

Justice News

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Remarks as prepared for delivery.

Good morning and thank you Raymond for that kind introduction.

I am very happy to be with you here in San Diego at the 32nd Annual National Institute on White Collar Crime.

First of all, this is just about the farthest you can get from Washington, DC, without leaving the continental United States. It is good for the soul to spend time beyond the Beltway.

My first white collar crime seminar was about 15 miles from here, and 27 years ago. I attended a corruption seminar in La Jolla shortly after I joined the Department of Justice in December 1990. A few years later, the Department built the National Advocacy Center in South Carolina. And we stopped scheduling our conferences in vacation spots.

The most important reason that I am glad to be here is that I have worked with so many of you over the past three decades. I also have worked for many of you.

I have served under nine Attorneys General. On every floor of the Main Justice Building, there are reminders of heroes, mentors and friends who have worked there.

They taught me that the Department of Justice stands for the principle that every American deserves equal protection under the rule of law.

Our friends deserve it, and our enemies deserve it. They deserve it whether they are innocent or guilty. They deserve it whether they are rich or poor. They deserve it whether they are Republican or Democrat.

That requires us to be faithful to the pursuit of truth.

For lawyers, truth is about credible evidence, not strong opinions. Many people sincerely believe things that are just not true. In the words of a 19th century Philadelphia doctor, "sincerity of belief is not the test of truth."

People who seek the truth need to avoid confirmation bias. They must remain open to the possibility that the truth may not match their preconceptions.

Long before he became President, John Adams was a trial lawyer who proudly defended unpopular causes. Adams famously observed that "[f]acts are stubborn things; and whatever may be our wishes, our inclinations, or the dictates of our passions, they cannot alter the state of facts and evidence."

Pursuing truth means always yielding to the facts, even if they run contrary to our expectations.

Sometimes people look at the high criminal conviction rates in federal courts and mistakenly assume that the job is easy. You know that the opposite is true. Conviction rates are high because federal prosecutors exercise great care before they allege wrongdoing.

In Robert Bolt's brilliant play about Sir Thomas More, *A Man for All Seasons*, there is a humorous scene that illustrates the need for solid evidence. More and his family are discussing whether More should prosecute a man they do not like.

More's wife says, "Arrest him!"

More replies, "For what?"

More's daughter provides a reason: "Father, that man is bad!"

And More responds, "There's no law against that."

More proceeds to explain that as a judicial officer, he must be concerned about what is "legal."

What is right is a matter of personal opinion. What is legal is an objective issue of fact and law.

Even then, we do not prosecute every violation of the law. Discretion is inherent in law enforcement. Judge Richard Posner put it this way: "The Department of Justice wields enormous power over people's lives, much of it beyond judicial or political review. With power comes responsibility, moral if not legal, for its prudent and restrained exercise; and responsibility implies knowledge, experience and sound judgment, not just good faith."

The point is made more concisely in a remark attributed to French Enlightenment philosopher Voltaire: "With great power comes great responsibility."

If that quote sounds familiar, it was also said by another legendary person – Spiderman's Uncle Ben.

Government officials who exercise discretion have a special obligation to make the right choice.

That requires experience, good judgment, and wisdom.

Most of you have spent many years in and around the Department of Justice. I hope you see it the way I see it. When I walk the stately hallways of the Main Justice Building, I am reminded that giants like Attorneys General Robert Jackson, Edward Levi, and John Ashcroft confronted the challenges of their eras in the same rooms where Attorney General Jeff Sessions and I deal with the issues of our time. The Jackson, Levi and Ashcroft portraits hang proudly in the Deputy's conference room. They are a source of comfort and inspiration.

The portraits are also a reminder that controversy is part of the job. Department officials in the Jackson era navigated World War II. Levi presided in the wake of Watergate. Ashcroft dealt with 9/11. Those were very difficult times.

Of course, it is not just the famous Department leaders who inspire me. My personal heroes include men and women who demonstrated a steadfast commitment to the rule of law but never ascended to the top leadership positions.

The conference room on my hallway is named in memory of David Margolis. David served as a career prosecutor for 50 years. I was fortunate to know him for about half that time. David enjoyed telling stories about things Department officials did wrong. I pledged not to repeat any of their mistakes, and now I try to pass that wisdom on to new Department officials.

Attorney General Sessions shares that commitment. He spent 14 years working in a U.S. Attorney's Office, and two decades overseeing the Department as a senator.

You will not always agree with our policy decisions, and you definitely won't hear this on cable TV, but the

Department leadership team appointed by President Trump is very strong on ethics and professionalism. History will reflect that the Department of Justice operated with integrity on our watch.

Priorities change, but federal law enforcement principles are timeless. We will defend the principles, and we will pass them on to future generations.

The rule of law is not just about words on paper. Any nation can write a good Constitution and adopt reasonable laws. The question is whether people will faithfully implement them.

So the rule of law depends on the character of the people who enforce the law.

Abraham Lincoln said that the rule of law should be "the political religion of the nation." The goal is to enshrine reverence for the law in people's hearts, not just in law books.

In the play that I mentioned, Thomas More defends the rule of law in an argument with his son-in-law, William Roper. Roper is angry that More would respect the rule of law, even for the Devil himself.

Roper insists that he would cut down every law, if it were necessary to destroy the Devil.

More replies, "Oh? And when the last law was down, and the Devil turned round on you – where would you hide, Roper, the laws all being flat?"

More concludes, "I would give the Devil the benefit of law, for my own safety's sake."

As I reflect on the accomplishments of the Department of Justice over the past year, I am proud of the remarkable dedication of our attorneys at Main Justice and the 94 United States Attorney's Offices, of our FBI and other law enforcement agents, and of the support staff and professionals who make our work possible. What you hear about on the news is a very small fraction of the work performed by our 115,000 employees.

We are aggressively pursuing crimes that pose imminent dangers, including terrorism, gang violence, drug trafficking, child exploitation, elder abuse, and human smuggling. And we remain steadfast in combatting financial and economic crime.

In 2017, Main Justice Fraud Section prosecutors convicted 234 individuals. The Section also concluded 10 corporate resolutions.

The 2017 results exceed the prior year in both the number of convictions and monetary sanctions.

The numbers reflect the seriousness of those particular cases. But our Department will not employ the hammer of criminal enforcement to extract unfair settlements.

We must always be guided by the rule of law, transparency, fairness, and parity.

And we are committed to finding effective ways to ensure that individual wrongdoers are held accountable for corporate criminal behavior.

One aspect of that goal is to punish the people who make or knowingly participate in decisions that violate the law.

The corollary to that concept is equally vital. We want to avoid imposing penalties that disproportionately punish innocent employees, shareholders, customers, and other stakeholders.

Corporate misconduct can be serious or pervasive enough that an entity-level criminal resolution is warranted. We will pursue that outcome when appropriate. But we think carefully about accountability and fairness.

Let me share some highlights of our white collar enforcement efforts.

Many of you are familiar with the Department's work to combat Medicare and Medicaid fraud, military procurement fraud, and illegal offshore tax shelters – and you will see more such cases in the future.

We are complementing those efforts with others that have not been as prominent. One example is our employment tax initiative, which seeks to punish people who fraudulently fail to pay payroll taxes. Employment tax violations represent tens of billions of dollars in lost revenue to the U.S. Treasury.

A second example, which has resulted in multiple criminal convictions over the past year, is the work of the Environmental Crimes Unit of the Environment and Natural Resources Division to prosecute perpetrators of fraudulent transactions involving tax credits for renewable fuels.

Our white collar enforcement is also becoming smarter and more efficient thanks to the use of technology.

We used sophisticated data analytics in a number of the Department's major health care fraud cases, including recent cases brought by the Health Care Fraud Unit of the Criminal Division and by Medicare Fraud Strike Forces. The Department is building on that success by hiring data analysts to support the Opioid Fraud and Abuse Detection Unit.

In addition, we are using data analytics to more quickly identify, investigate and prosecute manipulation of the securities markets, and other forms of fraud that threaten the integrity of America's financial system.

In January, the Antitrust Division secured a guilty plea by the U.S. arm of a large European bank for price-fixing with emerging market currencies.

The same month, Department prosecutors charged eight individuals for manipulating futures markets. It was the largest futures market criminal enforcement action in history.

Most of the cases involve schemes commonly termed "spoofing." Spoofing refers to the illegal practice of placing an order for a futures contract that the trader does not intend to execute.

We will continue to work closely with regulators, including the Commodity Futures Trading Commission and the Securities and Exchange Commission, to identify and aggressively prosecute manipulation and trading schemes.

Another point I want to make about the Department's white collar enforcement is our ability to adapt to the types of criminal conduct normally described as "white collar."

Drug trafficking and national security investigations, for example, frequently involve sophisticated data analysis and complex financial transactions.

Criminal schemes use the Internet and other telecommunications systems, technology, business supply chains, and international financial networks.

A few weeks ago, the Criminal Division's Organized Crime and Gang Section and the Nevada U.S. Attorney's Office charged 36 defendants for their alleged roles in a transnational racketeering enterprise via an Internet forum called "Infraud."

The organization represents the latest in a pattern of new cybercriminal enterprises that facilitate the large-scale acquisition, sale, and distribution of stolen identify and financial information. The conspirators also used digital currency.

Our recent press releases reveal many cases involving transnational organized crime and digital evidence.

The U.S. Attorney's Office in California's Eastern District played a role in a major takedown last summer of AlphaBay, the largest criminal marketplace on the Internet. That case, which also involved a stellar team from the Computer Crime and Intellectual Property Section of the Criminal Division and agents from FBI and DEA, melded narcotics and drug trafficking, and cyber and white collar crime.

In February 2018, the Money Laundering and Asset Recovery Section's Bank Integrity Unit, along with Assistant U.S. Attorneys here in Southern California, secured a guilty plea in a major banking investigation. The bank ignored evidence that customer transactions were related to international narcotics and money laundering activities.

In those cases and others, the Department scrutinizes not only people who buy, sell, and use illegal drugs, but also the flow of money and resources.

We ask: which people or companies provided the necessary goods and services? Then, we seek to hold them accountable for any criminal conduct.

American corporations increasingly devote resources to compliance and oversight efforts designed to deter crime. They take proactive steps to protect their brands.

Some forward-thinking leaders contact the Department and our law enforcement partners with ideas about how best to mitigate risk.

We welcome input from good corporate citizens. Protecting our nation and maintaining the integrity of our financial system requires strong relationships between law enforcement and American businesses. Our Department is committed to reinforcing and promoting those ties.

Last June, the Attorney General announced that the Department would no longer direct third-party settlement payments to private entities that were not harmed by the defendant's conduct.

In mid-November, the Attorney General restricted the Department's use of agency guidance documents to impose requirements beyond those dictated by law or regulation.

In late November, we announced a new Foreign Corrupt Practices Act enforcement policy.

The FCPA Policy was incorporated into the U.S. Attorney's Manual.

There is a long tradition of Deputy Attorneys General issuing white collar policies in memoranda that are named for the Deputy. Some of you may have noticed that I forewent the opportunity to issue a Rosenstein memo, at least on that issue.

Memos can be useful in explaining a new Department policy or initiative. But they carry a number of drawbacks.

One problem is that it is difficult for prosecutors to keep track of which memos are still in effect. A few years ago, the volume of memos about drug enforcement policy became so overwhelming that prosecutors resorted to searching the public internet to try to find the latest version.

Another problem is that memos create uncertainty for businesses and other third parties, who wonder whether new Department leaders will continue to embrace policies named for their predecessors. Uncertainty makes it harder for businesses to make informed decisions.

So I try to avoid issuing memos, and my office is conducting a large-scale project to consolidate all existing Department policies in the U.S. Attorney's Manual.

Corporate America is often the first line of defense for detecting and deterring fraud. Meaningful compliance measures help the Department preserve its finite resources.

We want to reward companies that invest in strong compliance measures.

The challenge is especially acute in large and diverse organizations. I empathize: I reflect every day on the challenges we face with 115,000 employees in the Department of Justice. Things go wrong in every organization.

When something does go wrong, the greatest consideration should be given to companies that do not just adopt compliance programs, but incorporate them into the corporate culture. If you want us to treat a corporate entity as a victim, you should act like a victim who wants to see the perpetrators held accountable.

Finally, let me conclude by noting that principled disagreement is essential in a democracy.

One of the most frequently quoted remarks mocking lawyers is from William Shakespeare's play, Henry VI. You know the line: "The first thing we do, let's kill all the lawyers."

Shakespeare did not mean it literally. On the contrary, the speaker is a criminal. His point is that without lawyers, nobody would need to follow the law.

That would be good for criminals. But it would be bad for a society founded on the rule of law.

In a time of strong political passions, lawyers have a special responsibility to demonstrate why law and logic are essential to the peaceful resolution of disputes.

To succeed in that endeavor, we need your input and support. So I hope you will use opportunities like this conference to share your thoughts with us.

Thank you very much.