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National Institute of Justice

Research in Brief

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ACQUISITIONS

Environmental Crime Prosecution: Results of a National Survey

Specialization in discrete crime areas is not a new practice for local prosecutors. Over the past two decades, America's district attorneys, particularly in offices representing densely populated jurisdictions, have gravitated to specialized prosecutorial services in such areas as narcotics trafficking, domestic violence, and child abuse. Specialization has resulted, largely, as a response to the public's growing perception of these actions as "criminal" and as an

organizational answer to the burgeoning volume of reports of such behavior. After years of growing pains in identifying critical needs, defining boundaries of responsibility, and seeking the best methods for prosecuting these types of cases, many prosecutors have become specialists in these areas.

Environmental crime prosecution, a field that mixes elements of law, public health, and science, emerged as a new area of such specialization, and this

study, sponsored by the National Institute of Justice, sought to determine the status of environmental crime prosecution at the local level throughout the United States.

Virtually all individuals surveyed during this study regarded environmental crimes as essentially criminal activity. Prosecutors, investigators, and other task force personnel employed basic law enforcement techniques in the investigation and prosecution of these crimes.

Issues and Findings

Discussed in this Brief: The results of a nationwide survey of local prosecutors in large jurisdictions (populations more than 250,000) and interviews with criminal justice and regulatory personnel in 7 sites regarding environmental crime prosecution in their communities.

Key issues: Local environmental crime prosecutions increased dramatically between 1990 and the first half of 1992. Since this field has become more specialized, the researchers sought data on the processes and factors local prosecutors use when deciding if and how to prosecute environmental crimes.

Key findings:

- ◆ Approximately half of the large jurisdiction prosecutors' offices

surveyed operate special environmental prosecution units.

- ◆ Over half of the offices assign full-time prosecutors to environmental offenses and over three quarters assign part-time prosecutors to these cases.

- ◆ Most offices have seen a rise in environmental crime cases over the survey period.

- ◆ The most common environmental offenses prosecuted involve illegal waste disposal; the most common substances involved in these offenses are hazardous wastes.

- ◆ The most important factors in deciding to prosecute environmental offenses are the degree of harm posed by the offense and the criminal intent of the offender.

- ◆ The most significant factor for rejecting the prosecution of environmental offenses is insufficient evidence or

inability to recognize appropriate evidence; the least significant factor for rejection of the prosecution is lack of resources.

- ◆ Less than half of the local prosecutor offices believed they can enroll in training to qualify as experts in environmental investigation and prosecution.

Almost all surveyed and interviewed indicated a need for increased technical assistance and training to improve the performance of environmental prosecution unit personnel. The creation of local prosecutor-led environmental task forces may be the best way to bring together needed expertise and resources to prosecute environmental crime.

Target audience: Local and Federal prosecutors, attorney generals, environmental regulatory specialists, health department officials, and researchers.

The approach was to simplify the cases using basic law enforcement techniques. Some prosecutors viewed these cases as "who done it" crimes; others said they are similar to other types of criminal cases, differing only in the amount of involvement by scientific experts.

As with other criminal prosecutions, prosecutors are now willing to proceed in environmental cases with only circumstantial evidence. This is an important development for environmental prosecutors who, in the past, were reluctant to prosecute a case without direct evidence.

The study involved a national survey of prosecutors and interviews with prosecutors, law enforcement, and regulatory personnel at seven sites. This Research in Brief summarizes the research methodology, highlights the findings, and analyzes the status of environmental crime prosecution in the United States.

Survey methodology

The purpose of the survey covering the 2½-year period 1990–June 1992 was to collect and analyze data to identify major patterns of action, preferences, and

perceptions for a total analysis of factors relating to the outcome of local environmental crime prosecutions. It was anticipated that survey results would facilitate (1) an explanation of differences in local prosecution program implementation and prosecution outcomes among jurisdictions, (2) a listing of explanatory factors, and (3) a rating of the relative importance of each of the factors as they relate to the effective prosecution of environmental crime at the local level. It was expected that the level of complexity/sophistication of environmental crime units in District Attorneys' offices would range over the spectrum from very low to very high.

The survey instrument was devised by the American Prosecutors Research Institute's (APRI's) Research Center and the National Environmental Crime Prosecution Center (NECPC), with assistance from the project's Environmental Crime Advisory Committee. The questionnaire depended mainly on closed-ended, scaled queries in which response ranges could be reliably structured but also included an open-ended format to provide a wide range of responses.

Based upon prior knowledge of the level of environmental offense prosecutions within local prosecutors' offices, the researchers expected the highest level of prosecution activity to be concentrated in larger jurisdictions. Consequently, 2 separate questionnaires were designed: 1 for rural/suburban jurisdictions serving populations up to 250,000 and 1 for offices representing jurisdictional populations over 250,000.

The first questionnaire, sent to a random sample of offices representing populations between under 1,000 and 250,000, was selected from the National District Attorneys Association's (NDAA's) master list. The questionnaire contained general inquiries on the level of environmental criminality, volume of environmental prosecutions, and reasons for the absence of such prosecutions. The second, much more detailed questionnaire, posed questions in these categories: (1) organizational structure of the office, (2) extent of environmental offense prosecution, (3) offense characteristics, (4) offense identification, (5) decisions to prosecute environmental offenses, (6) ability/willingness to prosecute

The Typical Environmental Prosecutor

Based on the survey results, a profile can be constructed of a typical environmental prosecutor: the typical prosecutor specializing in environmental crime works in an office representing an urban jurisdiction, is assigned full-time to environmental crime prosecutions, and prosecutes each case vertically (i.e., being active in each case from its early stages of investigation through to disposition). The most common cases faced by the environmental prosecutor involve the illegal disposal of hazardous wastes that are as likely to be referred to the office by local law enforcement as they are to come from environmental regulatory agencies.

During the decisionmaking process leading to charging, the average environmental prosecutor places the greatest weight on the degree of harm posed by the offense and on the offender's criminal intent. If the environmental prosecutor decides not to prosecute, it is usually because of a lack of evidence or the inability to recognize appropriate evidence. In the mind of the average environmental prosecutor, pressures exerted by business/labor groups to withhold criminal prosecutions are generally outweighed by other pressures such as those exerted by the general public to execute criminal prosecution. The typical environmental prosecutor on the local level, however, is apt to proceed with a civil case if the prosecution target is a corporate/business. At

trial the typical environmental prosecutor is very reliant on expert witness testimony for successful dispositions.

Environmental prosecutors often exhibit a degree of frustration stemming from a perceived lack of appreciation for their work and an overall lack of resources to improve technical skills. They may feel supported by their office, local regulatory agencies, and the public but are less certain of support from police and the judiciary. Further, the average environmental prosecutor feels handicapped in achieving professional goals due to fierce internal competition for sparse funds and a limited range of educational and technical assistance sources.

environmental offenses, (7) evidentiary standards/technical needs, and (8) plea and trial issues.

This questionnaire was mailed to all local prosecutors' offices representing jurisdictional populations of over 250,000. Content and format of the questionnaire were constructed with the assistance of local prosecutors advising NDAA within the organization's Environmental Protection Committee. These representatives served as the core group for pretesting of instruments.

Initial mailings were followed by multi-stage mail and telephone contacts to maximize response rates. As predicted, the highest response rates came from those prosecutors' offices representing jurisdictions of over 250,000 (100 of 178 or 56 percent).¹ Since response rates for the smaller jurisdictions were low (248 of 882 or 28 percent) they are not analyzed here. However, this low response rate for small jurisdictions may be an indication of a lack of environmental crime prosecutions in these regions.

Survey results

Thirty-two States responded to the large jurisdiction survey. The highest concentration of responses by State were California (15), Florida (11), New York (9), New Jersey (8) and Texas (7).² This section focuses on these results.

¹All offices did not respond to all the questions. For example, 78 offices reported their caseloads in the first 6 months of 1992, while 46 offices answered the question about waste treatment violations. Complete data are available in the full report; see p. 11 for information on how to obtain the document.

²Other States represented were Alabama (1), Arizona (1), Colorado (3), Georgia (3), Indiana (1), Illinois (1), Iowa (1), Kansas (1), Louisiana (2), Massachusetts (3), Maryland (2), Maine (1), Michigan (2), Minnesota (2), North Carolina (2), New Mexico (1), Nevada (1), Ohio (2), Oklahoma (1), Oregon (3), Pennsylvania (3), South Carolina (3), Tennessee (2), Utah (1), Virginia (1), Washington (1), and Wisconsin (3).

Among several key survey findings were the data showing that local district attorneys were performing the majority of environmental prosecutions. During the first 6 months of 1992, district attorneys accounted for 882 environmental crime prosecutions in jurisdictions whose populations exceeded 250,000.

Survey results also point to the large increase in local environmental prosecutions between 1990 and 1992. The following sections highlight the data revealed by the survey.

Organizational structure

Data were collected regarding the organizational structure of prosecutor offices in large jurisdictions:

- Roughly half of the 100 offices responding to this question reported the existence of special prosecution units within their organizational structure.
- Thirty of 63 offices (48 percent) reported that they did not assign full-time prosecutors to specifically prosecute environmental offenses.
- Twenty-three of 63 offices (37 percent) did report the assignment of at least 1 full-time prosecutor to environmental offenses, and 9 (14 percent) reported the assignment of between 2 and 4 full-time assistant prosecutors.
- Thirty-three of 73 offices (45 percent) reported the assignment of at least 1 part-time prosecutor, 15 (21 percent) reported the assignment of 2 per office, 8 (12 percent) reported the assignment of between 2 and 4, and 2 (2 percent) reported the assignment of between 16 and 18 part-time prosecutors per office.

Similarly, the assignment of full-time investigators to environmental offenses was found to be low with 41 (67 percent) of the 61 offices responding to this question refraining from assigning any full-time investigators and 9 (15 percent) assigning 1 per office. A higher percentage (43 percent) of 70 responding offices assigned part-time investigators: 21 (30 percent) reported the assignment of at

least 1 part-time investigator, and 10 (13 percent) reported the assignment of between 2 and 9 per office. Fifty-seven of the 97 offices responding to this question (59 percent) reported that they relied on other law enforcement agencies to assign investigators to handle environmental offense investigations.

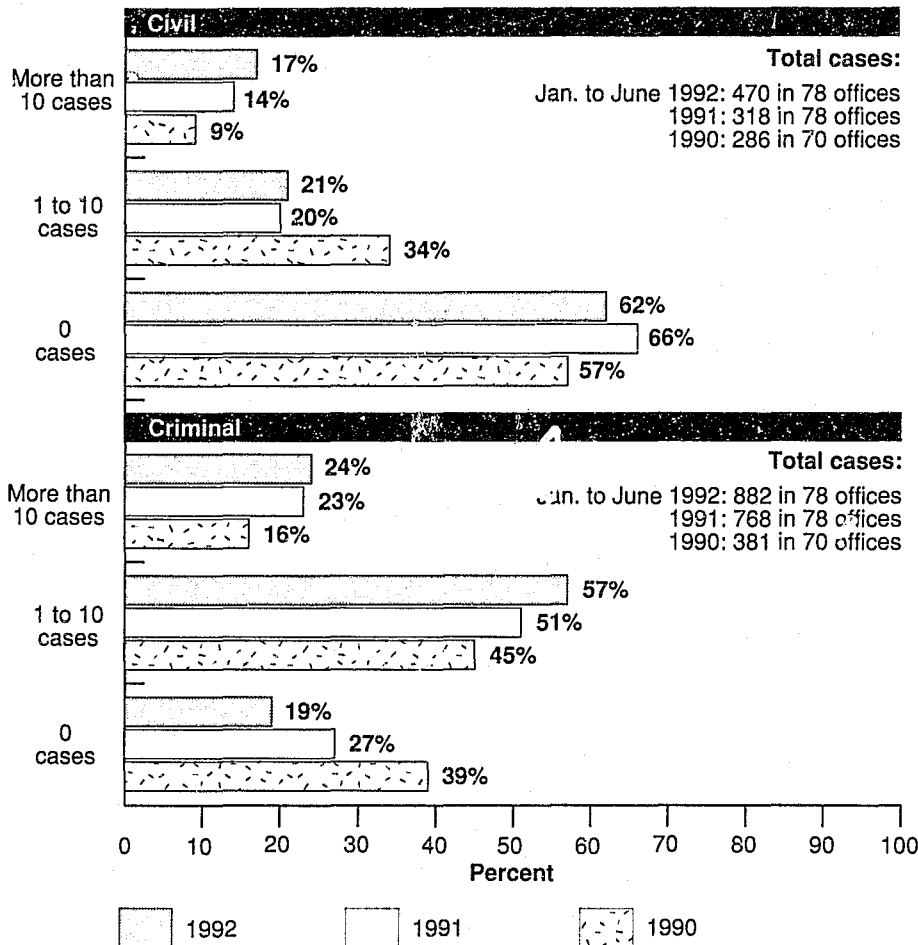
The vast majority of offices responding were found to assign active roles to prosecutors and demand that they assume a continuous role in cases to be prosecuted, from case initiation to disposition. Sixty-eight of 95 responding offices (71 percent) indicated that prosecutors in their offices were routinely active participants in the investigative processes of environmental offense cases. Furthermore, 71 of 87 responding offices (82 percent) added that all environmental offense cases were prosecuted vertically. Offices were split on the issue of task force participation with 42 of 96 responding offices (44 percent) acknowledging office participation in environmental crime task forces and 54 (56 percent) reporting nonparticipation.

Extent of environmental offense prosecutions

To assess the volume of environmental offense prosecutions carried out, offices were asked to report the number of criminal and civil environmental offense prosecutions for 1990, 1991, and the first 6 months of 1992. Results show a steady rise in these prosecutions, with pronounced increases for criminal cases.

As exhibit 1 illustrates, civil cases rose 11 percent between 1990 and 1991 from 286 to 318 and then escalated 48 percent to 470 cases in the first 6 months of 1992. The surge in criminal prosecutions during the same time period is significantly more striking. Between 1990 and 1991, criminal prosecutions of environmental offenses in the sample nearly doubled from 381 to 756—a 98 percent increase. In the first 6 months of 1992, criminal prosecutions eclipsed those for all of 1991, rising from 756 to 882, a

Exhibit 1. Environmental Offenses Prosecuted at the Local Level



Of special note in this comparative analysis is the change in the mean, median, and maximum number of criminal and civil environmental prosecutions among the three time periods and the implications of these changes. While the medians for yearly case totals changed little for both criminal and civil case categories, mean and maximum case prosecutions changed dramatically. Since medians represent the 50th percentile of collected case data, they are less likely to be affected by extreme cases (i.e., small numbers of offices representing high environmental case volume) and are more reliable as representations of averages in instances where the ranges are wide. While neither criminal case nor civil case medians varied widely, the mean and maximum number of criminal and civil cases changed radically. The most dramatic example is the criminal case maximums, which rose from 79 in 1990, to 100 in 1991, to 154 in the first half of 1992. In other words, while most offices progressively prosecuted more environmental cases a relatively small number of offices significantly increased their criminal prosecution totals in 1991 and the first half of 1992, and it is these offices that had a measurable impact on the total number of cases reported for the post-1990 time periods.

Offense characteristics

To discern the principal characteristics of environmental cases prosecuted by local prosecutors, respondents were asked about the types of offenses prosecuted and the types of wastes involved in the offenses. The types of offenses were categorized as:

- Improper dumping/disposal of solid, hazardous, medical/infectious or "other" wastes (disposal violations).
- Improper hauling/transporting of such wastes (transportation violations).
- Improper storage/stockpiling of such wastes (storage violations).

17-percent increase and a 132-percent increase over the criminal prosecution total for 1990.

Looking at these figures from a different perspective, the number of environmental cases prosecuted yearly per office can be examined. Data show a sharp decline in offices prosecuting no environmental criminal cases per year and, overall, a gradual increase in offices prosecuting more criminal cases throughout the 2-year time period studied. In 1990, 39 percent of 70 responding offices prosecuted no environmental criminal violations, and 57 percent prosecuted no environmental civil violations. In contrast, only 16 percent had prosecuted

more than 10 criminal cases that year, and 9 percent had prosecuted more than 10 civil cases.

By 1991, the number of offices (78 responded to this question) prosecuting no criminal cases had declined to 27 percent while a noticeable increase had occurred in the prosecution of criminal cases, especially in those offices prosecuting over 10 criminal cases for the year. In the first 6 months of 1992, only 19 percent of the 78 responding offices prosecuted no criminal cases; there were minimal increases in criminal cases in those offices prosecuting over 10 cases annually.

● Improper treatment of such wastes (treatment violations) and other violations.

Responses revealed that, overall, disposal violation prosecutions dominated within the caseloads of survey respondents. Slightly more than half of the 76 responding offices reported that over 50 percent of their prosecuted cases involved disposal violations (see exhibit 2). Furthermore, within this group one-third reported that over 90 percent of cases prosecuted were for disposal violations. In contrast, only 6 percent of the 63 responding offices indicated that transportation violations accounted for more than half of their prosecuted cases.

The majority of the respondents (64 percent) reported that transportation violations accounted for a small portion (between 0 and 15 percent) of their total environmental offense prosecutions. Similar findings were reported for prosecutions for storage violations; 69 percent of the 63 responding offices said these cases made up between 0 and 15 percent of their environmental prosecutions. Treatment and other violations represented negligible percentages of total environmental prosecutions (Treatment—5 percent; Other—1 percent).

To discern the types of wastes involved in prosecuted violations, the survey used the categories defined by the Resource

Conservation and Recovery Act (RCRA): hazardous, solid, medical/infectious, and other. Results show that the typical case prosecuted by the surveyed offices was for violations associated with wastes considered to be hazardous. Nearly half of the respondents reported that more than 50 percent of their prosecutions involve hazardous wastes. This percentage drops significantly for solid waste violation prosecutions (slightly more than one-quarter indicated that this category accounted for more than 50 percent of their environmental prosecution caseloads), and less than 3 percent reported that medical/infectious waste violations accounted for more than half of their caseloads.

Other Publications on Environmental Crime

Local Prosecution of Environmental Crime, NIJ Issues and Practices, by Theodore M. Hammett and Joel Epstein, 1993, 112 pages.

NCJ 143270

This document describes the experience of five local prosecutors' offices in prosecuting environmental crime (Alameda County, California; Cook County, Illinois; Jefferson and Gilpin Counties, Colorado; Los Angeles County, California; and Monmouth County, New Jersey) that have made prosecution of environmental crime a major priority. It discusses their approaches and the obstacles they face.

Prosecuting Environmental Crime: Los Angeles County, NIJ Program Focus, by Theodore M. Hammett and Joel Epstein, 1993, 16 pages.

NCJ 141868

This document examines the Los Angeles County Environmental Crimes Strike Force—a collaborative approach to investigating and prosecuting environmental crime. It explains the program's history and strategy and the roles of key health and law enforcement agencies.

Law Enforcement Response to Environmental Crime, NIJ Issues and Practices, by Joel Epstein, Esq., Theodore M. Hammett, with the assistance of Laura Collins, 1994, 92 pages.

NCJ 151399

This document describes the results of a national telephone survey and site visits to three jurisdictions that have made a strong commitment to enforcement of environmental crime. The report describes strategies that law enforcement, environmental, and regulatory agencies can adopt to enhance their responses to environmental crime.

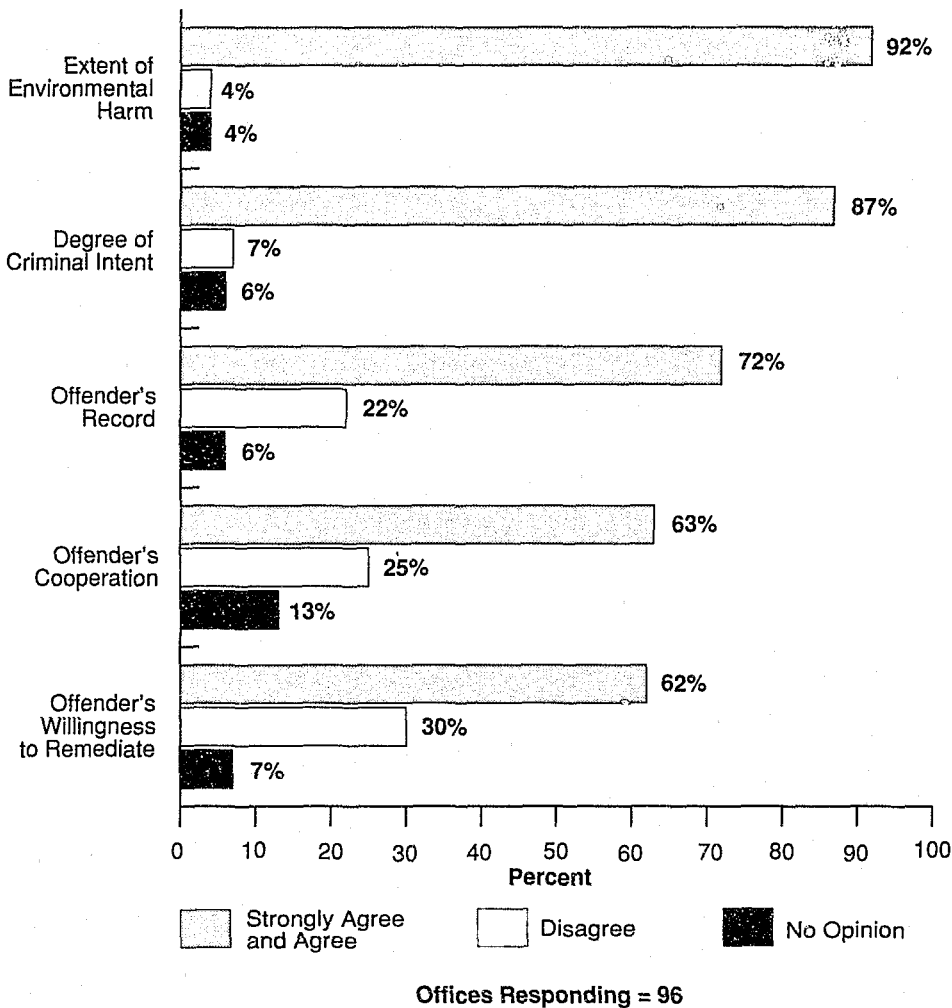
For more information or to obtain these free publications, write the National Criminal Justice Reference Service (NCJRS), Box 6000, Rockville, MD 20850, or call 800-851-3420.

Offense identification

The survey explored the manner in which environmental offenses were identified by local prosecutors' offices. Results may have implications for developing awareness and reporting strategies to assist local prosecutors in addressing more environmental offenses. Respondents were asked to indicate the most common methods of identifying offenses at the local level—referrals from environmental agencies, referrals from local law enforcement, emergency responses, citizen reports, proactive investigation by trained detectives, and other. Of the 217 common methods reported, 75 responses (35 percent) indicated referrals from environment agencies as the most common identification method, with referrals from local law enforcement following closely behind (61 or 28 percent). Emergency response and citizen reports each registered only 14 percent and proactive investigations was identified as a most common method among only 7 percent of respondents.

Followup questions revealed a general lack of prosecutor involvement in community programs designed to help residents recognize and report environmental offenses. When asked if prosecutors had created programs in community awareness, public relations, or education to develop the public's ability to recognize

Exhibit 2. Significant Factors in the Decision To Criminally Prosecute Environmental Offenses



and report offenses, only 18 of 95 responding offices (19 percent) answered affirmatively. In addition, only 9 (10 percent) reported developing environmental crime hotlines. This situation may partially explain the survey's findings of a low percentage of environmental crime referrals by citizens.

Finally, prosecutors were asked to what degree local health agencies were responsive to prosecution needs for technical assistance in their investigations. Sixty of 97 responding offices (62 percent) reported that health agencies were

responsive, and only 10 (10 percent) said the agencies were unresponsive.

Decisions to prosecute

The process by which prosecutors decide to charge environmental violations criminally was identified as important because of the technical knowledge needed to determine the level of harm caused by pollutants, the often uncertain circumstances surrounding determination of criminal intent, and the discretion that local prosecutors possess in deciding this issue. The survey revealed that only 13 offices (13 percent) have instituted spe-

cific procedural guidelines for the decisionmaking processes.

Exhibit 2 illustrates what prosecutors felt were the most significant factors in their decision to prosecute environmental offenses criminally. Prosecutors ranked the degree of environmental harm as the most important factor, with 92 percent of the 96 responding offices either agreeing or strongly agreeing. The degree of criminal intent of the offender and the offender's record also were reported to play an important part in the decision to prosecute criminally.

Respondents were also asked about the alternative aspect of this issue: What are the most important reasons for rejecting the option to prosecute criminally? Insufficient evidence was the most significant factor cited in decisions to reject criminal prosecution (76 percent of 100 responding offices). Only 16 percent said lack of resources was an important determinant. Another significant reason for rejecting local criminal prosecution was referral of cases to Federal and State agencies: 27 percent of local prosecutors surveyed said they referred cases out of their offices, and 17 percent said Federal and State agencies actively sought cases from local prosecutors.

Respondents reported a higher level of willingness to charge corporate directors and officers (76 percent) and management-level employees (73 percent) than to charge lower level employees (45 percent). Given that some offenses are the culmination of criminal directives handed down to lower level personnel, strong evidence against these offenders may be used as a device to elicit testimony against the upper level criminal architects. Forty-two percent of the responding prosecutors said they had granted immunity to an employee in exchange for testimony against corporate officers and managers, while 58 percent indicated that they had never done so.

Forty percent of the 100 responding offices confirmed that they had the option of using civil proceedings in pros-

ecuting environmental offenses. Of those with civil jurisdiction, 37 of 40 responding offices (93 percent) believed that the appropriateness of alternative civil statutes is a significant factor in the decision of whether to prosecute criminally. Twenty-four of 40 responding offices (61 percent) responded that they were more likely to proceed with a civil case if the prosecution target was a corporate/business entity.

Seventy percent of 100 responding offices found that case priority was fundamentally determined by the level of harm or threat of harm involved in the respective cases. One in three indicated that the high profile of the offender was a factor and 22 percent noted the type of environmental offense (i.e., hazardous waste, solid waste) was a factor. Only 22 percent of the sample reported that they had a preference for environmental cases that could be investigated and prosecuted inexpensively.

Ability and willingness to prosecute

Traditionally, effective environmental prosecution strategies and programs have been contingent on the amount of system and public support offered and the technical expertise and resources available to prosecutors.

Prosecutors pursuing environmental crime cases were asked if they received a sufficient level of support from the D.A. and staff, local government, regulatory system, local law enforcement, local judiciary, and the community. As anticipated, the greatest percentage of 99 respondents agreed that sufficient support was received from the DA's office (70 percent agreeing or strongly agreeing). Otherwise, prosecutors expressed similar levels of adequate support from local governments, regulatory agencies, and the community (61 percent, 58 percent, and 56 percent respectively). Respondents said the lowest level of support came from local law enforcement and the local judiciary (48 percent and 39 percent respectively). However, a large percentage of prosecutors had no opinion

about support from the local judiciary (35 percent) and the community (30 percent). These responses most likely reflect a lack of awareness of the level of support from these two sources.

The survey also attempted to gauge the extent of resources available to local prosecutors to carry out their duties effectively as environmental prosecutors. Many expressed a general need for additional resources to conduct their work satisfactorily. Eighty-three percent of respondents asserted that more resources are needed, 53 percent believed that internal competition for office resources adversely affects their environmental prosecution programs, and 42 percent contended that resources for the investigation and prosecution of environmental crimes in their jurisdictions were compromised by competing community economic interests. Almost all respondents (96 percent) agreed that technical assistance and training are important to the performance of environmental prosecution unit investigators.

To explore the range of alternative sources for local prosecutors to supplement environmental prosecutions, respondents were asked about the potential for retention of fines/penalties and forfeited assets. Only 33 percent of the 99 jurisdictions sampled were permitted by State law to retain all or a portion of fines and penalties generated by environmental cases. Forty-three percent, however, stated that there were alternatives available by which they could retain such fines/penalties. A majority of the sampled jurisdictions (59 percent) were found to be authorized under State law to seek asset forfeiture for environmental crimes.

Evidentiary standards and technical needs

Since the prosecution of environmental offenses on the local level often requires a high level of technical knowledge, specific survey questions concerned evidentiary standards and the use of expert witnesses.

Prosecutors were asked to assess the environmental regulations and laws in their jurisdictions that governed prosecutorial actions. While 58 percent of the 93 responding offices said that criminal statutes governing environmental offenses in their respective jurisdictions were effective, 69 percent believed that environmental laws should be consolidated into more comprehensive statutory schemes. Over one-third viewed current statutes as overly complex while another third considered them adequate in terms of complexity.

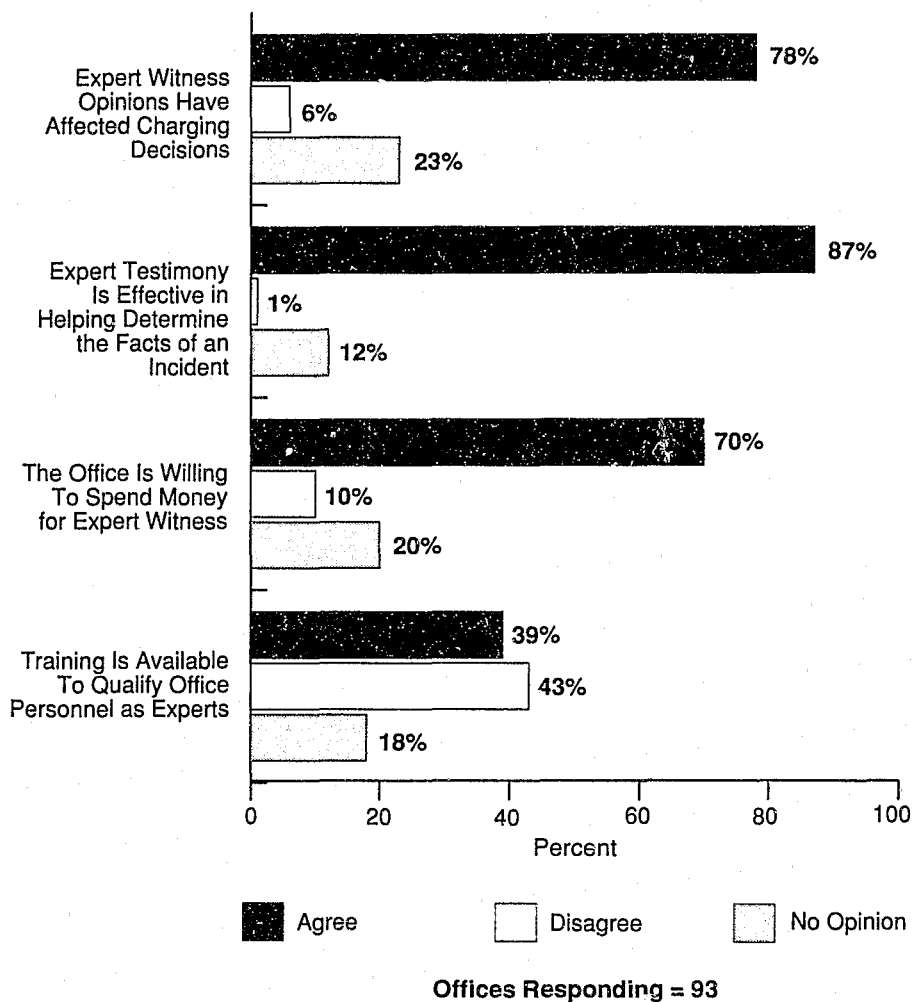
Local prosecutors generally believed that the use of expert witnesses in environmental prosecutions was quite effective, with 72 percent of 93 responding offices indicating that expert witness testimony had influenced court decisions and 87 percent reporting that expert testimony had been useful in helping to determine the facts of an incident. A large portion of the respondents (70 percent) contended that their offices were willing to spend the necessary money to hire expert witnesses but, as exhibit 3 demonstrates, only 39 percent of prosecutors reported that training and education was available to investigators, detectives, and other law enforcement personnel to transform them into special-area "experts."

Ninety-three respondents expressed a critical need for the development of a centralized source for available expert witnesses. Only 12 respondents (13 percent) revealed that their offices had created pools of environmental crime experts. Furthermore, 91 percent of the total sample expressed a need for national and regional lists of experts in a multitude of environmental crime areas.

Plea and trial issues

The final section of the survey questionnaire explored plea and trial issues. Only 28 percent of 69 respondents believed that the courts were willing to impose terms of incarceration in these cases. Sixty percent of 69 respondents claimed that outside pressures to prosecute environmental offenses (i.e., pressures by

Exhibit 3. Expert Witness/Testimony Utility in the Local Prosecution of Environmental Offenses



Policy and decision to prosecute

Through traditional prosecutorial discretion, the local prosecutor can decide which cases will be prosecuted and which types of charge will be made. This discretion gives the prosecutor the power and responsibility for making public policy decisions that reflect certain priorities, such as public health and safety. Their decisions influence the way laws are enforced and, in turn, shape the behavior of individual citizens. In deciding whether to prosecute environmental offenses, local prosecutors must not only be alert to factors common in conventional cases (e.g., criminal intent, reliability of evidence) but also factors that are important in newly emerging offense areas (e.g., potential public reaction, allocation of resources sufficient to prosecute cases effectively).

Environmental prosecutors must be technically skilled enough to accurately determine criminal intent associated with activities such as the improper disposal and treatment of hazardous wastes. In this they rely on the abilities of criminal and regulatory investigators, with whom they have close interaction. As both the community's attorney against crime and a protector of public welfare, the environmental prosecutor will inevitably consider the degree of harm or threat of harm posed by the offense as a significant factor in the decision to prosecute as was born out in this survey.

By and large, local prosecutors said they believed they had community support for their prosecutions because the public has become more aware of the effects of environmental crime and the accomplishments of local environmental prosecutors. But with this support comes a certain loss of discretion: the extent of harm created by the offense, the pressure of publicity, and the influence of complaining victims can all limit the prosecutor's discretion in potentially volatile cases. As the survey results of

environmental interest groups, community groups, media) can result in the filing of environmental cases. One in four believed that there is significant pressure by business/labor groups to downgrade criminal charges in these cases. Most of the 69 respondents (85 percent) believed that the environmental offender's offer to remediate or make restitution had an impact on case disposition. Sixty-eight percent had no opinion on whether EPA/State debarment policies had an effect on obtaining environmental pleas.

Discussion of results

There is no doubt that environmental crime can affect all types of jurisdictions, regardless of geographic size or population density. Prosecutors in this field find they must nurture relationships with the broad range of government agencies necessary for prosecutorial success. And they are required to muster support from a criminal justice system and a public that can be, at times, ambivalent about the environmental protection cause.

Local prosecutors showed, the cumulative effect of these elements to prosecute generally neutralizes any pressures that arise from business/labor groups to withhold prosecution.

Prosecutors seemed to be less optimistic about the level of support received from local police and the judiciary. Neither professional group was perceived by respondents as possessing the necessary sensitivity to the consequences of environmental violations. Respondents characterized local police as an important source of original reports but a source whose potential has not been completely realized.

Resources—or more precisely, the lack of resources—was cited as a factor in the decision of whether to charge in less serious cases. Local environmental prosecutors pointed out that they often must compete with other specialized units for limited funds, and they are often blocked by State law from retaining fines generated by environmental cases. Nonetheless, it appears that rejecting prosecution primarily for these reasons was rare. There was a common fear, however, that without requisite resources to execute their dual public health and law enforcement mandates, local prosecutors would make balancing public harm versus prosecution costs a routine part of the decisionmaking processes.

Plea bargaining and trial issues

The local environmental prosecutor is obligated to prepare each case as if trial were inevitable. This is necessary to offset the plea negotiating strengths of the defense attorney and to ensure technical effectiveness in the courtroom if the case does come to trial. Some of those surveyed stated that environmental prosecutors have a moral responsibility to discount plea bargaining efforts and see that the public receives its money's worth. Rejecting plea agreements is viewed, intuitively, as strengthening the environmental prosecutions by transmitting the unqualified message that local

environmental crime is intolerable. If a plea agreement is anticipated, however, a tightly prepared environmental case may attempt to convince the defendant that remediation is the most financially desirable alternative.

Upon coming to trial, the environmental crime case can seriously test the communicative skills of the average prosecutor. Environmental prosecutors at the local level find themselves responsible for understanding complicated technical aspects of risk assessment, chemical properties, and sampling analysis and demystifying all of this to the satisfaction of judge and jurors alike.

Compounding the difficulties are the handicaps the average environmental prosecutor encounters: inadequate funds for laboratory analysis, insufficient training in trial techniques, and deficiencies in effectively identifying expert witnesses. Prosecutors surveyed, though, have not succumbed to these setbacks. They have instead moved to even the odds by: (1) mastering the use of visual aids to simplify lengthy, esoteric descriptions of chemical properties and processes, (2) working with expert witnesses and regulators to mesh their testimony with the capabilities of juries to comprehend, and (3) supplying judges with juror instructions tailored specifically to environmental offenses.

Limitations of the prosecutors' offices

Prosecutors noted several limitations that significantly impede effective case management in the environmental prosecution field. These limitations affect case outcome, prosecutor workload, and success of enforcement.

Prosecutors stressed the need for a network of experts to support the investigative requirements of an environmental crime case. Many jurisdictions referred to these networks as task forces, traditionally composed of law enforcement and regulatory personnel. Within the

environmental prosecution field, however, such task forces must include experts from other fields in order to present witness testimony on scientific or environmental matters. Problems that may arise within these task forces (communications among members, obtaining and preserving evidence, confidentiality, and anticipating the needs of the prosecution) are easily overcome through training.

Many environmental crime prosecutors articulated the need for better environmental crime statutes. They particularly stressed the need for stronger laws and laws that are consolidated in a more coherent statutory scheme. Many also mentioned the lack of model environmental crime legislation, which limits uniform and comprehensive enforcement.

Future offense patterns and local prosecutor response

Environmental crime prosecution at the local level is currently at a crossroads. Having progressed in urban areas from the embryonic years where skills were largely self-taught and offenders were relatively unsophisticated, local prosecutors must now face evolving criminal behavior that—unless sufficient training and technical support services are available—could rapidly out-pace prosecutor capabilities. Evidence from this study indicates that local prosecutors will face more environmental offenders considering the growth in numbers of prosecutions over the 2 1/2-year survey period and in numbers of attorneys proficient in potent defense strategies.

If past prosecutorial patterns hold true, local environmental prosecutors will be called upon primarily to prosecute incidents of illegal disposal of hazardous wastes. Research tells us that the countless small quantity waste generators (SQG's) located throughout urban America are, for a number of reasons, more likely to dispose of their wastes criminally than are the large quantity waste generators. Recently implemented

amendments to the Resource Conservation and Recovery Act place more restrictive standards on SQG's than any they have experienced before, making it extremely expensive for many to comply with the law. Since environmental crimes are in essence crimes of "opportunity"—crimes in which offenders actively search out and capitalize on conditions conducive to successful crime commission—it is anticipated that a greater number of experienced opportunists will hatch inventive methods to dispose, transport, store, or treat hazardous materials illegally and evade detection.

According to responses, there is good

reason to be alert to those entrepreneurs who would exploit the plight of SQG's, and sometimes the plight of the average citizen clearing yard debris, in a stagnant economy. These fairly mundane "bread and butter cases" as one respondent put it, can be deceiving because seasoned offenders tend to assess shrewdly the possible harm criminal laws can pose to them. Offenders are likely to avoid jurisdictions where enforcement is strong and prosecution effective; thus displacement of these offenses from urban areas where enforcement may be tight into other less populated settings is likely. While survey results from local prosecutors' offices under 250,000 were inconclusive, they

did offer some insight into what may be a pattern of a rising number of environmental crime prosecutions in rural and suburban America.

Need for technical training

It is incumbent upon local environmental prosecutors to enhance their competitive technologies to keep pace and surpass those of tomorrow's environmental criminals. Two major findings culled from this study indicate the urgent need for improved technical abilities:

- Practically all those surveyed expressed a need for increased technical assistance and training to upgrade the

Task Force Concept: Integral to Environmental Crime Specialization

Over half of the large jurisdictions surveyed reported that they operate special units dedicated to environmental crime. Their past experiences spotlight some pitfalls and serve as a roadmap to managers of fledgling units or those aspiring to such a role. The formative years of these units paint a sobering picture of hurdles that environmental prosecutors were compelled to overcome on their way to establishing themselves as experts. Relying primarily on self-education, these prosecutors have looked at ways to convince the public and the criminal justice system of the equation between environmental violations and criminal behavior.

Obtaining a respected identity within the criminal justice system was another task. Environmental prosecuting units had to distinguish themselves from the larger units and establish a separate presence. This led to the adoption of an organizational concept that now stands as the heart of many environmental crime

investigations and prosecutions: the local environmental crime task force. About half of those surveyed were found to be part of these nontraditional arrangements wherein personnel from both law enforcement and regulatory agencies are assembled to capitalize on unique skills and decrease enforcement duplication. While past research has revealed that such operations can be pivotal in the success of environmental crime prosecutions, the present study probed to uncover those elements most important to such success.

Interviewees stressed the significance of an "open system" approach within the task force that in some ways modified traditional role definitions of investigator and prosecutor. In order to ensure a high level of case quality, interdependence and rapport building among criminal investigators, environmental regulators, and prosecutors are necessary. Since environmental task forces can be composed of individuals representing disparate enforcement philosophies emanating from distinct governmental levels (local

governments, State, and Federal) as well as from distinct enforcement disciplines (criminal and regulatory), it is essential that task force leaders cultivate a climate for professional collaboration. Since the most typical environmental task force cases demand protracted investigations, personnel selection methods that accurately identify the characteristics of candidates compatible with this type of work are necessary.

Practical training programs on the stages of environmental task force development, thoughtful personnel selection practices, and trust-building policies can help overcome these problems and transform proponents of regulatory/law enforcement ideologies into members of a cohesive team. Experienced task force managers from urban DA's offices could act as facilitators of these programs and provide much needed illumination to what promises to be a new wave of aspiring task force leaders.

performance of environmental prosecution unit personnel.

- Less than half believed they can enroll in training to qualify as experts in environmental investigation and prosecution.

These opinions were expressed by urban prosecutors, many of whom are in the forefront of environmental crime prosecution. Similar needs are likely in suburban and rural jurisdictions. Some of the most important topics that demand training and technical assistance on the local level include the following:

- **Trial skills that incorporate the use of demonstrative evidence to simplify what can be complex technical concepts and to dramatize the seriousness of the offenses committed.** For example, instruction is needed on the utilization of three-dimensional computer animation to reenact disposal crime scenes, criminal acts, and the flow of disposed wastes.

- **The effective use of expert witnesses in the courtroom and the admissibility of scientific evidence at trial.** Substantiating the level of public harm posed by illegally disposed wastes may be a key factor in the decision to charge and in the severity of penalties imposed.

- **The efficacy of the full scope of sentencing options—options that offer differential treatment to situational offenders and career offenders.** Training conducted by experienced local prosecutors can acquaint environmental prosecutor novices with the building of professional relationships that facilitate sensible sanctioning (i.e., local judge-prosecutor-probation officer exchanges that recommend reasonable penalties related to case circumstances). Education on the use of sanctions, such as the public acknowledgment of wrong-doing in the local media and employment termination of offending corporate executives, can help steer less experienced prosecu-

tors in these directions when more punitive actions are either inappropriate or unlikely to be imposed.

- **The constructive use of task force models to advance the mission of environmental prosecutions.** Especially in metropolitan areas, efforts have been made to form prosecutor-led environmental task forces. These efforts are at a stage of development comparable to where prosecutor-led narcotics task forces were approximately a decade ago. As the pace of environmental crime quickens in urban areas and spreads to suburban/rural regions, the call for effective crime control will intensify. Based upon the best information to date, environmental task forces at the local level may be the most logical method for addressing these concerns and it is reasonable to expect a growing desire to form more of these task forces in the near future.

To make sure existing task forces reach their full potential, today's environmental task force leaders must develop public awareness programs. As the national survey has shown, only a minority of present task forces have public awareness and education programs, yet other results in the study have stressed the integral part community support plays in the success of local environmental task force programs. Those offices that lag in this area will need to develop wider influence through community interaction programs that teach how to identify and report environmental crimes and promote awareness of task force accomplishments. Environmental prosecutors who have established such community-oriented environmental crime task forces can help task force leaders of tomorrow reassess the traditional boundaries of the environmental prosecutor's role and, in doing so, help reinforce constructive collaboration with the public.

Cooperation is essential. Without communication, consideration, and cross-

training, environmental crime investigations may commence but rarely lead to successful prosecution. Therefore, cooperation among local task force members, as well as a greater partnership between local, State, and Federal environmental crime prosecutors, would result in expanded and more effective environmental crime enforcement.

This Research in Brief is based on the full report, "Environmental Crime Prosecution: A Comprehensive Analysis of District Attorneys' Efforts in This Emerging Area of Criminal Enforcement," prepared by The American Prosecutors Research Institute (APRI), an affiliate of the National District Attorneys Association (NDAA) under grant 91-IJ-CX-0024 by the National Institute of Justice. The primary researchers and authors were Donald Rebovich, Research Director, APRI, and Richard T. Nixon, then-director, National Environmental Crime Prosecution Center. The complete report can be obtained from the National Criminal Justice Reference Service by calling 800-851-3420; ask for NCJ 150043.

Findings and conclusions of the research reported here are those of the researchers and do not necessarily reflect the official position or policies of the U.S. Department of Justice.

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