Prosecutor's Perspective

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Editor's Note:

This issue of *Prosecutors Perspective* takes a slightly different approach than have previous issues. *Prosecutors Perspective* is designed to acquaint prosecutors with research that will assist them in producing quality results. Generally, this research looks at empirical data and draws conclusions about whether activities that most district attorneys engage in daily produce meaningful differences.

The current issue addresses a new area: corporate and environmental crime. In doing so, it concentrates on acquainting prosecutors with the possibilities, by showing what is going on nationally. The material in this issue inventories the various corporate and environmental approaches to provide district attorneys with a menu of tools that they may wish to entertain.

Since prosecution of environmental and corporate crime is relatively new and infrequently used, research evaluating whether these tools reduce such crime is slight. What can be concluded, however, is that the criminal problems addressed are significant and that increasingly district attorneys are using state laws to prosecute what previously was almost entirely a federal matter.

Because this is a semiannual publication, we review important articles even if they are outside the main theme of the issue. Consequently, community policing, victim-offender mediation, and new areas for attacking drugs also are reviewed in this issue.

The reviewers of all the articles are among the nation's most talented district attorneys. After you read their comments, you may wish to order the full studies through APRI.

Local Prosecution of Environmental Crime (Part Two: Chapters 3-10)

Reviewed by Gil Garcetti, District Attorney
Los Angeles County (Los Angeles), California

Review of:

Theodore M. Hammett and Joel Epstein, "Local Prosecution of Environmental Crime," Part Two: Chapters 3-10, National Institute of Justice *Issues and Practices* (Washington, D.C.: U.S. Department of Justice, June 1993).

Environmental crime is a focus area for local prosecutors that has developed only in the last decade. In a trend that has paralleled and sometimes preceded increased criminal enforcement at the federal level, a number of district attorneys and other local prosecutors throughout the country have made their presence strongly felt in dealing with environmental violations.

As in other areas of non-traditional case specialization, the available accounts of local enforcement efforts in environmental law often have been primarily anecdotal. Thus, guidance for prosecutors interested in targeting environmental crimes has not been easy to obtain. With their study of local environmental prosecution efforts, funded by the National Institute of Justice, Theodore Hammett and Joel Epstein have helped to fill that gap.

"Local Prosecution of Environmental Crime" describes the experiences of five local prosecutors' offices in pursuing environmental violations, and outlines various strategies that have proven to be effective in jurisdictions of widely differing sizes. As such, it represents a compilation of information that should be valuable to any local prosecutor contemplating a role in environmental law enforcement.

A prosecutor in the environmental area must be open to novel or unusual sources of case generation.

In Part Two, "Developing More Effective Local Prosecution of Environmental Crime," the report seeks to encourage local involvement in the field and summarizes the information that the authors believe is necessary for prosecutors to be successful. Using both text and charts, the report provides a concise overview of the investigation and prosecution stages of environmental enforcement actions. Several useful appendices also are included; noteworthy among these is a comprehensive resource index for those seeking more detailed information.

Perhaps the first observation to be made is that a prosecutor in the environmental area must be open to novel or unusual sources

of case generation. Traditional police case development is more the exception than the rule, and regulators, environmental advocacy groups, and even private citizens are more often the sources of potential cases in this realm. Secondly, a focus on environmental enforcement gives rise to a number of concerns, including the need for reciprocal training for lawyers and regulators, and acquisition of specialized laboratory resources.

The touchstone of success starts with leadership from the local prosecutor.

This is not to say that district attorneys should be hesitant to take on environmental cases. As the authors demonstrate, both large and small prosecutors' offices can and do operate successfully in pursuing environmental offenses.

The touchstone of success starts with leadership from the local prosecutor. Most environmental enforcement efforts by non-prosecutors are administrative and civil in nature, with a strong emphasis on "compliance." Environmental regulators tend to view the regulated community as their clientele, and ordinarily have no experience with criminal sanctions. This process works well for the majority of businesses that operate in good faith, but for the recalcitrant few who put the environment at risk, it must give way to a more enforcement-oriented approach. For this reason, the prosecutor usually must take the lead.

As the report demonstrates, even small offices with limited resources can have a role. One deputy working part-time in this specialized area can be effective if the requisite motivation exists. The deterrent effect of using criminal and civil prosecutions can be dramatic in the environmental area, particularly because environmental violators, more than most criminals, use a cost-benefit calculation. The high cost of compliance with the applicable state statutes and regulations is much more likely to be borne if corporate officials know they are personally at risk of being prosecuted for failures to comply.

In some instances, a major environmental incident will create the public and political impetus for the creation of a specialized prosecutor's unit — an Exxon Valdez oil spill, for example, or the notorious 1985 Chicago case involving a worker's death due to cyanide poisoning (*Illinois v. Film Recovery Systems*). But even in the absence of such a dramatic development, prosecutors who are already active in this area generally have hit a responsive chord with the public. Most people view this as an important area, and many even will characterize environmental offenses as being equivalent to violent crimes, due to the threats to human health that they often pose.

The authors provide advice derived from the experiences of the offices profiled: insist on specialization and vertical prosecution, and involve regulators (e.g., sanitation districts, health departments) at an early stage and make them full partners in the effort. Moreover, lawyers need to be trained in the relevant scientific and technical areas, just as regulators must be acquainted with evidentiary requirements and chain of custody issues. The environmental defense bar is growing more sophisticated, but in view of the inherent public appeal that these cases have, prosecutors should be able to stay ahead of their opposition if their deputies are conscientious.

The deterrent effect of using criminal and civil prosecutions can be dramatic.

Given the overlay of criminal, civil, and administrative agency sanctions, one key cautionary note is sounded: maintain communication with the entire regulatory community, in order to not run afoul of each other inadvertently. For example, sometimes double jeopardy provisions are triggered by successive penalty actions, or an estoppel issue is raised by agency action that has an impact on the criminal case.

The authors' conclusions are clear: in the 1990s, local prosecutors can and should be active in the environmental arena. The public is likely to view it as a legitimate mission, even in the absence of a major disaster or environmental threat. As in other specialized areas of prosecution, prosecutors who are entering the environmental area can benefit from the experiences of others who have faced similar challenges. "Local Prosecution of Environmental Crime" is a helpful collection and analysis of these experiences.

Criminal Opportunity and the Hazardous Waste Offender: Confronting the Syndicate Control Mystique

Reviewed by Edwin L. Miller, Jr., District Attorney
San Diego County (San Diego), California

Review of:

Donald J. Rebovich, "Criminal Opportunity and the Hazardous Waste Offender: Confronting the Syndicate Control Mystique," in *Dangerous Ground: The World of Hazardous Waste Crime* (New Brunswick, NJ: Transaction Publishers, 1992).

A theme of numerous published works is that organized crime has moved heavily into illegal dumping of hazardous waste. Thus, perhaps the most effective way to deal with environmental crime would be to prosecute organized crime families. In "Criminal Opportunity and the Hazardous Waste Offender: Confronting the Syndicate Control Mystique," Donald J. Rebovich disagrees with the premise.

In this chapter of his book, Rebovich acknowledges that some organized crime activity may occur in hazardous waste disposal, but he concludes that the form and volume of hazardous waste crime is driven not by criminal syndication but by criminal opportunism. He suggests that firms and individuals already in or dependent upon the hazardous waste disposal business are breaking the criminal law primarily by cutting economic, regulatory, and environmental corners.

Rebovich researched characteristics of hazardous waste offenses and offenders in Maine, Maryland, New Jersey, and Pennsylvania. He chose those states, he said, because they "demonstrate high concentrations of known hazardous waste crime within a context of diligent state law enforcement efforts." He examined 71 hazardous waste criminal cases between 1977 and 1984 involving 121 individual defendants and 70 corporate defendants, inspecting the criminal case documentation and interviewing the prosecutors.

[H]azardous waste crime is driven not by criminal syndication but by criminal opportunism.

In Maine, Maryland, and Pennsylvania, where the largest category of offending firms was hazardous waste generators, offenses committed by "the acts of a formal, criminal monolith were rare." Criminal offenses by hazardous waste generators were organized only on the most basic level, usually taking the form of simple criminal conspiracies. These simple conspiracies were designed primarily for profit without the typical hallmarks of traditional racketeering syndicates, such as threats of violence and corruption of officials.

In New Jersey, treatment/storage/disposal (TSD) facilities were the largest category of offender. The high number of TSD defendants in New Jersey was attributed to that state's escalating volume of hazardous waste, coupled with early enforcement emphasis on TSDs. There was some limited evidence that organized crime family associates had infiltrated the TSD industry. This takeover was typically initiated by organized crime becoming a benefactor to financially-strapped TSD operators.

Criminal offenses by hazardous waste generators were organized only on the most basic level, usually taking the form of simple criminal conspiracies.

Among criminal hazardous waste offenders, the study found a prevalence of small (fewer than 50 employees) generating firms with low organizational complexity. This Rebovich attributes to the ease of discovery of their criminal behavior and clearer culpability levels within the organizational structure. Larger firms are less likely to form contractual agreements with outsiders, and thus are better insulated from discovery. Also, larger companies are more apt to dispose of hazardous waste on site, again avoiding detection. Further, larger firms generally are helped by the so-called "regulatory officer's technological vulnerabilities" — enforcement's inability to understand complex manufacturing processes.

Rebovich also found that theretofore legitimate TSD facilities turned to crime when the facility experienced an increase in waste load that it was incapable of properly treating. Initially, the conduct would be episodic, then would become a more consistent pattern, due to ineffective regulation, financial problems, and competitive pressures. These facilities also would hire employees with criminal records, anticipating that they would be more likely to comply with criminal directives.

Rebovich asserts that the increase in hazardous waste crime may be due in part to amendments to the Resource Conservation and Recovery Act of 1984, which brought previously unregulated industry procedures under the hazardous waste law. This new cost of compliance to small generators is prohibitive and increases the incentive to illegally dispose. In addition, New Jersey has severely limited the available outlets for legal disposal, increasing the chance that handlers of hazardous waste will opt for illegal disposal.

Among criminal hazardous waste offenders, the study found a prevalence of small...generating firms with low organizational complexity.

If enforcement focuses too much on syndicate crime, Rebovich fears that valuable enforcement resources will be diverted from generators and TSDs. Instead, he recommends that enforcement be redesigned to include strategies for eliminating industry-specific criminal opportunities — especially those that arise when laws, regulations, and market developments change.

Although the article makes a positive contribution to strategizing on environmental enforcement, there is some difficulty in accepting Rebovich's conclusions based on the dated research used. The cases examined for this study are between 10 and 17 years old, and were apparently used by the author in 1986 in another article. Because criminal environmental enforcement law is a dynamic field, it is inappropriate to use such dated material. The conclusions reached may have been relevant in the mid-1980s (and may, in fact, be valid today), but new studies should be done to verify those results before we can confidently base prosecutorial policy on them.

Community Context and the Prosecution of Corporate Crime

Reviewed by Stephanie Tubbs Jones, Prosecuting Attorney
Cuyahoga County (Cleveland), Ohio

Review of:

Michael L. Benson, Francis T. Cullen, and William J. Maakestad, "Community Context and the Prosecution of Corporate Crime," in Kip Schlegel and David Weisburd, eds., *White Collar Crime Reconsidered* (Boston, MA: Northeastern University Press, 1992).

The increasing incidence of economic crime is beginning to attract the public's attention. People are discussing the lawyer who stole millions of dollars from his client or the investment broker's theft of her client's funds. In "Community Context and the Prosecution of Corporate Crime," Michael Benson, Francis Cullen, and William Maakestad seek to determine the trends of economic conditions and sociological factors and their influence on the level of prosecutorial activity against economic crime.

The availability of resources and expertise in prosecutors' offices affects the level of corporate crime prosecution.

The researchers attempt, through various formulas, to evaluate prosecutorial activity against corporate crime. They focus their analysis on consumer, insurance, and securities fraud; tax violations; false claims; illegal payments; workplace-related and environmental offenses; and unfair trade practices. They sent questionnaires to district attorneys in metropolitan areas to determine the impact on prosecution of 1) the characteristics of the prosecutors' offices, and 2) the social and economic characteristics of their communities. The first set of characteristics included both the resources (i.e., number of attorneys) available for prosecution of corporate crime and the prosecutors' attitudes toward using their resources for this type of activity.

For the second set of characteristics, the authors focused on two important aspects of community context: legal culture and economic structure. The analysis of legal culture included a comparison of regions. For example, historically the South has held conservative attitudes towards regulation of corporations' economic activities; consequently, prosecution of corporate crime was expected to be weaker in southern states than in northern states. Economic structure variables included both the strength of the local economy and the degree of economic specialization. The researchers hypothesized that

"where the local economy is weak or dominated by a few large employers community demands for corporate crime control will be reduced."

[It] is disturbing to think that society's concerns with different types of crimes are determined by economic conditions.

Using a variety of statistical analyses, the research produced several conclusions:

- The availability of resources and expertise in prosecutors' offices affects the level of corporate crime prosecution.
- Office culture and attitudes toward corporate crime prosecution have little effect on the level of activity.
- Population size influences activity in this area, both directly and indirectly, through the number of attorneys available for prosecution.
- Economically strong areas, with high per capita income, are more likely to have a special unit for corporate crime prosecution and to conduct more prosecutions.

[T]he prosecution of corporate crime requires more time, more personnel...and more money than the prosecution of non-economic crimes.

- Geographic areas with a high degree of manufacturing specialization are less likely to have either a specialized unit or a large number of attorneys.
- Contrary to prediction, region of the country (as an index of community legal culture) has no effect on the level of activity.
- In economically deprived areas, more attention and resources are directed to street crime and less to corporate crime.

The corporate defendant is more likely to be required to make restitution and to be placed on probation.

While it is easy to accept the basic conclusions of the article and even to agree with the assumption that corporate criminals commit their crimes because they believe that they will not be caught or punished, it is disturbing to think that society's concerns with different types of crimes are determined by economic conditions. However, prosecutors are forced to accept certain facts about corporate crime. First, the prosecution of corporate crime requires more time, more personnel (including in some instances special expertise), and more money than the prosecution of non-economic crimes. Second, if both corporate and non-corporate defendants are convicted, the typical non-corporate defendant is more likely to face jail time. The corporate defendant is more likely to be required to make restitution and to be placed on probation. The combination of these two facts may deter prosecutors from vigorously pursuing corporate crime.

The article presents an interesting analysis of a complex and frustrating area. The factors that influence prosecutors and society in general in their views towards prosecuting corporate crime should continue to be analyzed to help explain why corporate crime is placed low on a scale of social importance. All crimes, violent or nonviolent, corporate or non-corporate, are real to the victims, and each victim deserves the protection of the law.

Local Prosecution of Organized Crime: The Use of State RICO Statutes

Reviewed by Michael D. Schrunk, District Attorney
Multnomah County (Portland), Oregon

Review of:

Donald J. Rebovich, Kenneth R. Coyle, and John C. Schaaf, "Local Prosecution of Organized Crime: The Use of State RICO Statutes," Bureau of Justice Statistics *Discussion Paper* (Washington, D.C.: U.S. Department of Justice, October 1993).

Donald Rebovich, Kenneth Coyle, and John Schaaf of the American Prosecutors Research Institute (APRI) present the first published review of prosecutors' use of state Racketeer Influenced and Corrupt Organization (RICO) statutes. This brief and straightforward report on "little RICO" statutes in the 29 states that have them on their books identifies how state RICO statutes are used, examines their strengths and weaknesses, and comments on some changes that might encourage prosecutors to use RICO statutes more often.

Prosecutors' reasons for using state RICO statutes included the potential for stiffer penalties and the versatility of the sanctions.

The APRI study relies principally on the results of a mail and telephone survey of 379 local prosecutors' offices. Of the 150 offices that responded to the survey, 37 said that they had experience in using either state RICO statutes (criminal and/or civil), "RICO-like" statutes, or a combination of both. Prosecutions were not limited to the largest jurisdictions but were present in all sizes, verifying the statute's applicability across jurisdictions. The small number of prosecutors' offices reporting use of state RICO statutes during the years surveyed (1989-1991) is not surprising, for only 29 states have enacted these statutes, mostly since 1980 — a full decade after enactment of the federal RICO law.

Prosecutors' reasons for using state RICO statutes included the potential for stiffer penalties and the versatility of the sanctions. When these statutes were employed, they were most frequently used in prosecuting drug trafficking and distribution, gambling, consumer fraud, and fencing/provision of illegal goods.

This study indicates that at the present time RICO statutes are not the statutes of choice among prosecutors, but are used sparingly and only in certain circumstances. Offices using RICO statutes employed them in 174 cases. Yet these same offices reported 700 other cases against organized crime in which only

the standard state statutes were utilized. Further research and analysis will be necessary to clarify the elements and factors that should be considered to determine the most appropriate circumstances for charging defendants with state RICO violations.

Prosecutors who are looking for suggestions for changing existing state RICO statutes or establishing such statutes would benefit from the recommendations offered in this report. They include:

- widen the scope of predicate offenses;
- simplify the language;
- weaken provisions dealing with private claims of action to prevent use of the statute by private sector plaintiff attorneys;
- include specific procedural provisions to protect the state from constitutional challenges and provide the defendant with defined rights;
- separate conviction from the state's forfeiture proceedings;
- replace current *in rem* forfeiture with *in personam* jurisdiction and substitute asset provisions; and
- include administrative forfeiture provisions.

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The report also calls for clear policy guidelines for the application of RICO statutes. Elements to consider include:

- nature of the offense;
- extent of the offense;
- amount of criminal activity;
- time span of criminal activity;
- appropriateness to state RICO framework;
- existence of criminal enterprise;
- number and types of individuals involved;
- evidentiary advantages possible (inclusion of predicate acts); and
- budgetary constraints, such as staff requirements.

The APRI article serves as a reminder to prosecutors to take a hard look at all available tools and to review the available research.

The APRI study does not answer all possible questions, but it may point the way for further research on this fairly recent prosecutorial tool. Although use of "little RICO" statutes may not be widespread, they may be beneficial and thus deserving of prosecutors' attention and consideration. The APRI article serves as a reminder to prosecutors to take a hard look at all available tools and to review the available research. The result may be policies that are both better articulated and more successfully applied.

Precursor and Essential Chemicals in Illicit Drug Production: Approaches to Enforcement

Reviewed by Dee Joyce-Hayes, Circuit Attorney
St. Louis, Missouri

Review of:

James R. Sevick, "Precursor and Essential Chemicals in Illicit Drug Production: Approaches to Enforcement," National Institute of Justice *Issues and Practices* (Washington, D.C.: U.S. Department of Justice, October 1993).

In "Precursor and Essential Chemicals in Illicit Drug Production: Approaches to Enforcement," James Sevick of Jefferson Research, Inc., focuses on the necessity of using law enforcement methods that prevent illegal drugs from reaching the marketplace. The tool that he offers for such a supply-side attack is intervention in the manufacturing process: preventing the "diversion of precursor and essential chemicals from legitimate uses in industry to the manufacture of illicit drugs." Interdiction of the raw materials required to manufacture illegal drugs and seizure of the manufacturing sites can be effective tools to reduce the supply of illegal drugs on the street.

With the exception of marijuana, every controlled substance in widespread illegal use is a manufactured product, employing some type of chemical processing. For example, the production of cocaine requires a series of steps to turn coca leaves into cocaine hydrochloride, and then into crack. Each step uses substances such as lime, kerosene, sulfuric acid, ammonia, and hydrochloric acid. The salts, solvents, acids, and other chemicals commonly used as reagents and catalysts in the production of drugs are known as "essential chemicals." Such essential chemicals do not become part of the drug, but without them the drug cannot be produced.

Interdiction of the raw materials required to manufacture illegal drugs and seizure of the manufacturing sites can be effective tools to reduce the supply of illegal drugs on the street.

Some illegal drugs incorporate chemicals into their molecular structure. Methamphetamine, for example, incorporates a chemical compound known as ephedrine, a substance commonly found in over-the-counter diet pills and cold medicines. Without ephedrine or a similar compound, "meth" cannot be made. Chemicals like ephedrine, which are integral to the ultimate drug product, are known as "precursor chemicals."

A knowledge of precursor and essential chemicals is important to law enforcement for two reasons: first, preventing the diversion of these chemicals to clandestine laboratories ("clan labs") can reduce the amount of illegal drugs being manufactured and distributed; second, many of these chemicals are toxic or create toxic wastes that are dangerous to health and safety and are hazardous to the environment. This *Issues and Practices* report seeks to educate law enforcement professionals about the role of precursor and essential chemicals in the illegal drug industry; how these chemicals are being diverted from legitimate to illegal uses; the need for legislation to support enforcement in this area; and the need for cooperation among the many state and federal agencies that play a role in controlling the diversion and illicit use of these chemicals.

The opportunities for diversion are innumerable, and detection of illegal usage can be difficult.

Prevention strategies are complicated by the fact that these chemicals have many legitimate uses and are easily obtainable. The opportunities for diversion are innumerable, and detection of illegal usage can be difficult. Furthermore, many of the precursor and essential chemicals can be used interchangeably. Methods of diverting these chemicals to illicit use also are numerous: theft from shipments or warehouses; laundering through middlemen; smuggling; relabeling or mislabeling containers; using legitimate front companies; and "smurfing," which is buying a chemical in a quantity just under the amount that suppliers are required to report.

[T]hrough training and legislation many controls can be effected to reduce the availability of precursor and essential chemicals to illegal drug manufacturers.

Despite these difficulties, through training and legislation many controls can be effected to reduce the availability of precursor and essential chemicals to illegal drug manufacturers. Improved record-keeping throughout the chemical distribution chain, consistent and complete labeling, more effective prevention of smuggling, detailed customer records, advance notification prior to the shipment of certain chemicals, and the right of authorities to suspend or seize shipments under suspicious circumstances are among the measures needed to combat chemical diversion.

Seizing diverted chemicals and closing "clan labs" can be dangerous. Police and prosecutors need to be aware of the inherent problems before implementing this enforcement strategy. Health and environmental hazards, the necessity of dealing with numerous federal and state regulations pertaining to toxic materials, the cost of clean-up operations, and the possibility that the seizing agency may be responsible for these costs — all are issues for which prosecutors and other law enforcement personnel must be prepared.

Under the Chemical Diversion and Trafficking Act of 1988, the United States currently regulates 33 precursor and essential chemicals. Equivalent regulatory and law enforcement powers are needed at the state and local level. According to a study by the American Prosecutors Research Institute, only 18 states have enacted adequate legislation. However, as described by James Sevick, preventing criminals from obtaining the raw materials necessary to the manufacture of illicit drugs, along with shutting down the manufacturing sites, can be both difficult and useful weapons in the drug war.

Cross-Site Analysis of Victim-Offender Mediation in Four States

Reviewed by Peter S. Gilchrist, III, District Attorney
26th Prosecutorial District (Charlotte), North Carolina

Review of:

Mark S. Umbreit and Robert B. Coates, "Cross-Site Analysis of Victim-Offender Mediation in Four States," *Crime & Delinquency*, Vol. 39, No. 4, October 1993, pp. 565-585.

A practice theory of restorative justice is emerging that attempts to reduce the sense of vulnerability and anxiety suffered by crime victims. "Restorative justice" views crime not just as an offense against the state but as a violation of one person by another. According to this theory, costly punishment of an offender is less important than helping a victim to obtain closure of the incident. The most visible method of restorative justice is victim-offender mediation. When crime victims are able to meet and talk face to face with their offenders, victims may have the opportunity to receive answers to their questions about the crime, to express their concerns directly to the person who victimized them, and to have an influence on the penalty the offender will receive.

In the mediation process, victims of certain crimes usually meet with their offender in the presence of a trained mediator. It is considered important for the mediation programs to be voluntary for both offenders and victims. If the program is coercive for offenders, the forced participation is likely to result in anger that will be reflected in the offenders' actions when meeting with the victims. For victims, voluntary participation may allow them to regain a sense of power and control over their lives. To force them to participate may further victimize them.

It is considered important for the mediation programs to be voluntary for both offenders and victims.

More than 100 programs for victim-offender mediation now exist in the United States. Authors Mark Umbreit and Robert Coates conducted the first cross-site analysis of programs in juvenile courts in Albuquerque, New Mexico; Austin, Texas; Minneapolis, Minnesota; and Oakland, California. The study examined the following questions. Who participates in mediation and why? How does the mediation process work? How do the participants evaluate it? What do court officials think about mediation? What were the immediate results of mediation? Does mediation have an impact

on the completion of restitution? What is the impact upon recidivism? The analysis utilized pre- and post-mediation interviews of participants and quantitative and qualitative data collection. In three of the sites, the mediation programs were operated by non-profit organizations.

Surprisingly, the victims believed helping the offenders was as important as recovering their loss.

The four sites included 2,799 victims and 2,659 offenders referred by the juvenile courts during 1990 and 1991. Property crimes accounted for 83 percent of the referrals, and crimes of violence, primarily minor assaults, for 17 percent. Eighty-five percent of the cases were referred prior to formal adjudication as part of a diversion effort, and the remainder were referred after adjudication. The offenders' ages ranged from 7 to 18; 86 percent were males and 14 percent were females. Most of the offenders referred had no prior criminal conviction, but those who did had from two to six prior convictions. Minority juveniles made up 46 percent of the referrals.

Surprisingly, the victims believed helping the offenders was as important as recovering their loss. Of less importance but still significant was the opportunity to tell the offender of the effect of the crime and to get answers to their questions about the crime. The offenders considered "making things right" most important, followed by having the chance to apologize to the victim and, finally, to be able "to be done with it."

Programs in the four sites followed a similar four-step process: intake, preparation for the mediator, mediation, and follow-up. The preparation included a separate meeting with victim and offender to hear each one's version of what happened, to explain the process, and to set a date for the mediation. The mediation session, usually lasting an hour, focused first on the facts of the crime and the feelings of the parties, then on the victim's loss and negotiation of a mutually satisfying agreement for restitution. During the follow-up phase, compliance with the agreement for restitution was monitored; if conflict developed, another meeting was scheduled to resolve it. The mediators received approximately 20 to 25 hours of training in mediation skills and procedures for their programs.

The offenders considered "making things right" most important.

Generally, the mediations resulted in agreements for restitution. Often these included personal service to the victim or community service. Participating victims were 22 percent more satisfied with how the criminal justice system handled their cases than those who did not participate in mediation. Both victims and offenders who participated in mediation felt that the system had more fairness. The completion of restitution was substantially higher for participants. The impact of mediation on recidivism was not statistically significant. The authors posit that it is naive to expect an intervention of four to eight hours per case to dramatically alter criminal and delinquent behavior when behavior is influenced by many other factors.

Both victims and offenders who participated in mediation felt that the system had more fairness.

For a prosecutor to be able to refer a substantial number of juvenile cases before adjudication to another agency is an attractive prospect. To have more than 90 percent of cases resolved to the satisfaction of the victim and the offender without further court involvement is even more attractive. Restorative justice, implemented through mediation, is a concept that is worthy of close review by prosecutors if it addresses the needs and interests of the victim, the offender, and the community — and if it can balance community safety and accountability for the juvenile offender.

Community Policing in Madison: Quality From the Inside Out

Reviewed by Norm Maleng, Prosecuting Attorney
King County (Seattle), Washington

Review of:

Mary Ann Wycoff and Wesley K. Skogan, "Community Policing in Madison: Quality From the Inside Out," National Institute of Justice *Research Report* (Washington, D.C.: U.S. Department of Justice, December 1993).

Community policing should not be an issue that sparks much debate any more. After all, the basic idea behind community policing — the cop on the beat interacting with the residents and business owners of the neighborhood — is the history of policing in America. It is also its future.

Community policing is the real work that police do. This was recognized almost 20 years ago by James Q. Wilson in his important book, *Thinking About Crime* (Basic Books, 1975):

> The growing realization among scholars and administrators of the importance of the service provision, order-maintenance function of patrolmen (sic) has led some experts to dismiss or downplay the crime control function. A police department is often thought "advanced" or "progressive" to the extent it emphasizes community service rather than crime prevention. To a degree, this is well and good: for too long, police officers were given little training and no supervision in the performance of their most frequent duties, with the result that many citizens felt poorly treated and many officers felt frustrated and unsure of their mission.

All crime is local. The community is where crime is either tolerated or prevented. The community environment determines the tolerance level a neighborhood has for illegal activity, as Wilson and George Kelling discussed in "Broken Windows: The Police and Neighborhood Safety" (*Atlantic Monthly*, March 1982). Police and other agencies of local government can work together with local residents to improve the environment and lower the tolerance level for disorder. This is the essence of modern community policing.

"Community Policing in Madison: Quality From the Inside Out" by Mary Ann Wycoff and Wesley Skogan is an exhaustive three-year evaluation of the effort to reintroduce community policing to the Madison (Wisconsin) Police Department. The unique aspect of this strategy was the merging of service-oriented policing with a major internal police management organizational change — to bring about change in the police culture from "the inside out."

In a classic laboratory fashion, one-sixth of the police department, serving one-sixth of the population, was carved out as the Experimental Police District (EPD). The EPD was charged

with implementing "Quality Policing," a mission combining community-oriented policing, problem-oriented policing, and employee-oriented management. The last of these concepts is probably the most alien to police culture. Total Quality Management (TQM) has found converts in the business sector, but has rarely been considered compatible with the paramilitary leadership chain associated with police management.

[T]he new management structure aimed to deliver improved services to the community by improving employee working conditions and morale.

In Madison, the new approach defined the role of managers as facilitators responsible for improving systems, involving employees in decision making, promoting team work, encouraging risk taking and creativity, and giving and receiving feedback from employees. Two other requirements were deemed essential to the success of the new management structure: a healthy work environment and physical decentralization. Decentralization allowed internal and external goals to be achieved simultaneously — small employee work groups to improve working conditions and closer proximity to citizen "customers" being served. In short, the new management structure aimed to deliver improved services to the community by improving employee working conditions and morale. In return, the citizens' involvement with the police would increase, as would their satisfaction with police performance. Fear and victimization would decrease as neighborhood conditions improved.

The strategy appears to have worked. After an implementation period of two years, the study concluded that a new participatory management approach was successfully implemented in the EPD; employee attitudes toward the organization and toward their work improved; and physical decentralization was accomplished. These changes were associated with a reduction in citizens' perceptions that crime was a problem in their neighborhood and an increase in the belief that police were working on problems of importance to people in the neighborhood.

The authors conclude that the most dramatic finding in their project was that it is possible to "bend granite" — to change a traditional control-oriented police organization into one in which employees become members of work teams and participants in decision-making processes. The internal management changes in the EPD brought benefits both internally and externally, including indications of reductions in actual crime and reduced levels of concern about crime. While the study does not conclude that internal management change is necessary to implement the external change of community policing, it uses Madison's experience as a demonstration of the positive symbiotic impact of the "inside out" approach.

The National Institute of Justice *Research Report* is replete with charts and tables displaying numerical conversions of survey answers, injecting statistical precision into a field that does not easily lend itself to mathematical analysis. There is a certain irony in attempting to justify transition to community policing using statistics. The goal of community policing is not to increase arrest numbers, but to prevent crime from occurring in the first place by building rapport between citizens and patrol officers. In fact, traditional policing's statistical measurements of success probably will decline with the introduction of community policing. The researchers acknowledge a need to develop objective measurements of the effectiveness of community policing.

The goal of community policing is not to increase arrest numbers, but to prevent crime from occurring in the first place.

There are many good reasons for local police departments to implement both community policing and a decentralized employee-oriented management structure. This study will provide ammunition supporting a new direction for those who must have empirical data to justify new policy initiatives. Others just may want the comfort of knowing that the homework done by researchers confirms that community policing is the right thing to do. Arguments in support of a return to community policing do not need to be overly complicated. As Professor Wilson observed in 1975: "Police time spent driving the streets waiting for something to happen is not time well spent."

Environmental Crime Prosecution at the Local Level: A Survey of Large Jurisdictions

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The Survey

In early 1994, APRI completed a research project that explored the status of environmental crime prosecution at the local level.[1] The purpose was to identify the needs of local prosecutors of environmental offenses and the key characteristics of local environmental crime prosecutions. This research brief from APRI's Research Center summarizes the findings of a national mail survey of large jurisdictions.

A questionnaire was mailed to local prosecutors' offices in jurisdictions of more than 250,000 population. Of 178 offices, 100 responded (a 56 percent response rate), representing 32 states, with concentrations in California (15), Florida (11), New York (9), New Jersey (8), and Texas (7).

Results

Extent of Prosecutions

The number of criminal and civil environmental offense prosecutions for 1990, 1991, and the first six months of 1992 showed a dramatic rise. From 1990 to 1991, the number of civil cases rose from 286 to 318. During the first six months of 1992, the number rose to 470, a 48 percent increase over the entire previous year.

The surge in criminal prosecutions was even greater. From 1990 to 1991, the number jumped from 381 to 756, a 98 percent increase. During the first six months of 1992, the number reached 882, a 17 percent increase over all of 1991 and a 132 percent increase over 1990.

Offense Characteristics

Slightly more than half of the respondents reported that more than 50 percent of the environmental cases that they prosecuted involved improper disposal of wastes. Only 6 percent of the respondents said that more than 50 percent of their prosecuted cases were for transportation violations. Improper treatment and other violations represented negligible percentages of the total environmental prosecutions.

Prosecutions by waste type were highest for hazardous wastes. The number dropped significantly for solid waste and was very small for medical/infectious waste violations.

Offense Identification

Respondents were asked to indicate the most common methods of offense identification. The highest percentage (35 percent) was for referrals from environmental agencies, with referrals from local law enforcement at 28 percent. Emergency response and citizen reports each registered only 14 percent, and proactive investigation only 7 percent.

Decision to Prosecute

Ninety-two percent of the prosecutors agreed or strongly agreed that the degree of environmental harm was the most important factor in the decision to criminally prosecute environmental offenses. This was followed closely by the degree of criminal intent of the offender, with 87 percent agreeing or strongly agreeing. The offender's record also influenced the decision to prosecute, with 72 percent agreeing or strongly agreeing.

Insufficient evidence was identified as the most significant factor in decisions to reject criminal prosecution in environmental cases, as reported by 76 percent of the respondents. Only 16 percent pointed to lack of resources as an important reason for rejecting cases. Also noteworthy is that while 27 percent said that referrals to state or federal agencies was an important reason for rejecting local criminal prosecution, 17 percent claimed that the active securing of cases from local prosecutors by state and federal agencies was an impor-

tant explanation for the absence of local criminal prosecution.

In determining case priority among cases accepted for prosecution, prosecutors were most concerned about the level or threat of harm. Of much less significance were the high profile of the offender, the type of environmental offense, and the cost of investigation and prosecution.

Ability and Willingness to Prosecute

Questions were asked about the extent of support that prosecutors receive to prosecute environmental crimes vigorously, the types and amounts of resources available, and the technical assistance needed to prosecute effectively.

Most respondents said that they receive sufficient support for prosecuting environmental crimes. However, 83 percent also expressed a need for additional resources to conduct their work satisfactorily. Fifty-three percent said that competition for office resources affects the resources available for environmental prosecution. A sizable minority (42 percent) contended that the investigation/prosecution of environmental crimes in their jurisdictions was compromised by competing community economic interests. While 89 percent said that laboratory facilities were available for waste sample analysis, 48 percent added that adequate funds were not available for conducting these analyses. Ninety-six percent also agreed that technical assistance/training is important for environmental prosecution investigators.

Evidentiary Standards and Technical Needs

Respondents were split in evaluating the complexity of environmental regulations — 36 percent saw them as too complex and 34 percent as adequate. However, 58 percent said that the criminal statutes in their jurisdictions were effective. Sixty-nine percent believed that these laws should be consolidated into more comprehensive statutory structures.

Indicating overwhelmingly a belief in the effectiveness of expert witnesses, prosecutors expressed a need for developing centralized information on available expert witnesses for environmental crime prosecution.

Plea and Trial Issues

Eighty-five percent of the sample believed that the environmental offender's offer to make restitution influences case disposition. Sixty percent also claimed that outside pressures to prosecute (by environmental interest groups, community groups, media) can result in the filing of cases. Only 25 percent believed that business and labor groups exert significant pressure to downgrade criminal charges.

Summary

As environmental crime emerges as a formidable challenge to the skills of the law enforcement community, APRI's research has tested the conventional wisdom that such crimes should be handled exclusively by federal and state prosecutors. Probably the most surprising discoveries are the volume of environmental crime cases handled by the large jurisdictions and the rate at which these prosecutions are increasing. These increases probably can be attributed to an increased familiarity with and confidence in investigating and prosecuting environmental offenses, rather than to a sharp increase in actual crimes committed. Public demand for a more active local approach also may have contributed to the increasing level of prosecution.

Although we now know more about local prosecution of environmental crime than we did, we need to learn more. For instance, more attention should be paid to characteristics of the local environmental offender and the offense, and how these characteristics compare to those of offenders and offenses at the federal level. We also are fairly uninformed about the decision-making dynamics of jurors in local environmental crime trials and what local prosecutors can do to affect such behavior. We know little about which sanctions are most effective in deterring criminal pollution without dampening innovative, legitimate business practices. And we lack knowledge about the preventive impact of public awareness programs for environmental crime control.

There is good reason to expect that as prosecutors in metropolitan areas continue their environmental crime programs, prosecutors in less populated jurisdictions may establish their own programs. Preliminary results of an APRI survey conducted as an adjunct to the present study reveal a growing trend toward local environmental crime prosecutions in some suburban jurisdictions. If this is a harbinger for other similar-sized districts, the answers to the research questions posed above will hold even greater meaning for the future.

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American Prosecutors Research Institute

The American Prosecutors Research Institute (APRI) is the research, technical assistance and nonprofit affiliate of the National District Attorneys Association. APRI is committed to being the leading source of national expertise in the prosecution function and to facilitating improvements and innovations in local prosecution. In pursuit of this mission, APRI has established programs providing a variety of services to state and local prosecutors.

National Center for Prosecution of Child Abuse

Established in 1985, the National Center serves as a central resource for prosecutors and other child abuse professionals responsible for handling criminal child abuse cases. In addition to sponsoring in-depth training conferences on investigating and trying child abuse cases, on abuse-related deaths and on parental abduction, the National Center participates in hundreds of local, state and regional training events. Publications include an authoritative manual, *Investigation and Prosecution of Child Abuse*; a monthly newsletter, *UPDATE*, containing information on emerging issues and effective strategies; annually updated state statutory and case law summaries; and special monographs. An extensive library and automated legal database back up the National Center's expert staff who respond to some 8500 calls yearly from prosecutors and others seeking technical guidance in preparing cases for court.

National Drug Prosecution Center

In 1987, APRI was awarded a grant from the U.S. Department of Justice, Bureau of Justice Assistance to establish the National Drug Prosecution Center. The mission of the Center is to train prosecutors to more effectively investigate and prosecute drug cases, to identify and document specific approaches to drug prosecution which can be implemented in local jurisdictions, and to develop model legislation to bring drug laws up to date. The philosophy and policy of the National Drug Prosecution Center is derived in large measure from the NDAA Drug Control Committee, a committee of district attorneys established by the NDAA Board of Directors. These front-line prosecutors and other trial court prosecutors give the Center's products a unique perspective combining legal analysis with insight that comes from handling drug cases day-to-day.

National Environmental Crime Prosecution Center

The goals of APRI's National Environmental Crime Prosecution Center include collecting and disseminating model statutes; assisting state and local prosecutors in developing and implementing new policies and practices; developing a resource collection and national statistics base; developing and disseminating training packages and publications to assist prosecutors in making the best use of laws currently available; and conducting research concerning environmental crime trends, characteristics, and prosecution methods to promote more proactive enforcement approaches.

Research Center

APRI's research and evaluation center is dedicated to the empirical study of many aspects of prosecution. The research center's staff is skilled in survey design and implementation, organizational analysis, and crime trend analysis as well as in methods of program evaluation. Research staff has experience in conducting studies in prosecutorial decision-making, prosecution-based case tracking systems, the development of prosecutor-directed narcotics task forces, the impact of criminal law revision, the impact of prosecutor-directed speedy trial programs, and the effectiveness of the prosecution of crimes against the environment.

National Traffic Law Center

The mission of the National Traffic Law Center (NTLC) is to improve the quality of justice in traffic safety adjudications by increasing the awareness of highway safety issues through the compilation, creation and dissemination of legal and technical information and by providing training and reference services to prosecutors, judges and others in the justice system. To accomplish this mission, the NTLC has developed a clearinghouse of resources including case law, model legislation, lists of experts, research studies, training materials and trial documents. The information catalogued by the Center covers a wide range of topics with particular emphasis on impaired driving issues. NTLC's newsletter, *Between the Lines*, is published quarterly. The Center was created in cooperation with the National Highway Traffic Safety Administration.

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