

Subsequently, the policy was revised once again via yet another Memorandum, this time by Mark Filip, the Deputy Attorney General.⁸⁹³ As currently iterated the Filip Memorandum, the policy illustrates the general “factors” in whether to indict a business entity:

- the nature and seriousness of the offense, including the risk of harm to the public, and applicable policies and priorities, if any, governing the prosecution of corporations for particular categories of crime (see USAM 9-28.400);
- the pervasiveness of wrongdoing within the corporation, including the complicity in, or the condoning of, the wrongdoing by corporate management (see USAM 9-28.500);
- the corporation's history of similar misconduct, including prior criminal, civil, and regulatory enforcement actions against it (see USAM 9-28.600);
- the corporation's timely and voluntary disclosure of wrongdoing and its willingness to cooperate in the investigation of its agents (see USAM 9-28.700);
- the existence and effectiveness of the corporation's pre-existing compliance program (see USAM 9-28.800);
- the corporation's remedial actions, including any efforts to implement an effective corporate compliance program or to improve an existing one, to replace responsible management, to discipline or terminate wrongdoers, to pay restitution, and to cooperate with the relevant government agencies (see USAM 9-28.900);
- collateral consequences, including whether there is disproportionate harm to shareholders, pension holders, employees, and others not proven personally culpable, as well as impact on the public arising from the prosecution (see USAM 9-28.1000);
- the adequacy of the prosecution of individuals responsible for the corporation's malfeasance; and
- the adequacy of remedies such as civil or regulatory enforcement actions (see USAM 9-28.1100).⁸⁹⁴

The Memorandum provides more detailed discussion of how these factors are to be considered, particularly in the controversial area of demanding waiver of attorney-client privilege (more oversight in such demands) and considering entity payment of attorneys fees or demanding that it stop doing so(not to be considered or demanded). The devil, of course, is in the details, but the revisions are a good if not totally sufficient start to a process that should go further in determining how much raw power prosecutors should be able to exercise in our society.

⁸⁹³ The Memorandum appears in USAM Title 9, Ch. 9-28.000.

⁸⁹⁴ USAM ¶ 28.300.