

# CURRENT PROBLEMS IN THE FIGHT AGAINST CORRUPTION AND SOME POSSIBLE SOLUTIONS: US PERSPECTIVE

*Anthony Didrick Castberg\**

## I. INTRODUCTION

Official corruption occurs and is fought at several different levels of the criminal justice system in those nations using a federal model. The levels may generally be labeled as enforcement, prosecution, and trial, which in the US occur at both the federal level and the state level. There are fifty-one criminal justice systems in the US. This decentralization offers perhaps more opportunities for corruption, but at the same time provides more agencies to fight against corruption. The US has law enforcement agencies at the federal level<sup>1</sup>, the state level<sup>2</sup>, the county level<sup>3</sup>, and the local level<sup>4</sup>. Prosecution takes place at the federal level (US attorneys), the state level (attorneys general), and the county level (prosecutors)<sup>5</sup>. Trials take place at the federal level and the county level, although the courts in a county are generally state courts and the judges, state judges. This rather complicated system may sound strange to those unfamiliar with the US system of justice, and in fact, very few citizens of the US have a good understanding of it.

This system of government was created during the Constitutional Convention that met in Philadelphia, Pennsylvania, in 1787. The delegates to the Convention originally met to revise the Articles of Confederation, which had established a league of states with a relatively weak national government, but ended up writing an entirely new document that divided the

powers of government between the national government and the states. Thus, the US became a country with some powers reserved to the national government, some powers reserved to the states, and some powers that are concurrent. Article I, Section 8, gives Congress the power to establish tribunals (courts) inferior to the Supreme Court, while Article III delineates the powers of the judicial branch of government. The power to establish state courts and state criminal codes was left to the states. But because many of the more influential figures of the time felt that the Constitution established a national government that was too strong, there was great debate about ratification, with the major factions being the federalists (who supported the Constitution) and the anti-federalists (who wanted the power of the national government limited). In a compromise that allowed ratification to take place, the federalists agreed to support amendments to the Constitution that would limit the powers of the national government. These 10 amendments, which became known as the Bill of Rights, were ratified in 1791. Amendments 4, 5, 6, and 8 directly affect the criminal justice process, but until the middle of the 20<sup>th</sup> century these rights applied almost exclusively to the national government. Through a series of Supreme Court decisions however, almost all of the rights enumerated in the Bill of Rights have been applied to the states through the due process and equal protection clauses of the 14<sup>th</sup> Amendment. Prior to this incorporation, different standards applied to federal and state law enforcement.

\* Professor of Political Science, University of Hawaii at Hilo, United States of America.

## II. PROBLEMS OF INVESTIGATION

Investigation of corruption depends on a number of variables, the first of which is detection. As official corruption is by definition committed by government officials, its detection may be difficult because of its hidden nature, but also by the ability of government officials to intimidate subordinates who are in a position to reveal the corruption or to threaten the funding of law enforcement agencies which have jurisdiction over them. The federal government and most states have "whistle-blower" laws<sup>6</sup> which protect those who reveal corruption, but there are no protections against retaliation by corrupt politicians against law enforcement agencies who investigate them. Whistle-blowers are responsible for many investigations into corruption, both by providing information directly to law enforcement agencies and by contacting the media, which may launch its own investigation. However information from an informant is only the beginning, as many tips do not result in investigation, let alone conviction.

Official corruption may range from free restaurant meals provided to police officers to bribes paid to high-ranking federal officials by stock manipulators. In the US, many corruption investigations involve illegal contributions made to political campaigns. In such cases, detection is frequently accomplished by agencies created for that very purpose<sup>7</sup>, in contrast to other types of corruption that are investigated only after tips provided by whistle-blowers and other citizens. Thus, detection may take place in a proactive or a reactive manner. Regardless of how the alleged illegal activity is detected, a decision must be made to investigate or not. Such decisions should rest solely on sufficiency of evidence, but in practice are influenced not only by evidence but also by

the availability of resources<sup>8</sup> and by the political considerations. The resource problem in the US is frequently a function of the federal system and its decentralized law enforcement. While the US has more law enforcement officers per population than most other countries,<sup>9</sup> 60% of all local police departments employed fewer than 10 full-time, sworn officers.<sup>10</sup> Few local law enforcement agencies in the US then have the capability to investigate significant cases of official corruption. Political influences may range from threats of retaliation by those targeted, to fear of exposing community influentials; but it is safe to say that there are virtually always political factors in any decision to investigate official corruption.

There are, of course, legal considerations when undertaking an investigation of official corruption. Law enforcement agencies must observe all constitutional and statutory guidelines, with particular emphasis paid to search and seizure, which may include electronic eavesdropping, and entrapment, frequently an issue in "sting" operations.<sup>11</sup> Law enforcement agencies normally consult with prosecutors on such legal issues. There are 50 different state penal codes, the US Code, and precedent (common law) from appellate courts in each state, federal circuit courts of appeal, and the US Supreme Court, all of which must be considered when undertaking an investigation. Thus, the legal preparation and monitoring of a major corruption investigation is frequently complex and lengthy, and often involves search warrants which must be approved by judges. A successful investigation, therefore, is highly dependent upon adequate resources and the quality of and cooperation between law enforcement, prosecution, and the judiciary. And they are all dependent upon legislation that clearly delineates what constitutes official corruption.<sup>12</sup>

### III. POSSIBLE SOLUTIONS

Corruption must be clearly defined in the law, citing specific acts, the elements of which constitute a violation. The example cited above of a police officer receiving a free meal from a restaurant is a typical example. This practice is very common in the US, with some fast-food chains apparently having policies of providing free or discounted food to on-duty police officers. In this corruption? If so, what is the *quid-pro-quo*? What does the restaurant receive in return for the free food provided to the police officer? At best, the restaurant encourages police officers to eat on the premises, thereby affording some form of security. But is this the kind of behavior that should be made criminal?<sup>13</sup> And if so, how much effort should be made to enforce such laws? The law, then, must clearly define what acts are criminal and must make distinctions between breeches of ethics on the one hand and true crimes on the other. Ethical standards can be enforced administratively without invoking criminal sanctions. All government agencies should have standards of conduct, and it is important that such standards be rigorously upheld, as a lack of such enforcement may well lead to violations that are truly criminal in nature.

Redundancy must be built into law enforcement so that the lack of resources will never jeopardize detection or investigation. Jurisdictional jealousies must be put aside in the interests of effective law enforcement, and this may require a higher level coordinating agency. Thought should also be given to an independent agency at both the state and federal levels in a federal system, and at the national level in a unitary system, that specializes in the detection and investigation of official corruption. Governmental agencies themselves should each have a specific internal unit devoted to detection and investigation of corruption,

such as the internal affairs units commonly found in US police departments. Finally, law enforcement must be apolitical. Law enforcement agency heads should not be popularly elected nor directly appointed by a political figure, but rather selected by a non-partisan commission of experts in the field, with the commission also deciding whether the head is reappointed.

Law enforcement agencies should be accredited by a national accrediting body which makes periodic visits to the agency, and there should be minimum standards for hiring and training at the state level. Within agencies, recruitment of new personnel and promotion of existing personnel must be done according to strict rules with merit being the only criteria for both. Regular rotation of personnel is also an effective method of reducing the likelihood of corruption. Agencies should also have probationary periods after initial hiring during which time they can assess the abilities of their new employees and be able to fire for cause without civil service protection. Pay must be such that officers do not have to resort to payoffs to support a spouse and children, although it is clear that high ethical standards, rather than pay, are the best deterrent against corruption. Retirement pay should be enough that officials will not feel the need to engage in corruption to prepare for retirement.

### IV. PROBLEMS AT THE TRIAL LEVEL

In some nations, investigatory authority rests almost solely at the law enforcement level of the criminal justice system. Where this is the case, the prosecutor relies almost entirely on the police to carry out investigations, making prosecution highly dependent upon the ability of the law enforcement agency in whose jurisdiction the corruption occurred. This issue is discussed in the previous section, but

113TH INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

inasmuch as inadequacies in law enforcement may affect prosecution and therefore the likelihood of conviction, it must be mentioned here as well. In those nations where investigatory authority rests in both law enforcement and prosecution, there is a redundancy that usually enhances the chance of conviction. While virtually all prosecutors in the US have the authority to investigate, lack of resources frequently prevents them from doing so.

There may, however, be poor relations between law enforcement and prosecution, a situation that hinders successful prosecution. There may be corruption and/or incompetence in either or both. And there may be political considerations that affect prosecution. While it is probably true that corruption is more likely to be found in law enforcement agencies than in prosecution, there are exceptions. In Orange County, California, for example, a former deputy district attorney is being held without bail on charges that he was part of a nationwide methamphetamine distribution ring.<sup>14</sup> Prosecutorial corruption in the US is, however, quite rare,<sup>15</sup> and we must be careful to distinguish official corruption from simple law breaking; in the Orange County incident, for example, the deputy district attorney used his official position to obtain information on law enforcement efforts to investigate the ring.

Local chief prosecutors in the US are either elected or appointed.<sup>16</sup> Elected prosecutors may run in either partisan or non-partisan races, while appointed prosecutors are almost always members of the same political party as the person or group who does the appointing. Terms of office of elected prosecutors are usually 4 years, while appointed prosecutors serve at the pleasure of the appointing individual or group. Whenever prosecutors are elected or appointed it is virtually

impossible to remove politics from prosecutorial decision-making. Would, for example, a prosecutor approve prosecution for corrupt business practices of a major campaign contributor? Or would a prosecutor prosecute a corrupt member of the cabinet of the mayor who appointed him or her? To what extent will public opinion affect prosecutorial decision-making? Public outcry over a particularly terrible crime may bring about a rush to indict and try a suspect or suspects, and the result may be a poorly prepared case that results in a not guilty plea, the trying of the wrong people, or an ill-advised plea bargain. The failure to obtain a conviction in one high profile case may be a major issue when the prosecutor runs for re-election or is up for re-appointment.

It should be noted that only about 10% of defendants charged with a felony in the US go to trial. The vast majority of cases are settled through a guilty plea by the defendant, almost always as a result of plea bargaining. Plea bargaining involves consideration given by the prosecution in return for a guilty plea, with the consideration often consisting of a reduction in the charges or a sentence recommendation.<sup>17</sup> Plea bargaining is a very low-visibility activity, and except in high-profile cases, is rarely reported by the media. As a result, the public can only evaluate a prosecutor on the basis of a few well-publicized cases rather than on the vast majority of cases handled by the office.

There are no national standards for prosecutors, nor are there standards in most states beyond having been a member of the bar for a specified period of time. Thus, the quality of prosecution varies considerably from county to county. This, coupled with the fact that prosecutors generally earn less money than an attorney in private practice, does not lend itself to having the best legal minds as

prosecutors.<sup>18</sup> Many, if not most, prosecutors however, choose that position out of dedication to the administration of justice rather than out of financial considerations. At the same time, the turnover among junior prosecutors tends to be high in most offices, so that the percentage of career prosecutors in any given office is not great.<sup>19</sup> Many prosecutors' offices in the US, then, are simply not capable of investigating or prosecuting major corruption cases. Because most official corruption is also a federal offense, prosecution is frequently undertaken by US attorneys.

State judges are also either appointed or elected in the US.<sup>20</sup> Regardless of the method by which a judge reaches the bench, however, politics are involved. Terms of office for judges generally range from 4 to 10 years, with the longer terms providing greater judicial independence. Federal judges, by contrast, are appointed for life. As is the case with prosecutors, judicial salaries are not competitive with those in large law firms, so those attorneys who aspire to a judgeship do not do so for economic reasons. As is the case with prosecutors, there are virtually no qualifications for becoming a judge other than having been a member of the bar for a specified number of years (normally 5). Judges in the US are not required to have any training beyond that of law school, and a judge can be elected or appointed to the bench and handle criminal cases without ever having had any criminal law experience. The quality of judicial decision-making, therefore, varies considerably from county to county and state to state.

Defendants in US, criminal cases have the right to a speedy trial.<sup>21</sup> Generally this means that they must be tried within 180 days of being charged.<sup>22</sup> In order to assure the right to a speedy trial there must be a sufficient number of prosecutors, judges

and courtrooms. When there are not, there is great pressure to plea bargain, resulting in many criminals receiving less punishment than they would have gotten had they been convicted at trial. If the defendant refuses to plea bargain and the prosecutor must try a case without adequate preparation, the likelihood of a not guilty finding increases substantially, as the state must prove the defendant guilty beyond a reasonable doubt. The alternative is not to charge the suspect until the prosecution's case is solid and thereby run the risk of the suspect's fleeing the jurisdiction. State and local governments can rarely afford the number of judges, prosecutors, and courtrooms that are necessary for the effective administration of justice, so the system is constantly compromised.

There is a tendency in the US to restrict the sentencing discretion of judges. Federal judges must use a sentencing grid that has six criminal history categories along one axis and 43 categories of offense level along the other, while state judges are often restricted by penal codes that specify mandatory sentences for certain offenses or have a "three-strikes" provision.<sup>23</sup> Judges in Hawaii, for example, must sentence a felon to the maximum term as prescribed by law, with the Paroling Authority setting the minimum term.<sup>24</sup> This is part of a "get tough" policy toward crime and a backlash from what many perceive is a tendency on the part of too many judges to hand down lighter sentences than are justified. In some cases, however, light sentences are a function of prison overcrowding.<sup>25</sup> In other cases, the sentences reflect the philosophy of the judge. But without flexibility in sentencing, judges cannot hand down sentences that sufficiently distinguish, for example, between free meals for police officers and payments to police chiefs to overlook methamphetamine laboratories.

113TH INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

Because corruption is such a broad category that encompass a wide variety of criminal acts, it is especially important that the punishment fit the crime. This is not possible when a judge lacks flexibility in sentencing.

## V. POSSIBLE SOLUTIONS

Prosecutors must have the legal authority to investigate, an authority shared jointly with the police. Where prosecutors do not have such authority, or where they have it but rarely exercise it, it is not unusual for cases to be returned to the police for further investigation. Because prosecutors must prepare a case for presentation to a grand jury or preliminary hearing, and ultimately for a trial (even if ultimately settled through plea bargaining), their perspective is on admissibility of evidence and proof beyond a reasonable doubt. Police, on the other hand, tend to focus on obtaining evidence sufficient to charge, or a standard of probable cause. Prosecutorial investigation, therefore, should be supplementary to police investigation in order to best use scarce resources. Nevertheless, additional resources will be needed by prosecutors who gain investigatory authority, generally in the form of non-lawyer investigators. In the US, prosecutorial investigators are frequently former police officers.

Election, or appointment by elected officials, of prosecutors necessarily makes the process, and therefore the position, political. The same is true with respect to judges. In the latter case, however, longer terms of office to some extent offset the influence of politics, but this influence can never be completely eliminated. Even those systems combining election and appointment by a commission have not completely avoided politics, but they may hold the key to a better method of

appointing both prosecutors and judges. What is needed is a non-partisan commission, perhaps composed of experienced attorneys, which solicits names from the public, evaluates candidates, and makes the appropriate appointments. Members of the commission themselves could be popularly elected. While some may criticize this process as undemocratic and elitist, it must be realized that neither the judiciary nor prosecution is democratic by nature, as decisions may have to be made by both which are not supported by the majority. The judiciary is a check on the tyranny of the majority, the third branch of government which, among other things, protects the rights of minorities. The prosecutor represents the people, not in the same manner as a legislator, but rather as an impartial and relatively independent legal authority. Popularity, then, should not be the criteria for appointment or election of judges or prosecutors but rather independence and legal ability.

Legal ability is not a requirement for appointment or election as a prosecutor or a judge in the US, but prosecutors must be familiar with criminal law and criminal procedure, while judges, because they rarely specialize<sup>26</sup>, must be familiar with all areas of substantive and procedural law. This presents the dilemma of seasoned criminal law attorneys facing recently elected prosecutors (who have never practiced criminal law) in a case heard by a judge (who specialized in real estate law before appointment to the bench). There must, therefore, be minimum qualifications for appointment as a prosecutor or a judge. With respect to prosecutors, minimum qualifications should include at least 5 years experience practicing criminal law or one year post-law school training in criminal law and procedure, as well as public administration.<sup>27</sup>

For judges to be truly professional, and therefore free from political influences and resulting corruptive enticement, they must have training above and beyond that of other members of the bar. This training could take the form of post-law school education or an institute dedicated to training potential judges.<sup>28</sup> Because the penal code of each state and the federal government varies, and because criminal procedure also varies from state to state and from the federal system, a national institute for training judges would have to teach principles rather than the law of each state and the federal system. This would be more economical and efficient than having separate training institutes in each state, and would have the added benefit of bringing together potential judges from the entire nation. Specific training in the law of individual states and the federal system could come from an apprenticeship program whereby national institute graduates spend a specified period of time as assistants to veteran judges.

Just as specialized training is important in preparing prosecutors and judges to fight corruption, so too may be specialization within those professions in the handling of corruption cases. Where possible, one or more prosecutors should be assigned solely to corruption cases, and reporting directly to the chief prosecutor. This not only allows dedication to only one type of case, but some degree of independence as well. In smaller offices, however, this may not be possible. One possibility that does not depend upon the size of prosecutors office or court system is to centralize the prosecution and adjudication of corruption cases at the state level, with prosecution handled by a special unit of the Attorney General's Office and adjudication by a court established for that purpose, with branches in the largest cities of the state. The same could hold true for the federal system, with dedicated units in larger US attorney's

offices and a court in each federal circuit.

The problem of inadequate resources to provide speedy trials for all who do not waive that right can only be solved by allocating substantial sums of money to the 51 different judicial systems in the US. Any increase in the number of courts and judges would, of course, have to be met by additional prosecutors and public defenders, again a costly proposition. The alternative- more corruption, lighter sentences and dismissal of cases due to 6<sup>th</sup> Amendment (speedy trial) violations.

Plea bargaining is, at the same time, a standard practice and a hotly debated topic. The system could not operate without it, yet there are acknowledged abuses of it and injustices in its application. It can be particularly controversial in corruption cases, as it leaves prosecutors and judges open to charges of favoritism as well as their own corruption. Part of the problem with respect to plea bargaining is that it is a low visibility process, or a process that lacks transparency, and a process that the public does not completely understand. It is also a problem because it may be used to avoid, rather than as an alternative to, trials. There is very little case law on plea bargaining and it is rarely dealt with in rules of procedure. The solution, then, is to institutionalize plea bargaining while at the same time making it more transparent. There should be specific rules of procedure about plea bargaining and all plea bargains should be judicially approved prior to a formal change of plea. Some plea bargaining involves consideration given to defendants in return for their testimony against collaborators or co-conspirators. This is frequently true in corruption cases, and may result in those guilty of multiple felonies serving no time in prison in return for testimony against high ranking corrupt officials. While this may not sit well with the public, it is essential for the effective

113TH INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

administration of justice that such bargaining not remain hidden. Finally, all parties to the case, including victims, should have the opportunity to make formal input on any and all proposed bargains.

**VI. MEASURES TO PREVENT  
CORRUPT ACTIVITIES OF PUBLIC  
OFFICIALS**

Many of the suggestions discussed above constitute measures that would help to prevent corruption among public officials, but there are more that should be considered. The primary focus above has been on the criminal justice system, but measures are necessary to deter corruption among all public officials. The primary measures are laws and codes of ethical conduct. In the US there are numerous sections of the US Code which contain such provisions, while at the state level there are generally codes of conduct and statutes prohibiting bribery and other abuses of power.<sup>29</sup> In short, then, there is no shortage of laws prohibiting official corruption nor codes of ethical conduct. But do they serve as effective deterrents?

Deterrence is difficult to measure, although one study found that it is a function of likelihood of conviction and length of prison sentences.<sup>30</sup> Bribery of, or acceptance of a bribe by, a public official, for example, is punishable under 18 USC §201 by a fine and up to fifteen years in prison. Is the fine and prison sentence a deterrent to bribery? The answer, of course, depends upon the personalities of those involved, the amount of money of the bribe, and the likelihood of detection and conviction. It very likely deters some and does not deter others. So the question is whether increased efforts at detection and prosecution accompanied by increased penalties will deter more than the current penalties, and whether the increased costs

associated with these efforts will be justified. There are other methods, of course, that might not directly involve deterrence but would be more effective in reducing corruption.<sup>31</sup>

Susan Rose-Ackerman suggests the following approaches to reduction of corruption:<sup>32</sup>

1. Program elimination (of corrupt programs)
2. Privatization (of current government services)
3. Reform of public programs (revenue collection, regulation, social benefits)
4. Administrative reform (make administration competitive)
5. Deterrent effect of anti-corruption laws (increase deterrence and reward whistleblowers)
6. Procurement systems (improve the efficiency of government purchasing)
7. Reform of civil service (substitute civil service for patronage and ensure that it is apolitical)

Rose-Ackerman's suggestions tend to be societal in scope, and while institution of such reforms would clearly reduce corruption, their implementation would be difficult, costly and lengthy. This is not to say that the effort should not be made, but rather that initial reforms must start at the micro rather than the macro level. Most of the recommendations I suggest above can be made with a minimum of disruption and political controversy, and a modicum of money, but allow me to suggest several more.

Just as punishment may deter corruption, rewards may achieve the same result. Awards or salary increases could be given to employees and officials who detect and report corruption and to those who themselves are examples of integrity and honesty. Supervisors should be held



more accountable for the actions of their subordinates, so that both rewards and punishment would flow to supervisors as well. Strict laws regulating post-government employment should be implemented and enforced.<sup>33</sup> Transparency, or openness in government, must be increased. The public must be allowed access to all government meetings, documents, rules, regulations, etc, with restrictions only when national security is threatened. Public reporting laws should require all agencies to make available data on corruption and efforts to prevent it. Coupled with this is the importance of a free press. Only when the press is free from government restrictions and censorship can access to information on the operation of government be widely available to citizens. The press in the US has traditionally been the primary watchdog over government corruption.<sup>34</sup>

## **VII. INTERNATIONAL COOPERATION IN COMBATING CORRUPTION**

Corruption has become a truly international phenomena, thanks to organized crime, modern transportation, and computers. Perhaps the most corrupting international commodity is drugs, as the money involved in its transportation, distribution and sale is astronomical. Bribes to law enforcement officials constitute pocket change for large drug cartels, but for the corrupt official the bribe may be many times that person's annual salary. Despite the best efforts of governments, the international transportation of drugs continues at a high rate.<sup>35</sup> International money laundering is a multi-billion dollar business as well, and while there seems to be little official corruption in the US associated with this activity, that is not the case in many other nations. And while perhaps not a result of corruption, the failure of government

regulators to detect and prevent such laundering calls for reform of some kind.<sup>36</sup>

International cooperation is essential in fighting these types of criminal activities. While one can correctly say that the supply of drugs from South America to the US would not take place were there not a strong demand for drugs in the US, that does not mean that the problem is solely that of the US. The corruption that is present in Mexico and Columbia, for example, is damaging to the citizens of those nations while at the same time facilitating corruption in the US. The problem of drugs is far too complex to discuss in this paper, but it is an excellent example of corruption that must be fought through international cooperation, cooperation that must take place at every level, from law enforcement to heads of state.

International cooperation in fighting official corruption, while in the best interests of all nations concerned, is unfortunately affected by politics, both internal and international. Effective cooperation cannot exist, for example, between nations which have no diplomatic relations. Foreign trade issues may be mixed with anti-corruption efforts. Political change within a nation may affect international cooperation. And cultural differences may cause disagreements over what constitutes official corruption as well as the appropriate punishment for it. This, in turn, may affect extradition. Nations jealously guard their sovereignty, and in the end, one cannot compel another to fight official corruption. Only through mutual understanding, frequent dialogue, exchange of officials, and a shared understanding that official corruption is not in the best interests of any nation, can international cooperation prosper.

113TH INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

NOTES

1. Although the FBI (Federal Bureau of Investigation) is the best known federal law enforcement agency, there are many others: Immigration and Naturalization Service, US Marshals Service, Federal Bureau of Prisons, Drug Enforcement Administration (DEA), Internal Revenue Service, US Postal Inspection Service, US Customs Service, and the Bureau of Alcohol, Tobacco, and Firearms (BATF).
2. All states except Hawaii have "state police", but their duties and responsibilities vary considerably. In California, for example, the largest state law enforcement agency is the California Highway Patrol, which, as the name implies, is primarily responsible for traffic enforcement.
3. Traditionally, sheriffs are responsible for law enforcement in counties. In practice, sheriffs generally exercise their law enforcement in unincorporated areas of the county and in those cities and towns which contract for services from the county.
4. Law enforcement authorities in cities and towns are usually called "police", although other terms may be used as well.
5. "Prosecutor" is a generic term for those who prosecute. Actual titles include district attorney and state's attorney, among others. Prosecutors generally enforce state laws as well as local ordinances.
6. See, for example, 5 USC §2302.
7. In the state of Hawaii, for example, the Campaign Spending Commission may investigate alleged violations of campaign spending laws, assess administrative fines, and refer criminal cases to the appropriate prosecutor. See HRS §11-191 - 11-229.
8. Small law enforcement agencies rarely have the resources to pursue large-scale corruption. Where these resources are not available, the case is usually turned over to a larger agency in the same jurisdiction or to federal law enforcement officials.
9. The Bureau of Justice Statistics of the US Department of Justice reports that there were 25 sworn officers per 10,000 residents in 1996: Census of State and Local Law Enforcement Agencies, 1996. NCJ 164618, June 1998, p.2.
10. Ibid, p.5.
11. In the 1978 "Abscam" operation, for example, the FBI used agents posing as wealthy Arabs who offered bribes to US legislators. All of the meetings between the undercover agents and the legislators were videotaped, and one senator and four representatives were ultimately convicted for bribery and conspiracy. The conviction of one representative was overturned, however, due to entrapment.
12. Federal legislation on corruption is much more comprehensive than that found in state penal codes, which generally deal with bribery and codes of ethics that prohibit conflicts of interest, acceptance of gifts, etc. And all legislation is subject to judicial interpretation - a recent US Supreme Court decision held that in order to establish a violation of 18 USC §201, bribery of public officials, the government must prove a link between the gift conferred and a specific official act for which it was given. *US v. Sun-*

RESOURCE MATERIAL SERIES No. 56

- Diamond Growers of California*, 98-131 (1999).
13. Most, if not all, police departments have administrative rules prohibiting officers from accepting gratuities, with food defined as a gratuity, but they are rarely enforced.
  14. *The Orange County Register*, Wednesday, July 14, 1999, p.B04.
  15. Prosecutorial corruption, such as the Orange County case, must be distinguished from prosecutorial misconduct, which, while not common, is more frequent than corruption.
  16. Those deputies working under the chief prosecutor may be civil service employees or may serve at the pleasure of the chief.
  17. Plea bargaining is facilitated by the nature of penal codes in the US, where a given offense may have as many as four or five degrees. In Hawaii, for example, there are five degrees of sexual assault and four degrees of theft. A plea bargain may involve the prosecutor reducing the charge from first degree sexual assault to third degree sexual assault; the first is punishable by 20 years in prison while sexual assault in the third degree is punishable by 5 years.
  18. The average salary for a chief prosecutor in 1996 was \$64,000. "Prosecutors in State Courts, 1996," Bureau of Justice Statistics, US. Department of Justice, July 1998, p.1.
  19. The median size of prosecutors offices in 1996 was 9, 4 of whom were prosecutors, and the median length of service was 6 years. *Ibid.*
  20. There are many variations on election and appointment, such as "merit" plans that provide for a nominating commission to supply a set number of names for each vacancy to the governor, who then selects one for appointment. After a relatively short period of time on the bench, a retention election is held and the public is allowed to decide whether the judge shall be retained on the bench or not.
  21. Amendment 6 to the US Constitution, as applied to the states through the 14<sup>th</sup> Amendment.
  22. The Speedy Trial Act of 1974 (18 USC §3161) requires indictment within 30 days of arrest, arraignment within ten days of indictment, and trial within 60 days of arraignment in federal cases. State requirements vary but do not exceed 180 days.
  23. "Three strikes" is a baseball analogy ("three strikes and you are out") which in criminal law refers to statutes which require, for example, that a felon be sentenced to life in prison for the third violent felony.
  24. There are some exceptions to this, where, for example, a judge may impose a term of probation or grant a deferred acceptance of guilty plea.
  25. Judges may hand down light sentences because they are aware of prison overcrowding or, in states where parole boards determine sentence minimums, that this body will play the same role. Prison overcrowding may constitute a violation of the rights of the prisoner, so states run the risk of lawsuits or federal supervision if they allow overcrowding.

113TH INTERNATIONAL TRAINING COURSE  
VISITING EXPERTS' PAPERS

26. In small jurisdictions a judge will normally hear every type of case, from criminal to civil to equity, while in larger jurisdictions a judge may be assigned to a criminal court, or a probate court, or another court dealing with specific areas of the law. But even in the latter, it is normal for judges to be rotated from one court to another.
27. The vast majority of US law school graduates take only one course in criminal law and one course in criminal procedure. Chief prosecutors spend a significant amount of time as administrators, thus the need for training in that area.
28. The National Judicial College, located in Reno, Nevada, has trained over 38,000 judges over a 32 year period. Attendance at this institution, however, is voluntary.
29. See, for example, 18 USC §201 - 211, and 18 USC Chapter 31, for criminal provisions, and 5CFR2635.02 for standards of ethical conduct for executive branch employees.
30. Rajeev Goal and Daniel Rich, "On the Economic Incentives for Taking Bribes," *Public Choice*, 61:269-275 (1989).
31. It is unreasonable to expect that corruption can be completely eliminated; at best we can reduce it to a tolerable level.
32. Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences and Reform*. Cambridge: Cambridge University Press, 1999, pp.39 - 88.
33. See 18 USC §207 is a good example of this type of legislation.
34. The Watergate scandal is perhaps the best known example of the role of the media in exposing official corruption, but media exposure of official corruption takes place frequently at the state and local level in the US.
35. See, for example, "Peru's Drug Success Erode as Traffickers Adapt," *The New York Times*, August 19, 1999, via <<http://www.nytimes.com/library/world/americas/081999peru-drugs.html>>.
36. It was recently revealed that Russian organized crime laundered billions of dollars through the Bank of New York. See "Bank in Laundering Inquiry Courted Russians Zealously," *The New York Times*, August 20, 1999, via <<http://www.nytimes.com/library/world/europe/082099russians-launder.html>>.