

Devolution of Authority: The Department of Justice's Corporate Charging Policies

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INTRODUCTION

Both a climate of corporate corruption following the Enron scandal and public backlash over the conviction of the Arthur Andersen accounting firm have transformed the way the Department of Justice ("DOJ") handles the prosecution of business entities. This change is best embodied in the DOJ's Principles of Federal Prosecution of Business Organizations, commonly called the Thompson Memo.¹ After Enron and Andersen, pre-trial diversion has flourished as both corporations and the government have become less willing to roll the dice on a corporate criminal prosecution. In the last four years (2002-2005), the DOJ has entered into twice as many non-prosecution agreements ("NPA") and deferred prosecution agreements ("DPA") (collectively, "pre-trial agreements") as it had over the previous ten years (1992-2001).² This year, the use of pre-trial agreements continued to grow with the DOJ entering into six DPAs and

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¹ Memorandum from Larry D. Thompson, Deputy Att'y Gen., U.S. Dep't of Justice, to Heads of Dep't Components, Principles of Federal Prosecution of Business Organizations (Jan. 20, 2003), available at http://www.usdoj.gov/dag/cftf/corporate_guidelines.htm. [hereinafter "Thompson Memo"]

² *Crime Without Conviction: The Rise of Deferred and Non Prosecution Agreements*, Corp. Crime Rep., (Dec. 28, 2005) available at <http://www.corporatecrimereporter.com>. [hereinafter CCR Report] See *infra* DPA/NPA Matrix at p. 27 highlighting more recent statistics. Unlike the Corporate Crime Reporter, we did not include the declination of prosecution of Shell Oil in July 2005 because there was no agreement. The table below also includes four non-public NPAs that are not included in the DPA/NPA Matrix.

Number of Pre-Trial Agreements Since 1992



