

67590



# Department of Justice

STATEMENT

OF

PHILIP B. HEYMANN  
ASSISTANT ATTORNEY GENERAL  
CRIMINAL DIVISION

BEFORE

THE

COMMITTEE ON THE JUDICIARY  
U.S. SENATE

CONCERNING  
CRIMINAL DIVISION OVERSIGHT

ON  
APRIL 23, 1980

NCJRS  
MAY 6 1980  
ACQUISITIONS

67595

Mr. Chairman and Members of the Committee:

Last year I described to this Committee a major reorganization then taking place in the Criminal Division. That reorganization was successful--in my opinion, at least--and has contributed to a number of changes in what we do and how we do it. Those changes, particularly in the area of white collar crime and public corruption, are my main topic for today. To provide a context for that discussion, I would like to begin by summarizing for you how I have come to think, after nearly two years as Assistant Attorney General, about the mission of the Criminal Division.

The Criminal Division's mission is best described in terms of two things: first, the functions that the Division performs; and second, the other agencies with which it works. Let me start with the latter, which I usually describe in terms of five categories of actors:

- First, there are some 1800 attorneys in the 95 offices of the United States Attorneys. They spend somewhere between half and three-quarters of their time on criminal cases.
- Second, there are over 20 major federal investigative agencies. They include the Inspectors General in 15 Executive departments and agencies as well as the Federal Bureau of Investigation, Drug Enforcement Administration, Customs Service, Secret Service, Postal Inspectors, Internal Revenue Service, and Bureau of Alcohol, Tobacco and Firearms.

- Third, there are a variety of federal regulatory agencies, such as the Securities and Exchange Commission, the Environmental Protection Agency, and the Mine Safety and Health Administration, whose enforcement activities may reveal criminal offenses.
- Fourth, there are literally thousands of investigators and prosecutors at the state and local level. They have concurrent jurisdiction over many offenses that can also be prosecuted as federal crimes.
- Finally, there is the host of other organizations, public and private, who affect law enforcement even though it is not their principal concern. Federal program agencies are especially prominent in this group, since their operations often create opportunities for criminal activity. In addition, their policy concerns are a factor in decisions on enforcement strategies and sanctions.

Within this diverse array of actors, the Criminal Division possesses a unique combination of characteristics: litigative talent, relatively large size, a strong Washington base, and mobility in the field. As a result, I believe it makes for a sensible division of roles and responsibilities for the Criminal Division to emphasize four major functions:

The first major function of the Criminal Division is to develop and litigate cases, either independently or jointly with the United States Attorneys, in which specialized expertise, central coordination, or a national perspective is needed. Although most of the responsibility for prosecuting federal criminal cases properly

belongs in the field with the United States Attorneys, there are certain cases that cannot be handled effectively in such a dispersed, decentralized way. For example:

- Major organized crime cases often involve lengthy, complex, multi-district investigations using electronic surveillance, undercover operations, or other sensitive techniques, and sometimes requiring the participation of several investigative agencies. Each of these factors, but especially the combination of them, creates a need for central coordination and close liaison with the investigative agencies in both Washington and the field.
- The Office of Special Investigation's cases against alleged Nazi war criminals require special knowledge and diplomatic contacts. These would be difficult or impossible to develop if the cases were handled by a large number of Assistant U.S. Attorneys, each having only one or two cases.
- The espionage cases handled by the Internal Security Section often raise delicate issues involving relations with foreign countries or the release of classified information. They need to be supervised by attorneys who are in close contact with the national security agencies and the State Department.
- Major cases in the Courts of Appeals also require a national perspective--though of a different sort--because their consequences extend far beyond the districts in which the cases originated. As a result, the Appellate Section is becoming increasingly involved in work at the Circuit Court level.

The Division also has a special responsibility to develop the prosecutive and investigative techniques needed to address new problems and implement new statutes. For example, the Narcotic and Dangerous Drug Section has joined with the Tax Division and the U.S. Attorney for the Southern District of Florida to lead a multi-agency task force that will use new techniques of financial investigation to develop cases against major drug traffickers. The Section's experience in using these techniques will be disseminated to prosecutors and investigators across the nation.

A second major function of the Criminal Division is to exercise leadership in policy development and implementation within the field of law enforcement. Many issues that critically affect criminal investigations and prosecutions have not been adequately addressed in the past. Part of the problem is that no single actor in the array I described earlier is charged with responsibility for those issues or has the authority to speak for investigators and prosecutors as a group. This is an area, however, in which the Criminal Division, with its Washington base and its broad experience in law enforcement, can and should play an increasing leadership role. Our efforts to do so are reflected in the Division's current activities in several areas. For example, the Division is seeking to analyze and develop solutions for system-wide legal issues, such as grand jury reform, the scope of the RICO statute, and relations with the Internal Revenue Service in the disclosure of tax information. Second, the Division is representing the interests of the law enforcement community in general, and especially of prosecutors, in legislative matters,

including the proposed Criminal Code, the graymail statute, and the Stanford Daily legislation. Third, the Division has mounted a major effort to develop priorities, objectives, and declination policies to guide the allocation of federal law enforcement resources. I will have more to say on this below in discussing a project to set priorities in the area of white collar crime and corruption. Fourth, the Division is collaborating with other law enforcement agencies in developing and evaluating programs and strategies designed to deal with specific law enforcement problems, such as the rising incidence of automobile theft and the increasing importation of heroin from Southwest Asia. Finally, in support of all these efforts, the Division is seeking to maintain close contacts and exchange information with other prosecutors and law enforcement agencies. The establishment of the Executive Working Group on Prosecutorial Relations, which includes representatives from the National District Attorneys Association and the National Association of Attorneys General, is one recent initiative in this area. Another is the Division's memorandum of understanding with the Law Enforcement Assistance Administration--now the Office of Justice Assistance, Research and Statistics--which provides for the Division to consult with that agency on its priorities for the funding of innovative programs and research projects in areas of mutual interest.

A third major function of the Criminal Division is to provide legal advice, technical assistance, and training to the United States Attorneys and investigative agencies. The Division

has traditionally provided support services and backup resources for the United States Attorneys, helping them with research on legal issues, conducting training programs in specialized enforcement areas, and providing attorneys on a short-term basis to staff cases that a U.S. Attorney's office is unable to handle. These kinds of support and backup are particularly valuable to the smaller U.S. Attorney's offices, which sometimes lack the attorney resources and expertise to handle a large or complex case that occurs only rarely.

In its support function, the Division concentrates on services that take advantage of our special abilities and position. This is especially true with respect to training programs, where we make use of the Division's ability to draw together expertise from many sources--both Washington and the field--in new areas of law enforcement, new statutes, and sophisticated investigative techniques. For example, over the past several years the Narcotic and Dangerous Drug Section and the Drug Enforcement Administration have jointly conducted a number of very successful training seminars for Assistant U.S. Attorneys and DEA agents. These seminars have emphasized the use of the Continuing Criminal Enterprise and RICO statutes to make cases against major drug traffickers. More recently, the seminars have emphasized new techniques for obtaining and using financial information in the investigation and prosecution of drug cases. To supplement its training efforts, the Narcotic Section began a year ago to publish a monthly newsletter on recent cases and other developments related to drug law enforcement. The newsletter is widely circulated among U.S. Attorneys, investigative agency field offices, and state and local law enforcement agencies.



The fourth major function of the Criminal Division is to review and coordinate the use of the most sensitive statutes, investigative techniques, and judicial processes. Certain statutes, investigative techniques, and judicial processes require centralized administration because they are novel or complex, because they require consistent and uniform ways of relating to a non-law enforcement agency or to a foreign country, or because their misuse would pose special dangers to civil liberties. The Criminal Division has long played a role of review and coordination in these situations, a role that it is well suited to play because of its central location and legal expertise. At present, for example, the Division reviews and approves requests for electronic surveillance, reviews and approves proposed indictments under the RICO statute, manages the witness relocation program, and reviews requests to subpoena members of the press. The Division also works closely with the Federal Bureau of Investigation in reviewing and authorizing requests to initiate undercover operations involving FBI agents. With regard to the international aspects of criminal law, a newly important and rapidly growing area, the Division's Office of International Affairs coordinates the requests of U.S. Attorneys and state and local prosecutors for international extradition of fugitives and for judicial assistance in gathering evidence from abroad.

The above discussion of the Division's principal functions provides some sense not only of the activities carried out by the Division, but also of the rationale for those activities. What

it fails to do, however, is to demonstrate how the Division's four functions are interrelated in practice, that is, how they are used together in addressing a given area of law enforcement. I would like to illustrate those interrelationships by describing in somewhat greater detail a number of initiatives that the Division is pursuing in the priority areas of white collar crime and public corruption.

Economic Crime Field Unit Program: The Economic Crime Field Unit program is intended to establish special units focusing on white collar crime and public corruption in 27 to 30 major districts across the country. These units will be located in the offices of United States Attorneys, and will be staffed jointly by several Assistant United States Attorneys and one or more Economic Crime Specialists from the Criminal Division. The Division's Office of Economic Crime Enforcement will provide central coordination and direction for the program.

The Economic Crime program was initiated by order of the Attorney General in February 1979, and it is now perhaps one-third of the way to full implementation. Sixteen districts now have units, and 17 Economic Crime Specialists are in place. We expect to bring the total of Economic Crime Specialists to 23 by the end of the current fiscal year. Our budget request for fiscal year 1981 includes 19 more attorneys for the program, plus one non-attorney position. This is the only program for which we have requested an increase in personnel.

The key to the functioning of the Economic Crime Units is the role of the Specialist. To understand that role, one must

first understand the special challenges posed by that broad and rather diffuse area of law enforcement that goes under the label "white collar crime and public corruption." One of those challenges is the need to coordinate the many investigative agencies--an unusually large number--that work in this area. Gaps in enforcement must be identified and filled, and duplication of effort must be avoided. Second, since the various investigative agencies differ widely in their sophistication in dealing with white collar crime and corruption, there is sometimes a need to stimulate their attention and train them in the necessary investigative techniques. Third, since white collar crime and corruption is a relatively new area for even the most sophisticated agents and prosecutors, there is a critical need for the development and dissemination of new techniques and the sharing of experiences. Fourth, since public awareness of white collar crime and corruption is still relatively low in many industries and geographic regions, efforts at prevention and detection have been seriously hampered. Outreach programs, especially to the business community, are urgently needed.

These are not challenges that we can reasonably expect local U.S. Attorneys and investigative agencies to deal with by themselves. Faced with rising caseloads, they have neither the time nor the special skills required. That is the reason for the Economic Crime Specialists. The Specialists, like the Assistant United States Attorneys assigned to each unit, will handle priority cases involving fraud and public corruption. However, case preparation and trial work, which will wholly absorb the Assistants,

is only part of the Specialists' job. Much of the Specialists' time will be devoted to other activities. These include (1) meeting with investigative agencies, regulatory authorities, and state and local officials in order to assess the white collar crime and corruption problem in the district and the effectiveness of existing efforts to deal with it; (2) disseminating, both within the district and to other districts, any information about new fraudulent schemes or forms of corruption, about particular criminal groups whose operations extend to other regions, and about successful investigative and prosecutive techniques; (3) assisting the United States Attorney in determining white collar crime and corruption priorities for his or her district, communicating those priorities to the investigative agencies, and evaluating progress in each priority area; (4) working with the investigative agencies to coordinate their enforcement programs and resolve jurisdictional disputes; (5) conducting or arranging for training in such areas as auditing and financial analysis for those investigative agencies where weaknesses have been identified; and (6) working with program agencies and the business community to increase their awareness of fraud and corruption and assist them in undertaking efforts to detect or prevent such problems.

In Economic Crime Units where there is only one Specialist, which is virtually all of them at present, the work of the Specialist is limited primarily to the district served by the United States Attorney in whose office the unit is based. In most cases, however, the investigative agency field offices have

substantially larger jurisdictions. As additional Specialists are added to a unit, it will be possible--and desirable--to serve adjoining judicial districts as well. The program will then become more truly national in its impact.

White collar crime priorities project: Another significant initiative of the Criminal Division is the white collar crime priorities project. In the order that established the Economic Crime Unit program, the Attorney General also called for the establishment of national and district priorities within the area of white collar crime and corruption. As noted above, one task of the Economic Crime Specialist is to assist the United States Attorney in establishing priorities at the district level. We had originally envisioned that the information collected through the Economic Crime Unit program would provide a basis for determining national priorities as well. However, recognizing that the program would not be fully implemented until the end of fiscal 1981, we decided earlier this year that the need for priorities was too urgent to wait. As an interim measure, the Division's new Office of Policy and Management Analysis, assisted by the Public Integrity, Fraud, and General Litigation Sections and the Office of Economic Crime Enforcement, began last November a massive effort to collect and analyze data concerning white collar crime and corruption on a nationwide basis. We had rather modest expectations for this project when it began, but it now seems likely to produce quite meaningful results. I am pleased to predict that it will be a significant success.

Briefly, what we have done is to collect a rather staggering amount of information about what federal prosecutors and investigators throughout the country perceive to be the extent, nature, and importance of different kinds of white collar crime and corruption. This detailed information has come from a total of 238 respondents, including the Economic Crime Units, special Fraud or Corruption Units in U.S. Attorneys' offices, the Inspectors General, other divisions within the Department of Justice, and the field offices or regional offices of major investigative agencies and the Securities and Exchange Commission. We are now conducting an analysis of the collected information. This includes an effort to assess the relative significance of the various white collar crime problems that have been identified. To do so, we are examining a number of factors, such as: (1) the scope and frequency of the problem, (2) the nature of the victims and the size of their losses, (3) the kinds of individuals involved as perpetrators or accomplices, (4) the connection, if any, with organized crime, (5) the feasibility of prevention or self-help by the victims, (6) the ability of state and local law enforcement to combat the offense, and (7) the costs and likely success of increased federal law enforcement efforts. The analysis will be completed shortly, and we expect to make recommendations to the Attorney General within the next month. Provided that he approves the issuance of national priorities, we will then begin to assist each U.S. Attorney in establishing more specific priorities for his or her district within the broader national priorities.

This project has taken a great deal of work so far, and there is much more to be done in the future. Is it worth all that effort to establish priorities? I think so, for at least three reasons. First, white collar crime and corruption is, as I remarked earlier, a very broad and diffuse area, encompassing almost every offense committed through deceptive and non-violent means. In setting priorities, we will be beginning, for the first time, to give specificity and coherence to what heretofore has been a very "mushy" concept, one that means greatly different things to different people. Second, and this point is related to the first, the fact that we will now have a set of priorities--a framework--will help to improve coordination between prosecutors and the investigative agencies. By communicating which cases we regard as most important, we will help the investigative agencies to use their resources more effectively. Third, I expect that the framework provided by national and district priorities will be integrated into the Department's information and recordkeeping systems, and this will enable us to do a much better job in the future of measuring our performance and ensuring that significant problems do not go unaddressed in any area of the country. None of these results is guaranteed, of course, but I think we are making substantial progress in accomplishing them.

Having talked at some length about the Economic Crime Unit program and the white collar crime priorities project, let me now discuss more briefly a number of related initiatives and the reasons why the Criminal Division is pursuing them.

Support for the Inspectors General: The Criminal Division is currently playing a lead role in support of the Executive Group on Fraud and Waste in Government, which was created by the President in May 1979. The function of the Executive Group is to implement the Inspectors General Act and address other government-wide fraud and corruption problems. Its membership consists of the Inspectors General, representatives from the Department of Justice and the major investigative agencies, and certain other officials. The group is chaired by the Attorney General.

Over the past year, the Criminal Division has worked actively with the Executive Group to deal with common issues facing the Inspectors General. Among the issues being addressed at present are the use of the Inspector General subpoena power; ways to increase the availability and quality of audit personnel through recruiting and training; use of data from different agencies in matching programs to detect fraud; and relations between the Inspectors General and the major investigative agencies, especially the Federal Bureau of Investigation. As noted above, the Division is also consulting the Inspectors General in the white collar crime priorities project, and we plan to work closely with the Executive Group to implement whatever priorities are established.



Commodity frauds: Commodity frauds are a relatively new, rapidly growing problem that the Criminal Division is just beginning to address. Playing on public concern about rising prices, con-men who operate out of telephone "boiler rooms" have found they can sell almost any sort of bogus commodity investment that promises a hedge against inflation. Efforts by local law enforcement to combat these con-men have so far been sporadic and relatively ineffective, for reasons that are readily understandable. First, boiler rooms have proliferated because they are relatively easy to set up and operate. Almost any swindler can run one. Second, the boiler rooms are highly mobile. They can close down in Florida one week and open up in Texas the next. Third, since the sales are made by telephone, the victims of boiler room commodity frauds are geographically dispersed. They often live in states halfway across the country from where the boiler room is based.

The Division's Fraud Section is now seeking to establish a task force with the Postal Inspectors, Federal Bureau of Investigation, and Commodity Futures Trading Commission to attack the boiler room problem. Although this project may be hampered by a shortage of travel funds, it is precisely the kind of initiative I want the Division to undertake. Boiler rooms are a new problem, and the Fraud Section is well equipped to draw on expertise from anywhere in the country, develop new strategies and techniques, and then disseminate those strategies and techniques to prosecutors and investigators everywhere. Boiler rooms are also a

multi-district problem, and the mobility of Fraud Section attorneys will help ensure that the cases are developed in a coordinated fashion. Finally, boiler rooms are a problem that is best attacked by several investigative and regulatory agencies working together, and the Fraud Section is able to develop those working relationships in Washington as well as in the field. All these factors argue for a strong Criminal Division role, and I am eager for the project to go forward.

Criminal Regulatory Offenses: About a year ago, the Criminal Division launched a major effort to develop new approaches to enforcing federal health and safety regulations. This initiative is the responsibility of the General Litigation and Legal Advice Section, which is working closely with such regulatory agencies as the Nuclear Regulatory Commission, the Environmental Protection Agency, the Occupational Safety and Health Administration, and the Mine Safety and Health Administration. Our immediate objective is to identify and successfully prosecute the most serious, willful violations of health and safety regulations. Although such violations have rarely been prosecuted criminally in the past, they can have severe and sometimes long-term impacts on workers and the public. This has been amply demonstrated by several highly publicized industrial disasters and environmental incidents in recent years.

As a pioneer in the regulatory area, the General Litigation Section is seeking to develop and demonstrate new investigative and prosecutive techniques by bringing--and winning--significant regulatory cases. In addition, the Section is also working in

other ways to build the capacity and commitment of the regulatory agencies and the U.S. Attorneys. One of the major problems we face is that agency lawyers and investigators are relatively inexperienced in criminal investigations. As a result, the Section is arranging with the agencies to provide training in evidence gathering, interviewing, and other investigative techniques. The Section is also negotiating memoranda of understanding with the agencies to agree on what kinds of cases should be referred for criminal prosecution, and it is seeking to streamline the traditional case referral processes to ensure that cases do not become stale. Much remains to be done, but I am encouraged that we are on the right track.

International aspects of law enforcement: The ease of international travel and communication have made crime an increasingly international business. White collar criminals, in particular, take advantage of national borders to escape detection and evade law enforcement. They employ foreign corporations in conducting their fraudulent schemes. They hide their illicit revenues in foreign banks, protected by bank secrecy laws. And they flee to other countries when their activities are discovered.

The Office of International Affairs was created in 1979 to provide a focus for the Division's increasing concern about the international aspects of criminal law enforcement. As a coordinator and source of expertise, the Office serves the United States Attorneys and state and local prosecutors as well as the Division's litigating sections. One of its major responsibilities is to provide assistance in obtaining evidence from foreign

countries, usually through the process of letters rogatory. The Office is also responsible for processing extradition requests, including extradition requests from state and local prosecutors that formerly were processed by the State Department. In addition, the Office participates in treaty negotiations to obtain better procedures and more favorable provisions. Treaty revision is especially important in relation to white collar crime. For example, some of the older treaties now in effect do not recognize white collar offenses, such as mail fraud or wire fraud, as a basis for extradition.

Another of the Division's international initiatives is the Inter-agency Study Group on International Financial Transactions. The Study Group is chaired by the Chief of the Narcotic and Dangerous Drug Section and staffed by attorneys from that section. Among the participants are representatives of the Comptroller of the Currency, State Department, Federal Reserve Board, Customs Service, Drug Enforcement Agency, Postal Inspection Service, Central Intelligence Agency, Internal Revenue Service, Federal Bureau of Investigation, and Securities and Exchange Commission. The initial objective is to develop and exchange information about the use of offshore banks and other financial institutions for criminal purposes, including white collar crime and corruption.

Training programs: The Fraud and Public Integrity Sections have been active over the past several years in conducting training programs for prosecutors and investigators. These training efforts have taken three forms. First, one-day "mini-courses" on white collar crime have been developed for insertion in training programs run by the investigative agencies for their own personnel. Second, Division attorneys

have given a twelve-hour block of instruction in the two-week white collar crime course offered by the Federal Law Enforcement Training Center at Glynco, Georgia. Third, the Fraud and Public Integrity Sections have conducted annual seminars for Assistant U.S Attorneys assigned to fraud and corruption units. Agents from the Federal Bureau of Investigation also attended the two most recent seminars. Joint training of prosecutors and investigators is something we will continue to encourage, since it helps to develop the close working relationships that are essential in complex cases.

I have been quite impressed by the Division's accomplishments in the area of training. According to our most recent figures, over 1000 agents have been given one of the mini-courses, some 700 agents have attended the course at Glynco, and a total of 500 prosecutors and agents have participated in the white collar crime and corruption seminars. These activities are essential to progress in combatting white collar crime and corruption, and they effectively complement the Division's other responsibilities.

Mr. Chairman, I have not described all the white collar crime and corruption initiatives underway in the Criminal Division, but I should by now have given you a reasonably good sense of our deep commitment to this area and the innovative spirit with which we are attacking it. Before closing, let me just briefly mention one other development that should interest the Committee because of your considerable interest in improving litigation management systems. We share your interest, and the Public Integrity and Fraud Sections are now in the vanguard of a project by the Office of Policy and Management Analysis to install an automated case

management information system throughout the Division. A pilot test of the new system began last month in the Public Integrity and Fraud Sections with the strong backing of each section's management. It will take time to refine the system and tailor it to the needs of the other litigating sections, but I am quite hopeful about the project's ultimate success.

That concludes my statement, Mr. Chairman. I will be happy to answer any questions you or other Members of the Committee may have.

**END**