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Investigation and Prosecution of Homicide Cases in the U.S.:

The Process for Federal Involvement

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ABSTRACT

This research builds on earlier studies conducted by the Department of Justice (DOJ) that focused on the federal death penalty system. It responds directly to a call for research into the process by which “homicide cases are investigated and how and why some of those cases enter the federal system and others enter the state system.”

Using qualitative research techniques, this study examined the processes by which criminal cases, especially homicide cases, entered the federal criminal justice system. Researchers visited nine federal districts and interviewed federal, state, and local investigators, prosecutors, and defense attorneys who potentially played a role in determining whether homicide cases were investigated and prosecuted in the state or federal systems. The ten original districts were selected purposefully and should not be considered representative of the 94 federal districts. The findings in this report are limited to the first four districts analyzed. These districts are geographically diverse, with and without state capital provisions, and sent among the highest and lowest number of cases to DOJ for capital consideration during the study reference period, 1995-2000.

The report is divided into seven chapters. The first provides an introduction to the research, including a brief background on death penalty research in general, the federal system, and relevant federal homicide statutes. Chapter Two describes the research methodology, including decisions regarding sampling, interview protocol development, interview process, and obstacles encountered. Chapters Three through Six offer district profiles in demographics, availability of capital punishment, local criminal justice systems, homicide caseloads, federal capital cases, and findings from the district interviews. Using comparative analysis techniques, Chapter Seven explores patterns of similarity and differences among the four districts.

The findings make clear that no one factor likely predicts whether homicide cases are brought to the federal system. Instead, the findings suggest a framework that organizes the myriad factors that influence decision-making into two categories: openness that is influenced by expertise, capabilities, and track record; and coordination and interaction that is influenced by task forces and other mutually beneficial relationships reinforced by shared crime concerns and respect.

EXECUTIVE SUMMARY

INTRODUCTION

The U.S. Department of Justice (DOJ) in 2000 initiated two statistical studies of the federal death penalty system to address concerns about federal death penalty application post-*Furman*. The concerns arose as a result of early convictions under the newly enacted federal death penalty statutes that came primarily from defendants with minority backgrounds and from a few federal districts across the country. The DOJ goal for these studies was to understand what factors led to what on its face appeared to be racial and geographic disparity among federal death row inmates.

Our research examines the process by which criminal cases, especially homicide cases, enter the federal criminal justice system. Our goal is two-fold:

- 1) to identify the process by which the federal government is made aware of potentially federally relevant cases within the federal districts; and
- 2) to identify the process and factors that influence the decision by U.S. attorneys to prosecute a case in the federal court system or decline federal prosecution.

As part of our study, we interviewed actors in the state and federal criminal justice systems who potentially played a role in determining whether a homicide case was investigated and prosecuted in the state or federal systems.¹ Within each district visited, we interviewed local and federal prosecutors, local and state police, federal investigative agents, and defense attorneys who practiced in federal court.

BACKGROUND

While our study focuses on the processing of homicides, the original impetus for the study revolved around application of the federal death penalty. To accommodate this focus, we discuss the development of death penalty jurisprudence, as well as the kinds of research efforts into the question of the death penalty as it relates to disparity in race, ethnicity, gender, and geographic location with an emphasis on the federal system. As part of this discussion, we will highlight the trend toward federalization of the criminal law, which enables homicide cases to be heard in federal court. We provide a brief primer on the federal justice system, the 94 federal districts in which it

¹We originally intended to interview in 10 districts across the country. However, due to delays in gaining access to the various offices, funds permitted us to visit only nine of the 10 districts.

operates, and why this is important to our general understanding of how justice in this country is administered. This issue plays a pivotal role in understanding how actors in the state and federal criminal justice systems make sense of the work they do and the laws they protect.

DOJ Reports

DOJ released its first report, *The Federal Death Penalty System: A Statistical Survey (1988-2000)* on September 12, 2000. The goal of this report was to understand better the administration of the federal death penalty, and to ensure that the application of the death penalty was equitable. Racial and ethnic minorities were over-represented in the 682 cases reviewed, and significant geographic differences existed. Subsequently, on June 6, 2001 DOJ released a second report, *The Federal Death Penalty System: Supplemental Data, Analysis and Revised Protocols for Capital Case Review*. Although the second study reported similar findings, it also noted that the racial/ethnic and geographic differences were not the result of any “invidious” racial reasons. It found neither racial unfairness nor geographic arbitrariness, but rather a multitude of factors that influenced whether a homicide would be prosecuted locally or federally.

Reaction to the DOJ Reports

Noting that it was “long overdue in exploring the doctrine and practice of the federal death penalty,” the *Federal Sentencing Reporter* (FSR) published a special issue in July/August 2001, entitled “Perspectives on the Federal Death Penalty.” Included in this issue were a number of perspectives on the federal death penalty system, including excerpts from the two DOJ federal death penalty reports, a letter from Professor David C. Baldus to Senator Russell Feingold in response to the DOJ reports, a Roundtable Discussion with U.S. Attorneys conducted by the Vera Institute, and an article by Professor Rory Little focusing on the tension inherent in trying to administer a death penalty protocol that accounts for “uniformity, individualized fairness, and community values” (Little, 2001).

Dr. Baldus, a nationally known expert on the death penalty, argued that the DOJ reports missed the point on the issue of race and the federal death penalty. The concern was not whether there was blatant racism against minorities but rather “whether defendants with similar levels of criminal culpability and deathworthiness are treated comparably or differently because of their race or the race of their victims.” To get a more accurate gauge on this question, he suggested that research be conducted to examine differences in the rates at which death sentences were (a) sought by U.S. Attorneys, (b) approved by the Attorney General, and (c) imposed by juries.

Issues of Consistency in the Federal Death Penalty

The Vera Institute invited a group of former U.S. Attorneys who served during the DOJ study reference period to discuss their experiences and the extent to which any aspect of the decision-making process played a role in shaping the racial and ethnic composition of federal death row. Participants agreed on two important points. First, although “applying the same set of rules and trying to apply those rules in a way that is fair and just,” there is no “consistent standard between the county I live in and the next county, so how on earth could this happen across the country?” Second, federal prosecutors indicated that U.S. Attorneys can shape the demographics of federal death row when defining their prosecution priorities. For example, in one district, “it was only after the focus turned to drug trafficking on the southwest border that almost every defendant, including those prosecuted in death penalty cases, was Hispanic.”

Uniformity and Differing Regional Values

For many who responded to the DOJ reports, the question ultimately became whether a federal death penalty could be applied with consistency in each federal district across the country. Professor Rory Little considered this theme of uniformity and national consistency and noted that despite efforts by *Furman*, *Gregg*, and *Lockett* to provide “a uniform procedural structure for individualized consideration of offenders,” there existed an inherent tension in accommodating “uniformity, individualized fairness, and community values” (Little, 2001). With a country as large and diverse as the United States, Little suggested that uniformity might not be possible.

Little voiced concern about losing community values when attempting to develop a system that would promote widespread uniformity. Little was concerned particularly about states that held deep-seeded views such that capital punishment was not permitted in their jurisdictions but were forced into applying the death penalty due to national values. That is, “should the federal death penalty be prohibited, even for heinous federal crimes, in federal districts that lie within the States that prohibit capital punishment?”

Academic Research Related to the Death Penalty

Considerable research has examined the issue of capital punishment, with a focus primarily on state death penalty cases. Other than the two recent studies completed by DOJ (September 2000; June 2001), no empirical research has been completed that looks at the federal death penalty.² However, the research done at the state level provides helpful clues for examining the federal system.

²The RAND Corporation undertook a quantitative federal death penalty study at the same time we initiated this qualitative study. The results were not available at the time of writing this report.

Prior to the far-reaching U.S. Supreme Court decision in *Furman v. Georgia*, many research studies pointed to an ominous presence of racial discrimination in those sentenced to death in the United States.³ In its decision in *Furman*, the U.S. Supreme Court attempted to put to rest all concerns that application of the death penalty in the United States was arbitrary and capricious. *Gregg*, *Proffitt*, and *Jurek* opened the door to renewed application of the death penalty.

In numerous studies that followed *Furman*, it became apparent that contentions of racial bias remained despite the safeguards adopted by various states and the federal government.⁴ Furthermore, the post-*Furman* studies found an amazing degree of similarity in results from varied and numerous jurisdictions. Studies found that race of the victim played a significant role in the decision to charge and/or prosecute death penalty cases across many states.⁵ In addition, factors other than race of victim were found to influence the charging, prosecuting, and sometimes sentencing in death penalty cases, but none with such consistent results.⁶ The second most frequent factor influencing outcome among the death penalty studies was whether the homicide was considered a felony homicide or not;⁷ that is, a homicide that occurs in the course of committing another felony offense.

Federal Death Penalty

The federal death penalty contributes very few cases to the pool of offenders sitting on death rows in this country. Recent information shows that only one percent of the total number of inmates on death row in the United States is in the federal system. As with all state death penalty statutes, the federal

³ See, e.g., Garfinkle, 1949; Mangum, 1941; Johnson, 1957; Wolfgang, Kelly, and Nolde, 1962; Wolfgang and Riedel, 1973, 1975; Baldus et al., 1980; for complete review of these and other studies, see Kleck, 1981. For the most part, these studies conclude that the death penalty was applied discriminatorily against blacks in certain southern states, but not others. The most consistent finding was that those who killed white victims were far more likely to receive the death penalty than killers of black victims.

⁴ See, e.g., Riedel, 1976; Lewis et al., 1979; Arkin, 1980; Bowers and Pierce, 1980; Radelet, 1981; Zeisel, 1981; Baldus et al., 1983, 1985; 1994; 1998; Bowers, 1983; Paternoster, 1983, 1991; Radelet and Vandiver, 1983; Gross and Mauro, 1984; Barnett, 1985; Radelet and Pierce, 1985; Ekland-Olson, 1988; Vito and Keil, 1988; Keil and Vito, 1989, 1990; Berk et al., 1992; Bohm, 1994.

⁵ For example, Arkansas (Gross and Mauro, 1984), California (Baldus et al., 1980; Berk et al., 1992), Florida (Arkin, 1980; Bowers and Pierce, 1980; Lewis et al., 1979; Zeisel, 1981; Bowers, 1983; Radelet and Vandiver, 1983; Radelet and Pierce, 1985; Riedel, 1976; Barnett, 1985), Georgia (Baldus et al., 1983, 1985; Gross and Mauro, 1984; Bohm, 1994), Pennsylvania (Baldus et al., 1998), Illinois (Gross and Mauro, 1984), Kentucky (Keil and Vito, 1989, 1990); Louisiana (Smith, 1987), Mississippi (Gross and Mauro, 1984), New Jersey (Baldus et al., 1994), North Carolina and Oklahoma (Gross and Mauro, 1984), South Carolina (Paternoster, 1983), Texas (Ekland-Olson, 1988), and Virginia (Gross and Mauro, 1984).

⁶ For example, some studies find the victim-defendant relationship (i.e., stranger victim) important (Lewis et al., 1979; Paternoster, 1983; and Ekland-Olson, 1988). Others point to multiple homicides, multiple offenders, multiple victims as significant (Lewis et al., 1979; Paternoster, 1983; Bowers, 1983; Keil and Vito, 1989, 1990). While still others suggest the importance of regional difference (Bowers, 1983; Paternoster, 1983), urban/rural distinctions (Lewis et al., 1979; Paternoster, 1983; Baldus et al., 1985; Barnett, 1985), gender (Bowers, 1983; Paternoster, 1983; Ekland-Olson, 1988; Keil and Vito, 1989; Berk et al., 1992), prior violent criminal record (Keil and Vito, 1989, 1990), and more than one aggravating factor (Baldus et al., 1985; Keil and Vito, 1990).

⁷ See, e.g., Arkin, 1980; Bowers, 1983; Ekland-Olson, 1988; Keil and Vito, 1989, 1990.

government's statute was struck down in *Furman v. Georgia*. Since *Furman*, Congress has passed three death penalty provisions that revive capital punishment in the federal system: the Drug Kingpin Act in 1988, the Federal Death Penalty Act in 1994, and the Death Penalty Act of 1996 (DOJ, 2000:1), and three executions have occurred as a result of a federal death sentence.

Providing the Context: The Federal Criminal Justice System

In the United States, there are two distinct judicial systems: the federal judicial system that enforces federal laws, rules and regulations, and provides interpretations of the U.S. Constitution; and the various state and local judicial systems that enforce state laws, rules and regulations, and interprets the state constitution. The state courts have general power to decide nearly every type of case, subject only to the limitations of state law, the state's constitution, and the U.S. Constitution. In general, the state courts handle most criminal matters; the kinds of criminal violations that the general public thinks of as "street crime."

Federalization of the Criminal Law

Historically, the U.S. Constitution left to individual states the prerogative of determining what conduct should be considered criminal and what should not. In the main, this meant that criminal conduct has been left to the states to define and to sanction. However, the U.S. Congress does define some criminal conduct as federal in nature and defines in statutory language the factors that promote federal interest in these instances. Professor Louis B. Schwartz (1977), an early scholar in federal criminal law, summarized those factors upon which the Congress generally bases their argument for federal jurisdiction: 1) crimes interfering with the core function of the federal government; 2) legislation essentially based on a federal relationship to the site of the crime; 3) assimilated or state-defined crimes that Congress adopts to account for crime occurring on federal enclaves; and 4) criminalization of conduct based on the Commerce Clause of the U.S. Constitution.

There has been a growing tendency on the part of the U.S. Congress to make federal a number of crimes that generally would be considered state. And there tends to be a pattern in the federal legislation of criminal conduct that results in political benefits to those who instigate the attention of a new federal enactment and concern, as well as the resulting federal law.

Homicide provides an interesting example of the tendency to create federal statutes to address crime that historically has been outside the purview of the federal courts. Despite an increasing number of federal statutes that allow for federal prosecution of homicide cases, the federal government historically has looked upon homicide as a local crime, providing federal prosecutors with guidance that illustrates this point. For example, upon notice that a homicide

has occurred, federal prosecutors must determine whether the offense involves substantial federal interest before it can be brought into the federal system. “Where concurrent jurisdiction exists with a State or local government, a Federal indictment for an offense subject to the death penalty should be obtained only when the Federal interest in the prosecution is more substantial than the interests of the State or local authorities” (DOJ, 2001 at § 9-10.070).

Federal Capital Statutes that Cover Homicide or Death

Almost all homicides occurring within the 50 United States are subject to state criminal laws. In unique situations, as dictated by Congress in federal statutes, the federal government has been provided jurisdiction that, for the most part, can be considered sole or exclusive jurisdiction over homicides. For example, the federal homicide statute, 18 USC § 1111 – Murder, provides federal jurisdiction over homicides occurring on *federal property and “within the special maritime and territorial jurisdiction of the United States”* (Federal Criminal Code and Rules, 2002).

That said, the applicability of federal jurisdiction of the criminal law to offenses occurring on federal property is not always clear. As discussed with officials in several districts, the agreements by which the federal government obtained federal property may provide alternatively for jurisdiction to include only the state criminal law or provide for concurrent jurisdiction between the state and federal governments. These agreements may have included federal parkland, federal buildings, military installations, and Native American lands. The great majority of federal statutes provide for federal jurisdiction of homicides that typically are provided for under state law as well. The federal statutes provide for a federal nexus that allows, but does not require, federal jurisdiction over offenses.

Several federal statutes provide for jurisdiction over the homicide of a *federal victim*, such as the President, congressional officials, government inspectors, or federal witnesses. Homicides committed by *federal prisoners*, whether escaped or in prison may be handled federally. A large number of federal statutes allow for federal prosecution of homicides if the offense is likely to be multi-jurisdictional, most citing *transportation* (air, trains), *interruption of commerce*, or *use of the mail*. A group of *special crime categories* has been the focus of federal legislation and provides for federal jurisdiction over homicides committed in relation to (or deaths resulting from) drug offenses, transportation of illegal aliens, firearms, bank robbery, and civil rights offenses. Finally, some statutes cover activities that threaten *national security* or that are of an *international* nature.

METHODOLOGY

Site Selection

Originally, ten sites were selected and approved by NIJ for inclusion in this study. Selection was based on one of two criteria: 1) the local jurisdictions reported (through Uniform Crime Reports) high frequencies of homicides occurring, or 2) high numbers of federally prosecuted homicides. While some districts selected met both criteria, others did not. Data from only four of the original ten sites were analyzed for inclusion in this report. These sites are geographically diverse, include death penalty and non-death penalty states, and include considerable variations in the rate of federal capital prosecutions.

Local jurisdictions within each district were selected for interviews based on the percent of homicides reported in the district that occurred in their geographic area. Jurisdictions reporting the highest number of homicides in each district were selected automatically. If these jurisdictions contributed less than 50 percent of the district's homicide occurrences, additional jurisdictions were included until 50 percent of the homicides were represented. Given this criteria, the number of local jurisdictions included in the study ranged from one to five per district.

Because of the nature of the district selection process for this study, individual districts or the grouping of districts cannot be construed as representative of other districts or all federal districts. As a qualitative study, the research is intended to uncover factors and processes that may help to explain how and why federal districts may vary in their processes and outcomes; however, these findings cannot be generalized to include other districts.

Advisory Group

An advisory group, comprising both academic research and federal system experts, was impaneled for this project to assist in the development and final review of the interview instruments and protocol.⁸ During the initial stages of the project, advisors were called upon to address issues identified by staff that needed clarification. Once drafts of the instruments had been designed, the Advisory Group met in Washington, D.C. to discuss issues in general and review the instruments and protocol in particular. The group generally thought all major issues had been identified, helped to clarify sub-issues, and

⁸ Members of the panel included the Honorable Avern Cohn, District Judge for the Eastern District of Michigan; the Honorable A. David Mazzone, District Judge for the District of Massachusetts; Mr. Saul Green, former U.S. Attorney for the Eastern District of Michigan; Mr. Fred Warren Bennett, former Federal Defender for the District of Maryland – Mr. Timothy Sullivan, a capital certified defense attorney substituted for Mr. Bennett at the working meeting; Dr. Raymond Paternoster, Professor, Department of Criminology and Criminal Justice, University of Maryland; and Dr. Gordon Waldo, Professor, School of Criminology, Florida State University.

addressed difficulties in implementation. Suggestions made by the group were included in subsequent revisions of the instruments, and all final documents were submitted to the group and NIJ for final review.

Data Collection

The primary method of data collection used was face-to-face interviews of key criminal justice officials within each district included in the study. Interviews questioned respondents about processes and factors that might impact whether homicide cases within the district would be processed at the local or federal level, such as relationships between federal and local criminal justice officials, agreements to inform federal agencies of federally relevant offenses, and attitudes about the abilities of federal and local agencies to provide adequate results in handling homicides. Eleven separate interview instruments were designed to cover varying agencies and officials,⁹ including

- U.S. Attorneys and former U.S. Attorneys (or their designees)
- Section Heads of Drug, Organized Crime, and/or Violent Crime Units at U.S. Attorney Offices
- Assistant U.S. Attorneys within these sections
- Special Agents in Charge (or their designees) at DEA, FBI, and ATF
- Section Heads of relevant units at DEA, FBI, and ATF
- Police Chiefs (or their designees) of local law enforcement agencies (that reported up to 50 percent of homicide occurrences within the district)
- Section Chiefs of relevant units within these local law enforcement agencies
- Local Prosecutors (e.g., District Attorneys) or their designees who prosecuted homicide cases from the identified law enforcement agencies.
- Section Chiefs of relevant units within these local prosecutor offices.
- Federal Defenders

More than 150 officials were interviewed in the four districts discussed in this report. Table 1 summarizes the number of interviewees responding within each district.

Table 1: Number of Interviewees by Agencies within Each District

Agencies	District A			District B	District C	District D
	Hub 1	Hub 2	Hub 3			
U.S. Attorney’s Office	2	3	5	6	7	8
Federal Law Enforcement	8	3	7	8	12	8
Local Law Enforcement	5	15+	1	11	14	10
Local Prosecutor’s Office	2	9	1	5	3	5
Federal (or private) Defenders	2		1	1	4	2

⁹ Copies of interview instruments are available in the appendix to the technical report.

Site Profiles

Site profiles for the districts analyzed are provided in Chapters 3 through 6 of the technical report. Setting the stage for the interviews and subsequent comparisons among districts, these data provide background information that includes population statistics, racial distributions, and the numbers of homicides reported between 1995 and 2000. To explain the variations among homicides that are capital eligible in the federal system, the data were categorized further to identify those that might be relevant to federal prosecution (e.g., homicides in furtherance of drug activity, or homicides using firearms). In addition, we provide a brief overview of those cases that were processed through the federal system and submitted for capital case review during our reference period.

Table 2 provides a general description of the four districts included in this report. It provides a rough range of characteristic differences among the districts analyzed. District B stands out in both population size and proportion of minorities (non-White, non-Hispanic) in the population. Of those offenses deemed potentially federal relevant, more than three quarters of defendants in each district came from minority backgrounds. We emphasize that these figures provide background information about the districts included in our qualitative analysis and should not be used as the basis for quantitative judgments.

Table 2: Descriptive Profile Data for Districts

District Statistics	District			
	A	B	C	D
District Population (approximate)	5 million	17 million	7 million	6 million
Percent Population Minority Status (approximate)*	36%	60%	60%	25%
Number Homicides Reported (1995-2000)	2,099	9,951	3,063	3,684
Percent Potentially Federal Relevant Homicides	60%	61%	48%	68%
Percent Minority in Federal Relevant Homicides	80%	84%	83%	88%
Relative Rate of Federal Capital Cases Submitted	High	Low	Low	Medium
State Death Penalty Statutes	Yes	Yes	Yes	No

*Includes all except White/Non-Hispanic.

Interview Key Issues

Interviews undertaken in the federal districts explored several key issues that potentially could impact the processing of homicides and the likelihood that they would be processed federally. Data analysis of individual districts focused on the following key issues:

- The nature of the local crime problem
- Federal and local crime priorities
- Policies and agreements between federal and local authorities

- Perceptions of state and local jurisdiction
- Benefits of federal and state systems for processing cases, including resources, investigative grand juries, use of wiretaps, charge availability, evidentiary issues, use of accomplice testimony, multi-jurisdictional issues, strength of evidence, procedural issues, pretrial holding, witness protection, severance, practitioner capabilities, lengthy/complex cases, sentence availability, and death penalty availability
- Task forces
- Relationships between and among agencies
- General attitudes
- Case flow by offense type

The Executive Summary provides only highlights of those issues found to have the greatest impact on processing within each targeted district. For a fuller description across all key issues, the reader is referred to Chapters 3 through 6 of the final technical report.

Analytic Techniques Used for Interview Data

The research team read all the interviews, verbatim, many times, noting when particular ideas and important concepts emerged, and attaching key words to the data accordingly. We then grouped together responses describing similar ideas or processes, which allowed for further examination of the data relating to key issues.

In our final analyses, we organized the data, documented similar themes, and refined the analysis in an effort to make connections both within and across interviews and categories. We used a multi-step process for coding the interview data into separate categories. After coding the data into separate categories, the researchers looked for patterns and sub-patterns again with an eye toward tying these complex ideas together. By putting these categories together, the story or “integrated explanation” emerged.

The following sections report key findings from interviews in each of the four districts analyzed.

DISTRICT A – INTERVIEW FINDINGS

District A is located on the East Coast of the United States and has a population of approximately five million people.¹⁰ The majority of residents in District A live in one of three major population hubs, referred to as Hub 1, Hub 2, and Hub 3. Approximately 35 percent of the district’s residents live in Hub 3, compared to 14 percent in Hub 1 and 26 percent in Hub 2.

¹⁰ All figures derived from 2000 Census data.

District A differed structurally from the other districts analyzed as part of this report. While other districts had one metropolitan region that substantially contributed to the district homicide rate, District A had multiple regions. In addition, the U.S. Attorney's office that contributed substantially to the number of federal homicide prosecutions within this district was located in an area with a low overall homicide rate. As a result, three geographical areas were included for interviews in District A.

Hub 1 – Interview Findings

Hub 1 was a large metropolitan area located in District A. Relationships across law enforcement organizations and federal agents and prosecutors were very strong and somewhat isolating of the local prosecutor's office. Federal officials did not become involved in homicide cases, generally, without an express request for assistance from local officials. Task forces played a significant role in activities surrounding homicide cases, but did not necessarily result in prosecution in the federal system. Two particular task forces have contributed to the number of federal homicide cases during the target period: an unsolved homicide task force and a federal initiative to get firearms off the streets. Generally, federal homicide cases were related to drug-related activity.

Crime Problem

During the 1990s, Hub 1 had a serious problem with homicide, sometimes receiving the dubious characterization as the murder capital of America. During the study period, the primary local crime concerns included drugs, firearms, and violent crime. Respondents reported that the majority of homicides were drug-related and involved gangs located in pockets throughout the city. In general, the federal government became involved in Hub 1 homicide cases at the request of local authorities.

Jurisdiction

When questioned about the types of homicides exclusively or automatically handled by the federal government, respondents at all federal agencies mentioned that they generally did not think of homicide cases as exclusively federal jurisdiction. Federal involvement in homicides in Hub 1 was a frequent occurrence. Between 1995 and 2000, Hub 1 was targeted by federal agencies because of its high homicide rate. The U.S. Attorney's Office and federal agencies sought to bring federal resources to bear on the problem of reducing violent activity in the area. This involvement occurred through a major state/federal initiative, drug investigations, and an unsolved homicide task force that focused on drug-related homicides.

All respondents generally believed that most homicides in Hub 1 were related to drug activity. Due to the potential federal nexus of such crimes, federal involvement was sought frequently by local law enforcement. This tendency was exacerbated by the fact that the local police representatives were concerned the local prosecutor's office insufficiently prosecuted drug offenses due to its "treatment" as opposed to "punitive" ideology. As a result, local officers freely sought federal assistance in drug-related cases; the investigation of these cases frequently involved related homicides.

All federal players were focused on helping Hub 1 address its homicide problem and available resources were used accordingly. Federal prosecutors indicated that they actively lobbied to be permitted to prosecute such cases. Their only requirements appeared to be that the local officials request their assistance (which they frequently did) and that a federal nexus be found (which was easily established in drug cases). Respondents from local law enforcement indicated that they were comfortable approaching the U.S. Attorney's Office or task force members to assist in homicide cases. Local defense attorneys, however, felt the U.S. Attorney's Office was too aggressive and pushed the envelope on appropriate federal jurisdiction, indicating that federal prosecutors attempted to "pawn off" anything as federal interest.

Local prosecutors reported that homicides in Hub 1 generally were and continue to be prosecuted locally. They alluded to the important role federal authorities played in getting firearms off the street, but indicated that if federal officials uncovered a homicide in the course of prosecuting a firearms case, local officials would prosecute the homicide, leaving the firearms charge to be prosecuted federally. Respondents from the U.S. Attorney's Office indicated that to prosecute a homicide case federally, it had to be involved in something bigger (e.g., big drug conspiracy or gang investigation); they would not prosecute a simple homicide.

Benefits

Local law enforcement understood and took advantage of tools in the federal system that would allow for convictions when not possible, or unlikely, in the state system. These cases generally involved drug conspiracies and often necessitated the use of the federal grand jury. The subpoena power and the ability to compel testimony were particularly attractive.

Two federal benefits stood out as particularly important to the question of state versus federal prosecution: federal resources and practitioner capabilities. Federal staff, dollars, and equipment played an important role in assisting local authorities in this fiscally strapped local community. Local law enforcement and federal prosecutor respondents indicated that the local police had a general lack of confidence in the local prosecutors, especially with homicides, drug possession, and retail-level drug cases.

In addition, virtually all respondents spoke of the federal sentencing guidelines and mandatory minimum sentences for drug offenses as particular benefits to the federal system. The focus of this benefit, however, was not for punishment, but as an investigative technique to gain cooperation. The primary benefit rested with the ability of federal investigators to gather information through interviewing and debriefing lower level offenders who were subject to mandatory minimum sentences or high guideline sentences in the federal system. By obtaining information from less significant offenders, they were able to uncover information on homicides and higher level participants.

Finally, the U.S. Attorney's willingness to devote resources to the kinds of conspiratorial behavior that potentially resulted in homicides played a very important role. Local and federal investigators reported that the U.S. Attorney's Office was much more likely to assist in the investigation and prosecution of complex drug cases that resulted in homicide.

Task Forces

The local police respondents, including those in the homicide unit, felt very strongly that federal task forces played a major role in their city's ability to combat violent crime, as well as a major role in funneling homicide cases to the federal system. They indicated that federal agents and local officers intermingled so closely that there was very little of which either side was not aware. There was no hesitation taking cases, including homicides to joint task forces for consideration. If a case involved drug activity, they were more likely to approach the task force due to the perception that the local prosecutor's office would not handle the case adequately (resulting from its "treatment-oriented" approach). In addition, any multi-jurisdictional cases would be taken to the task forces. After working a case jointly, task force members would decide where cases would best be prosecuted. Street level offenses more likely would be handled at the local level, while multi-jurisdictional and more complex organization cases would be handled by the federal prosecutors.

Relationships

As indicated in the interviews, the relationships in this district among local and state law enforcement, the U.S. Attorney's Office, and federal law enforcement were extremely positive. Respondents from several agencies characterized these relationships as built on trust and respect, with open and daily interaction at all levels. These relationships were marked by shared priorities and an understanding that the federal agencies were available to assist the locals in addressing their crime problem. The local police found a much more willing law enforcement partner in the U.S. Attorney than in the local prosecutor for certain federally relevant homicides.

Summary – Hub 1

Two factors appeared to influence the number of homicide cases investigated and prosecuted in the federal system in Hub 1:

- 1) The relationship and trust between the local law enforcement and the U.S. Attorney's Office; this resulted in direct and considerable contact between the two organizations.
- 2) The willingness of the U.S. Attorney's Office to accept for federal prosecution all firearms cases, drug-related homicides, and more complicated cases that might have resulted in homicide.

The federal priority of assisting the local jurisdiction with its violence and homicide crime problem contributed to the number of homicide cases being pursued in the federal system. In other districts, where this program and priority did not exist, fewer homicides would come to the federal system.

In addition, the national spotlight on Hub 1 during our reference period had some influence on the number of homicides investigated and prosecuted federally. For example, the initiative to get firearms off the streets netted some firearm-related homicides. In addition, the cold case task force focused exclusively on uncleared homicides.

Relationships played a key role in bringing homicide cases to the federal system. Local law enforcement had little confidence that the local prosecutor would pursue cases presented to them by law enforcement, particularly drug offenses. Whereas local police had no compunction about calling the assistant U.S. attorneys at any time, they recognized as well the danger in overburdening the U.S. Attorney's Office. They tended, therefore, to seek federal assistance in the more complicated, difficult to solve and prosecute cases.

In the factors identified as potential routes to federal investigation and prosecution of homicide cases, the majority of respondents provided very similar pictures of the process. The conspiratorial drug-related conduct was the driving force behind most of the federal homicide cases. Task forces contributed to building strong relationships and a sense of teamwork among local and federal law enforcement and federal prosecutors that led to collaboration in handling homicide cases. The federal grand jury played an important role in some cases moving to the federal system, as did mandatory minimum sentences and sentencing guidelines. Often these last three factors served as impetus for low-level defendants to cooperate in the investigation and prosecution of conspiracy cases. Large, complex drug enterprise cases were investigated by joint local/federal task forces, which opened the door to federal prosecution. When task forces became involved, respondents indicated that the case likely would be prosecuted federally.

Jurisdiction played little role in whether a homicide case was investigated and prosecuted in the federal system. However, the U.S. Attorney's Office opened the window to federal jurisdiction by "looking into" cases that could be built into federal cases and being aggressive in their prosecution. It was clear to local and federal investigators that the U.S. Attorney's Office was willing to prosecute the violent crime-related cases; cases that sometimes would not be prosecuted locally. In general, the kinds of cases presented to the U.S. Attorney's Office involved fewer jurisdictional issues than in other hubs in this district. Hub 1, however, was considered a distribution or transit center for drugs coming from New York; thus, the multi-jurisdictional nature of the criminal conduct enhanced federal interest in pursuing the case.

Hub 2 – Interview Findings

Hub 2 consists of several contiguous metropolitan areas clustered in one region of the district. For purposes of this study, we interviewed in the three cities that contributed significantly to District A's overall homicide rate, referred to as City 1, City 2, and City 3. Federal involvement in homicide investigation and prosecution differed markedly between City 1 and Cities 2 and 3. Law enforcement and prosecutors in City 1 avoided federal involvement, arguing that they were capable of managing their homicide cases. On the other hand, law enforcement and prosecutors in Cities 2 and 3 recognized problems in their communities and weaknesses in their own local criminal justice systems and were open to assistance from federal officials.

Crime Problem

Homicides in Hub 2 were described as primarily drug-related. Law enforcement officials in all three communities indicated that the majority of homicides were drug related; however, one prosecutor noted that while the majority of homicides involved alcohol or drugs, he/she categorized a greater portion of these as domestic violence related. Officials in City 3 noted a significant problem in the mid-90s with a revolving door of drug-related cases that involved homicide and witness intimidation.

Jurisdiction

There were some differences across the three communities with respect to federal involvement in homicide cases. Federal prosecutors reported that they rarely handled homicide prosecutions. Respondents generally reported that the most appropriate cases for federal involvement were high-level, multi-jurisdictional drug dealings; particularly, cases about which they could build information over time that would lead to the toppling of the larger conspiracies. Officials from two cities responded that they were happy to have the federal assistance in dealing with these types of drug activities and indicated that

federal involvement in related homicides was appropriate. However, local authorities in City 1 held a provincial view on homicide. In no uncertain terms, homicide was strictly a local matter. Respondents from City 1 indicated that despite federal involvement in drug investigations, the homicide always would be investigated and prosecuted locally.

Federal prosecutors reported that local prosecutors had been trained on what constitutes a federal nexus on jurisdiction. In turn, local prosecutors provided guidance to local law enforcement on cases that should be handled more appropriately in the federal system. The active nature of task forces contributed to a better appreciation among local officials of the types of crime that would merit federal involvement. Respondents noted that when federal authorities collected information on ongoing investigations, they debriefed local case investigators to determine whether it was best prosecuted locally or federally.

Benefits

Respondents at local and federal agencies indicated the need for additional resources. Manpower was mentioned as lacking by most local agencies; in one city recruiting had been a serious problem. This shortage would become particularly problematic if there were a large number of homicides (e.g., when a single case involved six homicides). If local law enforcement officials recognized a need for additional resources, they had no hesitation in going to federal agencies for assistance. However, such assistance would support a locally led investigation only.

Most respondents reported that the federal grand jury was better than the state grand jury because under the state system, the prosecutor was unable to compel a witness to testify. In addition, local prosecutors found the federal grand jury beneficial in cases that required investigation and prosecution in multiple jurisdictions. Local prosecutors in City 1 noted that if a federal grand jury was used, the case would be prosecuted in the federal system; therefore, its use was avoided except in drug cases. On the other hand, local prosecutors in the other communities reported that the federal grand jury was a very beneficial tool and could be very helpful in homicide investigations.

Police officials in all communities reported that they used the threat of federal prosecution to motivate offenders to cooperate; this tactic worked particularly well with the threat of federal firearm and drug charges that included federal mandatory minimum sentences and frequently provided information on local homicides. All local officials felt that the main and most beneficial tool in the federal system was the threat of federal charges that would result in lengthy sentences under the federal sentencing guidelines.

During our study period, at least one community in Hub 2 had serious problems with witness intimidation that resulted in recanting of earlier

statements. Local officials found it necessary sometimes to seek federal assistance to protect witnesses pre-trial. Although respondents reported seldom using federal witness protection, respondents generally agreed that the federal system did a better job of protecting witnesses than the state system.

Task Forces

The degree to which joint local/federal task forces played a role in homicide varied somewhat across the hub. Local authorities in City 1 did not participate in violent crime task forces because they handled these cases locally; thus, joint task forces targeting violent crime simply were not necessary in that area. To the extent that joint task forces were useful, local police suggested they were better-suited to assist with local narcotics investigations. On the other hand, respondents in the other two communities noted that task forces played an important role, particularly in terms of coordinating information from other jurisdictions on drug investigations. Local prosecutors indicated that federal investigators had investigative tools and were better able to recognize crime patterns, trends, and criminals moving across cities in the area.

Respondents from Cities 2 and 3 perceived that a small number of violent offenders during our reference period terrorized the local communities and intimidated witnesses from testifying in court. Local prosecutors and police indicated that joint task forces were particularly useful in addressing these types of problems. Although federal investigators for the most part focused on high-level criminal organizations, when called upon, federal authorities formed task forces to target violent street gangs or particularly violent offenders.

Relationships

Relationships played a significant role in bringing federal investigators and prosecutors into local cases in Cities 2 and 3. Agencies in these communities reported that they felt comfortable picking up the telephone and calling any of the appropriate other parties as it related to violent and drug crimes. Coordination and cooperation between local and federal officials resulted in local understanding of the types of cases that were prosecuted more effectively federally as well as increased local willingness to inform federal authorities of these crimes. Local authorities perceived that federal authorities were willing, in return, to provide assistance when asked. Rarely, if ever, were there disagreements between or among local and federal agencies in these areas. By all accounts, they were “not really disagreements, but discussions.”

In City 1 local and federal authorities worked together less frequently and thus had weaker relationships. While stronger relations may have increased communication about homicides, based on local attitudes it would have been unlikely that local authorities would “give up” homicides to federal authorities.

Summary – Hub 2

Hub 2 contained multiple contiguous cities that had comparable homicide rates during the target period. Two of the three communities were quite similar with respect to the handling of homicide cases and in their interactions and relationships with federal criminal justice officials; a third community, representing the largest city in the region, was markedly different. While the smaller communities (Cities 2 and 3) would entertain the idea that a homicide case could be prosecuted in federal court, City 1 officials were adamant that homicides remained with local authorities.

Both law enforcement and prosecutors in City 1 indicated that they were both capable and desirous of handling their local crime problem. They were proud of their record in clearing and prosecuting homicides effectively. They avoided federal interaction because they perceived federal involvement as resulting in cases being taken from them.

Law enforcement and prosecutors in Cities 2 and 3, however, recognized problems in their communities and weaknesses in their own local criminal justice systems. They struggled to overcome the violence problem during the target years. Plagued with witness intimidation and/or system corruption issues, as well as the multi-jurisdictional nature of underlying drug activities, these cities were willing to consider new strategies, which included seeking federal assistance. Because federal priorities included violent crime, federal authorities offered and were willing to assist. Federal offers of assistance were welcome, and by working together they learned to utilize benefits of the federal system to attack these problems.

In Cities 2 and 3, task forces led to cooperation between local and federal agencies, particularly focusing on firearms and drug offenses. Local investigators came to recognize the types of cases that could be handled federally. Using the threat of mandatory minimum charges and extensive prison time associated with them, local and federal authorities were able to gain cooperation from street-level drug dealers and often obtained information about homicides as a result. Using the federal investigative grand jury additionally assisted them in obtaining information, especially from witnesses who otherwise were too intimidated to testify in the state system.

Because Cities 2 and 3 were actively involved with federal agencies and had local officers and prosecutors cross-designated to serve as federal agents and prosecutors, local agencies were more likely to recognize how the federal system could benefit them and use that system on a case-by-case basis to their advantage. Because City 1 did not actively work with the federal system and were confident that they did not need federal assistance, they did not perceive any benefits in the federal system.

Hub 3 – Interview Findings

Hub 3 exists within a sprawling metropolitan area that includes a number of fairly large cities and crosses three federal districts. Respondents pointed to two factors that appeared to drive the process of involving federal officials in the investigation and prosecution of homicide cases. The multi-jurisdictional nature of the metropolitan area in which Hub 3 was located made the federal system much more attractive, with criminal conduct occurring in multiple jurisdictions and witnesses freely crossing jurisdictional areas. Equally important, the willingness of federal prosecutors to agree to prosecute a variety of cases, including homicide, made the presentation of cases in Hub 3 more attractive to federal investigators than other federal districts in the larger metropolitan area.

Crime Problem

Hub 3 experienced few homicides during our study period; however, it shares a border with two other federal districts where a significant amount of drug- and gang-related violence and homicide offenses occurred. Criminal conduct spilled over into multiple jurisdictions and offenders moved freely among the neighboring jurisdictions to avoid detection, providing numerous challenges for local, state, and federal law enforcement and a plethora of choices regarding jurisdiction.

Respondents stated that between 50 and 70 percent of the homicides across the larger metropolitan area involved drugs and gangs. Gangs in the larger metropolitan area were large in number, violent, and deeply involved in the drug business but were widely described as “unsophisticated, mostly mid-level to street-level [drug] distributors.” By contrast, gangs in Hub 3 were less involved in the drug trade and violence, were much more organized, and reportedly drew their affiliation from pre-existing gangs with national and international roots.

Jurisdiction

Most respondents stated that they had never seen a case in Hub 3 that had automatic or exclusive federal jurisdiction. Overall, federal prosecutors in Hub 3 considered homicide a local matter. They noted that their office had a deferential policy toward local authorities such that local prosecutors made the initial decision whether or not to prosecute a homicide.

Despite the multi-jurisdictional nature of Hub 3, respondents across agencies noted few if any disagreements among local and federal authorities in terms of which jurisdiction would prosecute homicides. Respondents noted that often local authorities referred cases to the federal government as a result of

participation on or having knowledge that joint local/federal task forces had expertise in handling cross-jurisdictional crimes.

Interestingly, federal investigators and prosecutors reported little if any friction regarding the appropriate federal district; in general, if a case covered multiple jurisdictions, federal agents wanted to go to the district where they could get the “biggest bang for the buck,” which in their view was Hub 3 in District A. Some federal investigators whose jurisdiction encompassed Hub 3 viewed prosecutors in the neighboring federal districts as non-aggressive, and would “shop” their cases to prosecutors in Hub 3 because it was more aggressive in pursuing cases. Over time, agents presented more and more of the larger, metropolitan area drug-related cases (many involving homicides) to Hub 3, which a number of agents described as “agent friendly.” Investigators also preferred to establish venue in Hub 3 because “they favored the courts and the circuit and because the dockets were controlled, predictable, and very fast.”

Benefits

Hub 3 respondents noted a number of beneficial factors of the federal system that could increase the likelihood that certain types of homicide cases would be prosecuted by the federal government. Among these were the perception of extensive federal resources, the investigative grand jury, ease of dealing with multi-jurisdictional offenses, and the aggressiveness of the U.S. Attorney’s Office.

The reader must remember, however, that virtually all responses for Hub 3 were supplied by federal officials. As a result, they were not balanced by local respondents as in other hubs. Experience from other districts has shown that federal respondents perceive the benefits of the federal system to be much greater than local respondents.

Task Forces

As described by respondents, task forces in Hub 3 (and District A, in general) were “vital” and “absolutely essential.” Task forces played a key role in investigating drug enterprises in this region. The wide jurisdictional reach of task forces was particularly well-suited to address the drug-related crime and violence that occurred across the larger metropolitan area.

Summary – Hub 3

Primarily, two factors in Hub 3 appeared to drive the number of homicide cases that were investigated and prosecuted in the federal system:¹¹

¹¹An additional major contributing factor behind federal homicide-case prosecution in Hub 3 during our study period involved the structural feature of a corrections penitentiary located on federal property,

- 1) The multi-jurisdictional nature of the larger metropolitan area with federal agents who investigated crimes in three federal districts and criminal conduct and offenders that moved freely across shared borders.
- 2) The aggressive nature of the U.S. Attorney's Office in Hub 3 and its willingness to accept homicide cases for federal prosecution.

Other factors played somewhat tangential roles in bringing homicide cases into the federal system. For example, task forces were instrumental in bringing large, complex drug organization cases to the federal system, but those cases only rarely included a homicide. In addition, a corrections penitentiary on federal property contributed a substantial number of homicides to the federal prosecution numbers. The nature of these two factors may have resulted in greater numbers of minority defendants being investigated and prosecuted in the federal system; the penitentiary had a predominantly minority population and large, complex drug organizations generally comprised minority players.

Relationships among the various local and federal investigators and prosecutors were strong in Hub 3. The U.S. Attorney deferred to the state in homicide cases, but stood ready to assist if requested. This respect seemed to increase the trust between practitioners in the two justice systems, and allowed what appeared to be a greater willingness on the part of state and federal officials to move cases freely between the systems. Because of relationships and history, federal agents were more inclined to bring homicide cases or even complex drug cases to District A than to the other two federal districts covered by their field offices.

District A – Cross Hub Summary

Unlike other districts studied, District A has multiple geographic areas contributing to the high homicide rate. Further distinguishing itself, the main office of the U.S. Attorney in District A is located in an area in which comparatively fewer homicides occurred. Although the three hubs discussed in our study are all in the same federal district and share the same U.S. Attorney and state code, arguably, the hubs are as unique from one another as District A is from the other three districts included in this report.

Aspects of each of the District A hubs were unique with respect to the way in which homicide cases ultimately became federal cases, and yet there appeared to be some important ways in which they were quite similar. Local and federal respondents in all three hubs agreed that homicide, for the most part, is a state

which resulted in increased numbers of homicide in the federal system. It is not identified as a primary factor because it was structural and did not involve affirmative decision-making regarding whether these cases should be prosecuted by the state or the federal system; these cases were federal automatically.

crime and federal authorities do not become involved in their investigation or prosecution. Similarly, all agreed that should a homicide become a federal case, its most likely route would be through large-scale narcotics investigations conducted by joint local/federal task forces.

Below we point out some important differences across the three hubs in District A. Our intention in doing so is twofold. First, it clearly illustrates that there are significant regional differences, even among areas contained in one federal district. Second, it allows us to demonstrate how the various players in the local and federal systems perceive the federal role in homicide, as well as their perceptions of the degree to which federal benefits affect the flow of homicides into the federal system.

Context

The majority of federal homicide cases in District A originated in Hub 3, despite the comparatively higher rates of homicide for Hubs 1 and 2. Hub 1 distinguished itself by the high number of unsolved homicides. Furthermore, local law enforcement officials in Hub 1 expressly requested federal assistance much more often than did officials in the other hubs.

Hub 2 distinguished itself from the other District A hubs in that it consisted of several contiguous metropolitan areas clustered in one region of the district that accounted for a fairly high percent of the district's total homicides. Two of the three communities in Hub 2 (Cities 2 and 3) were similar with respect to the manner in which they handled homicides; i.e., they assumed homicides were local crimes, but would entertain the idea that a homicide could be prosecuted in federal court. By sharp contrast, officials from City 1, the largest city in the hub, insisted that homicide cases remain with local authorities.

Finally, Hub 3 was part of a sprawling metropolitan area that included a number of fairly large cities and crossed three federal districts. This hub distinguished itself in that it had the lowest homicide rate, but still sent a number of homicides for federal capital review during our reference period.

In addition to perceiving the federal government's role in homicide differently, respondents from the three hubs distinguished themselves from one another in their perceptions of the degree to which federal benefits affected the flow of homicides into the federal system.

Major Factors Identified Across Hubs

In Hub 1, two major factors seemed to influence the number of homicide cases investigated and prosecuted in the federal system more than any other. First, there was a strong relationship and trust between the local law enforcement and the U.S. Attorney's Office. Second, it was clear to local and federal

investigators that the U.S. Attorney's Office was willing to prosecute the violent crime-related cases, cases that sometimes would not be prosecuted locally.

The factors influencing the flow of homicide into the federal system in Hub 2 were not as clear-cut. In City 1, federal involvement in homicide was perceived as unnecessary and even unwelcome. Not surprisingly, respondents by and large reported that there were very few, if any, factors that would increase the likelihood that federal authorities would prosecute a homicide. On the other hand, respondents from City 2 and 3 were similar to Hub 1, recognizing that their violent crime problem was out of control. Plagued with witness intimidation and/or system corruption issues, as well as the multi-jurisdictional nature of underlying drug activities, these cities were willing to consider new strategies and thus welcomed the investigative and prosecutorial benefits of the federal system.

In Hub 3, two primary factors appeared to drive the number of homicide cases investigated and prosecuted in the federal system: (1) the multi-jurisdictional nature of the larger metropolitan area with federal agents who investigated crimes in three federal districts and criminal conduct and offenders that moved freely across shared borders; and (2) the aggressive nature of the main U.S. Attorney's Office and its willingness to accept homicide cases for federal prosecution.

DISTRICT B – INTERVIEW FINDINGS

District B is located in the western United States. From 1995 through 2000, the number of homicides reported in District B was more than double all other sites included in this study. Violence was associated strongly with large numbers of local gangs involved in street fighting and drug activities. While the number of homicides prosecuted federally was among the highest in the federal system during this period, they were proportionately much lower than reflected by other districts presented (e.g., Districts A and D).

Approximately 50 percent of the homicides in District B were reported by three local agencies, including one county sheriff's office and two police departments within a single county. The largest police department serviced a major city within the district and reported 36 percent of the district's homicides. The county sheriff's office and the smaller police department reported substantially fewer homicides (10 percent and 4 percent, respectively). These three police departments were included in study.

Crime Problem

The local agencies in District B reported that violent crime, especially homicide, was a major problem between 1995 and 2000. During that time, almost 10,000

homicides were reported in District B. Local agencies indicated that this violent crime problem was connected most frequently with gangs and often related to drug activity. One respondent noted that there were more than 1,300 street gangs with 90,000 members in the county. Their focus was primarily on Black and Hispanic gangs because these had been shown to be the most violent. The gang violence typically revolved around rivalries, narcotics, and street crimes.

Federal agencies confirmed the nature of these local problems, but focused on the conspiracies and organizations influencing these problems. Federal agencies were more concerned with general gang activity and violence, drug conspiracy and enterprises, as well as major international organized crime activity initiated by multiple groups operating in the area.

Jurisdiction

Respondents agreed that offenses occurring in federal prisons were of automatic federal concern and would be investigated and prosecuted federally. Offenses occurring on federal property would be investigated by federal agents and handled by the federal prosecutor if the state had no jurisdiction. If the homicide was first reported to local authorities, federal officials would be called. Most local and federal respondents indicated that homicides involving federal employees or officials would be of concern to federal investigators. However, several respondents gave examples to show that joint investigations followed by state prosecutions were most likely to follow such homicides.

Most respondents cited multi-jurisdictional cases as of particular federal interest, with focus mostly on cross-state or international cases that could not be handled adequately by the state, such as kidnapping or murder-for-hire. It was noted that local officials might seek federal assistance in such cases. Several respondents, both local and federal, indicated that cases crossing multiple jurisdictions within the state were easily handled under state law.

Homicides related to on-going federal investigations, such as gang or drug investigations, might be uncovered and/or investigated as part of joint task force activity. Additionally, homicides might be attached to kidnapping, bank-robbery, or murder-for-hire cases being investigated jointly or federally. However, unless such homicides met criteria (such as multi-jurisdictional activity), they likely were prosecuted by the state even if the underlying criminal activity was prosecuted federally.

Local prosecutors agreed that all homicides within their jurisdiction were always of local interest whether the federal government was interested or not. They would not concede a case willingly except under the above criteria and typically would disagree with federal authorities that desired to file on homicide cases that the state could handle. Any disagreements on jurisdiction were handled on a case-by-case basis and resolved at the highest levels; sometimes,

not pleasantly. Local officials indicated that the U.S. Attorney had the control, would make the decision, and would “take” cases. Because the federal government could try a case after it was filed by the state, but state law would not permit local officials from retrying a case already prosecuted by the federal government, local respondents indicated that the state should always file first when it could be handled by either jurisdiction.

Many respondents, both local and federal, referenced a high-profile capital case “taken” by the U.S. Attorney against the wishes of the local authorities. While federal authorities had promised to handle it as a death penalty case, the defendant eventually was allowed to plead to a lesser offense or sentence. Many local officials and some federal agents indicated that this case had been mishandled federally. This seemed to generate considerable local discontent with the federal government and reinforced the local resolve to keep all homicide cases in the local system.

Finally, one respondent at the Federal Defender’s Office explained that the federal court in this district had very strict limits on federal interest. Defenders had witnessed prosecutors being reprimanded by the federal district court for handling what were perceived as “state offenses.” Most U.S. Attorneys from this district had been promoted to the district’s bench. As a result, it was noted that this narrow view of federal jurisdiction was perpetuated in District B.

Benefits

Federal and local investigators and prosecutors indicated that the federal system benefited from its ability to investigate and prosecute activities that crossed state lines. Also, several mentioned the substantial benefit of the federal system to obtain international information from its network outside the country. All indicated that if homicides of this nature occurred, local officials would be more likely to seek assistance from the federal government, and the federal system would be more likely to prosecute such cases.

Local law enforcement and prosecutors, as well as some federal agents, indicated that the U.S. Attorney’s Office was very selective in the cases it chose to prosecute or would agree to support for task force investigation. Most referred to this behavior as “cherry-picking.” This behavior was looked upon negatively by most agencies. Respondents gave alternate reasons for this behavior, including non-aggressiveness, lack of manpower, and trying to maintain track records for winning cases. Although aware that other agencies believed they were “cherry-picking,” respondents at the U.S. Attorney’s Office argued that a lack of manpower, as well as high thresholds and requirements put on OCDETF cases by DOJ, prevented them from prosecuting many cases. One FBI respondent indicated that federal prosecutors were held to higher standards by the Circuit Court of Appeals, which was more likely to exclude evidence that was not excluded by other circuits.

Local law enforcement officials and prosecutors frequently referred to the bureaucracy and complexity of the federal system as a disadvantage in dealing with that system. Obtaining a wiretap was perceived as more difficult and time-consuming at the federal level; obtaining a federal search warrant took weeks compared to a day or two for a state warrant. Capital cases had to be sent to “DC” to determine if the death penalty would be pursued; the U.S. Attorney could not make these decisions. This bureaucracy created not only complexity but lengthened the time to process the case, a luxury perceived for the federal system, but not seen as such by local officials.

When asked to compare the abilities of federal and local investigators in handling homicide cases, respondents (almost unanimously) indicated that local homicide investigators were far superior. They generally were seen to have much more experience and training than federal investigators in dealing with homicides. While local homicide detectives focused exclusively on homicides for many years, federal agents rarely dealt with homicide cases.

Comparisons between local and state prosecutors as relates to homicides were similar. Local prosecutors were experienced in handling homicides. In general, federal prosecutors were described as young and lacking in capital experience. It was noted by more than one respondent that if the U.S. Attorney’s Office was prosecuting a federal capital case, either DOJ sent in someone to help or an AUSA had to be sent for training. The perception by most respondents that the local system was more experienced and capable in investigating and prosecuting homicides seemed to reinforce, as well as motivate, the general belief that homicides were best handled by the local authorities.

Relationships

Generally, relationships in District B were reported as being good, although responses frequently were guarded. While line officials typically reported better relationships with a few individuals with whom they worked, conflict was common among some agencies. This was most likely to occur among federal agencies, between the U.S. Attorney’s Office and federal agencies, and between the local prosecutor’s and U.S. Attorney’s Offices.

Respondents from federal law enforcement agencies and local police and sheriff’s departments indicated that interaction, particularly on task forces, increased positive relationships with each other. However, little interaction was evident among local officers and prosecutors and the U.S. Attorney’s Office

Several law enforcement respondents indicated that they had better relationships and coordination with one federal agency over another. The primary negative experiences reported by local law enforcement involved:

- the federal system could be slow in responding or took a long-term approach that could delay a case,
- federal agents frequently were provided information by the local departments, but never gave any back, or
- the federal government sometimes took over their (or other units') cases.

These negative experiences seemed to taint the overall attitude that working with the federal government was good. Most local respondents seemed to have identified selected individuals in the federal system that they would call because they were more likely to have a positive experience.

Relationships and coordination between the local prosecutor's office and the U.S. Attorney's Office generally were cordial, but guarded. As noted earlier, several bad experiences had resulted in very negative feelings about federal involvement within the local prosecutor's office. While formal and informal meetings between the heads of the offices occurred several times a month, only cordial professional relationships seemed to have developed throughout the organizations. Each would call selected individuals only as necessary for cases.

Respondents from the U.S. Attorney's Office confirmed that relationships between the agencies were minimal and problems were institutional, personal, and due to lack of communication. One AUSA indicated that the local prosecutor's office thought they were cherry-picking, and difficulties were based in history. He/she believed the attitudes from the local prosecutor's office went quite far back and involved prior experiences, including cases previously mentioned. Bad feelings had lingered in the local prosecutor's office.

Relationships with the U.S. Attorney's Office were described by federal investigators as "lukewarm" or "fair" to "fine" or "good." Criticisms from all agencies interviewed concerned the unwillingness of the U.S. Attorney's Office to take cases or their non-aggressiveness. Several federal law enforcement respondents indicated that they frequently took cases to local prosecutors, who were more willing to take the cases. Most sought out one or two AUSAs that they thought were more aggressive or responsive in hopes of getting better responses.

Federal agents and some local officials indicated that conflicts with the U.S. Attorney's Office were more likely to occur in high profile or "celebrity" cases. As noted by one respondent, nobody cared about the low profile cases, but everybody wanted the high profile cases. This was particularly offered as a criticism of the U.S. Attorney's Office.

It is unclear if relationships among agencies affected the handling of homicides in District B. Negative feelings toward the U.S. Attorney's Office's handling of previous homicide cases seemed to have affected current relationships, and will

continue to affect the likelihood that local authorities will battle with federal prosecutors over handling future cases.

Summary – District B

Within District B, jurisdictional lines for federal prosecution of homicides were drawn very narrowly. Only limited cases were reported to be federally relevant and this was demonstrated by the nature of cases that were processed federally from 1995 through 2000.

First, cases for which sole federal jurisdiction was applicable included only federal prisons and federal property cases. Both federal and local authorities agreed that these were the sole jurisdiction of the federal government.

Secondly, cases involving homicides of federal employees were considered of particular interest to federal authorities. While local authorities conceded that high-level federal employees (e.g., the President, judges) clearly should be perceived of federal interest, federal authorities expanded this to include postal workers. While examples of homicides of federal agents prosecuted locally were offered, cases between 1995 through 2000 showed postal worker cases prosecuted federally. Extenuating circumstances in these situations appeared to indicate that the decision to seek federal prosecution in such cases was made on a case-by-case basis depending on numerous factors that might have included location and whether it was a high (or low) profile case.

The third area agreed upon by both federal and local respondents involved multi-jurisdictional activity, particularly in cases that could not be handled by local authorities, e.g., local officials asked for federal assistance or federal agents uncovered a related homicide from another jurisdiction. Because local authorities were not equipped to handle such cases, the federal system would pick up the “homicide” component of a broader activity being investigated (e.g., kidnapping, drug, or organized crime activity).

Most cases forwarded to DOJ from 1995 through 2000 appeared to fall neatly into one of these three categories upon which federal and local authorities in District B agreed. However, clearly a large number of potentially federal relevant homicides occurred in this district that could have been prosecuted by the federal authorities. Several reasons seemed evident for why more federal homicide cases were not prosecuted in District B.

- Local authorities strongly contended that they should take all homicides that occurred in their jurisdiction. Local interest was not diminished by federal interest. Because they could point to at least one example in which the federal government had “taken” a case and failed to deliver the death penalty, there were likely to be conflicts over other attempts to take

homicide cases to the federal system if they could be prosecuted by the state.

- Local law enforcement and prosecutors were better trained and experienced to investigate and prosecute homicide cases. Respondents generally perceived federal prosecutors in District B as inexperienced in handling capital cases and that the U.S. Attorney’s Office would have to seek assistance from DOJ in DC. This enhanced the resolve of local officials not to seek federal assistance in homicide cases (except perhaps with specialized forensics work) and to maintain local jurisdiction over such cases.
- The U.S. Attorney’s Office rarely pursued homicides. The reasons given were numerous. The U.S. Attorney’s Office cited resources as an obstacle and their definitions of appropriate jurisdiction. Other local and federal agencies agreed that the U.S. Attorney’s Office was non-aggressive and would not take any case unless it was “perfect.” As a result, the status quo seemed to be to assume that local officials would take all homicides.
- There were no perceived benefits in prosecuting homicides in the federal system. The federal system was portrayed as cumbersome and time-consuming by investigators and prosecutors. The federal system could not provide lengthier sentences, and was perceived as less likely to deliver the death penalty.

Generally, relationships among agencies in District B were tense and guarded. While it was clear that much joint activity occurred and that individual relationships were often good, there was an undercurrent at many levels that other agencies not step over boundaries. This seemed most prominent between local and federal prosecutors, and also was evident among the federal law enforcement agencies. Communications among federal and local law enforcement agencies was often restricted to “need to know,” and frequently characterized as one way. Little information was shared regarding homicides, unless they clearly met the accepted federal definitions discussed above.

Unlike other districts that may negotiate over which system could provide the best prosecution or result for the case, jurisdictional lines seemed to be drawn and abided by in District B. Local officials historically struggled with federal agencies over high profile homicide jurisdiction; experience had shown that when it came to such cases, the federal government would not be more successful than the local officials in prosecuting the case. The federal courts, with former U.S. attorneys on the bench, maintained these strict lines between state and federal jurisdiction – leaving to the state its “state offenses.”

DISTRICT C – INTERVIEW FINDINGS

District C comprised a large geographical area in a southwest state. City 1 dominated the population for the district and drove the overall crime statistics generated in this district. Therefore, for purposes of this study, the research team only interviewed respondents from this city and the surrounding county. Generally, the state system in District C did not need or necessarily want the assistance of the federal government in investigating and prosecuting homicide cases. Ultimately, state officials were confident that they were more capable of providing a capital remedy in homicide cases than was the federal system.

Crime Problem

From 1995-2000, the crime problem varied across District C. Most of the violent crime occurred in the district's major center in City 1, where two thirds of the district's homicides took place. The majority of these incidents involved the use of firearms in commission of domestic, narcotic, and gang disputes.

Local law enforcement also reported crime problems involving illegal aliens moving freely across the border to avoid prosecution. However, federal prosecutors were quick to point out that crime along the border and in other rural towns produced far fewer homicides than in City 1.

Jurisdiction

Respondents across agencies in District C perceived federal jurisdiction in homicide cases as extremely narrow. Virtually all homicides that occurred from 1995-2000 were investigated and prosecuted by local authorities. For the most part, local (and even some federal) respondents indicated they were unaware of the availability of homicide-related charges at the federal level. Nor could they readily identify examples of homicides they would characterize as exclusively of federal interest.

To the extent that federal authorities were involved in homicide, they mostly played a supportive role. Only under extraordinary circumstances would the federal government assume investigative and prosecutorial jurisdiction of a homicide. As one federal prosecutor explained, "barring any evidentiary issues, homicide is prosecuted by the state."

Although nearly every respondent reported that, to his/her knowledge, there were no formal or informal agreements for determining jurisdiction on homicides, it was widely understood that homicide was a matter to be handled by local authorities. One key factor in preserving this tradition was that local and federal authorities perceived the local system as perfectly capable of handling homicide. Respondents across agencies indicated that local officials

had a great deal of experience handling homicide; and therefore, federal involvement in this area was unnecessary.

Not surprisingly, very few jurisdictional disputes were reported among federal, state, and local authorities. Respondents were able to point to select cases in which state and federal interests were at odds over cases involving homicide. However, to the extent that disagreements occurred, they generally occurred among, rather than between, local and federal investigators.

Benefits

In general, respondents indicated that while a number of investigative tools could be perceived as advantages to federal authorities, very few factors in District C influenced whether a homicide would be prosecuted by federal authorities. Local prosecutors indicated that “federal laws relevant to co-conspirator testimony and confessions are a big benefit to the feds.” Respondents across agencies indicated that the state had an “exclusionary rule” effectively quashing accomplice testimony if no other evidence presented corroborated the testimony in question.

The rules for introducing accomplice testimony reportedly were less strict in the federal system, and federal prosecutors had the ability to offer deals (charge and sentence reduction/ plea bargains) in exchange for “significant assistance” offered.¹² Moreover, all else being equal, federal prosecutors indicated they would be able to convict a defendant on accomplice testimony, whereas in state court the evidence would be inadmissible. This reportedly was important particularly with respect to prosecuting conspiracy investigations that most often were built on developing information from cooperators.

Respondents across agencies indicated with confidence that capital murders were investigated and prosecuted predominantly by local authorities because local law enforcement, particularly, local homicide detectives and prosecutors, were far more experienced in investigating and prosecuting homicide than their federal counterparts. Although the federal system offered more in terms of training opportunities (e.g., use of crime technologies, emergency response units, preserving evidence, foreign language skills, and other technical resources), it was understood widely that local authorities were far more experienced handling homicide.

Responses were mixed with respect to whether respondents would expect a harsher sentence from the state or federal system for a drug-related murder. This apparent inconsistency was due, most likely, to differing interpretations of

¹² Respondents across agencies noted that federal authorities’ use of Rule 35 – which essentially expanded the situations in which a defendant might seek a sentence reduction in exchange for providing prosecutors with substantial assistance – was a very effective tool in eliciting cooperation.

“harsher sentence.” Most respondents reported that successful federal prosecutions for drug cases would result in comparatively longer sentences than the state system. But if a defendant was found guilty in a state prosecution, respondents were confident that local prosecutors would be more likely to secure a death verdict.

With respect to homicide, most respondents reported that the state would provide the harshest sentence; therefore, this factor alone did not influence the likelihood that homicides would be prosecuted by the federal government. Respondents further noted that they expected that state authorities would prosecute these types of cases capitally “if the elements were there.”

Largely because District C is located in a death penalty jurisdiction, respondents across agencies noted that the availability of the federal death penalty had no effect on whether a homicide would be prosecuted federally. It was widely understood that it was “easier to go through the state [because] the capital remedy is quicker.” Not only were local homicide investigators and prosecutors more experienced and capable than federal authorities with respect to homicide but, taken as a whole, the local system for handling capital homicides was widely accepted, including the use of the death penalty. Indeed, federal prosecutors acknowledged that having the death penalty at the state level affected their office’s decision to proceed with homicides, and that they were confident that the local prosecutor would prosecute murders capitally.

Local, state, and federal investigators across agencies reported that local prosecutors were more aggressive in terms of accepting cases, including homicides, for prosecution. This same group of respondents reported that federal prosecutors were non-aggressive and not interested in prosecuting the cases submitted or the cases that potentially would be submitted.

Respondents indicated that impediments provided by the federal bench resulted in fewer federal homicide prosecutions. Even if there was an interest in prosecuting capital cases federally, capacity to do so reportedly was limited. One federal investigator put it this way, “Federal judges here don’t want to deal with homicide...they don’t even like firearms cases.” Additionally, several federal investigators and prosecutors noted during our reference period that federal judges sent formal letters of complaint to the DOJ, criticizing the federal prosecutors for prosecuting too many criminal cases and encroaching on local crimes, such as bank robberies and kidnappings.

Task Forces

Responses to task force questions were remarkably consistent across agencies. Due to the sheer number of joint task forces in District C, local, state, and federal law enforcement often worked together; however, this in no way influenced the likelihood that a homicide would be prosecuted federally.

Relationships

Relationships between federal and local prosecutors, although solid today, reportedly were tenuous during our reference period. Respondents from the local prosecutor's office noted that they had limited, if any, interaction with federal prosecutors. One local prosecutor reported that only a handful of local prosecutors interacted with federal prosecutors on a regular basis. Outside formal task force arrangements, local law enforcement reported having limited, if any, communication with federal prosecutors, particularly on homicides.

Summary – District C

From 1995-2000 District C submitted only a few homicides to DOJ's CCU; as a result, our discussion focuses more on why most homicides in District C remained in state courts. It also explains the role that federal authorities played with respect to investigating homicide. Finally, it considers the types of factors and situations that together may increase the likelihood that homicides could be prosecuted federally.

Although there was a significant crime problem throughout the district during the study period, including one of the highest homicide rates in the country, this did not increase the likelihood that a homicide would be prosecuted in the federal system. Neither did national crime priorities (e.g., for example, DOJ's emphasis on addressing violent crime during our reference period) nor agreements have a significant influence in terms of increasing the likelihood that homicides would be prosecuted federally. Likewise, jurisdiction, task forces, relationships, and case flow reportedly played no role in increasing the likelihood that homicides would be prosecuted federally.

One overarching attitude permeated throughout almost every interview in District C; that is, homicide was a local matter, best handled by local authorities. Local, state, and federal respondents across agencies expressed confidence that the state system was perfectly capable of handling homicide, especially capital homicide. Respondents widely perceived that local authorities needed no assistance in handling homicide cases.

In summing up the various findings in District C, two factors best explain why nearly every homicide in this district was prosecuted by local prosecutors.

- Nearly, every respondent interviewed expressed significant confidence in local law enforcement. Local, state, and federal respondents across agencies indicated that local homicide detectives and prosecutors were much better trained and experienced in handling homicide than their federal counterparts.

- Respondents praised the efficiency of the state’s “capital remedy.” Indeed, as deeply rooted as perceptions were regarding the prowess of investigators and prosecutors, respondents across agencies noted that the community was comfortable with the manner in which the state implemented the death penalty. Virtually all respondents viewed this district as a culture in which death was the appropriate remedy for capital homicide.

DISTRICT D – INTERVIEW FINDINGS

District D comprised a large geographical area in the Midwest. City 1 dominated the population for the district, and drove the overall crime statistics generated by this district. Active, ongoing task forces characterized law enforcement activities in City 1, with local, state, and federal officials working as teams without excessive concern about which team members were local and which were federal. These task forces contributed significantly to homicide cases resulting in federal investigation and prosecution.

Interviews were conducted in the two cities that contributed significantly to District D’s submission of federal homicide cases. Despite City 1’s overwhelming contribution to the total district homicides (71 percent), we also interviewed in City 2 because it contributed half of the federal homicides forwarded to the CCU for capital consideration.

Crime Problem

The two cities in which we interviewed had depressed economies, significant unemployment, and significant drug and firearm infestation. Both cities were plagued by violent crime, principally associated with drug or drug-related trade. Further complicating the violence problem was a lengthy historical tradition of firearm ownership among the minority populations in these communities.

All respondents identified violent crime and drugs as the primary crime problems. Violent crime ran the gamut from robbery to assault to rape and murder. The majority of respondents in both cities stated that the vast majority of homicides were drug-related (about 70-75 percent). However, the police in City 2 argued that the majority of homicide cases resulted from street altercations among acquaintances.

Jurisdiction

The question of jurisdiction in District D presented a vexing problem with respect to understanding its contribution to the decision-making processes regarding whether homicides cases were investigated and prosecuted federally.

On its face, respondents reported a very limited use of federal jurisdiction in determining the manner in which criminal offenses were investigated. Crime was viewed as a local problem with local responsibility for identification and redress. In their view, there were no situations in which particular criminal behavior or offender type would be subject to exclusive federal jurisdiction or federal jurisdiction would be so fundamentally strong that federal interest would outweigh state interest in all cases.

That said, homicide cases were investigated and prosecuted federally in District D during our reference period. How and whether jurisdiction influenced the decision to prosecute federally was not entirely clear. Federal investigators were involved very early in homicide investigations as a result of their participation on joint local/state/federal task forces. They were a continuing presence throughout the life of the investigation, but they did not view this as a question of jurisdiction. They investigated homicide cases because they arose, for example, as part of their work on the Violent Crime Task Force not because a particular case was of federal interest. The actual question of local versus federal jurisdiction was determined or solidified late in the process as part of a formal decision process within the task force, virtually at the point of the task force sending a recommendation to prosecute to the local or federal prosecutor.

With respect to homicide, local prosecutors reported a professional obligation to prosecute all homicide cases; there were no statutory requirements that excluded local investigation and prosecution. As an elected office, local prosecutors viewed homicide as the quintessential crime against the local constituency. Local/state and federal law enforcement tended to view the jurisdictional question for homicide prosecutions as a political rivalry. For the most part, respondents recognized that the U.S. Attorney's Office was not set-up to work homicide cases; but, homicide was "the local prosecutors' bread and butter."

Task Forces

This district saw the wisdom of joint task forces early in the 1980s and appeared to rely on task forces to a greater degree than other districts visited. Over the years, local and federal law enforcement came to depend on task forces for a variety of issues (e.g., violent crime, drug and drug-related homicides, cold cases, and planning). Local, state, and federal officials were exceptionally proud of their task forces and argued that "we have the best task forces in the country." Task forces brought local, state, and federal law enforcement together in such a way as to sometimes blur the lines between state and federal, with members describing themselves as task force members rather than local/state law enforcement or federal agents. They enjoyed a very high level of cooperation across federal, state, and local law enforcement organizations.

This was not the case in City 2. Local police respondents in that community stated, “We’re not much into a multi-unit thing,” pointing to potential problems with their union. Respondents stated that the only task forces in which they participated were local, which included state and local police officials but not federal. That said, the local police did have an officer participating on the DEA Task Force and worked out of their offices. As in City 1, respondents in City 2 appeared not to consider work on task forces as “working with the feds.”

Respondents from City 1 had only positive things to say about task forces. Task forces had become in this jurisdiction the modus operandi for solving crime problems and addressing particular crime-ridden areas. “If there’s an increase in crime in a particular area or a major incident, we immediately go into task force mode.” Task forces were viewed as opportunities in District D, bringing multiple resources to bear on a problem. They strengthened relationships and trust among the participants, and encouraged an immediate sharing of information. As a representative of the state police said, “Our task force personnel, we are all one.”

Task forces handled much of the violent and drug-related investigations,¹³ with local police officers assigned to federal agencies and investigative agents assigned to the local police. They were comfortable working together, because they shared offices, saw each other everyday, and focused on the same cases. Federal investigators in this district were involved in homicide investigations on a daily basis through the efforts of the drug-related homicide task force and the violent crime task force. They resided at the local police department and became a daily member of the enforcement team. Within the local police department, task force assignments generally were staffed by the most experienced investigators and seen as plum assignments; “they have to show us something before I give them that assignment.”

Respondents agreed that task forces played a significant role in the investigation of homicide cases, but not in the prosecution of homicide cases. Homicides investigated through a task force generally would return to local authorities for prosecution. However, these task forces served as a conduit for the rare cases that were prosecuted federally based on use of other criteria and on a case-by-base basis.

Relationships

District D demonstrated an interesting mix of very good and generally mediocre relationships. Much of it was personality driven, which meant, for example, that one federal agent might have excellent relationships with some local police

¹³Most homicides in District D had some affiliation with drugs. Task forces more generally became involved in homicides if there was organized activity involved; the local system handled discrete homicides.

officers and terrible relationships with others. Historically, relationships between local and federal law enforcement and local and federal prosecutors in City 1 were driven by city officials, and were not at all good. In general, respondents reported that city officials were “very untrustful of the federal government” and would not permit the local officials to work with federal officials. This directive to local officials continued for many years. About the start date for this study (1995), relationships began to change.

According to respondents, the changes came about through several channels. The U.S. Attorney’s Office began a concerted outreach program and instituted regular meetings among law enforcement officials (including prosecutors). New city officials promoted and encouraged coordination between the local police and prosecutors and the federal investigative agents and prosecutors. Local prosecutors noted that the joint local/federal investigation and prosecution of some local officials were key to bringing local and federal officials together. And, new SACs came to some of the federal agencies with specific directions to work to improve local/federal relationships. All of these factors helped to strengthen relationships, and all respondents recognized and noted the improved and improving relationships.

Despite the negative context in which they operated, joint local/state/federal task forces developed and thrived. According to the state police, “The foundation of the cooperation has been the task force over the years. Relationships have greatly improved in the past 10 years.” These task forces appeared to be an entity unto themselves, and were not seen as “local versus federal,” but as a single team. When the city officials changed, relationships were encouraged to flourish and all organizations worked to improve them, but the real strength was a direct outgrowth of historical task forces.

Summary – District D

To understand the process by which homicide cases were investigated and prosecuted in District D, one must remember that local and federal investigators and prosecutors strictly adhered to the principle that homicide was a local crime. One respondent summarized it aptly, “The default setting for homicide is State.” Whenever there was a homicide, this was the basic assumption.

However, some homicide cases were prosecuted in the federal courts during our reference period. Therefore, some mechanism must have provided exceptions in these cases. According to respondents in City 1, the key factor that influenced whether homicide cases were investigated and prosecuted by the federal system in District D was the regular practice of task forces. But task forces alone could not explain why very few homicides were prosecuted federally in City 1; some other factor, something exceptional, was required.

The City 1 task forces, with local, state, and federal law enforcement working together, would investigate the case and send a recommendation either to the local prosecutor's office or the U.S. Attorney's Office. In that decision-making process, something sparked their interest or concern in those homicide cases causing them to recommend federal prosecution. In District D, more than other districts visited, the reason homicide cases were prosecuted federally was more random, with it literally decided on a case-by-case basis. For example, as part of their task force work, federal investigators might have investigated a cold case homicide because local police were inundated with homicide cases. They might become involved in an investigation the next day because they were riding patrol with the local police and went to the scene of a homicide.

Therefore, in City 1 of District D, federal prosecution of homicide cases was not determined by one factor or, as may be typical in other districts, by the presence or lack of presence of federal interest or jurisdictional viability. It required something extra to become a federal case, and it was up to the task forces to uncover and determine what that something would be. In effect, task forces in City 1 served as a conduit through which other factors – determined on a case-by-case basis – contributed to the question of whether a case should be prosecuted federally. This resulted in benefits that played a role in determining local or federal jurisdiction to act in concert with task forces.

While DEA task forces played a significant role in bringing large drug conspiracy cases into the federal system in City 2, local officials did not identify task forces as particularly important to the decision-making process. Rather, City 2 officials identified two factors of homicide cases that contributed more to the case ultimately being prosecuted in federal court: an ongoing federal investigation already underway and the need for resources to assist in an investigation and prosecution of a complex case. Inasmuch as the “ongoing federal investigation already underway” implied a task force presence and efforts, task forces should be considered a factor in City 2 as well, despite its lack of direct reference by respondents.

Relationships, too, contributed somewhat to the decision to prosecute a homicide in federal court. But relationships were a direct by-product of agencies' participation on task forces and the roles played by agency representatives to those task forces. It was common practice for officers and investigators to discuss the merits of whether a case should be investigated and prosecuted in the state versus the federal system.

Task forces appeared to be a mechanism that grew out of necessity as a means of providing a forum for local and federal officials to work together. Local and federal law enforcement, including prosecutors, recognized the critical need to work together and formed task forces to provide a framework that was neutral or locally driven. In many ways, task forces have become an art form in District D with each task force serving as a model for subsequent versions.

PRELIMINARY CROSS-DISTRICT ANALYSIS

The final chapter of our report offers a comparative analysis of four of the ten districts originally selected as part of our study. Comparative research methods are important to our research as they provide a means of studying similarity and diversity by analyzing differences across a relatively small number of cases. We examine patterns of similarity and difference among the four federal districts in terms of the processes and dynamics related to determining jurisdiction in the investigation and prosecution of homicide cases.

While the ultimate aim of this study was to identify factors that might help to explain the geographic and racial/ethnic distribution of cases described in the two DOJ reports on the federal death penalty system, the analytic limitation of only four sites makes these findings more tenuous.¹⁴ That said, our study has uncovered striking differences on how federally relevant homicides are investigated and prosecuted from district to district and within districts across local jurisdictions. We describe these similarities and differences within two major frameworks, focusing on local/federal openness to federal involvement and the dynamics or interaction between the local and federal systems within the areas targeted by this study.

Respondents for this study reported no overt individual biases among local or federal officials that would explain the disproportionate numbers of minorities in federal capital cases. They generally explained disproportionate minority figures in one of two ways. First, they suggested that communities with high homicide rates often were large metropolitan communities marked by a high minority population. Further, federal agency presence most frequently occurred in these same communities. Second, they argued that the types of crimes targeted were more likely to involve minorities; federal and local law enforcement repeatedly indicated that they targeted “crime, not race.” The federal laws that brought homicide cases to the federal system primarily targeted drug, gang, and firearm activity; activity that respondents indicated was likely to involve more minority participants.

Regional disparity was reported in the DOJ report, finding that 8 of the 94 federal districts contributed 50 percent of all defendant cases reviewed for the death penalty at the Capital Crimes Unit. Through the following comparative analysis, we shed light on the reasons behind the extreme variations across federal districts. Four sites from the ten originally selected are included in this analysis. While some districts not included in the current analysis provide

¹⁴Our original research design called for the analysis of ten federal districts that represented those districts that accounted for more than 50 percent of the cases forwarded to the CCU for capital consideration. We argue that findings from the ten sites (or at a minimum, the nine sites visited) would allow for a more complete understanding of how decision-making might affect the racial/ethnic and regional distribution of inmates on federal death row.

entirely different models and dynamics, the four addressed here display striking variations.

While our purpose was to explain how (and why) homicide cases within each district made their way into the federal system, we often found it interesting to ponder why they did not. Federal homicide statutes are broad; statutes relating to drug conspiracy or firearms, for instance, cast a wide net that allowed homicides to readily come into the federal system. Other federal homicide statutes provided for discrete situations, easily identifiable as federally relevant, such as bank robbery homicides or murder of a federal witness. However, in all jurisdictions, even those with the highest number of federal capital cases, the processing of federal capital cases was rare. In all districts, homicide was considered a local problem and was handled by local authorities. Differences in federal processing were obvious. District A, for instance, had fewer homicides reported by local authorities from 1995 through 2000 than the other three districts selected (District B reported 375 percent more, District C – 45 percent more, and District D – 75 percent more). However, District A compared to the other three districts in this study processed by far the greatest number of federal capital cases during that period, approximately four times the numbers in Districts B and D, and 16 times the numbers in District C.

To explicate the processing of federal homicides, we use the analogy of a window that is cracked open (or slammed shut) to let in homicide cases. Our goal is to explain why in some districts the window is open wider than others. On the other hand, some districts in the federal system have slammed the window shut on homicides, so virtually none will be processed federally. Others leave the window cracked or only slightly open. In addition, in different districts, there are varying levels of interest in working to open or close the window even more.

It is important to note that our findings show that no one factor explored with each district (or locations within each district) can explain the resulting number of federal capital cases in that district or overall. Instead, it is an interactive process, developed within the confines of existing laws and procedures and influenced by history. Each federal district is unique, with different foci, resources, attitudes, experiences, and expertise. Furthermore, within each federal district are a multitude of local jurisdictions that each has its own focus and set of factors, including resources, attitudes, experiences, and expertise. In some locales, federal and local authorities work closely together, while in others they rarely interact.

It became clear early in our investigation that no one factor was likely to predict whether homicide cases were brought to the federal system. For instance, within two very different districts (both of which processed some of the highest numbers of federal homicide cases), we found some of the strongest and the weakest relationships among federal and local officials. What we found,

though, was that strong relationships generally appeared to increase the probability that the federal government (at least investigators) would become involved in the processing of homicide-related behavior, but this factor alone could not explain the results. We also found that alternative factors could overcome a lack of strong relationships.

Because so many major factors are interconnected and because they continually influence each other, organization of the myriad issues is more difficult. We have chosen to present the similarities and differences between and among districts under two primary frameworks. First, under *Openness*, we focus on the capacity and willingness of local and federal players to permit for the federal processing of homicides. Secondly, under *Interactions and Cooperation*, we include those activities and interactions between players that allow cases to flow (or block their flow) to the federal system. Using our analogy, the degree to which the window to federal involvement is open depends upon two conditions: openness of both local and federal authorities to potential federal involvement and interaction and coordination between them.

Openness

For homicide cases to move from the state system (in which they typically are initiated) to the federal system, there must be a willingness on the part of both local and federal officials to entertain the possibility of federal involvement. Across and within the four districts studied, striking differences were found with respect to factors related to openness.

Openness of Local Officials

A respondent in one district defined homicide as “the quintessential crime against the local constituency, and we as elected officials are obligated to prosecute those cases.” Homicide is the highest crime against the local community, and solving and clearing homicides is always the highest priority of the local criminal justice system. Another respondent referred to solving a homicide as winning “the brass ring”; it was a source of pride, the proof of success. Local authorities, often elected, stood (or fell) on their record and ability to deal with issues of the highest local concern, and homicide represents one of those issues. This feeling was expressed consistently across sites.

Given this attitude by local authorities, what factors would influence their openness to work with federal authorities, or transfer to them, homicide cases that occurred in their communities? Several factors that varied tremendously across jurisdictions seemed to influence whether the window was ever opened, even slightly.

The first part of openness relates to the crime problem and local capacity. Local officials must perceive that a problem exists. For example, local officials must

understand that there is a local homicide problem that they cannot handle adequately or that they need help solving. Or, local officials must understand that they do not have the resources necessary to solve the problem. Some local authorities interviewed in this study either did not perceive a local homicide problem or indicated that they were more than capable of handling all homicides that occurred in their jurisdiction. They had total confidence that their system could both solve and prosecute all homicide cases. These local jurisdictions were more likely to keep the window shut, or only narrowly opened, to federal involvement. The relationship of this factor was evident for both local law enforcement and prosecutors. In one extreme example (City 1 in Hub 2 of District A), this attitude resulted in exclusion of federal assistance from all local crime as well as exclusion from most joint activity with the federal government. In another extreme, local authorities in District C had such confidence that their system could best handle homicide cases and provide for the ultimate capital remedy if appropriate, that they would not entertain the thought of allowing the federal government to become involved. In both examples, the window was firmly closed.

By comparison, other local jurisdictions were aware of a local problem with violence and homicides. For varying reasons, these jurisdictions perceived barriers in their abilities to solve the problems; e.g., some local law enforcement identified what they believed were failures in the local criminal justice system, whether it was prosecutors, courts, juries, state law, or resources. Law enforcement in two local jurisdictions in District A was not confident in the capabilities of local prosecutors or judicial authorities to deal with those arrested for homicide in an acceptable manner. They saw the system as a revolving door, with offenders being released to continue violent behavior. Similarly, some police recognized that their resources were stretched beyond their limits to deal adequately with the violence. These law enforcement officials were more likely to contemplate the need for federal assistance and were likely to open the window to federal involvement.

However, federal assistance came in many forms and even those who were willing to accept federal assistance defined differently what was permissible “assistance.” For some local officials, allowing federal agents to assist in homicide investigations was acceptable, but the investigations had to be led by local officials and prosecuted locally. In others, local officials agreed that some homicide investigations could be led by federal agents (e.g., murder of a federal witness or bank robbery homicides) and prosecuted federally. In City 1 of District D, local authorities accepted complete federal participation in the investigation of most criminal activity, but drew a solid line at prosecution of homicides; thereby defining the level of assistance that would be allowed and the degree to which the window to federal involvement was open.

In another variation, local authorities who needed assistance had alternative systems of support. One location (District C) included a state police department

that housed a strong criminal investigation component. Local law enforcement needing assistance would first turn to state assistance before considering federal assistance. In another location (District B), a strong state/local task force had been developed to provide support against crime in the area. Local law enforcement officials were more likely to seek support from this local task force than from the federal government. In both examples, the availability of local alternatives for obtaining assistance reduced the likelihood that federal assistance would be sought, and reduced the likelihood that the window to federal involvement would be opened.

In keeping with the notion of openness, local authorities considered the expertise, capabilities, and track records of federal authorities before making the decision to allow federal involvement. Local prosecutors in District B, for example, indicated that federal authorities could not handle homicide cases adequately. They perceived federal prosecutors as inexperienced in handling homicide cases and less likely to obtain either convictions or adequate sentences. They understood that the U.S. Attorney could not make the decision to seek the death penalty; that decision was made in “Washington.” Given these uncertainties, openness to federal processing of homicides was diminished. Examples of cases in which federal officials were involved served to support these premises, hardening local officials’ resolve to keep the window to federal involvement shut. Every attempt to take a homicide to the federal system would be met with resistance in this community.

The importance of local openness to federal involvement in general and homicides specifically was great. This was particularly driven home within one hub of District A. Three neighboring cities, all interacting with the same federal offices and agencies, were vastly different in how they interacted, used, and depended upon federal assistance. One city adamantly refused federal assistance with homicides or local crimes in general, while a neighboring city had learned to use federal assistance and capabilities as an integral part of both law enforcement and prosecutorial practices.

Openness of Federal Officials

Federal districts varied substantially on how federal agencies and prosecutors responded to homicides with potential federal relevance. While federal officials often used the term “aggressive” and “non-aggressive” to describe a willingness of federal officials to investigate and prosecute federally relevant homicide cases, the issues cannot be cast so simply. Many factors influenced whether federal officials were willing to become involved in federally relevant homicides.

Federal interest in federally relevant homicides varied substantially from district to district. In District A, the U.S. Attorney’s Office, as well as federal agencies, took a very service-oriented approach. Their role was to help local communities address increased violence. They used every tool in the federal

arsenal to support local requests to assist in the investigation and prosecution of violence-related offenses, including homicides. This did not always result in federal charges or federal prosecution. However, this particular jurisdiction was willing to push the limits as far as the courts would allow, prosecuting homicides that would be handled by the local authorities in other jurisdictions. And, according to defense respondents, the court has allowed these limits to be broadened. The window of federal involvement was opened wider.

Other federal districts, however, more narrowly defined their involvement in federally relevant homicides. In District C, for instance, the U.S. Attorney's Office limited federal interest to homicide cases over which the state had no jurisdiction or that could not be prosecuted adequately at the local level. District B similarly limited jurisdiction or interest over homicides. Respondents in this area indicated that such limits were placed by the U.S. Attorney's Office, while others indicated that the federal courts also had very limited views of what was acceptable to be charged in federal court.

Variations in federal openness to involvement in homicide investigations also varied from district to district. Some federal agents limited their role to investigation of the underlying behaviors only (e.g., large complex drug conspiracies). While in District A, investigators would investigate a drug-related homicide in conjunction with local police and, in the process, attempt to build a drug-related case; agents in other districts were not likely to get involved in street-level crime unless an on-going federal investigation had already uncovered substantial information and the case met required thresholds for involvement. In two sites, these thresholds on federal investigation were imposed by the U.S. Attorney's Offices.

Federal openness to becoming involved in the investigation or prosecution of homicides also was bounded by federal officials' perceptions of available resources. In several districts, federal resources were reported to be extremely limited, and homicide cases were described as over-burdensome on the offices. In District A, on the other hand, federal agents and prosecutors indicated that they would never turn down a request for assistance in a homicide, and assuming a federal nexus could be established, would find the resources to prosecute. Whether as a cause or result of that attitude, District A had numerous federal prosecutors who were experienced in handling federal homicide cases. Other districts, however, indicated that they did not have sufficient resources or experience.

When asked whether any national policies or directives influenced their processing of homicide cases, federal authorities indicated that they had received none. There were no types of federally relevant homicide cases that they were directed to handle. This decision was left to the discretion of each district. However, the U.S. Attorney General and the DOJ designated certain areas (e.g., Districts A and D) for federal anti-violence efforts. U.S. Attorneys in

these regions had been directed specifically to assist in reducing local violence. In addition, DOJ decisions as to resource allocation also seemed to influence homicide processing at the district level. Several respondents noted that some districts received greater resources than others, and thus could handle more homicides¹⁵

Coordination and Interaction

However, as we found, it takes more than openness for homicide cases to be investigated and prosecuted in the federal system. Openness may lead to the opening or closing of the window to federal involvement, but interaction between federal and local officials contributed to factors that might open or close the window even further. In most districts visited, local and federal authorities worked together in some capacity, although this was limited in some local jurisdictions. These interactions played a role in the types and frequency of homicides considered for federal prosecution. In some districts, positive interactions increased local openness to federal handling of homicides; in other districts, negative interactions resulted in reducing openness.

The primary form of interaction within all districts was joint task forces. Some task forces focused on specific crime types, e.g., gangs, drugs, and bank robbery. Some task forces were developed to attack a single case or serious local problem, e.g., serial killings. Local or state authorities formed some task forces, and federal officials formed others. Usually the jurisdiction that formed the task force supervised the work of the task force, but did not necessarily dictate whether associated cases would be prosecuted locally or federally.

Task forces were the “bread and butter” of the federal law enforcement agencies. With limited personnel and little knowledge of the community, federal agencies needed the support and information of local law enforcement. In District D, federal/local task forces dealt with a wide range of crime in the major metropolitan area. Agents and officers were perceived as part of the unit, with little concern for whether they were federal or local. They attacked all local crime together. Similarly, Hub 1 in District A used federal/ local task forces to combat street crime. In these sites, local authorities indicated strong benefits of federal involvement, as their impact on the local crime problems was readily identifiable. These more general task forces in communities with a higher degree of openness were much more likely to be involved with and handle homicide cases. They further opened the window for federal involvement.

On the other hand, local officials in other communities perceived the federal/local task forces as only dealing with more complex, organizational

¹⁵Because this study was prohibited from addressing national policy issues with DOJ, the influence of national policy on distribution of resources (both funding and personnel) or differential nature of crime targeting among the districts could not be explored directly.

crimes and conspiracies that were more likely to address federal priorities and less likely to address local concerns. These task forces were unlikely to investigate related homicide activity, although they would be informed of them if local authorities were aware of both the nature of the task force investigation and a connection between the homicide and investigation. The differences in focus of task forces and the perceived benefit by local authorities varied from district to district, as did the likelihood that federal agents would become involved with federally relevant homicide cases.

For those districts in which federal and local authorities worked closely together, local authorities were more aware of, or were more likely to perceive, benefits (if only case specific) in the use of the federal system for some cases and offenses. For districts in which little interaction occurred, there was a marked lack of knowledge about the federal system, its benefits, and the types of cases potentially falling under federal jurisdiction. Some local respondents seemed unaware that the federal government could prosecute any homicide cases unless they occurred on federal property. In these locations, it typically was noted that officers responding to homicides would be unlikely to recognize potential federal relevance and, thus, would not inform federal authorities.

Alternatively, in areas of high interaction or coordination, local authorities were more aware of potential federal relevance in cases they investigated and were more likely to inform federal authorities. In District A, it was not only typical to find local law enforcement officers that were cross-designated to task forces (as they were in many districts), but local prosecutors also were cross-designated and allowed to handle cases in both courts.¹⁶ In one jurisdiction, the local cross-designated prosecutor flagged all local drug and firearms cases for review for possible federal relevancy. This degree of coordination increases the likelihood of federal prosecution of cases, some of which might include homicides, opening the window wider for federal involvement in homicides.

In the same jurisdiction, federal task force agents worked with local officers to interrogate street dealers. By threatening federal prosecution on charges that carried mandatory minimum sentences, they gained cooperation and information that often helped solve local homicides. While it would be unlikely that these homicides would be prosecuted federally, the window was clearly opened wider for the possibility.

Interaction also allowed local authorities to distinguish the benefits of the federal system and learn the types of cases for which they can get “the biggest bang for their buck.” Interestingly, this term was used frequently by federal and local authorities in regions with high coordination, but less likely used in regions that were unaware of federal system processes or benefits.

¹⁶Cross-designated local officers received the same authorities as federal officers. Cross-designated local prosecutors, similarly, could serve as federal prosecutors and handle federal cases.

This discussion is not meant to imply that all regions should perceive federal benefits equally. Some sites had state laws, rules of evidence, or procedural issues that altered the comparison between systems. Similarly, federal rules and procedures were different from district to district; the differences noted between federal districts included the strictness of federal district judges or circuit courts, and the aggressiveness of the U.S. Attorney's Office. While respondents at one site lauded the utility of the federal investigative grand jury in solving homicides through the investigation of drug activity, others indicated that they were unaware of the use of federal grand juries in their regions. This could be attributed either to unfamiliarity among local authorities or to actual differences in the level of use across districts.

One consistent point made across all districts was that the federal system was more complex procedurally than the local systems and cases moved more slowly through it. Even the federal process in District A, which was praised for its speed by federal agents who work with multiple federal districts in the region, was described as more complex and cumbersome than the local systems. As a result, this generally discouraged local officials from seeking federal assistance for prosecution. However, districts in which local authorities perceived benefits in the federal system that would provide a better result than the local system were more likely to work with federal authorities and were more open to federal prosecution. In many ways, this became a cyclical pattern. Local and federal officials had to interact to learn, and learning, in turn, could promote interaction. As the window opened, it appeared that more and more cases could be handled federally because local officials understood which cases could benefit from federal assistance and prosecution.

On the other hand, in a few local jurisdictions, past instances of failed interactions clearly reduced the willingness of local authorities to work with federal authorities. Examples of federal agents or prosecutors "taking" high profile cases did not set well with local officials. When these cases did not have acceptable outcomes (e.g., the defendant was allowed to plead), fuel was added to the fire. Windows on federal involvement were slammed shut. Similarly, when request for assistance from federal authorities were denied or "delayed," local authorities were less likely to ask again.

While most respondents indicated that availability of the federal death penalty was not considered a factor in individual case decisions regarding jurisdiction, uncertainty of the federal use of the sanction was discussed. In strong death penalty states, this factored into some perceptions that the state could better handle homicides. In the non-death penalty state visited, respondents indicated that it would be not only unlikely for federal authorities to request authorization to seek the death penalty, but that local juries would be unlikely to authorize that penalty due to local beliefs that the death penalty was not an appropriate solution.

Variations in Case Flow

There were similarities and differences in types of homicides likely handled federally. First, all districts indicated they would handle homicides that were within sole federal jurisdiction, for example, in federal prisons or on federal property for which local authorities had no jurisdiction. Obviously, the numbers of these offenses occurring within each district might vary substantially. In District A, 28 percent of federal capital cases occurred in a local prison situated on federal property. As we learned, however, what constitutes federal property is not always clear. Often agreements over federalization of land left criminal authority over crime on that property with the local government. In some locations, therefore, local authorities indicated that they would handle homicides on all “federal property.”

Both local and federal respondents addressed the likelihood that multi-jurisdictional offenses would be more likely to be handled by federal authorities. Such offenses, especially those that crossed state and country borders, became difficult for local authorities to process. Evidence, witnesses, and offenders were harder to obtain, especially after they left the local jurisdiction. Among districts visited, several unique situations concerning multi-jurisdictional issues were encountered. Within District A, one hub bordered on two metropolitan areas in other states, three other states, and two other federal districts; obviously, more crime in this arena met the multi-jurisdictional criteria. Similarly, at another hub in District A, six contiguous cities had similar jurisdictional issues. On the other hand, Districts B and D noted that state laws, procedures, and practices had been developed to cover multi-jurisdictional issues within the state, addressing some of the issues discovered in District A. Additionally, in District C in-state, multi-jurisdictional crime was handled by the state police with statewide jurisdiction.

The processing of federally relevant homicides varied greatly from district to district, especially as to the likelihood that a federal agency would be informed of the homicide or become involved in the investigation. While most local law enforcement agencies indicated that they would at least inform federal authorities of bank robbery-related homicides or kidnappings, this was not consistent across sites. If task forces existed that focused on these discrete crime types, federal agencies were more likely to become involved in the investigations. Across the four districts, it was rare that federal prosecutors would handle the majority of cases within any crime type. Only federal employee homicides in one district, bank robbery homicides in another, and federal witness homicides in two districts were identified consistently for federal prosecution. However, these processes were not formalized with agreements between the agencies in these four sites.¹⁷

¹⁷In one district included in the study, but not addressed in this analysis, the use of formal agreements

Frequency of cases going to the federal system also was influenced by the frequency with which the federal agencies used the more complex criminal statutes. Districts that were more experienced and willing to prosecute large conspiracy cases (such as CCE or RICO) might have been more willing to absorb capital drug charges. However, in most districts (especially those with highly capable and efficient local systems), it was most likely that the homicides would have been prosecuted locally, often long before the larger, conspiratorial federal charges were filed.

Regional Disparity

It should be clear from this report that factors influencing the district variation in both the frequency and nature of homicide cases entering the federal capital case pipeline were many. Each district, and sites within districts, had developed its own “ecosystem”; that is, they had developed unique and independent ways of dealing with each other and the justice systems within which they must work. These “ecosystems” varied based on the nature, resources, and openness of both local and federal officials. Their levels of cooperation and interaction varied tremendously as did the processes by which they handled homicide cases. When asked if regional disparity could be reduced, most federal respondents indicated that it was unlikely; because local systems, communities, crime problems, and U.S. Attorneys varied, the processing of homicides also would vary.

The final selection of homicide cases – assuming federal authorities had been informed, federal investigators had been involved in the investigation, and federal prosecutors had found a nexus and were willing to prosecute – depended upon reasons of rare occurrence. As mentioned by one respondent regarding a rare case prosecuted federally in his/her district, “all the stars were aligned.” In District A, homicides would be processed federally only with the agreement or request of local authorities. In Districts B and C, the case would be processed federally only if the local jurisdiction had no authority or if multi-jurisdictional or evidentiary problems arose. In District D, decisions regarding federal involvement were made on a case-by-case basis, although this generally applied to prosecution, because federal investigators were involved regularly with local police investigations. And as discussed, the frequency with which local authorities requested assistance or were unable to handle cases varied tremendously across and within districts.

In summary, the frequency of homicide prosecutions in the federal system was dependent on how wide the window to federal involvement was open. The window was opened wider when both federal and local officials were open to working together to solve crime. However, this openness was influenced by the

between local and federal authorities resulted in the funneling of all homicides within specified offense groups to the federal system.

perception of local authorities that there was a local crime problem with which they needed help solving and that the federal system was capable of providing that needed assistance. Similarly, federal authorities had to have the resources, capabilities, and willingness to handle these offenses. Once federal and local authorities worked together, the degree of interaction and cooperation greatly impacted federal awareness of local crimes, including homicide. However, these levels (as discussed) varied based on the nature of task forces, the degree to which interactions and cooperation help local authorities solve local problems, and the coordinated use of federal benefits to solve these local problems. The greater the interaction and coordination between the systems, the more open the window might have become. However, local authorities could not be pushed into working with federal officials or into “giving up” cases, especially high profile ones. As noted throughout, such negative interactions would certainly lower or shut the window to federal involvement.

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APPENDIX

FINAL INTERVIEW INSTRUMENTS FACE-TO-FACE INTERVIEWS

ID#:

District:

Office:

Unit/Section:

U.S. ATTORNEY QUESTIONNAIRE

First, we would like to focus on district priorities and how they relate to national priorities.

1. We understand that each federal district has some discretion to tailor its priorities and activities to meet local needs. What are your district's crime priorities? *(Please describe the focus (or targets) of each.)*

1a. Do these priorities differ from national priorities? (How? Why?)

2. Do any factors hinder your ability to implement these priorities? *(Specify.)*

3. How does your office get involved in homicide cases?

4. Do you have policies and procedures for handling homicide cases?

Now, I'd like to ask some questions about resources.

5. Do you feel the resources you receive to manage the district are adequate to achieve your office's priorities? *(Please explain.)*

6. How do national priorities impact your district's resources?

7. How do your district's resources, training, and experience compare to those of the state or local prosecutors, both generally and with respect to handling homicide cases?

7a. (IF ONLY CERTAIN JURISDICTIONS WITHIN THE DISTRICT MENTIONED, ASK:) Is this consistent across the district? (Please specify.)

7b. Does this impact the number of homicide cases your district handles?

8. How involved is your district with taking on high-profile complex cases?

8a. How does this impact your district's ability, or willingness, to take on homicide cases? (Please explain how.)

8b. Approximately, how many high-profile complex cases do you handle per year?

9. According to the Department of Justice report, your district sent _____ potential capital cases from 1995 to 2000 to the Capital Case Unit (approximately _____ per year). Has the general rate of homicide prosecutions in your district changed since then? (How and why?)

Now, we'll shift to jurisdiction. Because homicides are inherently local in nature, we are interested in understanding how districts view the issue of federal versus state and local jurisdiction.

10. Are there any homicides you feel involve exclusively federal jurisdiction or the federal jurisdiction is so fundamentally strong that you would always argue that federal interest exceeds state interest?

11. Do you have any policies, procedures, or guidelines for establishing jurisdiction for homicide cases?

12. Are there certain types of federally relevant homicides that would automatically be pursued by federal authorities?

13. With respect to jurisdiction, do you have any formal or informal agreements with state or local governments that impact the number of homicides federally prosecuted in your district? (Please explain.)

13a. (FOR EACH AGREEMENT, ASK:) What is the agreement?

13b. What general geographic area is covered?

13c. When was the agreement made?

13d. Why was the agreement made?

13e. How was it established?

14. What types of homicide cases are more likely to be prosecuted federally? (Why?) Does this vary across the district?

14a. What types of federally relevant homicide cases are more likely to be prosecuted by the state? (Why?) Does this vary across the district?

14b. Is your district different from others in this regard?

15. How are differences between federal and state interests resolved?

16. If a federal offense occurs across districts or states, how is the decision made as to which district would prosecute?

16a. Are there benefits to selecting one jurisdiction over another?

17. Do you feel that media attention ever plays a role in the decisions about jurisdiction?

There are many people who could play roles in the investigation and prosecution of homicide cases. This section focuses on interagency cooperation and how it is maintained.

18. First, how do you stay on top of community concerns? Do you work or meet with various community organizations? (On a regular or intermittent basis?)

18a. Do you meet more often with some communities in your district than others?

18b. Does this involvement ever impact your decision to take or not take certain cases?

19. Do you meet with state and local attorneys and law enforcement officials in your district? How often do you meet with them? (Do you meet one-on-one or as part of a group? Do you meet with officials in other cities or counties? Do you have regularly scheduled meetings or do you meet only as the need arises?)

19a. Do you and the state or local attorneys share information about your priorities and emerging issues?

- 19b. How about local law enforcement officials – do you share information about your priorities and emerging issues?**
- 19c. Do differences in priorities between your office and local law enforcement agencies result in any difficulties working together? (Ask for examples.)**
- 19d. Under what circumstances would you work together to solve local crime problems? (Ask for examples.)**
- 20. Do you maintain ongoing relationships with the various federal investigative agencies in your district? How often do you meet with them? (Do you meet one-on-one or as a group? Do you have regularly scheduled meetings or do you meet only as needs arise?)**
- 20a. Do you share information about your priorities and emerging issues?**
- 20b. Do differences in priorities among federal agencies result in any difficulties working together? (Ask for examples.)**
- 21. Has your district established formal or informal lines of communication with any local, state, and federal agencies for notification when a federally relevant homicide occurs?**

In some districts, task forces play a very important role in the investigation and prosecution of homicide cases. In others, they do not.

- 22. How important a role do task forces play in your district? (IF NONE, note reason and SKIP to Question #23.)**
- 22a. What factors drive the decisions to establish task forces in your district?**
- 22b. Do most task forces emanate from your district? Or do they generally arise from the local agencies?**
- 22c. How do you decide to staff task forces?**
- 22d. How is it decided which federal investigative agencies play a role?**

Finally, we'd like to ask some questions that call for your perceptions. Congress is interested in explaining variations among districts in the investigation and prosecution of homicide cases, particularly those that carry the possibility of a capital sentence.

23. Does having (or not having) the death penalty at the state level impact your district's decisions to proceed or not proceed with homicide cases?

23a. Does having (or not having) a state death penalty impact your decision to seek or not to seek the death penalty?

23b. Does the frequency with which the state carries out the death penalty affect the decision?

24. If districts vary in the way they decide to pursue or not pursue capital homicide cases, how would you explain that variation?

25. How would you explain the disproportionate number of blacks and Hispanics on federal death row?

26. With respect to homicide cases, and ultimately the use of the federal death penalty, how do you balance the question of national consistency versus local discretion?

27. Do you feel the current levels of regional and racial differences in federal capital cases can be eliminated or reduced? (IF YES, what do you think can be done? IF NO, why not?)

28. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. In your opinion, what best explains why cases go to the federal system?

28a. Does this vary by offense type?

28b. Has this changed since the federal administration changed in 2000?

28c. Are there any other explanations we have not discussed?

- 29. We have asked about policy and procedures for handling homicide cases and for establishing their jurisdiction, as well as formal or informal agreements with state or local governments that impact the number of homicides federally prosecuted. We wondered if these were in writing, and if so, may we have copies? Here is a list of the documents we discussed. (CIRCLE NONE, if none in writing, or NO, if can't have copies.)**

That completes our list of questions. Is there anything else you would like to add? Thank you very much.

ID#: **District**

Office: **Unit/Section:**

SECTION HEAD U.S. ATTORNEY QUESTIONNAIRE

We'll start with questions about priorities and general practices and move to more specific questions about homicide cases.

- 1. On what types of crime does your section focus?**
- 2. Do you have specific section priorities? (*What are they?*)**
- 3. In general, how do cases flow in and out of your section?**
 - 3a. *How do you hear about cases?***
 - 3b. *What role do you play in the process?***
 - 3c. *Do you ever personally handle homicide cases or are they handled by the attorneys in your section? (IF YES, for what kinds of cases?)***
 - 3d. *Do you make the decisions to accept or decline cases in your section? (If not, who does?)***
 - 3e. *How are Assistant U.S. Attorneys selected to handle homicide cases?***
- 4. What is the average AUSA caseload in your section?**
 - 4a. *How many AUSAs are assigned to each case?***
 - 4b. *On average, how many cases does your section process at a time?***
- 5. Do you feel that resource or caseload issues affect your ability or willingness to proceed with homicides of federal interest? (*Specify resources, support, or expertise that is lacking.*)**

5a. How does this vary across the district?

6. Has the way cases flow in and out of your section changed since the administration changed in 2000?

6a. How about the homicide caseload in your section? Has it changed?

6b. Have changes in resources impacted the flow of homicide cases?

We understand that the vast majority of homicides are investigated and prosecuted within the state jurisdiction, with only a select few being of federal interest. We are trying to ascertain those factors that influence the likelihood that a homicide case becomes a federal case.

7. Do you have any idea of the total number of homicides that occur in your district compared to the number handled at the federal level per year?

7a. Of those, can you estimate the number of federally relevant homicides that occur? By this we mean those specified in the approximately 59 federal capital statutes.

8. Are there certain types of federally relevant homicides that would automatically be pursued by the federal government? (Which types?)

9. Are there certain types that would be more likely to go to the state? (Which types?)

10. Have the types of homicides pursued in the federal system changed since the administration changed in 2000?

11. What types of organized criminal activity do you usually see in your district? Is such activity centralized in certain locations within your district?

11a. What role does homicide play in your efforts to investigate or prosecute (drug/gang/organized crime) organizations?

11b. Are you more likely to investigate or prosecute a homicide if you believe it's related to an ongoing investigation of drug trafficking organizations, gang activities, or organized crime?

12. How often do your cases involve long-term investigations?

12a. What role does your section play in these long-term investigations?

Now, I'd like to ask several questions about your relationships with other criminal justice organizations.

13. Please describe your interactions with agencies outside the U.S. Attorney's Office, such as local and federal investigators and prosecutors.

13a. Have these interactions changed since the administration changed in 2000?

14. Are you more likely to hear about federally relevant crimes from those agencies with which you work most frequently?

14a. Are there certain local authorities that may be less inclined to inform you of potentially federally relevant crimes? (If so, which ones?)

14b. To what extent do these relationships influence the number and types of homicide-related cases you handle?

15. We are interested in whether directives from the national office or the U.S. Attorney are provided for how staff should interact with other criminal justice agencies or with whom staff should interact? Does your section receive these kinds of directives?

15a. Has any of this changed since the administration changed in 2000?

16. Does your section ever work with other sections in the U.S. Attorney's Office on homicide cases? Which section handles the most homicide cases?

16a. Have these relationships changed since the administration changed in 2000?

Now, let's talk a bit about task forces.

17. Does your agency participate in joint task forces that include state/local and federal representation? (IF NO, why not? Skip to Question #18.)

- 17a. Why are these task forces developed?**
- 17b. In general, do task force personnel work well together?**
- 17c. Are the relationships between federal and state or local officials strengthened by participation on joint task forces?**
- 17d. If a joint task force investigation is successful, how likely is it that the case will be tried in the federal system? How about the state system? What factors influence this decision?**
- 17e. Does the structure of task force personnel, such as which agencies are represented or who serves as the lead agency, have an impact on whether a case will be handled in the federal system? (Please explain with examples.)**
- 17f. What role do joint federal/state task forces play in the investigation and prosecution of homicide cases in your jurisdiction?**
- 17g. Our research suggests that joint state/federal task forces targeting certain crimes may have an impact on the number and types of homicides handled by the federal system. What is your take on this, and how does it play out in your experience?**
- 17h. What advantages or disadvantages does federal involvement bring to task forces?**
- 18. Are there other types of coordinated activities with federal and local agencies in your jurisdiction? (What are they and how do they operate?)**
- 18a. Why were these joint activities developed?**
- 18b. In general, do federal/local personnel work well together?**
- 18c. Are the relationships between federal and state or local officials strengthened by these activities?**

18d. *If an operation is successful, how likely is it that the case will be tried in the federal system? How about the state system? What factors influence this decision?*

18e. *What role do such operations play in the investigation and prosecution of homicide cases in your jurisdiction?*

Next, we consider prosecutorial and investigative issues that might arise in the course of responding to criminal cases, in general, and homicides, specifically.

19. In developing criminal cases, what advantages does the federal prosecutor in your district have compared to the state prosecutor?

19a. *Are there times when the state prosecutor has an advantage compared to the federal prosecutor?*

19b. *Does the state or federal advantage differ by offense?*

19c. *Do either of these advantages vary across the district?*

20. How do local clearance rates impact your district's activity on homicide cases?

20a. *Is federal law enforcement more likely to be brought in on cases that are difficult to clear? (Which agencies?)*

20b. *Does this vary across the district?*

21. What proportion of federal homicide cases in this district result in a plea agreement?

21a. *How often do these result in charge reductions?*

22. Are there certain types of defendants or cases in which the parties are more likely or less likely to enter into a plea agreement?

- 23. Does race of defendant in homicide cases impact the willingness of defendants to negotiate with you on a plea agreement or to cooperate with the prosecution?**

23a. Have you seen any changes in plea practices since the administration changed in 2000?

- 24. We are currently reviewing 10 federal districts that prosecuted from 1 to 29 homicide cases during a six-year period from 1995-2000. Your district handled ___ during the target period. What do you feel explains the number of homicides handled in your district as compared to other districts?**

24a. Do you feel there have been any changes with the current administration that would impact this reasoning?

- 25. Do local attitudes about the death penalty impact the decision to proceed with a federal capital case?**

25a. Does this vary geographically within your district?

- 26. How would you explain the disproportionate number of minorities on federal death row?**

- 27. Do you feel the current levels of regional and racial differences in federal capital cases can be eliminated or reduced? (IF YES, What do you think can be done? IF NO, Why not?)**

- 28. With respect to homicide cases, and ultimately the use of the federal death penalty, how do you balance the question of national consistency versus local discretion?**

- 29. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. In your opinion, what best explains why cases go to the federal system?**

29a. Does this vary by offense type?

29b. *Has this changed since the federal administration changed in 2000?*

29c. *Are there any other explanations we have not discussed?*

That completes our list of questions. Is there anything else you would like to add? Thank you very much.

ID#:

District:

Office

Unit/Section

ASSISTANT U.S. ATTORNEY QUESTIONNAIRE

I'll begin with questions concerning the types of cases you handle.

1. In general, how are cases assigned to you?

1a. Do you have any choice in the cases you handle?

1b. Are you personally assigned certain types of crimes? (If more than one is identified, estimate the time spent on each in comparison to one another and whether this is typical. Inquire as to time frame 1995-present.)

2. Do you ever participate in the investigation or prosecution of homicides? (What types?)

3. How do homicides come to your attention?

3a. Are some types more likely to come to your attention?

3b. Are some kinds more likely to occur than others?

4. Do you feel your caseload affects your ability or willingness to proceed with homicides of federal interest? (Specify resources, support, or expertise lacking.)

5. Have any of the general practices relating to case flow changed since the administration changed in 2000?

Now, I'd like to ask several questions about your relationships with other criminal justice organizations.

6. In general, how would you describe your relationships with the state prosecutors in your district?

- 6a. Describe a typical interaction. (Who calls whom? Issues discussed? At what stage in the investigation?)**
- 6b. Do you have better relationships with some than others? (Please explain.)**
- 6c. Does your relationship with state prosecutors impact the number and types of homicide cases you hear about or accept or decline?**
- 6d. Are your relationships with state prosecutors across the entire district similar, or do you deal primarily with a few specific locales? (Please explain.)**
- 6e. Are there ever disagreements over which jurisdiction will proceed with a case?**
- 6f. (IF YES) How are these disagreements resolved? (Do you have a homicide example?)**
- 6g. Are disagreements over jurisdiction more likely to occur in high profile cases?**
- 6h. Have any of these relationships changed since the administration changed in 2000? (Which ones?)**
- 7. In general, how would you describe your relationships with local and state law enforcement in your district?**
- 7a. With which law enforcement agencies and/or divisions do you typically interact at the local level?**
- 7b. Describe a typical interaction. (Who calls whom? Issues discussed? At what stage in the investigation?)**
- 7c. Do you have a better relationship with some than others? (Which one? Please explain.)**

- 7d. Does your relationship with local and state law enforcement impact the number and types of homicide cases you hear about or accept or decline?**
- 7e. Are your relationships with local or state law enforcement organizations across the entire district similar, or do you deal primarily with a few specific locales? (Please explain.)**
- 7f. Are there ever disagreements over which jurisdiction will proceed with a case?**
- 7g. (IF YES) How are these disagreements resolved? Do you have a homicide example?**
- 7h. In the investigation of drug organizations or other organized crime in your district, are federal agents and officials more likely to work alone or in conjunction with local agents or officials?**
- 7i. Have any of these relationships changed since the administration changed in 2000? (Which ones?)**
- 8. In general, how would you describe your relationships with federal law enforcement offices or agents in your district?**
- 8a. With which federal law enforcement agencies do you typically interact?**
- 8b. With whom in those organizations?**
- 8c. Describe a typical interaction. (Who calls whom? Issues discussed? At what stage in the investigation?)**
- 8d. Do you have a better relationship with some agencies than others? (Which ones? Please explain.)**

- 8e. Does your relationship with federal law enforcement agents impact the number and types of homicide cases you hear about or accept or decline?**
- 8f. In general, do you feel your office's case priorities correspond with those of the federal investigative agencies in your district?**
- 8g. Are your relationships across the federal agencies *similar*? (Please explain.)**
- 8h. Are there ever disagreements with other federal agencies about whether you will proceed with a case?**
- 8i. IF YES) How are these disagreements resolved? (Do you have a homicide example?)**
- 8j. Have any of these relationships changed since the administration changed in 2000? (Which ones?)**

We have reviewed many federal homicide cases and have seen various reasons for why cases are pursued or not pursued. We'd like to get your take on what factors, in your jurisdiction, are more likely to cause you to pursue or not pursue a case.

- 9. INVESTIGATIVE TOOLS AND TECHNIQUES — What types of federal investigative tools and techniques increase the likelihood that some types of cases are sent to the federal system?**
- 9a. What types of cases?**
- 9b. As they relate to homicide?**
- 9c. INVESTIGATIVE GRAND JURY — Do you find that the ability of the federal prosecutor to impanel an investigative grand jury increases the likelihood that the investigation and prosecution of a homicide would occur in the federal system? (Please explain. How frequently?)**
- 9d. (IF YES) Does this affect the number of cases in general that go federal? How about homicide cases (How? How frequently are federal grand juries impaneled?)**

- 9e. **WIRETAPS** — *Do you feel that the availability of wiretaps in an investigation increases the likelihood that a homicide would be brought to the federal system? (IF NO, why not?) (IF YES, how often does this happen?)*
- 9f. **AVAILABLE CHARGES** — *Does the availability of certain charges at the federal level increase the likelihood that certain types of homicides are more likely to be handled in the federal system? (Which charges, for example, RICO or CCE?)*
- 9g. **(FOR DRUG, GANG, ORGANIZED CRIME ONLY)** *We notice that some districts more typically use drug conspiracy charges and others tend to use RICO charges. How do you determine whether to use a RICO vs. a CCE charge?*
- 9h. **EVIDENTIARY ISSUES** — *Are there specific evidentiary issues that would result in certain cases being funneled to the federal system?*
- 9i. **USE OF COOPERATOR/ACCOMPLICE TESTIMONY** — *Does the use of cooperator or accomplice testimony impact the jurisdiction chosen for homicide prosecutions?*
- 9j. **MULTI-JURISDICTIONAL OFFENSES** — *Does the federal government's ability to include behavior occurring in multiple jurisdictions increase the likelihood that homicides in your district are processed in the federal system?*
- 9k. **STRENGTH OF EVIDENCE** — *Does the federal system ever get homicide cases that represent a slam dunk prosecution?*
- 9l. *In general, does the federal system take homicide cases with weaker evidence?*
- 9m. **PROCEDURAL ISSUES** — *Are there specific procedural issues that would result in certain homicide cases being funneled to the federal system?*

- 9n. **PRE-TRIAL HOLDING** — *Does the ability of the federal system to hold homicide defendants prior to trial increase the likelihood that a case will be tried federally?*
- 9o. **WITNESS PROTECTION** — *Does the presence of a federal witness protection program result in a higher likelihood that certain cases are handled in the federal system? (Which types of cases?)*
- 9p. **SEVERANCE** — *Do local or federal requirements that certain cases or defendants be severed impact on decisions as to prosecution in state or federal courts? How? For what types of cases?*
- 9q. **LOCAL LAW ENFORCEMENT ABILITIES** — *How would you rate the abilities of local investigators and prosecutors compared to their federal counterparts?*
- 9r. *Is this consistent throughout the district?*
- 9s. *Does this affect the flow of homicide cases into the federal system? (Which types of cases?)*
- 9t. *(IF INDICATED AS A PROBLEM, ASK:) Does this influence the homicide clearance rates in the local jurisdictions?*
- 9u. **LOCAL VS. FEDERAL RESOURCES** — *How about local resources vs. federal resources in general? Are there instances in which one system does not have sufficient resources to proceed with a homicide investigation or prosecution? (Please explain.)*
- 9v. **LENGTHY/COMPLEX CASES** — *Does your office handle a significant number of long-term investigations or complex cases? Does this impact your ability to handle other types of cases? How about homicide cases?*
- 9w. **AVAILABLE SENTENCE LENGTHS** — *Does the length of available sentences increase the likelihood that certain offenses will proceed to one system or the other? (Please explain.)*
- 9x. *How about the availability of the death penalty?*

ADD OFFENSE-SPECIFIC QUESTIONS HERE

Now, we'd like to ask you a few questions about plea bargaining.

10. We understand that plea bargaining plays a critical role in the criminal justice system. At what stages of the criminal justice process are you most likely to enter into plea negotiations?

10a. At what stage are defendants most likely to agree?

10b. Does this relate to type of crime?

11. In developing your charging strategy for cases involving homicide, what factors influence you to file lesser charges as part of a plea agreement? (Please provide an example.)

12. What reasons would lead you to enter into an agreement in a capital case?

12a. What if the defendant has significant information to provide?

12b. What if the defendant cooperates with authorities concerning his/her own behavior?

12c. What role does weak evidence play?

12d. What if an equally culpable defendant does not receive the death penalty?

12e. What if a less culpable defendant receives the death penalty?

12f. Would you still enter into an agreement eliminating a potential death sentence with the more culpable defendant?

13. What reasons would make you less likely to enter into a plea agreement in a capital case?

13a. Would review by a supervisor or committee?

13b. Would possible review by the attorney general impact your decision?

14. Are you any more or less likely to consider or seek a plea agreement in a capital case?

15. What proportion of capital homicide cases result in a plea agreement?

15a. How often do these involve charge reductions?

16. Is your district more or less likely to prosecute a homicide case because of the death penalty?

17. Do you feel your district is more or less likely to seek the death penalty in homicide cases than other districts? (*Why does this happen?*)

18. Do you feel the current levels of regional and racial differences in federal capital cases should or could be eliminated or reduced? (*IF YES, What do you think can be done? IF NO, Why not?*)

19. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. In your opinion, what best explains why cases go to the federal system?

19a. Does this vary by offense type?

19b. Has this changed since the federal administration changed in 2000?

19c. Are there any other explanations we have not discussed?

That completes our list of questions. Is there anything else you would like to add? Thank you very much.

ID#:

District:

Office:

Unit/Section:

FORMER U.S. ATTORNEY QUESTIONNAIRE

Because the Department of Justice studies, in their analyses of the federal death penalty, used data from the period 1995-2000, we thought it important to speak with you. We have modified the interview we use for the current U.S. Attorney, so some questions may seem somewhat awkward.

We'd like to begin by focusing on district priorities during that period and discuss how those priorities related to national priorities.

- 1. We understand that each federal district has some discretion to tailor its priorities and activities to meet local needs. What were your district's crime priorities from 1995-2000? *(Please describe the focus (or targets) of each.)***
 - 1a. Did these priorities differ from national priorities? (How? Why?)***
- 2. Did any factors hinder your ability to implement these priorities? *(Specify.)***
- 3. How did your office get involved in homicide cases?**
- 4. Did you have policies and procedures for handling homicide cases?**
- 5. It is our understanding that under the Reno administration the focus was on local priorities, local discretion, and local/state/federal partnerships. Can you explain how that focus played out in practice?**
 - 5a. Do you feel this has changed under the current administration? If so, how?***

Now, I'd like to ask some questions about resources.

- 6. Do you feel the resources you received to manage the district were adequate to achieve your office's priorities? *(Please explain.)***
- 7. How did national priorities impact your district's resources?**

8. How did your district's resources, training, and experience compare to those of the state or local prosecutors in handling homicide cases?

8a. *Did this impact the number of homicide cases your district handles?*

8b. *(IF ONLY CERTAIN JURISDICTIONS WITHIN THE DISTRICT MENTIONED, ASK:) Was this consistent across the district? (Please specify.)*

9. How involved was your district with taking on high-profile complex cases?

9a. How did this impact your district's ability, or willingness, to take on homicide cases? (Please explain how.)

9b. *Approximately, how many high-profile complex cases did your office handle per year?*

Now, we'll shift to jurisdiction. Because homicides are inherently local in nature, we are interested in understanding how districts view the issue of federal versus state and local jurisdiction.

10. Are there any homicides you feel involve exclusively federal jurisdiction or the federal jurisdiction is so fundamentally strong that you would always argue that federal interest exceeds state interest?

11. Were there any policies, procedures, or guidelines for establishing jurisdiction for homicide cases?

12. Were there certain types of federally relevant homicides that would be investigated automatically by federal authorities?

13. With respect to jurisdiction, did you have any formal or informal agreements with state or local governments that impact the number of homicides federally prosecuted in your district? (Please explain.)

13a. *(FOR EACH AGREEMENT, ASK:) What was the agreement?*

13b. *What general geographic area was covered?*

13c. *When was the agreement made?*

13d. Why was the agreement made?

13e. How was it established?

14. What types of homicide cases were more likely to be prosecuted federally? (Why?) Did this vary across the district?

14a. What types of federally relevant homicide cases were more likely to be prosecuted by the state? (Why?) Did this vary across the district?

14b. Was your district different from others in this regard?

15. How were differences between federal and state interests resolved?

16. If a federal offense occurred across districts or states, how was the decision made as to which district would prosecute?

16a. Were there benefits to selecting one jurisdiction over another?

17. Did you feel that media attention ever played a role in the decisions about jurisdiction?

There are many people who could play roles in the investigation and prosecution of homicide cases. This section focuses on interagency cooperation and how it is maintained.

18. First, how did you stay on top of community concerns? Did you work or meet with various community organizations? (On a regular or intermittent basis?)

18a. Did you meet more often with some communities in your district than others?

18b. Did this involvement ever impact your decision to take or not take certain cases?

19. Did you meet with state and local attorneys and law enforcement officials in your district? How often did you meet with them? (*Did you meet one-on-one or as part of a group? Did you meet with officials in other cities or counties? Did you have regularly scheduled meetings or did you meet only as the need arises?*)

19a. Did you and the state or local attorneys share information about your priorities and emerging issues?

19b. How about local law enforcement officials – did you share information about your priorities and emerging issues?

19c. Did differences in priorities between your office and local law enforcement agencies result in any difficulties working together? (*Ask for examples.*)

19d. Under what circumstances would you work together to solve local crime problems? (*Ask for examples.*)

20. Did you maintain ongoing relationships with the various federal investigative agencies in your district? How often did you meet with them? (*Did you meet one-on-one or as a group? Did you have regularly scheduled meetings or did you meet only as needs arise?*)

20a. Did you share information about your priorities and emerging issues?

20b. Did differences in priorities among federal agencies result in any difficulties working together? (*Ask for examples.*)

21. Had your district established formal or informal lines of communication with any local, state, and federal agencies for notification when a federally relevant homicide occurred?

In some districts, task forces play a very important role in the investigation and prosecution of homicide cases. In others, they do not.

22. How important a role did task forces play in your district? (IF NONE, note reason and SKIP to Question #23.)

22a. *What factors drove the decisions to establish task forces in your district?*

22b. *Did most task forces emanate from your district? Or did they generally arise from the local agencies?*

22d. *How did you decide to staff task forces?*

22d. *How was it decided which federal investigative agencies should play a role?*

Finally, we'd like to ask some questions that call for your perceptions. Congress is interested in explaining variations among districts in the investigation and prosecution of homicide cases, particularly those that carry the possibility of a capital sentence.

23. Did having (or not having) the death penalty at the state level impact your district's decisions to proceed or not proceed with homicide cases?

23a. *Did having (or not having) a state death penalty impact your decision to seek or not to seek the death penalty?*

23b. *Did the frequency with which the state carries out the death penalty affect the decision?*

24. If districts vary in the way they decide to pursue or not pursue capital homicide cases, how would you explain that variation?

25. How would you explain the disproportionate number of blacks and Hispanics on federal death row?

26. With respect to homicide cases, and ultimately the use of the federal death penalty, how do you balance the question of national consistency versus local discretion?

27. Do you feel the current levels of regional and racial differences in federal capital cases can be eliminated or reduced? (IF YES, what do you think can be done? IF NO, why not?)

28. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. Which factor or factors do you feel are most important?

28a. Does this vary by offense type?

28b. Are there any factors we have not discussed?

28c. Has the importance of any of these factors changed since the federal administration changed in 2000?

29. We talked about policy and procedures for handling homicide cases and for establishing their jurisdiction, as well as formal or informal agreements with state or local governments that impact the number of homicides federally prosecuted. Were any of these in writing? May we have copies? Here is a list of the documents we discussed. (CIRCLE NONE, if none in writing, or NO, if can't have copies.)

That completes our list of questions. Is there anything else you would like to add? Thank you very much.

ID#:

District:

Office:

Unit/Section:

DISTRICT ATTORNEY QUESTIONNAIRE

Our focus for this interview is on factors that would cause a homicide in your district to be prosecuted federally, and how those factors may differ from other jurisdictions. Let's start with looking at how homicides are generally processed in your jurisdiction.

1. Within the _____ District of _____, your office handles more homicides than most other jurisdictions. Can you describe the nature of your homicide problems?

1a. Which types of homicides are most likely to result in federal involvement?

1b. In what kinds of homicide cases would you feel federal involvement most appropriate? Most helpful?

Now, we'll talk about resources and relationships.

2. Do resources ever play a role in deciding whether a homicide case will be sent to the federal system for investigation and prosecution?

2a. Does lack of resources ever result in seeking federal assistance in homicide cases?

2b. What benefits are provided by federal involvement? Please provide examples.

3. How do you feel your jurisdiction's resources, training, and experience compare to those of the federal prosecutors, both generally and with respect to handling homicide cases?

3a. What impact does this have on the number and types of homicide cases sent to the federal system?

4. Do federal law enforcement priorities impact your ability to address local crime problems?

5. Do you maintain ongoing relationships with the U.S. Attorney's office? How often do you meet with them? *(Do you meet one-on-one or as a group? Do you have regularly scheduled meetings or do you meet only as the need arises?)*

5a. Do you share information about your priorities and emerging issues?

- 5b. Do differences in priorities between your office and the U.S. Attorney's Office result in any difficulties working together? (Ask for examples.)**
- 5c. Do you experience any strain in your relationships with federal prosecutors? Can you provide examples? Are these institutional problems or do they involve individual circumstances?**
- 5d. Has your relationship with the U.S. Attorney's office changed since the federal administration changed in 2000?**
- 6. Do you meet with federal investigators in your jurisdiction? How often do you meet with them? (Do you meet one-on-one or as part of a group? Do you meet with federal investigators in other cities or counties?)**
- 6a. Do you have regularly scheduled meetings or do you meet only as the need arises?**
- 6b. Do you and federal investigators share information about your priorities and emerging issues?**
- 6c. Do differences in priorities between your office and federal law enforcement result in any difficulties working together? (Ask for examples.)**
- 6d. Do you experience any strain in your relationships with federal investigators? (Can you provide examples?)**
- 6e. Are these institutional problems or do they involve individual circumstances?**
- 6f. Has your relationship with federal investigators changed since the federal administration changed in 2000?**
- 7. Does your office have any guidelines for working with federal officials?**

We understand that the vast majority of homicides occurring within a jurisdiction falls under state jurisdiction, with only a select few being of federal interest. We are trying to ascertain those factors that influence the selection of those few federal homicides in your jurisdiction.

8. Are there any homicides you feel involve exclusively federal jurisdiction or the federal jurisdiction is so fundamentally strong that federal interest always exceeds state interest?

9. With respect to jurisdiction, do you have any formal or informal agreements with the federal government that impact the number and types of homicides prosecuted federally in your jurisdiction? *(Please explain.)*

9a. *(FOR EACH AGREEMENT, ASK:) What is the agreement?*

9b. *When was the agreement made?*

9c. *Why was the agreement made?*

9d. *How was it established?*

10. In developing criminal cases, what advantages does the federal prosecutor in your jurisdiction have compared to the state prosecutor?

10a. *Are there times when the state prosecutor has an advantage compared to the federal prosecutor?*

10b. *Does the state or federal advantage differ by offense?*

11. Do you have any policies, procedures, or guidelines for establishing jurisdiction for homicide cases?

12. Are there ever disagreements between state or local and federal officials over the appropriate jurisdiction of cases? *(Please explain.)*

12a. *Do these involve particular types of crime?*

- 12b. Do these disagreements occur most frequently in particular types of situations? (IF YES, what types?)**
- 12c. How are these disagreements between federal and state interests resolved?**
- 13. Do you feel that media attention ever plays a role in the decisions about jurisdiction?**
- 14. Have you established any policies or procedures, or even general guidance, for when federal authorities are to be contacted in a case involving a federally relevant homicide?**

Now, let's talk a bit about task forces.

- 15. How important a role do task forces play in your jurisdiction?**
- 15a. What factors drive the decisions to establish task forces in your jurisdiction?**
- 15b. Do most task forces emanate from your office? Or do they generally arise from other agencies?**
- 15c. How do you decide to staff task forces?**
- 15d. How and who decides which federal investigative agencies play a role?**
- 16. If available, would you want more assistance from the federal system in fighting crime? (IF NO, why not? IF YES, what type of assistance and by whom?)**
- 17. Would you like the federal system to handle more homicide cases or less? (Why?)**
- 18. Do you find federal involvement helps or hinders your investigation or prosecution of a homicide? (Please explain.)**

19. About ____ percent of the federal homicide defendants in the _____ District of _____ between 1995 and 2000 involved minority defendants. Does the proportion of minorities charged with homicide in the federal system mirror the minority rates charged with homicide locally?
20. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. In your opinion, what best explains why cases go to the federal system?
- 20a. *Does this vary by offense type?*
- 20b. *Has this changed since the federal administration changed in 2000?*
- 20c. *Are there any other explanations we have not discussed?*
21. We have talked about formal and informal agreements with the federal government that may impact the number of homicides prosecuted federally, and policies, procedures and guidelines for deciding jurisdiction in your district. Are any of these in writing? May we get copies? Here is a list of the documents we discussed. (CIRCLE NONE, if none in writing, or NO, if can't have copies.)

That completes our list of questions. Is there anything else you would like to add? Thank you very much.

ID#: _____

District: _____

Office: _____

Unit/Section: _____

ASSISTANT DISTRICT ATTORNEY QUESTIONNAIRE

Our focus for this interview is on factors that would cause a homicide in your district to be prosecuted federally, and how those factors may differ from other jurisdictions. Let's start with looking at how homicides are generally processed in your jurisdiction.

1. Within the _____ District of _____, your office handles more homicides than most other jurisdictions. Can you describe the nature of your homicide problems?

1a. Which types of homicides are most likely to result in federal involvement?

1b. In what kinds of homicide cases would you feel federal involvement most appropriate? Most helpful?

We'd like to briefly focus on your relationships with federal officials.

2. Do you maintain ongoing relationships with the U.S. Attorney's office?

2a. Which sections in the U.S. Attorney's Office do you interact with and how frequently? (Specify.)

2b. How would you characterize these relationships?

2c. Has this changed since the federal administration changed in 2000?

3. Under what circumstances do you ask the U.S. Attorney's Office to prosecute a case?

3a. At what point in the investigation or prosecution does the U.S. Attorney become involved with or assume responsibility for the case?

3b. How often does this occur?

4. Do you personally meet with federal investigators in your district?
 - 4a. *With whom do you interact and how frequently? (Specify.)*
 - 4b. *How would you characterize these relationships?*
 - 4c. *Has this changed since the federal administration changed in 2000?*
 5. To what extent do relationships between your office and federal players in the criminal justice system influence the number and types of homicide-related cases handled federally?
 6. Under what circumstances do you ask for help on a case from federal investigators?
 - 6a. *At what point in your investigation do federal investigators become involved with or assume responsibility for the case?*
 - 6b. *How often does this occur?*
 7. Have there been instances in which federal investigators or the U.S. Attorney stepped in or took over a case or cases without being asked by your office or local law enforcement?
 - 7a. *What types of cases and under what circumstances did this happen? How often? (Relate to homicides.)*
 8. Are there ever disagreements between state or local and federal officials over the appropriate jurisdiction of cases? *(Please explain.)*
 - 8a. *Do these involve particular types of crime?*
-

8b. Do these disagreements occur most frequently in particular types of situations? (IF YES, what types?)

8c. How are these disagreements between federal and state interests resolved?

8d. Do you feel that media attention ever plays a role in the decisions about jurisdiction?

9. *FOR DP STATES ONLY*. Is your office more likely to agree to the federal prosecution of a homicide case if the state death penalty is not available for that case?

We have reviewed many federal homicide cases and have seen various reasons for why cases are pursued or not pursued. We'd like to get your take on what factors, in your jurisdiction, are more likely to cause you to pursue or not pursue a case.

10. *INVESTIGATIVE TOOLS AND TECHNIQUES*. What types of federal investigative tools and techniques increase the likelihood that some types of cases are sent to the federal system?

10a. What types of cases?

10b. As they relate to homicide?

10c. *INVESTIGATIVE GRAND JURY* — Does your state have an investigative grand jury? Does the federal grand jury have advantages over a state grand jury? (Please explain.)

10d. Do you find that the ability of the federal prosecutor to impanel an investigative grand jury increases the likelihood that the investigation and prosecution of a homicide would occur in the federal system? Please explain. How frequently?

10e. Does this affect the number of cases in general that go federal? How about homicide cases (How?)

- 10f. **WIRETAPS** — *Do you feel that the availability of wiretaps in an investigation increases the likelihood that a homicide would be sent to the federal system?*
- 10g. **AVAILABLE CHARGES** — *Does the availability of certain charges at the federal level increase the likelihood that certain types of homicides are more likely to be handled in the federal system? (Which charges, for example, RICO or CCE?)*
- 10h. **EVIDENTIARY ISSUES** — *Are there specific evidentiary issues that would result in certain cases being funneled to the federal system?*
- 10i. **USE OF COOPERATOR/ACCOMPLICE TESTIMONY** — *Does the use of cooperator or accomplice testimony impacts the jurisdiction chosen for the prosecution of homicide cases?*
- 10j. **MULTI-JURISDICTIONAL OFFENSES** — *Does the federal government's ability to include behavior occurring in multiple jurisdictions increase the likelihood that homicides in your district are processed in the federal system?*
- 10k. **STRENGTH OF EVIDENCE** — *Does the federal system ever get homicide cases that represent a slam dunk prosecution?*
- 10l. *In general, does the federal system take homicide cases with weaker evidence?*
- 10m. **PROCEDURAL ISSUES** — *Are there specific procedural issues that would result in certain cases being funneled to the federal system?*
- 10n. **PRE-TRIAL HOLDING** — *Does the ability of the federal system to hold homicide defendants prior to trial increase the likelihood that a case will be tried federally?*
- 10o. **WITNESS PROTECTION** — *Does the presence of a federal witness protection program result in a higher likelihood that certain cases are handled in the federal system? (Which types of cases?)*

- 10p. **SEVERANCE** — *Do local or federal requirements that certain cases or defendants be severed impact on decisions as to prosecution in state or federal courts? How? For what types of cases?*
- 10q. **AVAILABLE SENTENCE LENGTHS** — *Does the length of available sentences increase the likelihood that certain offenses will proceed to one system or the other? (Please explain.)*
- 10r. *How about the availability of the death penalty?*
11. **Do you use the threat of more significant charges or penalties in the federal system to gain cooperation of defendants at the local level?**

Now, we'd like to talk a bit about task forces.

12. **Does your agency participate in state or state/local task forces that do not include federal representation?**
- 12a. *What are the targets of these state or local task force investigations? (By focus or target, we mean, e.g., urban drug, gang, organized crime, weapons violations.)*
- 12b. *What role do state or local task forces play in the investigation and prosecution of homicide cases in your jurisdiction?*
- 12c. *If evidence obtained through a state task force indicates that there may be a federally relevant crime involved in the case, would the federal government be brought in? (IF NO, why not?)*
13. **Does your agency participate in task forces that include federal representation? (IF NO, why not? Skip to Question #14.)**
- 13a. *Why are these task forces developed?*
- 13b. *In general, do task force personnel work well together?*

- 13c. Are the relationships between federal and state or local officials strengthened by participation on joint task forces?**
- 13d. If a joint task force investigation is successful, how likely is it that the case will be tried in the federal system? How about the state system?**
- 13e. What factors influence this decision?**
- 13f. Does the structure of task force personnel, such as which agencies are represented or who serves as the lead agency, have an impact on whether a case will be handled in the federal system? (Please explain with examples.)**
- 13g. What role do joint federal/state task forces play in the investigation and prosecution of homicide cases in your jurisdiction?**
- 13h. Our research suggests that joint state/federal task forces targeting certain crimes may impact the number and types of homicides handled by the federal system. What is your take on this, and how does it play out in your experience?**
- 13i. What advantages or disadvantages does federal involvement bring to task forces?**
- 14. Are there other types of coordinated activities with federal agencies in your jurisdiction? (What are they and how do they operate?)**
- 14a. Why were these joint activities developed?**
- 14b. In general, do federal/local personnel work well together?**
- 14c. Are the relationships between federal and state or local officials strengthened by these activities?**
- 14d. If an operation is successful, how likely is it that the case will be tried in the federal system? How about the state system?**

14e. What factors influence this decision?

14f. What role do such operations play in the investigation and prosecution of homicide cases in your jurisdiction?

ADD OFFENSE-SPECIFIC QUESTIONS HERE

Finally, we'd like to ask some questions that call for your perceptions. Congress is interested in explaining variations among federal districts in the investigation and prosecution of homicide cases, particularly those that potentially carry a capital sentence.

- 15. Do you generally find that federal involvement helps or hinders your investigation or prosecution of a homicide? (*Please explain.*)**
- 16. Is your office more or less likely to agree to a federal prosecution of a homicide case because of the federal death penalty?**
- 17. Do local attitudes about the death penalty impact the decision to proceed with a federal capital case?**
- 18. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. In your opinion, what best explains why cases go to the federal system?**
 - 18a. Does this vary by offense type?**
 - 18b. Has this changed since the federal administration changed in 2000?**
 - 18c. Are there any other explanations we have not discussed?**

That completes our list of questions. Is there anything else you would like to add? Thank you very much.

ID#:

District:

Office:

Unit/Section:

FBI/ DEA/ ATF SPECIAL AGENT-IN-CHARGE QUESTIONNAIRE

Our first few questions focus on your office's priorities and their relationship to regional and national priorities. If your office has any written documentation of these priorities, we would like to get copies if that's possible.

- 1. What are your field office's crime priorities, and please describe the focus (or targets) of each?**

 - 2. How are these priorities determined?**
 - 2a. Do local crime problems or local law enforcement influence these priorities? (How?)**

 - 2b. Do these priorities target only specific areas within your territory (e.g., which cities)?**

 - 2c. Have your priorities changed since the administration changed in 2000?**

 - 3. Can you indicate if, and how, your priorities differ from national priorities? (Why do they differ?)**

 - 4. Do the priorities of your office differ from those of the U.S. Attorney's office for the _____ District of _____? (How and why?)**
 - 4a. Does this cause any conflict? (Please explain.) How are they resolved?**

 - 5. Do any factors hinder your ability to implement your priorities? (Specify.)**
 - 5a. Do you feel the resources you receive to manage your office are adequate to achieve your priorities?**

 - 6. What impact do national priorities have on your jurisdiction's resources?**
-

- 7. What percent of your activities focuses on investigations of ongoing criminal conspiracies as opposed to discrete crimes?**
 - 7a. What are the nature and location of these ongoing investigations?***
 - 7b. Do you feel you have sufficient resources to manage large ongoing investigations?***

 - 8. How frequently does your office get involved in homicide cases? By *homicide* we are referring to any homicides that can be prosecuted federally through the approximately 59 federal capital statutes.**
 - 8a. How does your office become involved in homicide investigations?***
 - 8b. Can you give me two examples involving homicides that your office investigated?***
 - 8c. Could you estimate how many federally related homicides you hear about per year?***
 - 8d. Of those, generally, how many does your office investigate?***
 - 8e. Of those you investigate, how many are prosecuted federally?***
 - 8f. What types of homicide cases are more likely to be investigated federally (Why?)***
 - 8g. Does this vary across your jurisdiction?***
 - 8h. What types of federally relevant homicide cases are more likely to be investigated locally? (Why?)***
 - 8i. Does this vary across your jurisdiction?***

 - 9. Within your office, do you have any policies and procedures for handling homicide cases?**
-

10. How do your office's resources, training, and experience compare to those of your local law enforcement counterparts, both generally and with respect to handling homicide cases?

10a. (IF ONLY CERTAIN JURISDICTIONS WITHIN THE OFFICE AREA ARE MENTIONED, ASK:) Is this consistent across your office area? (Please specify.)

10b. Does this impact the number of cases involving a homicide you handle in your office?

Now, let's talk about jurisdiction. Because homicides are inherently local in nature, we are interested in understanding how federal agencies view the issue of federal versus state and local jurisdiction.

11. Are there any homicides you feel involve exclusively federal jurisdiction or the federal jurisdiction is so fundamentally strong that you would always argue that the federal government should investigate?

11a. What about military bases, parkland, or other federal properties?

12. With respect to jurisdiction, do you have any formal or informal agreements with the state or local governments that impact the number and types of homicides federally investigated in your jurisdiction? (Please explain.)

12a. (FOR EACH AGREEMENT, ASK:) What is the agreement?

12b. Does it cover your entire jurisdiction?

12c. When was the agreement made?

12d. Why was the agreement made?

12e. How was it established?

13. Do you have any policies, procedures, or guidelines for establishing jurisdiction in homicide cases?

14. **How does your office generally become aware of federally relevant homicides in the ____ District of ____?**
 - 14a. **Are there other ways?**
 15. **Who makes the initial decision to investigate a homicide case? *Do you sign off on such decisions?***
 16. **How are cases in general assigned to units or agents, and who makes those decisions? Is this the same for homicide cases?**
 17. **What about homicides that cross into another field office's territory? Would you work together with the other field office or would one of the offices assume control of the investigation?**
 - 17a. ***How do you decide who will investigate?***
 18. **Is your office ever asked by local law enforcement to assist in solving homicides? (*When and why?*)**
 - 18a. ***How often does this happen?***
 - 18b. ***What primary benefits are offered by federal investigation?***
 19. **Does the U.S. Attorney ever ask you to investigate homicides? (*How often?*)**
 20. **Typically, how involved is the U.S. Attorney's Office in homicide investigations?**
 - 20a. ***At what stage do they become involved in an investigation?***
 21. **In our review of cases, it appears that federal authorities are more likely to become involved with a homicide if it relates to an ongoing investigation of a drug or organized crime conspiracy. Is that the case in your territory? (*Please explain.*)**
-

21a. How often are homicides related to such conspiracies investigated by the FBI/ DEA/ ATF (specify)?

21b. Of the number investigated, how often are the offenders identified?

21c. Once uncovered, what is the probability they will be prosecuted federally?

21d. How frequently are the triggermen in such conspiracies likely to receive charge or sentence agreements in return for information about the conspiracy?

There are many people who could play roles in the investigation and prosecution of homicide cases. This section focuses on interagency cooperation and how it is maintained.

22. In general, how would you describe your relationships with the U.S. Attorney in the ___ District of _____?

22a. Describe a typical interaction. Who calls whom? Issues discussed? At what stage in the investigation?

22b. Do you interact with individual AUSAs? (IF NO, SKIP to Question #23.)

22c. Please describe a typical interaction. Who calls whom? Issues discussed? At what stage in the investigation?

22d. Do you have better relationships with some than others? (Please explain.)

22e. Are your relationships with federal prosecutors across the entire territory similar, or do you deal primarily with a few specific locales? (Please explain.)

23. Do your relationship(s) impact the cases you hear about and investigate? (How about homicide cases?)

24. Have any of these relationships changed since the administration changed in 2000? (Which ones? How?)

25. In general, how would you describe your relationships with local and state law enforcement in your jurisdiction?

25a. With which law enforcement agencies do you typically interact at the local level?

25b. Describe a typical interaction. Who calls whom? Issues discussed? At what stage in the investigation?

25c. Describe the nature of cooperation between your agency and agents, and local law enforcement. Do you work closely together? On what assignments?

26. Are interactions between federal and local law enforcement generated through your relationships with the police chiefs or sheriffs or are such interactions primarily the result of relationships formed between individual agents and local officers?

26a. Do these relationships impact the cases you hear about or investigate? (How?)

26b. Are your relationships with local or state law enforcement agencies across your territory similar, or do you deal primarily with a few specific locales? (Please explain.)

26c. Are there ever disagreements over which jurisdiction will proceed with a case?

26d. (IF YES) How are these disagreements resolved? Do you have a homicide example?

26e. Have any of these relationships changed since the administration changed in 2000? (Which ones? How?)

27. Do you ever contact or are you ever contacted by district/county/ commonwealth/ state's attorneys? (IF YES, please explain the typical interactions.)

27a. Do these contacts ever involve homicides?

- 28. Has your office established formal or informal lines of communication with any local, state, or federal agencies for notification when a federally relevant homicide occurs?**
- 29. Have there been situations when you felt your agency should be involved in a homicide investigation, but were not? (*Please explain.*)**

Now, we'd like to talk a bit about task forces.

- 30. How important a role do task forces play in your jurisdiction? (IF NONE, note reason and SKIP to Question #31.)**

30a. *What factors drive the decisions to establish task forces in your jurisdiction?*

30b. *Do most task forces emanate from your agency? Or do they generally arise from other agencies?*

30c. *How do you decide to staff task forces?*

30d. *How is it decided which federal investigative agencies play a role?*

30e. *Do such task forces impact the number of homicides investigated by your agents?*

Finally, we'd like to ask some questions that call for your perceptions. Congress is interested in explaining variations among federal districts in the investigation and prosecution of homicide cases, particularly those that carry a possible capital sentence.

- 31. If different field offices vary in the way they decide to pursue or not pursue capital homicide cases, how would you explain that variation?**
- 32. Do you find that the kinds of crime your office targets affect the rates of minority arrests or indictments? (*Please provide an example.*)**

32a. (IF YES) Do you think this outcome is specific to your office or would you say the relationship between minority arrest rates and crime type applies across all FBI/ DEA/ ATF (specify) field offices?

32b. How about across regional offices?

33. Do you feel the current levels of regional and racial differences in federal capital cases can be eliminated or reduced? (IF YES, what do you think can be done? IF NO, why not?)

34. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. In your opinion, what best explains why cases go to the federal system?

34a. Does this vary by offense type?

34b. Has this changed since the federal administration changed in 2000?

34c. Are there any other explanations we have not discussed?

35. We've discussed policies and procedures for handling homicide cases and for establishing jurisdiction, as well as formal and informal agreements with state or local governments that impact the number and types of homicides investigated federally. Are these in writing? May we get copies? Here is a list of documents we discussed. (CIRCLE NONE, if none in writing, or NO, if can't have copies.

That completes our list of questions. Is there anything else you would like to add? Thank you very much.

ID #:

District:

Office:

Unit/Section:

FBI/ DEA/ ATF SPECIAL AGENT QUESTIONNAIRE

Our focus for this interview is on factors that would cause a homicide in your district to be prosecuted federally, and how those factors may differ from other jurisdictions. Let's start with questions concerning the types of investigations you handle.

1. Are you assigned to a specific investigative section? To whom do you report?

1a. IF YES, on what types of crime does your section focus?

1b. IF MORE THAN ONE IDENTIFIED, estimate the time spent on each in comparison to the other(s) and whether this is typical. Inquire as to time frame 1995-present.

2. How does your unit work? Do you receive individual assignments or work as a group? (Describe the process by which you receive assignments/cases.)

2a. How do you hear about the crimes you investigate?

3. Do you or your unit ever participate in the investigation of homicides? By homicide we are referring to any homicide covered by the approximately 59 federal capital statutes. (What types?)

4. How do federally relevant homicides come to your attention?

4a. Are some types more likely to come to your attention? (Why?)

5. If a relevant homicide comes to your attention, who decides whether the [FBI] [DEA] [ATF] will proceed with an investigation?

6. What percent of your time or resources is spent assisting local investigations on cases that are not of federal prosecutorial interest?

- 7. Does the lack of resources or number of active investigations affect your ability or willingness to investigate homicides of federal interest? (Specify resources, support, or expertise that is lacking.)**

Now, I'd like to ask questions about your relationships with other criminal justice organizations.

- 8. In general, how would you describe your relationships with the U.S. Attorney's Office in _____?**
- 8a. With which AUSAs do you typically interact?**
- 8b. Describe a typical interaction. (Who calls whom? Issues discussed? At what point in an investigation?)**
- 8c. Do you have a better relationship with some AUSAs than others? (Please explain.)**
- 8d. Do your relationships have an impact on the cases you hear about or decide to investigate?**
- 8e. Are your relationships with federal prosecutors similar throughout the entire territory or do you deal primarily with a few specific locales? (Please explain.)**
- 8f. Does your agency ever disagree with the U.S. Attorney's office about whether a homicide should be investigated or prosecuted federally?**
- 8g. How are these disagreements resolved? Please provide a homicide example.**
- 8h. Are disagreements over jurisdiction more likely to occur in high profile cases?**
- 8i. Have any of these relationships changed since the administration changed in 2000? (How?)**

- 9. In general, how would you describe your relationships with local and state law enforcement in your jurisdiction?**
- 9a. *Does your agency or unit frequently work with local officers? (Are activities carried out jointly or independently?)***
- 9b. *How closely are activities coordinated?***
- 9c. *With which law enforcement agencies and officers do you typically interact at the local level?***
- 9d. *Describe a typical interaction. Who calls whom? Issues discussed? At what stage in the investigation?***
- 9e. *Do you have a better relationship with some agencies or officers than others? Which ones? (Please explain.)***
- 9f. *Do these better relationships impact the cases you hear about or decide to investigate? (Are you more likely to hear from those?)***
- 9g. *Are your relationships with local or state law enforcement organizations similar across the entire territory or do you deal primarily with a few specific locales? (Please explain.)***
- 9h. *Are there some local authorities that would be less inclined to inform you of potentially federally relevant crimes? (Which ones? Why?)***
- 9i. *Are there ever disagreements over which jurisdiction will proceed with case?***
- 9j. *How are these disagreements resolved? Please provide a homicide example.***
- 9k. *Have any of these relationships changed since the administration***
- 10. In general, how would you describe your relationships with other federal investigative agencies (specify FBI/ DEA/ ATF) in your jurisdiction?**

10a. *With which federal law enforcement agencies do you typically interact?*

10b. *Specifically, whom within those organizations do you typically interact?*

10c. *Do you ever work together on the same cases?*

10d. *Are there ever disagreements with other federal agencies about whether you will proceed with a case?*

10e. *How are these disagreements resolved? Please provide a homicide example.*

10f. *Have any of these relationships changed since the administration changed 2000? (Which ones and how?)*

11. We are interested in whether directives from the national or regional offices are provided for how staff should interact with other criminal justice agencies or with whom staff should interact? Does your section receive these kinds of directives?

11a. *Has this changed since the administration changed in 2000? (How?)*

We understand that the vast majority of homicides are under state jurisdiction, with only a select few being of federal interest. We are trying to ascertain those factors that influence the selection of the few federal homicides in your jurisdiction.

12. Are there certain types of homicides that would be investigated automatically by your office?

12a. *Are there certain types of federally relevant homicides that would be more likely to go to the state? (Please explain.)*

13. Describe the organized criminal activity you usually see in your jurisdiction?

13a. *What types of offenses does this involve?*

13b. *Is such activity centralized in certain locations within your jurisdiction?*

14. Are you more likely to investigate a homicide if you believe it's related to an ongoing investigation of a criminal organization?

15. Who investigates conspiracies to distribute drugs or other criminal organizations in your territory?

15a. *Do local and state law enforcement?*

15b. *Does federal law enforcement?*

15c. *Or both? (Please explain.) (IF BOTH, do these agencies work together or independently?)*

We have reviewed many federal homicide cases and have seen various reasons for why cases are pursued by federal officials. We'd like to get your take on what factors, in your territory, are more likely to cause you to investigate a case.

16. What types of federal investigative tools and techniques increase the likelihood that some types of cases are brought to the federal system?

16a. *What types of cases?*

16b. *How does this relate to homicide cases?*

16c. **INVESTIGATIVE GRAND JURY — *Do you find that the ability of the federal prosecutor to impanel an investigative grand jury increases the likelihood that the investigation and prosecution of a homicide would occur in the federal system? (Please explain. How frequently?)***

16d. **WIRETAP — *Do you feel the availability of federal wiretaps in an investigation increases the likelihood that a homicide would be investigated by federal authorities?***

16e. **CHARGE AVAILABILITY — *Does the availability of certain charges at the federal level increase the likelihood that federal authorities may investigate certain types of homicides? (Which charges?)***

- 16f. **SENTENCE AVAILABILITY** — *Does the length of available sentences at the federal level increase the likelihood that certain offenses will be investigated by federal authorities? (Please explain.)*
- 16g *How about the availability of the death penalty?*
- 16h. **MULTIPLE JURISDICTIONS** — *Do you feel the federal government's ability to include behavior occurring in multiple jurisdictions in a single case increases the likelihood that homicides in your territory are investigated by federal authorities?*
- 16i. **LOCAL LAW ENFORCEMENT ABILITIES** — *How would you rate the abilities of local investigators and prosecutors compared to their federal counterparts?*
- 16j *Is this consistent throughout the district?*
- 16k. *Does this affect the flow of homicide cases into the federal system? (Which types of cases?)*
- 16l. **IF INDICATED AS PROBLEM, ASK:** *Does this influence the homicide clearance rates in the local jurisdictions?*
- 16m **LENGTHY/COMPLEX CASES** — *Does your office handle a significant number of long-term investigations or complex cases? Does this impact your ability to handle other types of cases? How about homicide cases?*
- 16n. **LOCAL VS. FEDERAL RESOURCES** — *How about local resources vs. federal resources in general? Are there instances in which one system does not have sufficient resources to proceed with a homicide investigation or prosecution? (Please explain.)*

Next, we consider investigative issues.

17. How do local clearance rates affect your involvement in homicide cases?

17a. Is federal law enforcement more likely to be brought in on cases that are difficult to clear?

17b. Does this vary across your territory?

18. Generally speaking, at what point(s) in the course of a (drug, gang, organized crime) investigation would you contact federal prosecutors?

18a. Do you or other special agents actively lobby for federal prosecution in certain cases? (Please explain.)

19. To what extent, and at what points in the course of a (drug, gang, organized crime) investigation, do you apprise local law enforcement agencies of an ongoing investigation in their area?

20. Our research suggests that some cases appear to come into the federal system because federal cooperators or informants in on-going investigations could provide evidence that was unavailable to the state. Does this happen in your jurisdiction? (Please explain.)

Now, let's talk a bit about task forces.

21. Does your agency participate in joint task forces that include local/state and federal representation? (IF NO, why not? SKIP to Question #22.)

21a. Why are these task forces developed?

21b. In general, do task force personnel work well together?

21c. Are the relationships between federal and state or local officials strengthened by participation on joint task forces?

21d. If a joint task force investigation is successful, how likely is it that the case will be tried in the federal system? How about the state system? (What factors influence these decisions?)

21e. Does the structure of task force personnel, such as which agencies are represented or who serves as the lead agency, have an impact on

whether a case will be handled in the federal system? (Please explain with examples.)

- 21f. *What role do joint federal/state task forces play in the investigation and prosecution of homicide cases in your jurisdiction?***
- 21g. *Our research suggests that joint state/federal task forces targeting certain crimes may impact the number and types of homicides handled by the federal system. What is your take on this, and how does it play out in your experience?***
- 21h. *What advantages or disadvantages does federal involvement bring to task forces?***
- 22. *Are there other types of coordinated activities with local agencies in your jurisdiction? (What are they and how do they operate?)***
- 22a. *Why were these joint activities developed?***
- 22b. *In general, do federal/local personnel work well together?***
- 22c. *Are the relationships between federal and state or local officials strengthened by these activities?***
- 22d. *If an operation is successful, how likely is it that the case will be tried in the federal system? How about the state system? (What factors influence these decisions?)***
- 22e. *What role do such operations play in the investigation and prosecution of homicide cases in your jurisdiction?***

ADD SPECIFIC OFFENSE LOOPS

Finally, we'd like to ask some questions that call for your perceptions. Congress is interested in explaining variations among federal districts in the investigation and prosecution of homicide cases, particularly those that potentially carry a capital sentence.

- 23. *If districts vary in the way they decide to pursue or not pursue capital homicide cases, how would you explain that variation?***

- 24. Do you feel the current levels of regional and racial differences in federal capital cases can be eliminated or reduced? (IF YES, what do you think can be done? IF NOT, why not?)**

- 25. How would you explain the disproportionate number of minorities on federal death row?**

- 26. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. In your opinion, what best explains why cases go to the federal system?**
 - 26a. Does this vary by offense type?**

 - 26b. Has this changed since the federal administration changed in 2000?**

 - 26c. Are there any other explanations we have not discussed?**

That completes our list of questions. Is there anything else you would like to add? Thank you very much.

ID #:

District:

Office:

Unit/Section:

LOCAL CHIEF OF POLICE QUESTIONNAIRE

- 1. What are the primary local crime concerns for your department/office?**

- 2. Are these crime problems centralized in specific areas within your jurisdiction or do they span the entire jurisdiction? (*Please explain.*)**

- 3. Do you have sufficient resources, such as staffing and technology, to address your local crime problems?**
 - 3a. What are your greatest needs?***

 - 3b. Do you ever ask for assistance from federal authorities due to a lack of resources? (What type of assistance?)***

 - 3c. What types of cases or case-related factors increase the likelihood that your department/office would call for federal assistance?***

- 4. Do federal law enforcement priorities impact your ability to address local crime problems? (*How?*)**

- 5. How do you feel your department's/office's resources, training, and experience compare to federal law enforcement agencies within your jurisdiction, both generally and with respect to handling homicide cases?**

- 6. Do available resources sometimes require your department to discontinue an active homicide investigation before you're ready to move the case to inactive status? (*Please explain.*)**
 - 6a. What types of cases are more likely to go to inactive status? (What is the nature of these cases?)***

 - 6b. Are you more likely to ask for federal assistance for cold cases?***

- 7. Are there any homicides you feel involve exclusively federal jurisdiction or the federal jurisdiction is so fundamentally strong that federal interest always exceeds state interest? (*What about military bases, parkland, or other federal properties?*)**
 - 8. Have you established any policies or procedures, or even general guidance, for when federal authorities are to be contacted in a case involving a federally relevant homicide?**
 - 9. What primary benefits are offered by federal investigation? (*How often?*)**
 - 10. Have there been situations when the federal government took over a homicide investigation against your wishes? (*Please explain.*)**
 - 11. With respect to jurisdiction, do you have any formal or informal agreements with the federal government that impact the number and types of homicides investigated federally in your jurisdiction? (*Please explain.*)**
 - 11a. (*FOR EACH AGREEMENT, ASK:*) *What is the agreement?***
 - 11b. *When was the agreement made?***
 - 11c. *Why was the agreement made?***
 - 11d. *How was it established?***
 - 12. Could you tell us about any policies or procedures you have for establishing federal or state jurisdiction?**
 - 13. In our review of cases, it appears that federal authorities in some jurisdictions are more likely to become involved with a homicide if it relates to an ongoing investigation of a drug or organized crime conspiracy. Is this the case in your area? (*Please explain.*)**
-

- 13a. How often are homicides related to such conspiracies investigated by the FBI or other federal investigators in your jurisdiction?**
- 13b. If investigated federally, what is the probability a case will be prosecuted federally?**
- 14. Are potential federal prosecutions or punishments (such as with mandatory minimum drug or firearm laws) used to elicit cooperation or pleas from defendants? *(Please explain.)***
- 14a. *Does this increase the likelihood that a case will go to the federal system?***
- 15. How would you describe your level of cooperation with the local District Attorney? *(Why? Can you elaborate?)***
- 16. Does the District Attorney provide you with guidance on cases that are most appropriately handled federally?**
- 16a. *Do you ever you go to the District Attorney to recommend seeking federal prosecution or investigative assistance?***
- 16b. *Does the District Attorney's Office affect the way in which you investigate homicides?***
- 17. In general, how would you describe your level of cooperation with the U.S. Attorney's Office in _____?**
- 17a. *Do you meet regularly or on ad hoc basis as the need arises?***
- 17b. *Do you share information with the U.S. Attorney's Office about your priorities and emerging issues?***
- 17c. *Does the U.S. Attorney's Office make you aware of the types of federal offenses they are most interested in prosecuting? (What are they?)***

- 17d. Does your level of cooperation with the U.S. Attorney's Office have an impact on the homicide cases your department/office investigates?**
- 17e. Are there instances when the U.S. Attorney's office alerts you or the District Attorney that a case has federal relevance? (How about that a case will be handled federally?)**
- 18. What are your levels of cooperation with federal investigative agencies in your jurisdiction?**
- 18a. Do you interact with FBI/DEA/ATF officials in your area? (Please explain the nature and frequency of these interactions.)**
- 18b. Do you share information with federal investigators about your priorities and emerging issues?**
- 18c. Do federal investigators share information about their priorities?**
- 18d. How about their on-going investigations?**
- 18e. What are the targets of federal investigation in your jurisdiction?**
- 18f. Have federal agencies asked that you alert them to federally relevant activities? (Homicides?)**
- 18g. In general, do your department/office and federal investigators work together to solve crimes, or does your department/office target some criminal activities and federal investigators target different criminal activity?**
- 18h. Do your department/office and the federal investigators have any difficulties working together? (Ask for examples.)**
- 18i. Do levels of cooperation with federal agencies have an impact on the homicide cases they investigate?**

- 18j. How often do you request federal assistance in solving homicides?**
- 18k. When you have sought federal assistance, are these cases typically prosecuted federally or locally?**
- 19. Are interactions between local and federal law enforcement generated through your contacts with the federal special agents in charge or are such interactions primarily the result of contacts formed between individual agents and local detectives or officers? (Please explain.)**
- 19a. Has this changed since the federal administration changed in 2000?**
- 20. Does your office have any guidelines for working with federal officials?**
- 21. Are there ever disagreements over which jurisdiction will proceed with a case?**
- 21a. How are these disagreements resolved? (Please provide a homicide example.)**
- 22. How important a role do task forces play in your jurisdiction?**
- 22a. What factors drive the decisions to establish task forces in your jurisdiction?**
- 22b. Do most task forces emanate from your agency? Or do they generally arise from the other agencies?**
- 22c. How do you decide to staff task forces?**
- 22d. How is it decided whether federal investigative agencies should play a role, and if so which agencies?**

- 23. What types of crimes do you feel are most appropriate for the federal system to be involved with in your jurisdiction?**

- 24. Do you feel that federal authorities offer great assistance or are they more likely to hinder your investigations? *(Please explain.)***

- 25. If available, would you want more assistance from the federal system in fighting crime? *(What type of assistance and by whom?)***
 - 25a. Would you like the federal system to handle more homicide cases or less?**

- 26. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. In your opinion, what best explains why cases go to the federal system?**
 - 26a. *Does this vary by offense type?***

 - 26b. *Has this changed since the federal administration changed in 2000?***

 - 26c. *Are there any other explanations we have not discussed?***

- 27. We have asked about policy and procedures for handling homicide cases and for establishing their jurisdiction, as well as formal or informal agreements with state or local governments that impact the number of homicides federally prosecuted. We wondered if these were in writing, and if so, may we have copies? Here is a list of the documents we discussed. **(CIRCLE NONE, if none in writing, or NO, if can't have copies.)****

ID #:

District:

Office:

Unit/Section:

HOMICIDE/DRUG/OC UNIT QUESTIONNAIRE

- 1. What types of crimes are generally handled by your unit? (Specify nature of these crimes or crime problems)**

 - 2. How is your unit organized?**
 - 2a. How many officers/detectives are assigned to your unit?**

 - 2b. What is the average tenure of officers in your unit?**

 - 2c. Do you have your own forensics lab?**

 - 3. How often do federal agents become involved in your investigations? (Can you provide some examples?)**
 - 3a. Do you feel that federal authorities offer great assistance or are they more likely to hinder your investigation? (Explain.)**

 - 4. Under what circumstances would you ask for help on a case from federal investigators? (Who would you ask?)(Anything else?)**
 - 4a. At what point in the investigation or prosecution does the U.S. Attorney become involved with or assume responsibility for the case? (How often does this occur?)**

 - 5. Do federal agents ever request to take over a case? (Examples?)**

 - 6. (IF DRUG/GANG/OC UNIT) How often does your unit handle homicides?**
 - 6a. What types of homicides?**
-

- 7. Are there certain types of homicides that would be investigated automatically by federal authorities?**
 - 8. What factors increase the likelihood that a homicide case will be investigated and prosecuted federally as opposed to locally?**
 - 9. Who investigates conspiracies to distribute drugs or other criminal organizations in your jurisdiction? Local and state law enforcement? Federal law enforcement? Or both?**
 - 9a. IF BOTH, do these agencies work together?***
 - 10. In our review of cases, it appears that federal authorities are more likely to become involved with a homicide if it relates to an ongoing investigation of a drug or organized crime conspiracy. Is that the case in your area?**
 - 10a. How often are homicides related to such conspiracies investigated by the FBI or other federal investigators in your jurisdiction?***
 - 10b. If investigated federally, what is the probability a case will be prosecuted federally?***
 - 10c. Our research suggests that some cases appear to come into the federal system because federal cooperators or informants in on-going investigations could provide evidence that was unavailable to the state. Does this happen in your jurisdiction? Please explain.***
 - 11. We assume that you may request federal investigative assistance, but most often do not expect them to lead the investigation or prosecute the case. Can you tell us the frequency of federal involvement or assistance as opposed to the frequency with which they lead the investigations or prosecute cases?**
 - 12. What types of crimes do you feel are most appropriate for the federal system to be involved with in your jurisdiction? (As it relates to homicide?)**
-

13. Do you use the threat of more significant charges or penalties in the federal system to gain cooperation of defendants at the local level?
 14. **INVESTIGATIVE TOOLS AND TECHNIQUES.** What types of federal investigative tools and techniques increase the likelihood that some types of cases are sent to the federal system? *(Please explain.)*
 - 14a. *What types of cases?*
 - 14b. *As they relate to homicides?*
 - 14c. **INVESTIGATIVE GRAND JURY** — *Do you find that the ability of the federal prosecutor to impanel an investigative grand jury increases the likelihood that the investigation and prosecution of a homicide would occur in the federal system? (IF NO, why not?) (IF YES, how often does this happen?)*
 - 14d. **WIRETAPS** — *Do you feel the availability of federal wiretaps in an investigation increases the likelihood that a homicide would be investigated by federal authorities?*
 - 14e. **CHARGE AVAILABILITY** — *Does the availability of certain charges at the federal level increase the likelihood that federal authorities may investigate certain types of homicides? (Which charges?)*
 - 14f. **SENTENCE AVAILABILITY** — *Does the length of available sentences at the federal level increase the likelihood that certain offenses will be investigated by federal authorities? (Please explain.)*
 - 14g. *How about the availability of the death penalty?*
 - 14h. **MULTIPLE JURISDICTIONS** — *Do you feel the federal government's ability to include crimes committed in multiple jurisdictions in a single case increases the likelihood that homicides in your jurisdiction are investigated by federal authorities?*
 15. In general, how would you describe your level of cooperation with federal investigative (e.g., FBI, DEA, ATF) agents in your jurisdiction?
-

- 15a. With which agencies do you interact most frequently?**
- 15b. Do you have better levels of cooperation with some federal investigators than others? (Please explain.)**
- 15c. Do you share information with federal investigators about ongoing cases?**
- 15d. Do levels of cooperation with federal investigators have an impact on the cases you investigate?**
- 15e. At what point in the investigation do federal investigators become involved with or assume responsibility for a case?**
- 15f. Have there been instances in which federal investigators stepped in and took over a case without being asked by your department/ office?**
- 16. Has the DA ever asked that you stop your investigation at the request of the federal government?**
- 17. Does your agency participate in state or state/local task forces that do not include federal representation? (IF NO, skip to Question #18.)**
- 17a. What are the targets of these state or local task force investigations? (By focus or target, we mean, e.g., urban drug, gang, organized crime, weapons violations.)**
- 17b. What role do state or local task forces play in the investigation and prosecution of homicide cases in your jurisdiction?**
- 17c. If evidence obtained through a state task force indicates that there may be a federally relevant crime involved in the case, would the federal government be brought in? (IF NO, why not? Skip to Question #18).**
- 18. Does your agency participate in joint task forces that include federal representation? (IF NO, why not? Skip to Question #19.)**

- 18a. Why are these task forces developed?**
- 18b. In general, do task force personnel work well together?**
- 18c. Are levels of cooperation between federal and state or local officials strengthened by participation on joint task forces?**
- 18d. If a joint task force investigation is successful, how likely is it that the case will be tried in the federal system? How about the state system? (What factors influence this decision?)**
- 18e. Does the structure of task force personnel, such as which agencies are represented or who serves as the lead agency, have an impact on whether a case will be handled in the federal system? Please explain with examples.**
- 18f. What role do joint federal/state task forces play in the investigation and prosecution of homicide cases in your jurisdiction?**
- 18g. Our research suggests that joint state/federal task forces targeting certain crimes may impact the number and types of homicides handled by the federal system. What is your take on this, and how does it play out in your experience?**
- 18h. What advantages or disadvantages does federal involvement bring to task forces?**
- 19. Are there other types of coordinated activities with federal agencies in your jurisdiction? (What are they and how do they operate?)**
- 19a. Why were these joint activities developed?**
- 19b. In general, do federal/local personnel work well together**

19c. Are levels of cooperation between federal and state or local officials strengthened by these activities?

19d. If an operation is successful, how likely is it that the case will be tried in the federal system? How about the state system? (What factors influence this decision?)

19e. What role do such operations play in the investigation and prosecution of homicide cases in your jurisdiction?

ADD SPECIFIC-OFFENSE QUESTIONS HERE

20. We've discussed many factors here that may or may not influence the likelihood that homicides would be handled federally in your district. In your opinion, what best explains why cases go to the federal system?

20a. Does this vary by offense type?

20b. Has this changed since the federal administration changed in 2000?

20c. Are there any other explanations we have not discussed?

DEFENSE ATTORNEY QUESTIONS

- 1. In your experience, what factors are most important in determining if a homicide case is processed in the federal as opposed to the state system?**
 - 1a. *Are federal investigators/prosecutors more likely to give certain types of homicide cases high federal priority? Local priority? Why?***
 - 1b. *Are there negotiations over this decision?***
 - 1c. *Do you see any benefits in the investigation or prosecution of homicide cases in either the federal or state systems?***
 - 1d. *Federal grand juries?***
 - 1e. *Wiretaps?***
 - 1f. *Availability of certain charges?***
 - 1g. *Evidentiary issues?***
 - 1h. *Use of cooperator/accomplice testimony?***
 - 1i. *Multi-jurisdictional offenses?***
 - 1j. *Strength of evidence?***
 - 1k. *Procedural issues?***
 - 1l. *Pre-trial holding?***
 - 1m. *Witness protection?***
 - 1n. *Severance?***

- 1o. *Local law enforcement abilities?***
- 1p. *Local v. state resources?***
- 1q. *Lengthy/complex cases?***
- 1r. *Available sentence length?***
- 1s. *Availability of the death penalty?***

- 1t. *Do you feel that media attention or high profile cases play a role in this situation?***

- 1u. *Do you think that relationships between federal prosecutors/ investigators and local prosecutors/investigators are factors in deciding to investigate or prosecute a homicide case federally?***

- 1v. *Is the particular jurisdiction or district where the crime occurred related to the decision to investigate or prosecute a homicide case federally? How?***

- 1w. *Is race of defendant related to the decision to investigate or prosecute a homicide case federally? How?***

- 1x. *Are low-level participants in a drug trafficking or other organized activity, who are involved in violence, targeted by investigators to obtain cooperation against leaders?***

- 1y. *Have any of these factors changed since 2000?***

- 2. Can you tell me about the federal plea bargaining process?**

- 2a. *When do you generally become involved?***

- 2b. *What is the likelihood of obtaining a plea agreement?***

- 2c. *When do these negotiations take place?***
- 2d. *How often do the negotiations involve charging decisions?***
- 2f. *What factors influence whether a plea negotiation will be undertaken?***
- 2g. *Are homicide cases different?***
- 2h. *Do you feel your relationships with the prosecutors have an influence on charging, or plea agreements? How?***
- 2i. *Do you find there are any patterns with the types of cases or defendants who are offered pleas?***
- 2j. *Do you find there are any patterns in the acceptance of pleas?***
- 2k. *Is the particular jurisdiction or district where the trial will be held related to the decision? How?***
- 2l. *Is race of defendant related to this decision? How?***
- 3. Do state investigators and prosecutors use the threat of charging a crime federally as a cooperation tactic or a means of eliciting a plea?**
 - 3a. *To what extent does Project Exile play a role in this process?***
- 4. What factors influence whether a death penalty is recommended in your district?**
 - 4a. *Does availability of a state death penalty impact this decision?***
 - 4b. *Is such a recommendation used as leverage to obtain cooperation?***
 - 4c. *Is race of defendant related to this decision?***

4d. *How about the jurisdiction where the trial will be held, e.g., rural vs. urban venue? Does that play a role?*

5. In your work or interaction in other federal districts, have you noticed any differences from this district that would impact the number and types of homicides processed federally?

If you had a client charged with homicide, would you rather have the at factors do you think may account for this? ➤

Offense-Specific Questions

Offense: _____

A. All Federal Prosecutions. During our preliminary data collection, both federal and local law enforcement in your district indicated that all (insert offense) in your jurisdiction are investigated and prosecuted through the federal system.

1. Are there formal or informal arrangements between federal and local authorities for cases of this nature? Explain. (*Clarify any parameters to the agreement such as use of firearm, death*) (*Clarify who arrangement is with and arrangements with other local jurisdictions*) (If no, skip to Question #2.)

1a. Do you know what motivated this (these) specific arrangement(s)?

1b. Are there any situations when you would depart from this arrangement? Please explain.

2. Why has the federal government felt its interests are greater than the locals in these types of offenses?

3. Are federal investigators ever called to the scene of the homicide? *If no, when are they brought into the investigation?*

4. Are there any other factors that explain why (insert offense) in your jurisdiction are all prosecuted in the (*state or federal*) system?

5. In general, would you expect harsher sentences for (insert offense) from the state or federal system?

6. To the best of your knowledge, what is the racial distribution of those known to have committed (insert offense) in your jurisdiction?

_____ % Black

_____ % Hispanic

_____ % White

Offense: _____

B. All State Prosecutions. During our preliminary data collection, both federal and local law enforcement in your district indicated that all (insert offense) in your jurisdiction are investigated and prosecuted through the local/state criminal justice systems.

1. Are there formal or informal arrangements between federal and local authorities for cases of this nature? Explain. (*Clarify any parameters to the agreement such as use of firearm, death*) (*Clarify who arrangement is with and arrangements with other local jurisdictions*) (If no, skip to Question #2.)

1a. Do you know what motivated this (these) specific arrangement(s)?

1b. Are there any situations when you would depart from this arrangement? Please explain.

2. Is the federal government notified when these crimes occur?

3. Why hasn't the federal system in this district been interested in prosecuting (insert offense)?

4. Are there any other factors that explain why (insert offense) in your jurisdiction are all prosecuted in the state system?

5. In general, would you expect harsher sentences for (insert offense) from the state or federal system?

6. To the best of your knowledge, what is the racial distribution of those known to have committed (insert offense) in your jurisdiction?

_____ % Black _____ % Hispanic _____ % White

Offense: _____

B. Mixed Results. During our preliminary data collection, both federal and local law enforcement in your district indicated that **(insert offense)** are investigated and prosecuted through both the local/state system and federal system in your jurisdiction. We'd like to explore how the decisions are made to prosecute some cases in the federal system.

1. Would local agents always be called to the scene of the crime first?

1a. *Can you think of any reasons why federal agents would be called to the scene?*

2. If a **(insert offense)** occurred, would the local authorities recognize the potential federal relevancy?

2a. *Would this answer vary based on location within your district (for example, in a rural area as opposed to a major city)? Please explain.*

2b. *Would this change if there was a related series of offenses (for example, ...)?*

3. Are there formal or informal arrangements between federal and local authorities for cases of this nature? Explain. (*Clarify any parameters to the agreement, such as use of firearm, death*) (*Clarify who arrangement is with and arrangements with other local jurisdictions.*)

3a. *Do you know what motivated this (these) specific arrangement(s)?*

3b. *Are there any situations when you would depart from this arrangement?
Please explain.*

4. Would a federal agency or joint task force likely be informed? Explain.

4a. Which federal agency or joint task force? (*focus of task force*)

4b. How likely is this to happen?

- 4c. **Would local law enforcement ask for help if they were having trouble solving the case?**
5. **Would a federal agency likely become aware of the offense through an alternate means and seek to become involved?**
6. **What is the probability that a joint task force or federal agency would take over investigation of the case? _____**
- 6a. *What factors would need to be in place for the federal agency to become involved?*
7. **What is the probability the U.S. Attorney's Office would prosecute a (insert offense), as opposed to the state? _____**
- 7a. *Would there be a struggle over jurisdiction? If so, how would it be resolved?*
- 7b. *What would be the primary issues relevant to federal interest?*
8. **If the federal government proceeded with prosecution, how likely is it that the case would be prosecuted as a capital case?**
9. **(If in a DP state) If the DA proceeded with the case, how likely is it that the case would be prosecuted as a capital case?**
10. **In general, would you expect harsher sentences for (insert offense) from the state or federal system? Would this include the death penalty?**
11. **To the best of your knowledge, what is the racial distribution of those known to have committed (insert offense) in your jurisdiction?**

_____ % Black

_____ % Hispanic

_____ % White