

Testimony of
Mr. Judson W. Starr

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Mr. Chairman and Members of the Subcommittee:

Good afternoon. My name is Judson Starr and I am very pleased to accept your invitation to provide my perspective on the federal environmental crimes program and to suggest areas where there is more work to be done.

Personal Background

After I returned from Vietnam in the early 70's and while attending Georgetown University Law School, I had the privilege to work on the staff of Bill Ruckelshaus during his first tenure as EPA's Administrator and also at the Environmental Law Institute, a local environmental think tank. Once I had my law degree, however, I turned to criminal law. That combination of environmental and criminal law led me to the US Department of Justice in 1978. At Justice I first held the title of Director of the Environmental Crimes Unit. Later I became the first Chief of the Environmental Crimes Section. During my decade at Justice, I worked closely with my counterpart at the Environmental Protection Agency and others in implementing a federal environmental crimes program. In 1988 I left the Justice Department to head the Environmental and Energy practice at the Venable law firm, then and now chaired by former US Attorney General, Benjamin Civiletti.

My practice concentrates primarily on advising individuals and corporations on environmental compliance and management systems, conducting internal investigations where wrongdoing is a concern and in representing those charged with violations of environmental laws. I therefore have spent roughly half of my professional career prosecuting environmental criminal cases and the other half representing those with serious or potentially serious environmental problems.

Background of the Environmental Crimes Program

For more than two decades I have experienced or observed many of the "growing pains" in the development of this program. I have watched Congress change the federal environmental statutes, which once were only misdemeanor sanctions, to felonies. The strengthening by Congress of these sanctions made a significant impact in capturing the attention at that time of US Attorneys offices, judges and investigative agencies which previously treated federal environmental crimes as a much lower priority when they were misdemeanors. In an attempt to achieve a higher standard of corporate accountability, which is no small issue today, I have seen the development of the Responsible Corporate Officer Doctrine, a doctrine peculiar to this field, take hold and be refined. In the process, this doctrine has made it easier for the government to prosecute individual corporate officers. Since 1987 I have seen the application of federal sentencing guidelines to individuals who have now been sentenced to lengthy periods of

incarceration. Until these guidelines were enacted, judges generally treated environmental wrongdoing as a mere regulatory violation.

I have also watched as EPA's investigators obtained law enforcement authority and no longer were treated as the "poor stepchild" in the law enforcement community. I have also seen the Federal Law Enforcement Training Center in Glynco, Georgia expand its basic and advanced curriculum to ensure that federal and state law enforcement officials are properly trained about how to build the environmental criminal case. I have witnessed the evolution of the prototypical defendant grow from so-called Mom and Pop entities to the point where, particularly in the maritime field, well known, large corporations have been targeted, charged and convicted. Lastly, I watched the program work through its "political baptism" during the end of the first Bush Administration and the beginning of the Clinton Administration when then House Commerce Committee Chairman Dingell held lengthy oversight hearings into how cases were being handled by the Department of Justice during that period of time.

Present Times

Since the tragedy of September 11, I have been very concerned about the direction of this program. No one can argue that intentional and serious environmental crimes that can have a significant adverse effect on the public health and welfare should not be prosecuted. But I wonder whether the priorities after 9/11 may have changed the definition of villain so as to omit the environmental criminal. For the past year EPA criminal investigators have been tasked to assist at the site of the World Trade Center and at the Pentagon and to shift their time and attention to other anti-terrorism efforts. Will the focus of EPA's investigators permanently move to where the resources and the spotlight shine on an even greater danger than "ordinary" environmental crimes?

Furthermore, and somewhat unrelated to 9/11 issues, what will happen in the cities like Boston, Baltimore, Houston, and others where individual prosecutors with extensive experience in environmental crimes have been transferred to other, more pressing matters or simply moved on professionally? To the best of my knowledge, out of the 94 US Attorney offices, only the offices in Syracuse, Miami, Seattle and Anchorage, currently have experienced criminal prosecutors assigned to do these environmental cases.

It is self evident that the Department of Justice cannot do cases alone. The government's latest initiative -- the prosecution of those in the maritime field -- has been very successful if success can be measured by the strengthening of an industry's environmental compliance programs to a much higher level when much less emphasis was placed on these programs only a short time before. The involvement of the Coast Guard in that initiative has been essential. However, post 9/11 there are many other demands placed upon the Coast Guard. While the FBI has contributed to the prosecution of environmental cases, the FBI has also experienced even greater demands on its priorities. And, as noted, the EPA has found itself shouldering new burdens. What do these events mean, however, for the prosecution of these cases? My sense from speaking to people across the country is that environmental enforcement, and environmental crimes particularly, is no longer the priority it once was.

Reprioritization of investigative and prosecutorial resources away from serious environmental crimes at this time, would, in my opinion, be the wrong step. This is because the relationship

between the environment and internal security and anti-terrorism efforts is a critical one. Most companies which have considered the lessons of 9/11 have looked to their environmental compliance units to also beef-up security and anti-terrorism efforts. We must remember that policing a pipeline, a port or terminal, and overseeing the transportation of hazardous waste, from a security or anti-terrorist perspective, is only an extension, not a departure, from otherwise normal environmental compliance activities. For example, the American Chemistry Council and other Associations have published "Site Security Guidelines for the U.S. Chemical Industry," that is meant to be easily adapted into most existing environmental, health and safety compliance programs, particularly those that follow the standards in the Federal Sentencing Guidelines compliance program. I might also suggest that Congress consider legislation that would mandate coordination of the functions of environmental compliance with anti-terrorism security.

However, if federal criminal enforcement efforts are diminished because of other pressing priorities, so also will be the authority of the corporate environmental officers charged with internal compliance with the environmental laws in a large number of companies. The people who perform these essential functions within the corporate hierarchy are sometimes perceived as producing little that can be attributed to the bottom line. They derive their powers from another source. What I have seen time and time again is that their powers emanate from a fear - a fear that if they do not do their job well, their company and their bosses might be exposed to criminal liability. A strong criminal enforcement program that wisely selects cases appropriate for criminal prosecution is essential to their empowerment and therefore to protection of our nation's health, welfare, safety and natural resources. They are also a part of our overall homeland security.

As always, emphasis must be placed on the wise selection of cases. The Department of Justice is often criticized, sometimes with justification, for how it exercises its wide discretionary powers in the cases it brings. The discretion is wider in environmental cases than in any other area of criminal law. My colleague and also a former Chief of the Environmental Crimes Section, Ron Sarachan, will address some of those case selection issues. However, if the goal is to obtain greater compliance with the environmental laws, and not to see how many people can be put in jail or how high corporate fines can exponentially grow, choosing clearly the cases to focus on and enunciating a unified DOJ/EPA centralized system will give the program greater credibility.

Mr. Chairman, I appreciate your invitation to present my views to the Subcommittee and I look forward to answering any questions you may have.