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Corruption control in Argentina : problems faced by federal courts in Buenos Aires

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**CORRUPTION CONTROL IN ARGENTINA
PROBLEMS FACED BY FEDERAL COURTS IN BUENOS AIRES**

**A Thesis
Presented to
The Faculty of the Department of
Administration of Justice
San José State University**

**In Partial Fulfillment
of the Requirements for the Degree
Master of Science**

**By
Santiago Ottaviano**

December, 1997

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ABSTRACT

CORRUPTION CONTROL IN ARGENTINA PROBLEMS FACED BY FEDERAL COURTS IN BUENOS AIRES

by Santiago Ottaviano

This thesis tries to assess the problems faced by the federal criminal investigative courts in Buenos Aires, Argentina, as agencies that investigate corruption in the national government. It examines general theories about corruption, corruption control, and white-collar crime; and discusses the structure of Argentina's federal justice system describing its activities and operation.

The author presents a set of potential problems and hypothesizes that they have an important negative impact on the investigation of corruption cases by federal courts in Buenos Aires. A survey conducted to test whether federal investigative judges perceive the impact of these problems shows that they are concerned about most of these difficulties. However, more research is necessary to determine the extent to which these problems affect the studied courts.

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Introduction

Corruption is a complex phenomenon that has been studied from the perspective of disciplines as diverse as political science, public administration, economics, public policy and sociology. Scholars interested in developmental issues, criminology and business ethics, among others, have written on the topic.

The present work is an attempt to study the issue as a criminal justice concern. It deals with the role of the criminal justice system in controlling corruption, and with some of the problems that such role poses. More specifically, the present work tries to assess the problems faced by the federal criminal "instructing" courts in Buenos Aires, the capital of Argentina, as agencies that investigate and punish corruption in the national government. The focus then, is on a particular type of court in a system that also includes other agencies.

The theoretical foundations of this thesis derive from research efforts undertaken by scholars who have studied corruption in many different settings around the world, including Argentina. Such groundwork was complemented with an analysis of the structure of Argentina's federal criminal justice system. Using these elements the author identified potential problems, and developed hypotheses concerning the impact that such problems might have on the targeted courts when they act as corruption-control agencies. Finally, these hypotheses were tested through a survey that gathered the perceptions of the judges in charge of the instructing courts.

The thesis is organized in eight chapters. Chapter 1 addresses the cultural problems involved in studying Argentina from theoretical frameworks developed mainly by European and North American researchers. Next, a summary is presented of the debate around the concept of corruption, and a specific definition of the term is offered. In a similar way, the last section of chapter 1 discusses theories about causes of corruption, and ends with a proposition about the multicausal nature of the phenomenon.

Chapter 2 contains a brief review of Argentina's historical context, focusing on the last ten years, and explains how corruption in the national government has become a pivotal concern in that country. This chapter also includes an explanation of the criminal behaviors described in Argentina's penal code that fits the definition of corruption proposed in chapter 1.

Chapter 3 discusses general strategies for controlling corruption and their relationship with the causes of the phenomenon. This chapter also reviews a comprehensive strategy of corruption control developed by Klitgaard (1988). Using his theoretical framework, the generic role of criminal justice systems in controlling corruption is explained and characterized as a secondary, individual-oriented one.

Chapter 4 explains the structure and operations of the federal criminal justice system in Argentina, focusing on investigative courts in Buenos Aires. This description is considered essential for understanding both the specific role of these courts in controlling corruption, and the problems they face in performing such a role.

Chapter 5 presents and discusses in depth the problems faced by the federal investigative courts, and states many hypotheses about their impact.

Chapter 6 contains the methodological explanations related to the survey research undertaken to explore whether or not federal investigative judges are concerned about the problems discussed in Chapter 5.

Finally, chapters 7 and 8 include respectively the presentation of the findings and the conclusions of the present work.

Chapter 1: Fundamental Notions

Studying corruption means analyzing a controversial phenomenon. There is no accepted scientific “truth” about corruption. Scholars are still debating basic issues like its definition and its causes. This lack of agreement has one direct outcome: Researchers interested in corruption need to be especially careful in explaining the concept. In fact, most works about corruption, no matter the aspect of the topic they consider, devote entire chapters or sections to the explanation of these fundamental issues. This thesis is not the exception.

The Cultural Problem

The present work is primarily concerned with certain problems related to corruption control by criminal courts in Argentina. For that reason, before starting the analysis of the concepts that will constitute the basic foundations of this study, something has to be said about the many cultural problems involved in undertaking this research effort based on theoretical approaches mainly developed by European and North American researchers. In fact, political corruption seems to be culturally determined. Who can say that a given act is “really” corrupt? Maybe it is corrupt in one culture but not in others. Even when an act is considered corrupt by the standards of two different cultures, it is possible to find different opinions about its seriousness.

There are certain possibilities of “western bias” in defining and therefore trying to control corruption, but fortunately, contemporary authors seem to be perfectly aware of this situation. However, the growing emphasis on cultural diversity may have undesirable effects. According to Leavitt (1990), the development of American criminology can be characterized by a “localism” that has precluded the evolution of a universal crime theory. The factors contributing to this emphasis on understanding America’s own societal circumstances are many, but one of the most important came from the relativists’ critique, which was a powerful movement among the social sciences at the beginning of the 19th century. Since the development of relativism has taken place outside of criminology, Leavitt thinks that the result in this field has been a relativism “commonly oversimplified, unspecified, and even contradictory in expression” (page 25). The general result has been for the discipline to refute cross-cultural analysis.

Sociocultural phenomena contain diversities and complexities that must not be underestimated, but they do not eliminate comparability and generalization. In many ways, any kind of knowledge is biased, but accepting this proposition to its last consequences means rejecting every form of scientific knowledge.

This issue is laterally connected with certain topics regarding gender and crime: Are the existent general theories of crime useful to explain female criminality? This is known as the “Generalizability” Problem in building theories of gender and crime. (Daly and Chesney-Lind, 1988). In the same way it is possible to ask: Are western theories about corruption useful to explain the phenomenon in eastern societies? Are corruption

in developing countries and corruption in developed nations comparable? Are the general strategies designed to control corruption useful in such different settings? If extreme relativist theses are rejected, but the existent cultural differences are taken into account the answer would be yes.

There is also another important point to be considered, specifically related to the country on which the present work focuses. Argentina is, in many important aspects, a western nation. The cultural values of this country have been historically shaped mainly by European colonizers, immigrants, and their descendants. Unlike most Latin American countries, Argentina has relatively few "mestizos" (persons of mixed European and Native American ancestry), and about 85% of its population is of European origin. It is a nation with a rich Spanish heritage, strongly influenced since the 19th century by European, notably Italian, immigration. Only in folk art has there been significant influence from Native American cultures.

With these ideas in mind, it will be assumed that the basic theoretical frameworks developed to explain political corruption by North American and European researchers are useful foundations for the analysis of the Argentine situation.

What Is Corruption?

Any attempt to analyze the concept of corruption must contend with the fact that in English and other languages the word corruption has many different meanings and connotations (Friedrich, 1989). The Oxford English Dictionary (as cited by

Heidenheimer, Johnston and Le Vine, 1989) categorizes nine distinct meanings of the word corruption in three groups:

1. Physical -- for example, "the destruction or spoiling of anything especially by disintegration or by decomposition with its attendant unwholesomeness and loathsomeness; putrefaction."
2. Moral -- . . . "a making or becoming morally corrupt; the fact or condition of being corrupt; moral deterioration or decay; depravity."
3. The perversion of anything from an original state of purity -- for example, "the perversion of an institution, custom and so forth from its primitive purity; an instance of this perversion." (p. 8)

All the categories share a basic common element. The Indo-European root of the word corruption is "reut", which means "snatch away". The implicit meaning in the verb under analysis is the idea of depriving something of an element that is essential to its nature in such a way that the form of the object is no longer the same (Grondona, 1993). The word "form" is used here in the sense that Aristotle gave it in his theory of the substance, as the essence, or unchanging characteristic element in an object (Microsoft, 1996). The form is what makes things what they are, and not something different. The original meaning of the term corruption implies the idea of denaturalization.

When examining the concept of corruption from a historical perspective, the ideas developed by Aristotle are commonplace. He, following Plato, defined three kinds of constitution: kingship, aristocracy and republic; and their respective deviations or corruptions: tyranny, oligarchy and democracy. These corrupted regimes instead of being guided by the law -- which should represent the public interest -- tend to serve the interest of the rulers (Friedrich, 1989).

There are also a variety of definitions employed by contemporary social scientists interested in political corruption. Heidenheimer, Johnston and Le Vine (1989) have identified usages that seek to define this concept in terms of one of three kinds of basic models: public-office-centered, market-centered, and public interest-centered definitions.

The first group relate their definitions of corruption to concepts concerning the duties of the public office. For example, Nye (1989) defined corruption as the

behavior which deviates from the normal duties of a public role because of private-regarding, pecuniary or status gains; or violates rules against the exercise of certain types of private-regarding influence. (page 966)

The second group develop definitions that are primarily related to demand, supply, and exchange concepts derived from economic theory. A good example of this type of definitions was provided by Van Klaveren (1989), who stated that

a corrupt civil servant regards his public office as a business, the income of which he will . . . seek to maximize. The office then becomes a "maximizing unit." The size of his income depends . . . upon the market situation and his talents for finding the point of maximal gain on the public's demand curve. (page 26)

The third group understand corruption more with regard to the concept of the public interest, a notion that derives from the Aristotle's' views discussed above. For instance, Friedrich (1989) said that

the pattern of corruption can be said to exist whenever a powerholder who is charged with doing certain things . . . is by monetary or other rewards not legally provided for, induced to take actions which favor whoever provides the rewards and thereby does damage to the public and its interests. (page 18)

Scott (1972) suggested two other bases for defining corruption: legality and public opinion. However, there are many problems with definitions based on these

notions. Legality would be a key component in understanding political corruption, but that would imply that only illegal practices can be corrupt (de Leon, 1993). This view is currently rejected by many scholars who perceive some forms of unethical behavior as corrupt acts (Simon & Eitzen, 1993). Public opinion poses the problems of unpredictability and rapid change. So, it does not seem to be a very useful concept in defining political corruption with the necessary amount of objectivity that is required for scientific purposes (de Leon, 1993).

Corruption, like many other forms of behavior, is an elusive and complex phenomenon (Theobald, 1990) that has been studied from the perspective of disciplines as diverse as political science, public administration, economics, public policy, and sociology. Researchers interested in developmental issues, criminology and business ethics, among others, have written about the topic, and, to some degree, have added the definitional complexities of their fields to the existent confusion. The task of definition is not an easy one. In addition, the term corruption also seems to be inseparable from questions of public morality and morality in general, which have sometimes impeded objective analysis.

De Leon (1993), in an attempt to explain public sector corruption in the contemporary American federal system from the perspective of public policy research, tried to overcome the moral implications of the term under study defining it as

a cooperative form of unsanctioned, usually condemned policy influence for some type of significant personal gain, in which the currency could be economic, social, political, or ideological remuneration. (p. 25)

All the possible negative elements like deviate, harmful or damage to the public do not appear in this definition. They were replaced by a more descriptive than valorative notion: usually condemned. This would imply that corruption is not really a problem. In fact, this is not what the cited author thinks, but it seems that he preferred to leave the negative aspects of the phenomenon outside his definition.

However, a comprehensive, useful, and accurate definition of corruption should not leave aside its negative characteristics, for the following reasons: First, political corruption was found to be a problem in almost all the studies about the phenomenon, with the only exception of research efforts based on extreme functionalist approaches that are not consistent with most of the available data. Research studies performed in the United States of America, Latin America, Europe and Asia have shown that corruption is harmful because it wastes resources, distorts policy, reallocates resources to the rich and powerful intensifying and extending existing relations of exploitation and dependency, distorts energies of officials and citizens toward the socially unproductive seeking of corrupt rents, creates risks, induces unproductive preventive measures, distorts investments, breeds popular alienation and cynicism, reduces government capacity, and creates regime instability (Klitgaard, 1988; Ward, 1989; de Leon, 1993; Simon & Eitzen, 1993; Sobrino 1992; Bayley, 1989; Grondona, 1993). Second, the negative connotation of the word itself should not be underestimated. As it was explained when the original meaning of the term was discussed, all the known uses of the expression imply the idea of deprivation of an important positive element. Therefore, it would be better not to use

this word to define a phenomenon that is perceived as neutral. Third, it is important to note that the notion of damage to the public interest is at the same time a negative characterization of corruption, and an objective enough element if defined in terms of the previously mentioned findings in social science research.

Leaving aside its unnecessary neutrality, de Leon's (1993) definition has many positive aspects, like the emphasis on the many possible types of gains that a corrupted agent may seek and the idea that the corrupt act is not necessarily an illegal but an unsanctioned, usually condemned one. However, stating that corruption is always cooperative suggests the exclusion of important forms of corruption like extortion, which can be committed by single individuals. The same problem can be found in Friedrich's public-interest-centered definition, quoted above, in which he stated that corrupt behaviors "favor whoever provides the rewards" (1989, page 18).

In short, the definition of corruption proposed in this work includes some of the components developed by de Leon and the old but important notion of damage to the public interest. Public-office-centered definitions are only partially taken into account, getting from them the idea that only those acts that include the participation of a person in a public role, or, more specifically, the participation of a public officer, can be considered corrupt. On the other hand, the notion of deviation from the normal duties of a public role is rejected. By which standard can such deviation be measured? Maybe by the law, but then only illegal acts can be considered corrupt. Perhaps by certain moral rules, but then the definition of corruption becomes too vague, and probably biased.

Maybe by the harm that certain behaviors produce in public interests, but then it is better to use the latter concept in defining corruption. Finally, market-centered definitions are also discarded because they only provide explanations about the perceived causes of the phenomenon. Corruption is defined in this thesis as plain human behavior. Understanding the causes of such behavior is a different issue that will be discussed in the next section of this chapter.

For the purposes of this work, corruption occurs whenever a person in a public role, while seeking some type of significant personal gain which could be economic, social, political, or ideological in nature, commits a form of unsanctioned, usually condemned behavior that does damage to the public interests.

What Causes Corruption?

Numerous theories have been developed to explain the causes of corruption, and they can be classified in four groups. The first group of explanations emphasize individual responsibility, and perceive corrupt acts as the consequence of free-will decisions guided by a hedonistic tendency to maximize pleasure and minimize pain. The second group is formed by those theories in which political corruption is understood as an ingrained, systemic part of the political-economic processes. The third group includes explanations that find the causes of corrupt acts in the immediate environment of the individuals who commit them, like the family, the neighborhood, or the structure of the organization where corruption occurs. Finally, the fourth group includes theoretical

models that take into account two or more of the causes mentioned above (de Leon, 1993).

This classification system can be related to more general criminological theories about causes of crime, or, more specifically, about causes of white-collar criminality. There is a general agreement among criminologists that political corruption is a specific type of white-collar crime. Most criminological studies that analyze corruption are texts about white-collar crime that discuss the topic in a specific chapter or section (Albanese, 1995; Simon & Eitzen, 1993). In short, criminological theories define the causes of white-collar crime and apply these concepts to explain political corruption.

An example of a concept of white-collar criminality that rests on individual responsibility can be found in the work of Geis and Meier (as cited by Friedrichs, 1995). They used the term political white-collar crime to refer to illegal actions carried out by political officeholders in the context of their official duties.

The vast majority of experts in white-collar criminality find the causes of the phenomenon in the structure of the political-economic system. Of course there are important differences among theorists in this group about the processes by which corrupt behavior arises. However, they all share the notion that it is the political and/or economic structure in a given state (and not the individual) that generates the phenomenon. For instance, Simon and Eitzen (1993) developed the notion of elite deviance. This concept is based on the view of the social structure as dominated by a power elite of the largest corporations, the federal government, and the military, who are interrelated in numerous

ways and who have the greatest amounts of wealth, power, and often prestige. Political corruption is seen as a form of Elite Deviance through which members of the political elite obtain personal or political gain by using the governmental power illegally or unethically. It is perceived as a necessary consequence of the way in which the different groups in the power elite relate to one another.

The criminological theories that find the causes of white-collar crime in the immediate environment are usually known as positivistic theories (Albanese, 1995). An illustration of this approach is Edwin Sutherland's Differential Association theory (as cited by Albanese, 1995). He created the term "white-collar crime" and claimed that criminality is learned in the same way as one learns anything else: by association with those who approve of such illicit behavior and by isolation from those who perceive it unfavorable.

Finally, corrupt behavior has also been understood as the consequence of personal moral decisions and structural causes combined. For instance, De Leon (1993) developed a model of corruption in which he identified two principal components.

First, the decentralized nature of the . . . political-economic system provides both the incentives and the ambiguities -- the rewards and the opportunities -- that sustain and, at times, encourages corruption. Second, the individual, with a full set of mixed (occasionally inconsistent) motives, is the actual perpetrator of the questionable actions, the one who physically takes advantage of (sometimes even works to create) these opportunities toward his or her personal unsanctioned reward. (page 44)

In short, corruption is perceived in de Leon's model as a deliberate, coordinated behavior to which some people resort as a means of making the system work or function in ways

that are advantageous to their goals. By this description, both the individuals and the system are held responsible.

In this work it will be assumed that it is primarily the system and its inherent rewards that most of the time impulses the individual to commit corrupt acts. However, neither immediate milieu variables nor the partially indeterminated character of human behavior are to be discarded. The structure of the political-economic system and the environmental factors constitute the necessary (but not sufficient) causes of corrupt behavior and choice.

Chapter 2: Corruption In Argentina: An Overview

In the last ten years corruption has been getting more attention in the media as an important issue in Argentina. After decades of political instability, economic decline and chronic bouts of inflation that were perceived as the most urgent problems in the country, public opinion has turned its focus to the many corrupt practices that seem to exist in governmental agencies at all levels (Sobrino, 1992).

This chapter discusses how the problem of corruption is currently perceived in Argentina, and includes an explanation of the criminal behaviors described in that country's penal code that fits the definition of corruption proposed in chapter 1.

Perception of the Problem

On October 30, 1983, after nine years of dictatorship, Argentines voted for a president, vice-president, and 14,000 other national, provincial and local officials in fair, open and honest elections. Raul Alfonsin, the candidate of the Radical Civic Union (UCR), won the presidency and began a six-year term of office on December 10, 1983. The Alfonsin Government took steps to resolve some of the nation's most pressing problems, including accounting for "missing" citizens during the era of terrorist groups, establishing civilian control over the armed forces and consolidating democratic institutions. Alfonsin, however, had serious problems getting the nation's economy in order. By 1989 inflation reached four-digit proportions. In May 1989, Carlos Saul

Menem, the candidate of the Justicialist Party (PJ), was elected President. This was Argentina's first transfer of power between democratically elected leaders in more than sixty years. The new administration then began an unprecedented, profound economic restructuring. The Government obtained price stability, privatized most state-controlled companies, opened the economy to foreign trade and investment, improved tax collection, and created private pension and worker's compensation systems. In May 1994, following a first term marked by economic success and political stability, President Menem was reelected to a second term with nearly 50% of the vote. However, from the very beginning of his first presidency, several political scandals associated with corruption cases involving top ranking officers, close friends, and even relatives of the president (Navas Prieto, 1994) have contributed to the development of a powerful public opinion movement against political corruption. Many government officials challenged this movement affirming that corruption cases decreased dramatically following privatization of most state enterprises between 1989 and 1996.

The special political connotation that the problem of corruption currently has in Argentina makes its objective analysis difficult. This problem seems to be the weakest point in Menem's administration, and the most important political capital for his adversaries. Leaving aside the political debate, an independent study conducted by an Argentine NGO called "Centro de Estudios Union para la Nueva Mayoria" (Center of Studies for the New Majority) showed that in December of 1991, 45.9% of the

population perceived the corruption level in Argentina as "high" in the Federal Government (Fraga, 1991).

A recent study by Transparency International (TI), and different research efforts by other business and academic groups, have contributed to more open debate of corruption in Argentina. TI is a not-for-profit global organization that is dedicated to curbing corruption in international business transactions by encouraging governments to establish and implement laws that promote transparency and accountability. This organization is headquartered in Berlin and has more than 50 national chapters throughout the world. It publishes every year a list of approximately 55 countries that are ranked from low to high according to their level of corruption. These indexes are prepared by combining the results of a varying number of world wide surveys, usually seven. Argentina fell from the 24th position in 1995 to the 35th in 1996, and fell again to the 42nd position in 1997 (TI, 1997). According to the director of the National Chapter of TI in Argentina

when 1996 index appeared in the news and since then a very strong debate aroused. There were front page news in the major papers, more than thirty radio interviews at local and national level, every political talk show on TV referred to the study, it was editorial page for two consecutive days in the major newspapers, I attended at least four TV shows to explain the work and last, the government had a very strong reaction. In fact, President Menem said that TI was an unknown "business corporation" and that people should be aware of criminals who sometimes use these organizations as cover-up schemes for their activities. (TI, 1997)

Some Definitions

As it was discussed in the previous section, people in Argentina perceive corruption as an important problem. But, what do they understand by corruption? A survey conducted by Gallup Argentina in 1993 tried to answer this question. The results were analyzed by Moreno Ocampo (1993), who stated that most of the people in this country tend to describe corruption as the violation of moral duties (acts and omissions), and the commission of crimes of any kind. Only a small percentage of the respondents defined the term as behavior that results in harm to the society, and none of the answers included causal factors or explanations about how corruption arises.

Following, some legal definitions of corruption in Argentina will be considered. Although it was stated in the first chapter that corrupt acts are not always illegal, the present work is an attempt to study the problems that federal criminal investigative courts in Argentina's capital have in performing their role as corruption-control agencies, and criminal courts in that country can only handle cases in which the defendants are indicted as the potential authors of behaviors described in criminal statutes.

Political corruption has been an important issue in the field of criminal law in Argentina. Many different actions that fit the definition proposed in the first chapter have been included in the national penal code or "Código Penal de la Nación" (1994). Surprisingly, none of these actions have been called corruption. The only crime that receives this name under Argentina's law is "corrupción de menores" (corruption of minors), a felony that consists in promoting child prostitution.

The part of Argentina's Penal Code that groups most of the crimes that, according to our definition, can be considered political corruption is titled "Delitos contra la Administración Pública" (Crimes Against the Public Administration). However some other acts of corruption can be found in the part devoted to property crimes.

The crimes against the public administration considered in this study are:

- Outrage Against the Authority (sections 237 to 243),
- Usurpation of Authority (sections 246 and 247),
- Abuse of Power and Violation of the Public Officers' Duties (sections 248 to 253),
- Violation of Seals and Documents (sections 254 and 255),
- Bribery (sections 256 to 259),
- Embezzlement of public funds (sections 260 to 264),
- Incompatible Negotiations in the Exercise of Public Duties (section 265),
- Illegal Excises (sections 266 and 267),
- Illegal Enrichment (section 268),
- Prevarication (sections 269 to 272) and,
- Refusal and Delay of Justice (section 273).

The property crimes are:

- Extortion (section 168)
- and Fraudulent Administration (section 174).

Outrage Against the Authority is described in Argentina's Penal Code as the use of intimidation or force against a public officer to demand the performance or omission

of an act proper of his or her duties. If the person accused of this crime is a public officer himself, the maximum sentence may be two years in prison.

Usurpation of Authority is another misdemeanor with a maximum of one year of imprisonment that includes behaviors such as taking over a public office without having the necessary requirements or qualifications, and exercising duties that are proper of a different public office.

Under the name of Abuse of Power and Violation of the Public Officers' Duties, Argentina's penal code groups many different actions that can only be committed by public officers like issuing decrees or giving orders that contradict national or province constitutions and laws, omitting or delaying the performance of required duties, appointing an officer that does not have the necessary qualifications (patronage), and requiring the assistance of police forces in impeding the fulfillment of judicial orders. All these behaviors, excepting the last one, are considered misdemeanors, with a maximum of two years in prison. The last behavior mentioned is a felony with a maximum punishment of four years of incarceration.

Violation of Seals and Documents is the destruction of seals placed by authorized officers to preserve or identify objects; and the destruction of evidence, public documents, or public records. The first behavior is a misdemeanor, with a maximum punishment of two years in prison. The second is considered a felony, and the maximum time that a public officer may serve in prison if he or she is found guilty of this crime is four years.

Bribery, perhaps the most recognizable form of corrupt behavior, is also described in Argentina's Penal Code. From the perspective of the public officer, it is defined as receiving money or another gift, or accepting a direct or indirect offer to do or avoid doing something related to his (her) duties, or to use his (her) influence over another public officer to make him (her) do or avoid doing something related to his (her) duties. This crime is considered a felony, and the maximum punishment prescribed by the law is six years in prison. If a judge accepts a bribe to perform or omit an act that affects a case, he or she may be sentenced to twelve years of incarceration. Finally just accepting a gift while (and because of) being a public officer, is considered a misdemeanor with a maximum punishment of two years in prison.

Under Argentina's law the public officer who steals money or goods under his or her administration or custody, or uses them in a way different from the one prescribed by the law, can be held responsible of the crime of Embezzlement of public funds. The maximum punishment for this behavior is ten years in prison.

Incompatible Negotiations in the Exercise of Public Duties is the name that Argentina's Criminal Code gives to the situation in which a public officer lets his (her) personal interests interfere with contracts or transactions that he (she) may handle as part of his (her) public duties. This conflict of interests may be punished with a maximum of six years of incarceration.

The term Illegal Excises refers to a crime that can be compared with the concept of extortion at common law (Gifis, 1996). It means the collection by a public official

under color of office of an excessive or unauthorized fee. It is punishable as a misdemeanor, with a maximum of three years in prison, excepting those cases in which a public official collects illegal fees for personal gain. In this situation, this act can be punished with a maximum of six years in prison.

The crime of Illegal Enrichment includes two types of situations. First, the misuse of confidential information related to the office for obtaining profit. Second, an unjustified substantial increase in personal property, occurred after taking over the public office. The maximum punishment for this crime is six years in prison.

Prevarication -- a term that in English means deceitful, dishonest, or unfaithful conduct (Gifis, 1996)-- has to do with judicial decisions pronounced with abuse of discretion. In other words, only judges can commit Prevarication when their decisions clearly contradict national or province constitutions and laws, or are wholly inconsistent with the facts and circumstances before the court. It is a specific type of abuse of power, and is punished with a maximum of fifteen years if committed when making a final decision against the defendant in a criminal case.

Refusal and Delay of Justice is also a form of abuse of power that can only be committed by judges. The behaviors that the law punishes in this section are omitting or delaying judicial decisions. The maximum punishment for such behaviors is four years of inhabilitation.

The crime of Extortion involves the use of intimidation or a false order of an authority to make somebody transfer, money, goods, documents or titles. It also involves

the use of force to make somebody sign or destroy statements of debt. This felony is punished with a maximum of ten years of imprisonment.

Finally, Fraudulent Administration is a crime that can be committed by those who, for any reason, manage somebody else's property. It occurs whenever a manager causes damage to the property under his or her administration while seeking a personal profit in violation of his or her duties. The penal code establishes a maximum punishment of six years of incarceration for this crime.

In sum, Argentina's Penal Code contains an exhaustive enumeration of behaviors that can be considered corrupt acts. Many of these behaviors are so similar to one another that their location in different sections of the code seems to be barely justified.

Using the prescribed punishment as indicators of seriousness, it is possible to say that Embezzlement, Extortion, Prevarication, and Bribery (when the offender is a judge) are the most serious corruption-related offenses under Argentina's law. Incompatible Negotiations, Illegal Excises (for personal gain), Illegal Enrichment, Fraudulent Administration, and Bribery (in most cases) are still serious crimes, but less important than those in the previous group. The remaining offenses mentioned in this section are only misdemeanors or trivial felonies.

Chapter 3: Controlling Corruption

Having explained the definitions and causes of corrupt behavior, and analyzed how corruptions is perceived and defined in Argentina, the focus of this thesis turns now to corruption control.

In this chapter general strategies for controlling corruption and their relationship with the causes of the phenomenon are discussed. Likewise, the generic role of criminal justice systems in controlling corruption is explained and characterized.

Generic Corruption-Control Strategies

Control strategies are usually the content of the final chapter in most general studies about corruption. Policy recommendations seem to be a logical conclusion in research efforts that seek to improve our understanding of social problems. However, scientific studies show important differences in the way in which these suggested solutions are elaborated. It is possible to identify two basic theoretical approaches in corruption-related research. The first one includes studies that offer more general corruption-control strategies based mainly on the identification and analysis of the causes of the phenomenon. This is usually the case in criminological works that study corruption in the broader context of white-collar criminality. In fact, this approach can be related to general criminological theories about crime control and white-collar crime control (Albanese, 1995). The second approach is usually held by researchers that make their

corruption-control recommendations based on their analysis of previously implemented strategies. They try to answer the question "what should be done?", based on their responses to the questions "what have been done?", "what worked?". This approach includes evaluation studies that attempt to measure the effectiveness of policies implemented in specific settings, and studies that seek to distinguish basic or ideal models of corruption control, by analyzing, evaluating and comparing strategies implemented in many different places and situations (Theobald, 1990).

As stated above, the first approach helps to develop corruption-control strategies that stem from the causes explained in the first chapter. The possible causes are: the individual, the political-economic structure, and/or the immediate milieu. Specifically, those who perceive that corruption is caused by free-will decisions made by individuals tend to define the solution in terms of deterrence, incapacitation, or retribution. In the same way, those who believe that corrupt behavior is the product of general political and economic conditions tend to recommend different types of structural changes that, they believe, contribute to a more equitable distribution of power and wealth in society. In third place, those writers who argue that corrupt acts are the consequence of external factors affecting the individuals' immediate environment tend to prescribe remedies that have to do with some kind of reform of those proximate causes (the family, poverty, the subculture) or see the solution in changing the individual's responses to those conditions by some kind of rehabilitation. Finally, those who state that corruption is caused by factors at different levels tend to recommend sets of different measures that include for

example modifying structural socioeconomic variables in a state, altering certain features in organizations in which corruption behaviors occur, and redefining the criteria to reward and punish individuals.

It was stated in the first chapter that the multicausal nature of corruption is assumed in the present work. Therefore, this author adheres to the last position in the previous paragraph. In other words, since corruption is a complex phenomenon usually caused by a variety of determinants, any attempt to control it should take into account all those conditions. However, just targeting the many possible causes of the problem does not ensure success. Studies performed using the second approach discussed above have shown that many ineffective and effective corruption-control efforts around the world usually deal with the political economic structure, environmental factors and the individual at the same time.

Control Trends Around the World

Theobald (1990) used the second approach in his comparative cross-cultural analysis of corruption in developed and developing nations. His attempt to classify the major trends of corruption control around the world resulted in a set of general tendencies that he named “purges and campaigns”, “legal-administrative measures”, “depoliticisation”, “moral re-armament”, “accountability” and “privatization”. These trends will be discussed in the next paragraphs as a summary of Theobald’s findings.

Major drives against corruption are usually associated with political upheaval, typically a change of regime (Theobald, 1990, pp. 136-139). These purges may take the form of the careful targeting of certain prominent representatives of the "ancient regime". The primary goal is to discredit the previous administration and establish the legitimacy of its successor. This strategy targets both the individual and the political structure. However, according to Theobald, it seems to have extremely limited impact on the level of corruption. Since these measures promote an atmosphere of mistrust and paranoia they may be held to encourage bureaucratic pathologies such as "cronyism", "factionalism" and excessive "politicization".

Legal-administrative measures aimed at controlling corruption are defined by Theobald (1990, pp. 139-143) as specialized and semipermanent bodies whose responsibility is to investigate alleged infringements of the law relating to behavior in public office, with a view to bringing them before the courts. Such organizations would seem to have a number of advantages over campaigns and purges. Since they exist over the long term they should be able to acquire a trained staff who is able to develop a specific expertise in investigating cases of abuse. In an age of large-scale and complex financial transactions such expertise would seem to be essential for effective operation. Furthermore, in so far as the inquiries of anti-corruption bodies are based upon careful investigations, striving to avoid arbitrary accusations, they are more likely to win the confidence of the civil service and the general public.

The primary goal of depoliticisation strategies is to curtail the system of patronage which in many cases has dominated the government of many nations (Theobald, 1990, pp. 144-147). They can be defined as an effort to institute merit systems in governmental agencies, ensuring that all placements, transfers, as well as disciplinary procedures conform with rational-legal criteria: the principles of economy, efficiency and merit. They attempt to suppress brokerage networks in the civil service and establish a thoroughly technocratic system; and usually recommend that opportunities for corruption be reduced by cutting back on the activities of state agencies as well as diminishing staff. The bureaucracy is also to be subjected to greater surveillance and more frequent deployment of legal sanctions against offenders. The most extreme measures of depoliticisation may result in antidemocratic movements. During the sixties and the seventies military forces in many South American countries, including Argentina, proclaimed themselves the incarnation of rational administration. Unfortunately, many people believed them, and this gave some popular support to military dictatorships.

According to Theobald (1990, pp. 148-152), a dominant theme in the literature about controlling corruption is the centrality of moral re-armament. This is a complete ethical reorientation in the process of modernization and the acquisition of a distinct set of values and attitudes that include being an informed participant citizen, independent and autonomous, ready for new experiences and ideas, open-minded and cognitively stable as well as having a marked sense of personal efficiency. This line of thought goes back to Max Weber's writings on the role of Protestantism in the modernization of

Europe. However, this need for some form of moral transformation for controlling corruption is widely accepted throughout the world. The same ideological emphasis in the need for discipline, hard work and frugality has been evident in socialist countries. In fact, these moral crusades are much more visible in centrally planned economies because of their formal rejection of the profit, but they appear in most countries. Their ability to achieve a permanent attitudinal change is considered minimal in Theobald's analysis.

The idea of accountability is relatively new (Theobald, 1990, pp. 152-155). The twentieth century saw the progressive political incorporation of the common people with the growth of mass democracy and welfarism. As a result the state became an institution that embodied the people's interests, underwrote their basic needs and was accountable to them for its actions. Theobald thinks that it is the development of public accountability and the awareness of its necessity, not the diffusion of moral values, what constitute the most important element in controlling political corruption. In other words, assuming the inherent corruptibility of power, the cited author affirms that the most effective way of containing corruption seems to be that of strengthening the restraints on the exercise of power by promoting the rights of free association and encouraging the emergence of independent interest groups and mass media.

Privatization involves reducing the size of the public sector by selling off nationalized industries (Theobald, 1990, pp. 156-158). Since the enthusiasm for privatization derives from a belief in the virtues of unrestricted competition, it is invariably associated with deregulation or the removal of "artificial" impediments to the

free play of market forces. Theobald believes that, initially, the impetus behind privatization had nothing to do with the problem of corruption but reflected the conviction among certain economists and politicians in the seventies that it was the only means of regenerating the capitalist economies of the developed world. The late eighties witnessed the widespread adoption of privatization programs by formerly statist and in some cases unequivocally socialist governments throughout the world. It was in this decade when the link between privatization and the control of corruption was explicitly recognized. Because fewer controls in the form of deregulation seem to reduce the opportunities for abuse, many economists who studied corruption think this a very important way of dealing with the problem.

A Model of Corruption Control

Having reviewed Theobald's insightful analysis of the major trends in controlling corruption around the world, an important question arises: Is it possible to integrate the positive elements of those somewhat disperse tendencies in one comprehensive model of corruption control? Surprisingly, such a model existed before the publication of Theobald's work. Klitgaard (1988) presented his measures to control corruption as a framework for policy analysis. Like Theobald's major trends of corruption control, Klitgaard's model derives from observations performed in many different countries. He took elements from what, he believed, were the most effective strategies in controlling corruption.

The model suggests a set of activities that should be performed in a coordinated manner. Those activities are (Klitgaard, 1988, pp. 74-97):

- selecting agents for “honesty” and “capability”,
- changing the rewards and penalties facing agents and clients,
- gathering and analyzing information in order to raise the chances that corruption will be detected,
- restructuring the “principal-agent-client” relationship to remove the corruption-inducing equation: corruption equals monopoly power plus discretion minus accountability ($C = M + D - A$) and,
- changing the attitudes about corruption.

In selecting individuals for “honesty” and “capability”, some specific steps that can be taken are:

- (a) screening out the dishonest based on past records, tests, and predictors of honesty and;
- (b) exploiting possible outside “guarantees” of honesty (like networks for finding dependable agents and ensuring they stay that way).

Changing the rewards can be accomplished by:

- (a) raising salaries to reduce the need for corrupt income;
- (b) rewarding specific actions and agents that control corruption;
- (c) using contingent contracts to recompense agents as a function of their eventual success or failure and;
- (d) using non-monetary rewards like transfers, training, travel, publicity or praise.

In shifting penalties for corrupt behavior some possible measures are:

- (a) raising the general level of formal penalties, increasing the principal's authority to punish;
- (b) calibrating penalties in terms of deterrence and retribution as a function of the size of the harm caused or the size of the illicit profit and;
- (c) using non-formal penalties such as transfers, publicity, loss of professional standing, and blackballing.

In order to enhance the collection and analysis of information some viable actions are:

- (a) improving auditing and information systems that provide evidence that corruption has occurred and assess the organization's or state's vulnerability to corruption (e.g., red flags, statistical analyses, random samples, inspections);
- (b) strengthening information agents by beefing up specialized staff, creating new investigative units (e.g., ombudsperson, special committees or agencies), and fostering a climate where officers are encouraged to report improper activities;
- (c) using information provided by third parties (e.g., media, foreign agencies, banks);
- (d) using information provided by clients and the public in general and;
- (e) changing the burden of proof, so that the potentially corrupt have to demonstrate their innocence.

The restructuring of the principal-agent-client relationship to remove the corruption-inducing equation discussed above ($C = M + D - A$) can be accomplished by:

- (a) inducing competition in the provision of service (privatization);
- (b) reducing agents' discretion (e.g., defining objectives, rules, and procedures more tightly, having agents work in teams and subject the to hierarchical review, or dividing large decisions into separable tasks);
- (c) rotating agents functionally and geographically and;
- (d) organizing client (citizen) groups that would make them less susceptible to some forms of corruption and would help to create an anticorruption lobbying force.

Finally, lasting changes in attitudes about corruption can be obtained by:

- (a) the continued use of training, educational programs, and personal example;
- (b) the promulgation of a code of ethics and;
- (c) a modification of the organizational culture.

The Role of the Criminal Justice System

The model of corruption control discussed in the previous section offers a broad variety of strategies that should be used in dealing with the problem. But, which of those strategies can be applied by the criminal justice system? The answer to this question depends on which type of corruption one is talking about. The reviewed model is flexible enough to be adapted to different situations: corruption as the problem of specific organizations and corruption as a national, state, or provincial concern. Criminal justice agencies should apply the whole model when dealing with corruption within them. On

the other hand, only some of the actions described in Klitgaard's framework are to be undertaken by criminal justice agencies if corruption is considered in more general terms.

Concretely, the role of the criminal justice system in controlling corruption has to do with penalizing corrupt behavior and with gathering information to raise the chances that corruption will be detected. This role can be compared with "heavy artillery that provides the backing to push the front-line troops forward" (Braithwaite, 1993, p. 27). Laterally, the activity of the criminal justice system against corruption may help to change general attitudes about corruption. By performing its role adequately the system would be able to stop corrupt acts that are being committed, to make corrupt systems more transparent, to maintain other control-organizations alert, and to recover public resources (Moreno Ocampo, 1993).

Historically criminal justice systems have investigated, prosecuted and punished individuals. This is true in United States of America (Friedman, 1993) as it is in Argentina (Bacigalupo, 1987). The reasons for this are many, and a complete explanation of them exceeds the purposes of the present work. Let us just say that it is a fact, derived from the primitive confusion between crime and sin. The tendency still characterizes the operation of the system, despite the recent emergence of approaches that recommend punishing organizations (Albanese, 1995). However, such focus on individual behavior does not pose a big problem. On the contrary, in applying a comprehensive strategy of corruption control, it seems better to have some degree of specialization among the organs in charge of the implementation. Therefore, if corruption at a national, state or

provincial level is to be successfully controlled, structural and organizational changes should be undertaken outside the criminal justice system since it is not prepared to perform such kind of tasks.

The punitive component of the criminal justice system in controlling corruption is connected with the continuing debate over the proper goals of sentencing for white-collar offenders. In this regard the proposed model of control emphasizes on deterrence and retribution as a function of the size of the harm caused or the size of the illicit profit. However, once the amount of the punishment is determined, the use of rehabilitation programs that seek to change individual responses to environmental pressures towards corruption may be helpful in increasing the effectiveness of the penalties. Incapacitation as a general approach to crime control is discarded, because in Argentina, as in United States of America, there exists the constitutional issue of imposing sentences for crimes not yet committed but that are predicted to occur.

The deterrent effect of punishing white-collar offenders has been attacked because it has been shown to be low in several studies (Albanese, 1995; Weisburd, Waring & Chayet, 1995; Tillman & Pontell, 1992). In addition, for deterrence to be achieved, there must be a high certainty of apprehension, and the time elapsed between offense and sanction must be as short as possible. Clearly, neither of these conditions is met in the case of corruption. Prison sentences usually come late, and, when awarded, are often modest. Some argue that deterrence would work if penalties were much more severe, like those imposed in Russia during Stalin's regime (Friedman, 1993). Most

societies, of course, are reluctant to dispense such punishments because the power to punish can be devastating if it is abused.

All the criticisms of deterrence theory are, to some degree, accurate, but their importance is considerably diminished if one realizes that criminal punishment is only a small component in a comprehensive model of corruption control. Even in punishing corrupt agents, criminal sanctions are only a final measure. Before utilizing them, individuals can be coerced by public pressure through disclosure, institutionalized peer pressure, prior review, prior authorization, concurrent review, post-delivery denial or payment, cancellation of program affiliation, payment retrieval proceedings, and civil penalties (Klitgaard, 1988). In short, an agent may be also punished through publicity or by affecting his or her credit rating, professional license, or later job prospects.

Gathering information is the other activity proper to the criminal justice system in controlling corruption. Of course, as the proposed model suggests, data collection should be the main task of different types of specialized bodies. The information obtained by criminal justice agencies, although helpful in understanding many aspects of the phenomenon of corruption, is mainly a means of assessing the criminal responsibility of individuals. Gathering information in the context of criminal justice agencies is, most of the times, collecting evidence to support criminal prosecutions.

The collection of evidence to prove the commission of white-collar crimes usually relies on proactive investigations. Victims do not often realize they have been victimized until much later. If at all, harm often appears later as well. Investigative

agencies need to use both overt and covert methods to gather information (Albanese, 1995). Overt methods include examination of bank and credit records, tax records, and civil and criminal records, among other information sources, when they are available to the general public or can be obtained without a search warrant. Covert methods involve obtaining information without the knowledge of the suspect through activities like physical and electronic surveillance, use of informants, and undercover investigations that generally require search warrants or other burden of proof to justify the intrusion. Of course, there is a great deal of variation among different countries in the way in which criminal investigations of corruption are implemented. The major differences have to do with which specific techniques are allowed and how they are regulated, which agencies are in charge of the investigations, and how many investigative bodies exist. The particular situation of Argentina will be explained in the next chapter.

Chapter 4: Corruption Control in Argentina: How the Federal Criminal Justice System Operates

The present chapter explains the structure and operations of the federal criminal justice system in Argentina, focusing on the district of Buenos Aires. It also contains a section in which the special importance of certain type of courts called investigative or instructing courts is emphasized. The author of this thesis has a direct knowledge of many of the topics discussed in this chapter, derived from his experience working in Argentina's criminal federal justice system.

The Structure of the Federal Judicial System

Argentina is organized as a constitutional federal democracy. The constitution, which was issued in 1853, reflects the ideas and aims of the Constitution of the United States in the preamble and in much of the text. Several parts of Argentina's constitution were revised in 1994. However the provisions for a strong executive branch, a bicameral legislature and an independent judiciary were maintained (Sagüés, 1994). The executive traditionally has dominated federal politics.

Many rights are reserved to the provinces under the constitution, in an attempt to produce a balance between federal and provincial authority that is more akin to that of Canada than to that of the United States. In practice, Argentina's Federal System is dominated by the center.

Each province has its own constitution, and the authority to establish a local judiciary. Criminal and civil procedures are also decided at a province level, but only the national legislature can promulgate criminal and civil codes. Argentina has a unified criminal law that is applied by many criminal justice sub-systems.

Although only the national legislature has the power to decide which behaviors can be considered crimes in Argentina, this does not mean that all the crimes defined by the federal congress are "federal crimes". On the contrary, only some offenses have this status.

In general, federal crimes in Argentina are those related to national sovereignty and security, all frauds against the nation, those offenses that affect national officers or employees by obstructing or corrupting their activities, those that interfere with the mail service or impede the normal delivery of communication services, those that obstruct national elections or affect their results, the falsification of national documents and currency, all drug-related offenses, all those crimes committed in federal territories, and all those perpetrated by federal officers while performing an official duty (Sagüés, 1994).

By comparing the previous list with the specific crimes of corruption enumerated in Chapter 2, one realizes that the federal system in Argentina manages all the cases related to corruption in the national government.

Federal courts include the Supreme Court, the "Cámara Nacional de Casación Penal" (National Chamber for Criminal Law Interpretation), seventeen appellate courts, and district trial and investigative courts. The district of Buenos Aires city, which is the

most populous in the country, has six criminal trial courts, each of them managed by three judges, and twelve criminal investigative courts directed by single judges. This is the only federal district in Argentina in which criminal and civil cases are handled by different specialized courts. Research for this thesis focused on Buenos Aires.

The President appoints the members of the Supreme Court of Justice with the Senate's consent. Under the new constitution, all other federal judges are to be appointed and removed by a yet undefined judicial council that will be established by a federal law (Sagüés, 1994). The Supreme Court and the National Chamber for Criminal Law Interpretation appoint their own court clerks and employees. All other court clerks and employees are appointed by the Appellate courts, based on proposals made by district trial and investigative judges and according to their needs. The provincial court systems are similarly organized.

Each district judge has multiple roles beside trying or investigating cases. Although they delegate many duties in their subordinates, they are still responsible for the administration of the court. Therefore they usually perform tasks like managing personnel, allocating resources, controlling the court's budget, and assigning cases. District courts in Argentina lack professional court administrators.

The operation of the federal criminal justice system in Argentina is moving from being inquisitorial and based on closed, written proceedings, to being more adversarial, open to the public and based on oral proceedings (O'Reilly, 1997). Many authors characterize Argentina's federal criminal justice system as a "mixed" one (Moras Mom,

1993), in which it is possible to find inquisitorial and adversarial components. The criminal procedure has two parts, the investigation or “sumario” and the trial or “plenario”. Inquisitorial aspects dominate the “sumario”, while the “plenario” is more, although not totally, adversarial.

The Investigation

The investigation is led by the district instructing judges, who have the maximum responsibility for collection and analysis of evidence. They also have the power to decide whether a case should be dismissed or sent to a trial court. These decisions can only be reviewed by an appellate court. Another important, although reversible, decision instructing judges make has to do with preventive detention. The indicted persons generally remain in custody during the investigation and trial if they have an extensive criminal record or engage in contumacious conduct against the court. Preventive detention is mandatory when the minimum punishment prescribed for the investigated crime is five years in prison or more, or the maximum is eight years or more. All the activities performed during the investigative stage is compiled in dossiers, or written reports (Moras Mom, 1993).

In performing the duties required by law instructing judges are assisted by court personnel. Each investigative court has two offices; both with a staff of approximately ten employees directed by a court clerk. The structure of each office is hierarchical. Almost all employees have a different rank, although it is possible to find two or three

workers at the same level in lower positions. Employees' duties are defined according to their rank. Those in the lowest positions perform maintenance duties and run errands. Most of these employees lack higher education and are usually excluded from promotion. The remaining positions are generally held by law students and novice lawyers who either aspire to make a career in courts or want to gain some experience. The lower-rank employees in this group (usually young junior law students) perform paper-work, like filing or mailing. All other employees handle cases with a varying degree of complexity, according to their position. Court clerks, as managers of the office, have an important degree of discretion and authority. In practice, they make all the daily decisions affecting most of the cases, and give instructions to police forces as representatives of the judges.

The federal police forces assist district judges in investigations, following general or specific instructions. When the police initiate an investigation and somebody is arrested, the officer in charge usually contacts a court clerk or a judge immediately, asking for directions. In this case, they have a legal obligation to notify a judge within six hours, and bring the person before the same judge within twenty-four hours. They do not have authority to interrogate suspects.

Police investigations are also assigned to specific judges, and therefore start under judicial control, when a search warrant is required. In short, although police forces can initiate and develop investigations, in most of the serious cases they cannot go far without district judges' direction.

The importance of prosecutors during the investigation is to some degree shaded by the powerful authority of instructing judges. State's attorneys usually suggest to the judges certain actions for collecting evidence, but judges are not obliged to accept these suggestions. Furthermore, prosecuting agents do not have the right to appeal unfavorable decisions regarding the recommendations they make. On the contrary, judges must consult with prosecutors before making certain key decisions. Prosecutors can appeal such decisions if they disagree with them. Examples of these type of resolutions are dismissal of the case, declarations of nullity affecting procedural acts or pieces of evidence, the release of suspects in preventive detention, and execution of pre-trial interventions (diversion programs) by which first-time offenders charged with a misdemeanor are not subjected to the regular judicial process, but rather are immediately placed under probation supervision (Moras Mom, 1993).

Eventually, instructing judges may delegate the investigation of a case to prosecutors, but they maintain the power to interrogate suspects, to issue search warrants and to make key decisions enumerated in the previous paragraph.

The most significant prosecutorial act in this stage of the criminal procedure is the "requerimiento de elevación a juicio" (request for trial), which is a written document that must contain a clear individualization of the suspect, an evaluation of the evidence collected, a detailed description of the behavior that is attributed to the accused, and a mention of the section of the criminal code that best fits such behavior. It is a direct accusation that constitutes the base of the trial (Moras Mom, 1993). The investigative

judge may not agree with the request and therefore dismiss the case. In this situation, as stated above, the state's attorney can appeal the decision. If the prosecutor thinks that there is not enough evidence to make a request for trial, he or she may ask the judge to dismiss the case. However, if the judge decides that the process should continue, the dossier is sent to the appellate court that may decide the dismissal or order a different prosecutor to prepare the request for trial.

Argentina's federal code of criminal proceedings does not include the possibility of plea bargaining. Judges and prosecutors do not have the authority to reduce charges or to grant the defendant a particular sentence in order to obtain a plea of guilty, or evidence against other possible accomplices. Historically, plea bargaining has not been a common proceeding in countries with an inquisitorial tradition in their criminal justice systems (Moreno Ocampo, 1993). However, this situation is changing. For example in Italy, a country with which Argentina has many cultural similarities, the possibility of making agreements with the accused was introduced in the context of the "Clean Hands" special investigations initiated in 1992. This vast anti-Mafia and anti-corruption movement led by judges and prosecutors, successfully used bargaining techniques, so "the crimes of one person helped magistrates unravel a string of other criminal activities" (Davigo, 1996). Usually, the plea-bargain laws of European countries that have an inquisitorial tradition require some kind of consensus between the instructing judge and the prosecutor before making an agreement (Moreno Ocampo, 1993).

Argentina also lacks laws regulating undercover investigations. For this reason, this technique is rarely utilized in the context of criminal investigations. The absence of clear permission to engage in certain criminal situations makes it difficult for undercover agents to perform their role adequately. Perhaps it is the scarcity of popular support that prevents Argentina's legislators from regulating this technique. The military dictatorship that ruled the country in the seventies illegally used undercover agents to fight subversion. In those years the government tried to infiltrate terrorist cells and many leftist groups that were suspected of being in contact with the insurgents. The activity of military and police agents who wore no uniforms, drove unmarked cars, and often hid their identities was commonplace then. Suspects were taken to clandestine detention centers, where they could be held, interrogate, tortured and, in many cases, made to "disappear" (O'Reilly, 1997). These historical facts generated a climate of distrust of police forces that began during Alfonsín's presidency, and still exists in Argentina.

The Trial

As stated in the previous section, the "sumario" or investigation ends with a decision by the "instructing judge", who may dismiss the case or approve a request for trial if made by the prosecutor. Once the request is approved, the dossier is sent to a trial court if the accused is charged with a felony, or remains in the same court if the charge is a misdemeanor. Under Argentina's law, every crime for which the penal code prescribes a maximum punishment that exceeds three years of imprisonment is considered a felony.

Federal judges in Argentina both direct trials and decide the outcome. Although the National Constitution contains a section in which it is stated that the federal congress should institute jury trials "as soon as possible", the tradition of civil law prevails in Argentina's federal criminal justice system, and jury trials were never implemented (O'Reilly, 1997).

When the trial court receives the dossier, it analyzes the case to determine whether the investigation was accomplished in a legal manner. After that, the judge in charge sends a communication to the parties asking them to mention the evidence that they want produced in the trial. The court then uses its discretion in deciding which evidence will be admitted, and schedules the trial (Moras Mom, 1993).

Trials are open to the public. They start with the reading of the "request of trial" by the court clerk. After that, the presiding judge invites the accused to explain their interpretation of the facts. Defendants never testify under oath. They have the right to remain completely silent or to answer only the questions they want. They may also ask permission of the judge to express their opinions whenever they want during the trial.

The next step after the interrogation of the suspects is the production of evidence. This usually includes the testimony of expert and lay witnesses, the exhibition of documents and objects, and the reading, always by the court clerk, of certain parts of the dossier like previous depositions of witness that are absent in the trial and reports produced during the investigation. Judges have the authority to ask questions and, in many courts, they tend to take a leading role in the interrogations (Moras Mom, 1993).

Following the production of evidence, the prosecutor first, and then the defense attorney, make their final statements. Finally the trial is closed and the court starts the deliberation process.

Decisions of guilt or acquittal made by Argentina's federal judges must always be justified with full explanations of the reasons used to reach the final conclusion. Judges must carefully evaluate the evidence and interpret the facts accordingly, trying to avoid arbitrary and conclusory statements. All reasonable doubts benefit the accused. Judges must also explain how the behavior attributed to the defendants fit the criminal statutes involved. This description of the facts in terms of the penal code may be different from the one held by prosecutors, and even more serious (Moras Mom, 1993).

If the indicted is found guilty, the sentence is then completed with the decision of the punishment to be applied. When such punishment equals three years of incarceration or less, and the defendant is a first-time offender or a person not found guilty of a crime in the previous eight years, the judge may discretionally suspend the execution of the sentence with or without placement on probation.

The explanations of the facts made by trial courts in the final decision are not subject to review by a higher court, unless there are enough elements to consider that they were arbitrary. On the other hand, all the legal interpretations made by trial courts can be appealed, and then reviewed by the National Chamber for Criminal Law Interpretation. Finally, if the decisions made by this chamber are not accepted, there is an "extraordinary appeal" before the Supreme Court. This type of appeal is restricted, and

can only be used in those cases in which constitutional rights of the parties were affected during the trial, or when the constitutional legality of a law is questioned.

Importance of the Instructing Courts

Considering the previous description of the structure and operation of Argentina's federal criminal justice system, it is possible to conclude that the role of the instructing court is central.

Trial courts only receive what investigative judges decide to send them, and the trial itself relies heavily on the evidence collected during the investigation. The dossier is a very important source of information for trial judges, and, in many cases, they base their decision solely on what is in it.

The importance of the instructing judge during the investigation itself was also discussed above. Police forces and prosecutors have little autonomy. It is the judge who leads the investigation and uses his or her discretion in deciding what evidence is important, and which the steps to be taken are.

In short, the "sumario" is a very critical stage in which corruption control by the criminal justice system in Argentina should be carefully observed and analyzed. Trial judges are more subject to control because of the publicity of their activity. They usually have fewer cases to handle. It is also important to point out that public trials and trial courts were established in 1992. They still constitute the "great innovation" in Argentina's judicial system. For this reason, trial courts have access to new facilities and equipment, and could start learning the practical problems of the new criminal procedure

without the pressure of previous cases to be solved. Investigative courts on the other hand seem to have many problems. The next chapter will be an attempt to identify and analyze them.

Chapter 5: Problem Areas for the Investigative Courts

The preceding chapters provide the necessary foundations for understanding the problems that federal criminal investigative courts in the capital of Argentina may have in performing their tasks as corruption-control agencies. Considering this information it is possible to hypothesize the existence of the following groups of difficulties: (a) problems that stem from the perceptions that criminal judges have about corruption and their role in controlling it; (b) problems that derive from the restrictions placed on criminal courts as organizations that represent the power of the state over individuals; (c) problems that are inherent to the investigation of all types of white-collar crime; (d) administrative problems that interfere with efficiency of the courts in handling corruption cases and; (e) problems that arise from the difficult balance between publicity and secrecy in criminal investigations.

The problem of the independence, which is currently a central issue in Argentina's political debate, will also be discussed in this chapter. This topic is extremely sensitive for Argentina's federal judges, whose independence is seriously questioned by many political groups and the press (Navas Prieto, 1994). For this reason, this issue will be only partially included in subsequent chapters, in which the perceptions of investigative federal judges in Buenos Aires will be analyzed.

In most of the categories of problems previously mentioned, it is possible to observe factors that are, to some degree, cross-culturally recognized as the potential

cause of difficulties. They interact with the specific characteristics that investigative courts in Argentina have because of their structure, their tradition, and the historical, political, and economic context in which they operate.

Perception of Role

How do criminal instructing judges in Buenos Aires define corruption? Are they aware of their specific role in controlling it?

According to the reviewed literature, corruption is the behavior of public officers that seek rewards of any kind, who become engaged in unsanctioned, not necessarily illegal, behavior that damage the public interest.

The causes of the phenomenon are many and have to do with the political economic structure of the state, the immediate environment of the persons involved in this type of conduct, and the partially indeterminated nature of the decisions that human-beings make. Comprehensive strategies of corruption control should take into account all those factors.

Using Klitgaard 's (1988) model of corruption control and assuming that the system is individual-oriented in nature, the role of the criminal justice system is to gather information to increase the probability of corruption detection and be the last and most serious punishing mechanism. In short, the criminal justice's activity is only a component in the fight against corruption at a national or state level.

A high corruption level usually means institutional corruption, while a low corruption level can be associated with isolated acts by individuals. Therefore, when corruption in the national government is a big problem, as appears to be the case in Argentina, (see sources in chapter 2), the relative importance of the justice system as a control mechanism decreases.

However, this is not what people in Argentina believe. Sixty percent of the respondents in a poll conducted by Gallup Argentina and analyzed by Moreno Ocampo (1993) said that the best solution for the problem of corruption in this country is to improve the efficiency of the criminal justice system. According to Moreno Ocampo, political leaders also tend to transfer the problem of corruption control to the justice system. In this way, they evade their responsibility "in selecting and controlling officers, and in administering the state" (1993, p. 199).

Given that both common citizens and leaders seem to have high expectations about the justice system as the primary controller of corruption, it is possible to presume that judges feel urged to fulfill those expectations; and that, therefore, they believe their activity is the most important means of controlling corruption at a national level.

Restrictions

It is a well known fact that criminal courts can exert an enormous power over individuals. In most countries they have the authority to affect individuals' freedom, privacy, and property. However, they have many limitations in the use of this power.

Western culture has developed a tradition of respect and consideration for human rights that has been expressed in national and international legal bodies. This legal recognition usually takes the form of restrictions, such as the requirement of due process, the right of suspects to remain silent, the abolition of torture, and the prohibition of cruel and unusual punishments.

Those restrictions clash, to some degree, with an efficient management of criminal cases in general. Such conflict was clearly exposed by Packer (1968) who stated that two models compete for priority in the operation of the criminal process in United States: the Crime Control and the Due Process models.

The first one relies heavily on the ability of investigative and prosecutorial officers, acting in an informal setting in which their skills are given full predominance, to reconstruct a tolerably accurate version of what actually happened in an alleged criminal event. The second one rejects this premise and stresses the possibility of error in the first stages of the criminal procedure. This lead to a rejection of informal fact finding methods and to a support for systems in which cases are publicly heard by impartial tribunals and are evaluated only after those accused have had a full opportunity to discredit the indictment.

The Due Process model aims primarily to protect the innocent. The whole criminal procedure is viewed as the heaviest deprivation that government can inflict, so a diminution in the efficiency in the interest of preventing official oppression of the individual is considered acceptable. These values are present in the doctrine of legal

guilt, according to which reliable evidence about the facts is not enough to condemn. The factual determinations must be made in regular way by the competent authorities.

The current situation in Argentina is the result of legal reform that, in an effort to expand due process, substantially modified the criminal procedure laws in 1992. As discussed in the previous chapter, many authors today characterize Argentina's federal criminal justice system as a "mixed" one (Moras Mom, 1993), in which it is possible to find inquisitorial and adversarial components. Before the reform, the system was much more inquisitorial. The same judge who performed the investigation presided over a written trial. According to O'Reilly the "plenario" was "viewed as a demonstration of the accused's guilt, a revelation of what the instructing judge had discovered" (1997, p. 238).

When democracy returned in 1983 the system came under attack as an expression of authoritarian state power. Therefore, when the procedure was finally reformed in 1992, one of the most important goals was the enhancement of constitutional rights of the accused. This caused a substantial reduction of power in investigative and prosecutorial officers.

This does not imply that Argentina's system was more efficient before the reform. On the contrary, it was extremely slow and caused a large backlog of cases and jail crowding as prisoners awaited trial (O'Reilly, 1997). The 1992 changes substantially reduced the duration of trials, and let the instructing judges focus mainly on investigations, although they still try misdemeanors.

However, since the reform was mostly a reaction against the authoritarian components in the system, the desire of having a more efficient process was only a secondary aim. This aim, in Argentina's case, was not in opposition but rather complemented the main goal of enhancing defendants' rights. Again, the inquisitorial system was so incredibly slow, that a faster process was seen as a matter of due process. Yet, as discussed in the previous chapter, federal investigative agencies in Argentina's criminal justice system have many important restrictions. For instance, the "new" federal criminal procedure does not permit or discourage the use of certain techniques for obtaining evidence that are currently implemented world-wide in white-collar crime investigations (e.g., plea bargaining and undercover investigations).

So, it is possible to hypothesize that, in order to have more tools for undertaking corruption-related investigations, federal investigative judges in the capital of Argentina would like to see some changes in many procedural and criminal laws that have a direct impact on their work and on the activity of prosecutors and police forces. Such changes would imply an increase of their authority and power.

Problems Inherent to All White-collar Crime Investigations

Investigating white-collar crime seems to be harder than investigating conventional street crime. The difficulties derive to an important degree from the nature of the behaviors involved. In the investigation of an offense like murder, it does not take long to determine whether or not a crime occurred. The evidence is usually clear and

unambiguous in this regard. The issue in this type of crime is finding who is responsible. For white-collar crimes, there can be months of investigation just to determine whether a violation occurred, and additional investigation is often required to prove responsibility (Albanese, 1995). The investigation is still more problematic when a white-collar crimes occur in the context of organizations. Because organizational structures are made up of replaceable people who function with limited knowledge and responsibilities, it is often impossible to determine where and when a decision to violate the law was made (Belbot, 1993).

Criminal prosecutions in many white-collar crime (corruption) cases rely heavily on the introduction of documentary evidence like letters, memoranda, and financial and other kind of records that are too complex or too abundant to be analyzed in a reasonable period of time (Moreno Ocampo, 1993).

Sometimes the effects of white-collar criminal activities are difficult to detect because they are diffuse. For instance, the collection of an illegal excise may cost each individual victim a relatively small amount of money, although it results in a much larger total damage. Even if the effects are not diffuse, victims are often unaware that they have been victimized.

Adding to the previous problems, white-collar suspects are often powerful defendants who succeed in challenging the adjudication process because they have access to outstanding legal talent, a close relationship with regulators, and the ability to delay legal battles (Albanese, 1995).

These kind of problems in the prosecution of white-collar offenses have been observed in settings as different as Italy (Davigo, 1997), United States of America (Albanese, 1995), The Philippines (Klitgaard, 1988), and Argentina (Barcia, 1993). It is possible then to hypothesize that federal investigative judges in Buenos Aires are aware of these intrinsic difficulties in the investigation of corruption related offenses.

Administrative Problems

From the description of the structure and operations of the federal justice system in chapter 4 it is possible to conclude that investigative judges have several administrative problems that impede an adequate handling of corruption cases.

The first problem to be considered is the amount of cases under each judge's supervision. For example, investigative federal judges in Buenos Aires handle all drug related offenses that occur in that city, and have the authority to investigate all the connections and derivations of such offenses, even if the obtained evidence leads them out of the limits of the district. Although current information about the exact number of drug cases handled by each Buenos Aires' federal investigative court was not available, according to the US Bureau for International Narcotics and Law Enforcement Affairs (BINLEA, 1997) Argentina faces a growing problem with illegal narcotics, both in domestic use and in the flow of drugs transiting its territory. Police officers, public health officials, educators, and labor union leaders, among other authorities in that country, hold the view that drugs are readily available and that their use is growing, especially among

young people. The changing economic patterns of the past several years have given some sectors of the population increased disposable income, making the country a lucrative market for drug dealers. Conversely, there is a growing force of active drug distributors among many of those left behind by economic progress. This information can be complemented with some basic demographic data. According to the last census performed in Argentina in 1991, 10,686,163 people -- about one-third of Argentina's population -- lived within "Gran" (Greater) Buenos Aires, an area that includes both the city proper and its twenty-two suburbs. The city proper had about 2.9 million people (Microsoft, 1996). Based on these two sources it is possible to presume that investigative courts in Buenos Aires are overburdened with drug cases.

Another situation that may interfere with an appropriate handling of corruption cases in Buenos Aires is the lack of professional court administrators. Each district judge is responsible for the administration of the court, and must perform activities like collecting judicial statistics, managing fiscal affairs, supervising court personnel and scheduling cases. Although they delegate many of these tasks to their subordinates, they still have to spend some time reviewing and signing the documents related to these assignments, plus these are duties for which they often lack professional training.

A third problem that affects the efficiency of federal criminal courts in the investigation of corruption is the lack of an adequate infrastructure. The author of this work has direct knowledge of this issue. Human resources in federal courts consist mainly of employees who, as established in chapter 4, usually are inexperienced lawyers

or law students. Although complex cases are assigned to high ranking staff, the only difference between these and lower level assistants is the time they have been working in the court. There is no specific training required as a condition for advancement as a judicial employee. This problem worsened after the 1992 reform of the federal criminal procedure. Most of the experienced judicial workers and judges were promoted to higher positions in the newly created trial courts (Baglini & D'Ambrosio, 1993).

Federal criminal courts also need new equipment. Although many employees use their own personal computers, the courts only provide them with desks, old typewriters and their supplies, a few pre-typed forms, and letterhead paper. These are the only elements they have for preparing the documents that are added to the written dossiers. Each court has one "dumb" terminal connected to a network managed by the Supreme Court that is based on main-frame technology. These terminals are primarily used to enter cases in a unified electronic register, and to obtain limited information about laws and precedents. Other vital sources of data like criminal records and statistics are not available by electronic means, and must be obtained by letter to the appropriate agency. Video technology is not provided and used, since the procedure relies heavily on the information added to the written dossier. The only infrastructure component that seems to be adequate for federal courts is the physical plant. Today all the investigative courts are placed in the same relatively modern building that was extensively renovated to meet court processing demands.

Finally, the last problem in this section is the police force. Since the federal police assist instructing judges in many activities that are critical during the investigation (e.g., searches, arresting suspects, locating informants and witnesses, and executing summons), the way in which such activities are performed may affect the efficiency of the courts. According to the BINLEA's report cited above (1997) all of Argentina's federal law enforcement agencies face severe budget limitations that largely prohibit investment in new equipment and training, or additional manpower because of strict economic austerity measures. Moreover, an ongoing problem for the country is a lack of coordination among the various criminal justice agencies.

Many authors have recognized that the administrative problems discussed above are present in Argentina's Courts. According to Buscaglia (1996) a common situation in most Latin American countries, including Argentina, is that people do not turn to the justice system to solve their disputes because they perceive that courts are slow, uncertain, and costly. They find that the system offers poor quality services. This climate of distrust is considerably higher among people in middle and lower classes.

Although Argentina's present government has achieved much in areas such as deregulation and market opening, as discussed in chapter 2, it has been less successful in guaranteeing the "seguridad juridica" (legal security or rule of law) (Vimo, 1993; Grondona, 1993). The Government itself recognizes that the administration of justice must be improved to speed up court cases (Barcia, 1993). A management crisis seems to specifically affect the recently restructured federal criminal justice system, which has

been characterized as extremely inefficient in prosecuting and punishing those who commit crimes (Sobrino, 1992).

This concern for administrative efficiency and the problem of independence, which will be discussed below, seem to be the two major issues in Argentina's federal justice system today. Since it is not likely that federal investigative judges question their own independence, it is possible to hypothesize that they will tend to identify their concrete administrative problems as the greatest obstacle in adequately performing their role as a corruption-control agency.

Publicity

The model of corruption control presented in chapter 3 suggests that gathering information is an essential activity for achieving success in fighting corrupt behavior. The press and the media are often useful "outside" sources of information about corruption (Klitgaard, 1988). Mass media may also be an indispensable component in increasing accountability, and constraining the behavior of those who held public office (Theobald, 1990).

Although it is true that the role of the mass media is crucial in a comprehensive strategy for controlling corruption at a national level, some conflicts may arise when the press make public cases investigated by criminal justice agencies. Sometimes the information obtained by reporters leads to the criminal prosecution of corrupt agents, but

once the criminal justice system starts working, the roles invert and journalists try to extract information from the investigators.

The goals of mass media in publishing articles about corruption cases are to inform the public while “selling” a relatively accurate version of the facts. These aims often collide with basic criminal justice system’s objectives like finding the truth beyond a reasonable doubt and protecting the rights of the accused. The pace that these goals impose on the justice system often impede or conflict with media demands.

Other conflicts derive from the fact that the activity of the press as a control mechanism that helps to increase accountability also includes periodic evaluations of the justice system. Media information about corruption cases not only shows what happen in specific incidents, but also tells the public a lot about the work of the justice system. This may add pressure to the investigators, who find their performance reviewed in intrinsically complex and politically sensitive cases.

The intrinsic problems that all white-collar crime investigations share may also be the cause of another type of conflict between the press and the justice system. White-collar crime prosecutions often depend on sophisticated investigative techniques in which secrecy is an important component. Publicity may then be seen as a danger for the success of certain criminal investigations.

The history of Argentina’s federal criminal procedure may also have an impact on the perception that instructing judges have of the press. Before the 1992 reform the investigative stage of the criminal procedure or “sumario” could be handled without

almost any publicity. Judges had the authority to not release any kind of information about the case, even to the parties, for a certain period of time. They were “free to work in secret on the powerless, incommunicado suspect” (O’Reilly, 1997, p. 238). To some degree, federal instructing judges are not used to media publicity about their investigations.

Finally, publicity in corruption cases poses another problem. “The media are less vigilant and fair-minded than one would prefer. They suffer from their own set of corruptions” (De Leon, 1993, p. 229). “The submission of the public and the journalism to the show business’ logic implies many dangers” (Grondona, 1993). Unethical behavior by journalists is a possible source of conflict between the media and the justice system.

Having identified the potential problems that publicity may present to federal investigative judges in Buenos Aires, it is possible then to hypothesize that they perceive media coverage as an element that has a negative influence in the investigation of corruption-related offenses.

Lack of Independence

It is almost universally accepted in modern democracies that the role of the judiciary in controlling the other two branches of the government cannot be accomplished without a certain amount of independence (Baglini & D’Ambrosio, 1993). However, such independence should not imply a total isolation from political issues. The judiciary also has the responsibility to act as a government organ that takes into account

changes in societal values. Furthermore, as the principle of balance among powers suggests, judges must also be subject to some kind of control from the executive and the legislative branches.

Although the theoretical and practical boundaries of judicial independence are not totally clear, it is still possible to identify attitudes and practices that are likely to affect such independence beyond the gray zones that can be found in most constitutional democracies (Molinelli, 1991).

As stated above, the independence of federal investigative judges in Argentina is being seriously questioned. One argument is that, after the 1992 criminal procedure's reform, Argentina's president filled the instructing federal courts of Buenos Aires with "friendly attorneys, ready to pronounce decisions that favor the government, whenever the operators from the pink house order to do so" (Navas Prieto, 1994, page 142). The "pink house" is Argentina's version of the "white house" in the United States.

Other criticisms are less aggressive, but more acrid and equally tough. According to Moreno Ocampo (1993), most of the federal judges appointed by the previous president were "gracefully ousted by the government, and promoted to higher positions in less critical areas like trial courts or the National Chamber for Criminal Law Interpretation, which handle only those cases that pass the filter of investigative courts" (p. 305).

Of the total of twelve federal criminal investigative judges in the district of Buenos Aires only one was appointed before Menem's presidency. However, this judge

has been severely criticized for the way in which she managed serious corruption charges against one of the president's sisters in law. (Sobrino, 1992; Navas Prieto, 1994).

Before the 1992 reform, there were only six investigative courts in the district of Buenos Aires. Each judge was then in charge of four judicial offices. Through the reform all the courts were divided into two parts, and six new judges were appointed. In short, the Menem administration doubled the number of federal investigative judges without altering the sum total of judicial offices. In theory, federal judges now have a more direct control of the cases they handle. However, it seems that the federal criminal justice system's capacity was not substantially increased.

Adding to these suspicious changes, the Minister of Justice that planned the reform resigned a few months after the beginning of its implementation. Apparently, he considered that the candidates nominated to fill the vacant judicial positions were unacceptable (Moreno Ocampo, 1993; Baglini & D'Ambrosio, 1993).

The opinions of the general public regarding the independence of federal courts are strongly negative. In a poll conducted in April 1993, 77.2% of the respondents stated that the federal judiciary is not independent (Baglini & D'Ambrosio, 1993). This percentage was even higher among lawyers in Buenos Aires. A survey conducted in December 1992 revealed that 93% of them questioned the independence of federal judges (Baglini & D'Ambrosio, 1993).

The issue of independence of the judiciary is strongly debated in Argentina. The 1994 constitutional reform modified the process for selecting all federal judges excepting

Supreme Court justices. As stated in chapter 4, the reformed constitution instituted a judicial council that proposes three candidates among whom the president is obliged to choose one. The council must be composed of representatives from political organizations, lawyers associated to the national bar, and federal judges. However, the specific quota of each group was not established in the constitution, which only stated that it must be defined in a national law (Sagüés, 1994). This law have not yet been promulgated. The governing party supports a bill in which political organizations have almost total control of the council.

In short, there are good reasons to doubt the current administration's commitment in establishing and promoting an independent federal judiciary. This situation may affect the outcome of corruption-related investigations, especially in those cases in which high-ranking political officials are involved.

Finally, there is another aspect of the problem under analysis that should be considered. Judges may want to reject pressures from members of other branches of the government. However, if such pressures exist, they may negatively affect criminal investigations despite the volition of the individual judges involved, and they may also be considered as threats to judicial independence. For instance, they may derive in lack of cooperation from an organization in which a corrupt act occurred; or they may add tensions that impede the investigators to act with a reflective mind, making complex cases even more difficult.

Chapter 6: Assessing Judges' Perceptions: Methodological Issues

The list of potential problems discussed in chapter 5 provides some evidence that undertaking criminal investigations of corrupt behaviors is not an easy task in Buenos Aires. In fact, such obstacles were developed on the basis of previous research efforts, and complemented with the analysis of certain key components in Argentina's federal justice system. However, the actual impact of these problems needs to be corroborated.

In order to verify the existence of the difficulties discussed in chapter 5, the perceptions of instructing judges, who are the principal actors in the investigative stage of Argentina's federal criminal procedure, were surveyed. Because of their role as leaders of the investigation, their opinions constitute an essential source of information for a better understanding of corruption control by the federal justice system in Argentina. However, as discussed below, it is difficult to obtain responses from them regarding corruption.

This study focuses only on the opinions of federal investigative judges in the capital of Argentina. Given the demographic, economic, and political importance of Buenos Aires, this emphasis makes sense. This city has a dominant role in Argentina, and strongly influences the rest of the country (Johnson, 1990). However, there are some important differences between Argentina's cities and provinces that should not be underestimated. For this reason, the results of this study must not be considered applicable to provincial justice systems or to other federal districts in Argentina.

Research Purpose

The present work seeks to explore whether or not federal instructing judges in the capital of Argentina perceive that potential problems presented in chapter 5 affect their ability to adequately undertake the investigation of corruption related offenses. The extent to which these problems affect the courts is not considered in depth in the present study. For the purposes of this work, only those crimes in Argentina's penal code that were enumerated in chapter 2 are considered corruption related offenses.

Individual judges constitute the unit of analysis. They are considered in the context of their membership in the Buenos Aires' criminal federal judiciary, or, in other words, they are studied as individuals within a group (Maxfield & Babbie, 1995). This does not mean that the group as a whole or relationship to other groups becomes the analytical unit. Rather, this work is an attempt to examine and contrast individual responses in order to learn more about the targeted population.

Research Method

The final sections of the thesis are based on the results of a survey. According to Maxfield and Babbie (1995), this method is appropriate to learn about perceptions and attitudes, and has been extensively used for this purpose in criminal justice research. Since the issue of corruption is a very sensitive one for federal judges in Argentina, the survey was conducted using self-administered questionnaires in which the complete anonymity of respondents was guaranteed.

Likewise, in order to enhance the response rate, the distribution and collection of the questionnaire was entrusted to a court clerk who actually works in one of the studied courts. In doing so, the author hoped to make the return of the questionnaires easier for the respondents, and to reinforce the idea that the researcher was not an unqualified “outsider”.

The questionnaire included fifteen open-ended and closed-ended items, although the latter dominated the survey’s structure. In fact, only three open-ended questions were included as items number 1, 14 and 15, in which the respondents were asked to define corruption, to explain what they believed was the most important obstacle in efficiently investigating corruption cases, and to state what they thought was the best solution to solve this problem (see Appendix, questions 1, 14 and 15).

The specific questions prepared to measure judges’ perceptions regarding each of the problems defined in chapter 5 are explained in the following sections.

Opening Questions and Perception of the Role

The first two questions were an attempt to make the potential respondents think about corruption in general, and then to focus their attention on corruption in Argentina. Specifically, judges were asked to define corruption, and to rate the magnitude of the problem in Argentina using a scale from 0 to 5.

Given that the candidates selected to fill positions as criminal judges in Argentina are only required to have a degree in law, and are usually evaluated according to their

legal training, there was a presumption that the surveyed judges would tend to define corruption mainly in terms of illegality.

With respect to the second question, this author expected to find responses rating corruption as a significant problem in Argentina. This expectation derived from the fact that the debate about corruption is currently a central one in that country, as explained in chapter 2. After helping judges think about corruption in Argentina, the survey then tried to turn their attention to the role they have in controlling it.

It was hypothesized in chapter five that, although criminal investigations and sanctions are only a small component in a comprehensive strategy for corruption control, federal judges in Argentina would tend to believe that their activity is the most important means of controlling corruption in the federal government.

Regarding this hypothesis, judges were asked a closed-ended question in which they had to mark the option that, according to them, best represented the importance of their role (see Appendix, Question 3). These options varied from considering judicial activity as the only possible means for controlling corruption, to considering this activity only as a secondary means of control. An option called "other (please specify)" was also added, in order to ensure the exhaustiveness of the response categories.

Restrictions

As for the restrictions imposed on all criminal judges in modern democracies to guarantee the human and constitutional rights of criminal defendants, it was hypothesized

in chapter 5 that federal investigative judges in the capital of Argentina would like to see some changes in many procedural and criminal laws that have a direct impact on their work and on the activity of prosecutors and police forces. Such changes would imply an increase of their authority and power over criminal suspects.

Since diminishing power restrictions over criminal judges cannot be accomplished without changes in penal or procedural statutes, a contingency question seemed to be adequate to test this hypothesis. In other words, the respondents were asked whether or not they believed their activity in controlling corruption could be enhanced by modifying criminal and/or procedural laws. Those who responded affirmatively then had the opportunity to select the desired change or changes among options like "increasing the severity of punishments" or "regulating the possibility of plea bargaining" (see Appendix, Question 4). They also had the opportunity to specify other options.

Problems Inherent To All White-collar Crime Investigations

Concerning this category of problems, it was hypothesized that federal investigative judges in Buenos Aires are, in general, aware of these intrinsic difficulties in the investigation of corruption related offenses.

It was then necessary to explore whether the respondents found corruption investigations difficult, and if so, which inherent problems they were able to identify. Again it seemed that a contingency question was an adequate tool.

In this case, judges were asked to grade the perceived complexity of corruption investigations using a scale that goes from “the most simple cases in your court” to “the most complex cases in your court” (see Appendix, Question 5). All those who thought that corruption cases were complex, very complex, or the most complex cases were then asked to identify the source or sources of that complexity, marking as many options as they wanted among categories like “obtaining evidence is difficult” or “defendants in this cases have access to outstanding legal talent”. This question also included the possibility to add other categories.

Administrative Problems

It was hypothesized in chapter five that federal investigative judges in Buenos Aires tend to identify their concrete administrative problems as the greatest obstacle in adequately performing their role as a corruption-control agency. This hypothesis was tested using a direct open ended question inviting judges to explain which obstacle they believed would be the most important in efficiently investigating corruption cases is (see Appendix, Question 14).

However, judicial administrative problems in the federal district of Buenos Aires deserve a deeper consideration. Although these problems were discussed in the previous chapter as a single category, they may negatively affect the work of criminal courts in many different ways. Furthermore, besides the issue of judicial independence, they constitute one of the most important concerns in Argentina today.

Therefore, an exploration of the perceptions that federal judges have of the administrative problems was accomplished by asking the respondents six closed-ended matrix questions. In each question judges were asked about an item that may potentially affect the efficiency of their courts in handling corruption investigations, for example the equipment, or employees' training. They were to characterize each item as ideal, sufficient, insufficient or very insufficient (see Appendix, questions 6 to 11).

Only one question in this group had a contingency sub-question attached. Judges were asked to use the same set of responses to describe the time they have to spend on corruption investigations. Those who characterized their time as insufficient or very insufficient were then asked to identify the cause of this situation from responses like "the number of cases handled" or "the time spent in personnel management issues". This contingency sub-question also included the opportunity for judges to specify their own answers (see Appendix, Question 6).

Publicity

In respect to the problem of publicity, it was hypothesized in chapter five that federal instructing judges in Buenos Aires perceive media coverage as an element that has a negative influence in the criminal investigation of corruption-related offenses.

In that chapter, different sources of conflict between the mass media and the criminal justice system were also identified. However, those sources are not explored in depth in this work. Federal judges and the press today have a very difficult relationship in

Argentina, and this is also a sensitive issue. For this reason, judges were only asked to answer whether media coverage of the facts, the indicted persons, or the judicial proceedings linked to corruption cases obstructs, facilitates or does not affect the development of this type of criminal investigations (see Appendix, Question 12).

Lack of Independence

The degree to which judges are independent from the other branches of the government, especially the administration, is difficult, if not impossible, to assess accurately just by asking those whose independence is studied. Leaving aside the low probability of obtaining honest answers from dependent judges, asking such questions would be considered rude even by those whose independence is above reproach.

However, it seems that one aspect of judges' independence can be tested avoiding, to some extent, sensitive questions. As stated in the previous chapter, pressures from other branches of the government, if they exist, may negatively affect a criminal investigation despite the volition of the individual judge involved. Such pressures may also be considered as threats to the necessary judicial independence.

Given the current situation of federal judges in Buenos Aires, the word "pressures" was avoided in the survey. For that reason this author partially sacrificed the validity of the question to be asked in order to ensure a minimum percentage of responses.

In short, using the same response format chosen to assess the issue of publicity, respondents were asked whether the interest expressed by high-ranking members of other branches of the federal government in the facts, the indicted persons, or the judicial proceedings linked to corruption cases obstructs, facilitates or does not affect the development of these type of criminal investigations. (see Appendix, Question 13).

Attitude of the Respondents Toward The Survey

The main topic of the present study is an extremely delicate one for federal judges in Argentina. According to Grondona (1993), controlling corruption is the third biggest challenge for this country, the first two being instituting a stable democracy and achieving a stable economy.

Challenge or not, the issue of corruption control is at the very center of the current political debate. The year in which this work was written Argentines voted for national legislators, and both the government and the opposition focused their political campaigns on corruption.

A prevailing claim among opposition politicians was that the government had been manipulating the federal justice system to avoid the prosecution of officials involved in corrupt behavior. The media showed a lot of receptivity to this allegation.

In this context, the survey was distributed to the judges in May, 1997. After three months only one completed questionnaire was returned. For this reason, new copies were sent to the federal judges. In this second round, the person in charge of the distribution was urged to deliver the questionnaires in person, trying to meet each of the judges. This

was only partially accomplished. The court clerk entrusted with the distribution was able to meet only a few of the judges with whom he had previous contacts related to work issues. Even those who received him showed a reticent attitude, asking him question like "who is behind this?" or "who else received this?". Finally, another five questionnaires were returned by the middle of October, 1997.

Chapter 7: Assessing Judges' Perceptions: Summary of Findings

As implied in the previous chapter, the overall response rate for this study was 50%. Six federal investigative judges from Buenos Aires returned the questionnaires without leaving any of the questions unanswered. Although a small sample, this can be considered an adequate percentage for analysis and reporting (Maxfield & Babbie, 1995).

Judge's perceptions regarding the studied problems are discussed in the same order in which such problems were addressed in the last two chapters.

Perception of the Role

As explained in chapter 5, when corruption in a government increases, the relative importance of the justice system as a control mechanism decreases. However, the surveyed judges tend to believe that, although corruption is a big problem in Argentina, their role in controlling it is important.

In fact, using a scale from zero to five (with five being most important problem), 66.67% of the respondents graded the seriousness of corruption in Argentina with a four; a 16.67% graded it with a five, and the remaining 16.67% graded it with a three. In other words, four of the surveyed judges found corruption in Argentina a very important concern, one respondent expressed it is among the most serious problems, and the remaining judge stated that it is a problem of some seriousness.

When asked to evaluate the importance of their work as a means of corruption control, 33.33% of the respondents considered it the most important means, and the remaining 66.67% deemed it an important means among other equally significant. None of the respondents perceived corruption control by the judiciary as a secondary strategy.

The hypothesis stated in the previous chapter regarding this problem has been then only partially confirmed. Although the majority of the surveyed judges do not perceive their activity as the most important mechanism in controlling corruption, they still tend to overestimate their role. They, as well as common people in Argentina (Moreno Ocampo, 1993), have excessive expectations about their ability to control corruption. This situation may have undesirable consequences. People on the bench should help other citizens to clarify their expectations regarding judicial activity. The image of Argentina's federal judges is not good (Baglini & D'Ambrosio, 1993), and trying to satisfy excessive expectations will not help to improve it. On the contrary, the current climate of mistrust against federal judges is likely to last if people do not realize that their demands exceed the capacity of the courts. Judges, on the other hand, should recognize their limitations and take actions to let people know what they can and cannot accomplish in controlling corruption.

This overestimation of their role that federal judges make is even more difficult to understand if one reviews the respondents' definitions about corruption. Only three of the respondents (50%) defined the word in terms of illegal behavior. The remaining 50%

answered that corruption includes also unethical acts. One of the respondents even defined corruption as some kind of moral deterioration of society's "body" and "soul".

Since criminal instructing judges in Argentina are only permitted to investigate acts that violate the law, it is difficult to imagine them having an important role in solving a problem that, half of them believe, has only a moral significance in many cases.

Restrictions

Five surveyed judges (83.33%) think that some kind of changes in procedural or criminal laws are necessary to enhance their performance in the investigation of corruption cases.

The particular legal changes that they deem necessary to enhance their activity in controlling corruption are summarized in Table 1.

Table 1

Necessary Modifications in Criminal and Procedural Statutes

Desirable legal changes	Respondents
More severe punishments	83.33%
Authorize judges to make plea bargaining.	66.67%
Expansion of undercover investigations	33.33%
Creation of new crimes	33.33%
Changes in the burden of proof against suspects	16.67%
Restrictions in constitutional rights of the suspects	16.67%

As Table 1 shows, only two types of potential legal changes were supported by the majority of the respondents. First, most surveyed judges would require more severe punishments for corruption offenders, and second, an important group of respondents seem to want the power to negotiate guilty pleas with suspects. Both types of changes potentially offer judges the possibility to make corruption investigations easier. As explained in chapter 4, more severe punishments have a direct impact on the issue of preventive detention. Plea bargaining, on the other hand, would permit more confessions, making easier the collection of evidence.

Both legal changes may also improve the daily-work conditions of federal investigative judges. Since instructing judges investigate and try misdemeanors, if punishments for corruption misdemeanors are increased, certain offenses may start being considered felonies. Thus, investigative courts would be able to send more cases to trial courts once the investigation is ended. Plea bargaining may also constitute a useful tool for reducing the total number of cases in each investigative court. Through plea bargaining, judges would be able to close cases or send them to trial courts without being obliged to gather more evidence.

The desire of having more severe punishments may also derive from general deterrence concerns. It is possible that investigative judges expect reductions in the number of crimes committed if certain punishments are increased.

Only one third of the respondents mentioned punishing more behaviors and expanding undercover investigations as desirable changes. It is not surprising that most

judges do not find necessary the creation of new categories of crimes. It was extensively explained in chapter 2 that Argentina's Penal Code contains an exhaustive description of prohibited corrupt behaviors. On the contrary, the lack of support for the expansion of undercover investigations was not expected by this author. One possible explanation for this is that, since this investigative technique usually allows police forces to act with a considerable amount of discretion, the expansion of its use may be perceived by judges as a threat to their power of control over the federal police.

Finally, only a small percentage of the respondents stated that the constitutional rights of suspects constitute an obstacle for investigating corruption cases. It appears that more federal investigative judges in Buenos Aires are now used to working with this type of "fair play" limitations, or that, despite the "inquisitorial" tradition of Argentine courts (O'Reilly, 1997), they are now ready to accept such limitations as necessary restraints to their power.

In short, the hypothesis stated in the previous chapter has been confirmed. Most of the surveyed judges do think that legal changes in criminal and procedural statutes are necessary to increase their ability to work as corruption-control agents. However, the scope of the changes most of them want is narrow.

Problems Inherent to All White-collar Crime Investigations

All the surveyed judges agreed that the investigation of corruption-related offenses is complex. Five of them (83.33%) characterized these cases as very complex.

One respondent (the remaining 16.67%) stated that corruption cases are the most complex.

Regarding the causes that make corruption cases complex, the respondents identified the list of situations depicted in Table 2.

Table 2

Sources of complexity

Corruption cases are complex because	Percentages
obtaining evidence is generally difficult	100.00%
analyzing evidence is generally difficult	100.00%
proving that in fact there was a crime is difficult	83.33%
finding out who is responsible is difficult	66.67%
damages are diffuse	50.00%
suspects have access to powerful groups	33.33%
suspects have access to outstanding legal talent	16.67%

All the respondents shared the perceptions that, in general, it is difficult to collect and analyze evidence in corruption cases. Still the majority of them stated that proving the investigated behaviors are indeed criminal acts is often difficult in these cases, and that determining who is responsible is also a hard task.

Only half of the respondents expressed that presenting diffuse damages is a main cause of difficulties in investigating corrupt acts. Perhaps this response rate has to do with the fact that, in many corruption cases, the damage caused is irrelevant for the investigation. For instance, the crime of illegal enrichment is described in Argentina's

penal code as an unjustified substantial increase in personal property, occurring after a public officer takes office. In this situation, it is not necessary to prove the actual damage. This does not mean that these corrupt behaviors are considered not-harmful. The definition of corruption proposed in chapter 1 clearly states that only those acts that cause damage to the public interest can be considered corruption. What this means is that Argentina's criminal law presumes that certain unexplained property increases are harmfully and illegally obtained. It is a matter of burden of proof, not an exclusion of the damage.

Finally, only a few respondents identified the access that corruption suspects have to powerful groups and to outstanding legal talent as elements that make cases more complex. A possible explanation for this is that these issues are, to some degree, sensitive. They are respectively related to the ability of judges to resist pressures (their independence and honesty), and to the difficult relationship between the federal judiciary and the national bar association (Baglini & D'Ambrosio, 1993).

In sum, the hypothesis proposed in chapter 5 regarding intrinsic difficulties has been only partially confirmed. Judges are fully aware of some of the inherent problems in white-collar crime investigations, and tend to ignore others.

Administrative Problems

The perceptions of the surveyed judges regarding the administrative problems discussed in chapter five is summarized in tables 3 to 8.

Table 3

Time Judges Spend on Corruption Cases

Description	Percentages
Ideal	0.00%
Sufficient	16.67%
Insufficient	83.33%
Very Insufficient	0.00%
Total	100.00%

All those respondents who answered that they do not have enough time to handle corruption cases adequately were asked to identify the cause of this situation. The five judges in this group (83.33%) answered that lack of time is related to the excessive number of cases they handle. Only three judges in this group (50%) also considered that the time spent in the administration of the court has some influence in this regard.

Table 4

Availability of Human Resources

Description	Percentages
Ideal	0%
Sufficient	16.67%
Insufficient	83.33%
Very Insufficient	0%
Total	100.00%

Table 5

Personnel Training and Experience

Description	Percentages
Ideal	0%
Sufficient	16.67%
Insufficient	83.33%
Very Insufficient	0%
Total	100.00%

Table 6

Equipment of the Court

Description	Percentages
Ideal	0%
Sufficient	16.67%
Insufficient	50%
Very Insufficient	33.33%
Total	100.00%

Table 7

Cooperation and Coordination with
Police Forces

Description	Percentages
Ideal	0%
Sufficient	0%
Insufficient	83.33%
Very Insufficient	16.67%
Total	100.00%

Table 8

Police Forces Training and Experience

Description	Percentages
Ideal	0%
Sufficient	16.66%
Insufficient	66.67%
Very Insufficient	16.66%
Total	100.00%

The previous information leads to the conclusion that the majority of respondents perceive the administrative problems enumerated in chapter 5, excepting the item called "time spent in the administration of the court", as issues that impede an adequate handling of corruption-related offenses. Among these problems, the amount of coordination with police forces was the only item considered insufficient by all the

respondents. This item, the police forces training and experience, and the equipment of courts are the only three issues that some of the surveyed judges evaluated as very insufficient. So it can be said that federal investigative judges tend to consider these difficulties as the most serious problems in this group of administrative concerns.

The hypothesis stated previously regarding this category of problems was that they are the most important obstacles that judges have in investigating corruption cases. As discussed later in this chapter, four surveyed judges (66.67%) partially confirmed this hypothesis, identifying at least one of the problems in this group as the biggest obstacle in efficiently investigating corruption-related offenses.

Publicity

Five respondents (83.33%) affirmed that media coverage obstructs the investigation of corruption offenses. Only one of the surveyed judges (16.67%) answered that corruption cases are not affected by media coverage, and none of the judges expressed that the press can actually facilitate the investigations. The hypothesis regarding the publicity of corruption investigations is then confirmed.

Lack of Independence

Only two out of six respondents (33.33%) stated that the interest expressed by high-ranking officers from other branches of the government in the facts, the indicted persons, or the judicial proceedings obstructs the investigation of corruption cases. The

remaining four surveyed judges (66.67%) expressed that this interest does not affect the investigation.

As stated in the previous chapter, the validity of this item can be questioned. It is difficult to assess if the respondents understood that the purpose of this item was to determine whether congressmen and high-ranking officers in the executive branch try to influence the outcome of corruption investigations handled in federal courts.

Reviewing the obtained answers it seems that such pressures do not occur or, at least, do not pose a great problem for the surveyed judges.

The Biggest Obstacle and its Solution

Three respondents (50%) identified the lack of infrastructure (specifically equipment and human resources) as the main obstacle that impedes them in handling corruption cases adequately. One of the respondents in this group emphasized the relationship between this problem and the excessive number of cases handled by federal courts. These three judges stated that the solution to this problem is related to increasing the budget for the federal justice system and with reallocating the available resources to meet the needs of investigative courts. Two of them also mentioned as possible solutions establishing training courses and increasing the severity of the punishment for corruption offenses.

One respondent identified the lack of coordination among criminal justice agencies as the most important problem they face in handling corruption cases.

According to this judge, such agencies do not have common criteria and objectives in the way which they manage the investigation of corrupt acts. He also expressed that the solution to this problem requires a shift in the attitudes of those who work in criminal justice agencies, and a change in the perceptions of common people, who do not completely understand the necessity of reducing corruption.

One judge affirmed that the most important obstacle is related to some of the problems inherent in all corruption investigations, like the difficulties in obtaining evidence in reasonable periods of time. This respondent affirmed that the best solution is a reduction of the constitutional rights of the accused, and a shift in the burden of proof in all corruption cases.

Finally, another respondent described the most important obstacle as some kind of generalized "unconscious" cynicism among people in Argentina. According to this judge people underestimate the seriousness of corrupt behaviors and tend to think that they cannot be punished. This respondent, like the one who identified the lack of coordination among criminal justice agencies as the most important problem, suggested that the best solution is changing the attitudes of those who work in law enforcement agencies, making them more "fervent" in undertaking corruption investigations. This judge also stated that increasing the severity of punishment would help to modify people's attitudes toward corruption.

Chapter 8: Conclusions

Most of the problems discussed in chapter 5 have proven to be issues that negatively affect the performance of federal investigative courts in the district of Buenos Aires as corruption-control agencies. However, because of the exploratory design of this research and the extremely sensitive nature of the topic under study, data about the extent that these problems affect the investigative courts was not obtained. For this reason, policy recommendations about possible solutions are not discussed. Instead, this author preferred to state some avenues for future research.

The surveyed judges tend to overestimate their role in controlling corruption in the national government. This may cause frustration among judges and distrust among common people. Both groups have excessive expectations about the real potential for the investigative courts, so such expectations are not likely to be met. In order to gain a deeper understanding of this issue, future research efforts should include judges' perceptions about the causes of corruption and gather specific information about the objectives, if any, that instructing judges seek to achieve regarding the management of corruption investigations.

The surveyed judges also perceive that some restrictions on their power and discretion make it difficult to handle corruption cases adequately. They would like some reforms in criminal and procedural statutes. Specifically, they want more severe punishment for corruption offenses and the discretion to negotiate agreements with

suspects. The majority of them do not perceive the constitutional rights of suspects as a main problem. Again, more research is necessary to determine the extent and scope of the proposed legal changes. For instance, do investigative judges want more severe punishment for all corruption offenses? What should be the role of the prosecutor in a plea bargaining process? Other questions to be answered have to do with possible, and in theory important, legal changes that most of the respondents rejected, like those related to undercover investigations.

As for the inherent problems in white-collar crime investigations, all the surveyed judges agreed that corruption investigations have intrinsic difficulties. However, they tended to focus on obstacles related to the collection of evidence rather than on the power of corruption suspects. It is necessary to study whether they avoided to mark this second issue because they do not really perceive it as a problem, or because it is a sensitive one.

All the respondents found the proposed administrative problems a big concern. According to the surveyed judges, federal investigative courts in Argentina lack the necessary elements to manage corruption cases efficiently. Judges seem to have too many cases to handle, and this reduces the time they can spend on corruption investigations. Scarce and poorly trained court employees, provided with insufficient equipment, work on these cases assisted by ill-prepared police officers with whom they do not coordinate very well. Although these administrative problems were explored more in depth than other concerns in this work, many important and more detailed questions should be

answered before making recommendations about possible solutions. For instance, how many hours a week do judges think they should spend on corruption investigations? How many hours do they spend now? Is the time problem related only to corruption cases? Similar questions could be asked about employees, police officers and prosecutors. Furthermore, another important way to measure the magnitude of these administrative problems would be making performance comparisons among the investigative courts.

The impact of media publicity on the investigation of corruption cases was characterized as negative by most of the respondents. It seems then that federal investigative judges would prefer not to release to the press information regarding this kind of case. However, in order to understand judges' attitudes toward the press it is necessary to assess which of the sources of conflict identified in chapter 5 are considered by the targeted population as the primary causes of the problem.

Finally, the existence of political pressures affecting judges' independence was denied by most of the respondents. The majority of them stated that the interest demonstrated by officers in other branches of the government has no impact on corruption investigations. Future research efforts may find other ways to obtain accurate information about this extremely sensitive issue. Most concerns related to judicial independence were deliberately avoided in the present work because of the specific political connotations that they presently have in Argentina.

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Appendix

Questionnaire (translated from Spanish)

1) How would you define corruption?

2) Using a scale from zero to five, how would you rate the magnitude of the problem in Argentina's national government?

(0 = non-existent problem; 5 = one of the most urgent problems)

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

3) In order to control corruption in the federal government, the role of the federal justice system should be considered as: (mark the option that best represent your opinion)

- ☐ the only possible means
- ☐ the most important means
- ☐ an important means, among other equally important.
- ☐ a secondary means
- ☐ other (specify) _____

4) Do you think it is necessary to modify any criminal and/or procedural statute to control corruption in the federal government?

- ☐ Yes
- ☐ No

If you answered yes please mark among the following options all those that you consider necessary modifications.

- ☐ Creating new crimes
- ☐ Legalizing certain behaviors
- ☐ Increasing the severity of punishment for corruption offenses
- ☐ Creating a legal framework for undercover investigations
- ☐ Establishing plea bargaining
- ☐ Shifting the burden of proof
- ☐ Restricting the constitutional rights of suspects
- ☐ other (specify) _____

Consider the following questions as related only to those cases in which public officers are charged with the crimes of Outrage Against Authority, Usurpation of Authority, Abuse of Power and Violation of the Public Officer's Duties, Violation of Seals and Documents, Bribery, Embezzlement of public funds, Incompatible Negotiations in the

Exercise of Public Duties, Illegal excises, Illegal Enrichment, Prevarication, Refusal and Delay of Justice, or Extortion and Fraudulent Administration.

5) How would you grade the average complexity of these cases?

- ☐ The most simple cases in the court
- ☐ Very simple cases
- ☐ Simple cases
- ☐ Relatively complex cases
- ☐ Complex cases
- ☐ Very complex cases
- ☐ The most complex cases

If you think that these cases are complex, very complex, or the most complex please identify the source s of that complexity among the following options.

- ☐ Obtaining evidence is generally difficult
- ☐ Analyzing evidence is generally difficult
- ☐ Proving that in fact there was a crime is often difficult
- ☐ Finding out who is responsible is difficult
- ☐ Damages are diffuse
- ☐ Suspects have access to powerful groups
- ☐ Suspects have access to outstanding legal talent
- ☐ Other (specify) _____

6) The time that you can spend on these cases is:

(mark the most accurate option)

- ☐ ideal
- ☐ sufficient
- ☐ insufficient
- ☐ very insufficient

If you think that your time is insufficient or very insufficient please mark among the following options all those that you can identify as sources of this problem.

- ☐ The number of cases handled
- ☐ The time spent on personnel management issues
- ☐ The time spent administering the court.
- ☐ Other (specify) _____

7) The number of employees handling these cases is:

(mark the most accurate option)

- ☐ ideal
- ☐ sufficient
- ☐ insufficient
- ☐ very insufficient

8) The amount of training and experience of these employees is:

(mark the most accurate option)

- ☐ ideal
- ☐ sufficient
- ☐ insufficient
- ☐ very insufficient

9) The equipment that the court has to handle these cases can be characterized as:

(mark the most accurate option)

- ☐ ideal
- ☐ sufficient
- ☐ insufficient
- ☐ very insufficient

10) In investigating these cases, the amount of cooperation and coordination with police forces is:

(mark the most accurate option)

- ☐ ideal
- ☐ sufficient
- ☐ insufficient
- ☐ very insufficient

11) Police forces training and experience to investigate these cases is:

(mark the most accurate option)

- ☐ ideal
- ☐ sufficient
- ☐ insufficient
- ☐ very insufficient

12) Media coverage of the facts, the indicted persons, or the judicial proceedings linked to these cases usually:

(mark the most accurate option)

- ☐ obstructs the investigations
- ☐ does not affect the investigations
- ☐ facilitates the investigations

13) The interest expressed by high-ranking members of other branches of the federal government in the facts, the indicted persons, or the judicial proceedings linked to these cases usually:

(mark the most accurate option)

- ☐ obstructs the investigations
- ☐ does not affect the investigations

☐ facilitates the investigations

14) The most important obstacle in efficiently handling these cases is _____

15) The best solution to overcome this obstacle would be _____

THANK YOU VERY MUCH FOR YOUR PARTICIPATION

Cuestionario (Spanish version)

1) ¿Qué entiende usted por corrupción?

2) En una escala de 0 a 5, ¿cómo calificaría usted el problema de la corrupción en el gobierno nacional en la Argentina?

(0 = problema inexistente; 5 = uno de los problemas más urgentes)

☐ 0 ☐ 1 ☐ 2 ☐ 3 ☐ 4 ☐ 5

3) A fin de lograr controlar la corrupción en el gobierno federal la actividad que le corresponde realizar a la Justicia en lo Penal debe ser considerada como: *(marcar la opción que mejor represente su punto de vista)*

- ☐ El único medio posible para resolver el problema.
- ☐ El medio más importante, entre otros, para resolver el problema.
- ☐ Un medio importante, entre otros igualmente necesarios, para resolver el problema.
- ☐ Un medio secundario
- ☐ Otro (especificar) _____

4) A fin de lograr controlar la corrupción en el gobierno federal ¿considera usted necesaria una modificación de las leyes penales y procesales vigentes?

- ☐ Sí
- ☐ No

En caso de respuesta afirmativa, marque de entre las siguientes opciones todas aquellas que considere modificaciones necesarias:

- ☐ Creación de nuevos tipos penales
- ☐ Despenalización de ciertas conductas
- ☐ Aumento en el monto de las penas vigentes para ciertos delitos
- ☐ Creación de la figura del agente encubierto
- ☐ Regular la posibilidad de negociar acuerdos con los imputados para obtener pruebas
- ☐ Modificar la carga de la prueba
- ☐ Restringir las garantías constitucionales de los imputados
- ☐ Otro (especificar) _____

Considere las siguientes preguntas en relación con aquellas causas en las que se impute a funcionarios públicos la comisión de los delitos de Resistencia a la Autoridad, Usurpación de Autoridad, Títulos y Honores, Abuso de Poder e Incumplimiento de los Debers del Funcionario Público, Violación de Sellos y Documentos, Cohecho, Malversación de Caudales Públicos, Negociaciones Incompatibles con el Ejercicio de la

Función Pública, Exacciones Ilegales, Enriquecimiento Ilícito, Prevaricato, Denegación y Retardo de Justicia, Extorsión y Administración Fraudulenta.

5) ¿Cómo calificaría usted el conjunto de estas causas en cuanto a su complejidad para ser investigadas?

- ☐ Las causas más sencillas
- ☐ Muy sencillas
- ☐ Sencillas
- ☐ Medianamente complejas
- ☐ Complejas
- ☐ Muy complejas
- ☐ Las más complejas

En caso de que usted considere que se trata de causas complejas, muy complejas o las más complejas por favor marque de entre las siguientes opciones todas aquellas que usted perciba como causas de esa complejidad.

- ☐ Obtener prueba es generalmente difícil
- ☐ Analizar la prueba obtenida es generalmente difícil
- ☐ Determinar quien es el responsable es generalmente difícil
- ☐ Probar que efectivamente ocurrió un hecho ilícito es generalmente difícil
- ☐ Los daños causados son difusos
- ☐ Los sospechosos tienen generalmente acceso a grupos de poder
- ☐ Los sospechosos tienen defensores de gran capacidad que retardan la investigación
- ☐ Otro (especificar) _____

6) El tiempo de trabajo del que usted dispone para dedicarle a este tipo de causas es: *(marque lo que corresponda)*

- ☐ Ideal
- ☐ Suficiente
- ☐ Insuficiente
- ☐ Muy insuficiente

En caso de que la respuesta sea suficiente o muy insuficiente indique entre las siguientes opciones todas aquellas que contribuyan a la falta de tiempo

- ☐ El número de causas a mi cargo
- ☐ El tiempo dedicado a administrar el juzgado
- ☐ El tiempo dedicado a cuestiones atinentes al manejo del personal del juzgado
- ☐ Otro (especificar) _____

7) La cantidad de personal a su cargo asignado al trámite de estas causas es: *(marque lo que corresponda)*

- ☐ Ideal
- ☐ Suficiente
- ☐ Insuficiente
- ☐ Muy insuficiente

8) El nivel de capacitación de los empleados a su cargo asignados a la investigación de estas causas es:

(marque lo que corresponda)

- ☐ Ideal
- ☐ Suficiente
- ☐ Insuficiente
- ☐ Muy insuficiente

9) El equipamiento de que el Juzgado a su cargo dispone para investigar este tipo de causas es:

(marque lo que corresponda)

- ☐ Ideal
- ☐ Suficiente
- ☐ Insuficiente
- ☐ Muy insuficiente

10) El nivel de cooperación y coordinación con las fuerzas de seguridad para la investigación de este tipo de causas es

(marque lo que corresponda)

- ☐ Ideal
- ☐ Suficiente
- ☐ Insuficiente
- ☐ Muy insuficiente

11) El nivel de capacitación demostrado por los miembros de las fuerzas de seguridad que intervienen en la investigación de este tipo de causas es en general:

(marque lo que corresponda)

- ☐ Ideal
- ☐ Suficiente
- ☐ Insuficiente
- ☐ Muy insuficiente

12) La difusión en los medios de comunicación social de los hechos, las personas y los procedimientos judiciales vinculados a este tipo de causas generalmente:

(marque lo que corresponda)

- ☐ Dificulta el desarrollo de la investigación
- ☐ No incide en el desarrollo de la investigación
- ☐ Facilita el desarrollo de la investigación

13) El interés demostrado por miembros de otros poderes del estado acerca de los hechos, las personas y los procedimientos judiciales vinculados a este tipo de causas generalmente:

(marque lo que corresponda)

- ☐ Dificulta el desarrollo de la investigación
- ☐ No incide en el desarrollo de la investigación
- ☐ Facilita el desarrollo de la investigación

14) A fin de lograr una mayor eficiencia en el trámite de este tipo de causas el principal obstáculo es _____

15) La mejor solución para superar este obstáculo sería _____

MUCHAS GRACIAS POR SU PARTICIPACION