



Department of Justice

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ADDRESS

BY

THE HONORABLE WILLIAM B. SAXBE
ATTORNEY GENERAL OF THE UNITED STATES

BEFORE

THE ASSOCIATED INDUSTRIES OF NEW YORK

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THE WHITEFACE INN
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I appreciate the opportunity to be here today.

Federal employees often live in a hot-house environment in Washington, and we don't get out into the states enough to find out what is happening and what people are thinking.

It would be very productive if more Federal officials started coming to New York to find out about things at the grassroots level here. And in a sense it would be only fair -- since I imagine a great many New Yorkers will be going to Washington soon to see how things are there.

In trying to decide on a topic, I finally settled on something of great concern to us all -- crime and how it is being fought.

Not crime in the streets. No, I want to discuss something that seems to strike even more terror into the hearts of some business and industrial leaders across the Nation.

And that is the way they conceive of the Department of Justice enforcing the criminal statutes relating to tax and antitrust violations.

I intend to show you today that enforcement is fair. But I also think that I can convince you that the penalties are not. And that, I believe, is an injustice to you.

From a statistical standpoint, there are relatively few such cases each year. But they have enormous significance

for the Nation -- and particularly for every member of the business community.

The minority of businessmen who evade taxes or break the antitrust laws claim many victims -- and in many ways. For one thing, the vast majority of businessmen who are honest suffer for the illegal conduct of those who are not.

You pay your taxes, you do your duty; but if others fail to pay their taxes, and if they get away with it, you are cheated along with the rest of the Nation.

In the area of antitrust, your practices are honest; but if others fix prices and rig bids, the resulting loss of public confidence afflicts you as well as those who broke the law.

If too many people cheat on their taxes, and in my view even one is too many, then additional tax burdens fall on the law-abiding. And if enough prices are fixed, not only the consumer suffers -- but other business firms and eventually the entire economy are injured.

Those who fix prices do not believe in the free enterprise system. They are operating under an alien philosophy. And the antitrust violators could bring down the system if allowed to go as far as they desire.

One essential step in fighting white collar crime is for the business community to develop tougher measures to police itself -- and in demanding that government at all levels prosecute business crimes relentlessly.

In addition to everything else, violation of the tax and antitrust laws can have an effect -- and a devastating effect -- on the criminal justice system out of all proportion to the actual number of such offenses.

If the business community and the government wink at these violations -- if such lawbreakers are not punished -- then aid and comfort are in effect given to all forms of lawlessness.

Business and industrial leaders are among the most significant pillars in every community. If they are not honest in their own conduct -- and zealous in demanding that all laws be upheld -- then other citizens quickly get the message that obeying the law is only for the foolish.

Nationally, crime rose 16 per cent in the first half of this year -- a fact both significant and grisly. We don't know all the reasons for the increase. But one important factor must be a feeling which pervades more and more of our citizens that obeying the law is only for the other guy -- only for the suckers.

Of all the duties levied by government upon its citizens, there is probably none that has been more controversial over the centuries than the payment of taxes.

As historians have shown, two things which have loomed large in American history -- taxes and whiskey -- combined to pose a major threat to our new nation's existence in 1794.

When settlers in Pennsylvania refused to pay whiskey taxes, President George Washington had to call out the militia to put down an armed rebellion. Tempers ran so high that two men were sentenced to death for treason. They were saved by a pardon from the President -- another old procedure which also can still cause controversy.

It has been amply demonstrated over the decades that most Americans pay their taxes honestly. Disputes may develop over what is owed, but our willingness to obey the law sets this country apart from others where evading taxes is a national pastime.

At the same time, there are serious tax offenders -- and it is the Department of Justice's job to prosecute them vigorously. We also must do it fairly -- and I believe, as I said, that our policies are in fact fair and even-handed and effective.

But there are substantial difficulties in the enforcement of Federal tax laws, and they are apparent from Federal court records for Fiscal 1974.

A total of 1,128 persons were sentenced for income tax fraud, but only 392 went to prison. Of those, 192 were split sentences for six months or less followed by probation -- and 106 were for one year or less. Only 94 persons went to prison for more than one year -- and the average sentence was just under 13 months. Of the total tax evaders, 634 were placed on probation and 98 were fined.

To determine whether sentencing practices are equitable, we should look at another Federal offense -- interstate transportation of a stolen car.

Federal judges appear relatively lenient with tax offenders, but they have quite a different attitude toward car thieves, so let's see how the courts handled them. In 1974, there were 1,612 persons sentenced for this crime -- and 1,142 went to prison. The average sentence exceeded 36 months.

To sum it up, the Federal courts sentenced 34 per cent of the tax evaders to prison, compared to 70 per cent of the car thieves. And the car thieves received sentences which averaged nearly three times longer.

It may also be instructive to examine in more detail the Federal court treatment of some tax evaders. Three types of plea may be entered in criminal cases -- guilty, innocent, and nolo contendere, or no contest. In the latter, the defendant neither admits nor denies guilt -- rather, he does not challenge the charge, and it is left to the judge to determine the sentence.

The Department of Justice policy is to oppose no contest pleas except under unusual circumstances.

Income tax evasion is a deliberate crime -- one done with forethought and planning -- and there is nothing accidental about it. But yet the Federal courts in Fiscal 1974 accepted 172 no contest pleas.

Justice is poorly served when a court accepts a no contest plea except in unusual circumstances -- and yet we see it is a common practice. It is also a common practice -- far too common -- for tax offenders to get a slap on the wrist, if that.

One intriguing case in 1972 involved three prominent businessmen charged with taking part in a scheme over several years to evade payment of income taxes of \$3.2 million. Even in an era of inflation, that is still a fair amount of money.

So let's see what happened: Each defendant entered a guilty plea to at least one count; two were placed on probation, with no fines; the third was put on probation and fined \$5,000, with the fine then suspended.

In 1973, another prominent business executive was charged with 20 counts of tax evasion during a five-year period. He was convicted on all 20 counts and fined \$50,000. But there was no prison time -- only probation.

Even when sentences are imposed, they often are light. One man who evaded payment of \$500,000 received six months. For evading payment of \$250,000, another defendant received two months. And a nine-month term went to a man who evaded payment of \$500,000.

One factor often cited in defending the light sentences given to tax evaders is that they are first offenders -- but in most cases that is simply not the fact.

A tax evasion indictment may represent a first charge. But such an indictment usually is for more than one year -- so it is really a multiple offense, planned with stealth and care over a long period of time.

Similar excuses are made that antitrust violations are first offenses -- but they also are normally acts carried out over a long period. And it may be instructive to look at those sentencing patterns, too.

During Fiscal 1974, there were 26 persons sentenced for Federal antitrust violations -- including nine who pleaded no contest. Five went to jail, and in each case the sentence was 30 days. Just imagine, 30 whole days -- but of course that does not count time off for good behavior.

When sentencing disparities are considered, it is apparent we have two systems of criminal justice -- separate and unequal.

I do not suggest that the car thief -- who is probably from a blue-collar or no-collar background -- should not be sentenced to prison. He should -- but so should the white collar criminal, who has probably committed a crime infinitely more serious.

I recently proposed that state and local officials bring greater resources to bear on the dangerous and repeated criminal offender. I suggest today there are white collar criminals who also pose undermining peril to the Nation.

Price fixing and other antitrust violations rob citizens as surely as the thief who breaks into homes or snatches pocketbooks.

There is a difference between the white collar and blue collar criminal. One can rob one victim of \$100. The other can set into motion a conspiracy that can rob thousands of citizens of hundreds of millions of dollars.

The white collar criminal, the price fixer, the income tax evader have something in common -- they mock the criminal justice system and they sneer at our most cherished values.

The white collar criminal may have gone to the best schools, belong to the best clubs, live in the right neighborhoods -- but he does not deserve special treatment from a judge who also wears a white collar and is from the same affluent background.

Price fixers should go to prison. The man who evades taxes should go to prison. They are not better than the car thief or the burglar or the robber. They are all members of the same fraternity. And it is about time that all of the Federal judges begin realizing that.

White collar crime will not decline until the white collar criminal is convicted and punished -- and I stress punishment. What he has done deserves to be punished, and it will have a deterrent effect on others.

We are currently supporting legislation to increase the maximum criminal antitrust fine from \$50,000 to \$500,000. Stiffer fines would aid enforcement -- and so would more jail terms.

For many years, civil antitrust cases far exceeded criminal cases. But during the past fiscal year, the Department filed 34 criminal cases compared to 33 civil -- and criminal defendants totaled 84 persons. The emphasis on criminal antitrust cases will continue -- particularly on price fixing.

And we will generally seek prison terms -- for all who are convicted or who plead guilty or no contest. The time for unequal justice is long since past. Congress also should consider much stiffer prison terms for antitrust violations. At present, the maximum term is one year -- but I believe Congress should consider raising the maximum up to five years.

The pattern today is for the antitrust offender -- like so many tax evaders -- to receive a suspended sentence and be back on the golf course the next day. He is not an object of shame. Rather, I suspect, he may evoke admiration among some for the way he pulled off his sting -- on his original victims as well as the criminal justice system.

I recently was asked how I could urge tough sentences for white collar offenders when the Department, under a previous Attorney General, agreed to a no contest plea by Spiro Agnew.

I cannot second-guess my predecessor's decision. The country probably agreed he did the right thing, for it would have been an agonizing ordeal if a Vice President under indictment or appealing a conviction would have succeeded to the presidency.

But I will add one thing today. I am tired of exceptions in the process of justice -- tired of persons being exempt from its sanctions. And I believe the country is equally tired of exceptions to justice. It is time the exceptions were stopped, and one place to begin is with the white collar criminal.

The Nation's judges -- particularly the Federal district judges -- must begin to make the punishment fit the crime. If the white collar criminal is given favored treatment, the system of justice begins to break down. And then the people begin to lose faith in the process most essential to our way of life.

Perhaps never before in our history have we needed this process to work and work well.

And perhaps never before have we needed the faith that it could work.

But in this case, the faith must rest on a solid foundation of fact and first-rate performance.

Thank you.

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