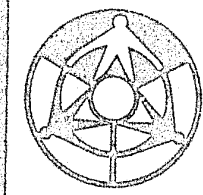


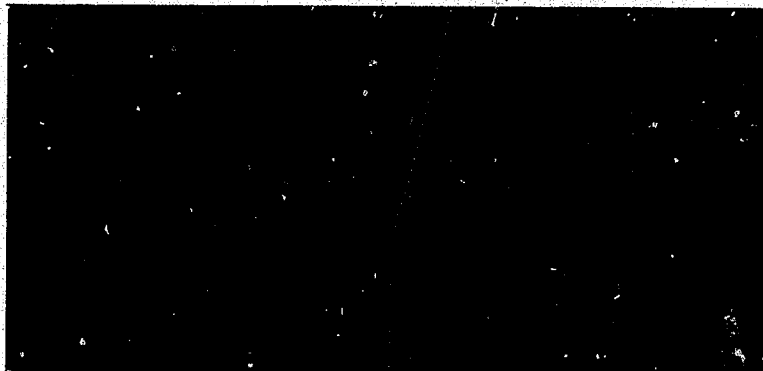
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THE AMERICAN UNIVERSITY

Criminal Courts Technical Assistance Project
Institute for Advanced Studies in Justice
The American University Law School
Washington, D.C.



DEVELOPMENT OF AN
ECONOMIC CRIME RESPONSE CAPABILITY:
TECHNICAL ASSISTANCE REPORT FOR THE
SAN FRANCISCO
DISTRICT ATTORNEY'S OFFICE

SEP 1976
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I. INTRODUCTION

This report presents findings and recommendations from an on-site technical visit to the San Francisco District Attorney's Office and Police Department on May 11-12, 1976. The visit was conducted by Mr. Herbert Edelhertz, Dr. Marilyn Walsh, and Mr. Michael Brintnall, under the auspices of the Criminal Courts Technical Assistance Project, Institute for Advanced Studies in Justice, the American University Law School, supported by the Law Enforcement Assistance Administration, U.S. Department of Justice.

The issues addressed by this assignment regarded: 1) development of a capability within the San Francisco District Attorney's Office and Police Department to respond to economic crime, and related abuses, e.g., consumer fraud, white-collar crime, public corruption, fencing, and organized crime; and 2) the most desirable and effective forms of interaction between these two agencies, in implementing and exercising such a capability. Special attention was paid to the development of a major frauds unit in the District Attorney's office.

These agencies have not previously been committed to special programs in the area of white-collar and related crimes and thus face the challenges of formulating policy and implementing programs in this law enforcement area. The purpose of this consulting assignment was to assist in the clarification of major policy and organizational issues, as discussed in the following chapters of this report, and to identify strategies and ideas helpful in this area.

We met with District Attorney Joseph Freitas, Jr., and Police Chief Charles R. Gain, with the Chief of the District Attorney's Consumer Fraud/White-Collar Crime Division, Mr. Raymond Bonner, with the attorney staff of that Division, and with the Chief of the Investigations Division, Mr. Ben Wood, in all day meetings on May 11, 1976. Mr. Brintnall then met individually with staff in the District Attorney's Office on the following day. Throughout our visit, everybody we talked with met us

with great cooperation and frankness, regarding plans and accomplishments. They freely discussed internal differences and difficulties. In these candid meetings, we made many additional specific recommendations, beyond those in this report, on an oral basis.

During and subsequent to these visits, the District Attorney's office was also supplied with several documents relevant to its task, including:

- (1) the Battelle Law and Justice Study Center Research and Evaluation Report on the Second Year of the Economic Crime Project, with particular reference to the empirical material on use of staff resources in investigations and prosecutions;
- (2) the section from the Battelle First Year Report on that project entitled "The Lawyer's Weapon for Combatting Economic Crime: the Statutes."

The objective of the following discussion and recommendations is to assist these San Francisco agencies in the development of the desired capability to address white-collar and related crimes. The challenges faced by these offices are urgent ones, but they are not unique. One measure of the success of our assistance to these offices may be the relevance of our observations and recommendations to other law enforcement agencies which might request similar technical assistance.

This report is divided into four parts, including this introduction. Part II presents an analysis of the existing situation in the District Attorney's office and the Police Department, with special attention to the development of a major frauds unit in the District Attorney's Office. It identifies major strengths and needs, and provides a general discussion of the issues involved. Part III presents our major recommendations regarding the problems identified in Part II, and discusses their potential impact. Part IV is a brief summary of this report.

II. ANALYSIS OF EXISTING SITUATION

The strengths, problem areas, and future needs of the San Francisco District Attorney's Office and Police Department in addressing economic and related crimes can be grouped under four major headings: 1. Mission; 2. Organization; 3. Investigation; and 4. Support. Each of these headings is broken down below into a number of discrete topics. In Part III of this report, specific recommendations, where appropriate, are presented according to this numbering scheme.

Throughout this Part II we will use the term "economic crime and related abuses" to refer to a program addressing white-collar crime, consumer fraud, public corruption, and organized crime in the broadest sense. Of major importance in understanding the needs and goals of the offices studied here is recognition that in the past there has been no programmatic effort addressing any of these areas in San Francisco. The need recognized by the District Attorney and Police Chief is not just to acquire additional capabilities in these areas but also to build up a balanced and coordinated program encompassing the broad range of these law enforcement challenges.

1. Mission

1.1 Coordinated Police and Prosecutive Effort

There are no apparent barriers to cooperation between the Police Department and the District Attorney's Office other than shortage of police resources to provide investigative services. The Chief of Police did indicate that when necessary, he would find some way to provide resources to handle specific cases. The extent of longer-range, permanent assignment of police investigators to economic crime and related areas cannot be determined at this time, because there is an on-going department-wide manpower utilization study in the Police Department.

We also explored the best ways in which the District Attorney's economic crime effort can best expand its ties with the Police Department.

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- a criminal enforcement emphasis is important to obtain police involvement, and to make maximum possible use of police skills and resources;
- a record of competent criminal prosecution can give added credibility to the office's efforts in detecting, investigating, and litigating or prosecuting other economic crime and related cases;
- criminal prosecution can maximize the likelihood of achieving deterrence.
- in the event of either successful criminal prosecution, or prosecutive declination, civil remedies are not precluded.

1.4 Public Information and Education

A public information and education program can contribute to the overall objectives of the District Attorney's office in addressing economic crime and related abuses in two ways, which may not be commonly recognized as being related to each other.

The first of these objectives is to educate consumers and the public to obtain assistance if victimized, to facilitate reporting of complaints, to inform potential victims how to avoid "rip-offs," and to seek deterrence through publicity. The Chief of the Consumer Fraud/White-Collar Crime Division is well experienced creating consumer information and education programs of this type.

The second objective of a public information and education program must be to make other investigative and regulatory agencies in the community aware that the office is now active and means business in pursuit of economic and related crimes, and that it is successful. According to staff we talked with, the District Attorney's office does not have a reputation

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Organization

The purpose of this...
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...the District Attorney's office.
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matter. In spite of the dominant theme of scarce resources, a major strength of the District Attorney's office in this regard has been the designation of at least four attorneys to work exclusively on consumer fraud and economic and related crimes.

2.1 Staff Assignments and Roles

Attorneys. Three of the four attorneys in the Division are predominantly interested in consumer fraud and consumer civil litigation. Only one is directly and solely committed to criminal prosecution. The extent to which these attorneys will continue to specialize in this way is not yet settled in this Division, because it is in initial organizing stages. It is worth noting in this context that four attorneys is considered in some studies to be the minimum number of attorneys in such a division to achieve specialization and economy of scale in operations.

Having only one attorney devoted to and experienced in major criminal case development and prosecution may be too little, and the Division may in the future find that other Division attorneys should work on criminal prosecutions and develop the requisite trial experience.

We commend the decision to have Consumer Fraud/White-Collar Crime Division deputies handle their own cases from beginning to end, rather than to refer investigations to other trial division deputies. The tentative plan to have misdemeanor court deputies handle the filing of misdemeanor cases, such as licensing and health department referrals, and have Consumer Fraud/White-Collar Crime Division attorneys try only those which will go to trial also appears workable, and consistent with the overall policies.

The Consumer Fraud/White-Collar Crime Division may find that some embezzlements currently tried by Criminal Division deputies assigned to non-violent theft are central to larger issues such as abuse of trust, and should maintain very close contact with these deputies. Many major embezzlements properly should be handled in a major frauds unit, although for organizational reasons this office may wish to keep the assignments

separate. Routine check cases and employee petty larceny or simple embezzlements belong in the Criminal Division and not in the Major Frauds Unit.

Investigators. One of the major problem areas in the District Attorney's office is the need for expanded and improved investigative resources to address economic and related crimes. Major aspects of this need, including the need for training, for more specialized investigative skills, and for resolving ambiguities in the relationship between the Investigation Division and investigators assigned to the Consumer Fraud/White-Collar Crime Division are discussed below, particularly in Part III.

A more formal system of making investigative assignments between Fraud Division attorneys and investigators is needed. There is lack of confidence between Division attorneys and investigators now assigned to the Division. The Division Chief, Chief of Investigations, and the District Attorney should consider making changes in this relationship. In the short run, a more formal, precise working relationship should be established between attorneys and investigators, perhaps involving written requests for investigation prepared by attorneys which become a permanent part of the investigation records.

Investigator assignments in the Consumer Fraud/White-Collar Crime Division might also be differentiated. One investigator might be selected or hired to supervise individual complaint-handling efforts, to mediate more complex complaints, and to coordinate intelligence from complaints. The remaining investigators could in turn be freed from run-of-the-mill complaint work, to concentrate on criminal investigation or preparation of major civil litigation based on complaints and leads from other sources.

Legal Interns and Volunteers. The Consumer Fraud/White Collar Crime Division is recruiting legal interns and part-time volunteers particularly for handling consumer complaints and related legal work. Outside foundation funding has been obtained to support some of these staff. The

office, and the Division Chief, should be complimented for the imaginative ways in which it has located and taken advantage of these resources.

Organizing and supervising interns and volunteers will raise special challenges for the Division, of which the permanent staff are well aware. Some of the specific issues regarding organizing for complaint handling are discussed below in Section 2.3

Clerical and Support Staff. Consumer Fraud/White-Collar Crime Division staff consider expanded clerical and support staff to be an area of major need, particularly in light of the office-wide shortage of support staff, and especially equipment. Equipment is discussed below in Section 4. One organizational question of importance to the Consumer Fraud/White-Collar Crime Division is the extent and ways in which clerical staff are integrated into the complaint-handling and prosecutive program. At present, in the throes of instituting a new records system and of gearing up for the intern and volunteer program, there is some confusion and dissatisfaction between attorneys and clerical staff. Clerical staff inevitably have fundamental roles in maintaining the pace and flow of complaint handling efforts. Steps will need to be taken to assure clerical staff fully understand and contribute to the prevailing operating system. An ideal time for this to take place will be the period of integration of intern and volunteer complaint-handling staff. Clerical staff should be given strong direction, but also important responsibilities during this developmental period.

2.2 Case Assignment and Review

As the workload of the Consumer Fraud/White-Collar Crime Division increases, informal and formal procedures for review and assignment of cases will become more important. This review is important for several reasons:

- to assure that civil litigation and criminal prosecutions are well prepared (primary responsibility for this would lie with the attorney preparing the case);

- to assure that the overall prosecutive program of the Division and office achieves the policy balance desired by the District Attorney; and
- to assure that Division and office-wide intelligence and prosecutive actions are coordinated.

The Consumer Fraud/White-Collar Crime Division presently follows a policy by which the Division Chief reviews all legal actions. As caseloads increase, the Division may wish to consider a formal review procedure occurring at a stage preliminary to investigations, so that policy review can be exercised at an early time in allocating scarce investigative and attorney time.

Two issues have been identified which are relevant to this case review and assignment task: (1) the balance between civil and criminal prosecutive action; and (2) the prosecution of agency-referred licensing and health violations.

Criminal-Civil Balance. The Consumer Fraud/White-Collar Crime Division should not allow the criminal and civil aspects of its program to become separate and independent. Any tendency for consumer fraud and for major economic and related crime programs to follow independent, unrelated tracks should be carefully avoided. Such a divorce of these two components of the overall office effort could occur, for example, if the consumer fraud program is based solely on complaints and regulatory agency referrals, and the major crimes effort is based solely on liaison with different investigative agencies at the state and federal level, with no internal mechanism for common review of resulting leads.

All cases developed by the entire Division should be fully considered for both criminal and civil remedies. This review should take place early enough to avoid a potential criminal case becoming legally compromised because of some litigation-oriented tactic followed during the investigation.

Specific recommendations regarding some ways these objectives can be achieved are included in Part III, under the corresponding heading.

Misdemeanors. The office in the past has followed the practice of filing numerous misdemeanor licensing and health violations, referred by local regulatory agencies. There is presently an internal Division discussion as to the extent to which this should continue, and the organizational procedures which should be followed to prepare these cases. Resolution of this question is a matter of office policy; organizationally, it will be important for the Division to maintain policy review of these generally routine cases in a manner which does not become time-consuming.

Standards for policy review of these misdemeanor cases are prosecutive merits of the cases, and compatibility of substantive prosecutive areas with overall office objectives. An additional factor in this review is the short and long term advantages of cooperating with local regulatory and investigative agencies, who have no place else to turn with many of these cases. There are at least three such advantages from a program of such liaison:

- 1) credibility with the referring agencies;
- 2) encouragement to such agencies to investigate and refer larger, more far reaching cases;
- 3) support in obtaining resources, e.g., auditing help, from other government agencies.

2.3 Complaint Handling Program

The Consumer Fraud/White-Collar Crime Division is now creating a consumer complaint handling program which will use paid legal interns and volunteers. The District Attorney's office had a more limited program for

this for several years which currently results in about 160 complaints a month being received. This number can be expected to increase substantially if the program is widely publicized, as planned.

In organizing and supervising a complaint-handling program, two tasks must be kept distinct. These are the need for: 1) administrative management; and 2) policy supervision.

1) Administration. An effective and efficient complaint-handling program requires that someone be assigned responsibility for management to coordinate volunteers' assignments, keep track of work schedules, maintain an even flow of activity in the face of irregular volunteer working hours, assign desk space to complaint handlers, supervise records flow, etc. We strongly recommend that this person not be one of the Division's attorneys.

It may be possible to assign a legal intern to this task, although in the long run this role requires greater continuity. The Division might consider using one of its investigator positions in a full-time complaint program administrator-community relations capacity, especially if a fourth investigator position can be created. If this is done, the administrative head of the complaint handling program could also be the Division's contact with low-income, minority, or other targeted neighborhoods and community groups --- to identify consumer needs, and to train community groups to resolve many of their citizens' own disputes.

2) Policy Supervision. The need for policy supervision is distinct from administrative supervision. The Division must assure that complaint handlers, including its own investigators, provide correct and proper information to callers, and that action taken in the effort to resolve disputes is proper and consistent with Division policy. In some offices, this task

is delegated to experienced investigators. In others it is handled by a junior attorney, or the task rotates daily among staff attorneys. The most common mistake in such Divisions is failure to delegate this task, with the result that all attorneys become burdened with requests for advice from complaint handling staff.

If complaint handling and a prosecutive/litigative program are to exist side by side, the Division must avoid the crisis atmosphere which will arise in response to the myriad emergencies reported by individual complaints in which everyone in the Division may tend to become involved. One way to avoid this is to make formal staff assignments severely limiting attorney involvement in complaint handling.

Purposes of Complaint Handling. A complaint handling program can serve twin goals of service and intelligence gathering. Often dilemmas will arise in design and operation of a program attempting to meet both of these goals, requiring both the Division Chief and the District Attorney to make basic decisions regarding which is to be given primary emphasis. One area in which the dilemma will arise is in the complaint screening and in the allocation of investigator time to complaint handling.

The two objectives of service and intelligence require somewhat different review processes and staff assignments. Service to complainants tends to require immediacy of response; use and analysis of intelligence from complaints may require lengthier, more in-depth investigation and perhaps the building of a file over a long period of time.

To achieve both goals it will thus be necessary to develop a means of screening complaints. This screening can be made by an experienced investigator, or an attorney, and would result in classes of complaints --- (1) those to be resolved by mediation or referral by legal interns and volunteers, and (2) those to be considered for possible litigation, criminal or civil. These latter complaints, probably a very small percentage of the

overall complaint load, would be assigned to criminal investigators and, sooner or later, to an attorney.

Complaints are important to intelligence because they are the raw material which will make it possible for the Division to identify patterns of reported victimization, as well as individual instances of patently criminal, illegal, or abusive activity. Patterns of violation, for example, may be crucial to proving criminal intent in a case. It is thus extremely important that complaints be thoroughly indexed and cross-referenced by corporate and suspect names and aliases. Designation of names for cross-referencing should not be done by a clerk, but by the experienced investigator, attorney, or other person who reviews the complaint. There should be a capability to designate additional cross-referenced names at any point during the complaint investigation. Further, the Division should have a system for automatically designating for somewhat more intensive investigation suspects against whom a pattern of complaints have been received. One bureau, for example, regularly updates a "hot list" of suspects for whom five or more complaints have been received.

Records. Records in a complaint handling program should serve three major functions: (1) to accumulate, organize and retain information or intelligence about prevalent schemes or types of schemes, and recurrent alleged offenders; (2) to track the progress of investigating and servicing a complaint or developing a prosecutable case; and (3) to record Division activity for internal evaluation and performance assessment. The records system being developed in the Division appears to meet points (2) and (3) well, and has the basic structure necessary to address (1). In general, the Division should test its record system against these three points on a continuing basis.

3. Investigative Resources

Investigative resources for sophisticated economic crimes and consumer fraud are severely limited, and intelligence gathering capabilities

appear to operate at only a minimal level. To the extent resources are available, the District Attorney, the Chief of Police, and senior office and department officials expressed a commitment to expand these capabilities.

3.1 Investigator Background and Training

In addition to a basic need for more investigative capability, the District Attorney's office faces a problem of inadequate investigator capability and training. One basic problem is the low salary level which can be offered for investigators, a salary below that for police department patrolmen. This issue as much as any other thing makes it difficult for the office to obtain the specialized investigative skills required.

Furthermore, the limited office-wide investigative staff must be so widely distributed among basic office responsibilities, such as child support and the Fraud Division, that there is no nucleus left to develop a general investigative capability, or even to set aside staff time which needs to be devoted to training efforts.

Because of this dispersion of limited investigative resources throughout the office, past lack of training, and the past absence of specialized investigative programs in the District Attorney's office, the office's investigative capability must be developed starting from a very low plateau. Because of the breadth of this need, addition of only one or two specially trained economic crime investigators will go just part way toward meeting investigative needs in economic crime, organized crime, and related areas. Planning consequently should stress both long and short range contingencies, including hiring first in the area of greatest need --- an investigative accountant --- and training existing investigators to be as flexible as possible in their assignments.

In the long run, it may be desirable to rotate at least some investigators in and out of the Major Fraud unit as a matter of policy. In the

short run, however, because of limited depth of investigative experience in the office, it appears to be desirable to assign investigators with the greatest skills and aptitude for consumer and major fraud investigation permanently to the Consumer Fraud/White-Collar Crime Division.

3.2 Relations Between Fraud and Investigations Division

There will be a need for greater clarification of the relationship between investigators assigned to the Consumer Fraud/White-Collar Crime Division and the Investigation Division, particularly regarding transfer and hiring practice. It is generally acknowledged that the Consumer Fraud/White-Collar Crime Division investigators are de facto assigned to and report to that Division. They nevertheless retain a tie with the Investigations Division, which informally prepares their time sheets. The investigators are considered de jure part of the office's investigator complement. This confusion should be cleared up.

The investigators presently assigned to the Consumer Fraud/White-Collar Crime Division were not selected because of their white-collar crime investigative experience or even with respect to their basic aptitudes in this area. It is commonly recognized in the office that investigators with special skills, particularly accounting, will need to be placed in that Division. The mechanisms by which those investigative skills are to be acquired by the Fraud Division, however, is at present not clear, and should be looked into jointly by the Divisions involved, with an eye to both short and long-range cooperation.

Long-range cooperation between the two divisions should be built around many factors, including the following: 1) sharing of investigative equipment and training programs; 2) acquisition of the most flexible and varied staff and backgrounds possible, so that, for example, the Consumer Fraud/White-Collar Crime Division could draw on foreign language speaking, or

minority group investigators when necessary; 3) the use of the Investigations Division as a close working liaison with the police; and 4) as suggested by the Chief of Investigations, the possible use of the Investigation Division as a central intelligence repository.

3.3 External Investigative Resources

Plans to develop or maintain contacts with local, state, federal, and private investigative and regulatory agencies as a major source of intelligence and investigative resources is a strong positive aspect of the developing program in the District Attorney's office. This effort should be coordinated through all relevant components of the office -- the Fraud Division, Criminal Division, and Investigations Division.

Working relationships with the Police Department should also be continued and expanded at all levels. Successful examples of this contact can already be noted -- such as a computer equipment embezzlement case developed between the Criminal Division and a police investigative team. The Police Chief told us that his department is presently in a period of manpower reassessment, and the District Attorney's office should maintain close contact with on-going police planning so that it can respond to police white-collar crime investigative organization as it develops and establish personal liaison with detectives in intelligence positions.

3.4 Investigative Grand Jury

An important aspect of an economic and related crimes program must be developing capability to use the grand juries to assist in investigations. We understand this has been almost unknown in local prosecutions in San Francisco. Both the Consumer Fraud/White-Collar Crime Division, and the Criminal Division, have an interest in taking this step, and their efforts should be coordinated. The Criminal Division, we understand, is already moving in this direction.

This step is a commendable one. Few local prosecutors' offices have developed such capabilities, not necessarily for lack of ability but rather because of restrictive conceptions of the prosecutor role and of the more sophisticated aspects of investigator/prosecutor interaction. Given the limited resources of this office and Division, the investigative grand jury may be an essential element to the development of a successful prosecutive program in such areas as municipal corruption and other complex white-collar crimes, fencing, organized crime, etc.

4. Support Services and Equipment

4.1 Training

Because of the new or expanded level of the District Attorney's Consumer Fraud and sophisticated economic crime program, there is a major, on-going need for training. In the Consumer Fraud/White-Collar Crime Division, this need takes several forms, including appropriate economic crime investigation techniques for investigators; complaint handling, and referral; training for legal interns, volunteers and other staff; and on-going exposure to criminal trial work for Division attorneys. This latter point can be very important; lengthy investigations or protracted periods of civil litigation should not prevent attorneys from getting some criminal trial experience, or maintaining their prosecution skills.

All investigators involved in the economic and related crimes prosecutive effort should receive specialized training such as that provided by the California Department of Justice white-collar crime training course. The District Attorney's office should periodically request that the Police Department and other agencies assign investigators to take training assignments with its Consumer Fraud/White-Collar Crime Division as a work-training effort. While these agencies may not be able to make such assignments at this time, the situation may change and it is desirable to keep this option for resource acquisition/training/liaison continually in everyone's mind.

4.2 Equipment

As is well known by office staff, there is a strong need for additional equipment -- both for clerical work and for investigation. For clerical work, major needs are photocopy equipment and an automated typewriter. For investigation, there is a shortage of cars, surveillance gear, and related equipment. We understand that Mr. Frank Weaver of the LEAA Regional Office has located some federal surplus equipment which may become available.

III. MAJOR RECOMMENDATIONS

In this section our major recommendations are set out following the format of the Analysis of the Existing Situation in Part II. As was mentioned earlier, many additional specific recommendations were made at the time of the site visit that are not repeated here. Additionally, many suggestions and comments are embedded in the analysis in Part II, which have not been singled out here. Each major recommendation made here is followed by a very brief statement of its importance and effects.

1.1 Coordinated Police and Prosecutive Effort

A. The District Attorney's office should maintain active contact with the Police Department regarding use of special investigative officers in selected economic and related crime cases, and pending completion of the on-going police manpower utilization studies, proper officials from the two offices, including the Investigations Division in the District Attorneys office, should meet to plan permanent working relationships.

Discussion: Both the District Attorney's office and the Police Department are undertaking a commitment to enforcement against economic and related crimes, notwithstanding their shortage of resources and the broad range of related law enforcement needs evidently unaddressed in the past. Cooperation is essential to get the most from the resources which are available.

B. The Police Department should seek ways to involve patrol officers in the detection and investigation of economic crime, consumer fraud, and related abuses, through coordination with its own intelligence divisions, and with the District Attorney's office.

Discussion: We were unable to discuss this recommendation in detail with the police, and undoubtedly much of this detection work is already done by patrol officers. The possibility of detecting economic crimes, particularly consumer fraud, in the neighborhoods of the City, often as the schemes are unfolding, will be greatly enhanced if patrol officers know where to report their observations, are confident that their reports

will be used in larger scale investigations, and can receive expert advice from attorneys on the complexities of the law in this field.

1.2 Major Policy Emphasis

A. The District Attorney's office should maintain maximum flexibility possible to respond to all forms of economic crime and related offenses, including public corruption, labor racketeering, organized crime, and fencing. Acquisition and development of additional resources should be taken with an eye toward maximizing flexibility to respond to all forms of these crimes, as warranted.

Discussion: Because of the low level of resources presently available, and the heritage of not responding to these crimes except in a purely reactive manner, the District Attorney's office and the Police Department will need to combine functions which are often separated in other offices, such as organized crime and consumer fraud. While clear priorities will be needed to avoid indirection and inefficient use of resources, this historical situation requires that the offices maintain maximum flexibility with respect to the use and application of their capabilities and resources.

B. The District Attorney should circulate a letter to heads of all public departments in San Francisco declaring its interest in addressing public corruption, purchasing fraud, and related crimes, and requesting agency cooperation, clearly stating that this is legally required, and requesting that this request be circulated to all supervisory personnel in all departments, as well as to all inspectors, auditors, etc.

Discussion: Most state and municipal agencies operate in patterns of traditional action (or inaction) with little in the way of clear guidelines. Thus a municipal employee may report evidence of crimes, orally or in writing, and such reports may be ignored, or be slowly responded to. Clear and precise requests, pointing out the legal basis for reporting requirements, should make it more difficult for local officials to ignore or fail to refer matters to the District Attorney. Failure to do so could be construed to be, and might be anticipated to be questionable behavior in

and of itself. Clear reporting guidelines might not ensure that evidence of crimes will be reported by local government employees --- but they will enhance the likelihood that some such employees will comply with a specific directive. The failure of agencies to disseminate such a request within its ranks would also raise issues for consideration by the Division, and by the District Attorney in his interaction with other units of government. It should be noted that such directives are used in the Federal Government.

1.3 Remedies

A. Criminal prosecution should be given strong emphasis in the office's program of complaint mediation, civil litigation, and prosecution. All potential cases, whether consumer-related or otherwise, should be considered for possible criminal action, rather than having the criminal aspects of the office be parallel but separate from the consumer protection and litigation efforts. A specific recommendation for accomplishing this is presented below.

Discussion: To retain the flexibility necessary to address the full range of economic and related crimes, it is important that the attorneys in the Consumer Fraud/White-Collar Crime Division not narrowly specialize and that the civil and criminal approaches not be restricted, respectively, to consumer or non-consumer matters. Remedies should be matched to cases, to the evidence, and to contemporary public interest, and not be constrained by the happenstance of attorney assignment, or proportionate resources devoted to litigation (civil or criminal) vs. consumer mediation, etc.

2.1 Staff Assignments and Roles

A. At least two attorneys should be assigned a primary commitment to major criminal action in the Consumer Fraud/White-Collar Crime Division.

Discussion: Ideally, this would involve assignment of a fifth attorney to the Division. If this is not possible in the short run, one of the existing Division attorneys should be assigned responsibility for a major commitment to felony cases. In our opinion, no realistic commitment to major criminal action can be met by one attorney working alone. Trials, complex investigations, or personal leaves of absence can bring the remainder of the program to a halt where there is only one attorney. Many complex investigation and legal issues are best worked out by continuous dialogue. The most important team should be the Consumer Fraud/White-Collar Crime Division itself, of course, but within this team two attorneys with a basic commitment to major criminal action appears to be a necessary minimum.

B. The District Attorney should give his personal attention to clarification of the relations between the Consumer Fraud/White-Collar Crime Division and the Investigations Division regarding the administrative assignment of investigators. The Consumer Fraud/White-Collar Crime Division should also clarify working relations between investigators and attorneys, and consider possible specialization in investigator roles within the Division.

Discussion: Internal investigative capability in the San Francisco District Attorney's office must be viewed in terms of long-term growth and development, since immediate needs are too great to be resolved quickly. Planning for this development must be coordinated office-wide to make best use of the limited resources which are available, and to match investigative resource development with overall office priorities.

2.2 Case Assignment and Review

A. Every case being developed by the Consumer Fraud/White-Collar Crime Division deemed worthy of civil litigation should be first reviewed by the deputy concentrating on major criminal work for a quick response as to whether the case should be handled criminally. If that deputy does

want to pursue the matter criminally, the Division Chief should then make a decision as to how the case will be handled.

Discussion: This review should not delay acting on a case. It might be structured so that if the deputy reviewing the matter for criminal potential does not respond within a given period of days, it would automatically constitute a criminal declination. A review of this sort must take place early enough in the investigative process that the potential for criminal action is not compromised by any particular investigative tactic, civil settlement, etc.

The purpose of such a review of all potential litigation for criminal possibilities should be to assure that the strongest possible action is taken against economic and related crimes, consistent with office objectives, and to integrate as fully as possible the criminal and civil elements of the Division's program.

2.3 Complaint Handling Program

A. An administrative leader for managing the consumer complaint handling program and supervising volunteers should be assigned. In the long run this should be a permanent appointment; the task should not be delegated to an attorney.

Discussion: A complaint handling program should supplement and support litigative and prosecutive activity, not substitute for it. In the face of limited attorney and investigator resources, consequently, procedures must be developed to insulate attorney time from the management demands of complaint handling, which can be especially great when it is necessary to rely on part-time and volunteer staff. An administrative head of such a program can also assume responsibility for community relations programs, training of community organization staff to handle many of their neighborhoods' own consumer needs, and to detect matters which should be referred to the

Division for possible litigation or prosecution.

B. After the new complaint records system is fully implemented and tested, a review procedure for complaints should be created in order to maximize intelligence capabilities for isolating complaints and patterns of complaints appropriate for criminal or civil action, and to segregate those complaints soon after receipt from complaints which are to be assigned for mediation. This review should be carried out by an experienced full time staff member -- either an investigator or attorney, who should also designate all corporate and individual names to be cross-referenced in the complaint index files.

Discussion: To achieve efficiency in use of consumer complaints for litigative and prosecutive leads, and case development, the Division must have a system which permits an early commitment as to what matters have promise for legal action. With the limited resources, the Division will simply not have the luxury of pursuing everything to its complete satisfaction. By assigning an experienced staff member to make the initial review soon after a complaint is received, the Division will avoid the common organizational predicament of having the lowest level, least trained staff make important de facto screening decisions about what stays in the pipeline for possible legal action.

C. The Division should consider requesting that on-site technical assistance be provided to it, to review and plan work assignments in the complaint handling program, and in the development of records systems and reports. Such a consultant should have experience in systems analysis and in the special needs of prosecutors' offices. This technical assistance should be provided after the legal interns and volunteers have started work in the Division, and the complaint servicing program has begun to build momentum.

Discussion: Such technical assistance should meet four objectives: (1) to organize and coordinate work assignments, records, and internal evaluation in the new complaint handling program; (2) to contribute to minimization of attorney administrative and supervisory involvement in this program; (3) to develop procedures for monitoring workloads in various aspects of the complaint handling and record keeping procedures, and to maintain the most efficient program structure; and (4) to assure that opportunities to derive information from complaints and from patterns of complaints for criminal prosecution are maximized. Such technical assistance should also address questions of how clerical staff can be trained and utilized most effectively in operating the mechanics of the complaint handling system.

3.1 Investigator Background and Training

A. At least one investigator with skills in accounting should be immediately obtained, and maximum efforts should be made to obtain additional positions office-wide for investigators. The salaries which can be offered to investigators should be raised to a level commensurate with the importance of this role and the specialized skills needed, e.g., at least to comparable police levels.

Discussion: Some economic crime bureaus have been able to develop successful criminal programs without a large internal investigative staff. This has occurred in somewhat special circumstances, usually in communities in which the need to build an economic crime program did not occur simultaneously with the need to build a response to related crimes such as public corruption, organized crime, and fencing, or in a community in which it was possible to rely on other agencies with specialized investigative capabilities. Building an experienced, skilled investigative capability must be kept a high priority within this office to achieve its goals of responding effectively to economic and related crimes.

3.2 Relations Between Fraud and Investigations Divisions

A. The Investigations Division should be considered the primary linkage between the District Attorney's office and the Police Department, and that for this and related reasons close working ties should be maintained internally between the Consumer Fraud/White-Collar Crime Division and the Investigations Division.

Discussion: To maximize use of scarce resources regular contact must be maintained between police and the District Attorney's investigators. This contact need not be duplicated between investigators in the Consumer Fraud/White Collar Crime Division, and the Investigations Division. Because of the greater breadth of its contacts, the Investigation Division is the best place to centralize this working contact.

4.1 Training

A. Specific training programs should be established for all staff, including attorneys, investigators, and legal interns.

Discussion: Training programs may be formal, as in the recommended sending of investigators to sessions such as those offered by the California Department of Justice on white-collar crime, or highly informal, such as assuring that all staff attorneys get periodic trial experience.

IV. SUMMARY

The commitment within the San Francisco District Attorney's office and Police Department to address economic crime and related abuses such as consumer fraud, public corruption, fencing, and organized crime is strong. The single major limitation to implementing an effective program is the lack of resources, and these offices are attempting to overcome this limitation through imaginative and aggressive use of available resources, and in the District Attorney's office through the formation of a special bureau with sole commitment to enforcement against these crimes and related abuses.

The crux of our recommendations is that these efforts to address economic and related crimes must include a strong commitment to criminal prosecution -- as a means of seeking deterrence, and of establishing the credibility of the office and Police Department as making a significant impact in this area. This is not to downgrade the need for appropriate, or even predominant activity in civil litigation and consumer mediation.

Many hard choices will have to be made among types of cases and types of remedies in the effort to allocate the limited resources between the extensive law enforcement areas which have not previously been addressed in these offices. Based on our observations on-site, we are confident these choices will be made well and can be implemented successfully by the central core staff who have been assembled to do this job.

END