

**Independent Judiciary and Public Corruption
Law Enforcement in the United States**

By

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I would first like to thank the Thailand Development Research Institute Foundation for inviting me to participate in the Seminar on International Experiences on Good Governance and Fighting Corruption. Seminars such as these serve an important function in development and maintenance of public institutions which have the respect and confidence of citizens in a free society.

Today I would like to discuss the importance of an independent judiciary in a free society, public corruption issues faced by law enforcement in the United States and their relevance to other countries. During the course of my twenty-year career as a Special Agent of the FBI, a significant portion of which has been spent investigating public corruption, it has been observation that the root of many types of crime problems, such as white collar crime and illegal drugs, can be traced in some measure to corruption of public officials.

In a democracy, elected officials are placed in charge of government ministries which are managed by civil servants and career government employees. These officials, both elected and non-elected, have a fiduciary responsibility to the citizens. They are responsible for managing the tax dollars of the country and enforcing the laws in a manner which best serves the public and protects the rights of an individual. What happens when government officials do not act responsibly and ignore the constitution of the country or enforce the laws in a manner which does not protect the rights of the individual? The founding fathers of the United States foresaw this problem when writing the constitution. They realized that government requires a system of checks and balances to prevent one branch of government from abusing its authority and taking away rights provided by the constitution.

Therefore we have a President who is elected in national election every four years, and who runs the “executive branch” of government. This consists of departments or agencies such as the military, of which the President is Commander-in-Chief; the Departments of State, Justice, Interior and so forth. The Justice Department, of which the FBI is a part, and which is charged with enforcement of the law, should not be confused with the “judicial branch” of government, which is separate from the “executive branch.”

The “legislative branch”, or Congress, consists of the Senate and the House of Representatives. Each state elects two Senators to serve six-year terms in the Senate and each congressional district, based on population, elects a congressman to serve two-year terms in the House of Representatives. The “legislative branch” makes the laws in accordance with the constitution.

The “judicial branch” consists of the courts, which in the federal system includes the district courts, the court of appeals and the supreme court. The judicial branch generally interprets the law and constitution and are the finders of fact in adversarial actions.

So we have the “executive branch” which enforces the law; the “legislative branch” which makes the law and the “judicial branch” which interprets the law.

In the U.S. Government as well as many other governments, there is an important distinction between members of the executive and legislative branch of government and the judicial branch. That is that the executive and legislative branch are run by elected politicians. Their actions are often influenced by political considerations. Federal Judges on the other hand, are appointed by the President to a life term. Before taking office they undergo a rigorous background investigation by the FBI and confirmation by the Senate. This helps ensure that only those with the highest standard of personal integrity are chosen. After they are chosen, they cannot be removed from office unless impeached, which is a lengthy process. Judges are also not immune from prosecution and can be convicted and imprisoned. However, their lifetime appointment which can only be affected by conviction or impeachment, solidifies their independence from the executive and legislative branches. This independence allows them to interpret the constitution and the laws without political interference.

An independent judiciary is essential in a democracy, but there are other essential elements. Other such elements include a free press and law enforcement agencies with sufficient independence from the political process that allows the agencies to aggressively enforce laws prohibiting public corruption.

This brings us the next area of discussion, public corruption law enforcement in the United States.

OVERVIEW OF THE FBI'S PUBLIC CORRUPTION PROGRAM

Global concerns about corruption have intensified in recent years. Corruption by those officials entrusted by the public to lead and govern destroys the fabric of democracy.

There is also increasing evidence that corruption impedes progress, and hampers the effectiveness in which domestic savings and external financial aid are used in many developing countries. Corruption cripples development by undermining the rule of law, and weakening the foundation on which economic growth depends.

There are two general areas of governing which can attack corruption at its source. The first area, which we will not address here, is economic policy reform. The second area, which is relevant to our discussion today, is the strength of government institutions. This includes effective public management systems, accountable organizations, a professional civil service, and a healthy legal framework and independent judiciary. An effective investigative agency can help to strengthen these government institutions by identifying weaknesses in internal controls, and eliminating those corrupt officials who exploit the system.

When bribes are large, the chances of being caught small, and the penalties if caught minimal, many officials will succumb to temptation. An aggressive investigative strategy will create an environment to dissuade future corruption through highly publicized investigations and prosecutions, coupled with sentences that are swift, certain, and severe.

I. PCU RESPONSIBILITY

- A. The PCU is responsible for supervision and oversight of corruption investigations at all levels of government.
 - 1. Federal
 - 2. State
 - 3. Local
- B. Investigation usually includes 5 basic areas of government:
 - 1. Judicial
 - 2. Legislative
 - a) city councils
 - b) state representatives
 - c) U.S. Congress
 - 3. Contract
 - a) procurement agents
 - 4. Regulatory
 - a) licensing
 - b) property zoning
 - c) inspectors (building, health, fire marshals, etc.)
 - 5. Law Enforcement
- C. Other matters handled include the Foreign Corrupt Practices Act (FCPA), Obstruction of Justice, and Election Law violations.

II. OBJECTIVES OF THE FBI'S CORRUPTION PROGRAM

- A. Identify breaches of trust and abuse of office by elected and appointed government officials.
 - 1. breaches usually relate to an official seeking, accepting, or demanding something of value in exchange for an official act.
- B. Collect evidence of the corrupt activity, for presentation to a jury during a criminal trial.

- C. Create a positive impact on the community by:
 - 1. Deterring future corruption through this aggressive investigation and prosecution.
 - 2. Restoring confidence in the governmental system to the citizens.
- D. Stir the public's interest, educate them about the dangers of corruption, and encourage their active participation (by way of reporting and/or cooperating), as a means of prevention.

III. IDENTIFYING THE CRIME PROBLEM VIA DEVELOPMENT OF AN INTELLIGENCE BASE

- A. Every effective corruption program has a strong intelligence base as its foundation.
 - 1. Successful campaigns involve the public, because they often have specific information regarding corruption.
- B. Various ways to develop
 - 1. Liaison with other government agencies, especially prosecutor's office.
 - 2. Task forces with other law enforcement agencies
 - 3. "Crime Survey"
 - a) meeting with businesses to determine their perception of the corruption problem.
 - 4. General "town hall" meetings with members of the public, to let them know we're out there, and to give them an opportunity to provide information

IV. THE DECISION TO INITIATE AN INVESTIGATION UPON RECEIPT OF AN ALLEGATION

- A. Public Corruption investigations are viewed as among the most sensitive investigative matters the FBI handles.

- B. Rumor and innuendo are NEVER enough to initiate an investigation
 - 1. As investigators, we must carefully review allegations of corruption by officials PRIOR to initiating an investigation.
 - a) PREDICATION - *the verification of an allegation through reliable sources of information* (human, document, etc.)
 - 2. Allegations must be corroborated, to ensure there is a reason to believe that a violation has been committed, and that there is merit to prosecution.
 - 3. A politician's career can be irreversibly damaged if it becomes known that the FBI is "investigating" them.
 - 4. The public will ASSUME the politician is "corrupt", based solely on the "investigation".
- C. We will ALWAYS remain impartial and objective
 - 1. Our standards for investigation and prosecution must be consistent. Our decision to investigate is based solely on the facts of the matter, and never by the subject's race, religion, or political affiliation.
 - 2. The FBI will never allow itself to be used as a political tool, by one party against another.
 - 3. Our credibility with the public is one of our biggest assets, and nothing will destroy that credibility faster than the perception that an investigation is politically motivated.

V. SUCCESSFUL TECHNIQUES MOST OFTEN USED IN CORRUPTION INVESTIGATIONS

- A. Two types of investigations
 - 1. Historical
 - 2. Covert
- B. Historical investigations often are document intensive, and rely heavily on testimony of witnesses.

- C. Covert “undercover” investigations provide an opportunity to “capture” the crime as it occurs, via audio and/or video tape.
 - 1. These are most effective in corruption matters because of the complexity of these crimes, and the stature of the public official.
- D. Court authorized “wire taps” allow for the interception of the unguarded conversations of co-conspirators. They are extremely effective in corruption investigations.

VI. RESPONSIBILITY OF FBIHQ, PCU

- A. Ensure predication is consistently applied.
- B. Review the sensitive investigative techniques, especially for issues like liability, intrusion, or safety of undercover agents.
 - 1. CUORC process - the review of sensitive undercover investigations by an objective board comprised of senior-level executives from the DOJ and FBI, that reviews issues like liability, safety of UCAs, etc.
 - 2. How we address sensitive issues, via stipulations, (notification, etc) in the course of developing a Group I UCO.
- C. Description of T-III review process and its effectiveness.

VII. SOME ITEMS OF PARTICULAR INTEREST

- A. Law Enforcement Corruption
 - 1. Significant increase in US in past 5 years.
 - 2. Corruption in this segment of government has a particular detrimental effect on the public, when those who are charged with enforcing the law break it.
 - 3. Can be largely avoided through successful recruitment and training of suitable candidates, and active management and leadership by executives.
- B. Foreign Corrupt Practices Act (FCPA)
 - 1. U.S. has made a determined effort to curb international bribery.
 - 2. Bribery of foreign officials is contrary to fair competition and economic development. It is a crime for any U.S. businessman to pay a bribe to any

official of a foreign government to secure a license, contract, or any type of business.

3. As a deterrence, U.S. companies and their employees face severe penalties for bribery of foreign officials, including up to a \$2 million fine for a corporation convicted under this statute, and a 5 year prison sentence for individuals convicted.

Corruption affects everyone: the young, the old, rich, and poor. It is our obligation to stand together, united in common cause, to hold the line against the turmoil and inequity caused by this dishonesty. Effective investigation, aggressive prosecution, and substantial penalties, will assist in the development and maintenance of strong governmental agencies, and create the appropriate environment for continued economic development.

CREATING AN ETHICAL POLICE FORCE

I would also like to devote some part of my presentation to discuss FBI investigative casework when problems with integrity have arisen in American police agencies. I will present two case studies of major corruption scandals emanating out of failed personnel practices at two major American police agencies.

My remarks will fall within two broad categories;

1. Formation of Police Forces --- Personnel Aspects
2. What Happens when things go Wrong --- Corruption Investigations Case Studies---Washington D. C. *"Broken Faith"* New Orleans *"Shattered Shield"*

Additionally, I want to briefly discuss a very topical issue in American law enforcement today, that of "determining any pre-disposition to corruption" on the part of officers. Many agencies, including the FBI, are devoting time and resources to determine if any predictive model can be established.

PART 1

FORMATION:

Let me start with the positive. Throughout American law enforcement circles today there is a widespread movement to set forth the agenda of honest and ethical police service right from the beginning. The MISSION STATEMENT of an organization, or in the case of the FBI, a statement of the CORE VALUES, is an up-front, clear, un-mistakable announcement that must be made to alert candidates interested in a police career that only the honest need apply. In essence, there is a realization that the individual to be recruited must be made aware that corruption will not be tolerated. Actually, a career in law enforcement is a very much sought after goal throughout America today. Specifically, as it relates to the FBI, we have many times the applicants as there are openings. I should note that this is partly because of the relatively high compensation and status of federal law enforcement in America. Regardless of this, law enforcement is regarded by the majority as a desirable career choice, and in part aids the fight to insure people of integrity seek out the job of police officer. What, then is the first component of the creation of an ethical police force.

RECRUITMENT:

Aggressive recruitment is the key to the successful staffing of a police agency. Rather than having to choose unacceptable candidates because of a lack of applicants, the ability to discard "questionable" applicants is the key to avoiding later corruption problems. Recently an American law enforcement agency turned down an applicant who scored too well on an entrance examination because of a concern that the candidate would become bored with the job. This aberration on the part of the agency reverberated nationwide, and subjected that agency, and its' officers to a great deal of ridicule. An agency cannot commit itself to finding the best and brightest when at the same time it rejects people on the basis of "excess intelligence".

Who does the recruitment is an important starting point. The single most important quality that can be possessed by those recruiting for law enforcement is genuine, old fashioned HONESTY. Applicants can sense this quality, and conversely, the absence of it. Do not be

overly concerned with the notion, or assertion that only those who mirror the targeted recruiting audience can be successful. The recruiter needs to be a person who can project in a sincere and direct fashion a care and concern, and honest answer to very personal questions from applicants.

Recruitment efforts should be broad and inclusive and should be continuous. This is not an activity that can be turned on and off. The important issue here is that recruiting relationships should be ongoing, even during periods when few jobs are actually available. The concept of law enforcement as a career must always be held out as something to be considered by your target audience. The true number and scope of openings should always be honestly and openly represented, again concentrating on the honest and open approach to recruiting.

Consideration should be given to bringing into outside consultants to assist in designing new recruiting strategies. In the late-1980's, as the FBI set out to reinvigorate our recruitment approach, one of the first strategies we employed was the hiring of an outside advertising agency that specialized in developing recruiting materials and strategies. This was the first such utilization of an advertising agency by the FBI. It proved to be a solid success!

HIRING:

A key principle today throughout American law enforcement is "don't hire your problems". An ethical police department is created through the setting of the highest manageable standards being created for employees. When applicants are plentiful why would any agency seek to hire any individual applicant with even a shred of controversy, or problematic area in their background. A more important point is that even when applicants are not plentiful, problematic people should be avoided. Now this may seem unduly harsh, but, anti-corruption efforts ought to begin with problem avoidance. Now, I should also point out that the FBI employs a hiring philosophy that we refer to as the "whole life approach". By this I mean that despite what sounds like we drop applicants at the first whiff of a problem, we actually take a broad look at an individual. Essentially, we try to distinguish between a "youthful indiscretion" and "minor misbehavior", and that which is an indication of an obvious failure of judgement as an adult. An individual who has moved beyond that foolish youthful mistake

into a productive and accomplished adult stage will be considered. By the way the average age of hire for FBI Special Agents is nearly 28 years of age, so we are hiring individuals who have established ethical standards indicative of who they are. We are able to get a very clear life picture of the individual. The success of our hiring program speaks for consideration to be given to bumping up the age of hire under the very same philosophy that a better picture of the ethical lapses, or mature decision making process begins to emerge with age. Our minimum age of hire as a Special Agent is 23 years, although we hire very few such individuals each year. I believe there is an advantage to an increased hiring age in the sense that if you are committed to a thorough and extensive background investigation, you simply have more data to go on.

BACKGROUND INVESTIGATION:

One of the classic mistakes made by law enforcement agencies is the overuse of the provisional appointment. As I will point out in one of the later case studies of actual FBI police corruption investigations that we will be discussing, hiring people who have not been fully vetted is an invitation to disaster. In many circumstances the existence of arbitrary hiring deadlines, based on budget considerations, or court ordered hiring schemes has caused damage to the ethical framework of departments. Hiring decisions cannot be rushed without great risk to the agency. I would invite those of you who care to inquire of me for a copy of the FBI employment application, at least the long form one on which we base our pre-employment background investigation. Many an applicant, not yet convinced of the length to which we will go to verify integrity, fails to complete this process upon seeing how far we do inquire. Now I should also point out that we have a *Preliminary Application for Employment* that is designed to make it easy for people to take our various qualifying examinations. At an initial stage where an agency is trying to determine basic intelligence, a lengthy, all inclusive application need not be afforded everyone. However, when it moves on to a stage of the process to actually assess the individual passing your entrance test for a career, then the scope and extent of the application needs to be expanded, and I contend applicants should be made very much aware of just how deeply law enforcement is going to look at their background.

What then are some of the principal components of a thorough background:

1. Detailed Application - Send the message to the applicant that the department is serious about determining integrity. We will look everywhere should be the message. Then, of course, the agency must follow through.
2. Clear Statement of Disqualifiers - in particular this relates to drug usage, bankruptcy, arrests, or other clearly problematic areas. If your agency has express disqualifiers, these ought to be readily described on the face of the application so as to discourage those at variance with these policies.
3. Use of Polygraph - If your agency has a policy of subjecting applicants to a polygraph interview, this should be listed. Again, it discourages people who might have a problem in their background from applying.
4. Security Interview - If your agency has a need for a detailed and specific interview for security vulnerability type assessment, that should be set forth.
5. Developed Reference - Go beyond references, associates and co-workers listed by the applicant. After these are individuals that the *APPLICANT HAS GIVEN YOU!* Determine what other key people comment on concerning the applicant.

PART 2

WHAT HAPPENS WHEN THINGS GO WRONG:

I should point out to you that I think it is important and relevant to discuss case studies of investigation into police corruption undertaken by the FBI as part of focus today. The largest component of the FBI Public Corruption Investigations Program is a special emphasis on detecting and eradicating police corruption in America today.

CASE STUDY # 1

Operation "*Broken Faith*" — Washington D. C. Police Department Setting the Stage --- The Washington D. C. police department had been found to have a totally non-representative police department compared to the community it policed, and was ordered by the courts to completely revamp and revise its hiring policies. Quotas and hiring deadlines were put in

place with very rigid and short term demands that they be met. Operation "*Broken Faith*" was initiated in May 1992, after an intelligence assessment identified a significant corruption problem within the Washington, D.C. police department. A Cooperating Witness (CW) had been developed and debriefed and had provided substantial indicators that a specific Washington police officer sold drugs for him prior to becoming a police officer. The CW, who was a large scale cocaine trafficker, related that after becoming a police officer, the subject developed a reputation for shaking down drug dealers by stealing their drugs and money. The CW further stated that the subject police officer provided protection to his drug dealer friends by providing them with information concerning police surveillance activity, search warrants, "jump outs" and other upcoming police actions. He further indicated that Officer had developed a "crew" of other officers to assist him.

This CW agreed to work with the FBI and to record his conversations with the subject police officer, and at the FBI's direction he paid bribes to the officer. These bribes were for actions such as providing police computer print-outs, vehicle registration print-outs, and for a police department issued bullet proof vest. In these recorded conversations the police officer confirmed that he had other police officers working for him and that they would be willing to assist in the protection of drug shipments. The FBI undercover Agent was then successfully introduced to the subject police officer, who told the Agent that he could provide "a little army" of corrupt officers, and subsequently introduced the undercover Agent to eleven other Washington, D. C. police officers.

In the following weeks the undercover Agent met with all of these officers and made audio and video tapes of him explaining the scope of his drug operation, and obtaining their promise to participate, and thereafter their participation in his movement of the cocaine. These corrupt officers were then used over a six month period on three separate occasions to "move" 45 kilograms of cocaine. On each of these operations the police officers provided security for the drugs, sometimes while in their police uniforms. Development of evidence in this entire operation was enhanced by the fact that the subject officers were given cellular phones by the undercover Agent to make it easier for him to locate them on business.

After six months of operational activity the FBI arrested all twelve officers, along with the help of Washington, D. C. Police Internal Affairs investigators. All twelve officers had been called to a nearby Marriot hotel to prepare for a fourth shipment of cocaine and they were arrested while they prepared to provide security for the arriving cocaine. Nine officers pled guilty, and three were convicted at trial on charges ranging from bribery, extortion, conspiracy to distribute cocaine, conspiracy to distribute marijuana, and carrying a firearm during a drug trafficking offense.

LESSONS LEARNED:

1. Eleven of the convicted officers were hired in 1988-89
2. During this period WPD had hired 1000 new police officers
3. Limited background investigation done on these recruits
4. Institution of new internal investigative process
5. Institution of a comprehensive applicant background process

CASE STUDY # 2

Operation "*Shattered Shield*" --- New Orleans, Louisiana Police Department Setting the Stage — The city of New Orleans has the well deserved reputation of being one of the most open, entertaining and "vice-filled" cities in America. The un-official city motto is "Let the good times roll", and they do. The local Police Department paid exceptionally low salaries to its' officers, allowed just about unlimited "outside" employment, and had a long standing reputation for corruption. Additionally, there was a classic inability to investigate itself, and the Department had a haphazard procedure to hire new officers.

Operation "*Shattered Shield*" — New Orleans, Louisiana Police Department

This investigation began in 1993, as an undercover operation, after a cooperating witness was extorted by two uniformed officers of the New Orleans Police Department. The FBI used this cooperating witness to make several bribe payments to the officers after which an undercover FBI Agent was introduced to the operation. This undercover FBI Agent portrayed himself as

a drug dealer, and numerous officers were paid protection money for drug shipments. New Orleans also used telephone wiretaps to gather additional evidence of illegal activity regarding the officers.

New Orleans used a fixed warehouse site as the trans shipment point for the cocaine that was to be protected during this operation by the police officers. In addition, the officers provided protection to couriers when they left the warehouse, until they were beyond the city limits.

While this operation was on-going, one of the officers ordered a "HIT" of a woman who had filed a brutality report about him with the New Orleans PD. Because of the extreme violence exhibited by the officers, which included threats to kill the undercover FBI Agents acting as couriers, and also to steal the cocaine being shipped, the undercover operation was terminated. Former Officer Davis was convicted of civil rights violations, and in the first ever sentence of its kind, sentenced to death. A total of ten former police officers and one civilian employee of the New Orleans Police Department were convicted at trial or pled to guilty charges.

LESSONS LEARNED:

1. Need to reorganize and re-staff New Orleans PD Internal Affairs
2. Purchase of voice privacy equipment for NOPD Internal Affairs
3. A civilian group was created which funded studies of NOPD to include an audit of the department, and expert advise on how to improve managerial and supervisory functions
4. Moonlighting details have been dramatically curtailed
5. Officers received dramatic pay increases, of as much as 25%

PREDICTORS OF CORRUPTION:

There is a great deal of interest and focus from both the academic, and the police communities to study police corruption in America today, and determine whether there are any predictors, indicators, or signs of corruptibility of officers. The benefit, of course, would be an opportunity to avoid such hires of those with this orientation.

Now to be quite frank, most of this work is very preliminary. I say this as a bit of a disclaimer before I go into this any further. I do, however, believe it is appropriate to discuss this in the form of a broad overview.

I should also say to you that most all of this work relates to those already on the job as police officers. You may suggest this is a case of having already hired people most at risk for corrupt action, and so this backwards assessment is not terribly relevant to how to screen out the wrong applicants. Again, my purpose is not to represent this as anything other than an interesting, potentially useful, but entirely preliminary basis for looking at people.

Interestingly, as might be your experience, in America we have a great deal of mobility in police work. Individuals tend to start in one department and then move on to another. So to the extent that we're trying to assess individuals moving from one department to another, these may be helpful indicators to pick up from a personnel file, or a prior employment interview.

Some of the criteria that are being assessed for their relevance to this notion of being predictors of corruptibility are as follows:

1. External Complaints
2. Use of Force reports/Head strikes
3. Sick Time Abuse
4. High incidence of resisting arrest cases
5. Battery of a Police Officer incidents
6. Arrestee Injuries
7. Officer Involved Shootings

So the obvious question becomes - Do these factors indicate a corruption prone career for the officer? By no means should you interpret these as indicating predisposition to corrupt action. I think some of these may be directly related to your departmental employees with discipline problems. I think that these may be individuals who have other issues needing to be explored. I think if you are a police executive in the position of forming up a new

department, agency, or even unit, that these are factors that provide legitimate points of assessment for any individual that you are vetting for a position of trust and responsibility.

CONCLUSION:

I have tried, within a limited time frame, to give you some characteristics of our hiring process in the FBI, and some experiences from the American context of police corruption incidents that occur in departments that suffer massive ethical breakdowns. I will gladly expand on any of these ideas either later during questions, or outside of this seminar. Thank you for your attention.