

# TRENDS IN PROSECUTION OF FEDERAL AND STATE PUBLIC CORRUPTION

David Kwok\*

Over the past thirty years, the Supreme Court has repeatedly sided with state criminal corruption defendants, suggesting concern with federal prosecutor decision-making. Analyzing aggregate national data from 1986 to 2020, this Article explores the Court’s criticism by utilizing federal corruption defendants as a reference. This Article reveals increased prosecutorial emphasis of state and local corruption defendants in comparison to federal defendants, suggesting a justification for the Court’s scrutiny of state and local defendant cases. This broader trend also encompasses significant jurisdictional variation; this Article identifies jurisdictions that are outliers in their comparative approaches. Besides implications for federal prosecutorial strategy, these distinct approaches also suggest caution for researchers relying on corruption convictions as a proxy for regional corruption writ large.

## Contents

I. Introduction .....	31
II. Corruption Background .....	34
A. The Federal Crimes of Corruption .....	35
1. Theft .....	36
2. Bribery.....	36
B. The Supreme Court decisions restraining federal prosecution of state corruption.....	37

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\*Associate Professor & George A. Butler Research Professor, University of Houston Law Center, and 2021—22 Elizabeth D. Rockwell Center for Ethics & Leadership Faculty Fellow, University of Houston Hobby School of Public Affairs. Thanks to David Engster, Miriam Baer, Ellen Podgor, Jessica Bregant, Seth Chandler, David Dow, David Fagundes, Zachary Kaufman, Jessica Roberts, and Peter Salib. Thank you to Amanda Parker for her tireless support, particularly in graphic design, and to the staff of the *Stetson Business Law Review*.

1.	Pre-McNally .....	37
2.	McNally .....	39
3.	Post-McNally: Honest Services Fraud .....	40
4.	Post-McNally: Loss of money & property rights.....	41
C.	Empirical studies of federal corruption prosecution .....	44
D.	Empirical studies measuring corruption .....	46
III.	Federal Corruption Prosecution as a Baseline .....	48
A.	Data Source .....	48
B.	Descriptive data .....	51
1.	Corruption convictions over time.....	51
2.	Convictions & Penalties .....	53
3.	Jurisdictional differences.....	57
C.	Analysis .....	65
1.	Relative importance of state & local corruption .....	65
2.	Severity of penalties .....	65
3.	Jurisdictional variation .....	66
IV.	Conclusion and Future work.....	67
V.	Appendix A.....	65

## I. INTRODUCTION

Over the past forty years, the Supreme Court has been steadily limiting the power of federal prosecutors over corrupt state officials.<sup>1</sup> Consider the recent case, *Kelly v. United States*, in which the Court overturned the federal wire fraud convictions of two New Jersey public officials.<sup>2</sup> In *Kelly*, the defendant officials created a fictitious traffic study that realigned toll lanes leading to the George Washington Bridge in an effort to punish a nearby mayor for failing to support the New Jersey governor’s election bid.<sup>3</sup> Their effort was successful in that traffic from the mayor’s town ground to a halt.<sup>4</sup> The defendants lost their jobs after their scheme was discovered, and federal prosecutors brought wire fraud

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1. See 140 S. Ct. 1565, 1574 (2020); see, e.g., *McNally v. United States*, 483 U.S. 350, 360 (1987); *Cleveland v. United States*, 531 U.S. 12, 14 (2000); *McDonnell v. United States*, 579 U.S. 550, 576 (2016). See also *Skilling v. United States*, 561 U.S. 358, 409 (2010) (rejecting undisclosed self-dealing by public officials as a basis for federal wire fraud conviction).

2. *Kelly*, 140 S. Ct. at 1568.

3. *Id.*

4. *Id.* at 1570.

charges against them.<sup>5</sup> The Court highlighted federalism as a primary motivating concern in striking down the convictions, emphasizing the need for state and local discretion in policymaking.<sup>6</sup> It noted that “federal fraud law leaves much public corruption to the States (or their electorates) to rectify,” citing the relevant New Jersey statutes that might prohibit the public officials’ fictitious traffic study.<sup>7</sup> Lacking more precise guidance from Congress, the Court gave states room to establish their distinct principles of good governance.<sup>8</sup>

As the *Kelly* decision suggests, the Supreme Court weighs federal criminal enforcement of state public corruption against alternatives such as state law enforcement and voters. Some commentators have interpreted these decisions as an embrace of agonist politics and voter primacy.<sup>9</sup> There is significant evidence suggesting limited state prosecution of public corruption.<sup>10</sup> Are federal prosecutors pursuing cases better left to state or local actors? If we read from this line of cases a normative perspective that federal criminal prosecution is disfavored by the Court, voters may be the primary check on corrupt officials in light of state prosecutorial inaction.

While the Court’s decisions restrain federal prosecutors, they also have been decided primarily on statutory interpretation grounds by arguing that Congress intended to limit federal prosecutorial power.<sup>11</sup> The Court in *McNally v. United States* expressly discussed an interest in increased Congressional specificity: the Court is uncertain as to the proper balance of federal, state, and voter power in these state corruption cases and is trying to make space for improved decision-making.<sup>12</sup> The Court is not outrightly prohibiting such federal interference under the

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5. *Id.* at 1571.

6. *Id.* at 1574.

7. *Id.* at 1571.

8. *Id.* at 1574; *see also* *McNally v. United States*, 483 U.S. 350, 360 (1987).

9. *See* Jacob Eisler, *McDonnell and Anti-Corruption’s Last Stand*, 50 U.C. DAVIS L. REV. 1619, 1652 (2017). *Cf.* Joshua S. Sellers, Contributions, Bribes, and the Convergence of Political and Criminal Corruption, 45 FLA. ST. U. L. REV. 657, 662 (2018); George D. Brown, *The Federal Anti-Corruption Enterprise After McDonnell-Lessons from the Symposium*, 121 PENN ST. L. REV. 989, 1006 (2017).

10. *See* Adriana Cordis & Jeffrey Milyo, *Measuring Public Corruption in the United States: Evidence from Administrative Records of Federal Prosecutions*, 18 PUB. INTEGRITY 127 (2016).

11. *See McNally*, 483 U.S. at 360.

12. *Id.*

Constitution, so there remains room for dialogue between the branches of government. If legislative intent is unclear, should courts be concerned when federal prosecutors take corruption cases in lieu of waiting for state prosecutors or voters?

This Article suggests viewing cases against federal defendants as a reference point: how do federal prosecutors exercise their power against state officials in comparison to federal officials? These cases can help our understanding of the Supreme Court's concerns regarding improper exercise of federal prosecutorial power.

Utilizing data from TRACFED as categorized by the Department of Justice ("DOJ"), this Article considers trends in the federal prosecution of public corruption cases from 1986 to 2020. First, prosecution of state and local corruption cases have risen disproportionately in comparison to federal corruption cases.<sup>13</sup> This lends some support to the Supreme Court's emphasis on state corruption cases. It is possible that underlying rates of state and local corruption have been on the rise and federal corruption on the decline, but the comparative shift in federal prosecutorial efforts merits attention.

Second, penalties in the state and local corruption cases appear to be more severe than in federal cases. The resulting inference is less clear without a comparison of the particular facts of each prosecuted corruption case. This might be evidence of excessive punishment in state and local cases, but it could also suggest prosecutorial selection of the most severe cases of state and local corruption.

Third, there is significant jurisdictional variation as to the relative proportions of state and local corruption cases.<sup>14</sup> Certain geographically connected jurisdictions, such as the Eastern and the Western Districts of Michigan, contrast starkly in the proportions of federal and state/local corruption cases.<sup>15</sup>

These observations suggest distinct federal prosecutorial approaches towards federal vs. state/local corruption cases. If so, the Court may improve its guidance to lower courts by pursuing cases that directly address the unique circumstances of state and

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13. *Official Corruption Prosecutions for June 2021*, TRAC REPORTS, <https://trac.syr.edu/tracreports/bulletins/corruption/monthlyjun21/fil/> (last visited Sept. 14, 2022).

14. *Id.*

15. *Id.*

local corruption, such as their approach in *Cleveland v. United States*.<sup>16</sup> For social scientists estimating the prevalence of public corruption, cases based on state and local defendants as distinct from federal defendants may be better proxies in light of observations from Pavlik's work.

## II. CORRUPTION BACKGROUND

There is debate as to the appropriateness of federal prosecution of state or local corruption.<sup>17</sup> One common starting point is evaluating federal criminal prosecution in the light of state or local prosecution. As a practical matter, federal prosecution is much more frequent than state or local prosecution.<sup>18</sup> Less clear is the normative question: is the predominance of federal prosecution over state prosecution desirable?

The Supreme Court has highlighted three related problems in its concern regarding such prosecutions.<sup>19</sup> One issue is federalism: is the federal government appropriately situated to address alleged wrongdoing within the states?<sup>20</sup> Allowing variation within each state of permissible government behavior is part of the country's Constitutional design.<sup>21</sup> Such variation may help the country better understand which government strategies perform better than others. A related argument is overbreadth. An overbreadth argument suggests that federal criminal charges are inappropriate when used against behavior that may be justified.<sup>22</sup>

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16. 531 U.S. 12, 16–17 (2000).

17. See Peter J. Henning, *Federalism and the Federal Prosecution of State and Local Corruption*, 92 KY. L.J. 81 (2003) (supporting federal prosecutions); Charles F.C. Ruff, *Federal Prosecution of Local Corruption: A Case Study in the Making of Law Enforcement Policy*, 65 GEO. L.J. 1171 (1977); Andrew T. Baxter, *Federal Discretion in the Prosecution of Local Political Corruption*, 10 PEPP. L. REV. 321 (1982); Sara Sun Beale, *Comparing the Scope of the Federal Government's Authority to Prosecute Federal Corruption and State and Local Corruption: Some Surprising Conclusions and A Proposal*, 51 HASTINGS L.J. 699, 717 (2000).

18. See Cordis & Milyo, *supra* note 10.

19. *U.S. Supreme Court Shuts the Door on Bridgegate Prosecutions*, HOLLAND AND KNIGHT, <https://www.hklaw.com/en/insights/publications/2020/05/us-supreme-court-shuts-the-door-on-bridgegate-prosecutions>. (May 21, 2020).

20. See *Kelly v. United States*, 140 S. Ct. 1565, 1574 (2020) 1574 (citing *McNally v. United States*, 483 U.S. 360 (1987)) (decrying use of federal criminal fraud statutes to set "standards of disclosure and good government for local and state officials.").

21. *Id.*

22. See *McDonnell v. United States*, 579 U.S. at 574–75 (noting that prosecutor's expansive interpretation might prevent "conscientious public officials" from meeting with constituents).

Without such experimentation by the states, society may find it difficult to determine which policies and actions are actually justified. The third argument is vagueness: the argument that federal standards are insufficiently specific to put state and local officials on notice.<sup>23</sup>

These federal corruption prosecution concerns reflect broader criticism of excessive prosecutorial power. Prosecutors may be using broad laws to expand their power, punishing behavior that is not expressly prohibited by Congress or legislatures.<sup>24</sup> Excessive prosecutorial discretion may be displacing the proper role of courts and legislatures in the criminal justice system.<sup>25</sup> For these critics, courts have some threshold role in uncovering the truth regarding criminal defendants, and excessive prosecutorial power crowds out the judicial role. Such critics often focus on the behavior of prosecutors in plea bargaining. If prosecutors can consistently induce defendants to plead guilty, courts play a minimal role in determining whether justice has been done. Similarly, excessive prosecutorial power may crowd out the legitimate role of legislatures in defining offenses and penalties.<sup>26</sup> These problems may be compounded by the lack of a generally accepted definition as to the goal of “doing justice” by prosecutors.<sup>27</sup>

All of these concerns deal with the exercise of excessive power and discretion on the part of federal prosecutors. The Supreme Court often phrases these concerns using their interpretation of legislative supremacy: it does not believe that Congress intended to punish such a broad swath of questionable state and local

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23. See *id.* at 576 (highlighting importance of “sufficient definiteness that ordinary people can understand what conduct is prohibited”); Julie Rose O’Sullivan, *The Federal Criminal “Code”: Return of Overfederalization*, 37 HARV. J.L. & PUB. POL’Y 57, 63 (2014) (describing honest services fraud as the “poster child for the problems that attend vague statutes.”); Randall D. Eliason, *Surgery with A Meat Axe: Using Honest Services Fraud to Prosecute Federal Corruption*, 99 J. CRIM. L. & CRIMINOLOGY 929 (2009). See also David Kwok, *Is Vagueness Choking the White Collar Statute?*, 53 GA. L. REV. 495, 504–05 (2019) (discussing distinction between overbreadth and vagueness concerns).

24. See Beale, *supra* note 17, at 718.

25. See Julie R. O’Sullivan, *The Federal Criminal “Code” Is A Disgrace: Obstruction Statutes as a Case Study*, 96 J. CRIM. L. & CRIMINOLOGY 643, 674 (2006) (expressing concern that prosecutors utilize plea bargaining and expansive statutes to avoid formal adjudication that would lead to just results).

26. See, e.g., *Yates v. United States*, 574 U.S. 528, 570 (2015) (labeling 18 U.S.C. §1519 as a bad law because it is “too broad and undifferentiated, with too-high maximum penalties, which give prosecutors too much leverage and sentencers too much discretion.”).

27. Jeffrey Bellin, *Theories of Prosecution*, 108 CAL. L. REV. 1203, 1204 (2020).

behavior.<sup>28</sup> We can read this as antipathy towards federal prosecution, but we might also read this as uncertainty as to the proper balance of federal and state powers.

### A. The Federal Crimes of Corruption

Judicial uncertainty seems reasonable given that philosophers recognize a broad and contentious spectrum of behavior that might be considered corrupt.<sup>29</sup> Similarly, there is a broad range of federal statutes that might address public corruption. Nonetheless, federal prosecutors emphasize a relatively small number of federal statutes in pursuing criminal corruption cases against both state and federal defendants. These statutes have significant overlap. The broadest statutes are the federal mail and wire fraud laws, which cover nearly all of the behavior addressed below. Federal prosecution of corruption generally concerns one of two major fact patterns. One is the effective theft of government property, and the other is bribery.

#### 1. *Theft*

One form of corruption is the theft or embezzlement of government property, for example, an employee transferring public funds into a private account.<sup>30</sup> 18 U.S.C. § 666 is a specific federal statute targeting state and local officials: it prohibits, among other things, embezzlement or theft in connection with a program receiving federal funds.<sup>31</sup> Such theft may also be related to extortionate behavior.<sup>32</sup>

This is not to say that other public officials can steal without repercussion. The federal mail and wire fraud statutes are considered to be some of the most expansive federal criminal tools

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28. *Democratic Shame: Supreme Court Wrong on Corruption*, BRENNAN CTR. FOR JUST., <https://www.brennancenter.org/our-work/analysis-opinion/democratic-shame-supreme-court-wrong-corruption> (Aug. 9, 2011).

29. See, e.g., Sellers, *supra* note 9, at 662; Joseph LaPalombara, *Structural and Institutional Aspects of Corruption*, 61 SOC. RSCH. 325, 331 (1994); Dennis F. Thompson, *Theories of Institutional Corruption*, 21 ANN. REV. POL. SCI. 495 (2018).

30. See, e.g., *United States v. Doran*, 854 F.3d 1312, 1314 (11th Cir. 2017) (discussing whether victimized entity received federal funds to satisfy 18 U.S.C. § 666).

31. *United States v. Powell*, 576 F.3d 482, 487 (7th Cir. 2009).

32. See 18 U.S.C. § 666(a).

available to prosecutors.<sup>33</sup> The statutes address fraud that is similar to theft: collecting money from state government without providing contracted services.<sup>34</sup> Similarly, the mail and wire fraud statutes would address individuals who take government money for personal real estate purchases.<sup>35</sup>

## 2. Bribery

Two main statutes expressly prohibit both the payment and receipt of bribes involving public officials. 18 U.S.C. § 201 prohibits bribery of public officials.<sup>36</sup> It also prohibits the acceptance and provision of illegal gratuities.<sup>37</sup> As described under 18 U.S.C. § 201(a), this generally refers to federal officials, but also includes persons “acting for or on behalf of the United States.”<sup>38</sup> The parallel statute specifically addressing state and local officials is again 18 U.S.C. § 666.

A close cousin of bribery is extortion, although the term extortion in other contexts frequently implies nonconsensual participation in a transaction. The Hobbs Act prohibits extortion under color of official right. Although extortion may seem to imply a power imbalance with a public official making demands from another party, the Supreme Court has endorsed “passive acceptance” of payment to public officials as a basis for a Hobbs Act violation.<sup>39</sup> As a result, there is little distinction between bribery, as covered under the other statutes here, and extortion under the Hobbs Act.<sup>40</sup>

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33. CONG. RSCH. SERV., R41931, MAIL AND WIRE FRAUD: AN ABBREVIATED OVERVIEW OF FEDERAL CRIMINAL LAW (2019), <https://sgp.fas.org/crs/misc/R41931.pdf>.

34. *See, e.g.*, *United States v. Turner*, 551 F.3d 657, 659 (7th Cir. 2008) (describing state janitors’ fraudulent scheme to bill the State of Illinois for hours not worked as “straightforward money or property fraud”); *United States v. Lack*, 129 F.3d 403, 406 (7th Cir. 1997); *United States v. Stephens*, 421 F.3d 503, 508 (7th Cir. 2005).

35. *Turner*, 551 F.3d at 659.

36. *See* 18 U.S.C. § 201.

37. *Id.*

38. *See* 18 U.S.C. § 201(a).

39. *See Evans v. United States*, 504 U.S. 255, 258 (1992) (“passive acceptance of a benefit by a public official is sufficient to form the basis of a Hobbs Act violation if the official knows that he is being offered the payment in exchange for a specific requested exercise of his official power. The official need not take any specific action to induce the offering of the benefit.”).

40. *See, e.g.*, *Silver v. United States*, 592 U.S. 656, 656 (2021) *cert. denied*, (Gorsuch, J., dissenting); *Evans*, 504 U.S. at 278 (Thomas, J., dissenting); *Ocasio v. United States*, 578 U.S. 282, 300–01 (2016) (Breyer, J., concurring).



The broad mail and wire fraud statutes similarly overlap and address the aforementioned behavior. The mail and wire fraud statutes cover extortion by public officials.<sup>41</sup> Under the banner of honest services fraud, the Supreme Court has affirmed that the mail and wire fraud statutes address official bribery and kickbacks.<sup>42</sup> As discussed in *McNally* below, bribery may be related to theft depending on the source of the funds and attendant losses.<sup>43</sup>

## B. The Supreme Court Decisions Restraining Federal Prosecution of State Corruption

The Supreme Court's efforts to limit federal prosecutorial power against state corruption have been most evident in the recurring context of "honest services" as a theory under the mail and wire fraud statutes.<sup>44</sup> The Supreme Court has worked to limit the scope of other statutes, such as the Hobbs Act<sup>45</sup> and the federal bribery statutes,<sup>46</sup> and at times the Court has narrowed multiple statutes simultaneously.<sup>47</sup>

### 1. *Pre-McNally*

Today there are federal statutes expressly criminalizing bribery of state public officials,<sup>48</sup> but before such statutes, federal prosecutors relied upon the mail and fraud statutes to address state corruption.<sup>49</sup> There were two distinct paths by which prosecutors could frame an accusation of bribery under the general language of the mail and wire fraud statutes. The central question was whether prosecutors had to prove that the government lost "money or property" as a result of the bribery.

The mail and wire fraud statutes contain initial textual ambiguity, as they punish people "having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or

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41. *United States v. Brown*, 540 F.2d 364 (8th Cir. 1976).

42. *Skilling v. United States*, 561 U.S. 358, 408–09 (2010).

43. *See* Part II.B.2.

44. *See, e.g.*, 18 U.S.C. § 1341.

45. *See, e.g.*, *McCormick v. United States*, 500 U.S. 257, 272–74 (1991) (limiting scope of Hobbs Act in case against state legislator).

46. *See, e.g.*, *United States v. Sun-Diamond*, 526 U.S. 398 (1999).

47. *See McDonnell v. United States*, 579 U.S. 550, 573–74 (2016).

48. *See, e.g.*, 18 U.S.C. § 666 (first passed in 1984).

49. *See, e.g.*, 18 U.S.C. § 1341.

property by means of false or fraudulent pretense.”<sup>50</sup> Courts confronted the relationship between the “scheme or artifice to defraud” clause and the “obtaining money or property by means of false or fraudulent pretenses” clause.<sup>51</sup> The scheme or artifice to defraud might be independent, thus suggesting that Congress intended to punish a wider variety of frauds via the first clause. Alternatively, the obtaining money or property clause might be a clarification of the first clause: Congress intended to punish only frauds for which the goal was obtaining money or property.

Prior to 1987, federal courts oversaw an expansion of the use of the federal mail and wire fraud statutes to address public corruption by developing a theory of deprivation of honest services under the first clause.<sup>52</sup> Citizens might be defrauded of their right to honest services, in contrast to money or property under the second clause. This right to honest services is also known as an intangible right.<sup>53</sup>

Thus, there were two ways federal prosecutors might charge a state official accepting a bribe under the mail and wire fraud statutes. One method would be to prove that the citizens suffered a concrete loss: a public official took a bribe and selected an inferior good or service. An alternative method would be under the theory of honest services: citizens have a right to honest services, and the act of accepting a bribe would deprive citizens of that right.

By the time of *McNally*, Congress had passed a variety of other federal statutes that covered corruption. 18 U.S.C. § 201 prohibited illegal bribes and gratuities for federal officials, and 18

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50. *Id.*

51. *See McNally v. United States*, 483 U.S. 350, 356–59 (1987) (discussing *Durland v. United States*, 161 U.S. 306 (1896) as the first Supreme Court case addressing these clauses).

52. *See, e.g., United States v. Mandel*, 591 F.2d 1347, 1357–58 (4th Cir. 1979) (affirming theory of honest services fraud against officials including governor of Maryland), *on reh'g*, 602 F.2d 653 (4th Cir. 1979).

53. *See McNally*, 483 U.S. at 400 (crediting *Shushan v. United States*, 117 F.2d 110 (5th Cir. 1941) as the originator of intangible rights theory). There have been other intangible rights besides the right to honest services. *See United States v. Girdner*, 754 F.2d 877, 880 (10th Cir. 1985) (affirming mail fraud conviction based on deprivation of “intangible political rights” through absentee ballot fraud scheme); *United States v. Louderman*, 576 F.2d 1383, 1387–88 (9th Cir. 1978) (affirming wire fraud conviction where scheme to defraud sought to obtain confidential telephone subscriber information, causing “a loss to the subscribers of their right to privacy”).

U.S.C. § 666 prohibited theft and bribes for state officials. Other criminal statutes prohibited federal conflicts of interest.<sup>54</sup>

## 2. *McNally*

*McNally* concerned Kentucky public officials who selected insurance for the state and personally received profits for commissions from those insurance sales.<sup>55</sup> The defendants had been convicted on a theory of deprivation of honest services: the defendants had deceived the citizens of Kentucky into thinking they had honest public officials and deprived them of their right to honest services from those officials.<sup>56</sup> The Supreme Court in *McNally* struck down the theory of honest services, noting that the statute itself did not incorporate any express language referring to intangible rights of honest services.<sup>57</sup> It recognized a potential vagueness concern, noting the “ambiguous” outer boundaries of the intangible right to honest services.<sup>58</sup> It also recognized a federalism concern, that a decision affirming the right to honest services would involve “the Federal Government in setting standards of disclosure and good government for local and state officials.”<sup>59</sup> Combining these principles together, it struck down the theory of honest services, stating that, “If Congress desires to go further [than property rights], it must speak more clearly than it has.”<sup>60</sup>

The Court in *McNally* then analyzed the facts to determine whether Kentucky had suffered deprivation of money or property rights. The Court found various deficiencies.<sup>61</sup> The Court noted that the jury had not found that “in the absence of the alleged scheme the Commonwealth would have paid a lower premium or secured better insurance.”<sup>62</sup> Additionally, the Court noted that while the officials received commissions, “those commissions were not the Commonwealth’s money.”<sup>63</sup>

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54. See, e.g., 18 U.S.C. § 203 (limiting compensation for services by members of Congress).

55. See *McNally*, 483 U.S. at 360.

56. *Id.* at 355.

57. *Id.* at 356.

58. *Id.* at 360 (citing *Fasulo v. United States*, 272 U.S. 620, 629 (1926)).

59. *Id.*

60. *Id.*

61. *Id.*

62. *Id.*

63. *Id.*

### 3. *Post-McNally: Honest Services Fraud*

The primary holding of *McNally*, the rejection of the honest services fraud, was promptly overturned by Congress via legislation.<sup>64</sup> Congress adopted 18 U.S.C. §1346, providing a statutory basis for honest services fraud as a theory of loss. Congress added little detail as to the substance of the offense, though, leaving further explanation to the judicial branch.

The Supreme Court was happy to oblige and continued its suspicion of an expansive approach towards honest services fraud. In 2010, the Supreme Court established that honest services fraud only consisted of illegal bribery and kickbacks due to a “vagueness shoal.”<sup>65</sup> In *Skilling v. United States*, the Court rejected undisclosed self-dealing as another theory of honest services fraud.<sup>66</sup> Thus, a public official’s failure to disclose that she is steering government contracts to companies in which she secretly holds an interest does not qualify for honest services fraud; prosecutors must prove actual loss.

The Court has also limited the scope of federal criminal bribery itself. In *McDonnell v. United States*, the Supreme Court limited the scope of federal criminal bribery prosecution by narrowing the definition of an “official act.”<sup>67</sup> Although Governor McDonnell received \$175,000 worth of gifts and benefits in exchange for setting up a meeting on behalf of a local businessman, the Supreme Court held that setting up a meeting alone did not constitute an “official act” for purposes of the federal statutes; McDonnell had to do more than setting up a meeting to be found guilty.<sup>68</sup> The Court rejected the government’s more expansive definition of an official act citing federalism concerns.<sup>69</sup>

### 4. *Post-McNally: Loss of Money & Property Rights*

The Supreme Court seems most comfortable when defendants obtain the state’s money or property. As discussed, concerning *McNally* above, the Court wants to see proof of loss: the state overpaid for services, the state received subpar services, or the

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64. *Skilling v. United States*, 561 U.S. 358, 402 (2010).

65. *Id.* at 368.

66. *Id.* at 409.

67. 579 U.S. 550, 573–74 (2016).

68. *Id.*

69. *Id.* at 576–77.

defendants directly took the state's money or property. After *McNally*, there were several Supreme Court cases that limited the application of the mail and wire fraud statutes to public state corruption.

The first important case concerning money or property rights was *Cleveland*. *Cleveland* did not center cleanly on public corruption. Rather, it addressed private parties who deceived the state of Louisiana.<sup>70</sup> In *Cleveland*, the Court overturned the mail fraud conviction of a defendant attorney who had obtained a Louisiana gambling license via deception.<sup>71</sup> The Court started with a combined federalism/statutory intent argument, describing Louisiana's gambling licensure regime as regulatory in nature.<sup>72</sup> Although the defendants clearly gained money as a result of improperly obtaining licenses, the Court required an analysis of whether the victim suffered a loss of money or property.<sup>73</sup> The Court held that the gaming license itself was not property in the hands of the state, even though it might be considered property once obtained by the defendants.<sup>74</sup> The Court rejected the argument that the license was government property due to the upfront processing fee paid by applicants, which they considered to be too minimal of an entitlement.<sup>75</sup> The majority of the money associated with the license came after issuance of the license.<sup>76</sup> The Court noted that the defendants paid Louisiana its proper share of revenue, and thus the state suffered no economic loss.<sup>77</sup> The Court also rejected a deprivation of Louisiana's "right to control" argument: that Louisiana lost control over the issuance, renewal, and revocation of gaming licenses, noting that such control is regulatory in nature.<sup>78</sup> The Court, while not ruling out the power of Congress to apply criminal penalties to the defendants'

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70. *Cleveland v. United States*, 531 U.S. 12, 16–17 (2000).

71. *Id.*

72. *Id.* at 20–21.

73. *Id.* at 21–22, 25.

74. *Id.*

75. *Id.* at 22. The Court focused on whether the government could treat the license as property because the state received an upfront fee associated with the license. The Court did not, however, address the question as to whether the state's processing costs associated with the license could constitute property for purposes of mail and wire fraud.

76. *Id.*

77. *Id.* at 22.

78. *Id.* at 23.

behavior, required a “clear” statement from Congress to expand federal criminal penalties to this domain of state regulation.<sup>79</sup>

Although state gaming licenses may not constitute property in the hands of the state, state fines may constitute government property rights that can be the basis for federal mail and wire fraud charges.<sup>80</sup> A variety of government taxes also constitute property rights that can satisfy the federal mail and wire fraud statutes.<sup>81</sup>

This brings us to *Kelly*, the most recent Supreme Court decision on state corruption.<sup>82</sup> In *Kelly*, the defendant officials created a fictitious traffic study to punish a nearby mayor for failing to support the New Jersey governor’s election bid.<sup>83</sup> The *Kelly* facts do not incorporate bribery or kickbacks, so any mail or wire fraud prosecution must rest on deprivation of money or property. The prosecutors in *Kelly* emphasized how the Port Authority would have paid less money in the absence of the scheme: the overpayment argument from *McNally*.<sup>84</sup> The Port Authority would not have conducted the unnecessary and unjustified traffic study had it not been for the defendants’ duplicity.

The Court overturned the defendants’ fraud convictions, noting that the defendants’ behavior is likely illegal under New Jersey law and that it is up “to the States (or their electorates) to rectify.”<sup>85</sup> The Court described the *Kelly* defendants’ behavior as regulatory in nature.<sup>86</sup>

As a doctrinal matter, however, the Court emphasized mens rea. The Court applied a challenging legal distinction: knowingly

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79. *Id.* at 25 (“Unless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance in the prosecution of crimes.”) (quoting *Jones v. United States*, 529 U.S. 848, 858 (2000)).

80. *See United States v. Hird*, 913 F.3d 332, 345 (3d Cir.), *cert. denied*, *Alfano v. United States*, 140 S. Ct. 657 (2019) (mem).

81. *See Pasquantino v. United States*, 544 U.S. 349, 355 (2005); *United States v. Hoffman*, 901 F.3d 523, 537 (5th Cir. 2018); *Fountain v. United States*, 357 F.3d 250, 260 (2d Cir. 2004) (deeming taxes owed to states and the federal government property within the meaning of the mail and wire fraud statutes); *see also United States v. Louper-Morris*, 672 F.3d 539, 557 (8th Cir. 2012); *United States v. Frederick*, 422 F. App’x 404, 405 (6th Cir. 2011).

82. *Kelly v. United States*, 140 S. Ct. 1565, 1565 (2020).

83. *Id.* at 1567.

84. *Id.* at 1571.

85. *Id.*

86. *Id.* at 1572.

as opposed to purposely causing loss.<sup>87</sup> In overturning the federal convictions, the Court relied upon the mens rea of fraud: the defendants must have *intended* to cause monetary or property loss to the government through their deception.<sup>88</sup>

In rejecting the overpayment argument, the *Kelly* decision established the importance of mens rea in the overpayment argument: a state official must desire the state to overpay, and not simply know the state will overpay as a result of the official's fraudulent scheme.<sup>89</sup> Similarly, the Court recognized and rejected an unmade transfer argument: the *Kelly* defendants "did not hope to obtain the data that the traffic engineers spent their time collecting."<sup>90</sup>

The Court in *Kelly* did acknowledge certain lower court cases as being sufficient to establish such intent for the government to suffer loss. It cited *United States v. Pabey*, a case in which a mayor uses deception to get "on-the-clock city workers" to renovate his daughter's new home,<sup>91</sup> and *United States v. Delano*, a case in which a city's parks commissioner induces his employees into gardening work for political contributors.<sup>92</sup>

The cited *Delano* example is of interest. In *Delano*, the theory of loss to the government is theft of labor of Parks Department employees.<sup>93</sup> The defendant required employees to give up "lunch breaks, weekends, or personal leave days" to service the defendant's friends and personal political supporters.<sup>94</sup> The government employees themselves suffered loss of their lunch breaks and weekends, but it is less clear that the government as an entity suffered monetary loss through this scheme.

By emphasizing the importance of personal political supporters, we could reframe *Delano* to follow the *Kelly* fact pattern. *Delano* involves a rogue government official who redirects employee labor for political gain. Just as government employees in New Jersey should not be conducting fake traffic studies,

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87. *Id.* at 1573.

88. *Id.* at 1574.

89. *Id.*

90. *Id.*

91. *Id.* at 1573 (citing *United States v. Pabey*, 664 F. 3d 1084, 1089 (CA7 2011)).

92. *Id.* (citing *United States v. Delano*, 55 F. 3d 720, 723 (CA2 1995)).

93. *Delano*, 55 F. 3d at 723.

94. *Id.* at 723. The court goes on to note that the government employees "received little for their efforts, although occasionally Delano would reward them with 'no-show overtime' or overtime pay that the employees did not actually have to earn."

government employees in New York should not be mowing the lawns of the Park Commissioner's political supporters.

There are two notable observations about the Supreme Court's decisions with respect to honest services. First, the decisions are similar in that they rely primarily on statutory interpretation. Even though the Court raises concerns regarding federalism and vagueness, the decisions do not leverage the full power of the Constitution in prohibiting Congressional action. Rather, the Court arguably leaves room for Congress to be more specific, if it wishes, to regulate state actors more aggressively.

Second, the Court takes two distinct approaches towards the problem of federal prosecution of state corruption. One approach, as seen in *Cleveland*, directly addresses state governance. The Court establishes a rule that applies specifically to state government: a license in government hands is not property under the mail and wire fraud statutes.<sup>95</sup> The other approach can be seen in *Kelly*, in which the Court relies upon a doctrinal rule that emphasizes mens rea, which could be applied to both federal and state corruption cases.<sup>96</sup>

### C. Empirical Studies of Federal Corruption Prosecution

While the aforementioned description of Supreme Court jurisprudence regarding federal prosecution of state corruption may seem critical, it is important to acknowledge the lack of academic consensus as to proper definitions of corruption.<sup>97</sup> Uncertainty from the Supreme Court is thus not surprising.

To refine the analysis, consider the background of the Supreme Court's case selection process. One reason we might observe the Court's trend in restraining federal prosecutors' power against state officials is that federal prosecutors may make problematic choices in pursuing state officials. This Article views various studies examining federal prosecutors' choices in state corruption cases.

Beginning with the Supreme Court's concerns regarding state criminal prosecution, Cordis & Milyo (2016) affirm the

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95. See *Cleveland*, 531 U.S. at 21–22, 25.

96. See *Kelly*, 140 S. Ct. at 1573.

97. See FABIO MONTEDURO, ALESSANDRO HINNA, & SONIA MOI, GOVERNANCE AND CORRUPTION IN THE PUBLIC SECTOR: AN EXTENDED LITERATURE REVIEW, 31–51 (Hinna, Luca, Gnan, & Monteduro eds., 2016).



preeminence of federal criminal prosecution of state corruption in comparison with state criminal prosecution.<sup>98</sup> Using media reports, they find little evidence of state criminal corruption prosecution.<sup>99</sup>

Alt & Lassen (2012) estimate the impact of prosecutorial resources on corruption convictions, finding that an increase in prosecutorial resources generally results in increased corruption convictions.<sup>100</sup> Their finding could support a marginal efficiency argument: federal prosecutors are not wasteful and do more work given more resources.

Artello & Albanese (2019) interview former federal prosecutors to examine the factors behind their decision to prosecute state corruption cases.<sup>101</sup> These factors include fairness in light of broad criminal laws, strength of evidence, and the career and resource costs of pursuing such cases.<sup>102</sup> They use these interview results to explain the comparatively higher declination rates and lower conviction rates of public corruption cases in contrast with white-collar crimes.<sup>103</sup>

Although not an express concern from the Court, there are numerous studies examining the impact of politics on corruption prosecution.<sup>104</sup> Relying on TRACFED data, Pavlik (2017) finds a correlation between federal corruption prosecutions and the political importance of a state in national elections.<sup>105</sup> Federal prosecutors convict more individuals of federal corruption crimes in politically important states.<sup>106</sup> The effect appears to be limited to convictions categorized as “federal corruption” in TRACFED; corruption convictions categorized as state, local, or other corruption do not show a statistically significant correlation.<sup>107</sup>

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98. See Cordis & Milyo, *supra* note 10.

99. *Id.*

100. See James E. Alt & David Dreyer Lassen, *Enforcement and Public Corruption: Evidence from US States*, 30 J.L. ECON. ORG. 306, 306–38 (2012).

101. See Kristine Artello & Jay Albanese, *The Calculus of Public Corruption Cases: Hidden in Investigations and Prosecutions*, 3 J. CRIM. JUST. L. 22, 22–37 (2019).

102. *Id.* at 34.

103. *Id.* at 27 (referencing TRACFED data).

104. See Jamie Bologna Pavlik, *Political Importance and Its Relation to the Federal Prosecution of Public Corruption*, 28 CONST. POL. ECON. 346, 346 (2017); Sanford C. Gordon, *Assessing Partisan Bias in Federal Public Corruption Prosecutions*, 103 AM POL. SCI. REV. 534, 534–54 (2009).

105. Pavlik, *supra* note 104, at 362–63, 370.

106. *Id.* at 364.

107. *Id.* at 366–67.

Gordon (2009) finds evidence that federal prosecutors were more willing to file weaker cases against state political opponents than allies.<sup>108</sup> Gordon compares the length of corruption sentences for partisan public officials; he finds that sentences, on average, are lower when the public employee is from a political party that differs from the U.S. president's party.<sup>109</sup> Nyhan & Rehavi (2018) similarly find influence in the timing of federal political corruption filings: political opponents are more likely to face charges immediately before an election rather than after an election.<sup>110</sup>

Finally, there is one study that is closest to this current project. Albanese, Artello, and Nguyen (2019) note differences in the proportion of corruption charges leveled at the federal, state, and local levels.<sup>111</sup> For example, they highlight that federal officials are most likely to be charged with bribery, while state and local officials are most likely to be charged with extortion.<sup>112</sup>

#### D. Empirical Studies Measuring Corruption

Federal convictions of corrupt state officials form the basis for many studies of corruption.<sup>113</sup> These studies use federal convictions as a proxy for the level of corruption within a particular state; the corruption frequency is typically normalized against the state's population. Glaeser & Saks (2006) find, for example, correlations between federal corruption convictions and state median household income, average educational attainment, and levels of public employment.<sup>114</sup>

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108. Gordon, *supra* note 104, at 535.

109. *Id.* at 543.

110. See Brendan Nyhan & M. Marit Rehavi, *Tipping the Scales? Testing for Political Influence on Public Corruption Prosecutions* (2018), <https://www.law.northwestern.edu/research-faculty/events/colloquium/law-economics/documents/fall18rehavi2.pdf>.

111. See Jay S. Albanese, Kristine Artello, & Linh Thi Nguyen, *Distinguishing Corruption in Law and Practice: Empirically Separating Conviction Charges from Underlying Behaviors*, 21 PUB. INTEGRITY 22 (2019).

112. *Id.* at 30–31.

113. See, e.g., Oguzhan C. Dincer, Christopher J. Ellis, & Glen R. Waddell, *Corruption, Decentralization And Yardstick Competition*, ECON. GOV., 11, 269–94 (2010); Alt & Lassen, *supra* note 100, at 306 (finding that increased prosecutorial resources increase corruption convictions utilizing PIN data but also explaining rationale over TRACFED data); Peter T. Leeson & Russell S. Sobel, *Weathering Corruption*, 51 J.L. & ECON. 667 (2008) (demonstrating correlation between PIN data and FEMA disaster relief); Edward L. Glaeser & Raven E. Saks, *Corruption in America*, 90 J. PUB. ECON. 1053 (2006).

114. Glaeser & Saks, *supra* note 113, at 1059.

As the above studies suggest, the quality of federal corruption convictions as a proxy for general state corruption can be debated and improved. Simultaneously, these generalized studies of corruption can also be interpreted in view of prosecutorial incentives. For example, Leeson & Sobel (2008) observe an increase in corruption convictions after the influx of FEMA disaster relief; they interpret this result as an affirmative answer to the question “Is bad weather responsible for U.S. corruption?”<sup>115</sup> An influx of federal money, however, might also lead to greater attention from prosecutors, rather than an increased level of corruption. Broadly speaking, the evidence from these studies have salience regarding prosecutorial behavior.

### III. FEDERAL CORRUPTION PROSECUTION AS A BASELINE

This Article highlights the use of federal prosecution of federal public officials as a baseline for evaluating federal prosecution of state officials. This most directly complements Albanese, Artello, and Nguyen’s (2019) work, which emphasizes the difference in the mix of charges and behavior against federal versus state defendants. A look at the aggregate statistics regarding prosecution can lay the groundwork for a better understanding of these corruption cases.

#### A. Data Source

This Article utilizes the TRACFED data, isolating their general criminal public corruption cases for a broad timeframe. The TRACFED data set relies upon DOJ and the respective U.S. Attorneys to properly categorize cases. DOJ initiated the use of such categories, including the “official corruption” category, in the early 1980s, which limits the timeframe of available data.<sup>116</sup> Thus, only considered is TRACFED data under the broad program category of “official corruption.”<sup>117</sup> “Official corruption” can be

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115. Leeson & Sobel, *supra* note 113, at 677–78.

116. See TRAC, *About the Data Federal Prosecutor Database*, <https://trac.syr.edu/data/jus/eousaDataHistorical.html> [hereinafter TRAC, *About the Data*].

117. I ran statistics for 18 U.S.C. § 666, 18 U.S.C. § 201, 18 U.S.C. § 1341, 18 U.S.C. § 1343, and 18 U.S.C. § 1346 as lead charges without the public corruption limitation; all return data starting in 1986, which is the earliest year provided.

separated into distinct detailed program categories; four federal, one state, and one local category of public corruption. Only federal criminal cases are captured in this system.

We can compare TRACFED as a data source with data from the DOJ's Public Integrity Section ("PIN"). The DOJ regularly publishes a "Report to Congress on the Activities and Operations of the Public Integrity Section," providing what is commonly referred to as the PIN report or PIN data. The PIN data aggregates the number of prosecutions and convictions for officials; a commonly referenced table below:

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	Totals
<b>Federal Officials</b>																					
Charged	615	803	624	627	571	527	456	459	442	480	441	502	478	479	424	445	463	436	518	425	10205
Convicted	583	665	532	595	488	438	459	392	434	460	422	414	429	421	381	390	407	405	458	426	9179
Awaiting Trial as of 12/31	103	149	139	133	124	120	64	83	85	101	92	131	119	129	98	118	112	116	117	107	2240
<b>State Officials</b>																					
Charged	96	115	81	113	99	61	109	51	91	115	92	95	110	94	111	96	101	128	144	93	1995
Convicted	79	77	92	133	97	61	83	49	58	80	91	61	132	87	81	94	116	85	123	102	1781
Awaiting Trial as of 12/31	28	42	24	39	17	23	40	20	37	44	37	75	50	38	48	51	38	65	61	57	834
<b>Local Officials</b>																					
Charged	257	242	232	309	248	236	219	255	277	237	211	224	299	259	268	309	291	284	287	270	5214
Convicted	225	190	211	272	202	191	190	169	264	219	183	184	262	119	252	232	241	275	246	257	4374
Awaiting Trial as of 12/31	98	88	91	132	96	89	60	118	90	95	89	110	118	106	105	148	141	127	127	148	2176

The PIN data contain only aggregate summaries of total charges and convictions by jurisdiction and year; they do not specify the actual charges. The use of PIN data as a proxy for corruption levels has led to a debate as to the legitimacy of PIN data as a proxy for corruption.<sup>118</sup>

There are also concerns about generating the PIN data via retrospective annual surveys of prosecutors rather than directly from administrative records.<sup>119</sup> While the Public Integrity Section's own data tracking might be comparatively reliable, it only directly handles roughly four percent of convictions; the various U.S. Attorneys' district offices annually report the vast majority of cases relying on their own classification and retrospective reports.<sup>120</sup> Thus, there is significant uncertainty as to the precise content of each corruption conviction in the aggregate PIN data.

118. Cordis & Milyo, *supra* note 10, at 127.

119. *Id.* at 128–31.

120. *Id.* at 132–33.

In comparison, the Transactional Records Access Clearinghouse (“TRAC”) is a nonprofit group dedicated to collecting such data. TRACFED provides greater granularity in comparison to the PIN data aggregates, but there are limitations due to the anonymization process. TRACFED includes a “lead charge” label, allowing identification of at least one statutory basis for the corruption conviction.<sup>121</sup> The TRACFED data set, although not dating back as far as PIN data, contains comparatively more detailed information and is arguably more reliable.<sup>122</sup> DOJ data may similarly be accessed via the National Caseload Data release.<sup>123</sup>

Of note is that the TRAC data set relies upon the U.S. Attorneys’ offices to properly code cases.<sup>124</sup> Such coding may be done by administrative staff. As described in the LIONS (“Legal Information Office Network System”) manuals, public corruption or official corruption is the “criminal prosecution of public employees or misconduct, or, misuse of, office, including attempts by private citizens to bribe or otherwise corrupt public employees.”<sup>125</sup> Thus, cases may involve defendants who are not government employees and do not necessarily include any wrongdoing by government officials.

There are four detailed federal categories. First is “Federal Corruption – Procurement”, which is “corruption of any federal employee relating to the procurement of goods and services (may involve violations of 18 U.S.C. sections 201, 203, 371, 872, 1001, 1962 and other statutes).” Second is “Federal Corruption – Program”, which is “corruption of any federal employee relating to federal programs, including grants, loans, subsidies, employment and other benefit programs (may involve violations of 18 U.S.C. sections 201, 286, 287, 371, 641, 648, 1001, 1962, as well as program-specific statutes).” Third is “Federal Corruption – Law Enforcement,” which is “corruption of any employee relating to law enforcement, including investigators, prosecutors, judges, court officials, prison officials (may involve violations of 18 U.S.C.

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121. *Id.* at 138.

122. *Id.* at 130; *see also* Gordon, *supra* note 104.

123. *National Caseload Data*, U.S. DEPT OF JUST., <https://www.justice.gov/usao/resources/foia-library/national-caseload-data>. (Last visited Oct. 7, 2022).

124. TRAC, *About the Data*, *supra* note 116.

125. *Official Corruption*, TRAC REPORTS (July 7, 2014), [https://trac.syr.edu/tracreports/crim/358/include/side\\_1.html](https://trac.syr.edu/tracreports/crim/358/include/side_1.html).

sections 201, 872, 1001, 1503, 1505, 1510, 1621, 1962 and others).” Fourth is “Federal Corruption – Other,” which is “corruption of any federal employee not covered by [the other program categories], including embezzlement by a ‘low level’ federal employee, such as a postal clerk, but only if charged with a violation of 18 U.S.C. sections 641, 1709, or 1711.”

“State Corruption” is “corruption of any state government employee (may involve violations of 18 U.S.C. sections 1511, 1951, 1962 and others).”<sup>126</sup>

“Local Corruption” is “corruption of any local government employee (may involve the same statutes listed in the state corruption category).”<sup>127</sup>

“Other Public Corruption” instructions indicate usage “ONLY if one of the [other] specific codes does not apply.”<sup>128</sup>

This Article also considers the lead charges brought against defendants. Selection of the lead charge is also at the discretion of the DOJ; its purpose is to indicate “the substantive statute that is the primary basis for the referral using the U.S. code.”<sup>129</sup> The lead charge may be updated after initial case filing; it is not necessarily the charge in the first count, nor is it necessarily the charge with the greatest potential sentence.<sup>130</sup>

## B. Descriptive Data

The TRACFED system does not incorporate direct statistical tests of significance.

### 1. *Corruption Convictions Over Time*

Figure 1 shows the number of corruption convictions over time separated by types of defendants. Convictions categorized as federal peak around 1998 and show a downward trend afterwards. Convictions categorized as state or local are consistently lower in frequency and trend upwards until 2008. By 2008, both federal and state cases follow similar rates trending downward.

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126. *Id.*

127. *Id.*

128. LIONS, appendix A, A-70.

129. Case Management Staff, EXEC. OFF. FOR U.S. ATT’YS, *Legal Information Office Network System User’s Manual*, (Aug. 2016), <https://www.justice.gov/usao/file/835096/download>.

130. *Id.* at 126-27.

Figure 1

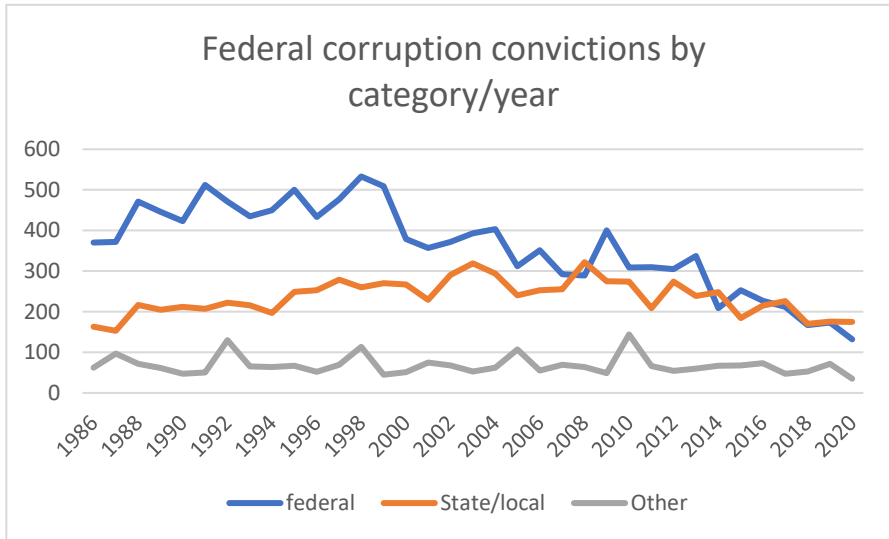
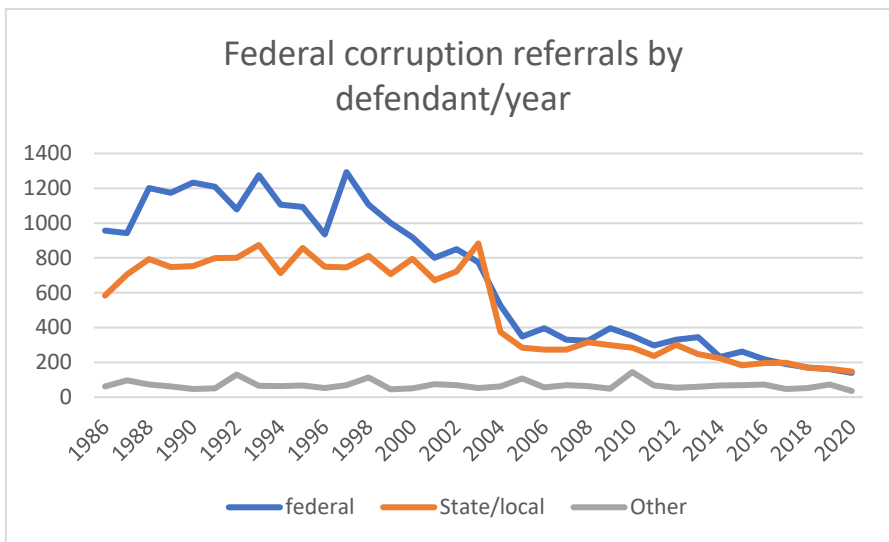


Figure 2 charts referrals by the same defendant categories. Both federal and state/local referrals encounter a significant drop-off around 2004. Federal referrals hit their peak in 1997 and then decline.

Figure 2



## 2. Convictions & Penalties

Table 1 shows convictions by category over the entire timeframe from 1986 to 2020. Column 3, % prosecuted, is relatively less reliable because it depends on accurate & prompt categorization of referrals in the LIONS system. As noted via TRACFED, DOJ has been withholding certain types of referral data since 1999. Nonetheless, it is unclear if there is systematic bias across categories for referral tracking. Column 4, % prison, is the percentage of convictions that result in any prison time. Columns 5 and 6 are the median prison term and mean prison terms, respectively, for all convictions (including no prison time) expressed in months.

Table 1: Convictions & prison terms by category

Corruption Category	Convictions	% Prosecuted	% Prison	Median Prison Sentence (months)	Average Prison Sentence (months)
Fed Law Enforcement	1,604	38	54	6	20
Fed Procurement	1,897	37	41	0	17
Fed Program	2,763	43	34	0	11
Fed Other	3,928	48	29	0	7
Local	4,871	33	58	12	26
State	1,925	34	61	12	28
Other	1,873	35	49	5	20

Although system limitations prevent statistical analysis, the percentage of cases prosecuted is lower for state and local case categories in comparison with the federal case categories. The percentage of state & local convictions receiving prison sentences is higher than all of the federal categories. Median and mean prison terms are longer for state and local cases.



To evaluate whether such differences across categories may be due to differences in statutory regimes, Table 2 breaks down the Table 1 data by lead charge. The listed statutes are some of the most frequent lead charges, although the Article presently does not include 18 U.S.C. § 371 (conspiracy). The Article includes 18 U.S.C. § 1346 as it is tightly related to the mail and wire fraud statutes (18 U.S.C. §§ 1341 & 1346).

Table 2: Convictions & prison terms by lead charge (all corruption)

Statute	Convictions	% Prosecuted	% Prison	Median Prison Sentence (months)	Average Prison Sentence (months)
18 U.S.C. § 201 – Bribery of public officials and witnesses	2,528	38	45	4	17
18 U.S.C. § 1341 – Mail Fraud	1,077	33	51	6	20
18 U.S.C. § 1343 – Wire fraud	384	37	65	12	19
18 U.S.C. § 1346 – Honest Services	82	16	79	21	29
18 U.S.C. §	2,192	34	65	12	19

666 – Theft or bribery in program s receiving Fed					
18 U.S.C. § 1951 –c Hobbs Act	1,810	26	62	18	40

We can compare Table 2 with Tables 3 & 4. Table 3 looks only at cases categorized as state corruption; Table 4 does the same for local corruption. The differences among these tables appear to be minimal.

Table 3: Convictions & prison terms by lead charge (state corruption only)

Statute	Convictions	% Prosecuted	% Prison	Median Prison Sentence (months)	Average Prison Sentence (months)
18 U.S.C. § 201 – Bribery of public officials and witnesses	42	21	67	4	10
18 U.S.C. § 1341 – Mail Fraud	214	30	64	12	28
18	66	34	65	10	18

U.S.C. § 1343 – Wire Fraud					
18 U.S.C. §1346 – Honest Services	22	19	91	38	49
18 U.S.C. § 666– Theft or bribery in programs receiving Fed funds	311	33	68	12	23
18 U.S.C. §1951 – Hobbs Act	489	28	68	18	40

Table 4: Convictions & prison terms by lead charge (local corruption only)

Statute	Convictions	% Prosecuted	% Sentenced to Prison	Median Prison Sentence (months)	Average Prison Sentence (months)
18 U.S.C. § 201 – Bribery of public officials and	163	20	54	6	18

witnesses					
18 U.S.C. § 1341 – Mail Fraud	504	33	50	6	16
18 U.S.C. § 1343 – Wire Fraud	139	37	70	16	22
18 U.S.C. § 1346 – Honest Services	37	13	81	15	23
18 U.S.C. § 666 – Theft or bribery in programs receiving Fed funds	1,212	34	67	12	21
18 U.S.C. § 1951 – Hobbs Act	939	26	61	16	43

### 3. *Jurisdictional Differences*

Table 5 sorts the federal judicial districts by ratio of federal to state & local corruption convictions. The District of the Northern Mariana Islands has the lowest ratio of federal to state & local

corruption convictions, while the District of Utah has the highest ratio. These ratios are not normalized against referrals due to potential unreliability with the referral counting. The Article also does not normalize against population since the ratio calculation would remove the salience of population (both federal and state/local convictions would be adjusted by the same amount).

Table 5: Judicial districts, sorted by ratio of federal to state/local convictions

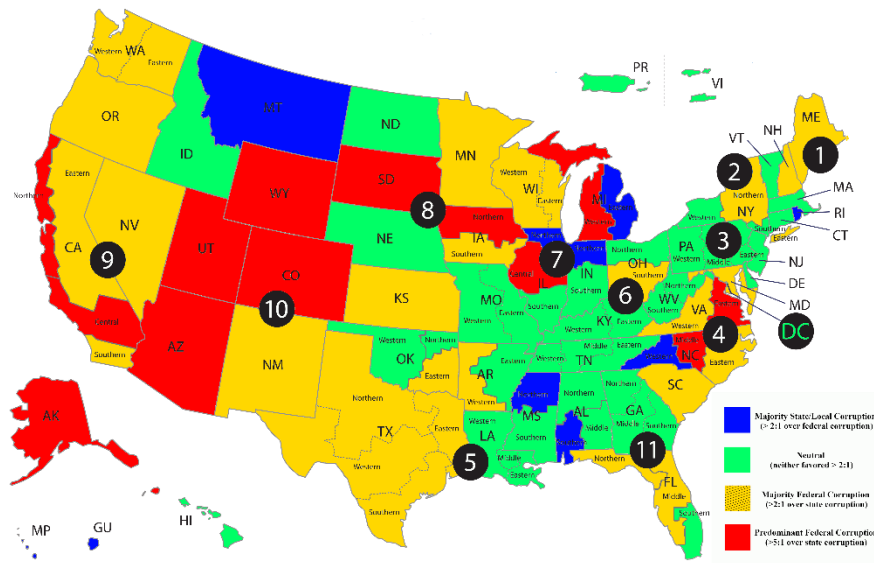
Judicial District	Federal Convictions	State/Local Convictions	Fed to State/Local Ratio
N Mar Is	5	24	0.208333
Miss, N	22	105	0.209524
Ind, N	31	138	0.224638
R. I.	12	40	0.3
Ala, S	11	32	0.34375
N Car, W	24	66	0.363636
Guam	20	55	0.363636
Mich, E	83	223	0.372197
Ill, N	131	297	0.441077
Montana	51	114	0.447368
W Virg, S	29	58	0.5
N. J.	311	568	0.547535
Ill, S	30	52	0.576923
Puer Rico	90	147	0.612245
Penn, E	209	322	0.649068
Virgin Is	25	38	0.657895
Ohio, N	156	237	0.658228
La, E	84	126	0.666667
La, M	41	60	0.683333
Penn, W	26	38	0.684211
Miss, S	96	122	0.786885
Mo, E	84	105	0.8
N Dakota	39	48	0.8125
Ark, E	55	66	0.833333
Ga, S	33	38	0.868421

Ken, E	99	110	0.9
Idaho	10	11	0.909091
Ala, N	83	89	0.932584
Tenn, E	59	62	0.951613
N. Y., W	62	63	0.984127
Ga, N	190	193	0.984456
Ken, W	30	30	1
Ind, S	32	31	1.032258
La, W	51	48	1.0625
Conn	82	75	1.093333
Nebraska	49	44	1.113636
Ala, M	28	25	1.12
Penn, M	105	90	1.166667
Fla, S	239	201	1.189055
Hawaii	60	48	1.25
W Virg, N	10	8	1.25
Tenn, W	92	71	1.295775
Ga, M	68	52	1.307692
Mass	270	194	1.391753
N. Y., S	446	284	1.570423
Mo, W	102	63	1.619048
D. C.	306	178	1.719101
Delaware	38	22	1.727273
Okla, W	68	39	1.74359
Tenn, M	88	48	1.833333
Okla, N	37	20	1.85
Vermont	19	10	1.9
N. Y., E	508	236	2.152542
Ark, W	22	10	2.2
Texas, E	78	34	2.294118
S Car	171	72	2.375
Nevada	50	21	2.380952
Ohio, S	124	52	2.384615
Okla, E	25	10	2.5
Fla, M	234	92	2.543478

N Car, E	97	38	2.552632
Virg, W	64	25	2.56
N. Y., N	80	30	2.666667
Maryland	244	90	2.711111
Texas, S	309	111	2.783784
Wisc, E	57	20	2.85
Wash, E	12	4	3
Wisc, W	21	7	3
Kansas	67	22	3.045455
Minnesota	114	37	3.081081
Fla, N	82	26	3.153846
Wash, W	70	21	3.333333
Iowa, S	14	4	3.5
N Mexico	84	24	3.5
Texas, N	255	71	3.591549
Maine	47	13	3.615385
Texas, W	176	46	3.826087
New Hamp	8	2	4
Cal, E	494	122	4.04918
Cal, S	183	43	4.255814
Oregon	74	16	4.625
Wyoming	26	5	5.2
Iowa, N	21	4	5.25
Arizona	238	45	5.288889
Alaska	66	12	5.5
Cal, N	166	30	5.533333
Ill, C	58	9	6.444444
Cal, C	566	79	7.164557
Virg, E	485	58	8.362069
N Car, M	35	4	8.75
S Dakota	36	4	9
Mich, W	138	11	12.54545
Colorado	107	5	21.4
Utah	65	3	21.66667

Table 5 suggests there is a wide range of differences in corruption conviction ratios; there are trivial amounts of state & local corruption convictions in the Districts of Utah and Colorado, for example, despite significant federal corruption convictions. These results are in graphical form in Figure 3.

Figure 3



Appendix A provides greater detail regarding select jurisdictions at opposite ends of the ratio spectrum. The appendix surveys five jurisdictions at each end of the spectrum that have at least 100 convictions in either category. Here are some jurisdictions with distinctive characteristics.

Consider the Districts of Eastern and Western Michigan, Tables 6 and 7 below.



Table 6: W. Michigan

W. Mich								
Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Sentence (of convicted)	Median Prison Sentence (months)	Average Prison Sentence (months)
Fed Law Enforcement	5	0	0	0	-	-	-	-
Fed Procurement	9	2	3	17	75	0	0	0
Fed Program	33	11	8	25	67	50	5	13
Fed Other	111	123	127	85	90	18	0	3
Local	30	9	9	18	75	89	30	24
State	19	4	2	18	67	100	39	39
Other	11	5	5	26	100	60	13	16

Table 7: E. Michigan

E. Mich								
Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Sentence (of convicted)	Median Prison Sentence (months)	Average Prison Sentence (months)
Fed Law Enforcement	79	24	17	20	68	53	2	10
Fed Procurement	60	25	14	36	64	7	0	1
Fed Program	123	42	28	27	78	25	0	3
Fed Other	97	33	24	27	73	25	0	5
Local	436	256	201	38	81	78	15	24
State	107	31	22	23	59	50	88	102
Other	123	54	45	39	87	58	9	24

E. Michigan dramatically emphasizes local corruption convictions, while W. Michigan emphasizes federal corruption convictions. Despite this, however, prison sentences in both jurisdictions tend to be limited for federal corruption, and the state and local corruption cases face comparatively higher penalties.

Table 8: Colorado

Colorado								
Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Sentence (of convicted)	Median Prison Sentence (months)	Average Prison Sentence (months)
Fed Law Enforcement	37	22	19	39	90	21	0	4
Fed Procurement	52	22	14	30	64	50	18	20
Fed Program	89	29	24	26	86	21	0	8
Fed Other	110	59	50	50	93	10	0	2
Local	60	6	2	8	50	50	72	72
State	36	5	3	13	60	67	9	9
Other	37	15	15	27	100	60	14	12

Another jurisdiction of interest is the District of Colorado, with figures reproduced in Table 8 above. Colorado's federal convictions greatly outweigh state and local convictions. Setting aside the local conviction figures, which, as they number only two, may be anomalous due to a single defendant's 12-year sentence, federal procurement corruption appears to receive some of the

most serious penalties. The “other” federal corruption category constitutes the most convictions, but the penalties appear rather low for the category.

### C. Analysis

#### 1. *Relative Importance of State & Local Corruption*

The Supreme Court appears justified in paying increased attention to federal prosecution of state and local corruption. The general frequency data suggests that state and local corruption has become a point of comparative emphasis over the emphasis on federal corruption in the 1980s and 1990s. Similar to other research focusing on convictions and prosecutions of corruption, this Article does not have information as to the underlying levels of corruption nor the quality of the declined cases, so it is difficult to infer causality. It is possible that state and local levels of corruption have comparatively increased while federal levels of corruption have decreased. Similarly, it is possible that wrongdoers focusing on federal corruption have become more skilled at covering their tracks, and prosecutors following the evidence have found state and local corruption cases easier to address.

#### 2. *Severity of Penalties*

Gordon uses penalty severity to detect political partisanship in prosecution of corruption.<sup>131</sup> He finds lower penalties for defendants whose political party affiliation differs from that of the sitting U.S. President, and he interprets this as evidence that prosecutors are more likely to pursue comparatively weaker cases of corruption against dissimilar political party defendants.<sup>132</sup> In contrast, for cases of serious corruption, prosecutors ostensibly feel obliged to pursue those cases regardless of political party affiliation. The resulting differential is that defendants of the same political party as the executive branch will suffer higher penalties in aggregate.<sup>133</sup>

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131. Gordon, *supra* note 104, at 543–44.

132. *Id.*

133. *Id.*

Nyhan & Rehavi express concerns with this approach; part of their concern mirrors the unobserved underlying corruption level previously discussed.<sup>134</sup> Another aspect of their concern is whether there are sufficient controls to attribute sentence disparities to prosecutors as opposed to other actors such as judges.<sup>135</sup> Judge-level controls may be difficult, however, in that individual judges may not handle sufficient numbers of public corruption cases to make statistical analysis feasible.

My aim here is not to resolve the methodological and inferential dispute. As an observational matter, there are disparities in the punishment for federal corruption as opposed to state and local corruption. Combined with data regarding the prosecution and referral rates, the aggregate data may, following Gordon's model, hint that federal prosecutors prioritize serious cases of state and local corruption in contrast to being generally concerned about federal corruption.

This inference may reduce alarm from the Supreme Court; it suggests that prosecutors are relatively cautious in pursuing state and local corruption cases. Even though the comparative rate of federal corruption cases has fallen, prosecutors may still be pursuing a wider variety of federal corruption cases.

### 3. *Jurisdictional Variation*

Variation in jurisdictional statistics invites further research as to the correlates and causes of those differences. For now, note that jurisdiction-level controls (something that Gordon utilizes<sup>136</sup>) makes analysis difficult due to limited frequency of cases within a jurisdiction, particularly if researchers emphasize specific statutes within the jurisdiction. One solution is to utilize regional controls, such as Glaeser & Saks South/Northeast/Midwest separation.<sup>137</sup> The evidence of remarkably different approaches in the Districts of Eastern and Western Michigan, however, hints at problems with regional aggregation. Sorting by federal versus state/local conviction ratios or other related correlates may improve future analysis. As Pavlik has noted, political influences appear to have an impact on federal prosecution of federal corruption; she does not

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134. See Nyhan & Rehavi, *supra* note 110, at 1–2.

135. *Id.* at 2–3.

136. Gordon, *supra* note 104, at 546–47.

137. Glaeser & Saks, *supra* note 113, at 1059.

find a similar impact on state and local corruption. Given the differences observed in this piece, reliance upon measures of federal prosecution of state and local corruption may be helpful in obtaining more consistent and unbiased estimates of corruption.

#### IV. CONCLUSION AND FUTURE WORK

Although the volume of federal public corruption convictions has declined in the past decade, the proportion of federal convictions of state and local corruption has increased during the same timeframe. This suggests that the Supreme Court's seeming focus on state and local corruption cases may be justified on a proportionality basis: increased relative frequency of cases drives the Court's attention.

The more difficult question is measuring federal prosecutors' choices in selecting corruption cases. Has the Supreme Court focused upon outlier cases that are not representative of the typical federal prosecutor, or does the Court's selection of cases reflect problematic trends of prosecutorial decision-making? Evidence from this Article suggests that there may be significant differences in prosecutorial strategy when considering federal corruption defendants in contrast to state and local defendants.

Additional work is important in understanding these initial results. Do these observed differences simply reflect existing differences in the volume and types of corruption that exist? In jurisdictions that have relatively high levels of federal defendants, for example, future work should consider the presence of large federal facilities such as federal prisons, which might explain an otherwise disproportionate level of federal referrals. Similarly, there may be interactions with the prevalence of private sector wrongdoing that drive these results: rather than federal prosecutors targeting particular public officials, for example, private criminal behavior may be attracting prosecutorial attention, and public officials may be simply caught up as a byproduct of private sector crime.

\* \* \*

## V. APPENDIX A

Top five jurisdictions with lowest federal to state/local ratios,  
minimum 100 state/local convictions

N. Miss								
Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Term (of convicted)	Median Prison Term (months)	Average Prison Term (months)
Fed Law Enforcement	11	3	3	20	100	33	8	8
Fed Procurement	12	4	4	27	100	50	3	7
Fed Program	31	9	7	24	70	29	0	17
Fed Other	22	8	8	31	100	50	3	6
Local	313	108	91	28	77	35	12	28

State	51	15	14	22	82	71	16	23
Other	46	4	4	8	100	50	28	21
N. Ind								
Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Term (of convicted)	Median Prison Term (months)	Average Prison Term (months)
Fed Law Enforcement	10	3	3	16	100	33	8	8
Fed Procurement	13	5	5	33	100	0	0	0
Fed Program	30	10	10	29	100	20	0	5



Fed Oth er	27	15	13	47	87	15	0	0
Loca l	269	141	12 7	39	90	51	12	27
Stat e	28	18	11	42	65	45	0	6
Oth er	73	30	35	29	88	23	1	18
E. Mic h								
Prog ram Cate gory	Ref err als Rec eiv ed	Pro sec utio ns File d	C on vi cti on s	Per cen t Pro sec ute d	Percen t Convic ted (of prosec uted)	Percen t Prison Term (of convict ed)	Media n Priso n Term (mont hs)	Avera ge Prison Term (mont hs)
Fed Law Enfo rce men t	79	24	17	20	68	53	2	10

Fed Procurement	60	25	14	36	64	7	0	1
Fed Program	123	42	28	27	78	25	0	3
Fed Other	97	33	24	27	73	25	0	5
Local	436	256	201	38	81	78	15	24
State	107	31	22	23	59	50	88	102
Other	123	54	45	39	87	58	9	24
N. Ill								

Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Term (of convicted)	Median Prison Term (months)	Average Prison Term (months)
Fed Law Enforcement	30	11	12	37	100	33	0	15
Fed Procurement	37	34	28	54	100	39	12	12
Fed Program	169	81	75	45	93	35	3	10
Fed Other	46	19	16	39	94	56	5	9
Local	411	246	203	56	87	65	18	55
State	139	107	94	67	90	69	12	25
Other	42	29	14	31	70	43	12	22

Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Term (of convicted)	Median Prison Term (months)	Average Prison Term (months)
Montana								
Fed Law Enforcement	13	8	3	38	50	33	0	6
Fed Procurement	22	14	13	44	100	69	21	43
Fed Program	44	42	18	69	44	61	18	21
Fed Other	34	18	17	44	85	53	1	7
Local	135	135	106	75	79	46	0	10

State	21	9	8	35	100	75	25	36
Other	59	62	51	73	82	57	6	14

Top five jurisdictions with highest federal to state/local ratios,  
minimum 100 federal convictions

Colorado								
Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Term (of convicted)	Median Prison Term (months)	Average Prison Term (months)
Fed Law Enforcement	37	22	19	39	90	21	0	4
Fed Procurement	52	22	14	30	64	50	18	20
Fed Program	89	29	24	26	86	21	0	8

Fed Oth er	110	59	50	50	93	10	0	2
Loca l	60	6	2	8	50	50	72	72
Stat e	36	5	3	13	60	67	9	9
Oth er	37	15	15	27	100	60	14	12
W. Mic h								
Prog ram Cate gory	Ref err als Rec eiv ed	Pro sec utio ns File d	C on vi cti on s	Per cen t Pro sec ute d	Percen t Convic ted (of prosec uted)	Percen t Prison Term (of convict ed)	Media n Priso n Term (mont hs)	Avera ge Prison Term (mont hs)
Fed Law Enfo rce men t	5	0	0	0	-	-	-	-

Fed Procurement	9	2	3	17	75	0	0	0
Fed Program	33	11	8	25	67	50	5	13
Fed Other	111	123	127	85	90	18	0	3
Local	30	9	9	18	75	89	30	24
State	19	4	2	18	67	100	39	39
Other	11	5	5	26	100	60	13	16
E. Virg								

Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Term (of convicted)	Median Prison Term (months)	Average Prison Term (months)
Fed Law Enforcement	87	73	61	59	88	43	6	18
Fed Procurement	361	171	160	34	89	48	2	37
Fed Program	250	92	86	36	90	30	1	7
Fed Other	307	195	178	49	91	47	0	12
Local	71	26	21	19	91	90	12	30
State	59	39	37	38	100	81	13	22
Other	40	24	21	39	95	38	0	21



C. Cal								
Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Term (of convicted)	Median Prison Term (months)	Average Prison Term (months)
Fed Law Enforcement	149	69	54	42	90	57	0	13
Fed Procurement	240	84	65	32	78	35	0	6
Fed Program	495	364	260	68	82	53	6	24
Fed Other	411	280	187	56	89	53	1	18
Local	178	72	49	27	82	78	15	32

State	66	23	30	31	97	73	6	19
Other	69	55	40	31	87	33	0	7
N. Cal								
Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Term (of convicted)	Median Prison Term (months)	Average Prison Term (months)
Fed Law Enforcement	71	30	20	33	71	20	0	7
Fed Procurement	118	58	37	46	77	27	0	6
Fed Program	201	104	66	46	83	17	0	5

Fed Other	108	58	43	40	83	7	0	1
Local	95	43	24	21	86	58	12	19
State	29	16	6	26	100	67	13	15
Other	90	23	13	25	72	46	12	11

Top five highest & lowest jurisdictions (as above) with population normalized figures

N. Miss						
Program Category	Referrals per Million Population	Disposals per Million Population	Declinations per Million Population	Prosecutions per Million Population	Convictions per Million Population	Prison Sentences per Million Population
Fed Law Enforcement	0.29	0.39	0.31	0.08	0.08	0.03
Fed Procurement	0.31	0.39	0.29	0.1	0.1	0.05
Fed Program	0.81	1.02	0.76	0.24	0.18	0.05
Fed Other	0.58	0.68	0.47	0.21	0.21	0.1
Local	8.21	10.51	7.42	2.83	2.39	0.84

State	1.34	1.84	1.39	0.39	0.37	0.26
Other	1.21	1.26	1.15	0.1	0.1	0.05
N. Ind						
Program Category	Referrals per Million Population	Disposals per Million Population	Declinations per Million Population	Prosecutions per Million Population	Convictions per Million Population	Prison Sentences per Million Population
Fed Law Enforcement	0.11	0.21	0.18	0.03	0.03	0.01
Fed Procurement	0.15	0.17	0.11	0.06	0.06	0
Fed Program	0.34	0.4	0.28	0.11	0.11	0.02
Fed Other	0.3	0.36	0.19	0.17	0.15	0.02
Local	3.04	4.13	2.54	1.59	1.43	0.73
State	0.32	0.47	0.28	0.2	0.12	0.06
Other	0.82	1.29	0.84	0.34	0.4	0.09
E. Mich						
Program Category	Referrals per Million Population	Disposals per Million Population	Declinations per Million Population	Prosecutions per Million Population	Convictions per Million Population	Prison Sentences per Million Population
Fed Law Enforcement	0.34	0.53	0.42	0.1	0.07	0.04

Fed Procurement	0.26	0.28	0.19	0.11	0.06	0
Fed Program	0.53	0.65	0.49	0.18	0.12	0.03
Fed Other	0.41	0.52	0.38	0.14	0.1	0.03
Local	1.87	2.84	1.78	1.1	0.86	0.67
State	0.46	0.6	0.44	0.13	0.09	0.05
Other	0.53	0.59	0.36	0.23	0.19	0.11
N. Ill						
Program Category	Referrals per Million Population	Disposals per Million Population	Declinations per Million Population	Prosecutions per Million Population	Convictions per Million Population	Prison Sentences per Million Population
Fed Law Enforcement	0.09	0.1	0.06	0.03	0.04	0.01
Fed Procurement	0.12	0.18	0.09	0.11	0.09	0.03
Fed Program	0.53	0.56	0.31	0.25	0.24	0.08
Fed Other	0.14	0.15	0.09	0.06	0.05	0.03
Local	1.29	1.34	0.61	0.77	0.64	0.41
State	0.44	0.5	0.17	0.34	0.29	0.2
Other	0.13	0.27	0.21	0.09	0.04	0.02
Montana						
Program Category	Referrals per Millio	Disposals per Millio	Declinations per Million	Prosecutions per Million	Convictions per Millio	Prison Sentences

	n Popul ation	n Popul ation	Popula tion	Popula tion	n Popul ation	per Millio n Popul ation
Fed Law Enforcem ent	0.39	0.57	0.39	0.24	0.09	0.03
Fed Procurem ent	0.66	0.93	0.54	0.42	0.39	0.27
Fed Program	1.31	1.79	0.57	1.25	0.54	0.33
Fed Other	1.02	1.28	0.69	0.54	0.51	0.27
Local	4.03	5.37	1.37	4.03	3.17	1.46
State	0.63	0.75	0.51	0.27	0.24	0.18
Other	1.76	2.54	0.69	1.85	1.52	0.87
Colorado						
Program Category	Referr als per Millio n Popul ation	Dispo sals per Millio n Popul ation	Declin ations per Million Popula tion	Prosec utions per Million Popula tion	Convic tions per Millio n Popul ation	Priso n Sente nces per Millio n Popul ation
Fed Law Enforcem ent	0.23	0.35	0.22	0.14	0.12	0.02
Fed Procurem ent	0.32	0.46	0.32	0.14	0.09	0.04
Fed Program	0.55	0.69	0.52	0.18	0.15	0.03
Fed Other	0.68	0.7	0.37	0.36	0.31	0.03
Local	0.37	0.46	0.43	0.04	0.01	0.01

State	0.22	0.24	0.21	0.03	0.02	0.01
Other	0.23	0.34	0.25	0.09	0.09	0.06
W. Mich						
Program Category	Referrals per Million Population	Disposals per Million Population	Declinations per Million Population	Prosecutions per Million Population	Convictions per Million Population	Prison Sentences per Million Population
Fed Law Enforcement	0.04	0.04	0.04	0	0	0
Fed Procurement	0.08	0.12	0.08	0.02	0.03	0
Fed Program	0.28	0.38	0.28	0.09	0.07	0.03
Fed Other	0.93	1.37	0.19	1.04	1.07	0.19
Local	0.25	0.45	0.35	0.08	0.08	0.07
State	0.16	0.18	0.15	0.03	0.02	0.02
Other	0.09	0.16	0.12	0.04	0.04	0.03
E. Virg						
Program Category	Referrals per Million Population	Disposals per Million Population	Declinations per Million Population	Prosecutions per Million Population	Convictions per Million Population	Prison Sentences per Million Population
Fed Law Enforcement	0.45	0.63	0.27	0.38	0.32	0.14

Fed Procurement	1.89	2.65	1.71	0.89	0.84	0.4
Fed Program	1.31	1.36	0.86	0.48	0.45	0.14
Fed Other	1.6	2.06	1.05	1.02	0.93	0.44
Local	0.37	0.69	0.57	0.14	0.11	0.1
State	0.31	0.52	0.33	0.2	0.19	0.16
Other	0.21	0.31	0.2	0.13	0.11	0.04
C. Cal						
Program Category	Referrals per Million Population	Disposals per Million Population	Declinations per Million Population	Prosecutions per Million Population	Convictions per Million Population	Prison Sentences per Million Population
Fed Law Enforcement	0.24	0.25	0.15	0.11	0.09	0.05
Fed Procurement	0.38	0.42	0.29	0.13	0.1	0.04
Fed Program	0.79	0.78	0.28	0.58	0.42	0.22
Fed Other	0.66	0.68	0.35	0.45	0.3	0.16
Local	0.28	0.41	0.31	0.12	0.08	0.06
State	0.11	0.13	0.08	0.04	0.05	0.04
Other	0.11	0.27	0.19	0.09	0.06	0.02
N. Cal						
Program Category	Referrals per Million	Disposals per Million	Declinations per Million	Prosecutions per Million	Convictions per Million	Prison Sentences



	n Popul ation	n Popul ation	Popula tion	Popula tion	n Popul ation	per Millio n Popul ation
Fed Law Enforcem ent	0.27	0.33	0.22	0.11	0.07	0.01
Fed Procurem ent	0.44	0.43	0.25	0.22	0.14	0.04
Fed Program	0.75	0.75	0.46	0.39	0.25	0.04
Fed Other	0.4	0.52	0.32	0.22	0.16	0.01
Local	0.35	0.71	0.6	0.16	0.09	0.05
State	0.11	0.19	0.17	0.06	0.02	0.01
Other	0.34	0.33	0.26	0.09	0.05	0.02

For comparison purposes, across all jurisdictions, values normalized by population

Progra m Catego ry	Referr als per Millio n Popul ation	Dispo sals per Millio n Popul ation	Declin ations per Million Popula tion	Prosec utions per Million Popula tion	Convic tions per Millio n Popula tion	Prison Sentenc es per Million Populat ion
Fed Law Enforce ment	0.38	0.5	0.31	0.19	0.15	0.08
Fed Procur ement	0.49	0.6	0.38	0.23	0.18	0.08
Fed Progra m	0.66	0.78	0.45	0.34	0.27	0.09
Fed Other	0.78	0.93	0.49	0.46	0.38	0.11

Local	1.23	1.69	1.13	0.57	0.47	0.27
State	0.49	0.66	0.44	0.23	0.19	0.11
Other	0.49	0.66	0.43	0.23	0.18	0.09

## All jurisdictions

Program Category	Referrals Received	Prosecutions Filed	Convictions	Percent Prosecuted	Percent Convicted (of prosecuted)	Percent Prison Term (of convicted)	Median Prison Term (months)	Average Prison Term (months)
Fed Law Enforcement	3,959	1,967	1,604	38	84	54	6	20
Fed Procurement	5,051	2,342	1,897	37	83	41	0	17
Fed Program	6,849	3,513	2,763	43	82	34	0	11
Fed Other	8,095	4,762	3,928	48	86	29	0	7
Local	12,750	5,901	4,871	33	85	58	12	26
State	5,118	2,337	1,925	34	84	61	12	28
Other	5,063	2,386	1,873	35	81	49	5	20