



LOCAL PROSECUTORS AND CORPORATE CRIME

FINAL REPORT

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TABLE OF CONTENTS
LOCAL PROSECUTORS AND CORPORATE CRIME
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PAGE

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CHAPTER 1

	ACQUISITIONS	
OVERVIEW		1
PROBLEM AND POLICY SIGNIFICANCE		2
GOVERNMENTAL RESPONSES TO WHITE-COLLAR CRIME		4
DISCRETION AND CORPORATE CRIME PROSECUTION		6
Justice Constraints		6
Legal Constraints		7
Resource Constraints		8
COMMUNITY CONTEXT AND OFFICIAL DISCRETION		9
PLAN OF THE STUDY		11

CHAPTER 2

PROCEDURES		12
MAIL SURVEY		12
Sample		12
Questionnaire Administration		13
ARCHIVAL DATA		14
INTERVIEWS		14
ANALYTIC STRATEGY		16
NOTES		17

CHAPTER 3

CHARACTERISTICS OF RESPONDENTS, OFFICES AND JURISDICTIONS		18
PERCEPTIONS OF THE CORPORATE CRIME PROBLEM		23
TRENDS IN CORPORATE CRIME PROSECUTIONS		26
JURISDICTION OVER CORPORATE CRIME		27
THE PREVALENCE OF CORPORATE CRIME PROSECUTIONS		31
NOTES		34

CHAPTER 4	
THE PROCESS OF PROSECUTIONS	38
DISCOVERY	38
INVESTIGATIONS: SPECIAL UNITS AND NETWORKING	40
REGIONAL VARIATION IN INTERAGENCY RELATIONSHIPS	49
INVESTIGATIONS: METHODS	50
CHAPTER 5	
CONSTRAINTS ON PROSECUTORIAL DISCRETION	54
CHAPTER 6	
THE GOALS OF PROSECUTION	59
CAUSES AND REMEDIES OF CORPORATE CRIME	63
CHAPTER 7	
IMPLICATIONS AND RECOMMENDATIONS	69
PERCEPTIONS OF THE CORPORATE CRIME PROBLEM	69
NETWORKING	71
GOALS AND CONSTRAINTS	74
THE PROSECUTOR AS PROBLEM SOLVER	75
RECOMMENDATIONS	78
National Recommendations	78
Recommendations for Local Jurisdictions	82
REFERENCES	86
APPENDIX I	92
APPENDIX II	105
APPENDIX III	107

LIST OF TABLES

TABLE	TITLE	PAGE
1	Respondent's Title	19
2	Personnel and Financial Characteristics of Respondents' Offices	20
3	Office and Jurisdictional Characteristics by Region	22
4	Perceived Seriousness of the Corporate Crime Problem by Population Size of Jurisdiction	24
5	Perceived Seriousness of the Corporate Crime Problem by Region in Large and Small to Medium Sized Jurisdictions	25
6	Perceived Trends in Corporate Crime Prosecutions by Population Size of Jurisdiction	28
7	Jurisdiction over Selected Corporate Crimes	30
8	Percent Prosecuting Selected Corporate Crimes in 1988	32
9	Frequency of Prosecutions in a Typical Year	33
10	Percent Who Prosecute More Than Three Cases Per Year By Region	35
11a	Percent Who Prosecute More Than Three Cases Per Year in Small Districts by Region	36
11b	Percent Who Prosecute More Than Three Cases Per Year in Large Districts by Region	37
12	Frequency of Referrals from Selected Sources	39
13	Special Control Districts by Region and Population Size	41
14a	Frequency of Prosecutions in Special Control Districts	42
14b	Frequency of Prosecutions in Other Districts	43
15	Percentage of Special Control and Other Districts That Prosecute One or More Selected Corporate Crimes in Medium and Large Sized Jurisdictions	45

16	Frequency of Joint Investigations with Selected Agencies	46
17	Helpfulness of Other Agencies	48
18	Percentage of Districts Conducting at Least One Joint Investigation per year with Selected Agencies by Region	51
19	Usefulness of Selected Investigative Methods	52
20	Likelihood of Selected Factors Limiting Willingness to Prosecute Corporate Criminal Offenses	55
21	Factors Increasing Willingness to Prosecute Corporate Criminal Offenses	57
22	First and Second Most Important Objectives of Prosecution by Type of Offender and Offense	60
23	Importance of Selected Causes of Corporate Criminal Offenses	65
24	Usefulness of Selected Methods of Improving Corporate Compliance with the Law	66
25	Most Useful Method of Improving Corporate Compliance with the Law	68

LOCAL PROSECUTORS AND CORPORATE CRIME

FINAL REPORT

CHAPTER 1

OVERVIEW OF THE REPORT

The need for coordinated Federal, state, and local responses to white-collar crime is obvious. Isolated and piecemeal efforts by individual enforcement agencies are inadequate against many white-collar crimes (Morrill 1982; Morris, 1982). They demand coordinated, multi-strategy responses (Edelhertz, 1982; Edelhertz and Rogovin, 1982; Edelhertz and Overcast, 1982; Skoler, 1982; McGuire, 1982; Conyers, 1980).

Unfortunately, we know little about how local prosecutors handle different types of white-collar offenses. Our knowledge of their enforcement activities is based largely on anecdotal data (Edelhertz, 1982:3-4). Systematic national data on local responses to corporate illegalities, an increasingly important form of white-collar crime, are missing. The absence of reliable information on these matters hinders the development of Federal, state and local control strategies. This research was designed to begin to rectify this problem. By investigating problems faced by district attorneys and regulatory officials as they respond to corporate illegalities, we hope to facilitate efforts to coordinate multi-strategy responses to white-collar crime.

We conducted a multi-method investigation of the prosecution of corporate illegalities by district attorneys. One component of the study was a mail survey of approximately 1,000 district attorneys. The questionnaire focused on: (1) organizational and fiscal resources of the prosecutor's office; (2) organization of local law enforcement networks; (3) perceived constraints

on prosecutorial decision-making in corporate cases; and (4) the number, types and sources of corporate criminal cases handled in preceding years. The survey data were merged with economic, social, and official crime data for each jurisdiction. This enabled us to explore contextual variation in and correlates of corporate crime prosecution in the United States.

Four jurisdictions were selected for intensive, ethnographic analysis of local control networks and decision-making in cases of alleged corporate violations. In each jurisdiction, interviews with prosecutors, regulatory personnel and other criminal justice representatives focused on (1) the creation, maintenance, and operation of local control networks, (2) the range and differential effectiveness of strategies employed in past corporate crime cases, and (3) factors that facilitate or inhibit official discretion in controlling corporate crime.

PROBLEM AND POLICY SIGNIFICANCE

The bureaucratic form of organization substantially increases efficiency and productivity, but it also generates new opportunities for antisocial behavior (Wheeler and Rothman, 1982). Illegal acts committed for the benefit of business corporations are a form of white-collar crime known as "organizational" or "corporate" crime (Clinard and Quinney, 1973:188; Clinard and Yeager, 1982:18). Over the past decade this form of white-collar crime has emerged as a salient public issue. As part of a broad social movement against white-collar crime (Katz, 1980), growing numbers of citizens, lawmakers, and law enforcers now recognize that the illegal conduct of business corporations may exact a heavy toll from its individual, corporate, and governmental victims (Cullen et al., 1987).

Although we lack reliable data on the economic cost of white-collar crime, many believe it dwarfs the total annual loss from street crime (Coleman, 1985; Levi, 1987). White-collar crimes

committed in organizational settings are especially costly. Wheeler and Rothman (1982:1414) found that the median victim loss for white-collar offenses committed by individuals was \$8,000, whereas the median loss in offenses committed by organizational offenders was \$387,274.

As with street crimes, concern for its immediate victims makes it easy to overlook the broader social and economic consequences of white-collar crimes. They create distrust and may undermine public confidence in the morality of big business (Sutherland, 1940; Kramer, 1984). Diminished faith in the fairness of the financial markets may cause potential investors to reduce their investments in the market, stifling economic growth (Clinard and Yeager, 1980:8; Conklin, 1970:7). By disregarding the rules of free and open competition, business organizations that engage in criminal behavior may gain unfair advantage over their law-abiding competitors. The ability of the market to reduce the costs of goods and services and to improve efficiency through competition is thus threatened. In sum, corporate criminal behavior may harm the American economy and free enterprise system (Edelhertz, 1970:9; Clinard and Yeager, 1980:11-12).

Despite the physical, economic, and social costs of corporate crime, prosecutors have reason to be chary of using the criminal process against corporate offenders. Corporations generally commit offenses that are incidental to and in the furtherance of legitimate business objectives. Harsh enforcement measures, no matter how well-intended, may have deleterious effects on innocent parties (Diver, 1979; Bardach and Kagan, 1982). If criminal penalties disrupt business operations, employees may be thrown out of work. The spill-over effects of criminal sanctions may harm investors, consumers, and the local community (Moore, 1987). Thus, the control of crimes committed by businesses may require different measures than those used to control other forms of crime (Clinard and Yeager, 1980:299).

GOVERNMENTAL RESPONSES TO WHITE-COLLAR CRIME

Historically, the Federal government has assumed primary responsibility for controlling white-collar crime, but in recent years state attorneys general and local district attorneys have grown increasingly concerned with this social problem (Cullen et al., 1987). For example, a recent survey of California district attorneys on their handling of corporate offenses found that nearly three-fourths of the district attorneys reported receiving citizen complaints about corporate misconduct (Maakestad et al., 1987). A significant majority (75 percent) have conducted corporate prosecutions. More important, a sizeable minority (40 percent) believed that in the future their offices will devote more resources to corporate crime prosecution. They are not unique in this regard.

District attorneys in California are part of a national trend against white-collar and corporate crime that began in the early 1970s. In 1972, the state attorneys general singled out consumer fraud, a form of white-collar crime, as a major concern (Skoler, 1982:67). The following year the National District Attorneys' Association (NDAA) established an Economic Crime Committee to promote local white-collar crime enforcement, to enhance the capabilities of local prosecutors to deal with white-collar crime, and to increase their professional commitment to doing so (Edelhertz and Rogovin, 1982:ix-x). This was the first nationally coordinated effort to improve local white-collar crime control capabilities. By 1975, forty-three district attorney's offices were participating in the Committee's Economic Crime Project.

Since the advent of the Economic Crime Project, local responses to white-collar crimes have changed significantly. Whereas district attorneys once concentrated almost exclusively on economic crimes such as consumer fraud, now they are prosecuting a broader variety of cases.

Concerned with occupational safety violations and illegal dumping of toxic wastes, prosecutors in a number of states have sought criminal indictments against corporations for non-economic offenses (Cullen et al., 1987:312-19). This shift reflects both a change in law and changing federal-state relationships. Courts have broadened traditional notions of corporate criminal liability (Brickey, 1984) and new regulatory initiatives at all levels of government have expanded the statutory tools available for prosecutors to use against harmful corporate behavior. In the past decade, the Federal government has shifted responsibility for many programs to state and local officials. In this new environment, local officials must push the initiative against social problems, such as white-collar crime.

Studies commissioned by the NDAA's Economic Crime Project added greatly to our knowledge and demonstrated the feasibility of local responses to economic crime (Whitcomb et al., 1979; Finn and Hoffman, 1976). They demonstrated that networking -- the use of interagency teams to analyze, investigate, and prosecute complex white-collar crimes -- can be an effective means of augmenting resources and overcoming legal constraints (Dinitz, 1982; Edelhertz, 1982; Battelle Institute, 1974; Finn and Hoffman, 1976; Whitcomb et al., 1979). Networks typically include prosecutors, regulatory officials, and representatives from federal, state, and local law enforcement agencies.

Despite the widely acknowledged significance of local control networks, we have little information on how they are created and maintained. Even less is known about how they set priorities, establish joint policy objectives, or choose among alternative remedies in cases of corporate illegalities (Thomas, 1982; Stier, 1982). In brief, we are uninformed about what may be the most effective white-collar crime control strategy (Edelhertz, 1982).

DISCRETION AND CORPORATE CRIME PROSECUTION

Although it is tempting to think of criminal laws as clear and precise proscriptions with unambiguous behavioral referents, those who must apply them to events of everyday life know otherwise. The demarcation between lawful and unlawful conduct often is not obvious. When does a public altercation between two acquaintances become disorderly? At what point does communication between two companies about prices or markets become a criminal conspiracy? These questions cannot be answered without careful scrutiny of situational elements of individual cases. The lesson is clear: Legal actors must exercise judgment as they apply the law to ambiguous and ever-changing events. Discretion is an unavoidable component of "law in action" (Friedman, 1975).

Viewed abstractly, constraints are forces that shape individual decision making. They mold the exercise of discretion by legal actors, determining when and how laws are enforced. For example, insufficient time and personnel make it impossible for police officers to arrest all who violate the law (LaFave, 1965). Prosecutors are no different. Some constraints encourage them to seek indictments and prosecution; others militate against use of the criminal process, perhaps in favor of other remedial measures. Previous research suggests that official discretion in cases of corporate white-collar crime is shaped by three broad constraints: justice, legal, and resource.

Justice Constraints

The legitimacy of the legal system ultimately rests on whether those subject to its authority believe it is just. The notion of meting out to individuals and groups what they deserve -- no more and no less -- is the core of the concept of justice (Friedman, 1975:17). If the legal system consistently produces results that violate fundamental beliefs on justice, its claim to authority is

weakened and the rule of law is threatened. Consequently, as a mandate imposed by the public, the pursuit of justice constrains the conduct of legal actors (Wilson, 1968).

From case studies of corporate crime prosecution we know that prosecutors try to achieve justice even when the most appropriate measure may not be apparent (Cullen et al., 1987; Schudson et al., 1984; Vaughan, 1983; Weaver, 1977). When culpable conduct violates criminal, civil and administrative law, which remedy is most just? While legal scholars continue debate over the ethical and practical merits of these alternative measures, prosecutors daily make hard decisions on the appropriate remedy for a given crime (Geis 1972; Anderson et al. 1977; Wilson 1980; Braithwaite, 1981-82; Fisse and Braithwaite, 1983; Reiss, 1984).

These decisions are complicated when the interests of victims conflict with broader social interests. Sometimes victims who are more interested in restitution than retribution oppose the use of criminal proceedings. Prosecutors, however, may believe that failure to respond sternly to white-collar crimes undermines belief in equal justice under law. The tension between community and victim interests may make the choice of remedy difficult for prosecutors.

Legal Constraints

Legal constraints are statutes and procedural rules that make the use of the law more or less difficult for legal actors. For example, the "probable cause" requirement makes it more difficult for police officers to conduct legal searches and arrests than would be the case if only "reasonable suspicion" were required. In corporate criminal cases, prosecutors frequently face legal constraints of a conceptual, constitutional, and evidentiary nature.

Conceptually, courts have encountered difficulties transferring traditional, individualistic notions of the criminal law to non-traditional, corporate settings. For example, indictments

against corporations have been dismissed because of restrictive judicial interpretations of the legal meaning of "person," the appropriateness of existing criminal sanctions for corporate actors, and the need to prove *mens rea* (Maakestad, 1981; 1986; Fisse, 1983; Coffee, 1981). These concerns may limit the perceived options available to corporate criminal prosecutors.

Corporations may raise constitutional arguments that threaten the viability of prosecutors' cases. For example, in a recent case, a trial judge ruled that Occupational Safety and Health Administration regulations preempted state law, and he dismissed criminal indictments against a corporation and its officers (Cullen et al., 1987:325). The belief that Federal regulatory law preempts state law may reduce the options that prosecutors see as viable in corporate cases.

Prosecutors also must contend with evidentiary constraints. Seldom is it possible to gather and present dramatic, "smoking-gun" proof of criminal knowledge or intent in a corporate context. Proof of such knowledge or intent is critical, for it is the element of *mens rea* that can turn what might have been a civil suit into a criminal proceeding. In today's complex corporate structures, it can be extremely difficult to pinpoint individual responsibility for specific decisions. Even cooperative managerial insiders may be unable to determine who made or knew of a particular decision. In addition, some large-scale organizations develop mechanisms for shielding their members from responsibility for corporate actions (Katz, 1977; 1979b; Gross, 1978).

Resource Constraints

Most organizations pursue multiple objectives with limited budgetary, personnel, and technical resources. Criminal justice organizations are no exception. Since they cannot meet all of the numerous, conflicting, and shifting demands made on them, criminal justice administrators must make strategic decisions on the priority of objectives.

The difficult and time consuming process of investigating, preparing and prosecuting a case against a corporation may tax prosecutors' resources severely (Bequai, 1978). Detection of illegal acts committed in organizational settings is hindered by the ability of organizations to restrict access to their inner workings. In addition, the evidence in these cases may be little more than an elusive paper trail of memoranda and files, and organizations may try to control the prosecutor's access to this crucial information (Mann, 1985). Gathering evidence buried in corporate files may exceed the investigatory capabilities of local prosecutors (Cullen et al., 1987; Rakoff, 1985; Schudson et al., 1984; Vaughan, 1983). The reality of limited resources constrains enforcement of the criminal law and the prosecution of white-collar crime.

COMMUNITY CONTEXT AND OFFICIAL DISCRETION

While all criminal justice and regulatory bureaucracies are constrained by the forces outlined above, their responses vary. Organizations tend to develop distinctive enforcement styles. For example, some police agencies employ a legalistic approach to law enforcement; others use a watchman or service style. These styles of enforcement are largely shaped by the norms, concerns, and activities of local constituencies (Wilson, 1968).

Community context also influences social control responses to white-collar crime (Hagan et al., 1982). Shapiro (1984) found significant variation in the caseloads, enforcement priorities, and investigative strategies of regional offices of the Securities and Exchange Commission (SEC). Shover et al. (1986) show that the Federal Office of Surface Mining adopted more stringent enforcement strategies in Appalachian states than in western states. Others have shown that contextual factors influence how regulatory agencies select and process cases (Bardach and Kagan, 1982; Feldman and Zeckhauser, 1978). Studies of the sentencing of white-collar

offenders also reveal substantial variation in sentence severity among districts and over time (Benson and Walker, 1988; Hagan and Palloni, 1986; Hagan and Parker, 1985; Nagel and Hagan, 1982; Wheeler et al., 1982; Hagan et al. 1980). In response to local conditions, regulatory and criminal justice agencies develop different enforcement styles to combat white-collar crimes.

Because most district attorneys are locally-elected officials, their day-to-day approaches to enforcement largely reflect the concerns and priorities of their constituencies and local communities (Cole, 1988:149; 1970). In corporate crime cases more than in other criminal cases, prosecutors must be sensitive to the potential impact of their decisions on the local economy. If enforcement action causes a corporate perpetrator to relocate to another community, it may have significant negative effects for local tax revenues and employment (Moore, 1987). This suggests that the severity of local responses to corporate crimes varies with the strength and diversity of local economies. A study of California district attorneys illustrates the influence of community context on corporate crime prosecutions (Benson et al., 1988). This study found that the importance of adequate resources and alternative remedies varied with the community context, specifically jurisdictional population size. In contrast to their counterparts in large districts, prosecutors in small districts were more likely to be constrained by these factors and by the potential impact of corporate prosecutions on the local economy.

We do not know how strongly and in what ways community context affects local responses to corporate illegalities. If its influence is substantial, efforts to develop national white-collar crime containment strategies must be sensitive to contextual variations among jurisdictions. If it is weak, then perhaps those who would develop national containment strategies need pay little

attention to social and economic differences among communities. Clearly, we need to know more about how different types of communities respond to white-collar crimes.

PLAN OF THE STUDY

This report presents the results of our investigation of how local prosecutors respond to corporate crime. Chapter 2 discusses the procedures used to gather and analyze the national survey and the case study data. In Chapter 3, we present descriptive information on the characteristics of the respondents and the characteristics of the offices and districts in which they work. Descriptive information on the attitudes of local prosecutors toward corporate crime and their levels of activity against it are also presented in Chapter 3. Chapter 4 discusses the process of prosecution, detailing what prosecutors have to say about how corporate cases are discovered and investigated. We pay special attention to the issue of networking in this chapter. Constraints on prosecutorial discretion is the subject of Chapter 5. Here we investigate the factors that increase or decrease the willingness of local prosecutors to pursue corporate crimes in their jurisdictions. In Chapter 6, we describe prosecutors' views on the causes of corporate crime and their objectives in prosecuting these types of cases. Finally, in Chapter 7, we summarize the major findings, discuss their implications, and make several recommendations for future research and for improving local reactions to corporate crime. The recommendations are drawn mainly from the interviews we conducted with prosecutors and other officials in the four case studies.

CHAPTER 2

PROCEDURES

This project used data from three sources: a mail survey of district attorneys; archival data gathered primarily from the County and City Data Book - 1988 (Bureau of the Census, 1988); and, interviews with criminal justice and regulatory officials in four jurisdictions.

MAIL SURVEY

Sample

The National District Attorneys' Association (NDAA) provided a mailing list of its members from which a sample of local prosecutors was drawn. In most states, criminal prosecutions are conducted by a locally elected official representing a county or county-equivalent geographic area. But in some states, felony and misdemeanor prosecutions are handled by different officials. Both types of officials may be members of the NDAA. In drawing the sample of local prosecutors, we used state statutes to identify officials responsible for prosecuting locally committed felonies. Officials responsible for prosecuting only misdemeanors were excluded from the sample.¹ Hereafter, we refer to all survey respondents as either district attorneys or local prosecutors.

We surveyed all prosecutors whose offices are located in or near large metropolitan areas and a 25 percent random sample of all non-metropolitan, or rural, offices. To identify offices located in or near metropolitan areas, we began by consulting the Statistical Abstract of the United States (Bureau of the Census, 1989). Appendix II of the Abstract lists the counties included in three classes of metropolitan statistical areas: consolidated metropolitan statistical areas (CMSA),

primary metropolitan statistical areas (PMSA) and metropolitan statistical areas (MSA). All counties located in either a MSA or PMSA constituted our sampling frame for metropolitan, or urban, jurisdictions.²

Most of the addresses on the NDAA membership list also identified the county in which the office was located. By comparing the NDAA list to the urban counties list, we were able to identify most offices located in counties in urban areas. For addresses that had no county identifier we referred to the Rand McNally Cosmopolitan World Atlas (Rand McNally and Company, 1971). The Atlas lists the county seat for all counties. Where a metropolitan county seat matched one of the city addresses on the NDAA mailing list, we included that office in the urban sample. A total of 632 offices on the NDAA mailing list were identified as being located in urban areas.

The remaining 1650 offices on the NDAA mailing list constituted the sampling frame for rural offices. We selected a simple random sample of 410 offices, approximately 25 per cent of the sampling frame. The total sample contains 1042 offices.

Questionnaire Administration

Following the procedures for mail surveys recommended by Dillman (1978), the questionnaire (see Appendix I) was administered through three mailings. The first mailing, containing a cover letter, the questionnaire and a stamped and addressed return envelope, was sent out in March 1989. Each respondent received a post card reminder one week after the first mailing. Second and third follow-up mailings were sent to the non-respondents three and seven weeks, respectively, after the first mailing. The third follow-up was sent by certified mail.

The cover letter was addressed to the district attorney, but instructions on the questionnaire

asked that either the district attorney or the attorney most knowledgeable about white-collar and corporate crime complete the survey. In general, the questionnaires were not completed by the district attorney personally, but rather by a high ranking assistant or department director.

ARCHIVAL DATA

To measure selected dimensions of community context, aggregate data on population, employment, income, local government finances, and crime for each jurisdiction in the sample were abstracted from the County and City Data Book, 1988, Files on Diskette (Bureau of the Census, 1988). In addition, data on the number of labor and other organizations in each jurisdiction were taken from County Business Patterns, 1987 (Bureau of the Census, 1989). These data were merged with the survey data. Appendix II lists the variables included in this portion of the data set.

In most states, local prosecutors are county officials and their jurisdictions are contiguous with individual counties. In a few states, however, prosecutors serve judicial districts which encompass multiple counties. In these cases, we combined the archival data from the constituent counties of the judicial district.

INTERVIEWS

We conducted field research in four jurisdictions with special units for white-collar, economic, or corporate crime. The offices were selected because they handle relatively large numbers of corporate cases and concentrate on different types of cases. To maximize cultural and social variation in community context, we studied offices located in different regions of the country: Cook County, Illinois, which includes Chicago; Los Angeles County, California;

Nassau County, New York; and, Duval County, Florida, which includes Jacksonville. At each field site, we spent approximately ten working days. In each jurisdiction, we interviewed attorneys in the local office, representatives from the state attorney general's office, state and federal regulatory officials, and local and state police personnel. The mix of agencies and officials varied from site to site. In general, we relied on the attorneys in the local office to identify the individuals in other agencies with whom they most often work on corporate cases. With a few exceptions, Co-Project Director Maakestad interviewed attorneys and Principal Investigator Benson focused on regulatory and law enforcement personnel.

The interviews were open-ended and most were tape recorded. The interviews with prosecutors focused on five major areas:

- (1) prosecutors' priorities in corporate cases;
- (2) legal and resource constraints on decision-making in corporate cases;
- (3) enforcement strategies that have been effective against corporate violators in the past;
- (4) coordination of activities with other criminal justice and regulatory agencies, and;
- (5) how other agencies can improve their performance in controlling corporate wrongdoing;

The interviews with regulatory and police officials focused on a related set of issues:

- (1) how liaisons with prosecutors and other agencies are established, maintained and operated;
- (2) services that the agency provides for prosecutors;
- (3) criteria used to determine whether a corporate case should be referred for criminal prosecution;

(4) advantages and disadvantages of criminal enforcement as a means to achieve regulatory objectives, and;

(5) legal and resource constraints on decision-making in corporate cases;

To facilitate analysis of the interviews, we used Ethnograph (Seidel et al., 1988), a computer program designed for qualitative data analysis. Although Ethnograph makes it easier to manage interview data, the reliability and validity of the data analysis ultimately depends on careful coding of the interviews. To ensure that the interviews were accurately and reliably coded, we developed a coding scheme organized around major issues, such as networking with other agencies, constraints on prosecutorial discretion and purposes of prosecution. We also instituted a system of cross-checking all coding work.

The interviews were transcribed into machine readable form and loaded on a personal computer. They were then reviewed and coded by the principal investigator, co-project director Maakestad and their research assistants. The coders identified segments of the interviews that dealt with themes relevant to this project. Analysis of the coded interviews involved using Ethnograph to abstract passages dealing with particular themes, say, for example, networking with federal agencies, and then reviewing those passages as a group to identify patterns.

ANALYTIC STRATEGY

This report focuses primarily on the survey data, attempting to describe and explain variation in prosecutors' reactions to corporate crime. We begin by presenting descriptive information on the respondents' opinions and activities regarding corporate crime. Next, we investigate whether their opinions and activities vary systematically with selected characteristics of the offices and

communities in which they work. Where appropriate, we supplement and illustrate the survey results with material from the case studies.

NOTES

1. District attorneys and criminal district attorneys were sampled in Texas, commonwealth attorneys in Kentucky, state attorneys in Connecticut, and district attorneys and county prosecuting attorneys in Wyoming.
2. CMSAs represent combinations of MSAs and PMSAs.

CHAPTER 3

A total of 685 questionnaires were returned for an overall response rate of 65 percent. Of these, 419 (66 percent) came from urban jurisdictions and 266 (63 percent) from rural jurisdictions. Given the sampling design, the final sample is disproportionately composed of respondents located in urban districts. For this reason and because preliminary analyses revealed that rural districts have little corporate crime, we report only the results for the urban districts in the body of this report. Selected results for the rural districts are presented in Appendix III.

CHARACTERISTICS OF RESPONDENTS, OFFICES AND JURISDICTIONS

Instructions on the questionnaire directed that it be completed by the district attorney or the attorney most knowledgeable about white-collar and corporate prosecutions in the office. As Table 1 shows, it appears that these directions were followed. Only three questionnaires were completed by non-attorneys. On average, the respondents had 10.45 years of experience as prosecuting attorneys, and 75 percent of them had at least six years experience. Thus, we have some confidence that the surveys represent the views of experienced prosecutors.

The offices in which the prosecutors work vary considerably in size and budget. Table 2 presents descriptive statistics on the budget and the number of full and part time attorneys and investigators. The range for these variables is considerable, and since the distributions are strongly skewed to the right, the median is a more reliable indicator of central tendency than the mean. In terms of the median, the typical office has nine full time attorneys, one full time investigator and a budget of around \$600,000 per year. The smallest office has no full time attorneys, while the largest has over 200. The largest office has a budget of over \$30 million per

Table 1

Respondent's Title

Title	Number	Percent
Commonwealth Attorney	27	6.5%
County Attorney ^a	29	7.0
District Attorney ^b	127	30.7
Prosecutor	16	3.9
Prosecuting Attorney	59	14.3
Solicitor	5	1.2
State's Attorney	38	9.2
Assistants identified with a special unit	28	6.8
Assistants not identified with a special unit	82	19.8
Investigator	1	0.2
Other	2	0.5
No Answer	5	----
Total	419	100%

^a Also includes "County and Prosecuting Attorney."

^b Also includes "Criminal District Attorney" and "District Attorney General."

Table 2

Personnel and Financial Characteristics of Respondents' Offices

Characteristic	Mean	Median	S.D.
Full time prosecutors	22.0	9	34.8
Part time prosecutors	1.9	1	3.5
Full time investigators	6.6	1	14.1
Part time investigators	0.2	0	0.7
Budget in \$1,000s	\$2,115	636	3,897

year and one quarter of the districts have annual budgets of \$1.8 million or more.

The jurisdictions in which the respondents' are located vary greatly along a number of social and economic dimensions, such as population size, crime rate and economic well-being. The smallest jurisdiction had a 1986 population of 5,300 and the largest, 2,798,300.¹ The mean and median were 281,058 and 150,500, respectively. The crime rate (serious crimes known to the police per 100,000) ranged from zero to 12,794, with a mean of 4,417. Two indicators of economic well-being, percent below the poverty line and personal income per capita, also had large ranges. In the most poverty-stricken jurisdiction, 35 percent of the population lived below the poverty line, while in the least poverty-stricken community only three percent did. Personal income per capita ranged from a low of \$6,030 to a high of \$22,650, with a mean of \$12,357.

There are regional variations in jurisdictional and office characteristics. As Table 3 shows, compared to prosecutors from other regions, those in the midwest tend to serve smaller jurisdictions and in offices with correspondingly smaller budgets.² Prosecutors from western states, on the other hand, serve in comparatively large districts and offices. Particularly noteworthy is the finding that the median number of full time prosecutors in western jurisdictions is 26, two to three times more than in any other region. Not surprisingly, the median office budget in western districts is also comparatively large. Prosecutors in southern states appear to serve jurisdictions that are economically less well-off than their counterparts in other regions. Their jurisdictions have the lowest average personal income per capita and the highest average percent below the poverty line. These results suggest that there may be significant regional variations in resources available to district

Table 3

Office and Jurisdictional Characteristics by Region

Region	Mean	Median	S.D.
<u>Midwest, N = 133</u>			
Population, 1986	211,510	123,100	281,645
Crime rate (per 100,000)	4,075	3,684	1,989
Personal income per capita	12,438	12,165	1,776
Percent in poverty	8.66	8.40	3.10
Full time prosecutors	13.83	7.00	20.02
Budget (\$1,000)	943	500	1,465
<u>Northeast, N = 71</u>			
Population, 1986	353,859	228,100	353,345
Crime rate (per 100,000)	3,553	3,422	1,709
Personal income per capita	13,216	12,689	2,829
Percent in poverty	9.62	9.20	3.29
Full time prosecutors	25.28	11.00	38.03
Budget (\$1,000)	2,801	1,000	4,023
<u>South, N = 161</u>			
Population, 1986	237,000	131,500	328,325
Crime rate (per 100,000)	4,495	4,121	2,210
Personal income per capita	11,691	11,316	2,564
Percent in poverty	13.28	12.50	5.19
Full time prosecutors	18.53	7.50	31.66
Budget (\$1,000)	1,571	500	3,097
<u>West, N = 54</u>			
Population, 1986	487,985	248,700	521,057
Crime rate (per 100,000)	6,164	5,832	1,664
Personal income per capita	13,012	12,574	2,845
Percent in poverty	10.53	10.30	2.94
Full time prosecutors	47.19	26.00	51.47
Budget (\$1,000)	5,557	2,850	6,689

attorneys.

PERCEPTIONS OF THE CORPORATE CRIME PROBLEM

In most local jurisdictions, corporate crime does not appear to be a serious problem for prosecutors. Only 3.6 percent of the respondents reported that corporate crime was a "very serious" problem in their jurisdictions. Although one quarter considered it a "somewhat serious" problem, the majority (60.6 percent) saw corporate crime as "not at all serious."

But perceptions of the seriousness of the problem appear to be strongly influenced by the size and regional location of the jurisdictions prosecutors serve. As Table 4 shows, prosecutors in jurisdictions in the upper quartile in population size (over 328,000) are much more likely to see corporate crime as a serious problem than their counterparts in smaller districts. About one out of eight (11.8 percent) of the prosecutors in large jurisdictions regard corporate crime as a very serious problem and 63.7 percent see it as somewhat serious. In smaller jurisdictions, a majority see corporate crime as not at all serious.

Region of the country also makes a difference. A majority of prosecutors in western jurisdictions (68.5 percent) say that corporate crime is a somewhat or very serious problem. In contrast, in all other regions more than half of the respondents regard corporate crime as not at all serious.

Since western prosecutors tend to serve districts with larger populations than other prosecutors, we investigated whether this might account for their more serious view of the corporate crime problem. We divided the sample at the 75th percentile, creating sub-samples of small and large jurisdictions, and cross-tabulated region and perceived seriousness in each sub-sample. The results, shown in Table 5, indicate that regional variation in perceived seriousness remains even after size of jurisdiction is controlled. Western prosecutors who

Table 4

Perceived Seriousness of the Corporate Crime Problem by
Population Size of Jurisdiction^a

Perceived Seriousness	Size of Jurisdiction ^b			
	Small	Medium Small	Medium Large	Large
Very Serious	1.9%	1.0%	0.0%	11.8%
Somewhat Serious	10.5	17.6	29.1	63.7
Not at all serious	73.3	55.9	51.5	16.7
Don't know	14.3	25.5	19.4	7.8

^a In your opinion, how serious is the corporate crime problem in your jurisdiction?

^b Districts are grouped by quartiles: small $\leq 75,500$;
medium small $\leq 150,000$; medium large $\leq 328,100$; large $> 328,100$.

Table 5

Perceived Seriousness of the Corporate Crime Problem by Region in Large and Small to Medium Sized Jurisdictions

Perceived Seriousness	Large Jurisdictions ^a			
	Midwest	Northeast	South	West
Very Serious	4.6%	0.0%	16.7%	25.0%
Somewhat Serious	63.6	73.1	50.0	70.8
Not At All Serious	22.7	19.2	23.3	0.0
Don't Know	9.1	7.7	10.0	4.2
N	22	26	30	24
	Small and Medium Jurisdictions ^a			
	Midwest	Northeast	South	West
Very Serious	1.0%	0.0%	1.6%	0.0%
Somewhat Serious	17.3	23.3	12.6	46.7
Not At All Serious	68.2	62.8	58.3	36.7
Don't Know	13.6	14.0	27.6	16.7
N	110	43	127	30

^a Large jurisdictions are all those in the upper quartile of the population distribution (above 328,100 in population size.) Small and medium jurisdictions are 328,100 or less in population size.

serve small jurisdictions are about twice as likely to regard corporate crime as somewhat serious as their counterparts in other regions. Nearly half (46.7%) of the western prosecutors in small jurisdictions regard corporate crime as "somewhat serious" compared to less than one quarter of their counterparts in other regions. In the large jurisdiction subsample, 95 percent of western prosecutors regard corporate crime as at least somewhat serious, compared to between 68 and 73 percent of prosecutors in the other three regions.

While this result may reflect a real difference in the way western prosecutors perceive the corporate crime problem, it also may be an artifact of the way in which we analyzed the data. Within the two sub-samples, western districts may be concentrated at the upper end of the distribution in population size. Thus, what appears to be a regional variation may be just part of a simple linear relationship between size and seriousness. We investigated this possibility by calculating the mean population size by region in the sub-samples and by regressing perceived seriousness on population size and region in the sub-samples. The average population size of the western districts in both sub-samples is larger than in other regions but not by very much, suggesting that relationship between region and seriousness is not an artifact of method. This is borne out by the regression analysis which found that region of the country makes a statistically significant contribution to the equation. Western prosecutors take a more serious view of the corporate crime problem than prosecutors in other jurisdictions.

TRENDS IN CORPORATE CRIME PROSECUTIONS

Although most prosecutors regard corporate crime as not serious, over one-quarter say that corporate prosecutions have increased during their tenure in office. One-quarter also say that they anticipate doing more corporate prosecutions in the future. Less than one percent have observed or anticipate a decrease in prosecutions.

The trend in corporate prosecutions appears to be most strongly upward in large jurisdictions. Over half of the respondents located in large jurisdictions have noted an increase in prosecutions during their tenure in office and a majority (52.9 percent) expect this trend to continue (see Table 6). Although proportionately fewer of the prosecutors located in smaller jurisdictions report these trends, it is noteworthy that between one-fifth and one-quarter expect to prosecute more corporate cases in the future than in the past and almost no one expects to do less.

In sum, corporate crime is seen as a more serious and growing problem in large jurisdictions than in small ones, but sizeable minorities of prosecutors located in jurisdictions with relatively small populations expect to prosecute more corporate crime cases in the future.

JURISDICTION OVER CORPORATE CRIME

It is probably safe to assume that local prosecutors have a clear understanding of their jurisdiction with respect to ordinary street crimes. These crimes are a regular, if not daily occurrence, in most districts. Corporate crimes, however, are not as common. Local action against a corporate crime, no matter how serious the transgression, is unlikely if the local prosecutor does not believe that he or she has jurisdiction over the offense in question. It is important, therefore, to understand the views of local prosecutors on their jurisdiction over corporate crimes.

We asked the respondents whether it is within the jurisdiction of their office to prosecute business entities for nine corporate crimes: consumer fraud, securities fraud, insurance fraud, tax fraud, false claims and statements, work-place related offenses (e. g., unsafe working conditions), environmental offenses (e. g., Jumping toxic waste), illegal payments to government officials, and unfair trade practices (e. g., price-fixing, bid-rigging,

Table 6

Perceived Trends in Corporate Crime Prosecutions by Population Size of Jurisdiction

Trends	Size of Jurisdiction ^a			
	Small	Medium Small	Medium Large	Large
	In Past ^b			
Increasing	10.6%	16.5%	25.7%	58.3%
About the Same	76.0	71.8	64.4	38.8
Decreasing	0.0	0.0	1.0	1.9
Don't Know	13.5	11.7	8.9	1.0
Trends	In Future ^c			
More	14.3%	20.6%	27.9%	52.9%
About the Same	68.6	55.9	51.0	44.1
Fewer	1.0	0.0	1.0	0.0
Don't Know	16.2	23.5	20.2	2.9

^a Districts are grouped by quartiles: small \leq 75,500; medium small \leq 150,000; medium large \leq 328,100; large $>$ 328,100.

^b During your tenure as a prosecuting attorney, has the number of corporate crimes prosecuted annually by your office been increasing, remaining about the same, or decreasing?

^c In the future, do you expect that your office will prosecute more, about the same, or fewer corporate criminal cases than in the past?

restraint of trade). As Table 7 shows, the percentage of prosecutors reporting they have jurisdiction varies considerably from crime to crime. Almost 95 percent report jurisdiction over illegal payments to government officials, but less than half say they have jurisdiction over work-place related offenses and unfair trade practices (39 percent and 47 percent, respectively).

Somewhat surprisingly, prosecutors located in the same state do not agree on whether they have jurisdiction over particular crimes. Indeed, there is considerable lack of agreement among respondents located in the same state over their jurisdiction in corporate cases. In every state, respondents differ over whether they, as local prosecutors, have jurisdiction over particular corporate crimes. For example, of the 13 respondents from Alabama, eight report they can prosecute consumer fraud crimes, while four say they cannot. (One Alabama respondent did not answer this question.) In Illinois, 17 respondents report jurisdiction over business entities who make false claims or statements, but 10 do not. Similar examples of disagreement were found in all states.

There are several possible explanations for this result. Some respondents may not have received any complaints about particular types of corporate crime and hence have had no reason to research the relevant state law. Not well-informed about the law, these prosecutors may think that they do not have jurisdiction over particular offenses, when in fact they do. Alternatively, some prosecutors may be more willing and able than others to apply traditional law in innovative ways. For example, some states do not have consumer fraud statutes. Nevertheless, consumer fraud-like offenses in these states may be prosecutable under theft by deception statutes. Similarly, other areas of corporate misconduct, such as environmental and workplace related offenses, may be reachable with innovative use of traditional laws. If this latter interpretation is correct, the results shown in Table 7 suggest that there may be considerable variation in the willingness of local

Table 7

Jurisdiction over Selected Corporate Crimes^a

Corporate Crime	Yes	No
Consumer fraud	85.3%	14.7%
Securities fraud	64.3	35.7
Insurance fraud	89.2	10.8
Tax fraud	58.9	41.1
False claims and statements	87.4	12.6
Workplace-related offenses (e.g. unsafe working conditions)	38.7	61.3
Environmental offenses (e.g. dumping toxic wastes)	72.9	27.1
Illegal payments to government officials	94.1	5.9
Unfair trade practices (e.g. price-fixing, bid-rigging, restraint of trade)	46.6	53.4

^a "Keeping in mind the working definition of corporate crime -- that is, crime by or on behalf of a corporation -- is it within the jurisdiction of your office to prosecute business entities for any of the corporate offenses listed below?"

prosecutors to use the criminal law against corporate crime.

The results on the question of jurisdiction have both negative and positive implications with respect to local corporate crime control. The extent of disagreement over such a relatively straightforward crimes as consumer fraud and false claims is worrying. It suggests that because prosecutors in some jurisdictions do not realize they have authority over these crimes, corporate offenders may operate with impunity. However, the sizeable number who do report that they have jurisdiction over such relatively new crimes as environmental and workplace-related offenses may mean that local prosecutors have begun to look beyond traditional street crimes and to recognize the serious threat posed by offenses committed in corporate settings.

THE PREVALENCE OF CORPORATE CRIME PROSECUTIONS

Two items on the survey assessed the prevalence and frequency of corporate crime prosecutions. The first item asked whether in 1988 the respondent's office had prosecuted any of the nine corporate crimes. The second asked how often the office typically prosecuted the selected corporate crimes.

In 1988, the corporate crime that local prosecutors were most likely to prosecute was consumer fraud. As Table 8 shows, just over 40 percent of the respondents reported handling at least one such case. In contrast, only eight percent reported prosecuting an unfair trade practices case. Somewhat surprisingly, environmental crimes were prosecuted by over 30 percent of the respondents. This equalled the numbers for false claims and insurance fraud offenses.

Consumer fraud also had the highest rate of prosecution compared to the other crimes. Table 9 shows that about 15 percent of the respondents say they "typically" prosecute more than three such cases per year and another 20 percent handle one to three cases per year. The next most frequently prosecuted crimes are false claims, insurance fraud and environmental offenses. Approximately 10 percent of the districts typically prosecute more than three of these offenses per year.

There are regional variations in rates of prosecution. In general, consistent with their more

Table 8

Percent Prosecuting Selected Corporate Crimes in 1988*

Corporate Crime	Yes	No
Consumer Fraud	40.8%	59.2%
Securities Fraud	22.4	77.6
Insurance Fraud	30.7	69.3
Tax Fraud	16.0	84.0
False Claims	31.0	69.0
Workplace Offenses	11.0	89.0
Environmental Offenses	30.6	69.4
Illegal Payments	15.9	84.1
Unfair Trade Practices	7.8	92.2

* In 1988, did your office actually prosecute any of the following corporate offenses?

Table 9

Frequency of Prosecutions in a Typical Year*

Corporate Crime	Frequency			
	Never	Fewer Than 1 Case Per Year	About 1-3 Cases Per Year	More Than 3 Cases Per Year
Consumer Fraud	31.5%	33.4%	20.2%	14.9%
Securities Fraud	56.5	28.0	12.0	3.4
Insurance Fraud	37.5	39.0	14.5	9.1
Tax Fraud	61.4	25.3	7.6	5.7
False Claims	40.2	33.6	14.8	11.4
Workplace	68.3	25.4	5.0	1.2
Environmental	45.1	33.8	12.7	8.3
Illegal Payments	50.9	37.4	9.5	2.2
Unfair Trade	74.9	17.7	3.0	4.5

* Typically, how often does your office prosecute the corporate criminal offenses listed below?

serious view of the corporate crime problem, the most active district attorneys are located in the west. Table 10 reports the percentage of prosecutors in each region who typically handle more than three cases per year of the selected corporate crimes. With two exceptions (workplace related offenses and illegal payments) a greater percentage of prosecutors located in western states achieve this rate than in other regions. The west stands out as being particularly active against consumer fraud, false claims, environmental and unfair trade offenses.

The greater activity against corporate crime among western prosecutors may be due to the size of districts they serve. The average western district has a population of 487,985 versus 237,000 in the south, 353,859 in the northeast and 211,510 in the midwest. As Tables 11a and 11b show, however, controlling for population size reduces but does not eliminate regional differences. Compared to other regions, western districts still report the highest level of activity against almost all corporate crimes.

NOTES

1. That some of the "urban" districts are so small may seem surprising. However, these relatively small districts are located in either an MSA or PMSA. They were included in the sample on the theory that because they are part of large metropolitan areas they will experience similar problems with corporate misconduct as more populous jurisdictions.
2. States were grouped according to the U. S. Bureau of the Census definition of regions (Bureau of the Census, 1986).

Table 10

Percent Who Prosecute More Than Three Cases Per Year By Region*

Crime	Region			
	South	West	Northeast	Midwest
Consumer Fraud	10.6%	41.5%	15.9%	8.6%
Securities Fraud	2.5	9.3	1.5	3.2
Insurance Fraud	8.2	15.4	13.0	5.5
Tax Fraud	7.0	9.4	1.5	4.7
False Claims	8.8	30.0	11.8	7.0
Workplace	2.6	2.0	0.0	0.0
Environmental	2.5	33.3	8.6	5.5
Illegal Payments	1.9	2.0	4.5	1.6
Unfair Trade	1.3	27.5	0.0	1.6

* Typically, how often does your office prosecute the corporate criminal offenses listed below?

Table 11a

Percent Who Prosecute More Than Three Cases Per Year in Small Districts by Region*

Crime	Small Districts			
	South	West	Northeast	Midwest
Consumer Fraud	3.9%	30.0%	6.7%	4.5%
Securities Fraud	0.8	0.0	0.0	0.0
Insurance Fraud	3.9	10.0	2.2	2.7
Tax Fraud	3.9	6.7	0.0	3.6
False Claims	6.0	20.0	8.9	3.6
Workplace	3.1	3.3	0.0	0.0
Environmental	0.8	20.0	2.2	3.6
Illegal Payments	0.8	0.0	2.2	0.0
Unfair Trade	0.8	13.3	0.0	0.0

* Small districts \leq 328,100 in population size.

Table 11b

Percent Who Prosecute More Than Three Cases Per Year in Large Districts by Region*

Crime	Large Districts			
	South	West	Northeast	Midwest
Consumer Fraud	37.5%	54.2%	30.8%	27.3%
Securities Fraud	9.4	20.8	3.9	18.2
Insurance Fraud	25.0	20.8	30.8	18.2
Tax Fraud	18.6	12.5	3.9	9.1
False Claims	18.6	37.5	15.4	22.7
Workplace	0.0	0.0	0.0	0.0
Environmental	9.4	45.8	19.2	13.6
Illegal Payments	6.3	4.2	7.7	9.1
Unfair Trade	3.1	41.7	0.0	9.1

* Large districts > 328,100 in population size.

CHAPTER 4

THE PROCESS OF PROSECUTION

It is well known that white-collar crimes committed in organizational settings are troublesome to detect, investigate and prosecute. Investigations and prosecutions tend to be long and costly affairs. Prosecutors often must contend with skilled defense attorneys who take full advantage of the procedural safeguards afforded criminal defendants by the law. These attorneys actively seek to restrict prosecutors' access to evidence, evidence that often involves arcane technical or financial data (Mann 1985). Lacking both the technical expertise and financial resources, local prosecutors often are ill-equipped to pursue such cases by themselves.

To overcome these difficulties, many have called for local prosecutors to use special strategies to combat corporate and other white collar crimes. One strategy is to establish special units for economic crimes. In theory, by concentrating on economic crimes the prosecutors in the units develop the technical and legal expertise necessary to handle these complex cases. Another strategy is to develop inter-agency control networks. Networks permit prosecutors and other agencies to share information, resources and expertise. The feasibility of both strategies was demonstrated by the NDAA's Economic Crime Project, but how widely they are used by local prosecutors is unknown.

In this chapter, we discuss how corporate cases are discovered and investigated, paying particular attention to the issue of networking.

DISCOVERY

Instances of corporate misconduct come to the attention of district attorneys through a variety of official and unofficial sources. Table 12 shows how often local prosecutors receive referrals from different sources. Most often, cases come to the attention of

Table 12

Frequency of Referrals from Selected Sources*

Referral Source	Frequency			
	Never	Fewer Than 1 Case Per Year	About 1-3 Cases Per Year	More Than 3 Cases Per Year
Local Police	25.3%	39.5%	20.3%	14.9%
State Police	41.4	37.2	15.9	5.5
State Attorney General	40.0	37.4	16.2	6.4
State Regulatory Agency	27.5	39.1	19.7	13.6
Federal Regulatory Agency	71.4	21.8	6.0	0.8
US Attorney Office	71.6	23.2	4.9	0.3
FBI	63.4	28.8	6.5	1.3
Business Victims	22.4	36.8	19.4	21.4
Citizen Victims	18.3	37.1	22.6	22.1
Public Interest Groups	59.2	28.1	8.8	3.9

* In general, how often do the sources listed below refer potential corporate criminal cases to your office for investigation or prosecution?

prosecutors via complaints by business and citizen victims. The next most common sources are the local police and state regulatory agencies, followed by the state police and state attorney general's office. Federal law enforcement and regulatory agencies apparently do not refer many cases to local prosecutors. Unfortunately, from these data, it is impossible to tell anything about the quality of the cases received from the different sources.

INVESTIGATIONS: SPECIAL UNITS AND NETWORKING

Just under 23 percent of the respondents indicated that their office had a special "in-house unit for investigating and prosecuting economic or white-collar crimes" (N=97). About 8 percent (N=32) reported being involved in an "inter-agency task force or strike group which focuses on economic or white-collar crimes." There is considerable overlap between the two groups, as three quarters of those involved in an inter-agency task force also had a special unit. Overall, a total of 103 (24.4 percent) of the respondents appeared to be using one or more of the special control strategies suggested by the NDAA's Economic Crime Project. Hereafter, we refer to these as special control districts.

The use of special control arrangements varies by size of district and region of the country. As expected, it is much more prevalent in large than in small jurisdictions. While just over 70 percent of the respondents located in large jurisdictions reported having made special arrangements, less than one in ten of their counterparts located in small districts have done so. Special units and networks are also more common in western and, to a lesser degree, northeastern districts than in midwestern or southern districts (see Table 13).

Having a special unit or participating in a control network is associated with higher rates of prosecution of corporate crime. As Tables 14a and 14b shows, prosecutors in special control districts are much more active than their counterparts in non-control districts.

The significance of these findings, though, is not clear. Do prosecutors in control

Table 13

Special Control Districts by Region and Population Size^a

Control District	Region				Total
	Midwest	Northeast	South	West	
No	84.2% (112)	63.4% (45)	83.2% (134)	48.2% (26)	76.0% (317)
Yes	15.8 (21)	36.6 (26)	16.8 (27)	51.9 (28)	24.0 (102)
Control District	Population Size ^b			Total	
	Small	Large	Total		
No	90.8% (286)	29.8% (31)	76.0% (317)		
Yes	9.2 (29)	70.2 (73)	24.0 (102)		

^a Special Control districts are those that answered yes to at least one of the following questions. "Does your office have a special in-house unit for investigating and prosecuting economic or white-collar crimes?" or "Is your office a member of an inter-agency task force or strike group which focuses on economic or other white-collar crimes?"

^b Small District \leq 328,100 in population size; large districts $>$ 328,100 in population size.

Table 14a

Frequency of Prosecutions in Special Control Districts*

Corporate Crime	Frequency			
	Never	Fewer Than 1 Case Per Year	About 1-3 Cases Per Year	More Than 3 Cases Per Year
Consumer Fraud	7.9%	19.8%	30.7%	41.6%
Securities Fraud	26.5	27.5	32.4	13.7
Insurance Fraud	15.0	33.0	27.0	25.0
Tax Fraud	48.5	26.7	12.9	11.9
False Claims	20.4	28.6	23.5	27.6
Workplace	59.6	28.3	11.1	1.0
Environmental	24.8	34.7	19.8	20.8
Illegal Payments	25.5	43.9	24.5	6.1
Unfair Trade	53.0	24.0	8.0	15.0

Note: N = 102.

* Network districts are those that answered yes to at least one of the following questions. "Does your office have a special in-house unit for investigating and prosecuting economic or white-collar crimes?" or "Is your office a member of an inter-agency task force or strike group which focuses on economic or other white-collar crimes?"

Table 14b

Frequency of Prosecutions in Other Districts

Corporate Crime	Frequency			
	Never	Fewer Than 1 Case Per Year	About 1-3 Cases Per Year	More Than 3 Cases Per Year
Consumer Fraud	39.2%	37.9%	16.8%	6.8%
Securities Fraud	66.6	28.2	5.3	0.0
Insurance Fraud	44.8	40.9	10.4	3.9
Tax Fraud	65.7	24.8	5.9	3.6
False Claims	46.6	35.2	12.1	6.2
Workplace	71.2	24.5	3.0	1.2
Environmental	51.8	33.6	10.4	4.2
Illegal Payments	59.1	35.3	4.6	1.0
Unfair Trade	82.1	15.6	1.3	1.0

Note: N = 317.

network districts prosecute more corporate crimes because of greater ability to do so or because corporate crimes occur more often in their jurisdictions? If we assume that population size correlates roughly with business activity and hence corporate crime, we can use it as a proxy control for corporate crime. Accordingly, we divided the sample into two groups based on population: medium-sized districts (between 150,000 and 328,100 and large-sized districts (over 328,100). We then examined prosecution rates in each group. Table 15 shows the results.

Controlling for population size reduces but does not eliminate the association between special control arrangements and prosecution rates. Respondents from medium-sized special control districts reported prosecuting six offenses more often than their counterparts in large districts without such arrangements. For example, 67 percent of the medium-sized special control districts prosecuted one or more consumer frauds per year, but only 46 percent of the large districts without special arrangements did so. These strategies appear to increase prosecutorial activity independent of the amount of corporate crime.

The attitudes of prosecutors located in special control districts may account for the higher levels of prosecutorial activity found there. Compared to their counterparts, significantly higher percentages of prosecutors in offices with special units rated corporate crime as a "somewhat" (65.1 percent versus 18.1 percent) or "very serious" (10.6 percent versus 1.3%) problem.

Networking is an integral part of the special control strategies available to local prosecutors. To find out how extensively local prosecutors work with other agencies, we asked the respondents how often they cooperated with selected agencies on corporate crime investigations. Table 16 shows the results.

Table 15

Percentage of Special Control and Other Districts That Prosecute One or More Selected Corporate Crimes in Medium and Large Sized Jurisdictions

Corporate Crimes	Population Size ^a			
	Medium		Large	
	Special Controls			
	No	Yes	No	Yes
Consumer Fraud	30.4%	66.7%	46.7%	72.2%
Securities Fraud	9.0	16.7	20.0	53.4
Insurance Fraud	21.5	37.5	38.7	59.2
Tax Fraud	16.4	20.8	13.8	27.8
False Claims	19.2	54.2	27.6	48.6
Workplace Offenses	6.6	25.0	10.3	7.1
Environmental Offenses	13.9	25.0	32.2	45.8
Illegal Payments	6.6	25.0	20.0	34.8
Unfair Trade Practices	2.6	16.7	10.4	25.4
N	82	24	31	73

^a Medium sized districts are between 150,000 and 328,100 in population size; large sized districts are greater than 328,100 in population size.

Table 16

Frequency of Joint Investigations with Selected Agencies*

Agency	Frequency			
	Never	Fewer Than 1 Case Per Year	About 1-3 Cases Per Year	More Than 3 Cases Per Year
Local Police	29.3%	33.2%	21.5%	16.0%
State Police	45.2	32.7	15.5	6.6
State Attorney General	39.4	39.4	16.1	5.2
State Regulatory Agency	35.4	36.4	15.9	12.4
Federal Regulatory Agency	70.3	22.7	5.9	1.0
US Attorney Office	66.8	25.8	5.9	1.5
FBI	60.9	29.2	7.4	2.5
Another Prosecutor	44.4	35.1	17.7	2.8

* How often does your office cooperate on joint investigations of corporate crimes with the agencies listed below?

Local prosecutors collaborate most often with the local police and state regulatory agencies. Almost 40 percent of the respondents said they work with the local police on at least one corporate case per year and 30 percent work with state regulatory agencies that often. The relatively high levels of cooperation with local police suggests that many prosecutors deal with corporate crimes as they do with traditional street crime. They wait for the police to bring them cases. It also may mean that they crimes involved are rather routine, garden variety consumer frauds, as these are the offenses police are most likely to hear about (Stotland, 1982). A smaller but still notable percentage of respondents (20 percent) work with the state attorney general's office and state police at least once a year. Cooperation among prosecutors in different jurisdictions appears to occur at about the same rate; 20 percent of the respondents report working with another prosecutor's office on at least one corporate case per year.

Joint investigations with federal agencies are rare; less than ten percent of the respondents said they work with the FBI, U.S. Attorney's Office, or federal regulatory agencies as often as once a year. Indeed, in three out of five offices prosecutors never work with these agencies.

We also investigated whether membership in a control network influences the frequency of joint investigations and found cooperation was more prevalent among control network districts. Extensive cooperation with federal agencies, however, was still relatively uncommon. Less than one in four of the special control districts cooperated at least once a year with the FBI, U.S. Attorney, or federal regulatory agencies. In contrast, three out of four districts cooperated at least once a year with the local police on a corporate crime case and 40 percent cooperated with the police more than three times a year.

One explanation for the rarity of cooperative investigations involving federal agencies may be that local prosecutors do not find them very helpful. Table 17 shows how

Table 17

Helpfulness of Other Agencies*

	Percentage Among Those Asking For Help			Percent Who Never Asked
	Very Helpful	Somewhat Helpful	Not Very Helpful	
State Attorney General	47.1%	37.5%	15.4%	29.3%
State Regulatory Agency	48.3	44.2	7.5	26.1
Federal Regulatory Agency	18.8	45.5	35.8	54.6
US Attorney Office	26.7	42.8	30.5	52.1
FBI	31.3	46.0	22.7	46.2

Note: Percents in rows do not sum to 100. Percentages in the first three columns are based on the number of respondents who asked for help. Percentages in column 4 are based on the total responding.

* In the past, when your office has asked for assistance on technical matters in corporate cases, how helpful have the agencies listed below been in assisting your office to make the case?

prosecutors rated the helpfulness of various agencies that they asked for technical assistance. Large majorities of prosecutors (over 70 percent) have asked for technical assistance from the state attorney general and state regulatory agencies. Of those asking for help, about half found these agencies to be very helpful. Less than 20 percent found them to be not very helpful. In contrast, local prosecutors are much less likely to approach federal agencies for technical assistance. Over half have never asked for assistance from the U. S. Attorney's Office or a federal regulatory agency. Just under half have never approached the FBI. Of those asking federal regulatory agencies for help only 18.8 percent found them to be very helpful. Twice as many prosecutors (35.5 percent) rated them as not very helpful. While U.S. Attorneys and the FBI did better than federal regulatory agencies, they were not regarded as helpful as state agencies.

Overall, integration between local prosecutors and other levels of government, especially federal agencies, does not appear to be widespread. More prosecutors worked with the local police than with any other agency on corporate cases. Their lack of cooperation with and less than ringing endorsement of the helpfulness of federal agencies is troublesome. Edelhertz and Rogovin (1980c:108) observed this same pattern over a decade ago. It would appear, therefore, that calls for greater local and federal cooperation have met with only partial success.

REGIONAL VARIATION IN INTERAGENCY RELATIONSHIPS

Since prosecutors located in western districts are more active than their counterparts in other regions, we investigated whether there are regional differences in interagency working relationships as well. This may shed light on why western prosecutors have such relatively high levels of activity against corporate crime. It may also suggest ways in which the effectiveness of prosecutors in other regions can be enhanced.

Prosecutors located in western states cooperate with other agencies in joint investigations of corporate crime cases more often than do other prosecutors (see Table 18). Particularly notable are the comparatively large percentages of western prosecutors who cooperate regularly with the local police, state regulatory agencies and other prosecutors. For example, over half of the western respondents report that they engage in cooperative investigations with state regulatory agencies at least once per year. In all other regions, less than one quarter of the respondents report a similar level of activity. Four out of ten of the western respondents report working on joint investigations with other prosecutors regularly. Less than two out of ten prosecutors in other regions do so.

The only agency with which western prosecutors apparently interact less frequently than other prosecutors is the state police. We are unsure as to why this is the case. It may be that state police agencies may emphasize different law enforcement functions in the west, such as highway traffic patrol.

We cannot determine if the amount of interagency cooperation in western districts is a cause or a consequence of their high levels of activity against corporate crime. It may be that western prosecutors work with other agencies often because they have more corporate crime. Alternatively, their apparent ability to establish good working relationships with other agencies may permit them to take on more cases against corporate offenders. Since the differences between the west and other regions remain even with population size controlled, we are inclined toward the latter interpretation.

INVESTIGATIONS: METHODS

Corporate crimes often are thought to require special investigative techniques. We asked respondents to rate the usefulness of seven investigative methods. Table 19 shows the results. The most useful method appears to be a search of financial records, as 70 percent of

Table 18

Percentage of Districts Conducting at Least One Joint Investigation per year with Selected Agencies by Region^a

Agency	Region			
	Midwest	Northeast	South	West
Local Police	30.7%	34.8%	35.8%	62.3%
State Police	19.5	37.1	22.5	6.0
State Attorney General	18.8	23.2	19.5	30.2
State Regulatory Agency	24.8	22.9	23.8	55.6
Federal Regulatory Agency	4.9	4.6	6.1	17.3
U.S. Attorney	6.5	5.9	6.8	13.2
FBI	8.1	11.8	7.4	18.9
Another Prosecutor	17.6	20.3	14.8	43.4

^a How often does your office cooperate on joint investigations of corporate crimes with the agencies listed below?

Table 19

Usefulness of Selected Investigative Methods*

Investigative Method	Percentage Among Those Using			Percent Who Never Used
	Very Useful	Somewhat Useful	Not Very Useful	
Interviews	58.3%	39.3%	2.5%	17.3%
Financial Rec. Search	70.8	26.7	2.5	19.8
Grand Jury Subpoena	54.1	31.2	14.7	41.1
Document Examination	55.1	40.1	4.8	20.1
Confidential Information	28.6	47.7	23.7	31.4
Computers	22.9	49.8	27.3	47.0
Search Warrants	56.0	36.8	7.3	23.4

Note: Percents in rows do not sum to 100. Percentages in the first three columns are based on the number of respondents who have used a method. Percentages in column 4 are based on the total responding.

* In your experience, have the following methods of investigating corporate crimes been very useful, somewhat useful, or not very useful?

those using this method rated it very useful. Over 50 percent rated interviews, grand jury subpoenas, document examination and search warrants as very useful. In contrast, only 29 percent rated confidential informants as very useful, and even less rated computers as a very useful method of investigating corporate crimes (23 percent). However, a large minority (47 percent) have never used this method. These results may suggest that in conducting corporate investigations prosecutors are more comfortable using standard investigative techniques, such as interviews and search warrants, than they are using special techniques.

A similar point was made by many of the investigators interviewed during the field studies. When asked how they went about investigating corporate crimes, many commented that the basic techniques for corporate and street crimes were the same. They involved talking to people, trying to get the full picture of what happened and looking for inconsistencies in what suspects and informants told them.

CHAPTER 5

CONSTRAINTS ON PROSECUTORIAL DISCRETION

The decision to prosecute a corporate crime is rarely automatic. Before deciding to proceed with a case, prosecutors must consider a number of factors related to the offense, the resources available to them, the actions of other agencies, the preferences of victims and the potential impact of the prosecution on the local community. The combination of factors involved in a case determines whether a corporate prosecution will take place.

To assess how important various considerations are for prosecutorial decision-making, we asked the respondents to indicate the likelihood that certain factors would limit their willingness to prosecute a corporate crime in their jurisdiction. We also asked them to indicate the likelihood that another set of factors would increase their willingness to prosecute a corporate crime. Some of the factors correspond to the justice, legal and resource constraints discussed earlier in this report, while others tap aspects of the community context.

Table 20 lists the limiting factors in order of their importance. The most important limiting factors fall into three categories: inadequate resources, legal constraints and the availability of alternative remedies. All appear to reduce the likelihood that a corporate criminal prosecution will take place. Seven out of ten respondents indicated that they would be less likely to prosecute if state or federal regulatory agencies acted. About 60 percent reported that insufficient personnel "definitely or probably" would limit their willingness to prosecute. Finally, strong majorities noted factors that make it difficult to win corporate criminal cases: lack of cooperation from victims and the difficulty of establishing *mens rea* in a corporate context.

The least important limiting factors appear to be those related to the community context. Only a few prosecutors said that insufficient public support or the potential negative impact

Table 20

Likelihood of Selected Factors Limiting Willingness to Prosecute Corporate Criminal Offenses*

Limiting Factor	Definitely Would Not Limit	Probably Would Not Limit	Probably Would Limit	Definitely Would Limit
Lack of cooperation from other agencies	3.7	19.8	50.1	26.4
Actual or pending action by a Federal regulatory agency	4.4	21.2	49.3	25.1
Actual or pending action by a state regulatory agency	4.9	25.2	48.9	21.0
Insufficient investigatory personnel	11.8	27.9	39.7	20.6
Difficulty of establishing mens rea in a corporate criminal context	7.9	36.1	44.7	11.3
Insufficient prosecutorial personnel	17.6	31.5	35.5	15.4
Insufficient cooperation from other agencies	15.0	37.7	42.1	5.2
Insufficient expertise in corporate crime cases	18.8	45.4	27.1	8.8
Actual or pending private civil suit(s)	20.3	45.8	27.2	6.6
Insufficient public support for prosecuting corporate criminal cases	51.1	39.9	6.6	2.4
The potential negative impact that a corporate prosecution might have on the local economy	57.3	37.6	3.4	1.7

* To what extent would the factors listed below limit your willingness to prosecute a corporate criminal offense committed in your jurisdiction?

of a prosecution on the local economy would limit their willingness to proceed.

Table 21 lists in order of importance the factors that prosecutors said might increase their willingness to prosecute. The most important factors involve the nature of the offense. Over 90 percent of the respondents would be more willing to prosecute in cases that involve "physical harm to victims," "evidence of multiple offenses," "large numbers of victims," or "substantial economic harm." Slightly less important are factors related to the deterrent and educational functions of prosecution. Over 85 percent said the "need to deter other potential corporate offenders" would increase their willingness to prosecute. About 75 percent felt the same way regarding the "need to demonstrate publicly that the law applies equally to all offenders."

Taken together, Tables 20 and 21 present a picture of prosecutorial discretion that is difficult to interpret. The role of community context in influencing prosecutorial discretion is especially confusing. While less than 10 percent of prosecutors say that insufficient public support would limit their willingness to prosecute, 80 percent report that public concern over an offense would increase it. Similarly, just five percent say that a potential negative impact on the local economy would limit their willingness to prosecute, but almost 50 percent say that media attention on the case would increase their willingness. With respect to the influence of community context on corporate crime prosecutions, these results appear inconsistent and difficult to reconcile.

One interpretation is that local prosecutors are sensitive to community context in the selection of cases. When the general public or media focuses attention on a case, prosecutors jump on the bandwagon. However, in cases where prosecutors have independently decided that an offense warrants action, they are not inclined to bow to outside pressure to forgo prosecution. Thus, community context may have a greater influence on how cases are selected than on how they are treated after entering the system.

Table 21

Factors Increasing Willingness to Prosecute Corporate Criminal Offenses*

Increasing Factor	Definitely Would Not Increase	Probably Would Not Increase	Probably Would Increase	Definitely Would Increase
Physical harm to victim(s)	0.5%	4.9%	25.4%	69.1%
Substantial economic harm caused by the offense	1.5	5.9	41.9	50.7
Large number of victims	1.0	6.4	40.1	52.5
Evidence of multiple offenses rather than a single offense	1.7	3.7	36.5	58.1
The need to demonstrate publicly that the law applied equally to all offenders	2.7	23.4	52.2	21.7
The need to deter other potential corporate offenders	1.5	12.8	58.3	27.4
Failure of regulatory agencies to act	4.7	41.9	41.9	11.6
Victim preference for prosecution	4.2	25.2	58.6	12.0
Public concern over the corporate criminal offense	2.2	18.4	64.4	15.0
Media attention on the case	9.9	43.1	39.9	7.2

* To what extent would the factors listed below increase your willingness to prosecute a corporate criminal offense committed in your jurisdiction?

CHAPTER 6

THE GOALS OF PROSECUTION

In punishing those who break the law, the primary goals of the criminal justice system generally are thought to be:

- Specific Deterrence (i.e., to deter the offenders from committing other crimes)
- General Deterrence (i.e., to deter other potential offenders from committing similar crimes)
- Retribution (i.e., to pay back offenders for the harm they caused to individuals and society)
- Boundary Maintenance (i.e., to make a public statement that certain kinds of behavior will not be tolerated)
- Rehabilitation (i.e., to reform offenders so that they may become constructive members of society, or in the case of corporations to restructure internal operations)
- Incapacitation (i.e., to protect society by incarcerating offenders so they cannot victimize others)

Presumably, criminal justice officials, as they carry out their official duties, try to achieve one or more of these goals. But the priority or importance of the various goals of law enforcement may vary from one type of offender or offense to another. For example, federal judges regard general deterrence as an especially important goal in sentencing white-collar offenders (Mann, Wheeler and Sarat 1980; Wheeler, Mann and Sarat 1988). For those who commit crimes of interpersonal violence, in contrast, punishment or incapacitation rather than general deterrence may be regarded as the primary goal. In this section, we present results from the national survey and the field studies. The focus is on how prosecutors view the goals of the criminal law in instances of corporate wrongdoing.

To get a general sense of how prosecutors nationwide view the traditional goals of the criminal law, we asked the survey respondents to rank their most important prosecutorial

goals in three different situations: (1) individuals who commit traditional street crimes; (2) individual businesspersons who commit corporate crimes; and (3) corporations or other business entities that commit corporate crimes. Table 22 shows the results.

As expected, for individuals who commit traditional street crimes, special deterrence and incapacitation were ranked first by a large majority of prosecutors. General deterrence ran a distant third. For individual businesspersons who commit corporate crimes, general deterrence was the modal category with 39 percent ranking it as the most important objective of prosecution. Special deterrence was the next most frequently cited objective. Contrary to their goals for street criminals, only six percent of the respondents ranked incapacitation as the most important objective. General deterrence also was the modal objective for corporate crimes committed by business entities. Somewhat surprisingly, more prosecutors ranked retribution as the most important objective of prosecution of corporate crimes committed by business entities than street crimes (15.9 percent versus 9.4 percent, respectively). A significant proportion of prosecutors (17.6 percent) also ranked boundary maintenance as important in corporate cases. The relatively large percentages ranking boundary maintenance as either their most or second most important objective in corporate cases suggests that prosecutors regard these cases as opportunities to educate the business community.

Overall, the survey findings suggest that there are strong parallels between how federal judges look at white-collar criminals and how local prosecutors look at corporate offenders. In both cases, general deterrence is regarded as the primary purpose for invoking the criminal law. But recognition of the importance of retribution also shapes reactions. Wheeler et al. (1988) report that federal judges feel a strong sense of moral outrage over crimes of greed committed by well-to-do people. Prosecutors, as well as investigators, law enforcement personnel and regulatory officials, also report a similar sense of outrage in their work. In our interviews with prosecutors and other enforcement officials, we found repeated

Table 22

First and Second Most Important Objectives of Prosecution by Type of Offender and Offense

Objective	Type of Offender and Offense					
	Individual Street Crime ^a		Individual Corporate Crime ^b		Corporation Corporate Crime ^c	
	Ranking					
	First	Second	First	Second	First	Second
Special Deterrence	35.5%	15.8%	31.3%	14.6%	24.7%	11.5%
General Deterrence	16.7	32.0	39.1	30.1	39.8	32.8
Retribution	9.4	13.3	10.0	18.7	15.9	19.6
Boundary Main.	4.4	10.8	11.0	25.3	17.6	29.5
Rehabilitation	2.2	7.1	2.8	5.3	2.0	6.4
Incapacitation	31.8	20.9	5.8	6.1	---- ^d	----

^a In general, which of the above (objectives) would you rank as the two most important objectives of prosecuting individuals who commit traditional street crimes, for example burglary, robbery, or battery?

^b In general, which (of the objectives) would you rank as the two most important objectives of prosecuting individual business persons who commit corporate crimes?

^c Recognizing that corporations cannot be incapacitated, which (of the objectives) would you rank as the two most important objectives of prosecuting corporations or other business entities that commit corporate crimes?

^d Incapacitation was not listed as a potential objective of prosecution of corporate crimes committed by business entities. See note c.

expressions of moral outrage against corporate offenders, especially against those who endanger health and safety.

In the field interviews, the theme of general deterrence emerged frequently. Prosecutors, investigators, and regulatory officials at all levels of government clearly regarded it as the primary purpose of criminal law enforcement against corporate wrongdoing. This belief in the general deterrent effectiveness of criminal law enforcement appears to be based on two assumptions about the temperament of the individuals involved in corporate and white-collar offenses. White-collar and corporate offenders are assumed to be rational planners and aversive to formal punishment by the justice system. Unlike ordinary street criminals, then, they are thought to be especially sensitive to the threat of punishment. For example, one local prosecutor had this to say about the deterrent effects of prosecution on corporate offenders.

...the only advantage to these prosecutions is that one of these prosecutions is worth five hundred as far as a deterrent value is concerned. I've prosecuted maybe fifty murderers and I've never deterred the street murderer once. I've probably prosecuted one industrial murderer and I think we've deterred a whole lot of people, at least woke them up, and some people are trying to do the right thing. So even with a lack of resources, one (of these corporate) prosecution(s) is much more valuable than one streetwise, or what they call traditional street crime prosecution.

Similar views were expressed almost universally by other prosecutors and by many investigators and regulatory officials.

General deterrence is an important objective for local prosecutors in corporate cases, but they also recognize and pursue a range of other goals. The most important of these are education, punishment and problem solving.

The educational effects of corporate crime prosecutions on the business community and the public-at-large can be profound. As prosecutors see it, use of the "criminal tool" is one way to get the business community to recognize that white-collar crime is not "just a sort of regulatory function." This approach can be especially important in communicating with smaller, less well-established business concerns. Unlike large corporate enterprises, smaller firms may not keep close track of changing regulations and laws. Because corporate prosecutions often receive considerable publicity in the newsmedia, they can make smaller firms aware of their legal responsibilities in, for example, environmental matters.

The publicity generated by a few corporate prosecutions also may serve to educate and to activate the public-at-large. A respondent argued that an active local prosecutor can educate the public as to the wrongfulness and potential harmfulness of some business practices. As the public becomes more attuned to these practices, the likelihood that they will report them to authorities increases. An active prosecutor also can give citizens more leverage in their disputes with businesses. If local businesses know that the local prosecutor or state attorney general is active against business crime, they are more likely to respond to complaints from consumers themselves in order to avoid negative publicity and resultant loss of business. In effect, a prosecutor who is active against corporate crime can empower citizens and enlist them in the fight against corporate wrongdoing.

Local prosecutors sometimes use their powers not so much to curb or punish the behavior of a particular offender, but rather to attack more general problems. In these cases, the prosecutor takes a broader view of his or her role in the justice system and tries to achieve broader goals than deterrence or education. For example, in a case involving a prosecutable environmental violation by a large generally law-abiding corporation, one prosecutor elected not to pursue a criminal indictment. In return for not being indicted, the company agreed to pay a large civil fine. The money from the fine then was used to fund

environmental awareness and education workshops for local law enforcers.

Moral rather than utilitarian concerns sometimes motivate local prosecutors to take action against corporate offenders. The interviews revealed that they sometimes are more interested in punishment than deterrence or education. Prosecutors, investigators and to a lesser degree regulatory officials expressed a strong sense of moral outrage at some corporate offenses and offenders. One investigator, for example, argued that in the case of environmental crime incarceration is a "punishment that really does fit the crime." Since environmental crimes jeopardize lives and health, it is appropriate for the perpetrators to be incarcerated. This view was most strongly held regarding environmental and work-place safety related offenses, which often have potentially direct and clear effects on individual health and well-being. They were also expressed by officials who handle financial frauds. After describing a case involving a fraudulent employment service which bilked approximately 850 people out of \$95 each, one investigator exclaimed,

Would it be sufficient to say that the organizers of this scheme should do sixty days in the county jail? To me that would be ludicrous. These people should be sent to the penitentiary, because ... the aggregate impact that they have is certainly (of) a felony nature.

Local law enforcement long has been accused of taking an overly tolerant view of white-collar and corporate crime. Certainly it is still the case that the vast bulk of local attention and resources is directed against street crime. Nevertheless, the interviews suggest that, like federal judges, local prosecutors are morally outraged by many corporate offenses and no longer willing to tolerate them.

CAUSES AND REMEDIES OF CORPORATE CRIME

People disagree over the causes of corporate crime. While some cite the low ethical

standards of business and pressures of competition as major causes, others focus on ineffective controls by the state. As Table 23 shows, prosecutors tend to regard ineffective controls as the more important factor. The "low rate of detection" as a "very important" cause of corporate crime was rated by more prosecutors (42.7 percent) than any other cause. The second most important cause was "ineffective regulation by administrative agencies." But the moral standards of businesspersons also were seen as important. Just over one-quarter of prosecutors ranked as very important causes "low ethical standards among businesspersons" and "the belief that illegal practices are a necessary and accepted way of doing business." Most prosecutors do not regard inadequate profits or market competition as important causes.

Taken together, the results suggest that prosecutors view the problem of corporate crime from a control theory perspective. Control theory assumes that the motivation to offend is widespread and that variation in the strength of controls determines who will offend and at what rate. Control theory does not postulate external causes, other than lack of adequate controls. Offenses occur when the offender is released from control rather than when the offender is pushed into offending by some external cause.

Relatively few prosecutors regard inadequate profits and market competition as very important causes. Many more endorse low ethical standards and the low rate of detection as causally important. It appears that prosecutors see corporate crime more as a problem that is allowed by inadequate controls rather than caused by external forces.

Causes imply remedies. We asked the respondents to evaluate the usefulness of selected methods of improving corporate compliance with the law. As shown in Table 24 the results on remedies correspond with those on causes. Nearly half of the sample (48.2 percent) thought more training for police on investigating corporate crime would be very useful. This is not surprising given the large number of respondents who work mainly with the local

Table 23

Importance of Selected Causes of Corporate Criminal Offenses*

Cause	Very Important	Somewhat Important	Not Too Important	Don't Know
Inadequate company profits	12.3%	38.1%	27.3%	22.3%
Severe market competition	10.8	43.0	26.4	19.8
A belief among business persons that illegal practices are a "necessary and accepted way of doing business"	27.7	43.8	13.1	15.3
Low ethical standards among business persons	29.4	36.6	15.9	18.2
The low rate of detection for corporate offenses	42.7	42.0	3.7	11.5
Weak criminal penalties	22.5	37.5	26.0	14.0
Ineffective regulation by administrative agencies	33.9	41.4	9.0	15.7
Vague and unclear state and federal legislation	17.9	39.8	22.1	20.1

* In your opinion, how important are each of the following as causes of corporate criminal offenses?

Table 24

Usefulness of Selected Methods of Improving Corporate Compliance with the Law^a

Method	Very Useful	Somewhat Useful	Not Very Useful	Don't Know
Tougher criminal penalties	29.1%	44.0%	17.5%	9.4%
Tougher civil penalties	46.2	37.8	6.7	9.4
Educational programs for local prosecutors on corporate crime	36.4	46.8	10.1	6.7
More training for police on investigating corporate crime	48.2	36.9	8.6	6.4
More emphasis on ethics in business schools	23.9	31.3	30.0	14.8

^a In your opinion, how useful would the following methods of improving corporate compliance with the law in your state be?

police. Recall that over 40 percent said that the low rate of detection was a very important cause of corporate crime. Tougher civil penalties were ranked as potentially very useful by a similarly large percentage (46.2 percent). This corresponds with the 33 percent who said that ineffective regulation was a very important cause of corporate crime. Less than one-third (29.1 percent) of the respondents said that tougher criminal penalties would be very useful. This is consistent with their views on the causes of corporate crime, as only 22.5 percent said that weak criminal penalties were a very important cause of corporate offenses. Note that nearly three times as many prosecutors said that tougher criminal penalties would be not very useful compared to tougher civil penalties (17.5 percent versus 6.7 percent, respectively). Prosecutors apparently believe that better detection and regulation of corporate misbehavior are more important than tougher criminal penalties to secure compliance with the law. However, when asked which method would be most useful, one-quarter of the respondents (26.5 percent) chose tougher criminal penalties (see Table 25). Only slightly more (31.1 percent) chose tougher civil penalties as the most useful means.

Table 25

Most Useful Method of Improving Corporate Compliance with the Law^a

Method	Most Useful
Tougher criminal penalties	26.5%
Tougher civil penalties	31.1
Educational programs for local prosecutors on corporate crime	9.5
More training for police on investigating corporate crime	16.5
More emphasis on ethics in business schools	9.0
Other	7.5

^a Of the methods listed in (the previous question), which do you feel would be the most useful means of improving corporate compliance with the law?

CHAPTER 7

IMPLICATIONS AND RECOMMENDATIONS

We began this report by noting that the need for coordinated Federal, state and local responses to white-collar crime has long been recognized. But, while Federal efforts against white-collar crime have been the subject of extensive research, little had been done with respect to local reactions. Hence, to facilitate the development of coordinated responses, this project was undertaken to gather national data on what local prosecutors are thinking and doing with respect to corporate crime. These data will help policymakers assess the seriousness and extent of the corporate crime problem in local jurisdictions. They provide insight into the obstacles local prosecutors face in responding to this problem, thereby providing a firmer empirical base on which to debate and to establish public policy. In this concluding chapter, we review the important findings of the project, discuss their implications, and make recommendations for improving the effectiveness of local reactions to corporate crime.

PERCEPTIONS AND ACTIVITY AGAINST CORPORATE CRIME

How prosecutors view the direction and seriousness of the corporate crime problem depends a great deal on the size and location of the jurisdictions they serve. Prosecutors located in small or in rural districts do not regard corporate crime as a serious problem. They report that during their tenure in office the number of prosecutions has remained about the same and most do not anticipate handling more such cases in the future. But prosecutors located in large districts take a significantly different view. In large districts, three out of four respondents see the corporate crime problem as at least "somewhat serious" and one in eight see it as "very serious." A majority of this group also has observed an increase in the number of corporate criminal prosecutions during their tenure in office and anticipates that

this trend will continue in the future. These views were particularly prevalent among prosecutors located in large districts in western states. The influence of population size on how prosecutors perceive the corporate crime problem seems easy to understand. Population size probably correlates roughly with the amount of business activity and hence the number of potential corporate offenders and actual offenses across jurisdictions. The greater the number of corporate offenders and offenses, the more prosecutors are likely to view them as a serious problem.

But regional variation in perceptions is not as easy to explain. Western prosecutors, regardless of the size of the jurisdiction they serve and presumably the level of corporate crime they encounter, take a more serious view of the corporate crime problem. This difference in perceptions of the corporate crime problem becomes important in light of the data on levels of prosecutorial activity. Western prosecutors are more active against most forms of corporate crime than other prosecutors. Furthermore, western prosecutors are more likely to have implemented special control procedures than prosecutors in other regions. Their attitudes toward the corporate crime problem appear to correlate with higher levels of activity and use of innovative strategies against it. This suggests that to enhance the capabilities of prosecutors nationwide to respond to corporate crime, policy-makers should closely examine the experiences of western prosecutors and try to communicate that experience to prosecutors in other regions of the country.

More information about what is going on in western states is needed. At least two lines of future investigation deserve to be pursued. Further investigation of how western prosecutors develop and maintain relatively high level of activity is warranted. More detailed knowledge of how they fund and manage higher levels of activity also is needed. Equally important are detailed studies of its effectiveness. What impact does a greater level of activity against corporate crime, particularly use of the control network strategy, have on

the its incidence and prevalence?

Regarding the types of corporate crime that local prosecutors are pursuing, the survey revealed some surprising findings. As expected, local prosecutors appear to be most active against economic crimes such as consumer fraud, but a sizeable percentage also report handling non-financial crimes. In 1988, nearly one out of three local prosecutors in urban areas prosecuted a corporate environmental crime. One out of ten prosecuted a workplace related offense. These findings confirm the observation made over a decade ago by Edelhertz and Rogovin (1980) that local prosecutors are moving beyond simple economic crimes to take on more complex and potentially more harmful corporate offenses.

These survey results suggest that programs to enhance the capabilities of local prosecutors to deal with environmental and workplace related offenses would find a receptive audience. Our interviews in the field also support this idea. The prosecutors, investigators and regulators we interviewed felt that these offenses were important and that local law enforcement could play a more active role in their containment. With respect to environmental crimes, the interviewees noted in particular a need for better access to laboratory resources to identify toxic materials quickly. Quick identification was seen as important not only for the obvious reason of protecting public health and safety, but also to help build prosecutable cases in a timely manner. Prosecutors complained that when they have to wait months for laboratory results, cases grow cold and become more difficult to prosecute successfully.

NETWORKING

The findings on networking shed some light on the direction of local responses to corporate crime and on the obstacles yet to be overcome. A decade ago, Edelhertz and Rogovin (1980b, p. 11) argued that local prosecutors were beginning to see white-collar law

enforcement as part of their job. No longer willing to cede the federal government exclusive jurisdiction over corporate crimes, local prosecutors were beginning to pursue these cases themselves. Unfortunately, without baseline data, we cannot determine how strongly this trend has continued. But there is evidence that it has continued.

As of 1978, district attorneys in 66 jurisdictions were participating in the NDAA's Economic Crime Project (Edelhertz and Rogovin 1980b, p. 11). The survey -- which does not include information from the 200 or so non-responding urban districts -- indicates that there are now close to 100 jurisdictions with a special units, representing nearly one quarter of urban districts. A smaller, but still notable, number of urban prosecutors' offices are involved in multi-agency task forces on white-collar or corporate crime. The growing use of special control procedures may mean that corporate and other white-collar crimes have permanently emerged from their pre-1970 levels of obscurity in local law enforcement.

While the increase in special units is encouraging, the continued rarity of inter-governmental cooperation is troubling. The prosecutors and investigators we interviewed routinely remarked on the virtual necessity of interagency cooperation but also noted it is difficult to initiate and maintain. Because we chose the field study sites in part as a result of their high levels of inter-agency interactions, it is probably safe to assume that networking problems are even more pronounced in other jurisdictions.

Working with people in other agencies takes a lot of time, energy, and patience. It requires sharing credit and control over investigations and prosecutions. For ambitious and busy people, as prosecutors tend to be, these are important disincentives to networking. Sometimes the benefits of cracking a big case are worth the trouble of coordinating with others and sharing credit. But much of the time the motivation to put up with the difficulties of networking comes only from the individual prosecutor's sense of professional duty.

Both the survey and the case studies strongly suggest that networking is particularly

difficult to coordinate between local prosecutors and federal officials. Whether measured by referrals or joint investigations, cooperation between local prosecutors and federal agencies is rare. Analysis of the field study data suggest that local prosecutors are disenchanted with federal agencies. Our questions about how their offices worked with federal agencies often were met with only polite smiles and disclaimers about not wanting to say anything negative. To the extent that we got answers, they suggested that local prosecutors and investigators see federal agencies as uninterested in local problems and intent on pursuing private agendas. Some of our interviewees went so far as to claim that some federal agencies would rather kill a case than turn it over to local authorities.

Because we found such little networking between federal and local agencies, it is difficult to say much about how to improve it. Indeed, trying to improve local and federal relations may be neither feasible nor worthwhile. It may be better to concentrate on increasing networking among local agencies and between local and state agencies.

The survey data show that network districts prosecute significantly more cases than non-network districts. Hence, it is important to understand more about how to promote networking. The field studies suggest that networking involves a delicate balance between formal and informal arrangements.

Formal networking arrangements such as task forces with regularly scheduled meetings between large groups of agencies were rare in the sites we visited. Where present, they seemed to be viewed with some skepticism. One investigator in a district attorney's office recounted how his district attorney had initiated such a task force to deal with environmental crimes. After a while, however, the attorneys and investigators concluded that the meetings were not producing significant information sharing. Representatives from each agency tended to try to get information from the other attendees rather than share information with the group in general. As a result, the attorneys handling these cases decided to meet

informally with smaller groups of agencies on a case by case basis.

While the formal task force may not have been as useful for information sharing as anticipated, it had important side effects that operated on an informal level. By establishing the task force, the district attorney and his administrative counterparts in other agencies created an environment in which their subordinates (investigators, regulatory officials, and assistant district attorneys) felt free to develop informal working relationships with one another. These informal relationships established between these street-level operatives constituted the real network in this jurisdiction.

This pattern was repeated in the other jurisdictions we visited and has important lessons. Networking appeared to work through informal and personal relationships established between street level operatives and their immediate superiors. It appeared most effective where operatives felt they could work with their counterparts in other agencies without fear of being sanctioned by higher level administrators. Whether in the prosecutor's office or in other agencies, administrators may promote networking by letting it be known that interagency cooperation will be rewarded rather than punished.

On the other hand, administrators can also retard the networking process. Regulatory investigators in one agency reported that although they had good contacts with their counterparts in other agencies, their superiors were opposed to cooperation with those agencies. The investigators clearly felt that too much initiative on their part would result in punishment rather than reward. Thus, networking and all of its attendant benefits can be inhibited as much by an atmosphere that discourages cooperation among street level operatives as by a lack of formal inter-agency arrangements.

GOALS AND CONSTRAINTS

Although local prosecutors strongly believe in the general deterrent effects of

corporate criminal prosecutions, not all cases that come to light are brought before a grand jury or judge. In many instances prosecutors elect not to file charges or, after charges are filed, not to bring cases to court. These decisions are made on a case by case basis and in light of more or less unique sets of facts. Nevertheless, both the survey and the field studies permit some generalizations about the exercise of prosecutorial discretion in corporate cases.

According to the survey respondents, the decision not to prosecute is shaped primarily by legal and resource constraints. Lack of cooperation from victims, the availability of alternative regulatory remedies, insufficient investigatory personnel and the difficulty of establishing *mens rea* in a corporate criminal context, all were cited by large majorities of the respondents as factors that would limit their willingness to prosecute a corporate criminal offense. Conspicuous by their relative insignificance were the community context factors often thought to militate against prosecution of corporate wrongdoing. Very few respondents reported that insufficient public support or a potential negative impact on the local economy would limit their willingness to proceed against a corporate criminal offender.

A similar picture was revealed by the field interviews. Prosecutors and investigators often spoke at length about the difficulty of successfully prosecuting corporate case without sufficient technical and personnel resources. Clearly, they desired to do more. But the reality of limited resources prevented them from doing so. In brief, local prosecutions of corporate crimes are relatively rare not because local officials regard these offenses as harmless violations of technical regulations or as someone else's problem, but rather because the offenses often are simply too complex and difficult to handle.

THE PROSECUTOR AS PROBLEM SOLVER

The prosecutors we interviewed strongly supported the traditional view that their job is to seek criminal convictions and the imposition of appropriate penal sanctions. Their

concern that the guilty be convicted and punished has multiple symbolic and practical justifications. Conviction and punishment function together to make a moral statement about the nature of the illegal act and to vindicate the rule of law; they may satisfy the victim's and the community's need for retribution; finally, they may deter the convicted offender from future crimes as well as other potential offenders contemplating similar crimes (Goldstock 1991, p. 2).

Yet, while interviews clearly show that for most prosecutors the primary goal is to deter corporate crime by convicting corporate criminals, a broader, more flexible, conceptualization of the prosecutor's role in the criminal process also emerged. In this broader view, the reduction of criminal activity is seen as a central function of the prosecutor's role and not as merely a hoped for by-product of the punishment process. This broader view requires prosecutors to move beyond thinking of themselves as mere presenters of evidence to a court and to focus on how best to control criminal activity. It means concentrating on solving problems as opposed to merely enforcing the law (Goldstock, 1991). Admittedly, this approach to the corporate crime problem is more the exception than the rule. Nevertheless, we found scattered evidence that such a view may be emerging among local prosecutors.

An example of this approach to corporate crime control, which took place in one of the field sites, involved a well-respected corporation that violated a state law governing the transportation and disposal of toxic materials. Although the prosecutor had sufficient evidence to pursue a criminal indictment, he elected, after an investigation indicated this was an isolated incident, not to do so. Instead, he negotiated with the company an agreement in which the corporation paid a substantial civil fine, donated money to a local hazardous waste project, and covered the entire cost of the investigation. The monies from the civil fine then were used to fund a conference on environmental problems attended by law enforcement and

regulatory officials.

This case illustrates an innovative use of prosecutor's office to achieve multiple objectives not all directly related to curbing or punishing the behavior of a particular offender. The prosecutor hoped to achieve both deterrence and educational objectives. Other corporations in the area would learn of and be deterred by the civil fine. Environmental awareness among local officials was fostered by the conference. In effect, ameliorating the problem of corporate environmental violations took precedence over enforcing the law against a particular offender.

This approach, which Goldstock (1991) has labelled "the prosecutor as problem solver," may be especially appropriate for corporate crime. Cases are difficult, time-consuming and costly to investigate and prosecute successfully. These constraints make it unlikely that prosecutors will be able to raise the certainty of punishment, so instrumental for achieving general deterrent effects, by any noticeable amount. By reconceptualizing their approach to the problem of corporate crime, however, prosecutors may be able to affect criminal activity in other ways. For example, one prosecutor we interviewed related how he had given a talk at a meeting of safety engineers. By explaining their legal responsibilities and liabilities, he not only motivated the safety engineers to attend more closely to worker safety but also gave them important information with which to lobby corporate leaders for more resources for worker safety programs.

The potential purposes to which the office of prosecutor can be put are tied to the range of available sanctions. For example, a prosecutor noted that if corporate probation were available as a sentencing option it could be used to solve problems or rectify dangerous situations. He used the example of an unsafe nursing home. The home should not be allowed to operate in an unsafe manner, but prosecuting the owners and closing it down would cause a lot of hardship for the patients and their families. If, however, the

corporation could be put on probation, it might be possible to arrange supervision so that the patients receive proper care and are not inconvenienced by closure.

We do not recommend that local prosecutors be encouraged to abandon the criminal law as a means of corporate crime control. Criminal conviction and the imposition of penal sanctions are both appropriate and necessary in many instances of corporate wrongdoing. Nevertheless, it should be recognized that perhaps the most important function which criminal penalties can serve in the control of corporate crime is to give local prosecutors leverage to pursue other crime reducing initiatives with the business community.

RECOMMENDATIONS

The recommendations are divided into two broad categories, according to the level of government or organization at which they can most feasibly be implemented. The first category involves programs and initiatives that will require funding and organization at the national or regional level to be successful. Most likely beyond the capability of any one jurisdiction or even state to implement in a cost effective manner, these recommendations could have a national impact on the control of corporate crime. The second set of recommendations can be implemented by individual jurisdictions. In some cases, they are based on practices that seemed to be successful in one or more of the field study sites and that could be used in other jurisdictions. Others are based on ideas that the experienced practitioners we interviewed felt would help improve their efficiency and effectiveness. Taken together, implementation of the national and local recommendations would help improve the effectiveness of local control of corporate and business-related crime.

National Recommendations

- 1) Establish regional laboratories to help local prosecutors investigate and prosecute environmental offenses.

The federal government should investigate the feasibility of setting up regional laboratories to analyze chemical and environmentally-related evidence. The laboratories would provide technical support for local law enforcers by analyzing and identifying chemical samples quickly. State of the art laboratory facilities are too expensive for local jurisdictions or even the individual states in which they are located to afford on their own. In addition, the number of times per year in which the laboratory may be needed in any given jurisdiction probably would not justify the cost. Regional laboratories that served a multitude of local jurisdictions would make economic sense and would permit local prosecutors to respond to cases that Federal agencies may deem as too small or too local in impact to take on.

Another advantage of regional laboratories is that they might reduce the number of instances in which cases fall through the cracks because of conflict over goals and procedures among local agencies. They could also provide training for local prosecutors and others in this technically complex area of law enforcement.

These laboratories would provide state-of-the-art and timely testing services for local prosecutors. They would be most useful in cases of illegal disposal or handling of toxic wastes and other potentially harmful chemical materials. Successful investigation and prosecution of these sorts of environmental crimes often depends up rapid and accurate identification of chemical materials. The expertise to accomplish these tasks often is beyond the capabilities of the traditional crime laboratory facilities available to local prosecutors. Hence, at present prosecutors often must make ad hoc arrangements for testing with other agencies. While these agencies may be willing to do what they can, they ordinarily are not familiar with proper evidence handling procedures and they have other important work priorities. Evidence may not be handled in a timely and proper manner. Regional laboratories devoted to providing testing services would give prosecutors access to technical

expertise in chemical analysis and evidence handling. The public safety implications of rapid testing are obvious.

The laboratories most likely would have to be funded by either the federal government or perhaps by regional combinations of state governments. Although concern over environmental crimes is growing and the threat posed by such offenses serious, the number of cases likely to occur in any single jurisdiction would not justify the cost of a state-of-the-art facility. Yet, the offenses that do occur need to be handled expeditiously. Whether the laboratories should be funded in part or in whole by user fees and the question of which agencies should have access to services need further investigation and policy analysis. Regional laboratories would reduce unnecessary and expensive duplication of effort among agencies and may help overcome situations of local inter-agency rivalries and lack of cooperation.

2) Establish a national brief bank and information clearing house on prosecuting white-collar crime.

A brief bank and information clearing house would permit local prosecutors to benefit from the collective experience and knowledge of prosecutors nationwide. It is one way in which the experience and wisdom of prosecutors located in larger urban centers can be communicated to their counterparts in smaller jurisdictions. It is well known that corporate offenders often have the financial resources to hire well-financed and well-staffed law firms to defend them against criminal indictments and prosecution. With virtually unlimited financial and legal personnel resources at their disposal, corporate criminals can erect stiff legal obstacles for prosecutors to overcome. While many of the legal challenges raised by corporate defendants can be successfully met, it is expensive and time-consuming to do so. This is especially true for prosecutors who are facing these challenges for the first time. A brief bank would help inexperienced prosecutors respond to these objections. In effect, a

brief bank would "even the playing field" between large corporate law firms and individual local prosecutors. Corporate law firms would have to contend with the collective experience of local prosecutors nationwide, instead of just an isolated and overworked assistant district attorney. A brief bank and clearinghouse would be especially useful in helping prosecutors respond to such relatively new areas as environmental and work-place related crimes.

The clearinghouse could also handle information on alternative sanctions and innovative sentencing. It could acquaint prosecutors nationwide with innovative techniques tried in other jurisdiction.

3) Establish a program of internships and personnel exchanges between federal and state regulatory agencies and between regulatory agencies and local prosecutors.

The primary benefit of such exchanges is that they would permit agencies to learn of each other's jurisdiction, mandate, standard operating procedures, and problems. With such knowledge personnel in involved agencies would be in a better position to share information and to recognize when situations should be referred to another agency. While it is well-known that such information sharing and case referrals are crucial elements of networking as a crime control strategy, the survey and field study show that there is relatively little cooperation between federal agencies and local prosecutors. A federally sponsored program of interagency internships and exchanges may help increase the level of interaction and cooperation. The interviews suggested that criminal matters may all too often fall through cracks in the system simply because they are discovered by an agency that has no interest or mandate to pursue them. To the extent that agencies at all levels of government learn about one another, the likelihood increases that potential criminal cases will be referred to an appropriate agency.

Recommendations for Local Jurisdictions

- 1) Recruit prosecutors and investigatory personnel who have an interest in environmental, work-place safety related or other corporate crime prosecutions.

Environmental and work-place related investigations and prosecutions require special knowledge and expertise. It is easier to develop expertise if one has a personal interest in environmental issues. Yet, in many jurisdictions assistant district attorneys are recruited with little attention to the types of crimes they may be called on to prosecute. The career path envisioned by new assistants often leads toward the prosecution of serious street crimes. The new assistant assigned to an environmental crime unit may view it as a temporary diversion from his or her real professional goals and not be inclined to develop expertise in the area. As a result, financial and personal resources may not be used very effectively. By recruiting attorneys with a personal interest in environmental issues, local prosecutors can ensure more effective use of their limited resources.

- 2) Create a local area computer network linking agencies, so that investigators can find out quickly if someone in another agency is working a case.

Computers are playing an increasingly important role in law enforcement, and many law enforcement agencies now use computers for record keeping and case management. By accessing computer files, an investigator can quickly learn whether someone else in the agency is working a particular case, thus reducing duplication of effort and facilitating information sharing. The full potential of computers, however, to reduce duplication of effort and to increase information sharing among investigators in different agencies has not yet been realized. At present, while many agencies have their own computer database of their cases, they have no way of knowing what other agencies are working on. To find out, investigators have to call their counterparts in other agencies. Not surprisingly, calls often do not get made. Such linkages between agencies in a given area may be particularly

important in putting together cases against certain kinds of financial frauds, where victims are spread out and offenders very mobile.

A local area computer network linking agencies would permit investigators in one agency easier access to their counterparts in another agency. Agencies could be linked to a common database of ongoing investigations and cases. The database entries would contain information on the investigator (for example, name, phone number, and agency) and information on the case (for example, suspects, modus operandi and victims). In theory, such a network would permit investigators to learn whether an investigator in another agency in their area was working a case involving particular suspects or a particular modus operandi. In situations where investigators have information on what may be the same case they could then contact one another directly and coordinate their activities. Such a network would be particularly useful in the largest urban areas where multiple agencies in different jurisdictions often work in close geographical proximity.

Many technical details would require careful consideration. For example, problems involving access, confidentiality, and hardware compatibility undoubtedly will arise. But these problems are not, in principle, unsolvable. For example, files could be set up so that only the investigator establishing or entering a case in the database could alter information pertaining to it, but other investigators would be able to read the file. Further, all those accessing a file could be required to identify themselves and to have security clearances.

3) Educate the public as to who to contact and make it easier for citizens to report corporate crimes.

Effective law enforcement ultimately depends on the support of a concerned citizenry willing to become involved in making the community safer. Public concern over environmental pollution and environmental safety is clearly rising. Local prosecutors and other law enforcement agencies should take advantage of the rising levels of concern by

publicizing their activities against corporate environmental crimes. They should make sure that the public knows that environmental crimes are real crimes and educate the public on how to identify and report such crimes.

- 4) Increase the number of prosecutors and investigators assigned full time to environmental, work-place related, and other corporate offenses.

Local prosecutors and law enforcement agencies always have limited resources.

During economic downturns personnel and financial resources often are reduced by state and local governments in response to fiscal emergencies. Nevertheless, it is clear from the interviews that to be effective against complex corporate environmental and work-place related crimes, more prosecutors and investigators need to be assigned full time to such cases. The same is true of regulatory agencies.

- 4) Have investigators assigned to environmental regulatory agencies so that they can cull through cases to identify the ones that should be brought to the attention of prosecutors.

A continuing problem in relationships between local prosecutors and environmental regulatory agencies is that regulatory personnel often are unfamiliar with the types of cases that deserve to be brought to the attention of prosecutors. By assigning investigators trained in criminal environmental investigations to work in regulatory agencies, prosecutors can ensure that prosecutable cases are identified and that agency personnel are sensitized to the prosecutor's priorities. Equally important, establishing a close working relationship between criminal investigators and regulatory officials may spur the use of innovative problem solving approaches to corporate crime control as opposed to over reliance on criminal controls.

- 6) Provide more technical training for environmental investigators.

Insofar as possible, investigators assigned to environmental crimes need regular re-training in technical matters. Industrial production and manufacturing techniques continually

change, posing new threats to environmental safety. To keep up with these changes, local prosecutors should not overlook the importance of regular training and re-training for their investigators.

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Appendix I
Survey Questionnaire

DISTRICT ATTORNEYS AND CORPORATE MISCONDUCT:

A NATIONAL SURVEY

This survey is part of a national study on district attorneys and corporate misconduct. The National District Attorneys' Association and the National Institute of Justice endorse the project and encourage you to participate by completing this questionnaire.

The questionnaire should be completed by the *district attorney* or the *attorney* most knowledgeable about white-collar and corporate prosecutions in your office.

Thank you for your help.

Questionnaire # _____

1. What is your title or position in your office?
 TITLE _____
2. How many years have you been a prosecuting attorney?
 YEARS _____
3. Including yourself, how many full time and part time prosecuting attorneys are employed by your office?
 FULL TIME _____
 PART TIME _____
4. Excluding prosecuting attorneys, how many full time and part time investigators are employed by your office?
 FULL TIME _____
 PART TIME _____
5. Approximately what was your total office budget for fiscal year 1988?
 \$ _____

For the purposes of this survey CORPORATE CRIME IS A VIOLATION OF A CRIMINAL STATUTE EITHER BY A CORPORATE ENTITY OR BY ITS EXECUTIVES, EMPLOYEES, OR AGENTS ACTING ON BEHALF OF AND FOR THE BENEFIT OF THE CORPORATION, PARTNERSHIP, OR OTHER FORM OF BUSINESS ENTITY.

This definition excludes crimes committed by an employee against an employer for the purpose of personal gain, such as embezzlement or theft.

6. Keeping in mind the working definition of corporate crime provided above — that is, crime by or on behalf of a corporation — is it within the jurisdiction of your office to prosecute business entities for any of the corporate offenses listed below? (Circle one number for each offense.)

	YES	NO
a. Consumer fraud	1	2
b. Securities fraud	1	2
c. Insurance fraud	1	2
d. Tax fraud	1	2
e. False claims and statements	1	2
f. Workplace-related offenses (e.g., unsafe working conditions)	1	2
g. Environmental offenses (e.g., dumping toxic waste)	1	2
h. Illegal payments to governmental officials	1	2
i. Unfair trade practices (e.g., price-fixing, bid-rigging, restraint of trade)	1	2

7. In 1988, did your office *actually prosecute* any of the following corporate offenses? (Circle one number for each offense.)

	YES	NO
a. Consumer fraud	1	2
b. Securities fraud	1	2
c. Insurance fraud	1	2
d. Tax fraud	1	2
e. False claims and statements	1	2
f. Workplace-related offenses	1	2
g. Environmental offenses	1	2
h. Illegal payments	1	2
i. Unfair trade practices	1	2
j. Other _____ (Please specify)		

8. Typically, how often does your office prosecute the corporate criminal offenses listed below? (Circle one number for each offense.)

	NEVER	FEWER THAN 1 CASE PER YEAR	ABOUT 1 TO 3 CASES PER YEAR	MORE THAN 3 CASES PER YEAR
a. Consumer fraud	1	2	3	4
b. Securities fraud	1	2	3	4
c. Insurance fraud	1	2	3	4
d. Tax fraud	1	2	3	4
e. False claims and statements ...	1	2	3	4
f. Workplace-related offenses ...	1	2	3	4
g. Environmental offenses	1	2	3	4
h. Illegal payments	1	2	3	4
i. Unfair trade practices	1	2	3	4

9. During your tenure as a prosecuting attorney has the number of corporate crimes prosecuted annually by your office been increasing, remaining about the same, or decreasing? (Circle one number.)

- INCREASING 1
- REMAINING ABOUT THE SAME 2
- DECREASING 3
- DON'T KNOW 4

10. Who conducts most of the prosecutions of corporate crime in your jurisdiction?

- YOUR OFFICE 1
- STATE ATTORNEY GENERAL'S OFFICE 2
- U.S. ATTORNEY'S OFFICE 3
- DON'T KNOW 4

11. Does your office have a special in-house unit for investigating and prosecuting economic or white-collar crimes?

- YES (Go to Q. 12) 1
- NO (Go to Q. 17) 2

12. How many full time and part time prosecuting attorneys are assigned to this unit?

FULL TIME _____
PART TIME _____

13. Excluding prosecuting attorneys, how many full time and part time investigators are assigned to this unit?

FULL TIME _____
PART TIME _____

14. Approximately what percentage of your total office budget is allocated to this unit?

PERCENTAGE ALLOCATION _____

15. Has this unit prosecuted any *corporate crimes* as they were defined above?

- YES (Go to Q. 16) 1
- NO (Go to Q. 17) 2

16. Which of the following corporate offenses does this unit prosecute most often? (Select up to three offenses by circling the letter next to the offense.)

- Consumer fraud A
- Securities fraud B
- Insurance fraud C
- Tax fraud D
- False claims and statements E
- Workplace-related offenses F
- Environmental offenses G
- Illegal payments H
- Unfair trade practices I
- Other _____ J

(Please specify)

17. Is your office a member of an inter-agency task force or strike group which focuses on economic or other white-collar crimes?

- YES (Go to Q. 18) 1
- NO (Go to Q. 19) 2

18. Do any of the agencies listed below belong to the inter-agency group?

	YES	NO
a. Local Police	1	2
b. State Police	1	2
c. State Att. General's Office	1	2
d. State Regulatory Agencies	1	2
e. Federal Regulatory Agencies	1	2
f. U.S. Attorney's Office	1	2
g. FBI	1	2
h. Another Prosecutor's Office	1	2
i. Other _____		
(Please specify)		

19. Instances of corporate misconduct come to the attention of district attorneys through a variety of official and unofficial sources. In general, how often do the sources listed below refer potential corporate criminal cases to your office for investigation or prosecution. (Circle one number for each source.)

	NEVER	FEWER THAN 1 CASE PER YEAR	ABOUT 1 TO 3 CASES PER YEAR	MORE THAN 3 CASES PER YEAR
a. Local Police	1	2	3	4
b. State Police	1	2	3	4
c. State Att. General's Office	1	2	3	4
d. State Regulatory Agencies	1	2	3	4
e. Federal Regulatory Agencies	1	2	3	4
f. U.S. Attorney's Office	1	2	3	4
g. FBI	1	2	3	4
h. Business victims	1	2	3	4
i. Citizen victims	1	2	3	4
j. Public interest groups	1	2	3	4

20. How often does your office cooperate on joint investigations of corporate crimes with the agencies listed below?

	NEVER	LESS THAN ONCE PER YEAR	1 TO 3 TIMES PER YEAR	MORE THAN 3 TIMES PER YEAR
a. Local Police	1	2	3	4
b. State Police	1	2	3	4
c. St. Att. General's Office	1	2	3	4
d. State Regulatory Agencies	1	2	3	4
e. Federal Regulatory Agencies	1	2	3	4
f. U.S. Attorney's Office	1	2	3	4
g. FBI	1	2	3	4
h. Another Prosecutor's Office	1	2	3	4

21. To be successful in corporate criminal cases prosecutors often must rely on investigative personnel from other governmental agencies for technical expertise. In the past, when your office has asked for assistance on technical matters in corporate cases how helpful have the agencies listed below been in assisting your office to make the case?

	<u>VERY HELPFUL</u>	<u>SOMEWHAT HELPFUL</u>	<u>NOT VERY HELPFUL</u>	<u>DON'T KNOW/ NEVER ASKED</u>
a. St. Att. General's Office	1	2	3	4
b. State Regulatory Agencies	1	2	3	4
c. Federal Regulatory Agencies	1	2	3	4
d. U.S. Attorney's Office	1	2	3	4
e. FBI	1	2	3	4
f. Other _____	1	2	3	4

(Please Specify)

22. In your experience, have the following methods of investigating corporate crimes been very useful, somewhat useful, or not very useful?

	<u>VERY USEFUL</u>	<u>SOMEWHAT USEFUL</u>	<u>NOT VERY USEFUL</u>	<u>DON'T KNOW/ NEVER USED</u>
a. Interviews	1	2	3	4
b. Search of financial records	1	2	3	4
c. Grand jury subpoenas	1	2	3	4
d. Document examination	1	2	3	4
e. Confidential informants	1	2	3	4
f. Computers	1	2	3	4
g. Search warrants	1	2	3	4
h. Other _____	1	2	3	4

(Please Specify)

23. A prosecuting attorney is influenced by many factors in deciding whether or not to take a case to court. Some factors may limit a prosecutor's willingness to prosecute, while others may increase it. To what extent would the factors listed below *limit* your willingness to prosecute a corporate criminal offense committed in your jurisdiction?

	DEFINITELY WOULD NOT LIMIT	PROBABLY WOULD NOT LIMIT	PROBABLY WOULD LIMIT	DEFINITELY WOULD LIMIT
a. Insufficient prosecutorial personnel	1	2	3	4
b. Insufficient investigatory personnel	1	2	3	4
c. Insufficient expertise in corporate crime cases	1	2	3	4
d. Difficulty of establishing <i>mens rea</i> in a corporate criminal context	1	2	3	4
e. Actual or pending action by a Federal regulatory agency	1	2	3	4
f. Actual or pending action by a state regulatory agency	1	2	3	4
g. Actual or pending private civil suit(s)	1	2	3	4
h. The potential negative impact that a corporate prosecution might have on the local economy	1	2	3	4
i. Insufficient public support for prosecuting corporate criminal cases	1	2	3	4
j. Insufficient cooperation from other agencies	1	2	3	4
k. Lack of cooperation from victim(s)	1	2	3	4
l. Other _____ . 1		2	3	4

(Please specify)

24. To what extent would the factors listed below *increase* your willingness to prosecute a corporate criminal offense committed in your jurisdiction?

	DEFINITELY WOULD NOT INCREASE	PROBABLY WOULD NOT INCREASE	PROBABLY WOULD INCREASE	DEFINITELY WOULD INCREASE
a. Public concern over the corporate criminal offense . . .	1	2	3	4
b. The need to demonstrate publicly that the law applies equally to all offenders	1	2	3	4
c. The need to deter other potential corporate offenders	1	2	3	4
d. Failure of regulatory agencies to act	1	2	3	4
e. Victim preference for prosecution	1	2	3	4
f. Physical harm to victim(s) . . .	1	2	3	4
g. Substantial economic harm caused by the offense	1	2	3	4
h. Large number of victims . . .	1	2	3	4
i. Evidence of multiple offenses rather than a single offense	1	2	3	4
j. Media attention on the case	1	2	3	4

The next set of questions ask about your office caseload for 1988. To answer these questions, it may be helpful for you or a member of your staff to consult your office records. We recognize that this is an imposition, but this information is vital for the success of this study. If the information is not available, please give your best estimate in the right hand space labeled "Estimate".

25. In 1988, how many felony prosecutions in total (corporate and non-corporate) were formally initiated by your office — that is, an indictment or information was filed?

NUMBER _____ (or) ESTIMATE _____

26. In 1988, how many felony *corporate* criminal prosecutions were formally initiated by your office — that is, an indictment or information was filed against a business entity or a person acting on behalf and for the benefit of a business? (If none, please enter 0 and go to Q. 29)

NUMBER _____ (or) ESTIMATE _____

27. Including cases initiated in preceding years, how many *corporate* criminal prosecutions were *concluded* through trial verdict or plea settlement by your office in 1988? (*Please consider cases on appeal as concluded*).

NUMBER _____ (or) ESTIMATE _____

28. Of the corporate criminal prosecutions concluded by your office in 1988, how many resulted in conviction of the corporation or its personnel on at least one count?

NUMBER _____ (or) ESTIMATE _____

29. We are also interested in your office's use of civil sanctions and proceedings against business entities. How many civil proceedings against business entities were initiated by your office in 1988?

(*If none, please enter 0 and go to Q. 31*)

NUMBER _____ (or) ESTIMATE _____

30. Of the civil proceedings initiated by your office in 1988, how many resulted in judgment against the defendant corporation or business entity?

NUMBER _____ (or) ESTIMATE _____

The final set of questions ask for your general opinions about the seriousness of the corporate crime problem and the effectiveness of different methods of curbing corporate misconduct.

31. In your opinion, how serious is the corporate crime problem in your jurisdiction?

VERY SERIOUS 1

SOMEWHAT SERIOUS 2

NOT AT ALL SERIOUS 3

DON'T KNOW 4

32. In the future, do you expect that your office will prosecute more, about the same, or fewer corporate criminal cases than in the past?

MORE 1

ABOUT THE SAME 2

FEWER 3

DON'T KNOW 4

33. There is considerable disagreement about the best means of controlling corporate misconduct. In your opinion, how useful would the following methods of improving corporate compliance with the law in your state be? (Circle one number for each method.)

	<u>VERY USEFUL</u>	<u>SOMEWHAT USEFUL</u>	<u>NOT VERY USEFUL</u>	<u>DON'T KNOW</u>
a. Tougher criminal penalties	1	2	3	4
b. Tougher civil penalties	1	2	3	4
c. Educational programs for local prosecutors on corporate crime ..	1	2	3	4
d. More training for police on investigating corporate crime	1	2	3	4
e. More emphasis on ethics in college business schools	1	2	3	4
f. Other _____ ..	1	2	3	4

(Please Specify)

34. Of the methods listed in Q. 33, which do you feel would be the *most useful* means of improving corporate compliance with the law? (Circle one letter.)

A B C D E F

35. People disagree over the causes of corporate misconduct. In your opinion, how important are each of the following as causes of corporate criminal offenses? (Circle one number for each cause.)

	<u>VERY IMPORTANT</u>	<u>SOMEWHAT IMPORTANT</u>	<u>NOT TOO IMPORTANT</u>	<u>DON'T KNOW</u>
a. Inadequate company profits	1	2	3	4
b. Severe market competition ..	1	2	3	4
c. A belief among businesspersons that illegal practices are a "necessary and accepted way of doing business"	1	2	3	4
d. Low ethical standards among businesspersons	1	2	3	4
e. The low rate of detection for corporate offenses	1	2	3	4
f. Weak criminal penalties	1	2	3	4
g. Ineffective regulation by administrative agencies	1	2	3	4
h. Vague and unclear state and federal legislation	1	2	3	4
i. Other _____ .	1	2	3	4

(Please specify)

In punishing those who break the law, the primary objectives of the criminal system are generally thought to be:

- A *Special Deterrence* (i.e., to deter the offenders from committing other crimes)
- B *General Deterrence* (i.e., to deter other potential offenders from committing similar crimes)
- C *Retribution* (i.e., to pay back offenders for the harm they caused to individuals and society)
- D *Boundary maintenance* (i.e., to make a public statement that certain kinds of behavior will not be tolerated)
- E *Rehabilitation* (i.e., to reform offenders so that they may become constructive members of society, or in the case of corporations to restructure internal operations)
- F *Incapacitation* (i.e., to protect society by incarcerating offenders so they cannot victimize others)

36. In general, which of the above would you rank as the two most important objectives of prosecuting individuals who commit traditional street crimes, for example burglary, robbery, or battery? (Circle a letter for the most important and second most important objectives)

Most Important Objective A B C D E F

Second Most Important Objective A B C D E F

37. In general, which would you rank as the two most important objectives of prosecuting *individual businesspersons* who commit corporate crimes?

Most Important Objective A B C D E F

Second Most Important Objective A B C D E F

38. Recognizing that corporations cannot be incapacitated, which would you rank as the two most important objectives of prosecuting *corporations* or other *business entities* that commit corporate crimes?

Most Important Objective A B C D E

Second Most Important Objective A B C D E

Please use this space to tell us about any other considerations that influence how your office responds to corporate misconduct?

Your contribution to this study is greatly appreciated. If you would like a summary of the results, please check the "results requested" box on the front of the return envelope. We will see that you get it.

Appendix II
County Level Variables

These data were abstracted from the County and City Data Book, 1988 Files on Diskette and County Business Patterns, 1987. For the analyses reported in this study, some variables were manipulated to transform them into per capita rates or percentages.

County Level Variables

Total Population, 1986
Serious Crimes Known to Police, 1985
Violent Crimes Known to Police, 1985
Civilian Labor Force, 1986
Civilian Labor Force, Unemployed, 1986
Employment in Manufacturing, 1985
Employment in Retail Trade, 1985
Employment in Finance, Insurance and Real Estate, 1985
Employment in Services, 1985
Private Non-farm Establishments Annual Payroll, 1985
Money Income, 1985
Personal Income, 1984
Personal Income Transfer Payments, 1984
Local Government Direct General Expenditures, 1982
Local Government Expenditures for Education, 1982
Local Government Expenditures for Police Protection, 1982
Local Government Expenditures for Public Welfare, 1982
Population Change, 1980-1986
White Population, 1984
Black and Other Races Population, 1984
Population 25 or Over, 1986
Population with 12 or More Years Education, 1980
Population with 16 or More Years Education, 1980
Population per Square Mile, 1986
Total Organizations, 1987
Labor Organizations, 1987

Appendix III
Selected Tables for Rural Jurisdiction Sub-Sample

Table 1

Perceived Seriousness of Corporate Crime in
Rural Jurisdictions*

Seriousness	%
Very Serious	0.4
Somewhat Serious	10.8
Not at all Serious	71.3
Don't Know	17.3

* How serious is the corporate crime problem in your jurisdiction?

Table 2

Jurisdiction over Selected Corporate Crimes in Rural Jurisdictions*

Corporate Crime	Yes	No
Consumer fraud	83.3%	16.7%
Securities fraud	56.0	44.0
Insurance fraud	80.0	20.0
Tax fraud	53.0	47.0
False claims and statements	85.3	14.7
Workplace-related offenses	38.3	61.7
Environmental offenses	69.4	30.6
Illegal payments	93.0	7.0
Unfair trade practices	49.2	50.8

* "Keeping in mind the working definition of corporate crime -- that is, crime by or on behalf of a corporation -- Is it within the jurisdiction of your office to prosecute business entities for any of the corporate offenses listed below?"

Table 3

Percent Prosecuting Selected Corporate Crimes in Rural Jurisdictions in 1988*

Corporate Crime	%
Consumer fraud	16.2
Securities Fraud	5.3
Insurance Fraud	10.3
Tax Fraud	4.6
False Claims	11.5
Workplace Offenses	2.3
Environmental Offenses	13.4
Illegal Payments	1.1
Unfair Trade Practices	1.5

* In 1988, did your office actually prosecute any of the following corporate offenses?

Table 4

Frequency of Prosecutions in a Typical Year in Rural Jurisdictions*

Corporate Crime	Frequency			
	Never	Fewer Than 1 Case Per Year	About 1-3 Cases Per Year	More Than 3 Cases Per Year
Consumer Fraud	54.4%	32.7%	11.0%	1.9%
Securities Fraud	80.5	19.1	0.4	0.0
Insurance Fraud	59.8	34.1	5.4	0.8
Tax Fraud	79.2	17.7	2.7	0.4
False Claims	57.5	34.9	6.9	0.8
Workplace	81.6	16.9	1.5	0.0
Environmental	63.0	25.6	11.5	0.0
Illegal Payments	70.1	29.1	0.8	0.0
Unfair Trade	82.8	16.5	0.8	0.0

* Typically, how often does your office prosecute the corporate criminal offenses listed below: never, fewer than 1 case per year, about 1 to 3 cases per year, more that 3 cases per year.

Table 5

Frequency of Referrals from Selected Sources in Rural Jurisdictions*

Source	Frequency			
	Never	Fewer Than 1 Case Per Year	About 1-3 Cases Per Year	More Than 3 Cases Per Year
Local Police	48.3%	40.7%	9.3%	1.9%
State Police	58.7	34.1	6.7	1.9
State Attorney General	56.3	37.4	5.9	0.4
State Regulatory Agency	50.8	37.9	10.9	0.4
Federal Regulatory Agency	86.5	13.5	0.0	0.0
US Attorney Office	88.1	11.9	0.0	0.0
FBI	85.4	14.2	0.4	0.0
Business Victims	45.3	42.2	10.2	2.3
Citizen Victims	39.1	42.6	14.7	3.5
Public Interest Groups	82.3	16.9	0.8	0.0

* Instances of corporate misconduct come to the attention of district attorneys through a variety of official and unofficial sources. In general, how often do the sources listed below refer potential corporate criminal cases to your office for investigation or prosecution?

Table 6

Frequency of Joint Investigations with Selected Agencies In Rural Jurisdictions*

Agency	Frequency			
	Never	Fewer Than 1 Case Per Year	About 1-3 Cases Per Year	More Than 3 Cases Per Year
Local Police	50.2%	37.9%	9.9%	2.0%
State Police	56.6	35.9	6.4	1.2
State Attorney General	53.6	40.5	4.4	1.6
State Regulatory Agency	54.4	36.0	9.2	0.4
Federal Regulatory Agency	83.2	16.8	0.0	0.0
US Attorney Office	83.1	16.9	0.0	0.0
FBI	79.8	18.1	1.6	0.4
Another Prosecutor	61.7	32.8	4.7	0.8

* How often does your office cooperate on joint investigations of corporate crimes with the agencies listed below?

Table 7

Helpfulness of Other Agencies in Rural Jurisdictions*

	Percentage Among Those Asking For Help			Percent Who Never Asked
	Very Helpful	Somewhat Helpful	Not Very Helpful	
State Attorney General	48.4%	44.4%	7.1%	50.0%
State Regulatory Agency	41.7	49.2	9.2	52.2
Federal Regulatory Agency	16.9	30.5	52.5	76.4
US Attorney Office	21.7	41.7	36.7	75.9
FBI	25.8	42.4	31.8	73.7

Note: Percents in rows do not sum to 100. Percentages in the first three columns are based on the number of respondents who asked for help. Percentages in column 4 are based on the total responding.

* In the past, when your office has asked for assistance on technical matters in corporate cases how helpful have the agencies listed below been in assisting your office to make the case?