

TRAC

Transactional Records Access Clearinghouse
SYRACUSE UNIVERSITY

April 18, 1996

The Honorable Janet Reno
Attorney General of the United States
Department of Justice
9th and Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Reno:

As you know, the Transactional Records Access Clearinghouse (TRAC) has for the last few years obtained data from the Executive Office of United States Attorneys under the Freedom of Information Act. The goal of TRAC, a data gathering, research and distribution organization associated with Syracuse University, is to provide the public - Congress, reporters, lawyers, the business community, public interest groups and scholars - with accurate and comprehensive information about the functioning of federal enforcement and regulatory agencies. As you will remember, a TRAC staffing analysis developed at the request of the House Government Operations Subcommittee on Information, Justice, Transportation, and Agriculture in the fall of 1993 led to your important decision on July 8, 1994 to request the development of "a principled and objective model" for the allocation of department resources.

Because of TRAC's statistical expertise, administrative knowledge and the meticulous quality of our work, several federal agencies - including the Justice Department - have found our analyses helpful in highlighting problems in their own data and identifying broader policy questions worthy of analysis.

Given the genuine importance of the work of the federal government to the American people, TRAC works very hard to assess the accuracy of data we make available to the public. This usually involves two distinct efforts: (1) a group of activities we pursue to assess the reliability of information we have been provided by an agency and (2) steps we take prior to our release of information to the public.

Regarding the first effort, *TRAC* uses the referral-by-referral data we receive from an agency to reproduce the agency's own statistics, in the case of the Justice Department, the annual report of the Executive Office of United States Attorneys. If any inconsistencies are found, they are resolved. Internal checks are undertaken to make sure that the individual events recorded in the data sum up to the various broad categories that are recorded in the department's summary reports. In addition to acquiring the data themselves, *TRAC* tries to obtain all available written records describing the scope of the information that is involved, how it is collected, how it is coded and any internal administrative practices that might influence its quality. All of these efforts necessarily involve extensive discussions with the agency personnel directly involved in the collection and publication of the department's reports.

On the basis of all of this initial work, and acknowledging the challenge of maintaining accurate records in any large organization, we were and are quite confident that the data in question provide a fairly good portrait of the department's work product.

Concerning the second step in our effort to assure quality of the data, *TRAC* always makes its information available to the agencies involved prior to its release so that they can raise any questions that have not emerged in the earlier investigations. In the case of *TRAC*'s study of IRS's criminal referrals, we informed officials at both the Justice Department and the IRS about the data in late March - two weeks before the release to the public - and said we would be glad to meet with them to answer any questions concerning the data. IRS accepted our invitation and a meeting was held in which the data were described and several problems were explored. The Justice Department, however, did not respond to our invitation.

Given these continuing efforts, and the fact that *TRAC*'s data were collected and organized by the Justice Department itself, we were astonished by many of the comments apparently made by Justice Department personnel during the last few days before the April 13 release by *TRAC* of data regarding IRS referrals for the criminal enforcement of the nation's laws.

An article in the Los Angeles Times on April 14, 1996, for example, quoted a Justice Department spokesman as follows: "The statistics are so flawed I don't know what to do with them."

Reporters in the Middle District of Pennsylvania and Western District of Kentucky informed David Burnham, a co-director of *TRAC*, that the U.S. Attorney in Pennsylvania and an assistant U.S. Attorney in Kentucky had told them that both the total number of referrals listed on the tapes of the department's executive office, and the breakdown of the matters in various

program categories, were not correct. Because the source of the information in the tapes is the referral-by-referral reports of the U.S. Attorneys themselves, the statements were extremely puzzling.

In an article published on April 15 by Tax Notes, a widely respected trade publication, a Justice Department spokeswoman was quoted as saying that since "the data they are using are not accurate, the conclusions they are drawing are not accurate."

We also were informed by a number of reporters that Justice Department spokespersons were claiming that the database of the Executive Office of U.S. Attorneys included as "matters" a large volume of extraneous and incidental activities wholly apart from the referrals received for prosecution. While no concrete evidence was provided to us or, as far as we know, to any reporter to back up these assertions, and some Justice Department technical personnel disputed the accuracy of the agency's last minute claims, these statements were widely reported in the media.

The apparent effort of some Justice Department personnel to undermine the department's own data is serious business on both procedural and substantive grounds. First, some of the statements involved in the effort appear to be in direct conflict with what is stated in numerous official Justice Department documents. Second, assuming that Justice Department policy decisions are partly based on the enforcement data from the EOUSA, the extent to which they are not accurate may lead to the adoption of fundamentally flawed policies.

It is obvious that our knowledge of some, but not all, of these last minute criticisms is based on third hand comments and that they involve a complex subject where misunderstandings are possible. We cite them, not in a spirit of confrontation, but in hopes that through a meeting with your staff - and an open and complete discussion of the data - any questions that exist can be resolved.

To make such a meeting fruitful, however, we believe it is essential that any concrete information the department may have that will clarify the precise nature of all matters listed in the computerized systems of records given to TRAC in the past should be provided us. In addition, we feel that prior to our requested meeting, that we should be provided the results from current and past agency studies that shed light on the coverage, completeness, accuracy and reliability of the EOUSA's files. These are, after all, factual matters that can best be resolved through the examination of the factual record.



U.S. Department of Justice

Office of Public Affairs

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Washington, D.C. 20530

MAY 13 1996

May 6, 1996

TRAC

Susan Long
Co-Director, TRAC
Associate Professor of Quantitative
Methods, School of Management
Syracuse University
188 Newhouse II
Syracuse, NY 13244-2100

Dear Professor Long:

I have been asked to respond to your letter to the Attorney General.

I thank you for your offer to meet with Justice Department officials to discuss discrepancies between your statistical accounting methods and the Department's. However, I do not believe that any useful purpose would be served by such a meeting.

While it might have been beneficial to discuss the limitations of the statistics you were using before your analysis was widely circulated on the Internet along with a sort of electronic press release, there seems little point to pursuing it now. We would be covering much of the same ground as the Internal Revenue Service did, apparently with little effect.

As you know, there are lies, damn lies and statistics. A statistical approach does not lend itself well to this subject matter, and leads inevitably to distortions. It does not enlarge public understanding. Rather than chasing our statistical tails, trying to reduce the prosecutorial art to numbers of uncertain contexts and meanings, I think it would be best to let the matter rest at this point.

Please give my best wishes to my old friend David Burnham.

Sincerely,

Carl Stern
Public Affairs Director

TRAC

Transactional Records Access Clearinghouse
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May 13, 1996

Carl Stern
Public Affairs Director
U.S. Department of Justice
9th and Pennsylvania Avenue, NW
Washington, DC 20530

Dear Carl,

With all due respect, we take issue with several of the points made in your May 6 letter. We also earnestly request that you reconsider your decision not to accept our invitation for a meeting to discuss TRAC's use of Justice Department data, in this case data from the Executive Office of United States Attorneys.

Point One. We did not, as stated in your letter, request this meeting "to discuss the discrepancies between your [TRAC's] statistical accounting methods and the Department's." The data on TRAC's IRS Web Site were provided by the Executive Office of U.S. Attorneys. The data on TRAC's IRS Web site precisely match the summary information published in the Justice Department's own annual statistical report. Thus, the central problem we wish to explore has nothing to do with alleged discrepancies between TRAC's accounting methods and those of the department, but rather with discrepancies that appear to exist in how the Justice Department and the IRS keep track of their business.

Without any fingerpointing, the fact that the Justice Department and the IRS are unable to reconcile their books is a significant problem. And conversations we have had with several U.S. attorneys, federal enforcement officials from other agencies and experts in the Administrative Office of the U.S. Courts indicate that the problems are in no way limited to the IRS.

Even with the discrepancies, however, the data raise numerous questions worthy of serious exploration. In her interview in "The New York Times," for example, Shirley D. Peterson, the former assistant attorney general for tax matters and the former commissioner of the IRS, acknowledged that reality when she said

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that the criminal matters referred to United States attorneys by the IRS "are too often relegated to the bottom of the barrel." Why is the government wasting so much of its time on matters that are not accepted? Should the IRS be more selective? Should the tax agencies better coordinate their resources? Are there, as Ms. Richardson suggests, U.S. attorneys who choose to ignore tax cases because they lack sex appeal?

Point Two. You say that a meeting between knowledgeable Department officials and TRAC "might have been beneficial" before the release of the information about the handling of IRS criminal referrals but would have little value now. We note that in a conversation with one of your staff members, Auburn Rainey, David Burnham specifically requested such a meeting two weeks before the data became public, and that the Justice Department chose not to respond. We also note that we in fact did have a preliminary meeting with two IRS officials, showed them the data site, and requested their insights as to why there were variations between the IRS and Justice data. The IRS also chose not to respond in a substantive way. We finally note that the Justice Department is the central controlling point of a wide range of vital federal enforcement programs and that you should fully expect that TRAC will continue to explore them.

Point Three. You seem to assert that we agree with the tiresome statement regarding "lies, damn lies and statistics" and add the comment that the statistical approach inevitably leads to distortions. This cynical remark makes just as much sense as if we were to say that the public should question any statement written in English because there have indeed been occasions when the language has been harnessed by those who deliberately sought to mislead the public. All assertions, whether written or statistical, must be examined on their individual merits.

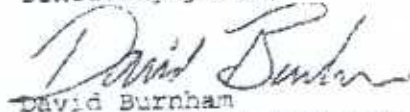
Point Four. You dismiss the notion that the numbers generated by "the prosecutorial art" ever can be analyzed in a way that will enlarge public understanding. There was a time, we suppose, when physicians made the same kind of assertion. But modern epidemiology and other kinds of medical research have shown the wonderful power of statistical analysis to discover previously hidden truths for the good of all the world. No agency enjoys having someone look over its shoulder. And because of the large number of cases and the wide range of law, prosecutors at the federal, state and local level have long enjoyed immunity from such an examination. Because of the Freedom of Information Act and the analytical ability of modern computing, however, this

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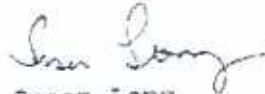
interesting form of immunity is coming to an end.

For all of the above reasons, and in the name of the fair and efficient administration of justice, we therefore ask you to accept our genuine invitation to meet and deal with the discrepancies that have developed in the measurement of the criminal enforcement activities the Justice Department and the Internal Revenue Service.

Sincerely yours,



David Burnham
Co-director of TRAC and
Associate Research Professor,
Newhouse School of Public Communications



Susan Long
Co-Director of TRAC and
Associate Professor of Quantitative
Methods, School of Management

cc: Attorney General Reno
Assistant Attorney General Argrett



U.S. Department of Justice

Office of Public Affairs

Washington, D.C. 20530

May 28, 1996

David Burnham
Susan Long
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Syracuse University
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Dear David and Susan:

I appreciated your detailed and thoughtful letter, but I don't see where we go from here.

I'd be happy to talk to you until the cows come home, but it is the professional staff in the Tax Division and Executive Office of U.S. Attorneys who have a substantive grasp of the subject matter, not me.

Unfortunately, their work day is unreasonably long, already. The material you wish to discuss is extraordinarily complex. You and they do not seem to share even a common vocabulary or format for viewing the material. There is little likelihood that they will convince you of the weaknesses of your methodology or the virtue of theirs, or that you will persuade them that they are in error.

Under the circumstances, it does not seem practical to me to ask them to commit the substantial time and resources that would have to be devoted to the kinds of meetings you are requesting.

As I get older, I realize there are not enough hours in the day to solve every problem, correct every misconception, and respond to every unflattering depiction. If you have a few questions that can readily be answered, I will do my best to handle them for you. But, I cannot justify asking the staff to do more.

With best wishes,

Sincerely


Carl Stern