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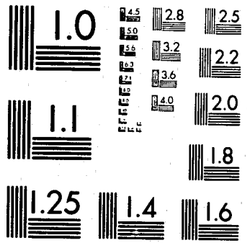

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Department of Justice

STATEMENT

OF

STEPHEN S. TROTT
ASSISTANT ATTORNEY GENERAL
CRIMINAL DIVISION
UNITED STATES DEPARTMENT OF JUSTICE

BEFORE

THE

CONFERENCE ON LABOR AND
EMPLOYMENT LAW

SPONSORED BY THE
FEDERAL BAR ASSOCIATION
PHILADELPHIA, PENNSYLVANIA

FEBRUARY 6, 1986

I am pleased to speak to you today on recent developments in the field of criminal labor law and the activities of the Department of Justice in connection with the prosecution of labor and management racketeering. I regret that I was not able to address the Federal Bar Association as scheduled last year on the occasion of the fiftieth anniversary of the National Labor Relations Act (NLRA). I am told that the conference was postponed because of a labor-management dispute at the location where the conference was to be held. Of course, if a conference on the NLRA has to be delayed for any cause, it seems proper that a labor-management dispute would be a good reason for the postponement.

Although Justice Department attorneys do not practice before the National Labor Relations Board, issues involving the primary Federal law governing labor-management relations do come into play from time to time in connection with the criminal prosecution of labor-management racketeering. You may have recently heard or read in the news media about the report made to the President and the Attorney General three weeks ago by the President's Commission on Organized Crime. Among its many recommendations, it proposes that Congress make it an unfair labor practice for any person to control a labor organization through a pattern of racketeering

activity, similar to that now prosecuted under the Racketeer Influenced and Corrupt Organizations or RICO statute (18 U.S.C. 1961, et seq) about which I will have more to say later.

Under the Presidential Commission's proposal, sanctions against this new racketeering unfair labor practice would be enforced by the National Labor Relations Board upon evidence brought to the Board's General Counsel by the Justice Department. As a last resort, the Board could decertify a labor union which was found to be dominated by organized criminal elements where no feasible alternative existed to remove those elements. The Attorney General has asked me to chair a working group which will study the report and advise him concerning the feasibility and appropriate implementation of the Commission's recommendations. The suggested amendment of the NLRA is one of the proposals which we will examine. The report, by the way, was released only in part on January 14, 1986; but the full report is expected to be available to the public in the near future.

The Presidential Commission's primary finding, however, is that "organized crime has used labor unions as a tool to obtain monopoly power in certain markets and to give mob-run businesses an 'edge.'" The report is therefore appropriately entitled "The Edge: Organized Crime, Business, and Labor Unions." It basically concludes that organized criminal groups do more than merely use certain labor unions which they influence or control as a means

of generating revenue from the extortion of employers in return for labor peace or as a way of bleeding union treasuries and union-sponsored pension and welfare plans. The report concludes that organized criminal elements have used their influence in these unions to manipulate the supply and cost of labor so as to force legitimate businesses to deal with mob-run companies, to enforce price fixing, bid-rigging, and other anti-competitive practices in certain industries which favor mob-infiltrated businesses.

Prosecutions by the Justice Department support that finding at certain locations. There are cases now pending which allege that criminal groups have used their control of particular labor unions and the fear of labor unrest in the construction and moving industries, for example, to allocate business among contractors and firms from whom members of these groups have demanded and received payoffs. 1/

You may also have read or heard that the Presidential Commission's report has also reviewed the Federal government's program against labor-management racketeering. Although the Commission's review comes at the very time when we are witnessing some of our greatest successes, there is always room for improvement in any program.

Just two weeks ago a Federal jury in Kansas City brought to a close a prosecution in which eleven defendants including five

(5) organized crime leaders from four midwestern cities were convicted of conspiracy, interstate travel and use of interstate facilities to maintain hidden interests in certain Las Vegas casinos in violation of the Nevada gambling laws. United States v. DeLuna, et al., Cr. 83-00124 (W.D. Mo.). As part of the conspiracy, certain defendants used their influence with the Teamsters Central States Pension Fund in Chicago in order to obtain loans in excess of $80 million for the acquisition and improvement of the casinos. The borrower obtained a loan of almost 63 million dollars in 1974 essentially on the strength of a two-page loan application and the influence of organized crime members with the trustees. Evidence at trial indicated that over eight (8) million dollars was thereafter skimmed from the casino's operations and distributed to organized crime interests over a five (5) year period.

The prosecution of this case by the Federal Organized Crime Strike Force in Kansas City resulted from a five-year FBI investigation involving over 4,000 hours of electronically intercepted conversations. The four-month trial was especially notable for the appearance of former Teamsters Union President Roy Williams who testified on behalf of the government. Williams testified that he had accepted bribes of fifteen hundred dollars ($1500) a month from 1974 until 1981 as a result of his activities as a trustee of the Central States Pension Fund and

helping to arrange for approval of the casino loans. Williams was told to vote for approval of the loans by Nick Civella, the former organized crime leader in Kansas City who died in 1983.

As you may recall, Roy Williams was convicted in December 1982 by the Federal Organized Crime Strike Force in Chicago for his role in a conspiracy to bribe a United States Senator in order to defeat legislation affecting the deregulation of the trucking industry. Williams, who faces a ten-year prison term as a result of the 1982 conviction, further testified about how former Teamster President Jimmy Hoffa had advised Williams and other trustees of the Teamsters Fund in the late 1960's to just follow the instructions of Allen Dorfman, an organized crime associate who was murdered one month after his conviction with Williams for his role in the bribery case. Dorfman, a former asset manager and insurance service provider for the Central States Fund, was murdered, according to the FBI, with the approval of Chicago organized crime leader Joseph Aiuppa who was among those convicted two weeks ago in the Kansas City trial. If there was ever any doubt about the ability of organized crime to dominate and control certain labor unions, that doubt was dispelled in the Kansas City trial.

However, the Presidential report does not focus on labor unions alone. It also concludes that some legitimate businesses have "willingly cooperated with organized crime and have derived benefits such as decreased labor costs, inflated prices, or increased business in a market." The report therefore recommends that corporations adopt codes of ethical practices which would forbid any business arrangements with individuals or companies known or reasonably suspected of being engaged (or having been engaged) in repeated serious violations of law.

As an example of the Justice Department's efforts to deal with management racketeering, a few months ago one of the largest drywall contractors in the New York metropolitan area, for example, entered guilty pleas to criminal charges as part of a plea agreement with the Federal Organized Crime Strike Force in Brooklyn. The corporation agreed to make restitution of one million dollars to the United States Treasury, the State of New York, union-sponsored pension and welfare funds, and an insurance company. These entities had been defrauded of payroll taxes, fringe benefit contributions, and unemployment insurance benefits in a scheme which involved the employment of workers who worked "off the books" over a three year period, that is, for wages in cash and without taxes or fringe benefits being paid. Corporate officers and owners have also entered guilty pleas to

racketeering offenses under the RICO statute for their part in the scheme. 2/

A few years ago Eugene Boffa, an owner of a nationwide labor leasing business, was convicted by the Federal Organized Crime Strike Force in Philadelphia, sentenced to twenty (20) years' imprisonment, and forfeited assets worth approximately 250 thousand dollars and his interests in the leasing corporations as a result of his participation in a racketeering scheme to defraud employees of their benefits under existing collective bargaining contracts. The fraudulent scheme involved keeping labor costs down and silencing aggrieved employees by ceasing business operations at particular locations, terminating employees' jobs, and then restarting new businesses at the same locations. At the same time managers concealed from employees the true identity of the new businesses which, of course, paid considerably lower wages and benefits. At some locations, the union official representing the terminated employees was bribed to overlook this flagrant violation of employees' rights under their labor contracts. The racketeering scheme under the RICO statute and its relationship to the Federal labor laws are set out in some detail in United States v. Boffa, 688 F.2d 919 (3rd Cir. 1982).

By way of background, the RICO statute has been increasingly used by Federal prosecutors to reach the more substantial cases of labor-management racketeering where criminal defendants seek to

conduct or participate in the affairs of a racketeering enterprise through a pattern of racketeering crimes specified in the statute. Such an enterprise might typically be a labor union, a pension or welfare benefit plan, an employer, or simply a group of individuals associated in fact. The crimes might commonly include the bribery of union officials, the extortion of employers, bribery or graft affecting pension or welfare benefit plans, or embezzlement of labor union or benefit plan funds. The minimum requirement for such a pattern is the commission of two racketeering crimes within a ten (10) year period, one of which must have occurred within the past five (5) years for purposes of the Federal statute of limitations. The maximum penalty for each racketeering offense is imprisonment for twenty years, a fine of $250,000 for individuals, $500,000 for non-individuals or twice the gross proceeds of the crime, and forfeiture of any interest acquired or maintained in violation of the statute or any interest which affords the convicted person a source of influence over the racketeering enterprise. Such an interest might include not only the proceeds of the crime, but also an office or employment in a labor union, an administrative position in a pension or welfare plan, or an ownership interest in a particular business.

Because of the RICO statute, wide-ranging schemes taking place in several Federal districts such as the one in the Boffa case can be prosecuted in a single proceeding which promotes judicial economy as well as careful restraint with respect to scarce prosecutorial resources. The RICO statute permits the prosecution of patterns of criminal conduct which bear a relationship to the affairs of a particular business, labor union, or pension-welfare benefit plan, for example, despite the diversity of the criminal transactions which possibly could not be tried together in the same case under traditional rules of criminal joinder and conspiracy. Because of this kind of flexibility in criminal racketeering cases, every criminal prosecution under the RICO statute requires the review and approval of the Justice Department's Criminal Division in Washington, D. C. prior to a prosecutor's recommendation that a grand jury return an indictment containing a racketeering charge. The review function is performed by the Criminal Division's Organized Crime and Racketeering Section.

The RICO statute has also been very useful in labor-management racketeering cases because RICO provides a vehicle for the forfeiture of both the unlawful proceeds of the racketeer's crimes and the interest which he has unlawfully maintained in the racketeering enterprise. In a particularly egregious case which involved the domination of a construction union in Louisiana by a

group whose violent criminal activities reached back more than ten years, the government was able to obtain an order which forfeited the convicted union official's office, his ownership interest in certain businesses which he had promoted by the criminal misuse of his union office, and his membership in the labor union. This forfeiture followed the lead defendant's sentence of imprisonment for 12 years and payment of $50,000 fine. Not every labor-management racketeering case contains evidence which justifies the full extent of forfeiture which was imposed in this case, United States v. Willard S. Carlock, Sr., et al., Cr. 85-20002-07 (W. D. La. 1985), appeal pndg., No. 85-4741 (5th Cir. appeal filed Oct. 10, 1985). However, the lead defendant had not only instilled fear in the hearts of most of the employers whom he had encountered for his own corrupt enrichment over the years, he had run the union as his personal preserve to the extent of soliciting money and sexual favors from prospective employees as the price of being referred to union jobs. I would call to your attention, that Senator Orrin Hatch, the keynote speaker today, is familiar with the Carlock case inasmuch as the Senate Labor Committee which he chairs played an important role in bringing the Carlock group to justice.

However, in the case of a forfeited interest like labor union office, the RICO statute has been interpreted to permit the convicted person to immediately regain his office by election or

appointment. See United States v. Rubin, 559 F.2d 975 (5th Cir. 1977). Moreover, forfeiture orders can be stayed pending the appeal of the racketeering conviction. Therefore the Department of Justice supported legislation, enacted as part of the Comprehensive Crime Control Act of 1984, which provides that persons who are convicted of certain crimes are immediately disqualified from holding certain positions upon conviction in the trial court. These prohibited positions not only include an office or employment in a labor union, but also certain corporate capacities involving direct responsibility with respect to labor-management relations and specific authority in regard to collective bargaining. The period of disqualification may extend to a maximum of thirteen (13) years following conviction or the end of any imprisonment, whichever is the later date. The legislation which amended the disability enacted in 1959 as part of the Labor Management Reporting and Disclosure (Landrum-Griffin) Act can be found in section 504 of Title 29 of the United States Code.

Another provision of the RICO statute which the Justice Department has used to combat labor-management racketeering involves the use of civil remedies in 18 U.S.C. 1964. Under the civil provision, the Attorney General is authorized to seek injunctive relief including divestment of interests in any racketeering enterprise, dissolution or reorganization of a

racketeering enterprise, and restrictions on the future activities of civil defendants which prevent them from engaging in the same type of unlawful endeavor in which the racketeering enterprise has engaged. The civil remedies which are available to private parties in section 1964(c) and which include provision for treble damages, have been controversial. The Supreme Court had the opportunity to review certain aspects of these remedies for the first time only last term in Sedima, S.P.R.L. v. Imrex Co., Inc., et al., _____ U.S. _____, 105 S.Ct. 3275 (1985). One important ruling was that civil defendants can be held accountable under the RICO statute without having been previously convicted of a predicate crime or RICO criminal violation. By analogy, this ruling sanctions the Federal government's use of the civil provisions of the RICO statute in section 1964(b) as an alternative to any criminal prosecution in particular cases or as an alternative to the criminal prosecution of particular racketeering defendants.

On December 26, 1985, a United States Court of Appeals for the first time ruled on the validity of the Federal government's use of the RICO statute to enjoin officials of a labor union from future involvement in the affairs of the labor organization which they had dominated and controlled by means of criminal activity for more than twenty years. The case will also impose for the

first time a court-supervised receivership over a labor organization until the union's affairs can be put in order and a democratic election of new officers can be held. The decision of the Court of Appeals for the Third Circuit in this case, United States v. Teamsters Local Union 560, et al., No. 84-5333 (3d Cir. filed December 26, 1985), reh. pet. pndg. (3d Cir. filed January 9, 1986), will undoubtedly be viewed as a watershed opinion with respect to the civil use of the RICO statute against labor-management racketeering.

The decision is particularly notable in that it upholds the concept that certain non-convicted union officers can be enjoined from stewardship of a labor organization by virtue of their having aided and abetted the control and domination of the union by other convicted union officials through a pattern of extortion directed at union members' rights of free speech and democratic participation in labor union affairs. That is, the aiders and abettors of racketeering activity can be removed from their union positions even though they have not been criminally prosecuted and convicted of the underlying offenses by which the convicted officials inspired fear in the union membership.

Consequently, civil defendants who currently remain as officers of Teamsters Local 560, which the trial court found to be a captive labor organization controlled by the so-called

Provenzano Group, will be compelled to vacate their offices and be enjoined from any participation in the affairs of Local 560 during the period of court-supervised receivership. These civil defendants as members of the executive board of Local 560 had not been convicted of having participated in the murder of a dissident union member, the extortion of employers, or the bribery and graft involving employee benefit plans of which members of the so-called Provenzano Group had been convicted. Instead, the trial court found that these defendants had aided the extortion of union members' rights by repeatedly appointing convicted and reputed criminals to union positions, by increasing salary and pension benefits to the leader of the Group, Tony Provenzano, by allowing access to union offices by known or reputed criminals, and by being "recklessly indifferent" to systematic misconduct by their fellow officers. Other civil defendants who were members of the Provenzano group and who had been convicted of crimes were permanently enjoined from involvement in the affairs of Local 560, any other labor organization, or any employee benefit plan.

Because the Court of Appeals' decision in the Local 560 case also approves the expansion of the definition of extortion in the Hobbs Act, 18 U.S.C. 1951, the opinion will be controversial. The extortionate acts on which the civil prosecution was predicated in part included depriving individual labor union

members of "property" in the form of intangible rights of free speech and democratic participation in internal labor union affairs by the wrongful use of fear of violence and/or economic harm. On the other hand, the Hobbs Act, which itself carries a prison term of up to twenty (20) years, has been recognized for many years as protecting commercial victims from the extortion of intangible property in the form of the right to do business in a particular locality or the right to conduct businesses free from outside pressure wrongfully imposed.

In view of the Government's successful effort thus far in the Local 560 civil litigation, it is no surprise that the President's Commission on Organized Crime has suggested in its report that the use of the civil RICO provisions in labor-management racketeering cases be emphasized. There is no question that the Justice Department will continue to use this extremely effective tool. On the other hand, we will not misuse it. The use of civil provisions of the RICO statute is not appropriate in every racketeering prosecution. It is appropriate in the circumstances presented by the Local 560 case, where the receivership is a proper means of repairing extensive and long-standing damage which has been done by a career-criminal group after key members of the group not only have been removed from union affairs, but have also been removed from society at large by criminal prosecution and incarceration. The Federal

government's goal in the Local 560 case is not to put the Federal courts routinely into the business of running labor unions. Instead, our objective is to help labor union members perceive that they can run their own organization according to the democratic principles guaranteed in the Labor Management Reporting and Disclosure Act of 1959 and without the assistance of organized criminal elements.

In other cases where patterns of labor-management racketeering are detected, civil remedies under the RICO statute may not be necessary if the expeditious use of criminal prosecution, with or without the RICO charges, is sufficient by itself to remove the racketeers from positions of control and readily return the organization into the hands of its members. It should be remembered that as effective as the Local 560 litigation has been in this instance, civil actions do not have the benefit of the accelerated calendar given cases on the criminal docket because of the Federal Speedy Trial Act. Moreover, where civil remedies are necessary, they are likely to be delayed until after a parallel criminal prosecution based on the same racketeering activities has been completed in the trial court. The Federal prosecutor is not likely to risk that the more liberal rules of civil discovery might result in the disclosure of evidence which could endanger witnesses or otherwise impede the criminal case if such result can be avoided.

Consequently, while we will be carefully reviewing the recommendations of the Presidential Commission in the weeks ahead and implementing those suggestions which further the interests of sound law enforcement, we are mindful of the limitations and restraints with which we must use these powerful prosecutorial tools in order to safeguard the rights of innocent employees and union members in this war against organized crime and labor-management racketeering. We recognize that while we vigorously seek to cut out the cancer in the body of American labor-management relations, we must keep the patient alive so that he survives the operation to lead a long and healthy life.

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