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ADDRESS

OF

THE HONORABLE ARNOLD I. BURNS  
DEPUTY ATTORNEY GENERAL OF THE UNITED STATES

BEFORE THE

1988 WINTER CONFERENCE OF NEW YORK STATE  
DISTRICT ATTORNEYS ASSOCIATION

NCJRS

FEB 11 1988

ACQUISITIONS

THURSDAY, JANUARY 21, 1988  
OMNI PARK CENTRAL HOTEL  
7th AVENUE AT 56th STREET  
NEW YORK, NEW YORK  
12:00 NOON

Today I am going to take advantage of this opportunity to speak about the very serious problem of public corruption, the criminal abuse of the public trust by public officials and public employees at every level of government.

Our entire government, from inception, was structured so as to permit the use of public power, while curbing the abuse of it. It reflected the wisdom of the Founders' contemporary, William Pitt, Earl of Chatham, who said:

Unlimited power is apt to corrupt the minds of those who possess it; and this I know, my lords, that where law ends, tyranny begins.

Our founding fathers believed that tyranny resulted from the concentration of too much power. In the words of Hobbs, freedom is political power divided into small fragments. Therefore, they divided, distributed, and diffused power as much as possible. They also knew that power not sufficiently counter-balanced, could also lead to corruption.

In fact, as the people in this room surely know, too often power does lead to corruption. The founders made the most allowances they could for human nature, but they could not change it. They could not ensure virtue. The administration of the federal system they created, and of the state and local systems, is in the hands of people who come from a long line of human beings. And so a certain amount of corruption sets in -- precisely how much is difficult to tell because corruption, crimes such as fraud, bribery, perjury, and extortion are especially difficult to detect.

✓ However, we do know that in a Department of Justice survey just a few years ago, 75 percent of the FBI's field offices reported state and local public corruption as one of their most serious problems. And we also know that prosecutions at both the federal level and the state and local level are definitely up as our law enforcement agencies are working harder and more effectively to curb this plague of public corruption.

✓ Seven years ago, public corruption was designated as one of the Department of Justice's four top criminal enforcement priorities. It has continued as a top priority ever since. In the last decade, enormous strides have been made by the federal law enforcement effort to combat public corruption:

- ° The number of federal convictions nationwide increased fourfold between 1977 and 1986.
- ° In 1986, 1192 federal indictments of corrupt public officials at all levels of government resulted in 1027 convictions nationally.

As you know, almost every area of public service has its distinctive forms of corruption with variations cropping up at different levels of government across the country. In New York, we have convicted corrupt officials who span the range from low level city inspectors, to heads of city agencies, to both Democratic and Republican political leaders, to mayors, to state officials (yes, even judges), to senior executives with federal agencies and to a United States Congressman.

Our Hall of Shame -- memorializing felons convicted in New York State who have dishonored themselves and their families include:

- ° Richard Cegina, a Buffalo police officer for Continuing Criminal Enterprise (CCE) narcotics charges;
- ° John Vespa, an Assistant Commissioner of the NY State Department of Motor Vehicles for Hobbs Act extortion and kickback violations, and related tax crimes;
- ° William Brennan, a New York State Supreme Court Judge, for taking bribes;
- ° Alex Lieberman, New York City's Director of Leasing, for taking bribes in violation of RICO;
- ° Jay Turoff, the City's Taxi Commissioner, for criminal tax violations;
- ° Richard Rubin, Special Counsel to the State Assembly and Executive Secretary to the Queens County Democratic Organization, for criminal tax and mail fraud related to the placement of no-show state employees;
- ° Stanley Friedman, Bronx County Democratic leader and head of the NYC Parking Violations Bureau, for RICO violations related to corrupt contracting practices;
- ° Joseph Margiotta, Nassau County Republican leader for Hobbs Act extortion and mail fraud violations related to insurance commissions;
- ° Mario Biaggi, United States Congressman, and Meade Esposito, Brooklyn Party leader, respectively, for

accepting and giving illegal gratuities and conspiracy to obstruct justice;

- ° Lee Alexander, Mayor of Syracuse, for taking political kickbacks in connection with municipal contracts in violation of RICO;
- ° Samuel Weinberg, a New York State Civil Court Judge in Brooklyn, for racketeering, extortion, arson and mail fraud;
- ° Fred Richmond, U.S. Congressman, for tax evasion; and
- ° More than thirty state and local highway superintendents and contractors for taking bribes.

We are now armed with statutes ranging from the Bribery and Gratuities Act (18 USC 666) through a variety of Conflicts of Interest provisions, the False Statements statutes, Election and Campaign Fraud provisions, the Hobbs Act, Travel Act, Obstruction of Justice law, RICO (Racketeer Influenced and Corrupt Organizations), Mail and Wire Fraud to the Tax Code and Conspiracy to Defraud provisions. It is with this powerful federal arsenal that we have attacked public corruption on its many fronts in the past few years.

Joint state and federal investigations and cross-designations of state and federal prosecutors have a long and successful history in this state in the area of narcotics enforcement. However, they still are comparatively rare in public corruption prosecutions. We expect to see more of them.

I encourage joint corruption investigations, just as I do joint drug investigations. Indeed, some of the procedural difficulties created by New York criminal law may in some instances make federal prosecution of corruption offenses preferable to state prosecution. I urge you to advocate changes in your state laws as persuasively as you can. But until then, there may be situations in which, if allegations of corruption are brought to your attention, you should reach out to your local United States Attorney and see if you can work your cases jointly.

Key to several of the federal corruption prosecutions has been the RICO statute. Governmental entities, such as the New York City Bureau of Leasing, Division of Public Structures in the Alex Lieberman case and the New York City Parking Violations Bureau in the Stanley Friedman case, have been used as the RICO "enterprise" in several cases. Similarly, in the "Greyford" prosecutions in Chicago involving corruption within the local judiciary, the chambers of a particular judge was charged as the enterprise. Another prosecutorial technique has been the designation of a business entity as the RICO enterprise.

As I understand it, New York's Organized Crime Control Act requires proof of the existence not just of an enterprise, as in RICO, but of a criminal enterprise. It is not too likely that you will succeed in showing that a governmental entity is a criminal enterprise. So the federal RICO statute may be the

avored prosecutorial tool in corruption cases unless and until your statute is amended.

Cases made largely through undercover operations or through wiretaps are the cases a prosecutor would most like to bring and try. But often we are not so lucky. Many corruption cases develop from a defendant who has "flipped" or "turned", and you may be left with an accomplice witness whose testimony is the key to your case.

Unhappily, New York's rule requiring corroboration of an accomplice witness' testimony can put up a substantial roadblock to prosecution of a historical conspiracy. If you determine that corroboration other than by other accomplices will be difficult to achieve, I suggest you join forces with your local United States Attorney.

Moreover, investigation of historical information almost always has to be done in the grand jury. A witness testifying before a federal grand jury receives no immunity -- use or transactional -- unless the prosecutor seeks it. Prior to the testimony, the prosecutor may negotiate a written agreement calling for limited transactional immunity -- limited to that prosecutor's particular office and granted only for stated crimes -- in exchange for full and complete truthful testimony. Or, if the witness invokes the Fifth Amendment privilege in the grand jury, the prosecutor may seek permission from the Department of Justice to apply for an order from the Court conferring use -- not transactional -- immunity, and compelling the testimony. The



Court cannot issue such an order sua sponte or on the witness' application; only the prosecutor can seek it.

These rules make federal grand jury investigations, particularly at their earlier stages, far less risky than grand jury investigations under New York law. Your rule, which confers automatic transactional immunity on the witness for everything about which he testifies unless the witness affirmatively waives it, and which may even immunize unrecorded preparatory conversations prior to the testimony, is obviously fraught with peril. Until such time as the New York rule is changed, it may be useful to contact your local United States Attorney when grand jury time is needed to develop your case.

I have cited only a few examples of how a major corruption investigation may benefit from the utilization of federal tools. I assure you there are others.

Let me be crystal clear that I am not advocating that until the New York State Legislature revises some of New York's rules, you simply turn over your most interesting corruption investigations to federal authorities. On the contrary, I am suggesting that a collaborative effort -- a partnership -- is called for. I am also suggesting that through the sharing of forfeited assets, you seek recoupment at least for the work of your investigative staff.

As the statistics I cited a few moments ago suggest, we at the Department of Justice have been putting our arsenal to effective use in the past six years in an effort to sharply

curtail public corruption. The heat has been turned up on corrupt public officials nationwide. Prosecutions and convictions are up at both the state and federal levels.

But, despite these successes, despite our accomplishments, I fear we may be winning these battles at the same time that we are losing the war. Increases in the numbers and effectiveness of investigations and prosecutions for crimes of public corruption alone will not solve the problem, and, in my judgment, will never solve the problem.

Quite frankly, public corruption is often not taken very seriously by either the public or the courts. In fact, inadequate sentences and fines continue to plague public corruption prosecutions. According to a recent GAO Report, only 63.2 percent of convicted public corruption defendants receive jail terms, and the average prison term is only 1.9 years. By contrast, 91 percent of convicted bank robbers receive jail terms, averaging over eight years each.

Why is this the case?

I believe the situation parallels our early efforts to address the nation's drug problem through law enforcement alone. Today, in the war on drugs we talk about the supply-side and the demand-side of the problem. But, until recently most of us in law enforcement only focused on the supply-side of the equation. And as a result, despite our intensive eradication, interdiction and enforcement efforts, narcotics trafficking grew seemingly unabated. But, now we have targeted the demand-side. We are now

at work in a massive campaign to reduce the demand for drugs through education and abuse prevention. We are engaged in a great collaboration the likes of which has never before existed in law enforcement history involving federal, state, and local agencies and the private sector all across the country in a concerted effort to cut back the demand for drugs. And law enforcement officials like yourselves -- all those traditionally involved in the supply-side -- are working the demand-side of the street.

The parallels between our war on narcotics and the effort to combat public corruption are clear. No amount of enforcement will be enough as long as the public tolerance and matter-of-fact acceptance, even expectation, of public corruption continues.

I believe that it is high time that we go on the attack and start educating the public about public corruption. The real check lies not with law enforcement but with the American people.

The American people must have their collective consciousness raised about how public corruption affects each and every one of us. It is not a victimless crime. Its impact goes far beyond the people directly involved. It hits your pocketbook and mine and it hits hard. It greatly increases costs, and the increases are spread out over the tax-paying public -- taxes up, services down. One city that decided to weed out public corruption found it was paying around fifty percent less in contracting costs after it had flushed the crooks out.

People must be sensitized to the costs of corruption. Only when the costs of corruption are understood will people stop looking the other way and demand the highest standards of integrity and ethical conduct from all their public servants.

After all, why is public corruption such a pervasive problem in American government? How do people get sucked into betrayal of the public trust?

Remember, corruption doesn't happen only to "bad" people. No one requires you to pass a mustache-twirling test before they'll present you with a bribe. Many times "decent" people get caught in difficult situations and respond with bad choices. Like those who are drawn into the vortex of criminality through drug use, people convince themselves that "just this once " doesn't matter, that no one will be harmed. But whether it is cocaine or kickbacks, for all too many people the story is the same: once becomes twice and the "exceptional" practice somehow becomes routine, a habit regardless of the cost to society.

The new addict finds himself in the position of Macbeth, who thought one crime would be all he would need to set him up, then found that he had to commit more and more to keep what he had. Midway through the play, he declares:

...I am in blood

Stepp'd in so far that, should I wade no more,

Returning were as tedious as go o'er.

In the classic novel, All the King's Men, Robert Penn Warren painted a vivid portrait of the pernicious effects of public

corruption: A corrupt governor is in office. The former state attorney general has taken a bribe. The former governor participated in a cover-up for his attorney general. And all of the characters believe their behavior is safely hidden in the past. But, as the narrator says:

"Nothing is lost, nothing is ever lost. There is always the clue, the canceled check, the smear of lipstick, the footprint in the canna bed."

Corruption often exposes the public to physical danger, since a contractor who has paid a bribe to get a contract has extra incentive to make up the difference by cutting corners in his workmanship and by using shoddy materials. We cannot run the risk of public disasters due to defective highways (as in Operation Double Steel) and electrical systems (as in "Ampscam").

Furthermore, corruption drives out of politics and business the very people that we need in order to conduct government honestly. An honest would-be politician or public contractor takes a look at what is considered everyday conduct in so many government offices and decides that he will stick strictly to private life.

What kind of a way is that to recruit the best people for public service?

An integral part of our system of checks and balances is the electorate -- the people. Democracy gives us the chance, as the old saying goes, to "vote the rascals out." But for this check

to be effective, it has to be used. The voting public has to be alarmed about public corruption, and angry about it.

I would like to see a campaign against public corruption. One that raises the expectations of our citizens for good government and heightens intolerance for corruption in government. And you must be key players in this great educational effort. You must consider yourselves more than only prosecutors. You are leaders in your communities; you have hands-on experience and empirical knowledge. You must share that knowledge with the public and with policy makers.

Like drugs, public corruption is a dangerous and a pervasive threat to our national well-being. Yet, over time, it has been allowed to become part of the social fabric of large portions of America. Only when the American public forcefully demands higher standards from public officials will we begin to make some serious headway against this problem.

Why is it that the American public maintains a certain amount of tolerance for public corruption -- to the point of considering it routine in many areas of public life? After all, this isn't a communist country, where the black market is the only market that works. We're supposed to be the land of the above-board.

Part of the answer, I think, lies in the fact that we, in this country, stress success above all, particularly pecuniary success. People are led to feel that the most important thing is

to win the game, regardless of the methods employed in doing so. Winners take all.

Daniel Bell has suggested that criminal activities and corrupt politics may to some extent be seen as a natural by-product of American culture. "Crime," he said, "in many ways, is a Coney Island mirror, caricaturing the morals and manners of a society.... Illegal activity is one of the queer ladders of social mobility in American life."

Given the pressure to get ahead, it is not surprising to see that the successful may win general acceptance even if there is public knowledge that they used illegal methods to get there.

In the mid-nineteenth century, Charles Dickens' American Notes reported:

...The following dialogue I have heard a hundred times:  
"Is it not a very disgraceful circumstance that such a man as So-and-So should be acquiring a large property by the most infamous and odious means, and notwithstanding all the crimes of which he has been guilty, should be tolerated and abetted by your citizens? He is a public nuisance, is he not?"

"Yes, Sir."

"He has been kicked and cuffed and caned?"

"Yes, Sir."

"And he is utterly dishonourable, debased and profligate?"

"Yes, Sir."

"In the name of wonder, then, what is his merit?"

"Well, Sir, he is a smart man."

In brief, Americans love a winner, and this healthy instinct can have the unhealthy effect of validating any and all rewards that the winner may be able to grab.

But public tolerance of public corruption has its limits. This was well known to "Boss" Tweed, head of the New York City political machine during the 1870s. Tweed had endured and survived many barbed editorials, but he began to be concerned when the great cartoonist Thomas Nast -- inventor of the Democratic donkey and the Republican elephant -- turned his talents against the Tammany Hall machine.

Nast kept up his barrage of anti-Tammany cartoons in Harper's Weekly, and finally Tweed said to his cronies, "We gotta stop them damned pictures. I don't care what the papers write about me -- my constituents can't read. But they can see pictures."

The Boss was right. He lost his public support, and was eventually tried and sentenced. He escaped to Spain, but there, once again, it was those "damned pictures" that nailed him: while staying incognito at a Spanish resort, someone recognized him from one of Nast's caricatures. He was arrested and returned to the United States.

This story illustrates the power of aroused public opinion. It's the tool that you and our federal prosecutors need most in targeting public corruption. It is the demand side of the equation.



We have a solemn obligation not to permit destruction of our system of governance by decay. We must give new force and meaning to the words of the late Justice Robert H. Jackson, in his 1950 decision American Communications Assn. v. Douds:

"It is not the function of our Government to keep the citizen from falling into error; it is the function of the citizen to keep the Government from falling into error."

We must recall to mind Benjamin Franklin's famous statement reported contemporaneously in the notes of one James McHenry following the close of the constitutional convention.

"Well, Doctor, what have we got -- a republic, or a monarchy?"

Dr. Franklin: "A republic, if we can keep it."

I have no doubt that with your help, an aroused and an informed American public will indeed keep it.

Thank you very much.