Leveraging Resources and Relationships in Joint Corruption Investigations

The Benefits of Working Together
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Prosecutors and investigators pursuing corruption cases need all the help they can get. Detecting and proving public integrity violations can require hours of work, specialized expertise, and sometimes expensive software or surveillance equipment. Collaboration across agency lines can be a force multiplier, bringing additional resources, expertise, and legal tools. Strong partnerships can also provide critical cover in politically sensitive cases, helping investigative agencies weather the storm and diffuse political risks.

This paper is intended to provide practical insights about the benefits and nuances of inter-agency cooperation on public integrity cases, as well as anticipated challenges. The paper ends with two recent case studies of successful inter-agency partnerships in New York State: the Rockland County Public Corruption Task Force and a multi-agency collaboration to break up a conspiracy to facilitate cheating in commercial driver's license examinations in Manhattan.

The paper is based on the lessons, experiences, and concerns shared at an event that CAPI hosted at Columbia Law School on July 20, 2016, Fighting Corruption in New York State. In particular, the paper draws from a presentation by three experts: Thomas Zugibe, the District Attorney of Rockland County; Philip Foglia, Special Deputy Inspector General of the Office of the New York State Inspector General; and Nelson Sheingold, Deputy Comptroller and Counsel for Investigations of the Office of the New York State Comptroller.

The Benefits of Working Together

Federal, state, and local watchdog offices often have distinctive jurisdictions, financial resources, and statutory responsibilities, all potentially useful to a corruption investigation. Collaboration can both save time and money and facilitate knowledge-sharing, yielding better results.

Managing Complaints and Case Load

It is simply impossible for one office to investigate every complaint submitted, especially when heated election campaigns or other events trigger a deluge of allegations. For example, the New York State Inspector General's Office received around 6,000 complaints of waste, fraud, and corruption in 2015. Law enforcement agencies with limited manpower can have trouble sorting through complaints and allocating resources to explore investigative leads.

Working with partner agencies can help an office address more complaints and match each investigative lead with the personnel with the right skill set, resources, and tools available to address it. These considerations can range from a simple calculus of resource allocation (e.g. which agency has vehicles available?) to complicated legal questions (e.g. what legal rules cover witness interviews conducted by which agencies?)

Collaboration is especially important to share the burden of long investigations, which can last for several months—or even years—and drain the resources of a small office, turning into a “black hole” case. The best safeguard against such a case is to clearly prioritize and triage cases. There’s no shame in acknowledging that a
particular office doesn’t have the resources available to take a gamble on a lead that may either grow into a great case or sink into a black hole.

Even after an investigation begins, corruption cases tend to grow outwards as new connections come to light. It’s hard for investigators close to the case to know when to stop looking, cut losses, consolidate a case, and proceed towards a trial. Staff can also become emotionally invested in such investigations, and unwilling to let go of unproductive efforts. By partnering up, law enforcement agencies can provide outside perspective and accelerate casework.

Partnerships can prove especially crucial for law enforcement offices with broad mandates. For many prosecutorial offices, violent crimes and other urgent threats to public safety take priority over white-collar crime and public corruption cases with less obvious impact. Specialized offices focused on audits or reforms may provide the extra boost needed to close corruption cases.

**Sharing Resources**

Public corruption investigations often require a range of tactics—combing through financial records, undercover sting operations, or wiretaps—to prove the essential element of *quid pro quo*. Surveillance and data analysis can rapidly rack up costs, requiring expensive tools and seasoned operators. Depending on the investigation, surveillance may require constant monitoring, maintenance and troubleshooting, and sometimes translators or physical surveillance teams on the ground. The costs can overwhelm a smaller state or local agency. For example, the [U.S. Courts 2015 Report on Wiretaps](#) stated that in 2015 the average cost of a wiretap was $42,216 (for more information, see [CAPI’s online toolkit on wiretaps](#)).

In a case that may require extensive surveillance, partnering with a federal agency like the FBI can cut down costs. The FBI already has necessary equipment and expertise to perform technologically sophisticated operations. And the FBI can benefit as well from the on-the-ground intelligence and nuanced local knowledge that local law enforcement offices bring to the table. Partnering with a state tax department, comptroller’s office, or other office specialized in financial investigations can yield other critical resources such as robust auditing units, with statistical or analytic software and experts proficient in its use.

**Division of Labor**

A successful partnership will leverage each party’s strengths. The first step is to identify each partner’s specific investigative capabilities and resources, so that a complaint may be expediently and thoroughly reviewed. If the review results in an actionable case, partners must determine who will lead the prosecution.

It’s usually best to kick off a collaborative investigation with a strategy meeting to brainstorm, divide up roles and responsibilities, determine points of contact in each office, and set the tempo of future meetings. As the investigation proceeds, course corrections are inevitable, but clarity at the start puts everyone is on the same page.

**Complementary Strengths**

Each office has specific, statutory responsibilities that bring unique benefits and drawbacks. For example, due to their institutional nature and role, some offices have safeguards of independence or autonomy that insulate them from political pressures, which can be useful in a politically charged case to mitigate perceptions of politicization. Local offices may face more political risks pursuing public integrity cases against officials they have to work with, elected politicians who vote on their budget, and law enforcement offices they rely upon. In contrast, depending on the individual case, independent state or federal offices may be able to provide more political cover and dispel any
complaints of perceived lack of impartiality. By joining or taking the lead on public corruption cases, independent offices can help shield more politically vulnerable partners.

For example, the New York State Comptroller is an independently elected constitutional officer in New York State, institutionally separate and distinct from the other branches of state government. As the State's elected independent fiscal watchdog, the Comptroller's office has investigated numerous executive, legislative and judicial officers across the state partnering with federal, state and local law enforcement from all regions. Similarly, the New York State Inspector General’s Office is independent and empowered to provide evidence, resources, and investigative assistance to prosecutors. The office’s autonomy allowed it to investigate two former governors without retribution.

Different offices also have varying jurisdiction, authority and powers which can influence investigative strategy. For example, lying to a federal agent is a crime. In contrast, lying to a state officer isn’t a crime, at least in New York. Thus, federal agents may be in a stronger position to interview witnesses in certain situations.

On the other hand, some state and federal administrative agencies, such as New York’s State Comptroller and Inspector General, have the statutory authority to issue administrative subpoenas, which do not require probable cause, in furtherance of an investigation. Witnesses subject to an administrative interview do not necessarily have the right to counsel, which may be triggered in a non-administrative investigative interview. For example, the New York State Inspector General has unique statutory authority to interview any state employees. However, courts have held that administrative searches cannot be used by pretext, solely as a stalking horse for other law enforcement agencies. If that line is crossed, evidence may be thrown out in court.

Partner agencies may be able to provide expertise in examining specialized types of cases. For example, state agencies may have experience working with fraud in esoteric areas such as public pensions or public charities, which local prosecutors may not have experience with.

Furthermore, partner offices may have easier access to certain data sources. The Department of Homeland Security has access to data about immigration. State comptrollers and audit bodies often have unique access to public records and personnel proficient in public records management, who can search records quickly and thoroughly. Similarly, agency-specific auditors and inspectors general—within offices such as the Department of Motor Vehicles, the postal service, tax offices, and public benefits programs—have useful expertise, software, and access to records.

Deciding Who Prosecutes
When federal and state prosecutors team up, they can allocate prosecutions to the jurisdiction with the most appropriate laws for each case. When deciding which office will take the lead on prosecution, it is important to look at the details of the specific case and consider which jurisdiction's laws are best-suited for the offenses in question, and how quickly the case can be prosecuted.

Federal and state laws vary in their treatment of public corruption. For example, the federal bribery law (18 U.S.C. § 201) may be stronger than state bribery laws, although it only applies to federal public officials. Unlike many state bribery laws, it doesn’t require proof of an actual agreement or understanding between the two parties. “Honest services” fraud (see 18 U.S.C. § 1346, § 1341, and § 1343) is a “catch-all” federal offense often used against state and local officials. However, the Supreme Court limited the application of this offense in the 2016 McDonnell decision, which narrowed the definition of “official acts” covered under the law.
Some states may have public integrity offenses that are not federal crimes. For example, many states have broad laws covering misuse of public information; others have specific offenses on subjects like embezzlement, misuse of public property, or procurement fraud. States may have offenses covering false filings on political campaign records or misappropriation of campaign funds. Some states have unique offenses, like Wisconsin's prohibition on logrolling, the trade of favors or promises between legislators (Wis. Stat. Ann § 13.05). See CAPI’s 50-State Oversight Survey for a comprehensive overview of state laws’ treatment of corruption.

Even though federal prosecutors tend to have more powers and resources than state counterparts, local law enforcement offices bring their own advantages to the table. They may have an intelligence advantage, as they are familiar with the nuances of their jurisdiction. Court practices differ across communities, and local prosecutors may know the judges and jury pool better, and may have a better sense of how to win over the courtroom. Moreover, state criminal laws typically cover a range of offenses outside the ambit of federal jurisdiction.

Furthermore, local offices may have more autonomy and more agility. Federal prosecutors often have to relay major decisions back to headquarters in Washington, which can be a slow, bureaucratic process. Federal offices may also adhere to national guidelines and protocols that are cumbersome in a local context. For example, in some cases it may be easier for local prosecutors to rapidly secure a warrant than their federal counterparts. In general, state and local prosecutors tend to have a flatter hierarchy, and more leeway to make their own decisions or take on riskier cases.

Federal and state laws differ in the rights and protections afforded to defendants. Some states have more robust privacy rules and protections against searches than the federal government. For example, New York State has stricter rules about vehicle searches. Some states have no laws governing criminal forfeiture of public pensions for those convicted of public integrity violations. Under New York State law, the pensions of public officials and employees who joined the system before 2015 cannot be forfeited, but the Court of Appeals for the Second Circuit held in the 2016 case of United States v. Stevenson that such pensions may be subject to asset seizure in federal criminal cases. Unbound by state laws, federal prosecutors may have a freer hand to pursue violators.

Witness immunity is another point of distinction between federal and state laws of evidence. After the 1972 case of Kastigar v. United States, witnesses giving testimony to a federal grand jury no longer receive automatic transactional, or “blanket,” immunity. Rather, federal law affords “use and derivative use” immunity, which only prohibits prosecutors from using a witness’s own testimony against him or her, but does not prohibit prosecuting a witness based on other evidence. In contrast, New York State’s Criminal Procedure Law grants transactional immunity to every witness who gives evidence to a grand jury (N.Y. Crim. Proc. § 190.40), which complicates prosecution of the witness in state court.

Delimiting a Partnership
An investigative partnership typically does not require a contractual agreement. Often, collaborations grow organically from informal requests between agencies for advice or assistance. A more formal commitment can facilitate a longer-term relationship, especially one focused on a specific capability like data analytics or a subject like public corruption.

In recent years, the FBI has created anti-corruption task forces in states and communities in response to specific corruption issues. A task force is a classic example of a formal partnership. Such a partnership may include federal prosecutors, state and local prosecutors, other federal offices like the Internal Revenue Service or federal inspectors general, and relevant state and local offices. Each partner designates staff to work with the team, who meet periodically to collaborate and share knowledge. (For more information on how task forces operate, see the CAPI issue brief, “Strategies for Increasing and Improving Public Corruption Prosecutions: The Task Force Model”).
Examples of Recently Formed Task Forces

The **Detroit, MI Public Corruption Task Force** (est. 2012) includes the FBI, U.S. Attorney’s Office of Michigan, Michigan Attorney General, IRS and Environmental Protection Agency, OIGs of the Department of Housing and Urban Development (HUD) and the Department of Transportation, and the Detroit Police Department.

The **Orange County, CA Public Corruption Task Force** (est. 2013) includes the IRS, GBI, U.S. Attorney’s Office, and Orange County District Attorney’s Office.

The **Little Rock, AK Public Corruption Task Force** (est. 2013) includes the U.S. Attorney's Offices of the Eastern and Western Districts of Arkansas, the FBI, the Pulaski County sheriff’s office, state police, and Little Rock police.


The **San Francisco Public Corruption Task Force** (est. 2016) includes the San Francisco District Attorney’s Office and the FBI.

State personnel who are cross-designated to federal investigations as part of a joint task force get many benefits, apart from new experience and connections. For example, they receive the legal privileges of federal agents, making it a crime to lie to them.

Task forces can be formalized with the signing of a memorandum of understanding (MOU) spelling out the terms of the partnership such as duration, cost, and allocation of roles. For example, the MOU forming the **Miami Area Corruption Task Force** stipulates the task force is “intended to enhance the effectiveness of Federal, State and local law enforcement resources through coordinated initiatives, using the most effective investigative and prosecutions avenues to investigate, convict and incarcerate offenders.” The Miami Beach Police Department agreed to deputize one investigative personnel to join the task force, and the FBI agreed to cover costs associated with providing a federal agent.

Collaboration can also evolve more organically as agencies reach out to various partner agencies to share knowledge, equipment, expertise, or personnel. Informal collaborations demonstrate the importance of networking to create meaningful relationships and channels for informal requests. Rather than an MOU, sometimes the only record of assistance may be a brief acknowledgement naming all parties involved in a press release announcing an indictment. Nevertheless, an agency that provides help in one case may eventually find itself on the receiving end in another case, or may find that giving support in one case may lead to a break in a seemingly unrelated case.

For example, the Office of the New York State Inspector General and State Comptroller offer informal assistance to many state and federal law enforcement agencies. Sometimes the office’s staff merely answers specific requests; in other cases staff work directly with law enforcement agents. For example, the office’s investigators and auditors can sit in on a witness interview involving complicated financial records to provide expertise.
Managing Challenges

Despite its benefits, partnership is not without challenges. Partner organizations don’t always see eye to eye about priorities, tactics, or goals. Agency hierarchies and office politics can be difficult for outsiders to navigate, and delays while decisions pass down multiple chains of command can be frustrating. Clear and ongoing communication can help manage expectations and resolve logjams. Frequent periodic meetings, such as weekly roundtables, are the best way to reduce friction and keep everyone pulling in the same direction.

Operational Challenges

Differences in agency missions and priorities can challenge partnerships. Law enforcement’s top priority is to pursue criminal cases while regulatory and auditing agencies may also be focused on rooting out the causes of fraud and other systemic deficiencies. Federal agencies may be focused on inter-state issues, while state agencies may have more local concerns. Partners need to be conscious of such differences so they don’t work at cross-purposes.

In addition, partner agencies need to be careful to respect each other’s working culture, processes, and hierarchies. When collaborators are unfamiliar with one another’s chain of command or operational procedures, they risk accidentally going over someone’s head or reporting information to the wrong person.

Ultimately, each partner needs to feel like they have a role to play in the investigation. Giving each partner a stake in the outcome helps build relationships of trust that can help down the road.

Legal Challenges

Evidence presented to a federal grand jury is confidential under federal law. In order for non-federal partners to view or use those materials, to assist in an investigation, federal authorities must issue an order under rule 6(e) of the Federal Rules of Civil Procedure. Under 6(e)(3)(ii), disclosure can be made to “any government personnel—including those of a state, state subdivision, Indian tribe, or foreign government—that an attorney for the government considers necessary to assist in performing that attorney's duty to enforce federal criminal law.” State or local partners that receive such materials must put safeguards in place to ensure that such the materials are kept confidential and not exposed to personnel not covered by the 6(e) order.

Garrity rights pose another complication for inter-agency collaboration. The Supreme Court held in the 1967 case of Garrity v. New Jersey that public officials cannot be forced to testify to their superiors under penalty of employment action, due to the Fifth Amendment protection against self-incrimination. Government investigators have to be very careful when questioning government employees to ensure that answers are given voluntarily. Investigators have to confirm that interviewees were not pressured by their superiors to testify against their will, or evidence derived from the testimony may be invalidated in court.

Investigators should be aware of Garrity rights, especially when working with partners who have less experience interviewing public employees. Some agencies have developed a written Garrity warning that interviewees are required to sign before being questioned in situations where the issue arises. Such procedures not only safeguard constitutional rights, they help reassure hesitant witnesses that they are under no legal obligation to testify.

Collaboration in Action

The benefits of inter-agency partnerships are evident in many successful real-life investigations. The two examples below from New York State—a joint investigation in Rockland County and a bust of a license fraud ring in New York City—show how agencies worked together to bring perpetrators of public corruption to justice.
Rockland County Task Force

The Rockland County public corruption task force is a partnership between the Rockland County District Attorney, the FBI, and the U.S. Attorney's Office for the Southern District of New York. This task force has successfully uncovered and prosecuted corrupt public officials in the rapidly growing suburbs northwest of New York City. The FBI provided valuable resources, including cutting-edge surveillance equipment and expertise, to make local investigations more fruitful. The partnership between the U.S. Attorney’s Office and the Rockland County District Attorney combined federal prosecutors’ experience with white-collar prosecutions with local prosecutors’ knowledge of their own communities.

The anti-corruption task force was formalized shortly after a successful collaboration in the conviction of former New York State Senator Malcolm Smith in 2015. The dramatic and far-reaching case grew out of a mortgage fraud investigation originating in Rockland County. The Rockland County District Attorney had been investigating a local man, David Neumann, for fraud involving the sale of a house Neumann had purchased from investor Moses Stern using $1.75 million in mortgage payments, that soon went into foreclosure. The District Attorney’s Office discovered that Stern had committed mortgage fraud, and used the carrot of a reduced sentence to gain his cooperation in an undercover investigation. With FBI assistance, prosecutors caught Spring Valley Mayor Noramie Jasmin and Deputy Mayor Joseph Desmaret accepting bribes to vote in favor of a land development contract. Finally a similar undercover operation caught Malcolm Smith in the act of accepting a bribe, along with several other high-ranking politicians. Ultimately, a modest investigation into a half-million dollar mortgage fraud exposed $150 million in fraud and corruption.

After the investigation, the District Attorney signed a formal MOU with the FBI. Two investigators in the District Attorney's Office were cross-designated as federal agents and assigned to the FBI with all of the attendant benefits (for example, it became a crime to lie to them). The District Attorney brought in forensic auditors and a financial analyst, with help from the Office of the State Comptroller. State tax authorities also provided crucial support.

Further investigations have led to several cases, including federal charges against a town supervisor, in the first securities fraud case against public officials related to misrepresentations in the sale of municipal bonds, as well as state cases against a council member and local building inspectors. The Division of Building Standards and Codes of New York State may take over building inspections in two towns due to the networks of graft exposed.

The rash of cases in Rockland County does not mean that the county is unusually corrupt or experiencing a white-collar crime wave. Many of the schemes exposed could happen anywhere, sadly. Hopefully, the Task Force's investigations will disrupt corruption networks and lead to lasting change, allowing the growing county to meet its housing needs fairly and efficiently.

An Informal Collaboration to Catch fraud in Commercial Driver's License Examinations

The New York State Office of the Inspector General, Manhattan District Attorney, New York Department of Motor Vehicles (DMV), New York City Police Department Internal Affairs Bureau, U.S. Department of Transportation Office of the Inspector General, and the Department of Homeland Security worked together to investigate a case involving cheating on commercial driver’s license (CDL) tests, resulting in more than 40 arrests. In 2013, the Inspector General's office announced the indictment of 19 individuals, and in 2014, the Manhattan District Attorney charged 21 more people involved in the scheme.

The cheating scheme was an elaborate, orchestrated conspiracy between security guards, test takers, and facilitators. With the acquiescence of the guards, the facilitators transported blank CDL certification tests out of the DMV testing center to a person who knew the answers sitting in a nearby restaurant, then brought the completed test back to the center. CDL applicants paid up to $7,000 to participate, which went to the masterminds of the scheme,
with cuts going to other participants, like the security guards who looked the other way, or even transported the tests themselves in some cases.

The Inspector General’s office was first tipped off about payments to the organizers. The office sought help from the Department of Motor Vehicles, the federal departments of Transportation and Homeland Security and the Internal Affairs Bureau of the New York Police Department, who all brought critical resources. For example, the Department of Homeland Security, which was concerned about interstate carriers and potential terrorists gaining access to trucks carrying hazardous freight, provided access to immigration databases. The Internal Affairs Bureau provided surveillance equipment, which enabled observation posts to be established in nearby businesses with permission from local landlords.

The Inspector General’s Office, which happened to be located near the site of the scheme, coordinated the investigation, which lasted roughly six to eight months. Partner agencies divided up duties and rotated responsibility for manning the observation posts. At the height of the investigation, daily inter-agency meetings reduced friction and ensured that sufficient evidence could be collected before the conspirators suspected they were under observation. The cases were prosecuted by both the Office of the United States Attorney for the Eastern District of New York and the Manhattan District Attorney’s Office.

Ultimately, the joint investigation prevented dangerous drivers from operating heavy vehicles—sometimes loaded with dangerous cargo—which could lead to dangerous collisions or infrastructure damage. Furthermore, relationships cultivated during the case led to on-going collaboration between partner agencies. For example, the Inspector General’s Office continued to work together with the Department of Homeland Security in unrelated investigations.

**Conclusion**

As oversight watchdogs and law enforcement offices proliferate nationwide, it is important for the public integrity community to form new pathways of collaboration to avoid isolated, redundant, or counterproductive efforts. And as the perpetrators of fraud and corruption grow increasingly sophisticated in their schemes, law enforcement efforts must cross agency lines to respond effectively. Sharing resources and creating partnerships can help bring offices across the country and with different jurisdictions closer together.

Partnerships can pool resources and result in a wider range of access to equipment, information, specialized expertise, legal tools, and more intangible assets such as safeguards of independence. Such collaborations need not be formalized, but communication and periodic meetings are essential to harmonizing efforts and allowing each office to achieve its goals.

Collaboration ultimately rest on the strength of individual relationships. Through institutions like CAPI, public integrity professionals can meet one another and cultivate new ties. In an era of renewed federalism, state and local agencies have an opportunity, and a responsibility, to step up oversight efforts. No community is free of fraud and corruption, and winning the long struggle against the abuse of public trust will require watchdogs to work together in new and fruitful ways.
What is CAPI?
CAPI is a nonprofit resource center dedicated to improving the capacity of public offices, practitioners, policymakers, and engaged citizens to deter and combat corruption. Established as a partnership between the New York City Department of Investigation and Columbia Law School in 2013, CAPI is unique in its city-level focus and emphasis on practical lessons and tools.

Published: September, 2016 by the Center for the Advancement of Public Integrity at Columbia Law School. Available at www.law.columbia.edu/CAPI.