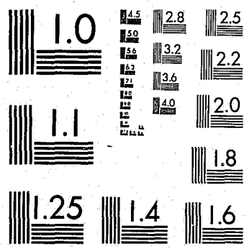

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Department of Justice

"THE SCOPE OF THE FEDERAL ROLE IN CRIMINAL LAW ENFORCEMENT"

Remarks of

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TO THE

NORTH CAROLINA STATE BAR ASSOCIATION

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For most of the first century of federal criminal law the Congress maintained a narrow view of federal jurisdiction. The statutes that did exist were narrowly designed to protect particular federal interests or to carry out powers uniquely federal in nature. For instance, there were laws governing customs duties, coinage, conflicts of interest involving federal employees, and the use of the mails.

With the advent of a federally financed series of roads and canals, the development of the steamboat, and the completion of the transcontinental railway, our nation changed and federal criminal law changed with it. Commerce among the various states was no longer a phrase from the constitutional law texts; it was the mode of business in America. Interstate travel was no longer as complicated as a visit to a foreign country; it was a part of daily life.

These changes required adjustments in the criminal laws equally as dramatic as those the Interstate Commerce Act and the Sherman Act made to the civil law. The adjustments were not slow in coming.

By the time of the 1928 codification of the United States Code a whole chapter was devoted to crimes having some effect on or making some use of interstate commerce. At the same time, the Federal Bureau of Investigation was coming into its own, being expanded and becoming the professional investigatory arm of the Department of Justice.

Among the types of conduct forbidden by the 1928 code were

interstate transportation of explosives, transportation of lottery tickets, intoxicating liquors, injurious birds and animals, illegally killed game, obscene books, women for the purpose of prostitution or debauchery, stolen motor vehicles, goods stolen from interstate commerce, and prizefighting films. Thomas Edison was one one of the chief purveyors of the latter though, fortunately for the development of the phonograph industry, no prosecution of him took place.

These laws were concurrent with state laws in the sense that they were aimed at the same conduct and thus at the same actors. While the state's jurisdiction within its borders was plenary, the federal government's jurisdiction depended upon some showing of a connection with interstate commerce. The overlap, while substantial, was not complete.

In other areas the overlap was complete. These offenses were based on the taxation power of the federal government. When possession of marijuana or machine guns without paying the tax is a federal crime, federal jurisdiction over the conduct is, in effect, plenary.

This type of "sin" tax jurisdiction does present some problems.

It creates plenary jurisdiction where there are not the resources nor the intent to fully exercise that jurisdiction. Finally, it is an indirect means of attacking the problem. Nonetheless such laws were put into effect because of a strongly felt need for some federal presence in the area. The federal

government's taxation power is a legitimate means of reaching the conduct sought to be deterred.

More recently, additions to the federal criminal code have been made and new uses of existing provisions of the law to reach organized crime and public corruption crimes include jurisdiction over extortions perpetrated through the power of elective office and frauds by elected officials which deprive the citizens of the state of the honest and faithful service of their elected officials. The obvious rationale for such jurisdiction is that when the local authority has been corrupted there may be no one else to bring a prosecution unless the federal government has authority to do so.

The anti-racketeering provisions are also comparatively new and provide a variety of weapons for dealing with conduct typical of organized crime including the takeover of legitimate enterprises and loansharking.

If one were to go through the whole array of federal criminal laws one would find what is admittedly a very considerable overlap with state authority. Nevertheless, there are strong reasons for exercising the federal government's powers narrowly.

First, the separation between the federal and local criminal justice systems is created by the Constitution. The concept that only limited powers are delegated to the federal government, while the rest are reserved to the states, forms the basis for our federalism.

Second, it is simply sound policy to honor local judgments

determining what conduct should constitute an offense and which offenses should be prosecuted.

Third, an overactive federal presence would require significant additional resources, especially investigative resources, and we have a historic and justified fear of a federal police force.

Fourth, the federal justice system is designed to handle a few cases of fairly specialized types. The state system, on the other hand, is designed to handle large numbers of cases. Any change in those roles would cause duplication of the state system and a loss to the federal system of its special character.

Fifth, by using our concurrent jurisdiction selectively we prevent undue overlap in operations and thus avoid confusion and uncertainty which are ultimately harmful to all criminal justice efforts.

Once we agree that the federal government should exercise its enforcement authority only sparingly when state prosecutions are also possible, we must of course develop criteria for deciding what cases the federal government should prosecute. [As a general rule in areas of concurrent jurisdiction the federal government should prosecute only those cases which cause the greatest harm to the greatest number of people and which are peculiarly difficult for state and local governments to prosecute.] A general exception to this rule involves crime against the federal government or against its employees in the course of their employment.

Active federal involvement in cases involving organized crime, drug offenses, white collar crime and public corruption

can be justified as meeting these criteria. Clearly such crimes adversely affect large numbers of people in a significant way.

It is less obvious but equally true that it is peculiarly difficult for state and local governments to successfully deal with these types of offenses. These cases tend to involve true interstate activity which no single jurisdiction can successfully prosecute. They often include complex factual and legal questions that would unduly burden already overworked local systems, tying up resources necessary for the policing of local, individual crime. Finally, these crimes frequently involve the direct or indirect corruption of local resources rendering local prosecution ineffective.

An example of a major crime where the criteria do not always justify federal intervention is bank robbery. This explains why our prosecutions in such cases have decreased. There is no substantial evidence that federal prosecution of bank robbers is more effective than local prosecution. In fact, criminal prosecution is not itself the most effective deterrent to bank robbery -- sound preventive measures within the bank have been proven to work better.

This does not mean that the federal government is or ought to be taking itself out of the bank robbery prosecution area. Our involvement in bank robbery cases is almost legendary and to pull out abruptly would be unwise. Where the state has the capacity and the intent to deal with such cases we are withdrawing our resources. To expedite this rearranging of resources and responsiblities, we are participating in and

promoting training of local police in the investigation and prevention of bank robberies.

Because of our policy of channeling our resources into the more complex and far-reaching types of crimes, our total number of criminal cases dropped by nearly 20 percent between 1976 and 1978. Yet our real workload has, if anything, increased. In 1977 we prosecuted 48 cases involving a betrayal of a public office. In 1978, 167 such cases were prosecuted. In that same period we had a 20 percent increase in the number of embezzlement prosecutions and a doubling of bankruptcy fraud cases. Mail and wire fraud prosecutions increased by 1,000 cases in one year. Racketeering prosecutions jumped by more than 15 percent.

We are withdrawing from property cases -- those involving bank robberies, auto thefts and the like -- and picking up paper cases which involve the patient examination of documents by expert and experienced investigators and the presentation to juries of complex factual situations into which the crime is interwoven. These latter cases take more time and consume more resources but they represent precisely the type of crime that the federal government should be involved in prosecuting.

At the same time, we are expanding our efforts to foster cooperation among the various levels of law enforcement. Many U.S. Attorneys' offices have established formal working groups comprised of the various law enforcement and prosecutorial agencies in their districts. On a national level we have established an Executive Working Group for Federal-State-Local Prosecutorial

Relations. This group, comprised of officials of the Department of Justice, the National Association of District Attorneys, and the National Association of Attorneys General, is designed to enhance the work of the local groups and to encourage inter-governmental relations in law enforcement.

In the Congress we are supporting as part of the overall revision of the Federal Criminal Code, a provision that makes clear that the existence of concurrent jurisdiction does not require it to be exercised; that sets forth criteria for the exercise of concurrent jurisdiction; that requires the Attorney General to consult with state and local law enforcement authorities in the exercise of concurrent jurisdiction; to instruct the federal law enforcement agencies on the exercise of such jurisdiction; and to report to Congress annually on the extent of the exercise of concurrent jurisdiction. With our resources being fully occupied the incentives to reach out for the less worthy case or the case better prosecuted in state courts are few.

Three recent cases illustrate how our criteria for the exercise of federal jurisdiction have been used and what they mean in practice. The first is the so-called "Black Tuna" case. This case involved what was proven at trial to be a business involving at least $300 million annually in marijuana. There were 14 named defendants and the grand jury investigation lasted for 18 months with the grand jury hearing over 1,000 hours of testimony. The case took one half of a year to try. Four Department attorneys

worked half time for eight months on the case. Two worked 60-70 hours a week for 18 months. Another attorney worked similar hours for nine months. Altogether the case consumed more than four attorney years. In addition, significant resources were used in the investigation and in the protection of key witnesses for a year.

I submit to you that there are few prosecutors' offices in the country that could have handled such a case. And there is certainly no guarantee that such cases will arise in the jurisdiction of those few offices.

In a continuing investigation of waterfront corruption, information from one person started a chain which eventually has led to indictments in a dozen states involving 121 defendants in a variety of charges. Some of those charges were purely federal such as income tax evasion. Others involved concurrent jurisdiction charges such as extortion under the Hobbs Act. The investigation itself was massive, involving eight attorneys in two regional offices beginning in January of 1977 and continuing to the present day. In addition to these attorneys many of the cases have been handled by Assistant United States Attorneys in local districts. In the first year of the investigation 375 subpoenas were served and more than 400 interviews were held. This single investigation involved both peculiarly federal offenses over which there was concurrent jurisdiction as well as enormous resource requirements. While some individual charges are of the type that might best be prosecuted on a local basis, the investi-

gation was not divisible and thus federal prosecution was not only appropriate but necessary.

In Tampa, Florida, federal investigators uncovered an arson scheme involving, among others, members of the Tampa Fire Department. Nineteen persons were found guilty of racketeering involving arson which had resulted in defrauding insurance companies of hundreds of thousands of dollars. The trial took three months with another month of jury deliberations. As a result of the conviction several hundred thousand dollars were forfeited by the defendants and, perhaps more importantly, the arson fire losses in Tampa dropped from $649,000 at the height of the scheme to $296,000 in the year after the indictment. Again the resources commitment was significant. More than four attorney years were devoted to the prosecution.

These are examples only. Many other cases could be cited, but they make the point that there are a number of cases out there which, if viewed through a microscope, might disclose conduct which seems like local crime. When a broader view is taken, a pattern emerges that is far from local in scope or in effect. To deal with such crimes successfully requires the ability to operate in several jurisdictions and to allocate significant resources for long periods of time. Such cases are and ought to be federal cases.

Having now viewed law enforcement from the viewpoint of an Assistant U.S. Attorney, head of the Justice Department's Criminal Division, Deputy Attorney General, and Attorney General, I am more

firmly convinced than ever that our policy of exercising federal jurisdiction only in limited classes of cases is the correct one, and that our criteria for doing so are well-founded. These policies result in the most effective and comprehensive law enforcement for the smallest expenditure of taxpayers' dollars. With the cooperation of state and local officials, which we have been receiving more than ever, we should be able to harvest the fruits of these efforts for many years to come.

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