

State Attorneys General Powers and Responsibilities

Edited by
Emily Myers
National Association of Attorneys General

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NATIONAL ASSOCIATION OF ATTORNEYS GENERAL

Courtesy Chapter

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*This book is dedicated to Attorneys General
and the men and women who work for them in the
56 jurisdictions. They continue to make an important
contribution to state government and the American legal
system. Without them, there would be no book to write.*

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This book is a collaborative effort, in which different authors with expertise in each substantive area contribute their time and talent. The principal authors are noted on each chapter, but we would like to thank them again here for their hard work and dedication. Many thanks to the following authors:

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Anti-Corruption

By Amie N. Ely, Director, NAGTRI Center for Ethics & Public Integrity

As the state's chief law enforcement officer, an attorney general is uniquely positioned to prevent, deter, and punish corruption.¹ First, attorneys general offices are often well-placed to prevent corruption by educating elected officials and other government employees about their state's ethics rules and the laws that criminalize corrupt behavior. Second, attorneys general offices can deter corruption by engaging in outreach to citizens to advise them of both the laws that apply to government officials and methods to report corruption to law enforcement. If officials are tempted to abuse their power, being aware that the people they represent know the laws and have an easy mechanism to use to report corruption can serve as a powerful deterrent.

Finally, when prevention and deterrence do not work, state attorneys general can seek to punish corrupt officials through criminal prosecution and/or civil lawsuits. Many attorneys general have criminal jurisdiction to punish at least some forms of corruption, and their offices generally enjoy robust civil jurisdiction. Some attorneys general also have the power to strip state-funded pensions and/or require the forfeiture of a defendant's office—particularly appropriate remedies when officials have used the power of their office for their own personal benefit. Civil and criminal enforcement actions also have the benefit of deterring other officials from engaging in corruption.

1 For the purpose of this chapter, "corruption" is defined as "the abuse of entrusted power for private gain." Accord Matthew C. Stephenson, *Corruption and Democratic Institutions: A Review and Synthesis*, in GREED, CORRUPTION, AND THE MODERN STATE: ESSAYS IN POLITICAL ECONOMY 92, 92 n.1 (Susan Rose-Ackerman and Paul Lagunes eds., 2015).

CORRUPTION PREVENTION AND DETERRENCE

Attorneys General should “set an example, punish corrupt practices, support those who seek to act ethically in the face of countervailing pressures, and urge compliance with legal and ethical principles.”² “Government officials . . . have no monopoly on dishonesty,”³ and at least one study has suggested there are equivalent levels of misconduct and corruption in both the government and the private sector.⁴ But government officials are often subject to ethical statutes and standards that non-government employees are not, and educating them about those requirements can increase compliance.⁵ While such training will include information about ethics rules in state statutes and regulations, attorneys general may also encourage officials to consider and follow broader principles of ethical conduct.⁶ Fostering an ethical culture can discourage corrupt behavior—and can also encourage others to report any instances of corruption that they witness.

Education/ Training

Some attorneys general are emphasizing ethics in their own offices first, as a good way to gain credibility before providing ethics and anticorruption trainings to others. In the wake of the prosecution of the former attorney general of Pennsylvania for leaking grand jury materials in an effort to retaliate against one of her former employees,⁷ her successor placed a priority on ethics by appointing a Chief Integrity Officer. One of the Chief Integrity Officer’s first duties was

2 Vincent R. Johnson, *Corruption in Education: A Global Legal Challenge*, 48 Santa Clara L. Rev. 1, 27 (2008) (referring to leaders of educational institutions).

3 Philip K. Howard, *THE DEATH OF COMMON SENSE* 98 (1994).

4 See Ass’n of Certified Fraud Examiners, 2008 REPORT TO THE NATION ON OCCUPATIONAL FRAUD & ABUSE 6, 30 (2008), (reporting data on occupational fraud, which is “the use of one’s occupation for personal enrichment through the deliberate misuse or misapplication of the employing organization’s resources or assets”).

5 Accord Vincent R. Johnson, *Ethics in Government at the Local Level*, 36 Seton Hall L. Rev. 715, 763-64 (2006) (arguing for ethics training). But see James M. Lager, *Overcoming Cultures of Compliance to Reduce Corruption and Achieve Ethics in Government*, 41 McGEORGE L. REV. 63, 75 (2009) (arguing that “mandatory [ethics] training neither mandates learning nor good conduct by anyone”).

6 Richard W. Painter, *GETTING THE GOVERNMENT AMERICA DESERVES: HOW ETHICS REFORM CAN MAKE A DIFFERENCE* 11 (2009) (“[C]ompliance may be superficial if ethics officials and government employees navigate their way around detailed rules rather than comply with broader principles of ethical conduct.”).

7 A decision staying a federal civil case filed against Kane by her former chief deputy attorney general of criminal appeals provides a comprehensive overview of the investigation that resulted in charges against Kane. See *Barker v. Kane*, 149 F. Supp. 3d 521 (M.D. Pa. 2016).

to provide mandatory ethics training to the entire attorney general's office.⁸ The office will provide similar training to state and local government officials.⁹

Since 2013, the Idaho Attorney General's Office has been providing ethics training to the state legislature every two years.¹⁰ Similarly, the attorneys general in California,¹¹ Texas,¹² and Washington¹³ each offer online ethics courses and videos for state officials.

Other attorney general offices have published information about ethics and anticorruption laws that govern public officials. The New Mexico Attorney General publishes a comprehensive guide to the New Mexico Governmental Conduct Act for both government officials and employees, and to assist members of the public "in holding their representatives in government accountable to these standards."¹⁴ The Idaho Attorney General publishes a similarly lengthy guide.¹⁵ The Washington Attorney General's Office has also provided a short guide to the Washington State Ethics in Public Service Law.¹⁶

Some attorney general offices provide easy access for citizens to report public corruption. For example, the Idaho Attorney General's Office includes "Public Corruption" as a link on the main page of its website; visitors who click on that link will be taken to a page that both explains the attorney general's limited jurisdiction over public corruption offenses and provides a link to a form for reporting violations of state law by county elected officials.¹⁷ The New York Attorney General's Office Public Integrity Bureau provides similar information about how to file a complaint, along with contact information for other agencies that "might be better suited to handle your matter."¹⁸ The website of the Office of the

8 Press Release, Office of Attorney General Initiates Ethics Training Under First-Ever Chief Integrity Officer (May 2, 2017).

9 *Here's How I'll Restore Integrity to the Attorney General's Office*, Josh Shapiro Campaign Website.

10 Betsy Z. Russell, *Idaho Lawmakers to get Mandatory Ethics Training*, IDAHO SPOKESMAN (Jan. 13, 2015); Kimberlee Kruesi, *Idaho Lawmakers Undergo Ethics Training*, WASHINGTON TIMES (Jan. 11, 2017).

11 Ethics Training Courses, State of California Department of Justice.

12 Open Government Training, Texas Attorney General's Office.

13 Open Government Training, Washington Attorney General's Office.

14 Office of the New Mexico Attorney General, New Mexico Governmental Conduct Act Compliance Guide 1 (2d ed. 2015).

15 Office of the Attorney General, Idaho Ethics in Government Manual (2015).

16 Ethics in Public Service, Faculty Senate Ethics Law, Washington State University.

17 Public Corruption Complaint Form, Office of the Attorney General, State of Idaho, (requires full name of reporter).

18 How to File a Public Integrity Complaint, New York Attorney General's Office, (requires

Indiana Attorney General, similarly, contains information about the Public Integrity Coalition, which has a mandate to “reach out to officials throughout local and state government to educate and inform on the issues of public corruption,” and an email address that can be used to report a concerns about corruption.¹⁹

In 2017, the New Jersey Attorney General announced two limited-time initiatives to fight corruption: a reward program offering \$25,000 for citizen tips, and a whistleblower program that provided immunity from prosecution for lower-level participants in corruption who self-disclose the scheme to the attorney general’s office and provide full and truthful information that is used to charge higher-level defendants.²⁰ The attorney general’s office described the program as offering “strong incentives for people to come forward confidentially and help us root out public corruption, whether they’re tipsters from the public seeking a reward, or public workers or others seeking to extricate themselves from a corrupt scheme.”²¹ Even before it announced those programs, the New Jersey Attorney General’s Office had a statewide corruption tipline, which is publicized on its website and in its corruption-related press releases, and remains active.²²

In at least one state, the attorney general is affiliated with a statewide ethics commission. In Illinois, the attorney general is an advisor to the Executive Ethics Commission, which receives and investigates complaints, conducts administrative hearings, drafts and disseminates guides to the ethics laws.²³ The Commission, which has jurisdiction over state executive branch officials and employees, also makes rulings and recommendations in disciplinary cases. The Illinois Attorney General has also prepared a Model Ethics Ordinance to help local governmental bodies comply with the State Officials and Employees Ethics Act.²⁴

full name of reporter and signature; warns that false statements are misdemeanors).

19 Public Integrity Coalition Office of the Indiana Attorney General. This Coalition comprises agencies that have jurisdiction to identify and prosecute corruption—civilly or criminally.

20 Press Release, Stop Public Corruption, Anticorruption Reward and Whistleblower Programs (May 9, 2017), (noting that programs expire on August 1, 2017).

21 *Id.*

22 Division of Criminal Justice, Corruption and Government Fraud Bureau, New Jersey Attorney General’s Office, (information received through tipline is confidential). The office also has an online confidential form to report any type of crime. Confidential Crime Tip Reporting Form, New Jersey Attorney General’s Office.

23 *Ethics and Public Integrity*, Illinois Attorney General’s Office.

24 Model Ethics Ordinance, Illinois Attorney General’s Office.

ANTICORRUPTION ENFORCEMENT

In *Corruption and Government: Causes, Consequences, and Reform*, Susan Rose-Ackerman writes “[t]he deterrence of criminal behavior depends on the probability of detection and punishment and on the penalties imposed—both those imposed by the legal system and more subtle costs such as loss of reputations or shame.”²⁵ If officials who know the ethical rules and criminal laws forbidding corrupt behavior nonetheless choose to violate the public trust, state attorneys general can—within the limits of their jurisdiction—investigate and prosecute them. These prosecutions can serve to properly punish violations of the public trust, compensate the loss of taxpayer funds through fines and/or restitution, and deter other would-be corrupt officials from making similar decisions.

Criminal Prosecutions

In states where the attorney general’s office has jurisdiction over criminal offenses, it can be argued that its prosecutors are particularly suited to investigate and prosecute corruption. Like federal prosecutors, prosecutors in an attorney general’s office may be able to devote more resources to proactive, long-term, complex investigations and prosecutions than can local prosecutors who have jurisdiction over every crime—large or small—in their city or county, and may, as a result, have to focus primarily on reactive prosecutions. Attorney general office prosecutors may also be less likely than local prosecutors to be entrenched in local politics—and thus more likely perceived to be apolitical when they investigate and prosecute corrupt local politicians.²⁶ But unlike federal prosecutors, attorney general’s office prosecutors are not subject to federalism arguments—such as those animating some of the reasoning in the Supreme Court’s 2016 *McDonnell* opinion²⁷—and have state statutes at their disposal.²⁸ They may also be more

25 Susan Rose-Ackerman, *CORRUPTION AND GOVERNMENT: CAUSES, CONSEQUENCES, AND REFORM* 52 (1999).

26 In some states, attorneys general will take over investigations if local prosecutors state they have a conflict of interest. See, e.g., *Amemiya v. Sapienza*, 63 Haw. 424, 629 P.2d 1126 (Haw. 1981); Idaho Code § 67-1401.

27 *McDonnell v. United States*, 136 S. Ct. 2355, 2373 (2016). The Supreme Court has generally rejected federalism arguments in federal prosecutions of corrupt state officials. See, e.g., *Evans v. United States*, 504 U.S. 255, 293-94 (1992) (Thomas, J., dissenting). Chief Justice Roberts was joined by a unanimous Court, however, when he narrowly construed “official act” in an effort to prevent the federal government from “setting standards ‘of good government for local and state officials.’” *McDonnell*, 136 S. Ct. at 2373 (quoting *McNally v. United States*, 483 U.S. 350, 360 (1987)).

28 While federal prosecutors can avail themselves of certain state statutes by alleging them as racketeering predicates, RICO prosecutions require authorization from the Organized Crime

attuned to local concerns, and less likely to be perceived as imposing the values of a distant federal government on local politicians.

Dedicated Units

Some attorney generals' offices have chosen to focus on corruption by creating and/or sustaining special units²⁹ that either focus exclusively on investigating and prosecuting public corruption (often called public integrity, public corruption, or government fraud units) or include public corruption offense among the generally white collar and/or complex cases that they investigate and prosecute (often called special prosecutions units).³⁰

It is worth noting, however, that offices do not necessarily require a designated corruption unit to bring important corruption cases. For example, in 2016, the Hawaii Attorney General's Office prosecuted a mayor for misusing his county-issued credit card to purchase large amounts of alcohol³¹ after the local prosecuting attorney determined he had a conflict of interest.³² While that office is devoting additional resources to public corruption, given its size, it is unlikely to be able to support a large, stand-alone corruption unit.

In New Jersey, the attorney general's Corruption and Government Fraud Bureau prosecutes public corruption.³³ It is the largest attorney general office corruption unit, with sixteen prosecutors and in-house detectives and analysts who help investigate cases. The Bureau handles all bribery, graft, official misconduct, and theft of public resources cases that come to the attorney general's office,

and Gang Section in Washington, D.C.; if that is obtained, federal prosecutors must prove, among other things, a racketeering enterprise and the defendant's commission of two distinct racketeering acts—elements that may not be present in every local or state corruption case.

29 Depending on the office, these specialized components might be called divisions, sections, units, or bureaus. I will generally refer to them generically as "units."

30 While outside the scope of this chapter, there is a perennial debate about whether public corruption prosecutions are more appropriately handled by state or federal prosecutors. In 2016, the former District of Columbia Attorney General and former U.S. Attorney for the District of Columbia argued the point in the editorial pages of *The Washington Post*. See Irvin Nathan, *Let DC's Elected Attorney General Prosecute D.C. Crimes*, WASH. POST (FEB. 12, 2016); Ronald C. Machen Jr., *Public Corruption Should be Investigated by the Feds*, WASH. POST (Feb. 26, 2016).

31 See, e.g., John Burnett, *PCard Used to Purchase Large Amount of Alcohol*, HAWAII TRIBUNE HERALD (Sep. 11, 2016), <http://hawaiitribune-herald.com/news/local-news/pcard-used-purchase-large-amount-alcohol>. The mayor, Billy Kenoi, was acquitted.

32 Letter from Mitchell D. Roth, Prosecuting Attorney, County of Hawaii, to Attorney General Douglas S. Chin (Apr. 6, 2015).

33 Information in this section that is not otherwise cited is from Anthony Picione, the Chief of the New Jersey Attorney General's Office Corruption and Government Fraud Bureau.

along with some forms of police and correction officer misconduct. After a case is accepted, it is usually assigned to both a Bureau detective and a Bureau prosecutor, and prosecutors play an active role in the investigation. In cases where the attorney general is recused due to a conflict of interest, the first assistant attorney general will usually serve as acting attorney general on the case.

The Corruption and Government Fraud Bureau has successfully prosecuted a multi-defendant, million dollar “pay-to-play” scheme where prohibited corporate political contributions were illegally funneled through employees;³⁴ brought charges against the founder of a special needs school for misappropriating over \$630,000 in public tuition funds;³⁵ and charged the mayor of Paterson, New Jersey, along with three public works supervisors, with using on-duty city workers to renovate warehouses leased by the mayor’s relatives.³⁶

The New York Attorney General’s Public Integrity Bureau was formed in 2001 with three prosecutors based in Manhattan.³⁷ In the beginning, the Bureau primarily brought civil cases; it is now focusing more on criminal prosecutions. It has grown to include fourteen prosecutors, analysts, investigators, and auditors at offices in Manhattan, Albany, Syracuse, and Buffalo. These offices cover each region of the state, and are designed to “give New Yorkers a place to go to report complaints of government corruption without the fear of local politics influencing the outcome.”³⁸

While the New York Attorney General’s Office does not have general criminal jurisdiction, it does have the power to initiate civil and criminal investigations itself (criminal investigations require a referral from another agency to look into a specific issue) and to accept investigations that were started by another agency. If a civil investigation reveals evidence of a possible criminal violation, the office can request a referral from the appropriate state agency to consider the case for criminal prosecution; if that referral is received, the Bureau can then prosecute

34 Press Release, New Jersey Attorney General’s Office, Two More Former Birdsall Executives Please Guilty and Face Jail Terms for Evading Pay-to-Play Law with Illegal Political Contributions (Apr. 12, 2017).

35 Press Release, New Jersey Attorney General’s Office, Founder of Special Needs School in Lakewood, N.J., Indicted for Allegedly Stealing \$630,000 in Public Tuition Funds (Mar. 29, 2017).

36 Press Release, New Jersey Attorney General’s Office, Paterson Mayor Joey Torres and 3 Public Works Supervisors Charged With Official Misconduct for Allegedly Using On-Duty City Workers to Perform Renovations at Warehouse Leased by Relatives of Mayor (Mar. 7, 2017).

37 Information in this section that is not otherwise cited is from Dan Cort, the current Public Integrity Bureau Chief, or Mark Peters, the Bureau’s first chief and the current Commissioner of the New York City Department of Investigation.

38 Public Integrity Bureau, New York Attorney General’s Office.

in a criminal case any crimes that “arise out of” the investigation. If investigating a matter civilly, the Bureau can use the office’s subpoena power to obtain records and interviews. As no grand jury subpoena is required, the Bureau is able to share the information it obtains with other civil enforcers or to use the data in a report about the office’s findings.³⁹

There are mechanisms for the New York Attorney General to recuse himself and appoint an “independent counsel” if there is a conflict of interest or the appearance of a conflict or impropriety. In a 2010 investigation into the state’s then-governor, the attorney general recused himself and appointed an independent counsel (a well-respected former chief judge of the New York Court of Appeals) to serve as, in essence, the acting attorney general for the investigation.⁴⁰

The New York Public Integrity Bureau has successfully prosecuted a judge who provided lenient treatment to a defendant in exchange for sex⁴¹ and a Department of Education vocational counselor who participated in a scheme to steal nearly \$2.4 million of state money;⁴² the office has also brought charges against a former and a current state senator for allegedly using political committee funds to improperly pay the wife of the senator and a staff member of the former senator, and then failing to properly report those expenditures in filings with the Board of Elections.⁴³

The Michigan Attorney General created a Public Integrity Unit in 2011 in an effort to protect taxpayer dollars, restore public trust in government, and

39 Such reports were more common under previous administrations, and were presumably somewhat similar to those frequently issued by the New York City Department of Investigation—whose Commissioner was the first Bureau Chief. See New York City Department of Investigation Public Reports. One such report is cited in the next footnote.

40 Danny Hakim, *Cuomo Hands Paterson Case to Ex-Judge*, NEW YORK TIMES (Mar. 11, 2010). The judge, Judith Kaye, released a 53-page report of the investigation after concluding that no charges could be brought. See Nicholas Confessore, *Ex-Judge Recommends No Charges Against Paterson*, NEW YORK TIMES (July 28, 2010); Judith S. Kaye, Report of Investigation into the Response by the New York State Police and Others to a Domestic Incident Involving David W. Johnson, an Aide to the Governor (July 28, 2010).

41 Press Release, New York Attorney General’s Office, A.G. Schneiderman Announces Jail Time, Fine For Former Village Justice Who Traded Lenient Treatment In Exchange For Sexual Favors (May 2, 2017).

42 Press Release, New York Attorney General’s Office, A.G. Schneiderman Announces Sentencing of NYS Employee For Stealing Nearly \$2.4M in State Funds through Bribery Scheme, (May 1, 2017).

43 Press Release, New York Attorney General’s Office, Attorney General Schneiderman Announces Felony Indictment Of State Senator Robert Ort and Former State Senator George Maziarz (Mar. 23, 2017).

investigate and prosecute corruption in state and local government.⁴⁴ Since its inception, the Public Integrity Unit has successfully prosecuted a number of public officials, including corrupt building inspectors⁴⁵ a court officer charged with embezzlement,⁴⁶ As a member of the Detroit Area Public Corruption Task Force, that office also secured the forfeiture in state court of pensions held by eight Detroit-area principals who were convicted in federal court of a \$2.7 million kickback scheme.⁴⁷

Special Prosecutions Units

The Special Prosecutions Unit at the Alabama Attorney General's Office is one of the newer units focusing on corruption.⁴⁸ The state's attorney general established it in 2015 in an effort to prioritize prosecuting corruption. He recruited a prosecutor with experience investigating and trying both state and federal corruption cases to serve as its chief, and approved hiring outside counsel when it was necessary to properly staff an early investigation. As the unit grew, its chief hired in-unit investigators who report directly to him and selected prosecutors with a variety of backgrounds to staff the unit. The investigators and prosecutors work the case together from its inception through the trial.

The Alabama Special Prosecutions Unit has brought several high-profile, complex cases during its tenure, including one against the Alabama Speaker of the House, who was convicted at trial in 2016. The speaker was sentenced to four years in prison⁴⁹ after a jury found him guilty of improperly soliciting benefits from lobbyists and voting in favor of a measure that would help a company for which he served as a consultant.⁵⁰ Citing a conflict of interest, the attorney general recused himself for the investigation and trial, and the Special Prosecutions Unit reported to an appointed acting attorney general.⁵¹ In 2017, the Unit filed misde-

44 Public Integrity, State of Michigan Attorney General.

45 Press Release, State of Michigan Attorney General, Schuette Announces Bribery Convictions Against Two Corrupt City of Detroit Inspectors (Feb. 25, 2014).

46 Press Release, State of Michigan Attorney General, Schuette Charges Former 36th District Court Officer with Four Felony Counts of Embezzlement by a Public Official (Feb. 27, 2018).

47 Press Release, State of Michigan Attorney General, Schuette Secures Forfeiture of State-Funded Pensions from Eight Detroit Principals Convicted of Bribery (May 1, 2017).

48 Information in this section that is not otherwise cited is from Matt Hart, the Chief of the Alabama Attorney General's Office Special Prosecutions Unit.

49 Campbell Robertson, *Michael Hubbard, Former Alabama Speaker, Sentenced to 4 Years in Prison*, NEW YORK TIMES (July 8, 2016).

50 Alan Blinder, *Michael Hubbard, Alabama House Speaker, is Convicted on 12 Felony Ethics Charges*, NEW YORK TIMES (June 10, 2016).

51 *Id.* A decision by an attorney general to recuse himself where there is a colorable appearance

meanor campaign violation charges against the state's governor who pled guilty to the charges and resigned from office on the same day.⁵²

The Georgia Attorney General's Office's Special Prosecutions Unit investigates and prosecutes fraud and corruption involving the state's departments and agencies, along with identity, mortgage, and securities fraud cases.⁵³ The Unit has existed for over twenty years, and is currently staffed by five prosecutors (including its chief).⁵⁴ Unlike most of the other attorney general's offices' corruption units, it has no on-staff investigators. Cases are referred to the Unit from other state departments and agencies (including inspectors general), whistleblowers, and even media outlets. The Unit has the ability to subpoena witnesses and documents and take depositions, and it can bring both civil and criminal cases.

The Georgia Special Prosecutions Unit faces some limitations on its power to investigate politicians. Under Georgia state law, while the General Assembly is convened from January to March, the Unit's investigation of an assemblymember must be suspended. While the Georgia Bureau of Investigation—the law enforcement partner with whom the Unit typically works such cases—is not explicitly subject to the same requirements, it, too, will generally suspend any investigative efforts during this time.

The Georgia Special Prosecutions Unit brought charges against a former high-ranking Georgia Bureau of Investigation agent who allegedly made hundreds of personal purchases with her state-issued credit card and covered up those purchases.⁵⁵ The unit also charged a state judge with stealing over \$433,000 in cash over seven years. The judge allegedly used her position as a probate judge to steal funds that had been provided to satisfy various violations, obtain licenses, including hunting and marriage licenses, and for court filing fees. She was charged with two racketeering counts and over eighty separate counts of theft by taking.⁵⁶

The New Mexico Attorney General's Office's Special Investigations Division investigates and prosecutes offenses ranging from child abuse to homicide

of impropriety or an actual or perceived conflict of interest can be a very wise one.

52 Margaret Hartmann, *Alabama Governor Resigns Over Sex Scandal, Pleads Guilty to Misdemeanors*, NEW YORK MAG. (Apr. 11, 2017).

53 Organization of the Office, Georgia Attorney General's Office website.

54 Information in this section that is not otherwise cited is from David McLaughlin, the Chief of the Georgia Attorney General's Office Special Prosecutions Unit.

55 Mark Winne, WSB-TV Atlanta, *Indictment: Former GBI Agent spent more than \$60K on illegal purchases*, Sept. 28, 2017.

56 *State v. O'Brien*, Indictment (Super. Ct. Atkinson Cty, April 2018).

to government corruption and fraud.⁵⁷ The Division successfully prosecuted the New Mexico Secretary of State for embezzlement, money laundering, and campaign finance violations,⁵⁸ and filed charges against a former New Mexico State Senator who alleged pushed through legislation to sell a state-owned building for which he expected to pocket tens of thousands of (undisclosed) dollars as commission.⁵⁹ The attorney general's office also charged the former head of the New Mexico Martin Luther King Jr. Commission and two others with submitting falsified purchase order requests that sought reimbursement for spending related to a leadership program, approving those requests, and facilitating the transfer of the funds.⁶⁰

In the Utah Attorney General's Office, the unit that handles public corruption, money laundering, and other white-collar cases is called the Special Investigations & Public Corruption Unit.⁶¹ That unit has convicted a county treasurer of embezzlement, for which she was required to pay over \$35,000 in restitution;⁶² and filed charges against sheriff's office employees in two separate counties alleging criminal misconduct.⁶³

Task Forces

A task force—that is, people who “come together to carry out mission or project or for problem solving that needs the effort from different approaches⁶⁴—can provide an attorney general's office with additional resources and expertise to fight corruption.⁶⁵ Before joining a task force, however, an office must accept the sacrifice of some decision-making power over the cases a task force

57 File a Complaint, New Mexico Attorney General's Office, <http://www.nmag.gov/file-a-complaint.aspx>.

58 Attorney General Balderas Statement Regarding Dianna Duran (Oct. 23, 2015),

59 *Former New Mexico State Senator Phil Griego to Face Trial in Fraud Case*, KRQE NEWS 13 (July 8, 2016).

60 Susan Montoya Bryan, Grand jury indicts former head of New Mexico MLK commission, SANTA FE NEW MEXICAN, Jan. 13, 2018.

61 Special Investigations & Public Corruption Unit, Utah Attorney General's Office,

62 Press Release, State of Utah Attorney General, Former Kane County Treasurer Pleads Guilty to Misuse of Public Money (May 4, 2017).

63 Press Release, State of Utah Attorney General, Utah Attorney General's Office Files San Juan County Sheriff's Office Case (May 12, 2017); Press Release, State of Utah Attorney General, Utah Attorney General's Office Files Daggett County Jail Case (May 5, 2017).

64 *Task force*, BLACK'S LAW DICTIONARY (Free Online Legal Dictionary, 2d ed.).

65 Information not otherwise cited in this section is from *Strategies for Increasing and Improving Public Corruption Prosecutions: The Task Force Model*, Center for the Advancement of Public Integrity, Columbia Law School (2016).

investigates, and the potential for greater discovery obligations in task force cases it charges as information known by other task force members may be imputed to the prosecutors for discovery, *Giglio*, and *Brady* purposes.⁶⁶ Those burdens aside, task forces have provided a good model for prosecutors and law enforcement to efficiently and thoughtfully work together across jurisdictional lines. Moreover, the mere existence of a public corruption task force may have a deterrent effect on corruption.

The Detroit Area Public Corruption Task Force includes the Michigan Attorney General’s Public Corruption Unit, along with several federal, state, and local investigative bodies and federal prosecutors.⁶⁷ The task force was formed, according to the Federal Bureau of Investigation Special Agent in Charge who announced it, to “leverage the best assets” of the state and federal investigators and prosecutors “to better focus on the problem” of corruption in greater Detroit.⁶⁸ This task force investigated some of the cases cited above.

The New York State Joint Task Force on Public Integrity is a partnership between the New York Attorney General’s Office and the New York State Comptroller’s Office, which is designed to allow the comptroller to provide information about audits to the attorney general.⁶⁹ It was formed by the attorney general and comptroller by Executive Order.⁷⁰ Other law enforcement entities—such as the New York City Department of Investigation and the New York State Department of Financial Services—also partner with this task force. Cases brought as a result of the task force include the conviction of the former executive director of the Metropolitan Council on Jewish Poverty—who, with his coconspirators, embezzled approximately \$9 million from the taxpayer-funded nonprofit⁷¹—and prosecutions of individuals who stole pension benefits.⁷²

66 See Memorandum from the Deputy Attorney General, Guidance for Prosecutors Regarding Criminal Discovery (Jan. 4, 2010), see also *Brady v. Maryland*, 373 U.S. 83 (1963), and *Giglio v. United States*, 405 U.S. 150 (1972).

67 Sarah Cwiek, FBI launches anti-public corruption task force in Detroit, *Michigan Radio* (Mar. 1, 2012).

68 *Detroit FBI Announces Multi-Agency Task Force to Combat Corruption*, *HUFFPOST* (Mar. 2, 2012).

69 Nicholas Confessore, *Accord with Comptroller will Help Attorney General Pursue Corruption Cases*, *NEW YORK TIMES* (May 22, 2011).

70 Exec. Order on the Establishment of the Joint Task Force on Public Integrity (May 17, 2011).

71 Press Release, Office of the Attorney General of New York, A.G. Schneiderman & Comptroller DiNapoli Announce Sentencing of Former Met Council Director (May 11, 2015).

72 See, e.g., Press Release, Office of the Attorney General of New York A.G. Schneiderman & Comptroller DiNapoli Announce Conviction and Sentencing of Florida Man for Theft of Over \$180K in YS Pension Benefits (Dec. 2, 2016).

CIVIL LAWSUITS

Even attorneys general with limited or no criminal jurisdiction often retain the ability bring civil lawsuits on behalf of the state. Some attorneys general have used this power to obtain multi-million dollar civil judgments against corrupt officials.⁷³

One of the best examples of using civil remedies to fight corruption comes to us from the Indiana Attorney General's Office, and is sometimes referred to as the East Chicago Racketeering Case.⁷⁴ The primary defendants in that case were Robert A. Pastrick (the mayor of East Chicago from 1971 to 2003), James Harold Fife, III (Pastrick's Special Assistant), and Frank Kollintzas (a city councilman from 1979 to 2003). As the federal district judge who decided the case found, "Pastrick and his associates . . . drew little distinction between government affairs, political affairs, and personal affairs," and operated East Chicago as if it was their own fiefdom.⁷⁵ They used a "Street Improvement Program" to woo voters by inducing contractors to do millions of dollars of work on sidewalks and parking lots of both public and private property not long before an election—without obtaining proper authorization to do so.⁷⁶ They then sought the issuance of city bonds to help pay for their "Sidewalks for Votes" scheme.⁷⁷ Pastrick also siphoned off funds that were received from a casino.⁷⁸ Together, these schemes resulted in a general fund deficit of \$17 million, which was revealed when Pastrick left office in 2003. It also resulted in blight: as the judge found that East Chicago's "streets and sewers are in desperate need of repair or replacement, and abandoned buildings are prevalent on the landscape but cannot be demolished due to lack of funding."⁷⁹ After concluding that East Chicago proved it sustained nearly \$30 million work of damages, applying prejudgment interest, and—as authorized by RICO—trebling the damages, the judge entered a judgment against the three defendants of over \$100 million.⁸⁰

73 For an exploration of the power of civil remedies with an international emphasis, see Emile van der Does de Willebois & Jean-Pierre Brun, *Using Civil Remedies in Corruption and Asset Recovery Cases*, 45 Case W. Res. J. Int'l L. 615 (2012).

74 *Indiana ex rel. Zoeller v. Pastrick*, 696 F. Supp. 2d 970 (N.D. Ind. 2010).

75 *Id.* at 975.

76 *Id.* at 976.

77 *Id.* at 976-77.

78 *Id.* at 978.

79 *Id.*

80 *Id.* at 990.

Separate civil cases can also be brought by attorneys general offices after a criminal prosecution brought by another office. In the 1990s, the West Virginia Attorney General's Office filed a civil racketeering lawsuit against Arch Moore, the state's former governor, who accepted cash contributions in violation of state election law and spent the money on personal, rather than campaign, expenses, and solicited over half a million dollars from the owner of a coal mining company to run interference with a state environmental agency.⁸¹ The former governor—who had served thirty-three months incarceration in federal prison on related criminal charges—eventually settled with the State for \$750,000.⁸² More recently, in a case referenced earlier in this chapter, the Michigan Attorney General's Office stripped the state-funded pensions of eight Detroit principals who were prosecuted in federal court for a scheme that cheated students out of nearly \$3 million worth of school supplies.⁸³

PARALLEL PROCEEDINGS

In some cases, the same attorney general's office can bring parallel criminal and civil actions against the same defendants.⁸⁴ The Massachusetts Attorney General's Office did so after woman was killed when a piece of the ceiling suspended over a tunnel in the “Big Dig” fell on her car.⁸⁵ The parallel proceedings allowed the office to pursue an involuntary manslaughter case against one company⁸⁶ and a civil case against several other companies.⁸⁷ While bringing both criminal and

81 *West Virginia v. Moore*, 895 F. Supp. 864 (S.D.W. Va. 1995).

82 *Lawyer Disc. Bd. v. Moore*, 214 W. Va. 780, 783 (S. Ct. App. 2003).

83 Press Release, State of Michigan Attorney General, Schuette Secures Forfeiture of State-Funded Pensions from Eight Detroit Principals Convicted of Bribery (May 1, 2017). *See also* Tresa Baldas, *Ex-DPS Official at Center of Kickback Scheme Gets 3 Years in Prison*, DETROIT FREE PRESS (Sep. 6, 2016).

84 The Supreme Court has approved of such parallel proceedings. *United States v. Kordel*, 397 U.S. 1, 10 (1970) (“It would stultify enforcement of federal law to require a government agency . . . invariably to choose either to forego recommendation of a criminal prosecution once it seeks civil relief, or to defer civil proceedings pending the outcome of a criminal trial.”). State courts have agreed. *See, e.g., State ex rel. S.A.*, 37 P.3d 1172, 1177 (Ct. App. Ut. 2001).

85 *See Commonwealth v. Powers Fasteners, Inc.*, No. 07-10802, 2007 WL 5022411, *1 (Mass. Super. Dec. 12, 2007).

86 The Indictment was docketed SUCR2007-10802. Materials about the case, including a deferred prosecution agreement, are available on the Attorney General's website.

87 *Commonwealth et al v. Bechtel Corp. et al*, No. 06-4933-BLS1, 24 Mass. L. Rep. 97 (Mass.

civil actions against the same defendant for the same conduct may well result in defense motions arguing that the attorney general has a conflict of interest, courts ruled against such a motion in the “Big Dig” case, concluding that because the attorney general represents the people of the state in both civil and criminal cases, there is no conflict.⁸⁸ Care should be taken not to unfairly harness the civil investigative techniques to, for example, compel a statement by a target in order to use it in a criminal case against him⁸⁹ or to violate grand jury secrecy rules by sharing materials obtained through that process with civil investigators or prosecutors without obtaining court leave to do so.⁹⁰

State attorneys general have an important role to play in the fight against corruption. Many attorney general offices encourage ethical behavior and deter and punish corruption by training government officials about ethical rules that govern them; informing the public of those rules and ways to report corruption; and/or prosecuting or filing civil actions against corrupt officials. By harnessing the powers of specialized units and/or task forces, some attorney general’s offices hone the talents of their own prosecutors and investigators and leverage the expertise of other agencies that are also doing this critical work.

Super. Ct. May 21, 2008).

⁸⁸ *Powers Fasteners, Inc.*, No. 07-10802, 2007 WL 5022411, at *3.

⁸⁹ Courts have held that “[a] government official must not ‘affirmatively mislead’ the subject of parallel civil and criminal investigations into believing the investigation is exclusively civil in nature and will not lead to criminal charges” and use a civil investigation solely to obtain evidence for a criminal case. *United States v. Stringer*, 521 F.3d 1189, 1198 (9th Cir. 2008) (internal citations omitted); see also *United States v. Scrushy*, 366 F. Supp. 2d 1134 (N.D. Ala. 2005).

⁹⁰ *Accord* Memorandum from the Attorney General to All United States Attorneys, et al. (Jan. 30, 2012).