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# NATIONAL INSTITUTE OF JUSTICE

## Research in Brief

Charles B. DeWitt, Director

January 1993

# Local Prosecutors and Corporate Crime

by Michael L. Benson, Francis T. Cullen, and William J. Maakestad

Crimes committed by and for business pose a serious threat to the health, safety, and financial welfare of consumers and workers as well as to the orderly functioning of the economy and the government. Commonly known as corporate or organizational crimes, these offenses raise special problems for detection, prosecution, and sanction.<sup>1</sup> Isolated efforts by individual enforcement agencies have proven inadequate against this type of crime, underscoring the need for a coordinated, multistrategy response from Federal, State, and local levels of government.

Historically, the Federal Government has assumed primary responsibility for controlling corporate crime, but in the past two decades, local prosecutors have become increasingly concerned about this problem. In 1973 the National District Attorneys Association established an Economic Crime Committee to encourage local prosecutors to enforce white-collar crime laws and to enhance their enforcement ability. By 1975, 43 district attorneys' offices were participating in the committee's Economic Crime Project.

Since the Economic Crime Project was begun nearly 20 years ago, local response to corporate white-collar crime has changed significantly. In the past, district attorneys concentrated almost exclusively on economic crimes such as consumer fraud. They are now prosecuting a wider variety of cases, including occupational safety violations and the illegal dumping of toxic waste. In nearly every State, prosecutors have sought criminal indictments against corporations, partnerships, and other business entities for noneconomic offenses.

This *Research in Brief* summarizes a National Institute of Justice study of local prosecutors' work against corporate crime. For the study, corporate crime was defined as "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."

The first component of the study was a mail survey of 632 district attorneys with jurisdictions located in or near urban areas.<sup>2</sup> Completed questionnaires were received from 419 districts, a response rate of 66 percent. The survey data were then merged with economic, social, and official crime data for each jurisdiction.<sup>3</sup> The second component of the study involved case studies in four jurisdictions: Cook County, Illinois; Los Angeles County, California; Dade County, Florida; and Nassau County, New York. In each jurisdiction prosecutors, regulatory officials, and representatives of various law enforcement agencies were interviewed regarding their views of corporate crime and their interactions with other law enforcement agencies.

### Trends in corporate crime prosecutions

One conclusion is that local prosecution of corporate crime is becoming more widespread. More than one-quarter of the survey respondents said that corporate prosecutions have increased during their

#### From the Director

Local prosecutions of corporate crime, particularly crimes against the environment and consumer fraud, are becoming more widespread. Six out of 10 local prosecutors who responded to a recent National Institute of Justice survey reported increased numbers of corporate prosecutions by their offices.

Once confined almost entirely to the Federal courts, local prosecutions of corporate crimes have increased steadily since the Economic Crime Project was established in 1975 by the Economic Crime Committee of

the National District Attorneys Association. As this *NIJ Research in Brief* points out, local district attorneys are now taking corporate defendants to court for a growing variety of offenses, including occupational safety violations and the illegal dumping of toxic waste.

Local prosecutions of corporate offenders are not undertaken easily; as this report shows, the complex, often technical nature of crimes committed in an organizational setting can make them both costly and difficult to prosecute. And because

successful prosecutions often require substantial time and labor, the availability of resources plays a significant role in local activity against corporate crime.

In addition to reporting on the results of the survey, this Institute report offers suggestions that may improve cooperation among Federal, State, and local agencies in combating this problem within our society.

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tenure in office. One-quarter reported that they expected to prosecute more corporate cases in the future. Less than 1 percent had seen or anticipated a decrease in prosecutions.

Prosecutors in large jurisdictions (those with populations over 250,000) most frequently reported increased rates of corporate prosecutions. Roughly 6 out of 10 respondents in large jurisdictions said prosecutions had increased during their tenures in office, and a majority expected this trend to continue.

### Prevalence of corporate crime prosecutions

In 1988 two-thirds of the survey respondents said their offices prosecuted at least one of nine types of corporate crime (table 1). Although local prosecutors handled a wider variety of corporate crimes in 1988 than in previous years, economic crimes still made up the bulk of their corporate crime caseload.

- Consumer fraud was the most frequently prosecuted corporate offense, with 41 percent of the offices prosecuting at least one case of consumer fraud.
- False claims and insurance fraud followed as the most frequently prosecuted economic crimes, with 31 percent of the offices prosecuting at least one offense in these categories.

- Only one type of noneconomic crime—environmental offenses—was prosecuted as often as economic crime. In 1988, 31 percent of the offices handled at least one environmental offense.

Most districts did not have data on the specific number of corporate offenses handled in 1988. For this reason, the prevalence of local corporate crime prosecutions can only be approximated (table 2).

- Typically, 15 percent of the districts handled more than three consumer fraud cases a year, while 20 percent of the districts handled one to three annually.
- About 10 percent of local prosecutors typically handled more than three false claims, insurance fraud cases, or environmental offenses per year.

Prosecutors in the case study sites reported that most of their resources were allocated to combat economic offenses, but noted that environmental offenses were becoming more prevalent. As one prosecutor said, "The danger from this environmental stuff is much greater than what we have to worry about from drugs." Another noted, "A day does not go by without my hearing about some type of environmental issue on television or in the newspapers. The problems are immense."

### Variation in local corporate crime prosecution

Because of their complex, technical nature, crimes committed in an organizational setting can be difficult to prosecute. Statistical analysis revealed three significant causes for local variations in corporate crime prosecution: availability of resources, community context, and regional differences. These all affected how aggressive local prosecutors were in responding to corporate crime.

**Availability of resources.** Because successful prosecutions often require substantial time and labor, the availability of resources has a significant influence on local activity against corporate crime. Large offices (as measured by the number of full-time attorneys) conducted more corporate prosecutions than small offices. Those offices that had joined an inter-agency task force to combat white-collar or economic crime or had established a special unit tended to be more active than offices lacking such arrangements.

**Community context.** The economic, demographic, and social makeup of the community also plays a significant role in determining the aggressiveness of local corporate crime prosecution. In the study, community context affected local prosecutors' attention and reaction to certain types of offenses. For example, prosecutors in Nassau County, New York, cited illegal disposal of medical waste as a significant environmental problem, while prosecutors in Cook County, Illinois, cited illegal disposal or abandonment of toxic chemicals by defunct metal-plating businesses as a typical problem. Local prosecutors tended to be sensitive to the specific problems, needs, and expectations of the communities in which they worked, much as are local police forces.

**Regional differences.** Regional differences also affect the amount of local activity taken against corporate crime. In general, prosecutors in western States tended to be more active against most forms of corporate crime than their counterparts in northeastern, midwestern, and southern States (table 3). Compared to offices in other regions, a larger percentage of western offices typically handled more than three cases per year of most corporate crimes.

**Table 1. Percentage of Offices Prosecuting Selected Corporate Crimes in 1988\***

Corporate crime	Yes	No
Consumer fraud	41 %	59 %
Securities fraud	22	78
Insurance fraud	31	69
Tax fraud	16	84
False claims	31	69
Workplace offenses	11	89
Environmental offenses	31	69
Illegal payments	16	84
Unfair trade practices	8	92
Any corporate offense	66	34

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

**Table 2. Frequency of Prosecutions in a Typical Year\***

	Frequency			
	Never	Fewer than 1 case per year	About 1-3 cases per year	More than 3 cases per year
<b>Corporate crime</b>				
Consumer fraud	32%	33%	20%	15%
Securities fraud	57	28	12	3
Insurance fraud	38	39	15	9
Tax fraud	61	25	8	6
False claims	40	34	15	11
Workplace offenses	68	25	5	1
Environmental offenses	45	34	13	8
Illegal payments	51	37	10	2
Unfair trade practices	75	18	3	5

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

The higher level of activity among prosecutors in the West may be due to the types of offices and communities they serve. First, the western offices sampled were located in districts with comparatively large populations. Along with their greater population size, these districts may have more business activity, and therefore, more potential offenses than districts in other regions. Second, the western offices tended to have more attorneys and investigators than offices in other regions. Third, legal or cultural factors unique to western States may cause local prosecutors to take a comparatively more vigorous approach to corporate crime. However, the true cause of regional variation remains unclear and deserves further investigation.<sup>4</sup>

**Discovery of corporate offenses**

District attorneys learned about corporate misconduct through a variety of official and unofficial sources. Most often, cases came to the attention of prosecutors after complaints by business and citizen victims. The second most common sources were the local police and State regulatory agencies, followed by the State police and State attorney general's offices. Federal law enforcement and regulatory agencies did not refer many cases to local prosecutors (table 4).

**Networking and special units**

The Economic Crime Project discovered two ways for local prosecutors to augment resources and increase efficiency against corporate crime:

- Using interagency teams to analyze, investigate, and prosecute complex white-collar crimes. These networks typically include prosecutors; regulatory officials;

and representatives from Federal, State, and local law enforcement agencies.

- Creating special units for economic crimes, which allows prosecutors to develop the technical and legal expertise necessary to handle complex cases by concentrating on these types of crimes.

This survey found that 24 percent of local prosecutors were using one or the other (or both) of these special control strategies.

- Twenty-three percent of the respondents had a special in-house unit in their office for investigating and prosecuting economic or white-collar crimes.
- Eight percent were involved in an interagency task force or strike group focusing on economic or white-collar crime.
- Of those involved in an interagency task force, 75 percent also had a special unit.

The use of special control strategies varied by size of district and region of the country and was more prevalent in large jurisdictions than in small ones.

- Fourteen of the 30 largest offices were involved in an interagency task force, compared to only one of the 30 smallest offices.
- More than 70 percent of the respondents in large jurisdictions used one or more

**Table 3. Percentage of Offices Prosecuting More Than Three Cases per Year, by Region\***

Crime	Region			
	South	West	Northeast	Midwest
Consumer fraud	11%	42%	16%	9%
Securities fraud	3	9	2	3
Insurance fraud	8	15	13	6
Tax fraud	7	9	2	5
False claims	9	30	12	7
Workplace offenses	3	2	0	0
Environmental offenses	3	33	9	6
Illegal payments	2	2	5	2
Unfair trade practices	1	28	0	2

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

**Table 4. 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%	40%	20%	15%
State police	41	37	16	6
State attorney general	40	37	16	6
State regulatory agency	28	39	20	14
Federal regulatory agency	71	22	6	1
U.S. Attorney's Office	72	23	5	0.3
FBI	63	29	7	1
Business victims	22	37	19	21
Citizen victims	18	37	23	22
Public interest groups	59	28	9	4

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

of the special strategies, compared to less than 10 percent of their counterparts in small districts.

- Special units and interagency networks were more common in western and, to a lesser extent, northeastern districts than in midwestern or southern districts.

### Cooperation with other agencies

Jointly coordinated investigations are an integral part of networking. Local prosecutors reported collaborating most often with local police and State regulatory agencies on joint investigations of corporate crimes (table 5).

- The highest number, 38 percent, reported working with local police on one or more corporate cases annually.
- Twenty-eight percent said they worked with State regulatory agencies on one or more corporate cases each year.
- At least once a year, more than 20 percent of prosecutors worked with the State attorney general's office and State police.
- Almost 20 percent of prosecutors cooperated with another jurisdiction at least once a year.

Joint investigations with Federal agencies were rare. Less than 10 percent of the respondents said they worked with the Federal Bureau of Investigation (FBI), the U.S. Attorney's Office, or a Federal regulatory agency as often as once a year. In three out of five offices, prosecutors never worked with these Federal agencies.

Some prosecutors interviewed during the case study visits faulted Federal investigative agencies for not referring cases to local officials. Although local prosecutors recognized the need for Federal agencies to focus on large cases, they believed that some small, unpursued cases may have had significant local impact. While acknowledging different priorities, the prosecutors believed that too many cases have escaped enforcement. Better communication between Federal and local officials could provide prosecutors with leads to pursue local cases not pursued by Federal agencies.

However, despite growing recognition of the seriousness of corporate crime and widespread knowledge that traditional methods of law enforcement are inadequate, the development of coordinated, multistrategy responses from Federal, State, and local governments remains more an ideal than a reality.

### Constraints on prosecutorial discretion

Before deciding to proceed with a corporate case, prosecutors reported they considered many factors, including the type of offense, resources available, actions of other agencies, preferences of victims, and potential impact of the prosecution on the local community. Some of these factors limited the prosecutor's willingness to proceed with a corporate prosecution, while others increased it.

**Factors that limited prosecution.** The most important factors limiting local prosecution of corporate crimes were inadequate resources, legal constraints, and availability of alternative remedies.

- Seventy percent of the survey respondents were less willing to prosecute if State or Federal regulatory agencies had already acted in a case.
- About 60 percent stated they probably would limit their willingness to prosecute if personnel were insufficient.
- More than 50 percent said they would be less willing to prosecute if victims were not cooperative or if criminal intent was difficult to establish in a corporate context.

The inadequacies of resources at the local level became apparent during visits to the case study sites. Even in relatively large well-to-do offices, prosecutors often did not have basic equipment. For example, prosecutors in one of the largest districts lamented that they did not have dictaphones and that memorandums, briefs, and other documents had to be written in long-hand before office secretaries could type them.

An investigator in the same district pointed out that a car phone and an answering machine would greatly improve her efficiency and productivity, enabling her to receive and return calls as she traveled around the city working her cases. Without a phone, her time in the car was, as she put it, "mostly wasted." She and other interviewees noted that these items are standard equipment in all but the smallest private law firms.

On a more substantive level, prosecutors in one district commented that their ability to develop and dispose of environmental

cases was seriously diminished by the lack of access to adequate laboratory facilities. For example, delays in identifying potentially toxic substances limited the prosecutors' options in responding to cases of illegal disposal or handling of toxic wastes. As one prosecutor explained, to "find out what's in a substance 6 months later is too late in an environmental case. How can you walk in [to a court] and [ask] for injunctive relief and say there's an immediate need to close this [business] down when you've waited 6 months? How can you do anything criminally—and talk about how bad this is—if our office lets it go 6 months at a time?"

**Factors that increased prosecution.** The factors most likely to increase a prosecutor's willingness to proceed against a corporate wrongdoer involved the nature of the offense and the characteristics of the offender. More than 90 percent of the respondents indicated they would be more willing to prosecute cases that involved the following:

- Physical harm to victims.
- Evidence of multiple offenses.
- Large numbers of victims.
- Substantial economic harm.

Only slightly less important were the education and deterrence functions of prosecution. More than 85 percent said the "need to deter other potential corporate offenders" would increase their willingness to prosecute. About 75 percent felt similarly about the "need to demonstrate publicly that the law applies equally to all offenders."

### Goals of prosecution

In general, district attorneys pursued different goals when prosecuting corporate as opposed to ordinary street crimes. In the case of a traditional street crime committed by an individual, the most important objective for local prosecutors tended to be either deterrence or incapacitation.

- About 33 percent of the respondents rated incapacitation or deterrence of the offender as the most important objective in prosecuting ordinary street crimes.
- Only 16 percent rated deterrence of other street criminals as the most important objective in this type of case.

In contrast, 40 percent of the respondents ranked deterrence of other offenders as the most important objective in pursuing corporate crimes. In the view of one experienced prosecutor:

There's only one advantage to corporate prosecutions—in terms of its deterrence value, one prosecution is worth 500. I've prosecuted maybe 50 murderers, and I've never deterred a street murderer. I've probably prosecuted one industrial murderer, and I think we've deterred a whole lot of people—at least woke them up—so some people are trying to do the right thing. So even with a lack of resources, one corporate prosecution is much more valuable than one street crime prosecution.

Addressing the same issue, another prosecutor commented on environmental crime:

Everybody agrees that criminal prosecution is the big hammer on environmental people. The proof is how loud they squeal when you file the case, and boy, do they squeal.

Despite the supposed moral neutrality of many corporate offenses, a notable proportion of prosecutors felt that corporate offenders deserve to be punished. Indeed, 35 percent ranked retribution as either the first or second most important objective in a

corporate crime conviction. In contrast, less than 10 percent ranked retribution as the most important objective in prosecuting street criminals.

Most of the prosecutors interviewed at the case study sites echoed these opinions, arguing that corporate offenders were more easily deterred than ordinary street offenders. Furthermore, prosecutors expressed a strong sense of moral outrage over the "arrogance" and "callousness" of many business offenders, particularly those involved in repeated and intentional violations. For these offenders, the imposition of criminal sanctions for the sake of deterrence and retribution was regarded as appropriate, necessary, and deserved.

### The prosecutor as problem solver

While acknowledging the importance of convicting and punishing the guilty, some prosecutors interviewed at the case study sites articulated a broader concept of their role in the criminal process. In their view, the prosecutor's central function is reduction of criminal activity; deterrence is not merely a hoped-for byproduct of the punishment process. So, rather than devote themselves exclusively to the development of prosecutable cases, these prosecutors attempt to control criminal activity through alternative means, an approach that has been called "the prosecutor as problem

**Table 5. 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%	33%	22%	16%
State police	45	33	16	7
State attorney general	39	39	16	5
State regulatory agency	35	36	16	12
Federal regulatory agency	70	23	6	1
U.S. Attorney's Office	67	26	6	2
FBI	61	29	7	3
Another prosecutor	44	35	18	3

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

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solver.”<sup>5</sup> Although it was more the exception than the rule, the case studies uncovered evidence that such an approach is not uncommon among local prosecutors.

For example, this strategy was used in a case involving a well-respected corporation that had violated a State law governing the transportation and disposal of toxic materials. Although there was enough evidence to pursue a criminal indictment, the prosecutor elected not to file charges. Instead, he negotiated an agreement in which the corporation paid a substantial civil fine, donated money to a local hazardous waste project, and reimbursed the entire cost of the investigation. The money from the civil fine was used to fund a conference on environmental problems for law enforcement and regulatory officials.

In this case, the prosecutor believed that this approach both educated and deterred other potential offenders, while the conference fostered environmental awareness among local officials. Preventing other corporate environmental violations took precedence here over enforcing the law against a particular offender.

## Policy implications

In dealing with corporate offenders, local prosecutors often find themselves competing with well-financed and well-staffed law firms with vast financial and personnel resources, which can put up stiff legal obstacles for prosecutors to overcome. The effort is often expensive and time-consuming, especially for prosecutors who have limited staff and are facing these challenges for the first time. The following ideas on consolidating resources may be worthy of exploration.

**Sharing information.** Local prosecutors cited a need for a centralized information clearinghouse and brief bank to allow prosecutors to benefit from the collective knowledge and experience of their colleagues nationwide. For example, prosecutors in small communities could draw on the experience and wisdom of prosecutors in large urban centers. Such a clearinghouse could also contain information on alternative sanctions, innovative sentencing, and other enforcement techniques. It would be especially useful in relatively new areas of prosecution such as environmental and workplace-related crimes.

**Automation.** The potential of computers to coordinate work among investigators in different agencies could be more fully explored. Agencies often have cases stored in a computer data base, but have no way of knowing what cases other agencies are working on. A centralized computer data bank might be particularly useful to local prosecutors in situations involving certain types of financial fraud or in cases in which victims are located in widely scattered areas and offenders are mobile.

Many law enforcement agencies now use computers for record keeping and case management. These computer files could tell investigators when someone in their own agency is working on a particular case, thus reducing duplication of effort and facilitating information sharing.

**Computer networks.** Some prosecutors and investigators suggested that a local computer network linking agencies could provide access to a common data base of ongoing investigations and cases. The data base entries could contain information on the investigator (for example, name, telephone number, and agency) and informa-

tion on the case (for example, victims, suspects, and modus operandi). Investigators could use this data base to obtain both information on the case and the name of the investigator to coordinate activities. Such a network would be particularly useful in large urban areas where multiple agencies in different jurisdictions often work in geographical proximity.

Many technical details would require careful consideration. For example, when a computer network is installed, files would need to be protected so that only the investigator entering a case into the data base could alter information pertaining to it; other investigators would need appropriate security clearances to read a file without altering it.

**Regional laboratories.** Regional laboratories to serve multiple local jurisdictions would make economic sense for hard-pressed prosecutors, and the feasibility of setting up such laboratories to analyze chemical and environmental evidence should be explored. These laboratories could analyze and identify chemical samples quickly, thus enabling local prosecutors to respond to cases that Federal agencies may deem too small or too local in impact to pursue.

**Publicizing of prosecutions.** Finally, local prosecutors and other law enforcement agencies could take advantage of heightened public concern over corporate crime by publicizing their prosecutions of such offenses. The public needs to hear that local prosecutors regard these crimes as serious and to learn how to identify and report them. Ultimately, effective law enforcement depends on the support of concerned citizens who are willing to become involved.

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1. Corporate crime is a form of white-collar crime. The distinctive feature of corporate crime is that the offense is committed primarily for the benefit of an ongoing legitimate business enterprise, rather than for the individual who carries out the offense.

2. The sample was drawn from a mailing list provided by the National District Attorneys Association. Districts were classified as urban if they were located in a Metropolitan Statistical Area (MSA), as defined by the U.S. Census Bureau.

3. Data were abstracted from the *County and City Data Book (1988), Files on Diskette*. U.S. Bureau of the Census.

4. A multiple regression analysis not discussed in this *Brief* confirmed the importance of resources, community context, and regional location in determining levels

of activity against corporate crime. The dependent variable in the regression analysis was a scale measuring the overall level of activity against corporate crime. To construct the scale, the prosecutors' responses to the question on how often the office typically prosecutes the selected corporate crimes (see table 2) were assigned ordinal ranks and summed. The independent variables were number of attorneys, presence of a special unit, level of retail employment, and region. All of the independent variables exerted statistically significant effects and collectively explained 40 percent of the variance in the activity scale.

5. Goldstock, R., 1991. "The Prosecutor as Problem Solver." Occasional Paper from the Center for Research in Crime and Justice, X. New York University School of Law.

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