

# **FRAUD**

## **The Modern Face of Public Corruption and White Collar Crime:**

### **Legislative Solutions for More Effective Prosecution**

*The Second in the Attorney General's Series of Reports on Fraud*

**Scott Harshbarger  
Attorney General  
Commonwealth of Massachusetts**

**November 10, 1993**

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**U.S. Department of Justice  
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# *The Commonwealth of Massachusetts*

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SCOTT HARSHBARGER  
ATTORNEY GENERAL

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November 10, 1993

To the Citizens and Taxpayers of Massachusetts:

As the chief law enforcement officer in the Commonwealth, I have made combatting fraud in the public and the private sector a major priority. This report, the second in our series on fraud, focuses on the extent and cost of public corruption and of white collar crime in the private sector. The report highlights recent enforcement activities in these areas and proposes legislative initiatives, including stiffer penalties, designed to assist the law enforcement community in its efforts to more effectively deter fraud.

Public and private sector fraud costs the people of Massachusetts billions of dollars each year; money each and every one of us pays for what I have called the "FRAUD TAX." The "FRAUD TAX" is the hidden, extra amount that we pay in taxes, in insurance premiums for health care, workers' compensation and unemployment compensation, and for goods and services that is added to cover the cost of fraud and corruption. As the Massachusetts Taxpayer's Foundation concluded in its recent study of the state's cost of doing business, Massachusetts' high cost structure in many of these areas places our businesses and citizens at a competitive disadvantage. Through a vigorous, statewide crackdown on fraud, I want to cut the "Fraud Tax," a tax cut that will benefit us all personally, while protecting our most vulnerable citizens and enhancing the economic competitiveness of our state.

The cost of fraud and corruption in the public and private sector must not only be measured in terms of dollars and cents lost. Its impact must also be calculated in a more immeasurable way: the loss of trust and public confidence in our societal institutions, both public and private. This sense of distrust breeds cynicism, an attitude that "everyone does it" and an impression that it is our right to try and "beat the system." And, it undermines the very values that we must protect, if we are to function as a free, open, fair and just society.

Whether it is occurring in the halls of the State House, the corridors of city halls, the boardrooms of Fortune 500 companies or the storefront offices of small businesses, fraud must be dealt with as a priority by all of us, not just law enforcement. Public corruption is not limited to Beacon Hill, and white collar crime did not end on Wall Street in the late 1980's.

This report shines the bright light of public scrutiny on the changing face of public and private corruption. No longer are the wheels of power typically greased by money passed in brown paper bags. Today, the crimes tend to be more sophisticated and, on a systemic level, more costly to all of us. This report uncovers the millions lost in small towns, the deals and conflicts covered up by sophisticated paper trails, and the arrogance of public and private individuals in positions of trust, who use their positions to make secret deals, to not pay their taxes, to shift client funds to their personal use and establish dummy corporations, to file false reports and to make secret contracts.

By way of specific examples, this report outlines the devastating effect the embezzlement of over \$1 million by a public official had on a small town, the personal tragedy of individuals who lost their life savings and their future because they put their trust in an unscrupulous attorney or financial advisor, and the toll taken on public confidence by violating the public trust.

This report has three goals. First, it demonstrates that, through aggressive prosecution of public corruption and white collar and economic crime in the private sector, we are sending the clear message that this conduct is criminal, unacceptable, and will not be tolerated. The risk of incarceration has become a reality and makes doing the time not worth the crime.

Second, this report demonstrates that the best form of public protection against public corruption and private sector fraud is prevention. The way to prevent these types of non-violent, calculated crimes is through deterrence. We can deter fraud by prosecution and we can enhance our deterrent efforts by broadening tools that law enforcement has at its disposal and toughening the sentences for these kinds of crimes.

Lastly, the report proposes specific legislative actions that must be taken now, if we are to punish the guilty, deter those who may engage in such activities in the future and restore confidence in our institutions and our government.

We want it to be clear that when a public official violates the public trust or when a public official fails to pay his or her taxes, we all pay; when an employee steals from his or her employer, the cost is felt by the public through higher costs.

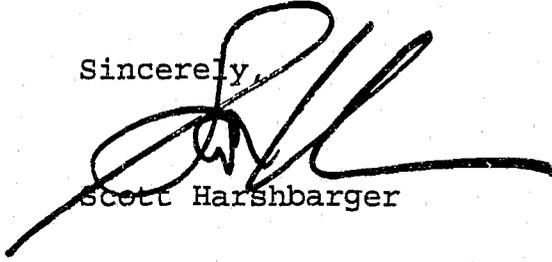
When a white collar professional targets older Americans because they are vulnerable, we all pay the price of lost confidence in people in whom we place our trust and our financial security.

The modern face of public corruption and private sector fraud has changed dramatically over the years. The techniques are often more subtle and more sophisticated, but, as our cases demonstrate, the impact of white collar crime, committed with a pen, can be as dramatic as if the perpetrator used a gun.

Our first fraud report focused on Medicaid fraud, workers compensation fraud, unemployment compensation fraud and insurance fraud. Our efforts continue in those areas. Future reports will focus on these other areas of fraud and will similarly offer recommendations on how to best prevent and deter it. It is my hope that this report, and our future reports, will play a genuine role in restoring public confidence and trust in our public and private institutions by demonstrating a commitment to aggressive prosecution, and by proposing recommendations to improve law enforcement tools and increase our ability to impose tough sentences.

I hope every citizen of the Commonwealth will join me in this effort to demonstrate that we will not tolerate fraud in the public or private sector. Together, we can reduce the tax we all pay for fraud.

Sincerely,



Scott Harshbarger

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# **Executive Summary**

## EXECUTIVE SUMMARY

### PUBLIC CORRUPTION

- \* 82 prosecutions initiated
- \* 39 defendants convicted, 3 not guilty, 37 pending, 2 dismissed, 1 continued without a finding
- \* \$3.4 million larceny of public funds detected
- \* 24 incarcerated in state prison or Houses of Correction

### PRIVATE SECTOR FRAUD

- \* \$12 million involved
- \* 40 prosecutions initiated
- \* 14 convictions, 0 not guilty findings, 22 pending trials
- \* Lawyer prosecutions
  - 6.3 million involved
  - 15 prosecutions
  - 8 convictions
    - 4 sentenced to state prison
    - 3 sentenced to House of Correction
    - 1 suspended sentence
- \* Tax highlights
  - \$1.5 million in taxes owed
  - 26 cases
    - 18 convictions
      - 2 sentenced to state prison
      - 8 sentenced to House of Correction
    - 8 pending cases

### LEGISLATIVE PROPOSALS

- \* Statewide grand jury
- \* Expand conflict of interest laws and enhance penalties to felonies
- \* Tougher penalties for white collar crimes
- \* Establish new crimes, such as extortion by abuse of public office
- \* Increase penalties for tax fraud
- \* Create crime of bank fraud
- \* Enact campaign reform legislation
- \* Enact Whistleblower legislation

# **Public Integrity**

## **Public Integrity**

- ▶ **82 Prosecutions initiated.**
- ▶ **39 defendants convicted, 3 not guilty, 37 pending,  
2 dismissed, 1 continued without a finding.**
- ▶ **\$3.4 million larceny of public funds detected.**
- ▶ **11 individuals incarcerated in state prison,  
13 incarcerated in House of Correction.**

## I. PUBLIC INTEGRITY CASES

The challenge is to demonstrate to the public that the law would be applied equally to all, regardless of one's position or political affiliation, both for reasons of public protection and, more broadly, to promote public confidence in government as a whole. In furtherance of this goal, it was first necessary to establish the presence of the Attorney General's office in the prosecution of public corruption cases. It also was necessary to demonstrate that the Attorney General would not focus only on the high visibility cases, but that we would devote resources to the prosecution of public corruption cases at the state, county and local level throughout the Commonwealth, without regard to politics, press, or outcome, if we believed in the facts and the law that the public trust had been violated.

### A. Public Integrity Division

One of Attorney General Harshbarger's first actions was to expand the resources of the Public Integrity Division. The Public Integrity Division's role is to investigate and prosecute those individuals who have violated the public trust. The Division has investigated a broad range of offenses committed by elected and appointed public officials at all levels, including conflict of interest, bribery, larceny, tax evasion, forgery, perjury and related offenses.

Due to Attorney General Harshbarger's commitment to combat public corruption, additional staffing has been provided to the division. The division presently consists of six full-time attorneys, two financial investigators and six state police officers.

This year marked one of the first joint state-federal prosecutions of a political corruption case in the Commonwealth of Massachusetts. By pooling resources, the Public Integrity Division and the Public Corruption Unit of the U.S. Attorney's office successfully prosecuted and convicted a state representative on bribery and child pornography charges.

This year also marked one of the first times the Attorney General's office was able to successfully investigate and prosecute procurement fraud in the Commonwealth. As a direct result of the coordination with outside agencies, the Public Integrity Division was able to target specific private contractors who obtained public contracts at the state and local level.

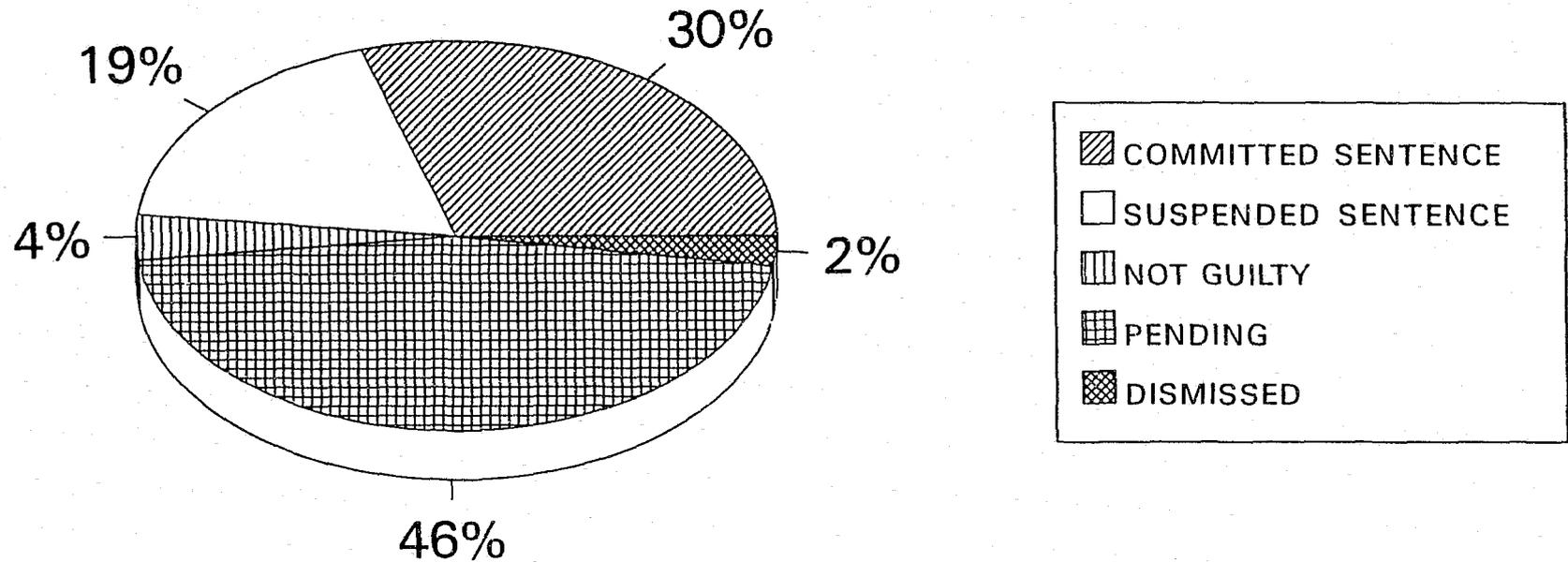
In 1993, the Division took an active role in training investigators from other state agencies. Assistant Attorneys General and financial investigators from the Public Integrity Division have provided training sessions on white collar crime to a variety of agencies, including the Massachusetts State Police, the Criminal Investigation Bureau of the Department of Revenue and the Division of Employment and Training.

The Division has coordinated the Attorney General's Public Integrity Advisory Group, which has brought together representatives of a wide variety of officials from the various executive branches, independent authorities, state agencies and watchdog groups. This Advisory Group meets quarterly with the Attorney General to discuss issues of common concern regarding waste and abuse in government. The task force member agencies

# PUBLIC CORRUPTION INVESTIGATIONS

JANUARY 1991 THROUGH OCTOBER 1993

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Disposition of Prosecutions\*

\* 82 Prosecutions involving \$3.4 Million in Public Funds

Total does not equal 100% due to rounding to nearest whole percent

successfully referred a number of cases to the Attorney General's office. Furthermore, these agencies were successful in pooling their resources to effectively investigate and prosecute cases.

With its prosecution of over 60 appointed or elected public officials, the Public Integrity Division has taken a statewide approach to public integrity cases, with prosecutions at all levels in virtually every corner of the state.

#### **B. Public Integrity Division Case Descriptions**

A former official of the Ashburnham-Westminster Regional School District was indicted in April, 1992 for embezzling more than \$1 million from the school district. The defendant, from Worcester, was found guilty by a Worcester County Superior Court jury, sentenced to 12-to-15 years in state prison, and ordered to turn over \$200,000 in assets to the school district.

The former Program Administrator of the state Executive Office of Communities and Development (EOCD) was indicted in August, 1991 on five counts of larceny over \$250, five counts of filing false claims with the Commonwealth and four counts of tax evasion, for stealing more than \$350,000 from the agency. The defendant pled guilty in November, 1991, and was sentenced to nine-to-12 years in state prison.

A former clerk magistrate at the Plymouth and Charlestown District Courts, was indicted in connection with the theft of \$4,000 in bail money. The defendant pled guilty and was sentenced to two years in the House of Correction, six months to serve and 200 hours of community service.

Two former officials of the state Pension Reserves Investment Management Board (PRIM) were indicted in January, 1992 on tax and larceny charges involving \$40,000. Their case is pending in Suffolk Superior Court.

A former accountant at the Department of Welfare was indicted in June, 1992 on charges of larceny and making false representations to the Commonwealth in connection with a continuous scheme that defrauded the state of more than \$300,000. The defendant pled guilty in July, 1992, and was sentenced to seven-to-10 years in state prison.

An East Sandwich man was indicted in March, 1991 on 62 counts of filing false claims with the Commonwealth and six counts of unauthorized practice of medicine, totalling more than \$450,000. The defendant pled guilty in September, 1991, and was sentenced to serve one year in the House of Correction and ordered to pay a \$5,000 fine.

A former Lynn School Committee member was indicted in June, 1991, and subsequently pled guilty to stealing more than

\$10,000 from the Aid to Families with Dependent Children (AFDC) program at the Department of Welfare. The defendant received a suspended sentence and was ordered to pay restitution.

The former Director of Weights and Measures for the City of Chelsea was indicted in July, 1991 on 19 counts of soliciting corrupt gifts, totalling more than \$2,000. The defendant pled guilty in February, 1992, and was sentenced to two years in the House of Correction, 60 days to serve, and was ordered to pay \$1,800 in restitution.

A former Department of Revenue employee was indicted in August, 1991 on three counts of filing false income tax returns and one count of making false claims to the Commonwealth. The case is currently pending in Suffolk Superior Court.

A former coordinator for the Homeless Veterans Reintegration Project was indicted in September, 1991 on larceny and bribery charges. The defendant was convicted on larceny charges and was sentenced to three-to-five years in state prison. A \$4,000 bribery case against the defendant is currently pending. A co-defendant in the case pled guilty to bribery charges.

A former Melrose police lieutenant was indicted in August, 1991 on one count of forgery and two counts of violating the civil service examination law in connection with a scheduled

exam for the Melrose Chief of Police position. The defendant pled guilty in April, 1992; however, the Judge continued the forgery case for three years without entering a finding, over the Commonwealth's objection.

A former Department of Welfare worker from Holyoke was indicted on larceny and forgery charges, in connection with a check forging scheme involving \$4,250. The defendant pled guilty in May, 1992 and was sentenced to a suspended three-to-five year state prison sentence and ordered to pay full restitution.

A former Somerville firefighter was indicted in October, 1991 on charges he falsified reports he was required to file with the Somerville Retirement Board in connection with a \$21,000 disability claim. The defendant pled guilty in April, 1992, and received a suspended two-year House of Correction sentence.

A former Metropolitan District Commission employee from Everett was indicted on larceny charges in connection with the theft of \$12,206 in workers' compensation money. The defendant pled guilty in September, 1991, received a two-year House of Correction suspended sentence and was ordered to pay restitution.

Three former employees of the Boston Common Parking Garage were all indicted on larceny charges for their involvement in the theft of \$8,500 from the garage. All three of the defendants pled guilty in January, 1992, and received suspended six-month House of Correction sentences. They were also ordered to pay restitution.

A Stoneham man was indicted in November, 1991 on larceny and extortion charges for accepting \$6,000 in cash payments from an individual interested in opening a concrete recycling plant. The defendant subsequently pled guilty and received a suspended three-to-five year state prison sentence and a \$6,000 fine.

A former State House court officer from Westwood was indicted in January, 1991 in connection with a no-show job scheme, whereby he collected \$130,000 in salary. The defendant was found not guilty following a jury trial in February, 1992.

The Chief Financial Officer of a Boston-area college was indicted in January, 1992 for embezzling approximately \$1.1 million from the school. The defendant was sentenced to nine-to-10 years in state prison, two years to serve, the balance to be suspended. In a separate unrelated case, he was indicted for violating state campaign finance laws by making more than \$13,000 in illegal contributions. He subsequently

pled guilty to those charges and was sentenced to a suspended one-year House of Correction sentence.

A former state lottery employee from Fall River was indicted in March, 1992 on larceny charges in connection with the theft of \$5,600 from a small business for which he served as lottery agent. He pled guilty in December, 1992, and was sentenced to two years in the House of Correction, two months to serve, and full restitution.

The former executive director of the Methuen Housing Authority was indicted in April, 1992 for embezzling \$47,000 from the housing authority and the U.S. Department of Housing and Urban Development. The defendant pled guilty in August, 1993, and was sentenced to two years in the House of Correction, nine months to serve.

A Swampscott man was indicted in March, 1992 on larceny charges stemming from a scheme in which he misrepresented himself as having authority to sign contracts for a minority contracting firm. The defendant was found guilty by an Essex County jury in January, 1993, and was sentenced to a suspended three-to-five-year state prison sentence. A co-defendant in the case was found not guilty.

A member of the Springfield School Committee was indicted in April, 1992 on criminal tax charges involving \$38,000 in taxes owed. The defendant pled guilty in April, 1993, received a \$31,000 fine and agreed to cooperate in the Attorney General's ongoing investigation into various activities within the City of Springfield.

A Lowell woman, a former financial assistance worker in the Lowell Welfare office, was indicted in June, 1992 on charges of larceny, filing false tax claims and filing false claims against the Commonwealth, for stealing approximately \$46,000 from the state. The defendant pled guilty in January, 1993, and was sentenced to serve six months in the House of Correction.

A former financial assistance worker at the Bowdoin Park Welfare office in Dorchester was indicted in June, 1992 for stealing approximately \$70,000 from the state. The defendant pled guilty and was sentenced to eight-to-10 years in state prison.

A former Department of Welfare accountant from Woburn was indicted in July, 1992 on larceny and receiving stolen property charges in connection with the theft of approximately \$300,000 from the Commonwealth. The defendant pled guilty in September, 1992, and was sentenced to three-to-five years in state prison.

A candidate for Norfolk County Sheriff, from Braintree, was indicted in July, 1992 on forgery and uttering of nomination papers. The defendant pled guilty in October, 1993, and was sentenced to two years in the House of Correction, three months to serve, and a \$12,000 fine.

A former Malden state representative was indicted in August, 1992 on bribery charges in connection with violating the state conflict of interest laws by accepting more than \$6,000 in illegal donations. The defendant pled guilty to the bribery charges in March, 1993, and was sentenced to seven-and-one-half-to-nine years in state prison. He also was indicted in November, 1992 on charges of illegally videotaping a minor engaging in sex. He pled guilty to the child pornography charges in June, 1993, and was sentenced to 10-to-12 years in state prison.

The former Conservation Commissioner of Taunton was indicted in September, 1992 on charges of solicitation and acceptance of gratuities involving \$15,000. The case is pending in Bristol Superior Court.

Two police officers were indicted in October, 1992 on larceny charges in connection with the theft of \$30,000 from the Dedham Patrolmen's Association. One defendant was acquitted; the other case is pending in Norfolk Superior Court.

A Hingham man and a Weymouth man were indicted in December, 1992 on charges of procurement fraud related to a minority business enterprise set aside in a contract awarded by the state. The construction company serving as the general contractor also was indicted. The case is pending in Suffolk Superior Court.

An attorney and former Director of the Division of Hearings for the Department of Welfare from Wakefield was indicted in December, 1992 on criminal tax charges involving more than \$50,000 in taxes owed. The case is pending in Suffolk Superior Court.

The former Yarmouth Water Superintendent and another individual from West Yarmouth were indicted in December, 1993 for stealing more than \$590,000 from the Town of Yarmouth. The case against the West Yarmouth defendant is pending in Barnstable Superior Court. The other defendant died prior to disposition of the case.

A former MBTA bus driver from Lawrence and owner of a Lawrence driving school was indicted in December, 1992 on bribery charges related to accepting illegal payments from students for driving tests without properly passing road tests. The defendant pled guilty in June, 1993, and was sentenced to one year in the House of Correction, 30 days to serve.

A Fairhaven School Committee member and Baybank employee was indicted in December, 1992 on larceny and forgery charges in connection with the alleged theft of \$45,000 from the bank for which he worked. The defendant pled guilty and was sentenced to two years in the House of Correction, six months to serve.

A former Department of Social Services (DSS) employee from Holbrook and a co-defendant from Dorchester were indicted in January, 1993 on larceny charges in connection with the theft of \$40,000 from DSS. The defendants pled guilty in June, 1993. The Holbrook defendant was sentenced to two years in the House of Correction. The Dorchester defendant was sentenced to four-to-five years in state prison. A case against a third defendant is pending in Suffolk Superior Court.

A former deputy tax collector for the City of Springfield was indicted in February, 1993 on criminal tax charges involving \$150,000 in unpaid taxes. The case is pending in Suffolk Superior Court.

Two Holbrook Police officers and two other individuals were arrested in December, 1992 on criminal charges for their involvement in a fencing operation. The defendants pled guilty in June, 1993. One officer was sentenced to two-and-one-half-to-three years in MCI-Cedar Junction. A civilian defendant was sentenced to three-to-five years in

MCI-Cedar Junction. The case against a patrolman is currently pending in Norfolk Superior Court. The case against a fourth defendant was dismissed.

A former records clerk for the Town of Rehoboth was indicted in April, 1993 on charges relating to the misappropriation of \$3,000 in funds from the town treasury. The case is pending in Bristol Superior Court.

A former state employee for the Department of Mental Health was indicted in May, 1993 on larceny charges involving the theft of \$26,000 from the Canteen and Grill, owned and operated by the Bridgewater Treatment Center. The case is pending in Plymouth Superior Court.

Seven Massachusetts Highway Department employees were indicted in June, 1993 for allegedly stealing more than \$70,000 from the Commonwealth in connection with a no-show job scheme. The case is pending in Suffolk Superior Court.

The former Chief of Police from Mansfield was indicted in June, 1993 on multiple criminal charges involving the alleged misuse of funds of the Mansfield Police Department. A co-defendant from North Attleboro was indicted on charges of perjury and filing false claims against the Commonwealth. The former Chief was indicted again in September, 1993 on larceny charges related to the alleged theft of police department drug

forfeiture monies. All of the cases are pending in Bristol County Superior Court.

The president of the Massachusetts Organization of State Engineers and Scientists (MOSES), from Norwood, was indicted in July, 1993 on multiple criminal charges for allegedly collecting more than \$71,000 from the Department of Public Works while he was on full-time unpaid leave of absence. The case is pending in Suffolk Superior Court.

Two Massport employees and two other individuals were indicted in July, 1993, on various criminal charges in connection with a scheme allegedly involving the payment of private vendors for services never performed, taking kickbacks and the illegal sale of Massport parking permits for personal profit, involving approximately \$50,000. The cases are currently pending in Suffolk Superior Court.

Three Department of Employment and Training (DET) employees were charged in July, 1993, in Boston Municipal Court on larceny and unemployment false claims charges for allegedly stealing \$15,000, collectively from three different unemployment offices. Their cases are pending in Boston Municipal Court.

A Cambridge general contracting firm, its owner and an employee were indicted in August, 1993, for allegedly attempting to defraud the Metropolitan District Commission (MDC) of more than \$11,000. The case is pending in Suffolk Superior Court.

A University of Massachusetts/Amherst professor was indicted in September, 1993 for allegedly participating in a University contract procurement matter between the University and a business in which the professor had an undisclosed financial interest. The case is pending in Hampshire Superior Court.

### C. Special Investigations Unit

The changing face of corruption, be it in the public or private sector, has highlighted the need for prosecutors to develop new tools, enhanced techniques and training, and to develop the sophisticated skills necessary to track the flow of money, property or other entities.

Attorney General Harshbarger's Special Investigations Unit (SIU) was established as a division within the Criminal Bureau in 1991. Comprised of four attorneys, a financial investigator and support staff, SIU's mission is to investigate and prosecute complex criminal acts and conspiracies. Many of the cases handled by SIU require extraordinary investigative techniques, such as court-authorized electronic surveillance and extensive, long-term financial transaction and document analysis. One recently concluded case alone involved the review of in excess of 500,000 files.

Over the past two years, SIU has reviewed 51 matters, conducted 16 full investigations and initiated criminal cases against 69 individuals in District and Superior courts in Essex, Middlesex and Suffolk Counties. Of those 69 cases, 58 were pending as of September 1, 1993. Of the 11 cases disposed, nine resulted in convictions and two cases were dismissed.

SIU also initiated related civil actions in two cases which resulted in fines totalling over \$750,000, together with more than \$3.4 million dollars in restitution payments to victims. Seizures of narcotics-related assets included over \$80,000 in cash, three motor vehicles, 12 firearms and one residence, which is the subject of a pending civil forfeiture action.

#### D. Special Investigations Unit Case Descriptions

In February, 1993, a former state senator from Fairhaven was indicted and pled guilty to violating the state's conflict of interest laws in connection with his hidden financial interests in two state contracts. One of those contracts involved commissions paid to the defendant's insurance agency pursuant to the state employee deferred compensation program. In addition to a sentence of probation with stringent past and future disclosure requirements, the defendant forfeited \$512,000 to the Commonwealth, including \$278,000 paid directly to the public employee's deferred compensation program as restitution. This is the largest penalty ever obtained under the state's conflict of interest law.

In May, 1993, a former Massachusetts Attorney General and a former state Treasury employee were indicted for violating the conflict of interest laws in connection with their involvement in the public employee deferred compensation program. The indictments allege that the former A.G., who had an ownership

interest in a private corporation which received substantial fees from the public employee deferred compensation program, paid compensation to a state employee assigned to the State Treasurer's office, in connection with that program, in violation of the state conflict of interest laws. The allegations against the former Attorney General do not relate to time in office. The case is pending in Suffolk Superior Court.

In August, 1993, a state senator from Cape Cod and a financial advisor were indicted for violating the conflict of interest laws in connection with the financial advisor's private employment of the Senator. The indictments allege that the payments made by the financial advisor to the Senator were in return for the Senator's official actions in advocating various business and investment proposals to the State Treasurer's office relating to the investment of public employee pension funds. The cases are pending in Suffolk Superior Court.

In August, 1993, two affiliates of a national insurance company, Aetna Capital Management Inc., and Aetna Financial Services, Inc., both subsidiaries of Aetna Insurance, were the subject of civil enforcement actions initiated by the Attorney General's office, the Massachusetts Securities Division, the United States Attorney's office and the federal Securities and Exchange Commission. Aetna forfeited \$5.2 million in fines and restitution as a result of those actions. \$3.7 million of the

monies paid by Aetna was returned to 22 Massachusetts public employee pension systems, which had invested over \$230 million dollars in public pension funds in the company's products between 1982 and 1991. Those enforcement actions established that the financial advisor was instrumental in securing those investments for Aetna, and that he and Aetna had undisclosed consulting and commission arrangements of which the public pensions systems were unaware, in violation of federal and state law.

# **Private Sector Fraud**

## **Private Sector Fraud**

- ▶ **\$12 Million involved.**
- ▶ **40 Prosecutions initiated.**
- ▶ **14 convictions, 0 not guilty findings, 22 pending trials.**
- ▶ **Lawyer Prosecutions:**
  - \$6.3 million involved**
  - 15 prosecutions**
  - 8 convictions**
    - 4 individuals sentenced to State prison**
    - 3 individuals sentenced to House of Correction**
    - 1 suspended sentence**
- ▶ **Tax Highlights**
  - \$1.5 million in taxes owed**
  - 26 cases**
  - 18 convictions**
    - 2 individuals sentenced to State prison**
    - 8 individuals sentenced to House of Correction**
    - 8 Pending cases**

**II. THE PRIVATE SECTOR:**  
**ECONOMIC AND WHITE COLLAR CRIME**

Economic and white collar crimes are costing Massachusetts working men and women hundreds of millions of dollars annually. Economic and white collar crimes are crippling small and large businesses alike, costing us jobs and diminishing the impact of important government programs. More importantly, the personal toll these crimes take on the victims is staggering. Victims of these crimes often lose their life's savings, their businesses and, in effect, their personal futures. Effective, swift and sure prosecution of those who would commit these crimes is extremely important, particularly in times when the economy is unhealthy, consumers' incomes are diminished and when the need for a secure financial future could mean the difference between independence or reliance on government programs, or worse.

**A. Economic Crimes Division**

In 1992, Attorney General Harshbarger formally created an Economic Crimes Division in order to investigate and prosecute effectively the heavy caseload of professional and white collar crimes. The Division was formed to focus on the matters of priority to the Attorney General and channel the cases into one comprehensive unit. At present, eight Assistant Attorneys General, three civilian investigators and state troopers are assigned to the division.

The Division focuses on three priority areas: insurance fraud, tax crimes and financial crimes, including fraud against the elderly and other vulnerable citizens of the Commonwealth. The Insurance Fraud cases will not be outlined in this report; they were addressed in the Attorney General's first report, Fraud I: Combatting the Fraud Tax, released in February, 1993.

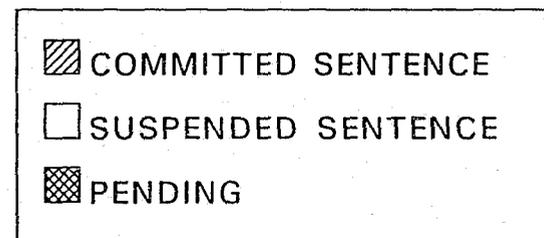
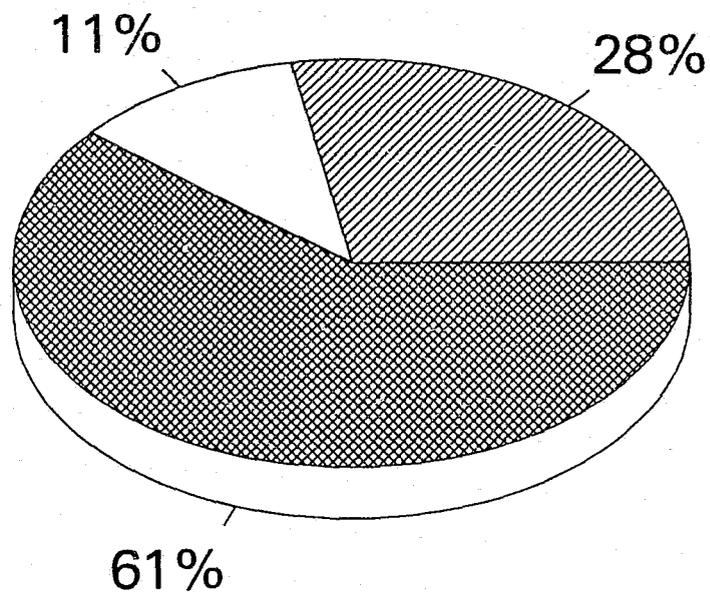
The Economic Crimes Division works on investigations and prosecutions of businesses and professionals who steal with a pen, or a false pretense, or through a business facade. To date, the Division has brought charges against nearly 50 individuals and/or corporations representing some \$12 million in white collar crime or financial exploitation. The Attorney General has placed emphasis on the prosecution of those who prey upon the elderly and on professionals, such as lawyers, financial advisors and other fiduciaries who abuse a position of trust to embezzle money from unsuspecting victims.

During the past two years, the Division has prosecuted a variety of white collar or financial crimes. Referrals are made to the Division by state and federal agencies, as well as judges, attorneys, private parties and police departments throughout the state. The Division has been able to develop good professional relationships with such groups as the Governor's Auto Theft Strike Force, the Board of Bar Overseers, the F.D.I.C. and various District Attorneys' offices in Massachusetts.

# ECONOMIC CRIME INVESTIGATIONS

JANUARY 1991 THROUGH OCTOBER 1993

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Disposition of Prosecutions\*

\* 36 Prosecutions involving \$12 Million

## B. Economic Crimes Case Descriptions

A Natick stockbroker/financial advisor pled guilty in March, 1992 to larceny and securities fraud charges for defrauding elderly investors of \$180,000. The defendant was sentenced to six-to-10 years in state prison and was ordered to make restitution.

A Cape Cod real estate broker was indicted in November, 1991 on larceny charges for defrauding investors of more than \$160,000. The case is pending in Barnstable Superior Court.

A Somerset classic car dealer was indicted in August, 1993 on larceny and forgery charges for allegedly stealing more than \$250,000 from prospective customers. The case is pending in Bristol County Superior Court.

A former Marshfield insurance agent was indicted in January, 1992 on larceny and forgery charges in connection with a surety bonds scheme in which he bilked numerous clients of more than \$110,000. The defendant pled not guilty at his arraignment in January, 1993, and the case is awaiting trial in Norfolk Superior Court.

A former Weymouth man was indicted in June, 1992 for stealing more than \$85,000 from an elderly Quincy man. The defendant pled guilty in March, 1992 and was sentenced to two years in the House of Correction and ordered to pay restitution.

A Newton man and an Ashfield man were indicted in April, 1993 for allegedly stealing more than \$150,000 from the H.P. Hood company. The case is currently pending in Suffolk Superior Court.

A Scituate man and former Controller of Prestige Imports, Inc., was indicted in March, 1991 for larceny charges in connection with the theft of \$1.2 million from a Mercedes-Benz dealership. The defendant pled guilty in March, 1993, and was sentenced to 18-to-20 years in state prison and was ordered to pay \$1,016,714 in restitution.

A Connecticut man and former Senior Vice President of the Springfield branch of Advest, Inc., was indicted in May, 1992 for misappropriating \$452,140 from 11 clients whose accounts he had managed. The defendant pled guilty in October, 1992, and was sentenced to two years in the House of Correction.

A former Sudbury stockbroker was indicted in March, 1992 on larceny and securities fraud charges involving the theft of more than \$500,000 from his clients. The defendant pled guilty in February, 1993, and was sentenced to four-to-five years in state prison.

A Cohasset investment broker was indicted in June, 1991 in connection with charges that he fraudulently solicited \$142,000 while posing as a licensed investment advisor. The defendant

pled guilty in February, 1992, and was sentenced to one year in the House of Correction and was ordered to pay restitution.

A Pawtucket, Rhode Island man pled guilty in June, 1992 to charges that he stole more than \$62,000 from a West Hanover corporation for which he served as a former executive. The defendant received a five-year suspended prison sentence and was ordered to pay full restitution.

An East Douglas woman was indicted in Norfolk, Worcester, Essex and Middlesex Counties for allegedly practicing medicine without a license. The defendant allegedly administered examinations to bus drivers throughout the Commonwealth to comply with safety requirements and purported to conduct tests for controlled substances. The alleged scheme had been ongoing for more than five years. The defendant allegedly examined approximately 2,000 patients, for which she may have collected more than \$100,000 annually. The cases are pending in each of the counties.

Two women were indicted in Norfolk, Bristol and Hampden Counties on larceny and forgery charges for running an alleged flim-flam scheme, known as a "pigeon-drop," and targeting elderly women as victims. The defendants took thousands of dollars from several elderly women, leaving the alleged victims without their life savings. The case is pending in each of the counties.

A bank manager was indicted in Norfolk Superior Court after an investigation revealed that she had allegedly systematically taken at least \$117,000 from customer accounts. Several of the account holders were elderly, including one customer who had \$60,000 taken from three separate accounts. The defendant pled guilty in October, 1993, and was ordered to serve 90 days of home confinement.

A Cambridge man was indicted in July, 1993 on larceny and forgery charges for allegedly stealing and attempting to pass two separate cashiers' checks, worth a total of approximately \$23,000, which were stolen from BayBanks corporate offices in Waltham. The case is pending in Suffolk Superior Court.

A Fall River used car dealer and two associates were indicted on multiple counts of larceny and operating an unlicensed used car business involving more than \$50,000. The case is pending in Bristol County Superior Court.

A New York man was indicted in two counties for charges that he attempted to take delivery of lap-top computers he had ordered using counterfeit bank checks and fake business documents. Computer equipment valued at \$50,000 was recovered at the time of the defendant's arrest. The cases are pending in Middlesex and Worcester Courts.

A Brockton man, the former brother-in-law of a slain Boston Police officer, was arrested after he allegedly cashed a death benefit check intended for the family of the deceased, who was killed in the line of duty. The defendant also allegedly obtained the deceased officer's credit cards and identification and made numerous purchases at various stores in the Brockton area. The case is pending in Brockton Superior Court.

A former president of the Wollaston Credit Union (WCU) and seven other individuals were indicted in January, 1993 on criminal charges relating to an alleged \$5 million embezzlement at the Wollaston Credit Union. WCU lost a total of \$20 million due to bad loans in what bank officials have described as the largest credit union failure in Massachusetts history. The case is pending in Norfolk Superior Court.

A Dennis man was indicted in August, 1993 on charges he allegedly issued and sold two fraudulent surety bonds. The defendant pled guilty in October, 1993, and was sentenced to eight-to-12 years in state prison, four years to serve.

A Dorchester woman pled guilty in June, 1993 to larceny charges for stealing \$1,800 from the Department of Public Health's Women, Infants and Children (WIC) program. The defendant pled guilty and was ordered to make full restitution.

An East Boston woman pled guilty in September, 1992 to larceny and forgery charges for stealing more than \$100,000 from two executives for whom she worked. The defendant was sentenced to a five-to-10 year suspended state prison term, 500 hours of community service and full restitution.

A Revere man was found guilty in September, 1993, following a two-week jury trial, on charges of larceny and securities fraud for defrauding an elderly widow of her \$1.5 million inheritance. The defendant was found guilty, following a two-week jury trial, and was sentenced to four-to-five years in state prison.

A Mansfield man pled guilty in April, 1993 to charges of embezzlement and practicing law without a license. The defendant was sentenced to one year in the House of Correction and full restitution.

An Andover computer executive pled guilty in May, 1993 to charges that he embezzled \$550,000 from the Boston software company for which he served as the Chief Financial Officer. The defendant was sentenced to nine-to-10 years in state prison.

A Haverhill accountant was indicted in October, 1993 on embezzlement charges in connection with the alleged theft of \$800,000 from a Billerica corporation. The case is pending in Middlesex Superior Court.

### C. Lawyer Fraud

During the past two-and-one-half years, The Attorney General's Criminal Bureau and the various divisions within the Bureau have devoted resources to the prosecution of dozens of cases of fraud committed by professionals, particularly those who violate client trust or the public's trust. Some of the most egregious cases involve lawyer fraud.

The A.G.'s Criminal Bureau has brought action against 15 attorneys to date, accounting for over \$5 million in the alleged theft of client funds or tax evasion. Eight of the cases have resulted in significant state prison sentences and fines; seven cases are pending in courts across the state.

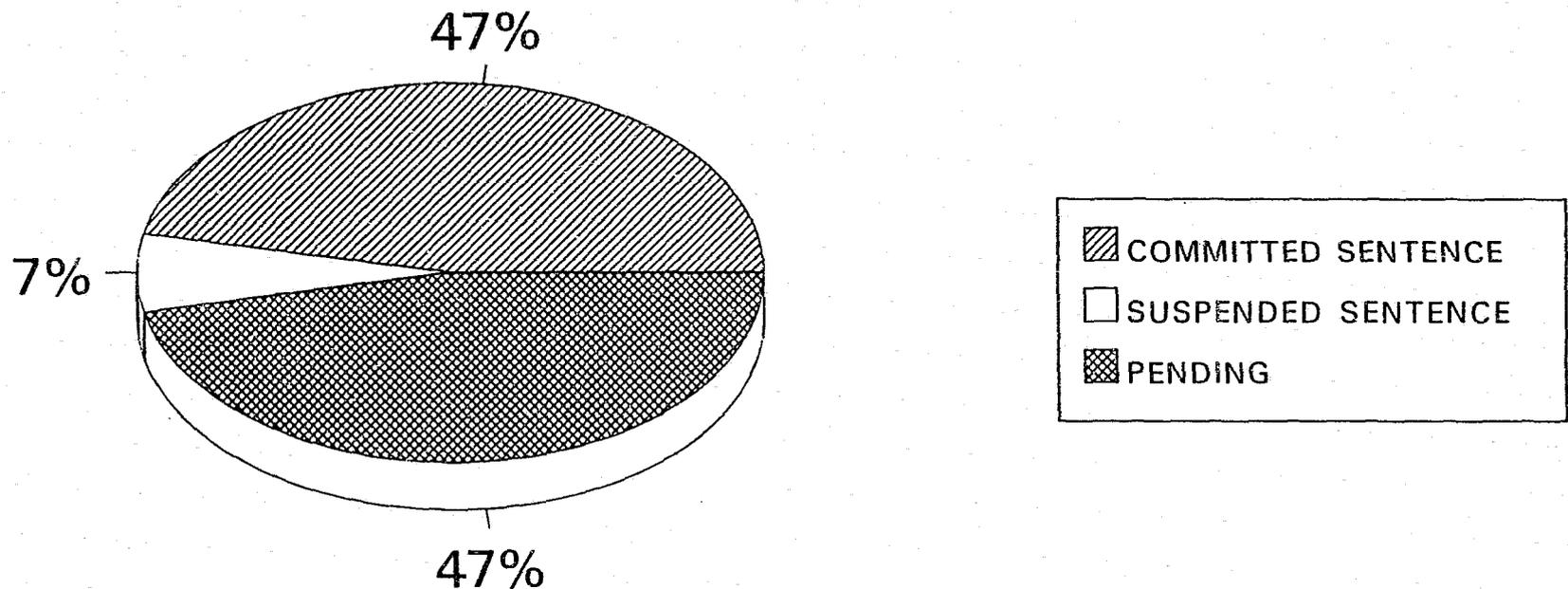
The charges brought in the majority of the cases include larceny, embezzlement, forgery, tax evasion and filing false insurance claims. Unfortunately, the majority of the cases involve the theft of elderly clients' funds. A typical scenario would show that the attorneys had power or control of trusts or served as a financial advisors to their various clients, and then either used the clients' money for their own personal use or for unsuccessful business ventures.

The Board of Bar Overseers has been instrumental in referring cases to the Attorney General's office. The Client Security Board (CSB) of the Supreme Judicial Court last year paid nearly \$1 million in reimbursement claims to clients who had been bilked by attorneys, many of whom were prosecuted by the Attorney General's office. The CSB reimbursements come from annual assessments on Board of Bar Overseers registration fees and from court-ordered restitution.

# LAWYER INVESTIGATIONS

## JANUARY 1991 THROUGH OCTOBER 1993

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Disposition of Prosecutions\*

\* 15 Prosecutions involving \$6.3 Million

Total does not equal 100% due to rounding to nearest whole percent.

#### D. Lawyer Fraud Case Descriptions

An Acton attorney was indicted in July, 1991 on 37 counts of larceny, forgery, embezzlement by a trustee and the unauthorized practice of law. Between 1985 and 1990 the defendant stole \$484,000 while serving as an attorney for a residential and commercial real estate business located in Brighton. The defendant pled guilty in September, 1992, was sentenced to two years at MCI-Cedar Junction and was ordered to make full restitution.

A Newton attorney was indicted in November, 1991 on larceny, embezzlement and forgery charges involving the theft of \$360,000 from clients he represented in personal injury cases. The defendant pled guilty in August, 1992, was sentenced to five-to-seven years in state prison, 14 months to serve, and was ordered to pay full restitution.

A Swampscott attorney was indicted in March, 1993 on larceny and embezzlement charges involving the theft of \$250,000 from his elderly clients. The defendant pled guilty in January, 1993, and was sentenced to a suspended two-year House of Correction sentence and full restitution.

A Cohasset attorney was indicted in March, 1992 on embezzlement and larceny charges involving the theft of \$450,000 of funds stolen from two trusts for which he served as trustee, lawyer and financial advisor. The defendant pled guilty in February, 1993, was sentenced to 17 1/2-to-20 years in state prison, nine to 10 years to serve, and was ordered to pay full restitution.

A Manchester attorney was indicted twice on two similar but unrelated charges. In December, 1992, the defendant was indicted for allegedly stealing \$600,000 from former clients, most of them elderly. In May, 1993, he was indicted for allegedly stealing \$875,000 from client funds. The defendant pled guilty in November, 1993, and was sentenced to four years in state prison and ordered to pay restitution to those victims who have not already been compensated by the Client Security Board or other means.

A Wrentham attorney was indicted in June, 1992 on larceny and embezzlement charges involving the theft of \$240,000 from mostly elderly clients. The defendant pled guilty in April, 1993, was sentenced to a suspended two-year House of Correction sentence and was ordered to make full restitution.

A Worcester attorney was indicted in February, 1993 on insurance fraud charges involving an alleged \$7,000 false insurance claim. The case is pending in Worcester Superior Court.

A Fall River attorney was indicted in February, 1993 on larceny charges in connection with the theft of \$30,000 from a Somerset couple for which he served as legal counsel. The defendant pled no contest in July, 1993. The judge entered a guilty finding and imposed one year of probation.

A Topsfield attorney was indicted in April, 1993 for allegedly embezzling \$1,250,000 from his elderly clients' trusts, for which he had been granted power of attorney. The case is pending in Suffolk Superior Court.

A Swampscott attorney and founder of a well-known bar review course was indicted in March, 1993 on embezzlement charges in connection with funds he solicited for a proposed real estate venture. The case is pending in Suffolk Superior Court.

A Hingham attorney was indicted in March, 1993 on criminal tax charges for failing to pay a \$30,000 criminal fine, after being found guilty of not filing a state income tax return. The defendant subsequently paid a \$30,000 fine.

A Wayland attorney was indicted in August, 1993 for embezzling approximately \$300,000 from his elderly clients. The case is pending in Suffolk Superior Court.

A Worcester attorney was arrested in September, 1993 on a 15-year-old warrant involving his failure to pay a fine after pleading guilty to criminal tax charges in 1978. The defendant owed more than \$19,000 in state income taxes. The case is pending in Suffolk Superior Court.

A Revere attorney who had pled guilty in 1989 was sentenced in Suffolk Superior Court in April, 1993 to one year in the House of Correction for stealing \$600,000 from his clients. The defendant maintained a law practice specializing in residential real estate.

A Cape Cod attorney was indicted on October 28, 1993 for allegedly embezzling more than \$1.9 million dollars from six different mortgage companies that employed his now-defunct real estate law practice. The case is pending in Barnstable County Superior Court.

### E. Tax Prosecution Unit

The Attorney General's Tax Prosecution Unit was formed as a result of an agreement between the Department of Revenue and the Office of the Attorney General to establish a prosecution team that handled and developed criminal tax prosecutions. The Unit, which is headed by a senior litigation attorney within the Criminal Bureau, draws upon a number of investigators and attorneys within the Bureau to prosecute criminal tax crimes across the state. The Unit itself is funded by the Department of Revenue through an interagency agreement between the Department and the Office of the Attorney General.

Many of the tax cases handled by the Unit are developed by investigators from the Criminal Investigations Bureau of the Department of Revenue, which are referred for criminal prosecution. The cases developed by the Bureau involve individuals, partnerships, companies and corporations, and deal with all types of taxes, including income, meals, sales, use and excise taxes. In addition, Unit attorneys have conducted extensive and ongoing grand jury investigations of financial transactions and situations involving suspected tax law violations by individuals and corporations. In an effort to remind the general public of the criminal penalties associated with acts of tax evasion and willful failure to file tax returns, the Unit has brought significant numbers of criminal indictments each Spring as the annual tax filing deadline approaches. The Unit's efforts, to date, have proven very

successful and have demonstrated to the public that tax obligations will be aggressively enforced by the Office of the Attorney General.

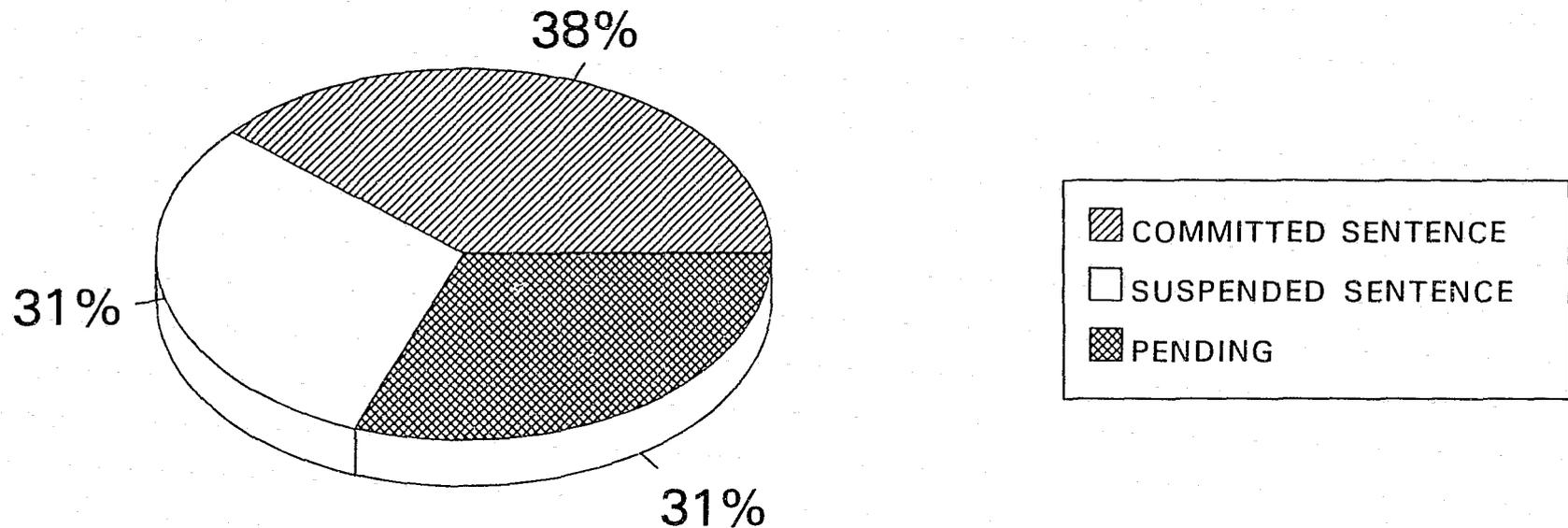
The Tax Prosecution Unit has obtained numerous convictions in cases involving charges of tax evasion, filing false tax returns, willful failure to file income and excise tax returns, and failure to account for meals and sales taxes. The prosecutions have targeted a broad range of defendants including professionals, salespersons, businesspersons, truckdrivers, small and large business owners, and corporation officials. Many of the convictions have resulted in the imposition of jail sentences, as well as substantial monetary penalties. Jail sentences in these cases have ranged from several weeks to five years in state prison. The Unit has also obtained hundreds of thousands of dollars in criminal fines from these defendants, with fines in individual cases ranging from several thousand dollars to \$175,000.

In April of 1991, April of 1992, and April of 1993, the Attorney General's office and the Department of Revenue announced tax "sweeps" involving the indictments of 28 individuals representing, in the aggregate, \$13.35 million in unreported taxable sales and income, for which over \$600,000 was owed to the state.

# TAX UNIT INVESTIGATIONS

JANUARY 1991 THROUGH OCTOBER 1993

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Disposition of Prosecutions \*

\* 26 Prosecutions involving \$1.5 Million

#### F. Tax Prosecution Case Descriptions

An Auburndale man pled guilty in February, 1991 to criminal tax charges relating to his failure to pay \$17,000 in income taxes for four years. The defendant was ordered to pay a \$10,000 fine.

A Brookline man pled guilty in February, 1991 to charges that he failed to pay \$11,000 in income taxes. The defendant was ordered to pay a \$7,000 fine.

A Springfield tax protester was sentenced in 1991 to four-and-one-half-to-five years in state prison after being found guilty of criminal tax evasion involving \$7,500 in unpaid taxes.

A Grafton man was sentenced to 30 days in the House of Correction in July, 1991, after he pled guilty to failing to account for \$48,000 in sales taxes collected by his company.

A Fall River man pled guilty in July, 1991, and was sentenced to serve 45 days in the House of Correction for willfully failing to file Massachusetts income tax returns involving \$11,000.

A Marblehead man was found guilty in September, 1991 after pleading no contest to criminal tax charges involving his failure to file income taxes on which he owed \$20,000. The defendant was ordered to pay a criminal fine of \$40,000.

A Brookline woman pled guilty in September, 1991 to charges that she filed false sales tax returns involving as much as \$38,000. The defendant was ordered to pay a \$10,000 fine.

A Worcester restaurant operator pled guilty in October, 1991 to criminal tax charges in connection with the evasion of meals tax and failure to file corporate excise tax returns amounting to \$20,000. The defendant was sentenced to serve 60 days in the House of Correction.

A Harwichport man pled guilty in November, 1991 to numerous criminal tax charges arising from his operation of a Hanover video store involving \$50,000. The defendant was sentenced to serve four months in the House of Correction.

An East Falmouth man and former employee of the Department of Revenue was indicted in August, 1991 for filing false tax returns and the filing of false claims to the Commonwealth. The case is pending in Suffolk Superior Court.

A Pittsfield restaurant owner pled guilty in September, 1991 to numerous charges that he had evaded meal and income taxes, and failed to file excise and personal income tax returns. The defendant was sentenced to three-to-five years in state prison.

A Springfield attorney was indicted in February, 1992 on willful attempts to evade and defeat income taxes involving \$24,000. The case is pending in Suffolk Superior Court.

A Springfield man pled guilty in June, 1992 to charges that he failed to pay income taxes on unreported income involving \$10,000. The defendant received a suspended one-year House of Correction sentence and a criminal fine of \$2,500.

A former attorney from Wakefield was indicted in December, 1992 on charges of willful attempts to evade and defeat income taxes. The case is pending in Suffolk Superior Court.

The former Deputy Tax Collector for the City of Springfield was indicted in February, 1993 on criminal tax charges for failing to report more than \$150,000 in taxable receipts for the years 1987 through 1991. The case is pending in Suffolk Superior Court.

A Springfield attorney who also serves on the Springfield School Committee pled guilty in March, 1993 to criminal tax charges involving \$25,000 in owed taxes. The defendant received a suspended one-year House of Correction sentence and was ordered to pay a \$25,000 criminal fine.

A Westfield man pled guilty in August, 1992 to criminal tax charges for failing to file state income tax charges involving \$10,000. The defendant was ordered to serve four days in the House of Correction.

A Rochester businessman was indicted in December, 1992 for failing to account for and pay meals taxes, and failing to file corporate excise tax returns for which he owed \$240,000 in taxes. The case is pending in Suffolk Superior Court.

Two Brockton brothers were each indicted in December, 1992 on tax evasion charges for which they owed \$100,000 in state income taxes. The case is pending in Suffolk Superior Court.

A national corporation was assessed a record \$175,000 fine after pleading guilty to criminal charges that it failed to file a state excise tax return or pay state excise taxes. This was the largest criminal fine ever assessed in a Massachusetts criminal tax case.

A Southwick woman pled guilty in August, 1992 to criminal tax charges for failing to file state income taxes for the years 1985 through 1990, involving \$34,000 in owed taxes. The defendant was ordered to serve four days in the House of Correction.

An Easthampton man pled guilty in September, 1992 on willful failure to file state income tax returns involving \$13,000 in unpaid taxes. The defendant was ordered to serve four days in the House of Correction.

A Springfield attorney was indicted in April, 1992 on criminal tax charges involving willful failure to file a state income tax return for the years 1985 through 1990, for which he owed \$30,000. The case is pending in Suffolk Superior Court.

A former attorney from Hingham was fined in March, 1993 after being found guilty of failing to file a state income tax return. The defendant was ordered to pay \$31,250 in criminal fines.

The former Springfield City Council president pled guilty in April, 1993 to charges that he failed to file a state income tax return. The defendant was ordered to pay a criminal fine of \$31,250 and to make full restitution.

The former owner of a Worcester consulting firm was indicted in August, 1993 on criminal tax charges for failing to report nearly \$150,000 in income. The case is pending in Suffolk Superior Court.

# **Legislative Proposals**

## **Legislative Proposals**

- ▶ **Statewide Grand Jury.**
- ▶ **Expand Conflict of Interest Laws and enhance penalties to felonies.**
- ▶ **Tougher penalties for White Collar crimes.**
- ▶ **Establish new crimes such as extortion by abuse of public office.**
- ▶ **Increase penalties for tax fraud.**
- ▶ **Create crime of bank fraud.**
- ▶ **Enact Campaign Reform Legislation.**
- ▶ **Enact Whistleblower Legislation.**
- ▶ **Enact Racketeer Influenced and Corrupt Organization Act.**

### III. LEGISLATIVE PROPOSALS: LAW ENFORCEMENT TOOLS & PENALTIES

We no longer need to go to a bank teller to transact our banking; we instead go to an ATM machine or even do it from home on our home computers. So, too, have the faces and methods of fraud and corruption changed. Corruption money is no longer typically passed in cash from one hand to another; it flows in the form of hidden commissions, phantom professional fees, and secret partnership agreements disguised by reams of paper and financial double dealing. No longer do we need a "Brinks" robbery to lose millions. The theft can be completed with a computer key stroke or the flash of a pen authorizing the transfer of funds from one account to another.

The changing face of corruption, fraud, economic and white collar crime require sophisticated enforcement techniques backed by new tools, tougher penalties, updated investigative skills, and clearer and stronger conflict guidelines. The cases presented in this report represent what could be done under the existing statutes. While, in some cases, current laws are sufficient and we have accomplished a great deal, in far too many others, the laws were not sufficient.

The proposals that follow were developed as a result of what we have learned in our investigation and prosecution of the cases cited in this report, and are designed to provide the tools necessary to fight corruption, fraud, economic and white collar crime into the year 2000. Without them, prosecutors will continue to fight a space age war with stone age tools and the losers will be the tax payers, the working women and men and the legitimate businesses of this state.

Each of these bills is born from our experience in attempting to prosecute creative fraudulent schemes where current state law is simply inadequate to get the job done. For example, our current antiquated grand jury system limits grand jury presentments by county line - a boundary which criminals do not recognize. Our Statewide Grand Jury bill, supported by the Governor and the Massachusetts District Attorneys' Association, would rectify this shortcoming.

Existing law gives the Attorney General jurisdiction to investigate and prosecute criminal cases throughout the Commonwealth. However, Grand Juries proceed county by county, potentially requiring prosecutors to involve as many as four or five separate county Grand Juries in the investigation of a single person, group or continuing course of conduct. As a result, our investigations must stop at one county line and pick up anew in the next county with a completely different Grand Jury, simply because a criminal targeted one victim in, for example, Marlborough and another in Southborough -- municipalities which are adjacent to each other, but are in different counties. The result: investigations are slower, more cumbersome, more disjointed, more costly and more inefficient than with a statewide Grand Jury model.

An example of the jurisdictional problems posed by the present system is a case recently prosecuted by the Attorney General's Criminal Bureau. In May, 1992, Mark Miller was indicted on charges of larceny, breaking and entering and

receiving stolen property by Grand Juries in Middlesex, Plymouth, Norfolk, Suffolk, Bristol and Worcester Counties. After having to make separate grand jury presentments in six different counties, it was necessary for the Assistant Attorney General handling the case to appear in each county for arraignments and motions. Miller eventually pleaded guilty in four separate counties. To investigate and prosecute Miller's criminal activities, we were faced with the prospect of having to conduct several smaller investigations with multiple grand juries, in multiple locations. In such cases, the statewide Grand Jury bill would allow for one grand jury in one location, to investigate all of the criminal conduct, no matter where in the Commonwealth it took place.

A number of our legislative proposals aim at assuring the public that their elected officials act in the public interest, without fear or favor. Among these proposals are bills to enhance the Commonwealth's conflict of interest laws for public employees and officials; to increase conflict of interest penalties where a violation occurs; Perry Law Amendments to close loopholes in the law governing suspensions where a public employee has been charged with criminal misconduct; to broaden the list of crimes for which conviction will result in automatic forfeiture of accumulated retirement benefits; to establish the crime of larceny of Commonwealth property; and to establish the crime of extortion by abuse of public office. Each of these proposals is designed to deter public officials and employees from misconduct in exercising the public trust.

One illustration of the need to deter misconduct by public officials may be found in our proposed Act Increasing The Criminal Penalties For Bribery. Few crimes jeopardize the core principles of our democratic form of government as dramatically as the crime of bribery. Those who serve the public interest are charged with preserving the public trust, and violations of that trust often tear irreparably at the fabric of a free society. The democratic process cannot function if one individual or group is allowed to receive from a public official a benefit which is unavailable to the decent law-abiding citizen. To maintain the integrity of a democracy, such acts of bribery must be punished and punished severely. Accordingly, the Attorney General's proposal calls for a substantial increase in the statutory penalties for bribery. This proposed change will ensure that the penalties for bribery reflect the seriousness of the crime.

As in past years, Attorney General Harshbarger has joined Common Cause in supporting their Act For Accountable Politics. Massachusetts needs real campaign finance and ethics reform. The public's confidence in politicians and the political system is at an all-time low. Because of the actions of a small number of elected or appointed officials, or the appearance of impropriety in the conduct of some public officials, the citizens of the Commonwealth have lost confidence in their leaders and in the ability of government to be fair, just and effective.

One way to re-earn the public trust is to fundamentally reform the manner in which campaigns are waged and the way in which elected officials conduct themselves once in office. Since 1978, when Attorney General Harshbarger was selected to serve as the first General Counsel of the then newly-created State Ethics Commission, he has consistently and publicly supported strong, comprehensive and effective conflict-of-interest, public corruption, ethics and campaign finance reforms and enforcement. Common Cause's Act for Accountable Politics contains important, necessary changes that should be made to our campaign and ethics laws. In particular, the provisions dealing with limiting the amount of money candidates can accept from PACs, imposing limits on campaign spending and conflicts of interest are commendable.

Our proposals to deter fraud also extend into the private sector. We have filed bills to Increase the Penalty for Failure to File a Tax Return, To Increase the Penalty for Tax Evasion and To establish that Three or More Years of Non-Filing of a Tax Return Shall Be Punished as Tax Evasion. We have also filed proposals to combat the unauthorized practice of medicine, nursing and other licensed practices or occupations.

One proposal which would reach into the public and private sectors is our Act Relative To The Protection of Conscientious Employees, also known as the Whistleblower Act. Job-related illegalities can take a tragic toll on the citizens of our Commonwealth. We have uncovered and prosecuted cases involving

fraud in the health care and insurance industries, public corruption, the pollution of our environment, and workplace health and safety problems. All too often, employees know about violations of law in these and other areas, but do nothing about them. We believe that the primary reason such violations go unreported is that employees fear losing their jobs, if they bring these matters to light.

The Whistleblower bill would accomplish three important goals. First, it would encourage more employees to bring job-related legal violations to their employers' attention so that these violations can be halted. The end result would be greater compliance with the Commonwealth's laws. Second, the Act would discourage employers from taking retaliatory actions against employees who report, object to or refuse to participate in illegal activity. This would result in a more secure and equitable working environment for conscientious employees. Third, the Act would provide much needed protection to employees whose employers retaliate against them for their conscientious conduct.

## A. Public Integrity Legislation

1. Conflict of Interest: This proposal modifies G.L. c. 268A, sec. 4, by restricting state employees from receiving compensation, not only in matters where the state or Commonwealth has an interest, but also where a county or municipal agency holds an interest. It also limits legislators from appearing for outside compensation, not only before a state agency, but also before a county or municipal agency. Finally, the bill includes county and municipal agencies, along with state agencies, in the definition of one type of proceeding before which legislators may appear for compensation, given (1) the agency's actions are adjudicatory and appealable and (2) counsel for both sides is not the Attorney General or a state employee.

2. Conflict of Interest Penalties: This proposal increases criminal fines which may be assessed for violations of G.L. c. 268A. and 268B. The fines in sections 4,6,7,8,11-20 of Chapter 268, and sections 4 and 7 of Chapter 268 B would be increased from a range of \$1,000 to \$5,000 per offense to \$15,000 per offense.

3. Increase Bribery Penalties: The Attorney General would increase the criminal penalties for bribery in G.L. c. 268A, sec. 2, for corrupt gifts, offers or promises to influence official acts, and corruption of witnesses. The present statute allows a fine of not more than \$5,000 or imprisonment in state prison for not more than three years or in a jail or House of Correction for not more than two-and-one-half years, or both such fine and imprisonment in a jail or House of Correction. The new language would punish by imprisonment for not more than 15 years and increase the potential fine up to \$50,000 or three times the value of the bribe, or both such fine and imprisonment. The amendment continues the ban on an offender holding an office of public trust. The bill would also amend the penalty provisions of G.L. c. 268A, sec. 3, concerning gifts, offers or promises for acts performed or to be performed, corruption of witnesses or solicitation of gifts. The current punishment is a fine of not more than \$3,000 or imprisonment of not more than two years, or both. The bill would increase the penalties to a fine of not more than \$50,000 or three times the monetary equivalent of the value of the bribe, or imprisonment for not more than 15 years, or both.

4. Perry Law Amendments: The Attorney General would close four loopholes in G.L. c. 30, sec. 59, and G.L. c. 268A, sec. 25. The Perry Law provides that a person under indictment for misconduct in public office may be suspended, and that during the suspension the person shall not receive compensation or accrue other benefits, but that, if the criminal proceedings are terminated without a finding or verdict of guilty on any of the charges, the suspension shall be removed and all lost compensation and accrued benefits restored. The bill would tighten these laws as follows:

- \* makes laws applicable to persons named in district court criminal complaints as well as in indictments;

- \* extends the forfeiture to encompass retirement benefits in situations where the suspension leads to a discharge (reversing the interpretation of the Perry law in MBTA v. MBTA Retirement Board, 397 Mass. 734 (1986));

- \* makes the laws applicable to superseding indictments and additional charges filed after the suspension commences; and

- \* extends the forfeiture to persons who are suspended based on state charges in situations where the state charges are dismissed but are followed within 180 days by federal charges (reversing the interpretation of the Perry Law in Madden v. Secretary of Public Safety, 412 Mass. 1010 (1992 (rescript))).

5. To Broaden The List Of Crimes The Conviction Of Which Will Result In Automatic Forfeiture Of Accumulated Retirement - this amendment would amend G.L. c. 32, sec. 15(3A), to more closely require forfeiture of a public employer's accumulated retirement benefits upon that public employee's conviction of the following crimes:

\* G.L. c. 266, sec. 67A-C, fraud in procurement of supplies, services or construction by department, agency, public instrumentality or subdivision of the Commonwealth; presentation of false claims to Commonwealth; false entries in records of capital facility construction projects.

\* G.L. c. 268, sec. 1A, false statements containing declaration relative to the penalties of perjury and G.L. 268, sec. 6A, false written reports by public officers or employees;

\* G.L. c. 268A, various provisions concerning gifts, offers or promises for acts performed or to be performed, corruption of witnesses or solicitation of gifts to certain public officials or employees, receipt by state employees of compensation in relation to matter in which the Commonwealth or a state agency has a direct or substantial interest, the gift, promise or offer of such compensation, or acting as agent or attorney for other than the Commonwealth in matter where agency is a party or has a direct and substantial interest; as well as G.L. 268A, sec. 6, concerning financial interests of state employees, relatives or associates.

6. To Establish The Crime Of Larceny Of Commonwealth Property By A State Employee - provides that a state official or employee who embezzles or fraudulently converts, or who fraudulently takes or secretes with intent to take property of the Commonwealth, shall be punished by imprisonment in state prison for not more than 10 years or by a fine of not more than \$1,000 and imprisonment in jail for not more than two years.

7. To Establish the Crime of Extortion by Abuse of Public Office - would add a new section 25A to c. 265A of the General Laws, which would criminalize the actions of a public employee who uses his office to instill fear in another that the public employee will perform or fail to perform some act in relation to his official duties, unless the third person delivers property to him.

8. Act For Accountable Politics: This Act addresses political ethics and electoral and campaign fairness in three important ways: reducing the influence of money giving in politics, limiting campaign spending and eliminating conflicts of interest. Importantly, the bill would include:

\* Aggregate PAC Limits: Special interests exercise influence far greater than the ordinary citizen because of the money that the interest groups can funnel to elected officials through PACs. In order to level the playing field and to ensure that decisions are made on the basis of sound policy and the law and the facts, we must limit the total amount that elected officials can accept from PACs. The amount of money contributed by lobbyists would also be curtailed.

\* Campaign Spending Limits: These provisions would prevent incumbents from amassing war chests that scare away challengers. This would open the process to more diverse challengers with new ideas. We have also encouraged the committee considering this legislation to look for ways to make more public money available for candidates who agree to spending limits as well as searching for ways to promote access to free media.

\* Conflict of Interest Reforms: These provisions would ban outside honoraria for elected officials, require a one year "cooling off" period before state officials can appear in front of their former agencies and increase criminal penalties for campaign finance and ethics violations, including increased fines for felony bribery.

9. Protection of Conscientious Employees - this

"Whistleblower" bill would establish job protections for any employee who assists law enforcement or his own employer's compliance efforts by disclosing information of job-related unlawful activity. Where an employer retaliates against an employee for disclosing such information, the employee has a private right of action against the employer for compensation and reinstatement. The Act also authorizes the Attorney General to bring a civil enforcement action against an employer who commits unlawful retaliation. With certain exceptions, the Act's protections do not apply unless the employee has provided his employer with written notice of the unlawful activity and give the employer an opportunity to correct the activity. The Act requires all employers to notify their employees of their rights and obligations under the Act. Finally, if the employee has any contractual or other legal right of recourse for such retaliatory acts, he must elect to pursue either his rights under this Act, or his other right of recourse.

## B. Private Sector Fraud Legislation

### 1. Increase Penalties for Major Frauds, Thefts and Embezzlements

Currently, larceny over \$250 is a felony and larceny under \$250 is a misdemeanor. The maximum penalty for larceny is five years in prison and a \$25,000 fine. This Act would categorize larcenies according to their dollar value and raise the penalties accordingly. This Act creates two new categories in addition to current law: larceny over \$100,000, which would carry a maximum 10 years in state prison sentence and \$100,000 penalty; larceny over \$1,000,000 which would carry a maximum 15 years sentence in state prison and a \$250,000 penalty.

2. To increase the penalty for tax evasion - would increase the penalty for tax evasion to 10 years.

3. To increase the penalty for failure to file a tax return - the penalty would be increased to a maximum penalty of five years.

4. To establish that three or more years of non-filing of a tax return shall be punishable as tax evasion.

5. To increase the penalty for unauthorized practice of a profession or occupation - would amend G.L. c. 112, sec. 65, to increase potential incarceration from six months in the House of Correction, to up to five years in state prison or two and one-half years in the House of Correction for the crime of unauthorized practice of a profession or occupation, after a license is revoked or suspended.
  
6. To increase the penalty for the unauthorized practice of nursing - would amend G.L. 112, sec. 80, to authorize imprisonment for the unauthorized practice of nursing.
  
7. To Make The Unauthorized Practice Of Medicine A Felony - would amend G.L. c. 112, sec. 6, to upgrade to felony status the crime of unauthorized practice of medicine.
  
8. To Amend The Kickback Statute - would amend G.L. c. 176H, sec. 3, the "Kickback" statute, to ensure that the prohibition on kickbacks applies to all situations in which payments may be made by all payors of health care benefits and not just those paid by commercial insurers.

9. Bank Fraud - would make it a crime to engage in any act, practice or course of business, or to employ any device or scheme, to defraud a bank or to obtain money or other property being held by a bank. The bill would address the areas of "insider" crimes by bank officers and crimes affecting loans given by financial institutions, especially for real estate.

## C. Legislation to Enhance Prosecutorial Tools

### (Public and Private Fraud)

1. Statewide Grand Jury - this bill would facilitate the prosecution of statewide criminal cases by allowing the Chief Justice of the Supreme Judicial Court, upon written application of the Attorney General and a showing of good cause, to direct superior court judges to convene and preside over statewide grand juries with jurisdiction extending throughout the Commonwealth. Offenses indicted by statewide grand jury may be prosecuted in any county where the offenses occurred. Statewide grand juries will operate in the same manner as county grand juries, except as otherwise provided in the act.
2. Grand Jury Immunity - this bill extends the obligation to a witness who has been granted immunity by a justice of the Supreme Judicial Court to testify or produce evidence not only before a grand jury, but also before any criminal proceeding in the superior court. It also modifies the General Laws by broadening the crimes for which witnesses may be granted immunity with the addition of any felony to the list of crimes. The bill also extends the granting of immunity to a witness in criminal proceedings on the basis of not only immunity previously granted for grand jury testimony, but also for testimony in a superior court criminal proceeding. The procedures for a District Attorney or the Attorney General to seek immunity and to waive service of applications are also modified.

3. RICO - the purpose of the Racketeering Influenced and Corrupt Organizations Act is to curtail racketeering activity and lessen its economic and political power in the Commonwealth by establishing new penal prohibitions and providing law enforcement new civil sanctions and remedies, including forfeiture of money and other things of value obtained through racketeering activity. Such activity in the Commonwealth is highly diversified and widespread, and annually diverts millions of dollars from the Commonwealth's legitimate markets through the illicit use of force, fraud and corruption. Racketeering activity weakens the stability of the Commonwealth's economy, infiltrates legitimate businesses and other organizations, harms innocent investors, impedes free competition and undermines the general welfare of the Commonwealth. Traditional law enforcement strategies are inadequate to meet this highly organized threat. The RICO bill would provide the Attorney General and the District Attorneys the tools given to federal prosecutors and law enforcement in 27 other states to combat organized racketeering activity.

4. Obstruction of Justice - this bill would codify the District Attorneys' and Attorney General's ability to prosecute individuals who conceal or give false information during an investigation of a crime or during a police officer's official functions with the intent to influence the investigation.

5. Pen Register/Trap and Trace - this bill defines a pen register as a device which records or decodes the impulses that identify the numbers dialed on the telephone line to which it is attached. Trap and trace device is defined as a device which identifies the originating number from which a call was transmitted. The bill sets out application procedures for the use of pen register or trap and trace devices, and the proper authorization criteria and limits for the court.

6. Tax Return Disclosure - this bill would expand the availability of tax returns and tax return information for use in criminal investigations. Such availability would be obtainable only by an order from a justice of the Superior Court and only to the Attorney General, the District Attorneys or other law enforcement agency working under their direction for use in criminal investigations. Before a justice grants disclosure, he must determine that there is reasonable cause to believe that a specific criminal act has been committed, that the information sought is relevant to a matter relating to commission of such act and that the information is being sought exclusively for use in a state or county criminal investigation or proceeding concerning such act.

# WHERE TO REPORT FRAUD

**Carmen Russo**      **Civil Investigations Division**      **617-727-2200 x2930**

**Mark Smith**      **Public Integrity Division**      **617-727-2200 x2846**

**John Ciardi**      **Economic Crimes Division**      **617-727-2200 x2858**

**Office of Campaign & Political Finance**      **617-727-8352**

**Inspector General's Office**      **1-800-322-1323**

**Dept. of Revenue Criminal Investigations Bureau**      **1-800-792-5254**

**Insurance Fraud Bureau Hot Line**      **1-800-32-FRAUD**

**Dept. of Employment and Training Hot Line**      **1-800-354-9927**