2023

Attorney Perspectives Regarding Use of Federal Confidential Informants in White-Collar Crimes

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This is to certify that the doctoral dissertation by

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has been found to be complete and satisfactory in all respects,
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Walden University
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Abstract

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Richard Dwayne Britt

MS, Walden University, 2020

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Dissertation Submitted in Partial Fulfillment

of the Requirements for the Degree of

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Abstract

Most federal white-collar cases involve the use of confidential informants (CIs) to obtain convictions. However, there was a gap in research regarding the examination of CI efficacy safeguards and whether combinations of safeguards produce desired effects from the perspectives of private practice attorneys with defense and prosecutor experience. The purpose of this historical research qualitative study was to explore the literature related to whether federal CI policies of safeguards influenced the national use of CIs to obtain convictions in federal white-collar cases based on the perspectives of private practice attorneys with defense and prosecutorial experience as gathered through participant interviews. The theoretical framework included the routine activity theory and convenience theory. Data were collected from semistructured interviews with 10 participants. Three themes emerged from coding analysis: power, illegal activities, and convictions. Results indicated the lack of CI safeguard policy specific to CI written registration adherence by federal agents severely impacted federal white-collar cases using CIs to secure convictions. Participants confirmed that the lack of the CI safeguard policy specific to recordkeeping knowledge impacted the integrity of convictions secured. All participants considered CIs vital to white-collar case convictions. Recommendations include attorneys using conviction integrity for all white-collar case convictions. Findings may encourage federal law enforcement agents to recognize the validity and accountability of federal policy safeguards regarding the information CIs provide in federal white-collar cases leading to positive social change.

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Dedication

I dedicate my dissertation to my loving and supportive mother, father, sister, and niece, who all passed during my dissertation doctoral journey.

Someone told me a long time ago if you want to make God laugh or smile, tell him your plans. My dissertation doctoral journey was unpredictable and an emotional roller coaster because I first lost my sister, Ellen Denise Durham Hawkins; then six months later, I lost my mother, Marlin Britt. Unfortunately, nine months later, I lost my father, Clinton Alton Britt Sr, then one month later, I lost my niece, Audrey Christina Azar. After each loss, I found the courage and strength to continue to move forward, never taking a break or leave of absence from my dissertation doctoral degree.

As a child, my mom and dad instilled in me the importance of always completing whatever you started. Therefore, I made a personal contribution and commitment to each of my loved ones to continue my dissertation doctoral journey and never stop until I was done, no matter the time frame. Each passing of my loved one was uniquely difficult and incredibly heartfelt and heart-wrenching.

My mother and father were not just my parents, but my best friends who raised and taught me how to become a good person and human being. After writing and reading two eulogies within nine months, I understood that I had no option but to finish my dissertation doctoral journey so I can dedicate it to the two most important people who gave me life.

Losing my oldest sister first to COVID-19 was an unexpected punch in the gut that happened during one of if not the worst pandemics in our country that was unseeable without warning or any explanation.

Lastly, the passing of my young niece who had her whole life ahead of her was so surreal and troubling to me in a completely different way than the passing of my sister, mother, and father.

So, I dedicate my doctoral dissertation journey and thank each of you for your time, knowledge, wisdom, and advice, but more importantly for the love, support, and guidance I have received from each of you to give me the opportunity and necessary strength to climb the mountain until I was done to make each of you proud.

I will carry every word and lesson that each of you have given me throughout my life, because without those words and lessons that each of you have given me at different points of my life, there was no way I could have completed what I started.

In closing, I will cherish and always hold close to my heart the same things I used to get through this dissertation doctoral journey to help get me through the rest of life's challenges and roadblocks until I see each of you again.

In dedication with love to each of you, more than any word in the Webster's dictionary can ever express, your loving son, brother, and uncle, I say thank you and God bless 🙏🏾👊🏾

Dr. Richard Dwayne Britt

Acknowledgments

To my wife, Dr. Leslie DeAnn Williams Britt,

For me to express and give you your just due of how much I love and appreciate you, I would have to write an additional dissertation. Therefore, I would like to say thank you for always being the great loving and supportive wife, friend, and human being you have been during our life together and throughout my dissertation journey, as well as through the loss of my family members. You know we tell and show each other every day the love and respect we have for each other. Nevertheless, I leave you with the concept that the journey being the destination doesn't have any meaning unless we actually go on the journey. This is a metaphor for life. Our journeys ARE the purpose. It's not where we are going as much as it is about how we get there together.

Love You

To Dr. Gregory Campbell, my dissertation chair,

Everyone knows you are a “GREAT CHAIR.” So, I would like to talk about the great man and incredible human being you are. I truly appreciate you having the tremendous amount of patience with me during my dissertation process. Your knowledge, guidance, information, kindness, and more importantly, your overall experience and expertise that you shared with each student individually and as a cohort group is priceless. I will cherish the personal and professional relationship we have created during this unforgettable journey.

RDB

To Dr. Dianne Williams, my second chair committee, I thank you for all of your scholarly thinking and input that you contributed to my dissertation regarding the betterment of social change.

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To Dr. David DiBari, my URR, I send you a very special thank you for all of your knowledge and feedback to help me produce a quality dissertation.

To Dr. Monique Allen, you are a great mentor and cohort advisor.

_____

To Yoshihiko Yoshimine, my Student Success Advisor,

First, I would like to thank you for living up to the nickname that I gave you as my Global Positioning System (GPS) because you have been with me throughout my two masters and PhD. I'm where I'm at because you always take the time to navigate me through the Walden System. If it was not for you, it would've taken more time due to my lack of system knowledge that you put on a silver platter to help guide me so I would not waste unnecessary time.

Thank You.

_____-

To Harper Shawver Howell, my editing & proofreading expert at Editide.us,

Harper, it's been a joy and pleasure to meet and learn from you during our editing experience. I highly recommend any student, person, writer, or company who needs assistance with their editing services on any level to email you immediately, especially

for APA assistance. She is bright; she also has incredible patience and is a fantastic listener to make sure she understands all your needs. I thank you for all of the wonderful editing ideas and guidance you have given me throughout my dissertation process.

_____-

Dr. Jon M. Shane, I thank you for giving me permission to use and modify the ACLU Confidential Informant Survey for data collection in my study.

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Lastly, I also dedicate my dissertation to all of my loving and supportive family, friends, and doctors who have all given me information, time, advice, and guidance. More importantly, I thank each of you who I name below for always making the time to talk and meet with me if or whenever it was needed regarding my dissertation and the passing of my family members. Moreover, for taking the time to pray and give me private council during the passing of my mother, father, sister, and niece. Each of you have supported and helped get me to the finish line.

They say it takes a village to raise a child. However, I learned it takes an army of love and support to get through the passing of loved ones paired with a doctoral dissertation journey. If I missed anyone's name below, please forgive me and bill it to my heart.

To my siblings who all have also suffered and had to deal with the same pain with the passing of our mother, father, sister, niece, and Mernelle Rhem, your daughter. So, Mernelle Rhem, Clinton Jr., Kendall and Ronald Britt, I dedicate my dissertation to mom, dad, Denise, and Audrey.

The names below are to my private army who all helped me in their own unique special way.

Dr. Toby, Dr. Shaheed, Dr. Kegler, Dr. Gleckel & RN Pam, Dr. Ackert, Dr. Bragin, Dr. Clifton, Dr. Hess & PA Maria, Dr. Knight, Dr. Garcia, Dr. Greiff, Dr. Rosco, Dr. Lee, Dr. Miller, RN Diann, and RN Joseph.

Russ, Atik, Heena, Salma, Pinky, Rimpy, Loren, Simone, Charlotte, Cheryl, Scott & Eugenia, Erma, Carmen, Tiffany, Jen, La Vern, Andree, Kim, Barbara & Pop, Kevin, Dawn, Qiana, EL, Roxanne, Grover, Perry, Jackie, little Brother, Renee, Marie, Pat, Anthony, Donna, Elsie, Susan, Patricia, Marie and David,

I thank everyone for their efforts, time, and individual contributions during my journey.

Thank you,

Dr. Richard Dwayne Britt

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Chapter 1: Introduction to the Study

The situation that prompted this research of literature pertained to how most white-collar cases involved the use of confidential informants (CIs) to obtain convictions (Gaille, 2017). In 2017, for every 100,000 people in the United States, there were 5,317 arrests that were directly related to white-collar crime (Gaille, 2017). CIs played a central role in the U.S. criminal justice system for most arrests and convictions (Oxford Bibliographies, 2018). With this in mind, I explored the shared perspectives of private practice attorneys with defense and prosecutor experience regarding the use of CIs in federal white-collar cases. This research expanded on the body of knowledge of private practice attorneys' perspectives, with defense and prosecutor experience, of federal white-collar cases that included the use of federal CIs as it related to Government Accountability Office (GAO) Department of Justice (DOJ) Federal Bureau of Investigation (FBI) CI safeguard policies.

The study furthered the research of Jones-Brown and Shane (2011) that addressed the use of CIs in New Jersey drug cases. Jones-Brown and Shane found that confidential informing was critical for the criminal justice system to obtain convictions. Jones-Brown and Shane also discovered that forms of corrupt practices by officers related to CI recruitment reported during the community interviews, such as getting high with drug-addicted informants. For single mothers, it was reported that officers commonly threatened that children would be taken away by the Division of Youth and Family Services if CIs did not cooperate. Jones-Brown and Shane confirmed that police will use leverage to scare first-time defendants and innocent civilians to produce information for

criminal cases. Subsequently, Jones-Brown and Shane found several motivating factors for snitches to gain and continue service: money, friendship, sex, and lifestyle addiction.

Prior research indicated that confidential informing was a vital aspect of law enforcement regarding drug cases (Adler, 2018; Garcia, 2018). The focus in prior research was on the use of CIs in drug cases (Adler, 2018; Garcia, 2018). Researchers also supported the need for more research to highlight the gap regarding the use of CIs in federal white-collar cases (Bunin, 2019; Harbeck, 2019; Piquero, 2018). For the purposes of the current study, the GAO DOJ FBI CI acronym represents the federal government's CI policies. This study focused on federal white-collar cases as it related to GAO DOJ FBI CI safeguard policies elaborated by the perspectives of private practice attorneys with defense and prosecution experience regarding CIs.

Chapter 1 introduces the topic of study and includes a discussion of the use of CIs, which includes safeguard antecedents of convictions. The background section provides a macro perspective of effective safeguards in place for private practice attorneys with defense and prosecutor experience that was considered when dealing with CIs. There is also a micro view of the GAO DOJ FBI CI policy provision issues that impacted the convictions of defendants. For the purposes of my study, CI policy provisions represented the safeguards used for CIs in federal white-collar cases. There was a gap in research regarding the examination of CIs' efficacy safeguards and whether combinations of several safeguards produce desired effects (Wetmore et al., 2020).

Chapter 1 also includes two theoretical frameworks and how each related to the purpose, study approach, and research question. The rationale supports the need to further

study concerning the use of CIs in federal white-collar cases from the prosecutorial and defense perspective of private practice attorneys. Chapter 1 also includes the assumptions, scope and delimitations, and limitations. Lastly, Chapter 1 provides a conclusion, summary, and transition to Chapter 2.

Background

The concern was that most federal white-collar cases involved the use of CIs to obtain convictions (Gaille, 2017). However, there was a gap in research regarding the examination of CIs efficacy safeguards and whether combinations of several safeguards produce desired effects (Wetmore et al., 2020). GAO policies for DOJ agencies, specific to the FBI, contain safeguards for CIs. For my study, these safeguards represented the safeguards used for CIs in federal white-collar cases. Although researchers investigated this issue, the topic had not been explored in this way: Defendants were prosecuted based on the information provided from CIs without the ability to have heard from the voice of the defendant (Garcia, 2018). In most cases, defendants were forced to plea bargain out before going to trial.

That said, there are many federal offices with CI safeguards, such as the GAO that has FBI CI policy safeguards within the umbrella of the DOJ. Only certain policy provisions (safeguards) were reviewed and used for data triangulation in my study. The GAO assessment of agencies informant policies for the FBI under the DOJ agencies' CI policies address the safeguards in the attorney general's guidelines for overseeing CIs otherwise illegal activities are, but not limited to

Tier 1 otherwise illegal activity must be authorized in advance and in writing for a specified period, not to exceed 90 days, by a Department of Justice Law Enforcement Agency's (JLEA) special agent in charge (or the equivalent) and the appropriate chief federal prosecutor.

After a CI is authorized to engage in Tier 1 or 2 otherwise illegal activity, at least one agent of the JLEA, along with one additional agent or other law enforcement official present as a witness, shall review with the CI written instructions that state, at a minimum, that: the CI's authorization is limited to the time period specified in the written authorization; participation in any prohibited conduct could subject the CI to full criminal prosecution.

Immediately after these instructions have been given, the CI shall be required to sign or initial, and date, a written acknowledgment of the instructions. JLEA official who authorizes Tier 1 or 2 otherwise illegal activity must make a finding, which shall be documented in the CI's files, that authorization for the CI to engage in the Tier 1 or 2 otherwise illegal activity is necessary; in making these findings, the JLEA shall consider the risk that the CI might misunderstand or exceed the scope of his authorization; the extent of the CI's participation in the otherwise illegal activity.

Immediately after the CI has been informed that he or she is no longer authorized to engage in any otherwise illegal activity, the CI shall be required to sign or initial, and date, a written acknowledgment that he or she has been informed of this fact. (United States GAO, 2015, para. X)

Participants in the current study provided perspectives of the existing legacy GAO DOJ FBI CI safeguard policies used in federal white-collar investigations. The historical research design was appropriate because many of the provisions and safeguards were beyond the scope of current research. The historical research design involves the review of written materials but also includes oral documentation (Thapa, 2017). The current study was needed to explore the use of CIs in federal white-collar cases from the perspectives of private practice attorneys who had defense and prosecutorial experience.

Problem Statement

In 2017, for every 100,000 people in the United States, there were 5,317 arrests that were directly related to white-collar crime (Gaille, 2017). The concern was that most white-collar cases involved the use of CIs to obtain convictions (Gaille, 2017). The specific research problem that was addressed in the current study was the lack of information on the perspectives of private practice attorneys with defense and prosecutor experience as to how federal CIs influenced the outcome of cases, resulting in convictions. Furthering the Jones-Brown and Shane (2011) study, I reviewed safeguard efficacies in federal mandates regarding national uniformity and oversight within the GAO DOJ FBI CI policy.

This study addressed the gap in research literature regarding the accountability of CI use in federal white-collar cases through the perspectives of private practice attorneys who had defense and prosecutorial experience. There was a lack of recent research that addressed the use of CIs in federal white-collar cases. Adler (2018) had addressed but had not explored how accountability of CIs might have changed the dynamics and system

regarding the practice of providing false statements against defendants. Because GAO policies for DOJ agencies specific to the FBI contain provisions for CIs, I explored federal policy provisions as safeguards used for CIs in federal white-collar cases.

A lack of adherence to CI requirements established under *Brimage* in 1998 provided another example of the lack of credence to the belief there was a degree of implementation failure needed for establishing uniformity and oversight to CI policy in the state that involved drug cases (Jones-Brown & Shane, 2011). The problem addressed in the current was that although written policies regarded the use of CIs exist at the state, county, and municipal levels of government, at the state level the policies are disjointed and spread throughout various documents (Jones-Brown & Shane, 2011). Also, Jones-Brown and Shane (2011) referred to how some law enforcement agencies, with a substantial use of information from CIs rather than independent police work, determined that was a part of the routine investigation of drug activity. Lastly, Jones-Brown and Shane suggested going beyond New Jersey would also widen the depiction of using CIs to a regional or national scope.

Purpose of the Study

The purpose of this historical research qualitative study was to explore the literature related to whether GAO DOJ FBI CI policies of safeguards influence the national use of CIs to obtain convictions in federal white-collar cases based on the perspectives of private practice attorneys with defense and prosecutorial experience. In 2017, for every 100,000 people in the United States, there were 5,317 arrests that were directly related to white-collar crime (Gaille, 2017). The concern was that most white-

collar cases involved the use of CIs to obtain convictions (Gaille, 2017). GAO policies for DOJ agencies, specific to the FBI, contain provisions for CIs which, in my study, represented the safeguards used for CIs in federal white-collar cases. Researchers had addressed but had not explored how accountability of CIs might have changed the dynamics and system regarding the practice of providing false statements against defendants (Adler, 2018). The need for the current study included highlighting parts of the GAO DOJ FBI CI policy use of safeguards, or lack thereof, which may have influenced the outcome of federal white-collar criminal justice cases resulting in convictions.

Research Question

For this historical research qualitative study, the perspectives of private practice attorneys with both defense and prosecutor experience regarding the use of CIs in federal white-collar cases were explored. The research question that guided this research was the following: How do the legacy GAO DOJ FBI CI safeguard policies use of safeguards, or lack thereof, impact the outcome of federal white-collar criminal justice cases resulting in convictions?

Theoretical Framework

The theoretical framework of this study included the routine activity theory and convenience theory. Because the aspects of white-collar crimes reflect elements of both theories, both theories were relevant to my study.

Routine Activity Theory

The routine activity theory was developed by Felson and Cohen in 1979 (Kalia & Aleem, 2017). For the purposes of the current study, Felson and Boba's (2017) problem triangle analysis in routine activity theory suggested three conditions for crime to occur: a motivated offender, an opportunity in terms of a suitable target, and the absence of a capable or moral guardian. Gottschalk (2018) claimed that the premise of routine activity theory was that crime was affected by social causes such as poverty, inequality, and unemployment. Because federal white-collar criminal acts were not socioeconomically exclusive, the routine activity theory was aligned with the opportunity of criminal activity represented in federal white-collar cases.

Convenience Theory

In contrast to the offenders associated with the routine activity theory, offenders in the convenience theory exist in the upper echelon of socioeconomic classes. It is not the convenience that supports the convenience theory; it is the perceived, expected, and assumed convenience that influences choices of action (Gottschalk, 2018). Gottschalk's (2016) convenience theory was associated with white-collar crime because it related to savings in time and effort by privileged and trusted individuals to facilitate the use of a solution to a problem or to exploit favorable circumstances. People of privilege with the ability to move undetected may find it convenient to commit federal white-collar crimes more freely than socioeconomically challenged counterparts. Chapter 2 provides additional evidence of the theoretical frameworks' alignment in this study.

The logical connections between the framework presented and the nature of this study included the population of private practice attorneys, with defense and prosecutor experience, perceptions of CIs in federal white-collar cases. For example, participants described whether the use of CIs was effective in defending or prosecuting federal white-collar crimes. Participants also discussed the efficacy of CIs that resulted in federal white-collar case convictions. Data were analyzed using the theoretical framework to interpret participant perceptions based on how CIs were used to build a federal white-collar case that established convictions or resulted in court dismissals.

The routine activity theory was used to confirm or refute the definition of a suitable target, who could be inferred as the CI, the perpetrator, or an unsuspecting person or organization. The matter of committing federal white-collar crimes initiated by a motivated perpetrator could be associated with the CI, the federal agent, or a corrupt person or organization. The use of these theories addressed the purpose of this study regarding how the GAO DOJ FBI CI policy use of safeguards or lack thereof may have influenced the outcome of federal white-collar criminal justice cases resulting in convictions. Both theories aligned with the agenda and opportunity of federal officers and the availability of CIs that produce information in federal white-collar cases.

Nature of the Study

A historical research qualitative study was the most appropriate design to explore the perspectives of private practice attorneys with both defense and prosecutor experience regarding the use of CIs in federal white-collar cases. Initially, I considered using a general qualitative design. Because data collection from participant perspectives about

the efficacy of GAO DOJ FBI CI safeguard provisions was current, the literature review was dated, and the general qualitative design was no longer valid. Therefore, a historical research qualitative design was the appropriate approach. Thapa (2017) explained that the purpose of a historical research design for qualitative studies is to collect, verify, and synthesize evidence from the past to establish facts that defend or refute a hypothesis. Because there was a lack of research regarding the use of CIs in federal white-collar cases, this research design helped me compare previous practices against current practices based on the participants' perspectives. This rich collection of data was appropriate for this study to gain insight into the use of CIs during federal white-collar cases from the perspectives of private practice attorneys with defense and prosecutor experience.

I used a modified version of the validated Confidential Informant Survey introduced in the Jones-Brown and Shane (2011) study. The instrument modification did not change the validity and reliability of the study because the main content and questions of the instrument were not altered. Data collection provided a thick description of the perspectives of private practice attorneys with defense and prosecutor experience regarding CIs in federal white-collar crimes. I used this modified instrument to interview private practice attorneys with defense and prosecutor experience to understand how federal CIs are used against defendants in federal white-collar cases.

Instrument modifications were done by using only selected questions that pertained to this study. The modification involved opening up close-ended questions,

which maintained the instrument's validity and reliability. I did not have the modified instrument reviewed by subject matter experts.

Attorney participants were solicited using a snowball sampling method. I also recruited participants using a membership-driven pool of attorneys such as the American Civil Liberties Union (ACLU), the California Lawyer Association, and/or California Attorneys for Criminal Justice. The criteria for the snowball sampling recruitment method stated that all attorneys had to be in private practice (active or retired), have defense and prosecutor experience, and have experience with federal white-collar cases that involved CIs.

The research problem was addressed through both theories because the effective safeguard GAO DOJ FBI CI policy elements reflected personal choices made by federal officers experienced by my study's population regarding CI interactions. I used a historical research qualitative design to explore the shared perspectives of private practice attorneys with defense and prosecutor experience regarding the use of CIs. The purpose of the historical research design is to gain a clearer understanding of the impact of the past on present and future events related to life processes (Thapa, 2017). Because there was no research that addressed CI involvement in federal white-collar cases regarding GAO DOJ FBI CI safeguard policies, this historical research qualitative study focused on the perspectives of private practice attorneys with defense and prosecutor experience of CIs related to federal white-collar crimes within the criminal justice system.

An adequate sample size in qualitative research is a matter of judgment and experience in evaluating the quality of the information collected against the uses put, the

research method, the purposeful sampling strategy employed, and the research product intended (Sandelowski, 1995). As directed by my committee members, I interviewed a range of participants to reach data saturation. The purposeful method of recruitment entailed researching the first attorney who met my participant criterion via public records. The snowball method of recruitment entailed researching a membership pool of attorneys such as ACLU or California Lawyers Association or California Attorneys for Criminal Justice who met my participant criteria via email notification.

I sent the recruitment invitation (see Appendix B) via email to each organization. The attorneys who responded to the email and met the participation requirements were sent the invitation letter (see Appendix B) followed by the consent email (see Appendix D) and were scheduled for in-depth interviews. In the event that snowball sampling was unsuccessful, I planned to use a convenience method of participant recruitment. When using snowball sampling of participants in my study, I asked the first attorney for referrals of additional attorneys who met the criteria for my study.

Data analysis involved collected data that were transcribed, coded, patterned, themed, and triangulated to clarify the outcomes of participant interviews (see Saldana, 2016). Methodological data triangulation included participant interviews, my interview data, Jones-Brown and Shane's (2011) findings, GAO DOJ FBI CI policy safeguards, and literature review themes. I used NVivo software as a research tool for theme detection based on codes and pattern categories.

Definitions

This study contained terms requiring definitions to increase understanding of critical concepts related to studied variables, the research question, and industry-specific terminology. The following terms were used in this study:

Confidential informant: A CI is an individual who requires anonymity in exchange for cooperation, such as providing useful information, directed assistance, or both that enhances criminal investigations in exchange for financial compensation, less time in prison, or no time in prison (Shane, 2016).

Defense attorney: A defense attorney, also known as a criminal lawyer, defends individuals accused of crimes committed with conducted research, analyzed cases, and presented findings in court to gain the defendant's freedom or to negotiate a plea bargain or settlement (Fountain & Woolard, 2018).

Department of Justice: The United States DOJ is a federal executive department responsible for enforcing the law and administering justice within the United States (Heese et al., 2021).

Federal Bureau of Investigation: The FBI is the department government responsible for gathering facts and evidence to solve and prevent crimes (Kamali, 2017).

Government Accountability Office: The U.S. GAO is a legislative agency that provides supreme auditing, evaluation, and investigative services for the United States Congress to improve the federal government's performance and accountability for the benefit of the American people (Carroll, 2019).

Prosecutor attorney: Prosecutor attorneys in the United States, including district attorneys and state attorneys, are the chief prosecutors for a U.S. state in a local government area, with responsibilities that involve trying cases, interviewing witnesses or victims, evaluating police reports, and performing legal research to plan the defendant prosecutions of each case (Joe, 2018).

Testimony: Testimony is a formal written or spoken statement as a solemn declaration made by a witness under oath in response to interrogation by a lawyer or an authorized public official authenticated by facts and evidence (Frumkin & Stone, 2020).

White-collar crime: White-collar crimes, viewed as victimless and nonviolent crimes, are associated with frauds committed by business and government professionals characterized by deceit, concealment, or violation of trust and are not dependent on the application or threat of physical force or violence (Sohoni & Rorie, 2021).

Assumptions

For this study, several assumptions guided data collection. There were three assumptions that related to the sample population and pertained to the study's design. The first assumption was that the participants would be truthful in their responses to the in-depth interviews. By requiring a clear and explicit informed consent, I assumed that each participant understood that participation was voluntary. The invitation to participate in this study included the option to withdraw from the interview without prejudice at any point.

Careful instructions were provided in the telephone interview protocol to ensure that participants knew the responses were confidential. The rationale for this assumption

was that these protocols promoted increased honesty with participant responses. Second, there was an assumption that participants were familiar with the GAO DOJ FBI CI policy provisions. The third assumption related to the appropriateness of the inclusion criteria to yield the targeted population sample.

Scope and Delimitations

The concern was that most white-collar cases involved the use of CIs to obtain convictions (Gaille, 2017). The scope of this qualitative study included the modified use of the Jones-Brown and Shane (2011) Confidential Informant Survey instrument administered through in-depth interview questions with private practice attorneys who had defense and prosecutor experience concerning the use of CIs in federal white-collar crimes. Delimitations are the deliberate boundaries determined by the researcher. For this study, the target population comprised private practice attorneys with defense and prosecutor experience. Due to the COVID-19 pandemic, I asked participants to join telephone calls for the in-depth interviews instead of conducting them in a face-to-face environment. The interview questions were administered via telephone calls with private practice attorneys with prosecutor and defense experience, who were invited from a membership-driven participant pool using the snowball sampling method. The first delimitation was that only active private practice attorneys were considered. Second, only private practice attorneys with defense and prosecutor experience who had sufficient access to the internet and a phone were asked to participate. Additional delimitations may have affected the study's external validity by not targeting all types of attorneys or federal agents employed in private or public settings.

Limitations

Qualitative research provided an opportunity to explore topics that were otherwise limited by quantitative analysis. However, my study had at least three limitations. The first limitation was the access to my population of private practice attorneys with defense and prosecutor experience. The second limitation was the use of the modified Jones-Brown and Shane (2011) validated Confidential Informant Survey because it pertained only to CIs and CI policies. My third limitation was the use of the convenience and snowball sampling to recruit at least 10 participants, which was required in the historical research qualitative design methodology.

My study produced at least two challenges. One challenge concerned my populations' willingness to be truthful and honest during the interview process. The second challenge was the ethical consideration of the removal of my personal bias regarding CIs. Aside from my limitations and challenges, I did not foresee any barriers to data collection for my study.

Significance

I explored the perspectives of private practice attorneys with defense and prosecutorial experience from the lens of CI safeguard efficacy regarding the use of CIs in federal white-collar cases. Furthering the research of Jones-Brown and Shane (2011), I reviewed CI safeguard efficacies in federal mandates regarding national uniformity and oversight within some of the GAO DOJ FBI CI policy provisions in federal white-collar cases. GAO policies for DOJ agencies specific to the FBI contain provisions for CIs. For my study, these provisions represented the safeguards used for CIs in federal white-collar

cases. Therefore, my research addressed the gap in the literature related to the exploration of CI efficacy safeguards and whether combinations of several safeguards produce desired effects (see Wetmore et al., 2020).

I explored how GAO DOJ FBI CI policies use of safeguards, or lack thereof, influenced the outcome of federal white-collar criminal justice cases resulting in convictions. My study may increase the focus and investigation into how federal law enforcement agents and prosecutors make arrests with the use of CIs regarding federal white-collar crimes. My study of private practice attorneys with defense and prosecutor experiences may encourage federal law enforcement agents to recognize the validity and accountability of GAO DOJ FBI federal policy safeguards regarding the information CIs provide in federal white-collar cases.

Summary

In 2017, for every 100,000 people in the United States, there were 5,317 arrests that were directly related to white-collar crime (Gaille, 2017). The concern was that most white-collar cases involved the use of CIs to obtain convictions (Gaille, 2017). Researchers had addressed but had not explored how accountability of CIs might have changed the dynamics and system regarding the practice of providing false statements against defendants (Adler, 2018). Consequently, the GAO DOJ FBI CI policy use of safeguards, or lack thereof, may have influenced the outcome of federal white-collar criminal justice cases resulting in convictions. However, the exploration of CIs efficacy safeguards and whether combinations of several safeguards produce desired effects was unknown.

It was essential to gather information from the perspectives of private practice attorneys with both defense and prosecutor experience regarding the use of federal CIs in federal white-collar cases. This information may increase the focus and investigation into how federal law enforcement agents make arrests with the use of CIs regarding federal white-collar crimes. Chapter 2 provides a literature review that contains the analysis and synthesis of recent scholarly research related to this study.

Chapter 2: Literature Review

The research problem addressed in this study was that there is a lack of information on the perspectives of private practice attorneys with defense and prosecutor experience as to how federal CIs influenced the outcome of federal white-collar cases that resulted in convictions. Researchers had addressed but had not explored how accountability of CIs might have changed the dynamics and system regarding the practice of providing false statements against defendants (Adler, 2018). The concern was that most white-collar cases involved the use of CIs to obtain convictions (Gaille, 2017). The gap in research was the lack of exploration of CIs efficacy safeguards and whether combinations of several safeguards produce desired effects (Wetmore et al., 2020).

The purpose of a historical research design is to collect, verify, and synthesize evidence from the past to establish facts that defend or refute a hypothesis (Thapa, 2017). I explored the relevance and credence of dated federal government policies currently used in federal white-collar cases through the selected participants' perspectives. The purpose of my historical research qualitative study was to fill the gap in the literature related to whether GAO DOJ FBI CI policies of safeguards influenced the national use of CIs to obtain convictions in federal white-collar cases based on the perspectives of private practice attorneys with defense and prosecutorial experience.

A review of the literature revealed a gap in the exploration of FBI officers' recruitment practices of CIs, defense counsel and prosecutor responses to white-collar crimes, and government participation in white-collar criminal investigations as each related to routine activity and convenience theories. Chapter 2 provides a review of the

literature search strategy used to saturate existing literature. Next, I review the theoretical framework that informed the discussion of federal white-collar cases, the history of CIs, and existing literature on defense and prosecutor experience with federal white-collar cases. The chapter concludes with a summary.

Literature Search Strategy

For this study, literature was first searched through Google Scholar and EBSCO and ProQuest Criminal Justice databases in the Walden University Library using the following search terms: *confidential informant*, *federal confidential informant*, *federal white-collar cases*, *government CI policy*, *testimony*, *grand jury*, *federal defense attorney*, and *federal prosecutor history*. Next, several journals were reviewed for content relevancy including but not limited to *Journal of Research in Crime and Delinquency*, *Security Management*, *Political Science Quarterly*, *Michigan Law Review*, *Justice Quarterly*, *Criminology*, *Strategic Management Journal*, *The Journal of Criminal Law and Criminology*, *Duke Law Journal*, and *Journal of Research in Crime and Delinquency*. Additionally, current dissertations on the routine activity theory, convenience theory, defense and prosecutor attorneys, and CIs were reviewed, and the sources were data mined. Lastly, books, government websites, and reports were reviewed. The searches yielded over 100 studies, of which approximately 70 were relevant to the topic.

Theoretical Foundation

The theoretical foundation for this study was based on both Cohen and Felson's (1979) routine activity theory and Gottschalk's (2016) convenience theory. The

application of Cohen and Felson's routine activity theory emphasized that crimes occurred when three elements converged: (a) a motivated offender, (b) a suitable target, and (c) the absence of a capable guardian. For instance, one interpretation implies that the CI is the motivated offender, the person of interest is the suitable target, and no attorney to represent the enlisted CI working with the FBI constitutes the absence of a capable guardian. Additional interpretations that address the combination of these theories are discussed throughout the literature review.

Gottschalk's (2016) convenience theory was based on the matters of convenience that motivated the choice of action in white-collar crimes. Regarding white-collar crimes, Gottschalk stated that convenience is a relative construct in that it is more convenient to commit crime than to carry out alternative actions to solve a problem or gain benefits from a possibility. Therefore, the CI, FBI, or prosecutor's intentions to participate in federal white-collar investigations may operate from choices associated with convenience as opposed to justice.

The use of both theories addressed the purpose of my study regarding how the GAO DOJ FBI CI policy use of safeguards, or lack thereof, may have influenced the outcome of federal white-collar criminal justice cases resulting in convictions. Both theories aligned with the agenda and opportunity of federal officers, prosecutors, legislation, and the availability of CIs who produce information in federal white-collar cases. These theories supported the problem that was addressed in this study.

Routine Activity Theory

The routine activity theory is a common criminal justice philosophy that describes the strategic mannerisms that are synonymous with many types of criminal activities such as drug, murder, terrorism, and federal white-collar crimes. Seo-ah (n.d.) determined that the routine activity theory postulates that the probability of crime increases when elements such as unavailability of protective power, motivated perpetrator, and a suitable target are in place. A loving parent, an unbiased judge, and a chef with excellent standards of food hygiene represent guardians who provide aspects of protective power. In each of these instances, a child, a defendant, and food consumers assume that each guardian uses the protective powers defined within strong ethical standards or laws that prevent actions of wrongdoing and harm.

In contrast, motivated perpetrators' characteristics range from the obvious to the oblivious. For example, a disgruntled employee, a victim of bullying, or a business accountant can become motivated perpetrators under the circumstances of events. A suitable target is a victim labeled as a person or a business that is easily accessible to motivated offenders. The protective power and guardianship help refrain the motivated offender from criminal behavior, and help empower the suitable target from becoming a victim.

Given its strong pragmatic leaning, the routine activity theory focuses on preventing crime by reducing opportunities (Miró, 2014). For instance, when the FBI targets an individual or a corporation, it relies on CI cooperation to gain inside information of wrongdoing that results in prosecutor convictions. Motivated offenders are

individuals who are not only capable of committing criminal activity but are willing to do so (Gottschalk, 2018). Also, the unavailability of defense attorney protective power aligns with the lack of safeguards available to CIs when approached by law enforcement agents. Gottschalk (2018) also stated that suitable targets are something that is seen by offenders as attractive. The increase in availability of suitable targets, the diminished effectiveness of guardians, or changes in society's routine activities increase the probability that these elements converge in space and time, thereby increasing opportunities for crime (Miró, 2014).

Guardianship was defined as the physical or symbolic presence of individuals who acted in a way to deter a potential criminal event (Hollis-Peel et al., 2011). In this instance, CIs may think by helping agents in a federal white-collar case in a guardianship role may serve as a deterrent example for targets engaged in similar crimes. The lack of any of these elements is sufficient to prevent the successful completion of a crime (Gottschalk, 2018). The FBI secures CIs to thwart illegal threats from targeted perpetrating offenders. Guardians are not only protective tools, weapons, and skills but also mental models in the minds of potential offenders who stimulate self-control to avoid criminal acts (Gottschalk, 2018). Regarding federal white-collar crime convictions, the routine activity theory's triple elements seem to accompany the needs of the prosecution.

Convenience Theory

The convenience theory is a hybrid of the routine activity theory. Gottschalk (2018) declared that when compared to convenience theory, routine activity theory's

three conditions did not cover the behavioral (the who), economical (the why), and organizational (the how) dimensions. Following the convenience theory principles, there were three dimensions added to the three elements of the routine activity theory. Gottschalk determined that motivated offenders are found in the behavioral dimension, while both suitable targets and the absence of capable guardians are found in the organizational dimension. Gottschalk further stated that the economical dimension of convenience theory is concerned with threats and possibilities; white-collar crime helps in terms of illegal financial gain. Gottschalk discovered that convenience is a matter of perception in advance of possible criminal actions.

According to Gottschalk (2018), the routine activity theory defines conditions for crimes that occurred, whereas the convenience theory defines situations in which crime occurred. Offenders are typically charismatic males in the age range of 40s, have a need to control, have a tendency to bully subordinates, fear losing individual status and position, exhibit narcissistic tendencies, lack integrity and social conscience, have no guilt feelings, and do not perceive themselves as criminals (Gottschalk, 2018). The characteristics defined by Gottschalk encourage researchers to assume that all federal white-collar crimes are committed by a specific elite group of the male population. However, Gottschalk maintained that white-collar crime is committed by privileged individuals in the elite who typically enjoy substantial individual freedom in individual professions with little or no control.

In that context, federal white-collar criminals were stereotyped as privileged persons of power. Gottschalk (2018) acknowledged that the opportunity to commit white-

collar crimes is found at the community level, business level, and individual level. Three levels were added to the three dimensions associated with the convenience theory:

> The first dimension was concerned with economic aspects, where convenience implied that the illegal financial gain was a convenient option for the decision-maker to cover needs. The second dimension was concerned with organizational aspects, where convenience implied that the offender had convenient access to premises and convenient ability to hide illegal transactions among legal transactions. The third dimension is concerned with behavioral aspects, where the convenience implied that the offender found convenient justification. The community level control regimes were absent, and entire industries were available for financial crime. At the business level, ethics and rules were absent, while economic crime was a straightforward business practice. At the individual level, greed can dominate, where the business did not have any relevant reaction to economic crime. (Gottschalk, 2016, 2017, 2018)

The organizational anchoring of some CEOs, politicians, government officials, heads of religious organizations, other leading figures in society, and independent professions such as lawyers and doctors all enjoy freedom and trust without control (Gottschalk, 2018). Even though not all federal white-collar criminals are affluent males, Gottschalk (2018) suggested that such anchoring reveals how white-collar criminals avoid investigation, prosecution, and conviction. Gottschalk described convenience as an absolute construct that reflects the attractiveness to commit crimes. In other words, the convenience of illegal financial gain is without the fear of reprisal. Gottschalk also

cautioned that convenience comes at a potential cost to the offender in terms of the likelihood of detection and future punishment. Under the guise of privilege, it may take longer to detect financial criminal activity from affluent white-collar criminals.

Crimes of convenience do not exist without consequence. White-collar crime committed for economic gain implies that items of value that belong to others are taken in an illegal way (Gottschalk, 2018). In the current study, the convenience theory added depth to the routine activity theory with the elements of financial criminal acts committed by federal white-collar criminals. In summary, the routine activities of white-collar crimes that include CI involvement rely on the choice in which all parties involved determine the matter of convenience prior to participation.

History of White-Collar Crimes in the United States

White-collar offenders have traditionally been considered employed individuals of the middle or upper class, not lower class, who have a respectable status in society (Friedrichs, 2019). The term white-collar is synonymous with working class citizens considered as occupants of the upper echelon of society. Initially coined in 1939 by Edwin Sutherland, white-collar crimes were defined as crimes committed by persons of respectability and high social status (Sutherland, 1949). At that time, the key aspect of Sutherland's presidential address included a decade-long project on the development of the concept, characteristics, and explanations of white-collar crimes, which emphasized the high social status of business offenders (Jordanoska & Schoultz, 2019). Presently, white-collar criminals are not strictly isolated to society's upper-class population.

White-collar crimes often involve concealed, elaborated schemes for personal, financial, or business gain (Severson et al., 2019). Therefore, the classification of white-collar crimes is not exclusive to high-class citizens. Severson et al. (2019) declared that unlike some street crimes where the motivation to offend often derives from sudden urges, such as craving drugs or violently settling disputes, white-collar offenses typically require planning. Moreover, the benefits from committing white-collar crimes typically include monetary gain (Severson et al., 2019). Based on this explanation, planning and scheming for financial gain does not discriminate and covers persons from all socioeconomic backgrounds regardless of occupational status.

Benson and Chio (2019) described white-collar offenders as both crisis responders who commit crimes out of desperation and opportunity takers in occupational positions who are enabled to become enriched with illegal money. Logically, the concept of white-collar crimes includes diverse types of offenses (Cullen et al., 2019). In particular, The Federal Criminal Attorneys' inclusion of white-collar cases entailed the following offenses: fraud, money laundering, conspiracy and Racketeer Influenced Corrupt Organizations Act crimes, counterfeiting money, bankruptcy fraud, embezzlement, computer crimes, real estate fraud, identity theft, theft of trade secrets, pyramid Ponzi schemes, tax evasion, insider trading, forgery, extortion, counterfeiting, corporate fraud, and bribery. The crimes represent illegal circumstances to achieve monetary gain by enabled individuals. The DOJ FBI (1989) defined white-collar crimes as individuals and organizations who commit criminal acts to obtain money, property, or

services; avoid the payment or loss of money or services; or secure a personal or business advantage.

The term economic stipulated in white-collar crimes is exclusively economic in character (e.g., corporate violence), which presents huge physical consequences, resulting in death, injury, and disease for citizens, consumers, and workers (Friedrichs, 2019). The anticipated need for money is a dangerous motivator for enabled perpetrators. Bell (2002) clearly stated that some CIs used by law enforcement in undercover settings engage in independent crimes for additional self-serving benefits. Therefore, dealing with white-collar criminals during federal investigations demonstrates a slippery slope for law enforcement and prosecutor involvement.

White-collar financial offenses are judged to be as serious as, if not more serious, than street crimes (Cullen et al., 2019). For instance, illegal monetary gain estimated from the FBI and Association of Certified Fraud Examiners (2004) approximated the annual cost of white-collar crimes totaled between $300,000,000,000 and $660,000,000,000. Simply put, white-collar crimes are powerfully lucrative. To expand this point, the Department of Homeland Security (n.d.) disclosed that during fiscal year 2017, there were over 34,000 intellectual property crime seizures by U.S. Customs and Border Protection, with items that ranged from pharmaceuticals to sporting goods, worth an estimated $1.2 billion.

Unfortunately, corporate theft of pharmaceuticals deprives persons and patients from receiving essential medicine in a timely manner. This type of inconvenience, a criminal act based on convenience of theft, could have harmful results within the medical

community. Additionally, the United States Trade Representative (2005) estimated U.S. losses to counterfeiting and piracy alone totaled $200,000,000,000. Lastly, piracy of digital music products for profit directly negatively impacts musicians and vocal artists within the industry. Thus, there are multiple facets of convenience associated with white-collar criminal acts.

Shover and Hochstetler (2005) discussed how choice and opportunity, along with the suitability of white-collar targets, are considered lures—the situation or potential reward that turns the head of motivated offenders toward a lucrative reward with little investment. Concurrently, when a scheme is alluring with little oversight by authorities, a white-collar crime is likely to occur (Severson et al., 2019). In summary, offenders are often motivated by a lack of guardianship to pursue a suitable target; thus, white-collar crimes are activities routinely based on the convenience of opportunity to gain illegal monetary profit.

Intentional and Unintentional Violations

Although many white-collar crimes appear to be intentional, there are instances where unintentional violations have occurred. In fact, willfulness or deliberate intent to violate is not essential to making a white-collar offense a criminal act (Hartung, 1950). Therefore, not all white-collar crimes are committed with malicious objectives. However, an absence of the intention to violate is nevertheless a criminal act once it meets the tests of formally defined social injury and the possibility of legal sanctions (Hartung, 1950). Sutherland (1949) explained that a white-collar offense is defined as a violation of law-regulating business, which is committed for a firm by the firm or its agents in the conduct

of its business. Individuals who commit federal white-collar crimes may represent a person or business entity.

Firms based in the defense, financial services, power (energy), or healthcare (related to Medicare fraud) industries maintain an extensive regulation where it is difficult to separate an intentional fraudulent act to prosecute in a civil or criminal court from an unintentional error or another form of violation (Schnatterly, 2003). There is a gray area that highlights how honest mistakes count as federal white-collar crime violations. For example, Schnatterly (2003) stated that a data entry error led to a Medicare fraud charge without any fraudulent intention. On the contrary, without direct supervision to monitor all employee behavior, employees may pursue opportunistic behavior at the organization's expense (Schnatterly, 2003). Therefore, employers must diligently monitor employee work to prevent intended or unintended federal white-collar violations.

White-collar crime reduction should begin with the careful screening of potential employees, which may identify potentially problematic individuals (Gardner, 1998; Martin, 1998; Stavros, 1998; Turner & Stephenson, 1993). However, persons with an undocumented criminal past may deceive prospective employers to earn gainful employment. Because many white-collar offenses have involved deception and abuse of legitimate authority, white-collar crimes are virtually impossible to uncover by nondeceptive means (Henning, 1993). For this reason, guardianship of persons and property must utilize CIs in an active role working with law enforcement to safeguard suitable targets from white-collar crime.

History of Confidential Informants in the United States

Federal Bureau of Investigation

The FBI employed the American Legion Contact Program (ALCP) from 1940 to 1966, which expanded surveillance permanently by recruiting reliable American Legionnaires as FBI informers, or, in the bureau's parlance, known as the Confidential National Defense Informants (Theoharis, 1985). History explains that the use of CIs originated with the FBI. Confidential National Defense Informants were controlled, and the surveillance of activities targeted by FBI control agents contributed to the permanent expansion of the FBI's surveillance of dissident activities through the recruitment of CIs (Theoharis, 1985). In the beginning, the FBI's purpose of recruiting CIs was based on control. In fact, the ALCP was conducted in secrecy, without public or congressional awareness of FBI officials' decision to encourage spying on American citizens by a private, self-proclaimed patriotic organization (Theoharis, 1985).

For over a decade, the FBI maintained complete control without oversight from any other government agency to make decisions about the surveillance of American people. The duration of this program and absence of any congressional or judicial oversight role raised serious questions about the effectiveness of constitutional restrictions on bureaucracies in modern America, about the DOJs relationship with the FBI, and the effectiveness of the attorney general's oversight (Theoharis, 1985). During that time, there was an insidious relationship among the FBI and DOJ concerning CI practices due to the absence of government oversight and safeguards to protect the ALCP's integrity.

An established baseline criterion for recruiting informants helps efficiently allocate prosecution resources and speed up notoriously slow investigations (Cuevas, 2019). Without any government oversight as a guardian, CI recruitment was a convenient choice made by law enforcement based on the opportunity of a suitable target. Guidelines should have been established within each agency to ensure informants are being used appropriately and with respect to individuals' civil rights (U.S. DOJ, 2001). Coincidentally, there are two types of CIs: informers, those who strictly provide information to law enforcement, and informants, those who play a more active role in assisting law enforcement (Miller, 2011). FBI CIs are required to play an active participant role in securing evidence for the prosecution.

Informants are motivated by various reasons; for example, some have a strong sense of patriotism and simply want to help the police (Hunt, 2018). That is, not all CIs are criminals or have a history of criminal behavior. Yet, when CIs agree to participate in federal investigations, there may be an assumption that the FBI will behave as a guardian and protect the individual's civil liberties throughout the process. Unfortunately, with respect to the procedural component, police hold almost all the power over informants and implicitly threaten informants with a complete loss of liberty, specifically prison (Hunt, 2018). The power the FBI holds in this circumstance is daunting and full of intimidation.

Moreover, untrained informants are often unable to appreciate the risks and contingencies associated with dangerous law enforcement operations (Hunt, 2018). Hunt (2018) conceded that an unconscionable agreement was one such as no man in his senses

and not under delusion would make on the one hand, and as no honest and fair man would accept on the other. Trained CIs represent a safeguard that helps mitigate risks related to a CI's agreement to actively participate in white-collar crime investigations. Without consistent and conclusive government oversight, the FBI has free reign over CI recruitment and agreements to secure participation in white-collar investigations.

As a former FBI agent, many of these agreements seem unconscionable *prima facie* as features of the agreement tracked the central characteristics of the doctrine of unconscionability and its underlying normative commitments (Hunt, 2018). However, it would not be right to say that all informant-police agreements are unconscionable (Hunt, 2018). Therefore, with respect to the FBI's intentions, CI involvement in many federal white-collar cases involves coercion and often entails huge risks to one's civil liberties.

Coercions

Some authors have defined coercive interchanges as physical attacks, which are often the outcome of escalated nonphysical coercive interchanges that include negative commands, critical remarks, teasing, humiliation, whining, yelling, and threats (Colvin et al., 2002; Unnever et al., 2004). Through aversive family interchanges, coercion became a primary learned response to adverse situations that arose in both family and nonfamily settings (Colvin et al., 2002; Snyder & Patterson, 1987). Research has suggested that physically abusive and erratic disciplining of children and adolescents, including corporal punishment that falls short of abuse, is related to subsequent delinquency and crime (Loeber & Stouthanier-Loeber, 1986; McCord, 1991; Smith & Thornberry, 1995; Straus, 1994; Straus et al., 1991; Widom, 1989). However, this learned behavior may not only

breed criminals. In nonfamily settings, this behavior could also produce persons prone to victimization as suitable targets for law enforcement CI recruitment.

Coercive interpersonal relations are among the most aversive and negative forces individuals encounter (Unnever et al., 2004). Moreover, fear of imprisonment proffered by the FBI represents one of the strongest motivators in CI recruitment for criminals and noncriminals alike. Tarwacki (n.d.) noted that there can be no ethical defense for the continued use of tainted informants after exposure to FBI officials.

In contrast, several options are available to corporations, courts, and regulators when dealing with the coercion white-collar defendants face: corporate employment indemnification provisions, constitutional protection through the Fifth and Sixth Amendments, and stricter standards for prosecutorial misconduct (Ribstein, 2009). In drug cases, police "squeeze" criminal defendants by threatening additional charges or counts related to individual cases if criminal defendants did not "cooperate" by becoming CIs (Jones-Brown & Shane, 2011). Therefore, tainted and untainted CIs must decide whether it is convenient and beneficial for them to become involved in white-collar criminal investigations.

Confidential Informants

A CI is any individual who provided useful and credible information to a law enforcement agent regarding felonious criminal activities and from whom the agent expected or intended to obtain additional useful and credible information regarding such activities in the future (U.S. DOJ, 2001). The FBI is under the DOJ's jurisdiction. Nevertheless, most police and prosecutors use CIs with the best intentions, to fight crime

(Natapoff, 2007). To do so, the value informants bring to investigative purposes surpasses the information that any law enforcement agency gathers through traditional policing methods (Taslitz, 2011).

CIs are highly coveted by law enforcement agents and prosecutors to secure court convictions of white-collar crimes. The FBI and federal prosecutors look for felonious criminal activities, information, and knowledge from CIs to secure indictments for convictions (Bunin, 2019). According to Jones-Brown and Shane (2011), only 17 of the 66 respondents interviewed were willing to acknowledge that they acted as a CI on one or more occasions. According to the FBI's *Manual of Investigative Operations and Guidelines*, CIs are classified in each of the following categories: organized crime, general criminal, domestic terrorism, white-collar crime, confidential source, drugs, international terrorism, civil rights, national infrastructure protection/computer intrusion program, cybercrime, major theft, and violent gangs (DOJ, 2005).

Everyone involved in the criminal justice system—from judges to prosecutors to police to defense attorneys—agree that informing has become a pervasive part of the legal system (Natapoff, 2007). Notwithstanding, the FBI, DEA, and other agencies handle many informants where some were also criminals and some of whom worked for money alone (Natapoff, 2007). Unfortunately, when dealing with criminal CIs, the lack of credibility can impede the white-collar investigation' integrity.

On the other hand, when scientists and other experts testify in federal court, the court is required to act as a gatekeeper, which ensures testimonial reliability and protects the jury from undue prejudice and confusion (Dauber v. Merrell, 1993). However, despite

the inherent problems of reliability, credibility, and transparency, the use of CIs in federal white-collar cases has increased dramatically (Brotman & Dougherty, 2011). Yet, most state and local jurisdictions have no mechanisms for counting, evaluating, or regulating the ways informants are used (Natapoff, 2007).

The evolution of CI usage did not include proper government reporting practices. Natapoff (2007) noted that on the state and local levels, it is much harder to estimate the extent to which law enforcement have relied on criminal informants. Fortunately, Natapoff stipulated that in law enforcement arenas such as white-collar crime, informant practices became better documented and more accountable when the DOJ revised its guidelines for managing CIs in 2002. The Office of the Inspector General conducted two audits—one of the FBI and one of the DEA—that produced significant information about the handling, reliability, and productivity of CIs used by the federal government (Natapoff, 2007). By establishing better oversight and regulation in this area, congress strengthened law enforcement, improved community safety, and promoted justice (Natapoff, 2007). Accordingly, the Office of the Inspector General's audits provides CI provisions to safeguard the use of federal CIs in criminal investigations. Natapoff concluded that the inclusion of oversight and regulation measures helped strengthen the judicial process.

Current Confidential Informant Literature

There is a lack of research involving CIs and federal white-collar criminal investigations. However, there is an abundance of research based on the use of CIs in

drug and terrorism cases. I discuss the use of CIs by law enforcement agencies in drug and terrorism cases in the following subsections.

Confidential Informant Involvement in Drug Cases

According to Jones et al. (2020), there is a dearth of literature on the role of enforcers or hitmen and CIs in the criminal network literature. However, the authors did notice that a part of law enforcement pressure on drug trafficking organizations was the use of informants to garner information about the network to provide evidence for prosecution. In drug cases, the use of CIs was detrimental to building cases for the prosecution. Cuevas (2019) noted that informant privilege expanded beyond confidentiality, where CIs had to be fully prepared to enter into dangerous drug deals as a required duty. CIs must decide whether it is tangible to become actively involved in criminal activity to assist law enforcement.

CIs provide a direct link to criminal organizations and cultures that law enforcement professionals would not otherwise have access to (Cuevas, 2019). CIs are highly coveted yet often treated as a means to an end. The use of CIs as a means of undercover policing has mustered concerns of liability surrounding the informant's safety, deception of targets, and the viability of the information/intelligence collection mechanism used by the informant and agency (Mabia et al., 2016; Nathan, 2017). Based on the use of CIs in drug cases, CIs are not regarded as completely reliable sources of information.

Confidential Informant Involvement in Terrorism Cases

CIs used in terrorism cases are permitted a certain latitude of trust when working with law enforcement agencies. In America, on August 17, 2016, Erick Jamal Hendricks was indicted on conspiracy to provide material support to a foreign terrorist organization (Carpenter, 2018). Carpenter also declared that the government monitored Hendricks' social media profiles and used CIs to build an international terrorism case against Hendricks. In this case, CIs are held to a higher regard, almost as heroes. Nesbitt et al. (2021) explained that in one scenario where police used a CI, police worried that none of that information could be used as evidence at trial; therefore, law enforcement made the CI a police agent to deter known bomb threats. In this instance, law enforcement reinforced the information produced by the CI by hiring the individual as a police agent.

Through a vast network of CIs, the FBI identifies individuals deemed prone to "radicalization" and offers them ostensible opportunities to engage in violence" (Shirin, 2019). Law enforcement agents lean heavily on the use of CIs to confirm suspected activities of terrorism. Koehler (2021) explored the investigation into Dr. Sabir, which began in 2001 when the FBI began investigating a long-time friend of Dr. Sabir's codefendant, Tarik Shah.

Shah spoke to a CI of the FBI's and promised he would provide support to al Qaeda through martial arts training for mujahideen (jihad warriors) to show his commitment to the jihad (holy war; Koehler, 2021). Working in tandem, Dr. Sabir remarked that the terrorist organizations were "most deserving" of his help and provided contact information to the CI (Koehler, 2021). In this instance, the codefendants did not

testify against one another. Instead, both parties confided in CIs about how individual actions were helping terrorists.

Whistleblowers

Unlike the active role of CI participation, whistleblowers play an inactive role in white-collar investigations. Corporate whistleblowers who try to expose corruption often discover the severity of the consequence as individual punishment, which includes not being promoted or losing jobs when whistleblowers expose corrupt officials in the government, corporations, the military, or public service administrators (Gottschalk, 2018). The result of being a whistleblower ends with suffering the wrath of the organization that committed the white-collar criminal act. Gottschalk (2018) listed a set protocol corporations should follow to counter and lessen a whistleblower's impact:

> When first told of an incident, the bureaucracy will resort to denial. The whistleblower at this stage is often just ignored. If ignoring fails, the department will circle the wagons. The next step is blaming a "few bad apples" – a fig leaf approach. That is, the department tries to cover up the systemic corruption in favor of a localized few individuals. If things continue to get messy, the department might get some friendly scholars or other outsiders with a respectable image to weigh in stating how the department is filled with honesty and integrity. If this fails, the department will often state they reviewed everything and will make some changes as a result. The changes, nearly all superficial, do nothing to change the status quo. When all these previous tactics fail, the department will generally set up some sort of meaningless committee on its own with a few

> friendly appointees in charge. Great fanfare will be taken to show how neutral and detached the committee is. It is generally nothing of the sort. Such committees will have little real force. They will generally not have subpoena power or the power to call witnesses – a toothless tiger. It is only when the mayor or other important political official receives political heat sees the truth and gets involved that a true commission is set up. While the commission operates, true changes take place. Yet once the commission is disbanded and the agency returns to normal operation, the corruption simply morphs. A new form of corruption will erupt that overcomes the mechanisms put into place in an earlier era. (Gottschalks, 2018)

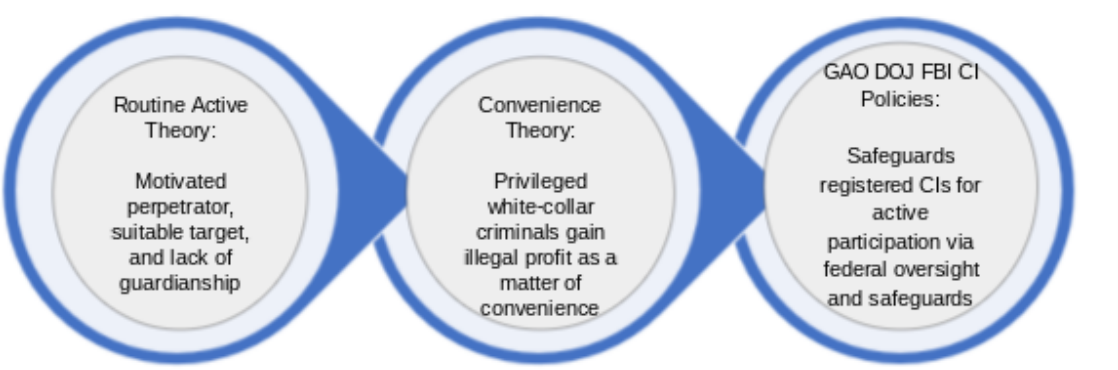
Given the aforementioned scenario, corporations ensure organizational sustainability from whistleblowers by following an elaborate antagonistic protocol that encompasses an aggressive schematic chain of events. According to the federal Inspector General, The Whistleblower Protection Act protects federal employees, formal employees, and applicants for employment (United States Office of Personnel Management, n.d.). Unfortunately, the act does not lend itself to nongovernment entities or nongovernment employees.

Whistleblowers in private organizations have no protective powers, lack guardianship, and could become suitable targets for the motivated perpetrator exposed with committing illegal financial gain. Public interest protections for whistleblowers should aid the process of public and media surveillance (Merritt, 2016). Unlike whistleblowers, CIs recruited for active participation in federal white-collar

investigations involve the judicial system as well as a set of policies. However, there is a lack of consistency regarding CI policies between federal, state, county, and city municipalities.

Figure 1

Theoretical Continuum of CI Recruitment, White-Collar Criminal Motivation, and Federal CI Safeguards for Participation



Note. GAO = Government Accountability Office; DOJ = Department of Justice; FBI = Federal Bureau of Investigation; CI = confidential informant.

Rules of Discovery in White-Collar Cases

The starting point for all discovery in criminal cases begins with the prosecutor's office (Henning, 1998). In federal court, cooperators and informants provide information behind closed doors in sessions that are not recorded (Brotman & Dougherty, 2011). The prosecutor's control over the grand jury process, coupled with the secrecy it offers, provides a significant advantage to the government for reviewing the extensive documentation that accompanies white-collar cases (Brotman & Dougherty, 2011). Once the prosecutor decides to proceed with the case, the grand jury is entrusted to find that there is probable cause to believe the defendant committed the crime, to hand up an

indictment (Henning, 1998). The exclusion of the defense from the process makes it a particularly inviting forum for the government (Leipold, 1994; Podgor, 2018).

Because all CI information is disclosed discreetly in the discovery process of the grand jury, it creates an uphill battle for the defense. Henning (1998) proclaimed that white-collar prosecutions are paper cases, meaning the government's principal proof of criminality comes from the comparison of what a specific document discloses with witness statements and other records. Paper documents represent a significant segment for the prosecution's case. In fact, Henning declared that without the paper, it is unlikely that the government can establish the elements of many white-collar crimes, especially those that involve fraud, bribery, or conflicts of interest. Paper documents provided by the prosecution must hold up in discovery for the prosecution to proceed with a federal white-collar case.

Therefore, the burden is on the defense counsel to make a sufficient showing that the discovery assisted the defendant (Henning, 1998). The advantages over influencing a federal grand jury, when mounted properly, are clearly in favor of the prosecution and government. Henning (1998) emphasized that the grand jury is a powerful engine of discovery for the government, with no comparable method for gathering evidence available to the defendant. Unlike the limited subpoena powers of the grand jury, the prosecutor's wide breadth in its use of subpoenas is substantial in the grand jury process (*United States v. R. Enterprises*, 1991).

Podgor (2018) explained how white-collar shortcuts are a function of prosecutorial policy that practices charging and over-charging individuals and makes

certain that plea agreements provide finality to cases. Additionally, white-collar shortcuts are made possible and enabled by legislation that simplifies what is needed to secure convictions in favor of the prosecution (Podgor, 2018). For example, a key concern of criminal defense counsels in recent years has been the receipt of, and failure to receive, discovery materials (Prodgor, 2018). To counter this tactic, defendants in California attempted to overcome this problem by seeking discovery of all police records relevant to the reliability of CIs (Rivas, 1987).

Essentially, the California defense counsel and defendants decided that not having the privilege of reviewing statements relevant to discovery was unfair. However, when the government provided massive amounts of documents involved in a white-collar case, days before trial, defense counsels found it necessary to move for a continuance or preceded with minimal preparation (Prodgor, 2018). To summarize, the defense's battle to combat prosecution tactics used in discovery, which entailed a culmination of secrecy, shortcuts, and collusion with the federal government, presented its own set of challenges defending white-collar cases.

Declination Statement Benefits

Prosecutors have navigated through the benefits and risks associated with declination statements without clear ground rules set by law, policies, or professional standards (Roth, 2020). In fact, neither the *Justice Manual* that provides instruction for United States attorneys, nor the American Bar Association's criminal justice standards on the prosecutorial function, nor the National District Attorney Association's standards adequately address declination statements (Roth, 2020). Therefore, it is up to the

prosecution to decline to proceed with charges and apply the correct declination statement to the investigation or case in question. Roth (2020) thoroughly examined how declination statements lead to a variety of purposes such as closure, respect, nudges, signaling, education, accountability, and history-keeping. For example, some declination statements offer *closure* to targets under investigation and the opportunity to resuscitate that person's reputation (Roth, 2020). Thus, closure provides targets the ability to be removed from an investigation.

Declination closure statements benefit victims by knowing that a decision has been made, even if it was disagreed, and they are then free to move on with their lives (Roth, 2020). Victims who receive closure are granted the opportunity of internal peace and individual growth associated with the experienced trauma. Next, prosecutors signal *respect* to the other institutional actors who are partners in the complex undertaking of law enforcement and governance (Roth, 2020). For instance, a declination statement from a prosecutor who deferred a case out of respect to partners equally qualified to prosecute, based on jurisdiction, signals respect. In other cases, declination statements, as a *nudge*, provide an opportunity to educate police and other law enforcement partners, especially when investigatory failures led to the prosecutor's decision, are explained (Roth, 2020).

Nudging provides law enforcement a baseline as to what federal prosecutors will permit as acceptable tactics of criminal investigations. Prosecutors *signal* to legislators the limitations of existing laws through issued declination statements that provide the legislature with useful information for deciding whether legislative reform is needed (Roth, 2020). Declination statements originated as legislation reform represent potential

political benefits. Declination statements also provide an opportunity for prosecutors to *educate* the public about the content of criminal law (Roth, 2020). When the education appears logical to the court of public opinion, the public may be inclined to understand the prosecutor's declination statement.

Declination statements also enhance prosecutors' *accountability* among law enforcement agencies they regularly work with (Roth, 2020). Promoting prosecutorial accountability, declination statements can be a tool for holding law enforcement agencies and legislatures accountable for official actions (Richman, 2017). Accountability and responsibility are vital elements that maintain the credibility and integrity of the criminal justice process. Lastly, when a case is charged, involving particularly complex investigations or high-profile events, the *history-keeping* function is fulfilled through the recitation of facts in charged documents in the presentation of evidence and arguments at trial (Roth, 2020). History-keeping offers insight and transparency into prosecutorial past practices that may help future law enforcement involvement of white-collar investigations and federal legislations.

Declination Statement Risks

There are several risks involved in prosecutor declination statements, such as the risks of undermining, error, reputational harm, political risk, and draining resources (Roth, 2020). The first declination statement risk factor is the possibility of *undermining* law enforcement, which compromises methods and sources that prosecutors preferr to be kept secret, such as revealing that someone close to a target is cooperating with law enforcement (Roth, 2020). When prosecutors actively undermine law enforcement agents

with a declination statement, it can hinder the working relationship. Next, the risk of *error* means having to correct prior statements damaging the prosecutor's credibility as well as confusing the public (Roth, 2020). The declination statement risk of error makes the prosecutor appear inconsistent and unreliable.

A declination statement that causes *reputable harm* presents significant risks to the privacy and reputational interests of witnesses and those under investigation (Roth, 2020). When the declination statement represents a retraction of blame, it may have already tainted the reputation of the person under investigation. For example, when no charges are filed, and without the public forum provided by the criminal process, a target has no means to clear their name or correct mistakes of fact (Roth, 2020). There is a great *political risk* when politicians pass more punitive laws or strip funding or authority from prosecutors who are perceived as too lenient based on declination statements (Roth, 2020). Lastly, declination statements require more time and *drain resources* because less time is spent investigations and prosecuting crime (Roth, 2020). Therefore, state prosecutors have financial latitude. However, there is a finite budget available to pursue white-collar cases.

Attorney Practices in White-Collar Cases

Prosecution

The difficulty of investigating corporate activity means prosecutors only obtain answers through wide prosecutorial discretion and some cooperation from employees and corporations (Griffin, 2007). An argument is made to justify the latitude of prosecutorial discretion. Yet, many scholars, lawyers, and policymakers have discussed the problem, or

lack thereof, of pressured individual white-collar defendants (Bharara, 2007; Buell, 2007). Some authors have argued that the constitution should protect white-collar defendants from prosecutorial pressure (Griffin, 2007). Therefore, the routine activity theory aligns with this notion where the lack of guardianship from the constitution to protect the suitable targets for the prosecution from a motivated prosecutor is clear. However, when prosecutors act in good faith and decide on a version of events after a thorough investigation, there is reason to think the summary is valuable and has a high degree of accuracy (Roth, 2020).

Other authors have contended that prosecutors are given too much power with broad corporate criminal liability standards (Bharara, 2007). For example, the high cost of defending corporate criminal charges creates dilemmas for white-collar defendants that are significantly different from the dilemmas facing defendants in traditional street-crime cases, which makes white-collar defendants uniquely vulnerable to coercion during prosecutions (Ribstein, 2009). In many cases, prosecutors make the convenient choice to justify expensive successful federal prosecutions.

Many commentators have argued that prosecutors should have every tool available to them because the types of inquiries involved in white-collar crimes make these cases very difficult to prosecute (Elston, 2007). In fact, prosecutors support, justify, and rationalize the use of shortcuts and behind-closed-doors conversations during discovery as ample tools required to secure favorable convictions. Ribstein (2009) claimed white-collar cases are so much more complex, so it is less clear whether the defendants committed crimes. Prosecuting federal white-collar crimes is not easy for

prosecutors. That said, prosecutors enjoy greater discretion that determines whether and how to charge white-collar cases (Ribstein, 2009).

The author further explained that prosecutors' increased discretion gives the government even greater bargaining power over alleged white-collar criminals than over alleged street criminals. Power, fear, and money represent the leverages prosecutions yield over white-collar defendants and CIs involved in white-collar cases. This power leads to a much higher risk of pressure on defendants to plead guilty to white-collar-crime allegations than the typical street-crime defendant faces (Ribstein, 2009). Ribstein (2009) pointed out that this greater discretion in white-collar cases leads to a greater risk of prosecuting noncriminal activity and pressures noncriminals to plead guilty.

Consequently, the pressures applied by the prosecution demand results from criminals and noncriminals alike. The findings of the drug enforcement study suggested that despite judicial and legislative support for the practice, the use of CIs during the investigation and prosecution of such cases needs substantial review, revision, auditing, and oversight (Jones-Brown & Shane, 2011). Factual mistakes and evidentiary uncertainty are more likely to favor the prosecution in white-collar cases than in street-crime cases because white-collar defendants have a greater resource disadvantage and are often pressured to plead guilty when defendants cannot afford to defend against the allegations (Ribstein, 2009). The paper documents discussed in secrecy to the grand jury that contain factual mistakes and evidentiary uncertainty should aid the defense attorney once the documents are made available for the defense counsel to conduct a thorough review.

However, negotiated pleas are an important tool for prosecutors to assure convictions when there is uncertainty about one being secured (Galvin & Simpson, 2019). A number of factors influence prosecutorial perceptions of case convict-ability, including evidentiary strength (Albonetti, 1986, 1987; Holleran et al., 2010; Kingsnorth et al., 1998, 2001; Spohn & Holleran, 2001), victim behavior (Holleran et al., 2010; Spears & Spohn, 1997; Spohn & Holleran, 2001), and offender characteristics (Albonetti, 1986, 1987; Albonetti & Hepburn, 1996; Baumer et al., 2000; Kutateladze, 2018; Kutateladze et al., 2016; Spohn et al., 1987). These factors directly correlate with CIs who gather inside information for the federal prosecution in white-collar cases.

Subsequently, discrete explanations given by prosecutors invite further inquiries and lead to a call for further explication (e.g., precisely what the evidence was, how it was insufficient, and if specific witnesses were credible), which helps the defense and places prosecutors on uncertain ground (Roth, 2020). Therefore, even though the prosecution has plenty of advantages, applications, and workarounds to secure favorable convictions, not all cases are guaranteed courtroom convictions.

Defense

To establish good faith based on the advice of counsel, defendants fully disclose all material facts to counsel, rely on good faith on the advice given by counsel, and act in accordance with that advice (*United States v. McClatchey*, 2000). Frongillo and Jaclyn (2007) shared that the reliance on the advice of counsel is technically not a legal defense to a crime, but it constitutes evidence that a person acted in good faith and thereby did not have the requisite mental intent to commit a particular crime. The vulnerability of being

targeted as the white-collar defendant requires the extensive knowledge of defense counsels to navigate defendants through the judicial process of criminal prosecution. In a challenge to the truthfulness of the statements made in an affidavit based on information from a CI, the defense counsel must learn whether the informant existed, whether credible information was given in the past, and whether the CI gave the information related by the affiant in the warrant (*United States v. Likas*, 1971).

Whether a defense counsel alleges that statements in a warrant are false or merely seek the opportunity to challenge its veracity, the defendant's goal is the same: to show the police officer affiant did not have an informant or, if the officer did, to show that the informant did not give reliable information in the past or present (Grano, n.d.; Lawrence, 1988). Even when the defense counsel does not expressly ask for the informant's identity, prosecutors argue that the answers given to questions about the informant's reliability indirectly led to the disclosure of the informant's identity (Grano, n.d.; Lawrence, 1988). When a defense counsel does not have access to the CI, the defendant's ability to refute the CI's declaration increases the difficulty of proving the statement as false. Therefore, the challenge defense counsels face is finding the value from the information provided by the defendant against the paper documents provided by the prosecutor. If a name is supplied, the defense counsel calls the informant to testify as to the information given to the officer on the current occasion and that which was provided on prior occasions (Lawrence, 1988).

The ability to call CIs to the stand gives the defense counsel the chance to properly argue the credibility of the CI's testimony in a court appearance. A lapse of

credibility may show a pattern of previous false testimony given and a history of self-serving behavior that may hinder the current testimony given from the prosecution. Because negotiated pleas were more common before formal charging, interviews with defense attorneys revealed that the most successful white-collar defenses were mounted before formal charging of an offense by limiting the information available to prosecutors (Galvin & Simpson, 2019). The authors continued to state that once charges were drawn, both the defense counsel and prosecutor were less likely to negotiate. In fact, defense attorneys reluctantly admitted to any wrongdoing by clients in the context of ambiguous evidence (Galvin & Simpson, 2019).

A prosecutor's declination statements help defense attorneys when the evidence does not establish a necessary element of a crime or support an affirmative defense (Roth, 2020). Additionally, Lynch (1998) discovered that based on the defense attorney's own experiences, knowledge of prior instances when a prosecutor did not think charges were worth pursuing aids the defense. Therefore, defense counsels draw on that knowledge in advising clients and negotiating with prosecutors, including persuading prosecutors not to press charges (Lynch, 1998).

In the matter of convenience and justice, pleas negotiated prior to formal charges brought against defendants benefit the defense. Galvin and Simpson (2019) remarked that defense attorneys exert significant strategies at sentencing by attempting to reduce offender blameworthiness and amplify the ambiguity of offenses. In summation, the defense counsel has three strategies to help defendants against the wrath of federal

prosecution: negotiate before formal charges, question CIs on the stand, and accept declination statements.

Previous Study

The previous study conducted by Jones-Brown and Shane (2011) discussed an elaborate review of drug cases that involved CIs within the state of New Jersey among CIs, law enforcement personnel, community members, and private and public defense attorneys. The findings showed there was no mandated uniform statewide policy or procedure for recruiting, cultivating, and using CIs (Jones-Brown & Shane, 2011). The authors also acknowledged that although written policies exist at the state, county, and municipal levels, there is disagreement among authorities as to whether the state policy is mandatory or merely advisory (Jones-Brown & Shane, 2011). Without a mandatory state policy, it appears that local authorities are granted a significant advantage in prosecuting drug cases. In fact, there is little consistency between the existing written policies, and there is evidence of insufficient oversight to achieve compliance with those policies (Jones-Brown & Shane, 2011).

Lack of oversight in drug cases mimics the lack of oversight in federal white-collar cases. The use of informants in drug law enforcement in New Jersey was found to be largely informal, undocumented, and unsupervised, and therefore vulnerable to errors and corruption (Jones-Brown & Shane, 2011). CI safeguards mitigate CI corruption and are critical to the maintenance of the criminal justice system's integrity. However, there is apparently no statewide database of information to record how CIs are recruited, cultivated, or used (Jones-Brown & Shane, 2011).

Moreover, there is no central database of information about the role specific informants have played in drug arrests, prosecutions, or case outcomes. CI safeguards should ensure recordkeeping of CI activity to document the purpose and frequency of involvement. In all contexts where CIs are used, the absence of a written agreement pits a CI's word against that of a law enforcement agency (Jones-Brown & Shane, 2011). The absence of a written agreement leads to disputes about what promises were made in return for cooperation, as well as the nature and duration of the expected cooperation. Although Jones-Brown and Shane's (2011) study investigated drug cases, there appears to be direct similarities with behavior among CIs who participated in federal white-collar crimes.

Confidential Informant Safeguards

Several California courts of appeal have considered whether the defendant should be allowed discovery of police records regarding the CI's reliability (Rivas, 1985). California sought to give defense counsels the chance to argue the validity of CI information collected by law enforcement. The Confrontation Clause in the Sixth Amendment demands that witnesses against a defendant come into court and testify in person against the defendant (Richman, 2017). This clause offers safeguards in the way of transparency cross-examination that counsel less regulation of cooperators and testifying jailhouse informants (Richman, 2017).

The Confrontation Clause can be a sufficient safeguard that assists the defense in white-collar cases. Unfortunately, in New Jersey, where the constitutional structure allows for more regulation than usual, there is a lack of mandated statewide police rules

for recruiting, cultivating, and using CIs in criminal investigations (Jones-Brown & Shane, 2011). In this instance, the convenience of not having a statewide mandate for the recruitment, cultivation, and use of the targeted CIs for motivated law enforcement agents represents the absence of policy from a legislative guardian.

Fortunately, CIs who have faced prosecution because of their refusal to work with the police had at least some adjudicative safeguards, including a lawyer (Richman, 2017). Paradoxically, CIs who have agreed to provide information frequently do not have the benefit of counsel and have, unlike the innocent bystander, been found to be at risk of illegitimate and unconstrained police exploitation (Richman, 2017). To reiterate, a CI's choice of whether to aid law enforcement agents in federal white-collar investigations may be influenced by the need for justice or simply a matter of convenience. The GAO assessment of agencies' informant policies for the FBI under the DOJ agencies' CI policies addressed the safeguards in the attorney general's guidelines for overseeing CIs' required illegal activities:

> Tier 1 otherwise illegal activity must be authorized in advance and in writing for a specified period, not to exceed 90 days, by a Department of Justice Law Enforcement Agency's (JLEA) special agent in charge (or the equivalent) and the appropriate chief federal prosecutor.
>
> After a CI is authorized to engage in Tier 1 or 2 otherwise illegal activity, at least one agent of the JLEA, along with one additional agent or other law enforcement official present as a witness, shall review with the CI written instructions that state, at a minimum, that: the CI's authorization is limited to the

time period specified in the written authorization; participation in any prohibited conduct could subject the CI to full criminal prosecution.

Immediately after these instructions have been given, the CI shall be required to sign or initial, and date, a written acknowledgment of the instructions.

JLEA official who authorizes Tier 1 or 2 otherwise illegal activity must make a finding, which shall be documented in the CI's files, that authorization for the CI to engage in the Tier 1 or 2 otherwise illegal activity is necessary; in making these findings, the JLEA shall consider the risk that the CI might misunderstand or exceed the scope of his authorization; the extent of the CI's participation in the otherwise illegal activity.

Immediately after the CI has been informed that he or she is no longer authorized to engage in any otherwise illegal activity, the CI shall be required to sign or initial, and date, a written acknowledgment that he or she has been informed of this fact. (United States GAO, 2015)

GAO DOJ FBI policy provisions for CIs safeguard CIs from law enforcement's unregulated tactics of recruitment, cultivation, and use of CIs in white-collar criminal investigations. For example, CIs must be registered and participate for a limited time with the approval of the chief federal prosecutor, which safeguards credibility. Secondly, the oversight of CI written statements provides a safeguard of transparency. Thirdly, the elimination of CI engagement of participating in self-serving conduct safeguards the prosecution. Lastly, making certain that the CI understands the documented scope of legal authority and extent of participation safeguards the CI's purpose of inclusion.

Conclusions and Summary

In summary, the routine activity and convenience theories aligned with perceived convenient choices in white-collar cases that primarily involved motivated law enforcement's use of CIs, the prosecution of suitable target defendants who use CIs to secure convictions, and the lack of sufficient guardianship from local and state government oversight. Presently, white-collar crimes are not isolated to fraud practices from upper-class members of society. Unintentional white-collar criminal acts that happen by mistake still count as an illegal violation. The FBI's initial purpose of recruiting CIs was based on control. There is a blatant absence of government oversight and safeguards to protect the ALCP's integrity. Prior to the installment of the GAO DOJ FBI CI provisions, there was an insidious relationship among CI practices between the FBI and DOJ. Therefore, CIs must ascertain whether there is an advantage to being coerced by the FBI to participate in white-collar investigations. Today, CIs are highly coveted by law enforcement agents and prosecutors to secure court convictions of federal white-collar crimes.

The defense's battle to combat prosecution tactics used in discovery, which entails a culmination of secrecy, shortcuts, and collusion with the federal government, presents its own set of challenges when defending federal white-collar cases. In fact, a prosecutor's support, justification, and rationalization of the use of shortcuts and behind-closed-doors conversations for discovery are ample tools required to secure favorable convictions. As previously stated, the defense counsel has four strategies to help defendants against the wrath of prosecution: negotiations before formal charges,

familiarity with the prosecutor, questioning CIs on the stand, and accepting appropriate declination statements.

Prosecution convict‐ability can be thwarted by the defense when there is a lack of evidentiary strength, a contradiction of victim behavior proffered by the prosecution, and evidence of positive federal white-collar offender characteristics. Therefore, prosecutors must consider the convenience of declination statements before pursuing white-collar investigations that align with partners, law enforcement agencies, and justice and political motivation. As stated, GOA DOJ FBI provisions for CIs safeguard CIs from law enforcement agencies' unregulated tactics of recruiting, cultivating, and using CIs in white-collar criminal investigations.

Furthering the Jones-Brown and Shane (2011) study, this study reviewed safeguard efficacies in federal mandates regarding national uniformity and oversight within the GAO DOJ FBI CI policy. Past researchers have shown but not explored how CI accountability might have changed the dynamics and systems regarding the practice of providing false statements against defendants (Adler, 2018). The GAO DOJ FBI CI policy's use of safeguards or lack thereof may have influenced the outcome of federal white-collar criminal justice cases that resulted in convictions. There was a gap in literature related to the examination of CI efficacy safeguards and whether combinations of several safeguards produce desired effects (Wetmore et al., 2020). Through this study, I addressed the lack of information on the perspectives of private practice attorneys with defense and prosecutor experience as to how federal CIs influenced the outcome of federal white-collar cases that resulted in convictions.

Chapter 3 discusses the methodology and research design chosen for this study. The chapter also presents the research design and rationale, my role as the researcher, participant selection, instrumentation, data collection, data analysis, the issue of trustworthiness, and ethical procedures. Finally, the chapter concludes with a summary and preview of Chapter 4.

Chapter 3: Research Method

The purpose of this historical research qualitative study was to address the gap in the literature related to whether GAO policies of safeguards influence the national use of CIs to obtain convictions in federal white-collar cases based on the perspectives of private practice attorneys with defense and prosecutorial experience. My study may foster positive social change should perspectives of private practice attorneys with defense and prosecutor experiences encourage federal law enforcement agents to recognize the validity and accountability of GAO DOJ FBI federal policy safeguards regarding the information CIs provide in federal white-collar cases. Additionally, this study may increase focus and investigations into how federal law enforcement agents and prosecutors make arrests with the use of CIs regarding federal white-collar crimes.

Chapter 3 includes a discussion of the methodology and research design chosen for the study. The chapter is organized as follows: research design and rationale, role of the researcher, participant selection, instrumentation, data collection, data analysis, issues of trustworthiness, and ethical procedures. This chapter concludes with a summary and preview of Chapter 4.

Research Design and Rationale

A historical research design was the most appropriate design for this study. The purpose of a historical research design is to collect, verify, and synthesize evidence from the past to establish facts that defend or refute a hypothesis (Thapa, 2017). I explored the relevance and credence of dated federal government policies currently used in federal white-collar cases through the selected participants' perspectives. The historical research

design relies on available data such as letters, reports, and diaries (Thapa, 2017). For the purposes of the current study, I used the literature review of court cases, federal policies, and judicial practices against the collected data for content analysis. The historical research design was the best way to gain a clearer understanding of the impact of federal policies on present and future federal criminal investigations and convictions related to CI involvement in federal white-collar cases.

The research question that guided this research study was the following: How do the legacy GAO DOJ FBI CI policies use of safeguards, or lack thereof, impact the outcome of federal white-collar federal criminal justice cases resulting in convictions? There was a gap in literature regarding the examination of CI efficacy safeguards and whether combinations of safeguards produce desired effects (Wetmore et al., 2020). The exploration of GAO DOJ FBI CIs efficacy safeguards and whether combinations of several safeguards produce desired effects was unknown. The concern was that most federal white-collar cases involved the use of CIs to obtain convictions (Gaille, 2017). I employed a historical research qualitative design to gain insight into private practice attorneys' shared perspectives about the use of CIs in federal white-collar cases.

According to Patton (2015), qualitative researchers explore the reality of people to understand the perspectives that shape individual behavior. One of the more popular areas of interest in qualitative research is the interview protocol (D. W. Turner, 2010). Standardized open-ended questions are the most popular form of interviewing used in qualitative studies because of the open-ended questions and probing follow-up questions allow participants to fully express individual viewpoints and experiences (D. W. Turner,

2010). In the current study, participant interviews were used to explore CI safeguard efficacies in federal mandates regarding national uniformity and oversight within some of the GAO DOJ FBI CI policy safeguards in federal white-collar cases through the perspectives of private practice attorneys with defense and prosecutor experience of CIs related to federal white-collar crimes.

Initially, I was going to use a general qualitative design as my research approach. Because data collection from participant perspectives about the efficacy of GAO DOJ FBI CI safeguard provisions was current based on the initial review of literature content, I noticed that the data were dated. Therefore, the general qualitative design approach was no longer valid. A historical research qualitative design was the appropriate approach. The historical research qualitative design was appropriate for this study to explore the shared perspectives of private practice attorneys with defense and prosecutor experience of CIs related to federal white-collar crimes within the criminal justice system. As a qualitative approach, the historical research design permitted an understanding of the perspectives of private practice attorneys with defense and prosecutor experience in federal white-collar crimes.

Role of the Researcher

The role of the researcher is to engage study participants through professional interviews that lead to the disclosure of perspectives, thoughts, and feelings related to the research question. The objective of historical research design is to analyze past events and develop the present concepts and conclusions (Thapa, 2017). In qualitative research, the researcher's role is to be an instrument for data collection (Ravitch & Carl, 2016).

Data are collected through a human instrument in qualitative studies rather than through technology or databases.

Additionally, the researcher's role is to observe social or nonverbal cues to interpret during data analysis (Rubin & Rubin, 2012). I participated during the interviews to identify opportunities to develop an emergent process. I requested that participants expound on certain responses and observed social cues to inform interpretations that may reveal new themes. Due to the COVID-19 pandemic, I asked participants to join telephone calls for the process of conducting in-depth interviews instead of using an in-person face-to-face environment.

Based on my education and personal experience, I was aware of my personal views regarding the responses that the study participants provided. I was open to learning through the lens of my participants' perspectives and refrained from passing judgment during data collection. As a scholar practitioner, I ensured that I did not have any previous or current relationship with any of the participants in this study. Regardless of my educational background and professional experience, the participants' perspectives were the focus of this study. A semistructured interview approach entailed asking follow-up questions that assisted with understanding the participants' terminology, thoughts, feelings, behavioral responses, and shared perspectives. During the interview, I used open-ended and probing questions in a nonthreatening, noncoercive manner.

Furthermore, I refrained from leading participants to certain responses through indirect or implied agreement or disagreement with responses. Additionally, I did not share personal stories, beliefs, or experiences with the participants to influence their

responses. My role was to have awareness of my preconceived thoughts about the shared perspectives of participants. Positionality refers to the social and political circumstances that influence a researcher, including race, class, sex, sexuality, and capacity status (Ravitch & Carl, 2016). I conducted self-reflections to ensure my personal views and professional experiences did not overshadow the data collection.

Critical reflective journaling facilitates self-awareness and helps the researcher identify situations perceived as challenging (Hwang et al., 2018). I maintained a reflexive journal to document observations and views during data collection to self-reflect and remain neutral during the interview process. According to Castillo (2018), the use of bracketing disengages a researcher from incorporating predetermined influences and biases. I managed my biases through bracketing to eliminate any irrelevant assumptions from participant responses.

Methodology

Participant Selection Logic

The participants were private practice attorneys with defense and prosecutor experience in federal white-collar crimes who were competent or familiar with GAO DOJ FBI CI policy provisions. According to Kuzel's (1999) homogenous sampling, in-depth interviews consist of five to eight participants or until data saturation is reached. However, based on the advice of my committee, at least 10 to 15 participants would be interviewed until data saturation was reached. Purposive sampling is a qualitative sampling strategy that is used to select cases that provide detailed information related to the purpose of the study (Patton, 2015). The snowball method of recruitment entailed

asking attorneys from a membership pool of attorneys such as the ACLU to recommend other participants who met my selection criteria via email notification.

I sent out the recruitment email to the ACLU organization. The attorneys who responded to the email and who met the selection requirements were sent the invitation letter (see Appendix B) followed by a consent email (see Appendix D) and were scheduled for qualitative interviews. In the event that convenience sampling for recruitment was unsuccessful, I would have used a snowball method of participant recruitment. Snowball sampling occurs when a researcher asks participants to recruit other qualifying participants (Patton, 2015). To employ snowball recruitment of participants in my study, after obtaining the first attorney who met the criteria, I asked that attorney for referrals of additional attorneys who met the same criteria to align with the purposes of my study.

For this study, participants had to meet three criteria: (a) be active or retired private practice attorneys with defense and prosecutor experience, (b) have experience with the use of CIs in federal white-collar crimes, and (c) have knowledge of GAO DOJ FBI CI safeguard policies. Although there was no minimum required experience for participants to meet, the demographic section of the questionnaire asked about individual years of attorney experience. To confirm that participants met these criteria, I included the study criteria in the attorney referral invitation email (see Appendix B). Because participant recruitment came from attorney membership pools, I verified occupations with public records. The study participants consisted of 10–15 private practice attorneys.

First, I made sure I followed institutional review board (IRB) rules and regulations. It is important to minimize the risk, which is defined in the U.S. federal regulations as preventing psychological risks by following seven steps: know and accept ethical responsibilities, identify and minimize risks, identify and minimize deception, weigh the risks against the benefits, create informed consent and debriefing procedures, get approval, and follow through. Upon receipt of Walden University's IRB approval (05-26-22-0751235), I created an attorney referral invitation email (see Appendix B) to recruit private practice attorneys who had defense and prosecutor experience regarding the use of CIs in federal white-collar crimes. Upon receipt of participant interest via the attorney referral invitation email (see Appendix B), I sent the informed consent email (see Appendix D) that included my contact information, my email address, and my telephone number. The attorneys who responded to the email and met the selection requirements were scheduled for qualitative interviews. I scheduled telephone interviews within 6 weeks. Data saturation was obtained through conducting interviews to the extent that new themes did not occur.

Instrumentation

Jones-Brown and Shane (2011) used a self-reporting survey that was designed to measure aspects of police officers' policy and practice environment and was likely to illuminate problems, something participants may try to avoid. Surveys that emphasize problematic issues discussed by the population present a set of challenges. For instance, the validity of self-report data is questionable due to response bias, which occurs if participants alter individual responses to meet the real or perceived needs of the

researcher (Jones-Brown & Shane, 2011). Although Jones-Brown and Shane's study included law enforcement personnel, my study included private and public defense attorneys. Despite their limitations, self-report measures are widely regarded as reasonable reflections of actual behavior, attesting to the self-reporting survey's validity and reliability (Jones-Brown & Shane, 2011).

I emailed Dr. Jon Shane, who coauthored the 2011 report titled, *An Exploratory Study of the Use of Confidential Informants in New Jersey*, to gain permission to use and modify the validated and published Confidential Informant Survey instrument. The validated instrument aligns with the concepts studied in that it focused on the use of CIs in criminal justice cases. There were some modifications in that the term *policy* was exchanged for the term *GAO DOJ FBI CI policy*, the term *agent* was exchanged for *federal agent*, and the term *CI* was exchanged for *federal CI*. The instrument modification did not change the study's validity and reliability as the instrument's main content and questions were not altered. Instrument modification was done using only selected questions that speak directly to this study. The modification involved opening up close-ended questions, which maintained the instrument's validity and reliability. Therefore, I did not have the modified instrument reviewed by subject matter experts for validity and reliability.

Participants were interviewed using in-depth semistructured interviews using the Confidential Informant Survey (see Appendix C) as a modified version of the validated instrument. Interviews provided self-reported information from the study participants (Rudestam & Newton, 2015). Although face-to-face interviews are the most common

interview method, technology has increased interview options for researchers (Opdenakker, 2006). Interviews were conducted via telephone calls because we are in a global pandemic.

Procedures for Recruitment, Participation, and Data Collection

As previously stated, snowball purposeful sampling was used to recruit participants using an attorney referral invitation email (see Appendix B). Purposeful snowball sampling ensured the participants shared perspectives of interest for the study. Once the first attorney who satisfied the participant criteria was interviewed, I was given the name of another attorney who was interested in voluntarily participating in my study. Approval from Walden's IRB was obtained prior to recruiting study participants. Upon obtaining approval, I used the snowball purposeful method of recruitment.

I sent the recruitment email to each organization. The attorneys who responded to the email and met the population requirement received the invitation letter (see Appendix B) followed by a consent email (see Appendix D) and scheduled their qualitative interviews. If this method of recruitment had been unsuccessful, I would have used the convenience method. Therefore, I asked the first attorney to refer me to a private practice attorney with defense and prosecutor experience concerning the use of CIs in federal white-collar cases. Once the first attorney who satisfied the participant criteria was interviewed, I was given the name of another attorney who was interested in voluntarily participating in my study.

I sent the attorney referral invitation email (see Appendix B) to recruit participants one-by-one, which was followed by the informed consent email (see

Appendix D). The attorney referral invitation email (see Appendix B) informed individuals of the study's purpose and that participation was voluntary. I contacted individuals who voluntarily agreed to participate via email to schedule telephone interviews.

The primary data-collection method for this study was telephone interviews. I conducted in-depth individual, semistructured interviews to understand the perspectives of private practice attorneys with defense and prosecutor experience concerning the use of CIs in federal white-collar crimes that resulted in convictions. The modified Confidential Informant Survey interview (see Appendix C) consisted of in-depth individual interviews, which was beneficial in exploring how the use of CIs impacts convictions through participants' shared perspectives. Therefore, in-depth individual interviews were an appropriate data-collection method for this study to obtain a wealth of knowledge about the populations' perspectives.

Collecting data from participants by interviews provides the opportunity for researchers to gather more data for analysis (Rubin & Rubin, 2012). Likewise, Kaplowitz (2001) provided that interviews permit the opportunity to gather detailed descriptions of events and probe for additional information through follow-up questions. Therefore, I used a semistructured interview process with a predetermined interview within the modified Confidential Informant Survey (see Appendix C) to guide the interview process. The interview questions aligned with the historical research qualitative design through the use of open-ended questions and, when necessary, I asked subsequent probing questions.

Follow-up interviews provide researchers the opportunity to ask interviewees further questions or to clarify discrepancies (Jacob & Furgeson, 2012). Therefore, if any clarification was required to previous participant responses, I would have requested permission to contact the participants, verbally or written, after the initial interviews for follow-up questions. However, the aim of the data collection was to fully understand the participants' perspectives during the initial interviews. Therefore, follow-up interviews after the initial collection of data were not necessary.

I reviewed the informed consent with interviewees prior to conducting the interview, offered a copy, explained the study's goal, and answered any questions. Participants were reminded that participation was voluntary and there would not be a penalty or punishment for not participating in the study. This included if the selected participant decided to withdraw from participation after beginning the study. I was in my private home office conducting each interview of every participant to guarantee their privacy. Participants were ensured that identity privacy was maintained through assigning an alias to each participant to conceal their identity.

According to Ravitch and Carl (2016), utilizing an alias masks each participant's identity during data collection and with direct quotes within the study. Additionally, private practice attorneys were informed that the modified Confidential Informant Survey (see Appendix C) would take approximately 60 minutes in length. Participants understood there were three demographic questions and nine interview questions.

Interviews were conducted over 6 weeks as I planned to reach data saturation by the end of that time. If data saturation was not met within 6 weeks, I would have

extended the time for data collection accordingly. As the interviewer, I obtained permission from the interviewees and intended to record the telephone interviews with the use of an audio recorder. Recording interviews combined with notetaking assists researchers in identifying the accuracy of transcripts and interpretations (Opdenakker, 2006). However, I observed the audible tone influxes such as pauses, sighs, and outbursts within the participants' speech to gather data and cues to identify any comfort or discomfort during the interviews. At the termination of each interview, I debriefed with participants to allow questions to be asked and informed the individuals when I shared a brochure of my study's results.

Data Analysis Plan

Collecting data from participants by interviews provides the opportunity for researchers to gather more data for analysis (Rubin & Rubin, 2012). Consequently, I practiced reflective journaling. Interview dataing supports a way for researchers to remove bias and become aware of participants' beliefs, opinions, and knowledge. Therefore, my knowledge of the participants' shared perspectives was recognized, documented during journaling, and abandoned to provide data analysis validity.

I did not hire a third-party transcriptionist to transcribe the interview field notes. I intended to review the audio recordings and transcribed each interview for accuracy prior to organizing and analyzing the data. However, because the interview field notes were taken as audio recordings, I read the transcribed field notes multiple times for familiarity purposes, comprehension, and note-taking. I used NVivo software as a research tool to develop word clouds, word patterns, and clusters and to detect themes.

In the event that response clarification was needed, participants would have been contacted for a follow-up interview. Initially, the interview questions were organized based on the research question. Organizing interview responses according to research questions assisted with ensuring data analysis aligned with the purpose of the research, which was consistent with the research design (Yin, 2014). Subsequently, I read the transcripts again for the purpose of general coding according to the respondents' exact responses. Initial data analysis involved the research data to be transcribed, coded, patterned, themed, and triangulated to examine the outcomes of participant interviews (Saldana, 2016). In my study, data triangulation had three points of reference for data analysis.

Methodological triangulation involved document analysis, direct observation, interview data, or other data sources separated from the participants' interview data (Denham & Onwuegbuzie, 2013, as cited in Fusch et al., 2018). To demonstrate methodological triangulation, I compared participant interviews with Jones-Brown and Shane's (2011) findings, my interview data, GAO DOJ FBI CI policy safeguards, and this study's literature review themes. I found a direct link between data triangulation and saturation, in that data triangulation ensured data saturation (Fusch & Ness, 2015). I reviewed each transcript and used NVivo to assist with the development of emergent themes, which was clustered to link aspects of each respondent's shared perspective. I used NVivo to confirm patterns after closely exploring all transcripts to ensure each participant's shared perspective maintained its original meaning. Patterns derived from the codes created a trinity of themes using three phases.

Table 1 demonstrates a preliminary visual representation of the initial phase of data analysis on how to connect the concepts to the themes using the literature and participants' perspectives. The table displays the codes that emerged from the literature review and their significance to the study. As Table 1 indicates, the literature review provided the necessary background information to ensure the study's trustworthiness. My assumptions were also under control from interjecting personal views into the data-collection and analysis processes of this study by utilizing the literature review in establishing credibility and transferability within the study.

Table 1

Preliminary Codes

Preliminary code	Literature	Analysis
Evaluation coding	Patton, 2008, 2015; Rallis & Rossman, 2003.	Evaluation coding is appropriate for the GAO DOJ FBI CI policy safeguards as it will relate to the routine activity theory. Evaluation codes emerge from the evaluative perspectives from the qualitative commentary provided by participants.
Emotion coding	Goleman, 1995; Prus, 1996.	Emotions are a universal human experience that will provide deep insight into participants' perspectives. The convenience theory will be described via emotions, regarding participant use if CIs resulting in federal white-collar case convictions.
Values coding	Gable & Wolfe, 1993; LeCompte & Preissle, 1993.	Values will compare principles and moral codes of the GAO DOJ FBI CI policy safeguards with participants' motives when working with CIs in federal white-collar cases. This dynamic of values will relate to the routine activity and convenience theories.

Note. GAO = Government Accountability Office; DOJ = Department of Justice; FBI = Federal Bureau of Investigation; CI = Confidential informant.

In Phase 2, I captured the essence of participants' perspectives from the analysis of the research findings. I incorporated the themes used to answer the research questions to synthesize the perspectives of private practice attorneys with defense and prosecutor experience concerning the GAO DOJ FBI CI policy safeguards. The research question of how the GAO DOJ FBI CI policy use of safeguards, or lack thereof, impacts the outcome of federal white-collar criminal justice cases, resulting in convictions, was analyzed using the literature review and participants' perspectives. Table 2 presents a visual

representation of the data analysis used to develop the themes from the concepts within the study.

Table 2

Themes from the Literature Review

Theme	Concept	Representation
CIs	Integrity and purpose	Coercion, self-serving, willingness to help, tainted or untainted
Judicial courts	Convictions Convenience	Grand jury, prosecutorial discretion, paper documents, declination statements, negotiated pleas
Government policies	State and federal government maintain different CI policy safeguards, confusion	California, New Jersey, lack of oversight, Attorney General, Department of Justice, Prosecutor statements

Note. CI = Confidential informant.

In the third phase, I developed the themes from the data analysis into composite descriptions of the GAO DOJ FBI CI policy safeguards' impact. The data collected from the participants provided information about how private practice attorneys with defense and prosecutor experience in federal white-collar cases using CIs that result in convictions make sense of GAO DOJ FBI CI policy safeguards. I used the probability of crime process introduced by Seo-ah's (n.d.) routine activity theory, such as protective power, motivated perpetrator, and suitable targets, to analyze the overall impact the GAO DOJ FBI CI policy safeguards have on the perspectives of the private practice attorneys

who have defense and prosecutor experience in federal white-collar cases using CIs that result in convictions. I also used the individualist position thought process introduced by Gottschalk's (2016) convenience theory, such as convenient calculations made by self-interested individuals, to analyze the perspectives of said attorneys. Table 3 demonstrates Moustakas's (1994) modified Van Kaam method of data analysis that describes how to code, pattern, and theme data in seven steps.

Table 3

Moustakas's (1994) Modified Van Kaam Method of Data Analysis

Step	Purpose	Representation
Step 1	Transcribe interview questions while gaining familiarity with the knowledge and reflecting on the meaning of the perspectives	Taking notes while reviewing each transcribed interview
Step 2	List significant perspectives into categories that do not overlap or repeat while accommodating new perspectives	Reading the transcripts and making (purple) note cards of each perspective, initiate developing a codebook
Step 3	Reducing, combining, and eliminating perspectives as concepts emerge or identify patterned and irregular perspectives	Identify concepts into (green) note cards using the (purple) perspective note cards as examples, continue developing codebook
Step 4	Concepts from the interview, journals, memos, and literature reviews are incorporated into concepts or contextualize in the framework of the literature and practice in reflexive thinking	Applying the (green) concepts note cards and the (purple) perspective note cards to fully capture the saturation data level of perspectives, continue constructing codebook
Step 5	Concepts are arranged into broader themes to reflect essence of the perspectives and practices in reflexive thinking	The (green) concepts note cards will be organized into (orange) thematic note cards, finalize codebook
Step 6	The themes are arranged to make sense "create meaning" of the perspectives from the participants' point of view	Developing the (orange) thematic note cards into the theoretical framework
Step 7	Answering the research question by developing a composite description of the perspectives	Creating a point of view of the perspectives using the (orange) thematic note cards, answer the research question

Issues of Trustworthiness

Trustworthiness should be developed at the beginning of qualitative research and implemented throughout the study (Ravitch & Carl, 2016). Developing trustworthiness in qualitative research requires credibility, transferability, dependability, and confirmability. Credibility refers to the confidence of truth in the research findings (Macnee & McCabe, 2008). That is, credibility refers to whether the research findings accurately reflect the study participants' factual accounts. Credibility in this study was established through reflexivity, member checking, and the dissertation committee's examination. To ensure credibility, I used a research reflexive journal and bracketing techniques to remove personal researcher bias, opinions, beliefs, and viewpoints that would obstruct the integrity of data analysis.

The research findings were exclusively based on the participants' perspectives and experiences that related to the use of CIs in federal white-collar cases that resulted in convictions. I used member checking with each participant to ensure the analysis and interpretation of participants' perspectives regarding CI experiences were accurately documented. Member checking is the foundation of qualitative research, as the study directly reflects the respondents' lived experiences (Anney, 2014). Additionally, member checking guaranteed that I did not include personal bias in the research findings. Finally, credibility was corroborated through peer examination with my dissertation committee to obtain professional guidance that improved the quality of the research findings.

Transferability refers to the readers' ability to use the research findings (Anney, 2014; Macnee & McCabe, 2008). Transferability was established through cementing a

thick description of the research purpose, methodology, and data collection and analysis. Purposive snowball sampling was utilized to solidify participant selection, which ensured relevant, valuable, and extensive information pertaining to individual perspectives for data collection and analysis. According to Macnee and McCabe (2008), the use of purposive sampling assists in providing a thick description. Thus, individuals of other settings and groups did not participate in this study and would not be able to identify with the findings of the study.

Dependability and confirmability are similar in that both terms determine whether the research findings are consistent and repeatable by other researchers. To establish dependability, I used code agreement and code rearrangement to identify if the same themes emerged. Anney (2014) stated that agreement in the codes enhances dependability. Further, Anney declared that audit trails are the ongoing documentation of the research process, specifically the decisions of the data collection and analysis. According to Lacey and Luff (2009), coding and recoding is a necessary stage of the qualitative data-analysis process. Therefore, I enlisted the strategy of a coding audit trail to develop dependability and confirmability.

Ethical Procedures

I was cognizant of ethical considerations throughout the research process. I obtained approval from Walden University's IRB prior to recruiting participants and collecting data. IRBs were established to assist with reviewing data collected by students for ethical purposes. This review assisted with protecting myself and the participants.

Therefore, I detailed the data-collection process in the methods section of this chapter. All IRB ethical procedures were followed.

As described in the data-collection section of this chapter, participants received a copy of the informed consent (see Appendix D) and acknowledged the informed consent electronically. I requested permission to electronically record interviews. All participants of the study were assured confidentiality, and no unnecessary personal identifying information was gathered. Access to all data has been restricted to myself; data are maintained in a secure location, in my place of residence. The results of the study are reported using aliases to maintain the participants' confidentiality. Participation was completely voluntary. Therefore, individuals were able to choose not to participate or end participation at any time with no penalty or punishment.

Confidentiality for the private practice attorneys was an ethical concern. One reason for this concern was that the private practice attorneys received confidential information regarding the use of CIs in federal white-collar crimes. Additionally, these attorneys may have divulged information pertaining to individual work ethics, routines, and employers that, if known, could risk individual professional reputation. To preserve confidentiality, participants were assigned an identifier that did not expose their individual identity. Only basic information and demographics of private practice attorneys were obtained to ensure compliance with participant criteria. To preserve private practice attorneys' identifying information, the name and specific location of individual practices were not identified. Specifically, the participants' geographic regions

were also not collected or identified. Participants did receive the opportunity to inquire about confidentiality.

Given that participants' identities were concealed, there was little to no risk for recording interviews and collecting data. Although minimal risk was associated with this study, and no traumatic experiences were expected, the participants were offered contact information for an individual local community service board to receive access to cost-effective mental health providers. Participants were provided the opportunity to inquire about confidentiality.

The dissertation and all electronic notes were maintained on my password-protected private external hard drive and secured in a fireproof safe (restricted to myself) when not in use. A backup was maintained in a private electronic location with a secure login and password and two-step verification. I maintained every effort to ensure the privacy and rights of the study participants and any others involved with my study. I was in my private home office conducting each interview of every participant to guarantee participant privacy. The participants were informed of the data collection and storage in advance. Reasonable accommodations for data storage would have been made upon any participant's request.

After completing the research, all information was stored in the same secure, restricted location. After 5 years, I will destroy all material pertaining to the research study, leaving no traceable files of the original data collected. Finally, participants were informed that a brochure with the study's results would be provided. There were no

unexpected ethical considerations. Therefore, I did not have to consult with the dissertation committee for ethical considerations.

Additional ethical considerations were my previous education, knowledge, and bias against the use of CIs in the criminal justice field, specifically within the criminal justice system. Therefore, I was aware of my personal and professional views on the responses study participants provided. Furthermore, I was open to learning about the study topic through a different lens, that of the study participants. I refrained from passing judgment during the data-collection phase of interviews. This practice assisted me in being receptive to the data collected rather than disregarding data based on previous education and personal experience.

Summary

Chapter 3 explained the planned research design along with a rationale. I discussed my role as the researcher and applicable ethical issues. I maintained professionalism during the interviews. Additionally, I asked open-ended questions during the interviews to refrain from leading participants to certain responses. Information pertaining to participants, instrumentation, data analysis, issues of trustworthiness, and ethical procedures were provided. I also outlined the methodology I employed in the study. The historical research qualitative inquiry was more applicable for addressing the shared current perspectives of private practice attorneys. All ethical guidelines were adhered to, and confidentiality was maintained for my participants. Chapter 4 presents this study's results.

Chapter 4: Results

The purpose of this historical research qualitative study was to explore the literature related to whether GAO DOJ FBI CI policies of safeguards influenced the national use of CIs to obtain convictions in federal white-collar cases based on the perspectives of private practice attorneys with defense and prosecutorial experience. For this historical research qualitative study, the perspectives of private practice attorneys with both defense and prosecutor experience regarding the use of CIs in federal white-collar cases were investigated. The research question that guided this research was the following: How do the legacy GAO DOJ FBI CI policies use of safeguards, or lack thereof, impact the outcome of federal white-collar criminal justice cases resulting in convictions? Chapter 4 includes the study's setting, demographics, data collection, data analysis, evidence of trustworthiness, results, and a summary and transition to Chapter 5. The setting for data collection enabled me to provide a safe environment for in-depth interviews with the participants.

Setting

Data were collected from participants through in-depth semistructured interviews. Given the conditions of the telephone interview, participant settings were their home offices. The COVID-19 pandemic caused a shift in the dynamic from working in an office to working from home, and private practice attorneys were not excluded from this global crisis. In-person interviews were not appropriate, and a shift was made to telephonically interview participants with the setting being their home offices.

I requested that all interviews be conducted with audio recordings from each participant. However, each participant declined to be recorded. My invitation to participate in the study and consent form clearly stated that being recorded was part of the data collection. Even though I reiterated the fact that all recordings would be kept confidential and not disclosed in my study, participants declined this request. Their refusal was based on the fear of possible voice recognition and exposure of truthful discussions related to personal experiences.

Because all participants were more willing to share their experiences via non-audio-recorded telephone interviews, the visual nonverbal social cues were not observable. I used participant tone and voice inflection to observe social cues during the analysis of the data. There were no organizational or personal conditions that influenced the participants or experiences, directly or indirectly, or that may have affected the results of the inquiry. Population demographics were well defined and provided rich content.

Demographics

Participant demographics and characteristics were relevant to my study. There were 10 participants who identified as active private practicing attorneys with both defense and prosecutor experience regarding the use of CIs in federal white-collar cases. Most participants were men (70%). Regarding race, most identified as White (50%), three were African American (30%), and two identified as LatinX (20%). Highest Education was Law School (100%), and years of experience ranged from 18 years or more (40%) to 6–11 years (30%) to 12–17 years (30%). Table 4 displays the participant demographics.

Table 4

Participant Demographics

Demographic	Category	Number of participants
Gender	Female	3
	Male	7
Race	African American	3
	LatinX	2
	White	5
Highest education	Law school	10
Years of experience	6–11	3
	12–17	3
	18+	4

Participant regions and occupational statuses were not included in the study's demographic questions. Through the use of snowball recruitment, each participant voluntarily provided me with regions of origin and occupational status. Participants were located in the East, South, and West regions of the United States. All 10 participants were active private practice attorneys. Because I was able to reach data saturation, my data collection contained a thick description and was thorough.

Data Collection

After obtaining Walden University's IRB approval, I recruited 10 participants who met the inclusion criteria. The primary source of data collection was in-depth semistructured interviews with individuals who were active private practice attorneys with defense and prosecutor experience. The attorneys also had experience with CIs in federal white-collar cases that resulted in convictions. After reviewing the informed consent form and consenting to participate in the study, each participant was contacted via email to schedule individual interviews.

I conducted in-depth semistructured telephone interviews with each participant using a modified version of the Confidential Informant Survey instrument (see Jones-Brown & Shane, 2011). A total of 10 participants provided verbal responses for data collection using the modified Confidential Informant Survey interview questions. Data were collected using field notes, and interviews were conducted in a private remote setting over an 8-week time frame. The length of the interviews was an average of 60 minutes.

There were variations in data collection from the plan presented in Chapter 3. For instance, participants were informed within the consent form that each interview would be audio recorded. However, each attorney declined to be audio recorded during the in-depth telephone interview. The refusal was based on the fear of possible voice recognition and exposure of truthful discussions related to personal experience.

Therefore, I took extensive field notes, listened for verbal and nonverbal cues, and wrote down the responses from all 10 participants. Because of this unforeseen and unusual circumstance encountered in data collection, I conducted member checking with the participants. Approximately 36 hours after each interview, I sent an email to each participant to share my summary of the responses to each of the nine questions to ensure data collection accuracy. After careful review, each participant confirmed that my summary was accurate in response emails. This was a deviation from the plan outlined in Chapter 3 and was an approved pivot by my dissertation committee members. Even though I had to navigate through the pivot regarding my data collection, my data collection was accurate.

Data Analysis

After each interview was conducted and member checked, I became engaged with the data analysis. According to Patton (2015), transcribing some or all interviews provides an opportunity for researchers to become immersed in the data. After I summarize my field notes from the interviews, I organized the summaries according to the interview questions in an Excel spreadsheet to create a data set and followed seven steps.

In Step 1, I reviewed the summaries of my field notes to gain familiarity and knowledge with participant perspectives. In Step 2, I listed perspectives for coding and categorizing purposes. For example, the evaluation codes represented the participant responses regarding the GAO DOJ FBI CI safeguard policies. The policy knowledge category was developed with evaluation codes indicated by the following terms: “aware,” “essential to know and understand,” “mandatory,” “learned,” “told and trained,” and “critical.” The policy perspective category was developed with evaluation codes indicated by the following terms: “isn’t very easy,” “problematic,” “not entirely consistent,” “horrible,” “impossible,” “questioned,, “congressional watchdog,” and “loopholes.”

Emotion codes were based on the CI experience during federal white-collar cases conveyed by the participants. The CI perspective category was developed with emotion codes indicated by the following terms: “sticky,” “unfortunate,” “hard,” “cynicism,” and “frustration.” Lastly, value codes indicated the moral integrity of the CI recordkeeping policies with respect to power from participant perspectives: “sanitized and redacted,”

"private never public," "only seen at trials," and "stored forever." Based on participant responses provided during the in-depth interview process, there were no discrepancies noted.

In Step 3, I discovered patterns, and no irregular participant perspectives were noted based on each interview. In Step 4, I used my interview data along with the literature review to begin to organize participant perspectives into concepts. In Step 5, I began to conceptualize emerging themes based on participant perspectives and through reflexive thinking. In Step 6, themes were arranged to reflect participant perspectives to create meaning and context. In Step 7, the research question was answered by the composite of perspectives that were presented by emerged themes. There was evidence of trustworthiness in my study.

Evidence of Trustworthiness

The evidence of trustworthiness in qualitative research requires credibility, transferability, dependability, and confirmability. In the current study, trustworthiness was developed at the beginning of the study and evolved throughout the research. Credibility was established through research reflexivity, participant member checking, and dissertation committee examination. To ensure credibility, I used a research reflexive journal and bracketing techniques to remove my personal bias, opinions, beliefs, and viewpoints that would have obstructed the integrity of data analysis.

The research findings were exclusively based on participants' perspectives and experiences that related to the use of CIs in federal white-collar cases that resulted in convictions. I used member checking with each participant to ensure the analysis and

interpretation of participants' perspectives regarding CI experiences were accurately documented. Additionally, member checking guaranteed that I did not include personal bias in the research findings. Finally, credibility was corroborated through peer examination from my dissertation committee to obtain professional guidance that improved the quality of the research findings.

Transferability was established through providing a thick description of the research purpose, methodology, and data collection and analysis. Additionally, snowball sampling was used to recruit participants who provided relevant, valuable, and extensive information pertaining to individual perspectives for data collection and analysis. To establish dependability, I used code agreement and code rearrangement to determine whether the same themes emerged. Anney (2014) indicated that if there is agreement in the codes, then dependability is enhanced. Further, Anney declared that audit trails are the ongoing documentation of the research process, specifically the decisions of the data collection and analysis. I employed the strategy of a coding audit trail to promote dependability and confirmability for my study.

Results

The research question that guided this research was the following: How do the legacy GAO DOJ FBI CI policies use of safeguards, or lack thereof, impact the outcome of federal white-collar criminal justice cases resulting in convictions? In an effort to instill researcher transparency, I included the list of interview questions and participant responses along within the results of my study in the following sections.

Interview Questions and Participant Responses

How Do You Know About the Mandates of the GAO Policy Regarding Federal Confidential Informants?

- Brad: All good prosecutors and defense attorneys are aware of the GAO policy because, unfortunately, it's been proven that without Federal Confidential Informants, probably zero defendants would get convicted in White collar crime.
- Erin: It's essential to know and understand how all the GAO policy works regarding Federal Confidential Informants. I learned as a former prosecutor that the GAO examines and evaluates federal government programs and policies. These mandates are essential because their recommendations help Congress make informed oversight, policy, and funding decisions.
- Desmond: One of the first things that a senior Federal prosecutor told me when I became a federal prosecutor is it's mandatory that I know and understand the mandates of the GAO policy regarding Federal Government informants. Now being a defense attorney, I'm better prepared to help my clients based on all the injustice of how the federal government overcharges individuals on the indictment to plea bargain with the use of confidential informants.
- Hannah: The GAO is a compelling and intelligent part of the process because they provide Congress with reliable, fact-based information for overseeing

federal agencies and programs. Therefore, I learned in law school how and why the GAO policy is important regarding federal confidential informants.

- Jasmine: Once I became a federal prosecutor and wanted to do White collar crime, the GAO policy was the most critical mandate to study. Then understanding the Comptroller General of the United States heads, the Government Accountability Office explained how vital these mandates were. The President of the United States also appoints the Comptroller General under the advice and consent of the Senate.
- Dale: The mandates of the GAO policy regarding federal confidential informants I learned during appropriations law. Because the principle of Federal appropriations law is also known as the Red Book, it's important because of the multi-volume treatise that covers federal fiscal law.
- Frank: Every attorney who has been a prosecutor or defense attorney must know about the mandates of the GAO policy regarding federal confidential informants. History shows that the budget and accounting act created GAO in 1921 because congress realized the need to control growing government expenditures and debt after World War I. What angers me as a defense attorney is that a majority of the time, the GAO policies regarding federal confidential informants are not enforced in the courtroom.
- Lee: I know a lot about the mandates of the GAO policy because when starting as a new attorney right out of an Ivy League college, you will sometimes think you know more than your peers. But the other federal

prosecutors in the office had a way of humbling and teaching me all the different ways to utilize and work the mandates of the GAO policy regarding federal confidential informants. After going into private practice and working for the defendants versus prosecuting them, I better see all the disadvantages with a more precise eye that the government has over my clients. It's very frustrating knowing that when I was a prosecutor, defendants were breaking the law and committing crimes. We were setting them free if they became a federal confidential informant. But now, representing the defendants, I see how they are being prosecuted for the same criminal crimes we were letting individuals go free that I used to charge. Federal informants often commit crimes and often do it with the permission of their federal handlers, according to a 2015 audit by the General Accountability Office (GAO). The GAO reported, and I witnessed it with my own eyes, that many times there was no way of knowing how truthful the federal confidential informant was regarding their involvement in the crimes. However, since 1980, the guidelines have permitted agencies to authorize informants to engage in activities that would otherwise constitute crimes under federal, state, or local law if someone without such authorization engaged in these same activities. The power the GAO has is because they report and perform their work at the request of Congress and under the Comptroller General's authority. Then the agency conveys the results of its reviews through written products and testimony to Congress. GAO also issues legal decisions on matters such as disputes

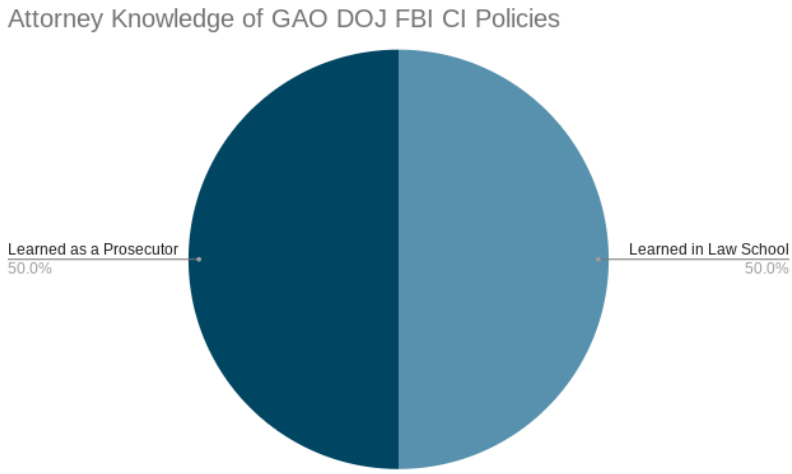
involving the awarding of government contracts. Still, the biggest complaints from most defense attorneys are the GAO finding and policies are recommendations.

- Keisha: There is no way an attorney can practice law properly without being aware of the mandates of the GAO policy regarding federal confidential informants. I first learned about the GAO policy and how important they were during law school. However, when I became a federal prosecutor and started doing white-collar crime, it was amazing that without using a confidential informant, it was impossible to gain a conviction.
- Taylor: All great. Federal prosecutors, I was told, are trained early on how to leverage and manipulate the system and understand the mandates of the GAO policy regarding federal confidential informants. I was told very early in my career that it's no way to force a plea arrangement with a defense attorney without one or multiple confidential informants to testify against the defendant.

Figure 2 presents a pie chart regarding participants' responses for Question 1.

Figure 2

Participant Response Pie Chart for Question 1



What Is the Most Burdensome Part of This GAO Policy and Why?

- Brad: Overall, the GAO has highlighted that some components within the Department of Justice (DOJ) for the FBI do not always address procedures that have been outlined in the Attorneys General's guidelines. This isn't very easy because it means confidential informants are not being appropriately watched with adequate oversight by the FBI.
- Erin: It's very problematic with a white-collar crime because criminal informants, a majority of the time, tell the FBI their side of the story, which could be untrue for their reasons. Even though they have policies in place that generally address the rules and procedures outlined in the guidelines for vetting a confidential informant. As a prosecutor, I did not find it a problem because it helped me to secure a conviction. However, from a defense Attorney's point of view, this is extremely burdensome.

- Desmond: Hands down, I find it highly burdensome that many components' policies are not entirely consistent with the guidelines' provisions for overseeing confidential informants' illegal activities in white-collar crimes.
- Hannah: I'm sure most, if not all, defense attorneys would agree that it is horrible in White collar crimes that the FBI most times believes whatever story is told to them first from the defendant. There are guidelines and components regarding the requirements to provide the informant with written instructions. But, by the time the FBI gets involved, more than 75 to 90% of the time, the white-collar crime has already been committed. So, without prior authorized activity or required signed acknowledgment from the informant, there was no one watching or monitoring any information about the white-collar crime the informant was giving. Any good or great defense attorney would find this very burdensome. But, as a prosecutor, we overlooked these facts and moved forward with our case.
- Jasmine: All white-collar criminals have a motive, so it's virtually impossible for the FBI to truly know how much credibility their story has. Because when I was a prosecutor I found that the average Confidential informant would give up their mother for their freedom or to get rid of their competition. However, what's most burdensome is all the facts show and prove that 100% of defendants will extend the truth not to go to prison.
- Dale: As a defense attorney and prior prosecutor, I most definitely find it very burdensome that the GAO policy allows a confidential informant testimony to

stack a mountain of charges against the defendants with mostly hearsay evidence.

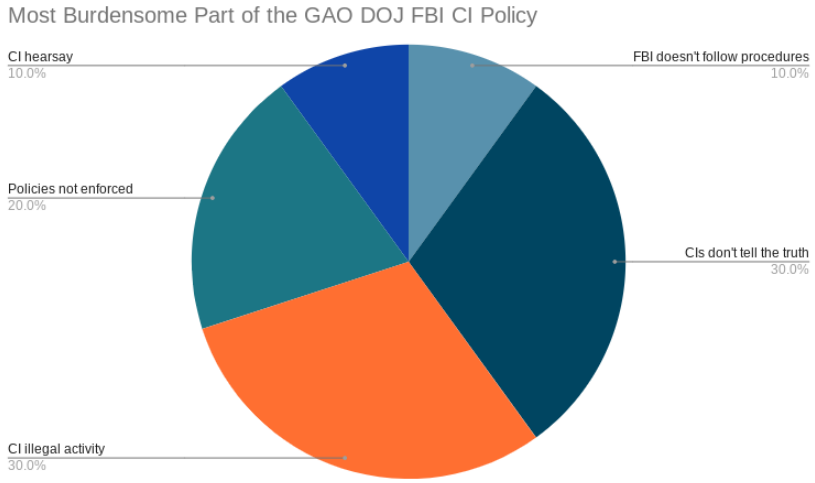
- Frank: I find it very burdensome that without documentation, how do you know if an informant engages in a criminal activity that exceeds the scope of the authorization? Nevertheless, as a defense attorney, how do you prove that the prosecutor/government confidential informant witness was or was not authorized to be involved in illegal activity if they never have to give up their identity?
- Lee: The (GAO) is the Government Accountability Office, which most attorneys call the congressional watchdog. But, what's most burdensome about this title is they make recommendations regarding policies. And often, their offers are excellent, but they are rarely enforced or executed. The major problem and reason are that the prosecutor has too much power.
- Keisha: Confidential informant GAO policy will always be questioned when it comes to white-collar crimes in my eyes as being burdensome as a defense attorney because of confidential informants overall or great liars. So, it's hard and, many times, very unfair and criminally unjustifiable when your client is forced to plea-bargain due to a lack of resources and finance.
- Taylor: The GAO will tell you themselves that what's most burdensome about their policies is it's just a recommendation. The GAO engages in audits and investigations, but at the end of the day, it has little enforcement power. So,

it's too many loopholes to get around the outcome due to the Policies are just being a recommendation.

Figure 3 offers a pie chart regarding participants' responses to Question 2.

Figure 3

Participant Response Pie Chart for Question 2



How Do You Know When Federal Agents Understand the GAO Policy?

- Brad: Most GAO attorneys are assigned to teams to provide legal advice and services to the comptroller General, therefore these attorneys would be available to the Federal prosecutor. So, all FBI federal agents deal with the prosecutors during all investigations. However, it would be difficult to say how well most federal agents understand the GAO policies. But it would be fair to say that all federal agents have access and communication with prosecutors who are attorneys to receive any answers to their questions regarding GAO policies.

- Erin: Overall, all federal agents are college graduates who have the basic knowledge and skills of the law. So, I would feel very comfortable saying that they may not be legal experts, but they would understand the GAO Policies about the role they are actively involved.
- Desmond: Over my decades as a prosecutor and defense attorney, I would say that there are a lot of federal agents with law degrees. So, I feel that they do understand the GAO policies.
- Hannah: I have learned over the years that you do not have to be a lawyer or have a law degree to become an FBI special agent. However, the FBI does recruit lawyers as special agents, as well as uses attorneys and other legal professionals in many roles. So, I know from past experiences that most federal agents would understand the GAO policy.
- Jasmine: I know that federal agents understand the GAO policy because most FBI agents have a bachelor's in criminal justice and a master's degree in some parts of criminal Justice. So, they are well prepared to handle the tasks.
- Dale: More importantly, the FBI accepts less than 20% of applicants, making jobs within the bureau highly competitive. So, this makes me believe that the federal agency would understand or know how and where to seek the GAO policy information when and if needed.
- Frank: It's a fact that all federal agents would understand the GAO policy because most of their backgrounds come from an undergrad of criminalistics,

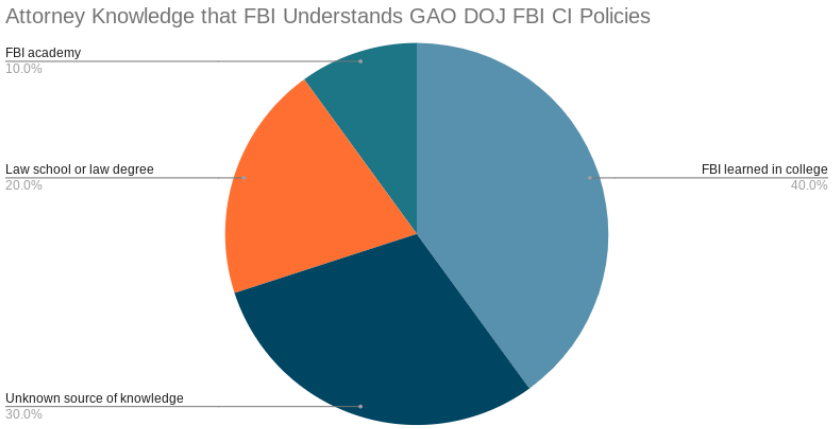
and they continue to further their education because the FBI will pay back a large amount of their loans.

- Lee: My experience of being a federal prosecutor and a federal defense attorney means I have had the pleasure of dealing with federal agents for decades. So, it's fair to say that any federal agent that did not understand the GAO Policies would have access to get the necessary and needed information at their fingertips.
- Keisha: I'm pretty sure that the FBI Academy covers the importance of the GAO policy during their 20 weeks of the training program. So, all the federal agents I have spoken with have been well versed and clarified the GAO and its overall Policies.
- Taylor: Most Federal agents would know about the GAO policy because, in my previous prosecutor days, I remember all FBI agents must hold a bachelor's degree at a minimum; however, many possess a master's degree or higher in Criminal Justice or political science.

Figure 4 presents a pie chart regarding participants' response for Question 3.

Figure 4

Participant Response Pie Chart for Question 3



Under What Circumstances Do Federal Agents Seek Approval From the Federal Prosecutor's Office Before Utilizing Federal Confidential Informants?

- Brad: Unfortunately, Federal agents utilize federal confidential informants all the time without seeking any approval. However, the policy for both Tier 1 and Tier 2 are supposed to be authorized in advance. The proper procedure is to have in writing not to exceed 90 days. But it honestly never happens.
- Erin: In White collar crime investigations of confidential informants, the crimes have most definitely happened many times before the FBI gets involved. So, there are less circumstances during the investigation that they are seeking any approval from federal prosecutors. The FBI many times has unlimited Power and discretion that is not legal on many levels.
- Desmond: It's tough to say or to prove when or if, under any circumstances, federal agents seek approval from the federal prosecutor's office before

utilizing federal confidential informants. Nevertheless, from my perspective and experience, they will be more likely to follow protocol and procedures when the defendant is high profile or very wealthy.

- Hannah: The federal government is the most powerful entity in the world. Therefore, as a former Federal prosecutor, before becoming a Defense attorney, I can say that the rules are to seek approval in writing in advance for a period not to exceed 90 days from the FBI SAC and the appropriate Chief Federal Prosecutor that's the U. S. Attorney in the district that is most likely participating in the investigation. But this process is not followed often. The vast majority of times, there are so many moving parts that the federal agents utilize confidential informants however they see fit to move forward with their case to get an indictment.
- Jasmine: Let me be clear that all Federal agents, under every circumstance, need to seek approval from the federal prosecutor's office before utilizing federal confidential informants. Because using federal confidential informants without permission or authorizing them to engage in otherwise illegal activity can facilitate their usefulness as a source of information to the government but may also have adverse consequences. The main reason why this is necessary is because to obtain 100nformationn or evidence without approval would be illegal. But the Federal prosecutor's office has an almost 100% conviction rate. Therefore, these cases will most definitely be Plea bargains for a lesser crime without ever going to court for a trial. So, my experience has been that

federal agents don't seek approval before utilizing most confidential informants.

- Dale: It's incredibly frustrating as a defense attorney to see how defendants are manipulated and taken advantage of by the power of the government bureaucratic system to seek an indictment and conviction. Being on both sides of the table, I can adamantly confess that under more than less circumstances federal agents don't seek approval from the federal prosecutor's office before utilizing federal confidential informants?
- Frank: Majority if not all Federal prosecutors would agree or say under oath that Federal Confidential informants are needed to get a conviction in white-collar cases, or is needed to retain a plea bargain for a lesser charge. However, no Federal prosecutor would never admit that illegal activity was used, or the proper guidelines were not properly conducted by the federal agents because this information would compromise the criminal prosecution.
- Lee: Considering that all federal agents don't seek approval from the federal prosecutor's office before utilizing federal confidential informants would play a major reason for the success of federal prosecutor's high conviction rate. As a defense attorney I remind my clients that without a trial the Federal prosecutor will never have to expose the federal confidential informant identity. Therefore, the bar and risk to my client's freedom is very high to prove if the government did follow the proper guidelines regarding how they

utilized the confidential informant to legally or illegally to seek their evidence against my client.

- Keisha: As a federal defense attorney, I only practice white-collar crimes defense. And I feel very confident that under no circumstances do federal agents seek approval from the federal prosecutor's office before utilizing federal confidential informants based on my firm caseload and track record. One of the reasons I became a Defense attorney is due to the injustice from the federal prosecutor's office of how they utilize federal confidential informants to seek convictions. I have had many innocent clients take Plea deals to prevent a more extended federal investigation for fear of a long prison sentence.
- Taylor: The system is far from perfect, and I'm sure any Federal prosecutor or defense attorney would agree with me. I'm not against the federal government utilizing confidential informants. My biggest dilemma is how do the average defendants stand any chance of winning when the government gets several individuals willing to testify and will say just about anything to prevent themselves from going to prison. Also, I'm not aware if you know that the Federal government pays confidential informants millions of dollars per year to testify for them as well. My partners and paralegals fact-finding and due diligence shows that without the Federal prosecutor using confidential informants that they would most likely lose a higher percentage of their cases.

Figure 5 offers a pie chart regarding participants' responses to Question 4.

Figure 5

Participant Response Pie Chart for Question 4

How Do You Make Certain That Federal Confidential Informants Are Registered and Have Signed a Written Agreement Before They Can Be Utilized?

- Brad: Each case and situation are uniquely different for each Confidential informant. So other than taking the word of the FBI agent or Federal prosecutor, it's very difficult to know that the federal confidential informants are registered and have signed a written agreement before they can be utilized. First, when your client is arrested or receives an indictment from the government, the confidential informant's name is not on the indictment. The confidential informant will be identified in the indictment by naming them CI1 or CI2, and any information that can identify the confidential informant will be redacted or sanitized.
- Erin: Unfortunately, there is only one way 100% to find out if the federal confidential informants are registered and have signed a written agreement

before they can be utilized, and that's to take your case to a federal trial. Because then the informants must give their correct names and address at trial under oath to establish credibility. However, there are arguments and motions that the Federal prosecutor can make and file saying that the witnesses need not be disclosed at trial if it can be shown that their harm will ensue. Also, don't forget that the Federal prosecutor has a close to a 100% conviction rate, which means only three to five percent of defendants take their case to trial.

- Desmond: Every reasonable defense attorney knows and understands that this is a challenging task to accomplish. The reason being is most federal White-collar cases can take years to reach an agreement between the prosecutor and the defense attorney. So, if the case ends in a plea-bargain agreement, the federal confidentiality of Informant Identity and registration information become a moot point.
- Hannah: It's very true that the FBI, DOJ, and Attorney General office do have guidelines and procedures in place that requires all federal confidential informants are registered and have signed a written agreement before they can be utilized. These guidelines would be titles like authorization of otherwise illegal activity, General provisions, written authorization, precautionary measures, and the list goes on and on. But all documentation that may be given or shown to you to review will be redacted. So, all defense attorneys will advise their client, who is the defendant, that if they don't have the

financial capability to fight this case and to go to a jury trial of their peers, this information will never be disclosed.

- Jasmine: I like to highlight that I had a very wealthy client who had a benefactor who could afford to spend the needed funds to take the Federal prosecutor to a jury trial. My client was innocent and was willing to pay whatever amount of money that was necessary to expose the federal confidential informant to prove that the allegations were untrue. The case dragged on for three years, and the Federal prosecutor decided to drop the charges. So, in the end, after years of the FBI investigation and the indictment, we still could not find out if the federal confidential informant was registered and had signed a written agreement. I'm giving you these statistics from memory, so I may be off a little, but jury trials in federal criminal cases declined from 8% to 3%. Currently, federal prosecutors have around a 95% to 97% conviction rate. Don't lose foresight because most defendants never make it to trial.
- Dale: I'm so happy that you are doing this research because the system is designed to push defendants into Plea bargaining by using Federal Confidential Informants. So, it's very irrelevant if you were able to make certain that federal confidential informants are registered and have signed a written agreement before they can be utilized. Because the fact shows and prove that the government track record is over 97% because the cases are

pleaded out with the Federal prosecutor only taking less than 3% of defendants to a jury trial by their peers.

- Frank: How do you ensure that federal confidential informants are registered and have signed a written agreement before they can be utilized? As a federal prosecutor, I had many FBI agents who documented the confidential informant's documentation after the fact. But due to the high caseload, everyone looked the other way. I have learned that most federal attorneys only stay one to five years and then go into private practice or continue to work with another law firm to fight government cases due to poor representation and resources. I learned early that without a confidential informant, it's virtually impossible to get a conviction. For most federal White-collar crimes, the statute of limitations is five years. Bank fraud has a statute of limitations of ten years. And the government is using the Convicted criminal to help them to convict other defendants. Federal criminal cases are more sophisticated, and most times, they involve many people that are very hard to prove. So, I went into private practice because I wouldn't say I liked the concept of letting bad people free to convict many times, not bad people who sometimes made a wrong decision.
- Lee: The major problem and reason to use federal confidential informants are usually federal cases are more sophisticated and involve more moving parts than state cases. That's why the federal cases are taking longer to file. I learned that the feds don't just file any case. They are always looking for

high-profile cases. Federal prosecutors must ensure that federal confidential informants are registered and have signed a written agreement before being utilized. Because one of the few reasons prosecutors may decide to dismiss cases after charges are filed. Evidence may be poor, witnesses may be unavailable, or illegal tactics may have been used to gather evidence or make arrests based on wrongdoing from the confidential informant.

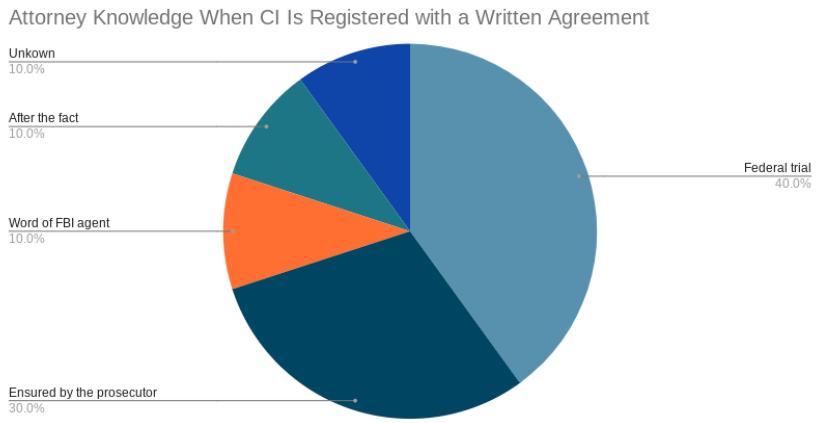
- Keisha: However, the federal confidential informants are often criminals themselves; therefore, the Federal prosecutors want federal confidential informants to be registered and have signed a written agreement before they can be utilized. The prosecution's overall goal is to get the defendant to plea bargain their case without ever taking it to trial. So, it's crucial to have everything in the proper order so it won't be overturned on appeal later. And most defense attorneys will constantly challenge the credibility, and if the federal confidential informants are registered and have signed a written agreement before they were utilized in the investigation would help the case if it went to trial.
- Taylor: I'm Partner in a law firm with more than twenty attorneys; we have conversations regarding how confidential informants are poorly selected and utilized to fight white-collar crime regularly. Your question makes perfect sense. But the facts will always supersede the question of "How do you make sure that federal confidential informants are registered and have signed a written agreement before they can be utilized?" Overall, I and all other

criminal defense attorneys practicing white-collar crimes feel because of the power of the government and Federal prosecutors, it's complicated to know other than to take the Federal prosecutor's word truly. Most times, when this topic is brought up to your adversaries, they will always avoid it by saying your client is facing serious charges and may want to consider a plea bargainn deal.

Figure 6 offers a pie chart regarding participants' responses to Question 5.

Figure 6

Participant Response Pie Chart for Question 5



Regarding the Legal Obligation of Confidential Informants, What Types of Problems Were Encountered Using Federal Confidential Informants?

- Brad: This is a very sticky and controversial topic regarding the legal obligation of confidential informants because the guidelines permit the FBI to authorize confidential informants to engage in activities that would otherwise constitute crimes under state or federal law if committed by someone without such authorization. Otherwise, there would be a long list of legal problems

with all federal confidential informants. One of the terms we learned in law school is OIA: Office of the Independent Adjudicator. Such conduct is termed "otherwise illegal activity."

- Erin: Unfortunately, the defendant that the federal prosecutors are seeking an indictment against will shield the legal obligation. However, many times also may have adverse consequences and create problems. Nevertheless, authorizing confidential informants to engage in otherwise illegal activity can facilitate their usefulness as a source of information to the government case, no matter if the information is legal or illegal.
- Desmond: There are so many legal obligations and problems with using confidential informants that the federal government would encounter if they did not have such a high conviction rate. Because they authorize federal confidential informants to commit crimes, it's hard to know where the illegal line is drawn. My Partners and I always like to highlight that in state court, a lot of the time, a lot of the testimony would be hearsay, which creates all types of legal issues. However, in federal court, it becomes a legal issue, and the obligation gets overruled and looked at as a conspiracy.
- Hannah: Why would there not be a legal obligation and legal problems when using confidential informants when they have many motives not to tell the federal prosecutors the truth to be sent to prison? One of the best legal words that come to mind is entrapment; every time I read any indictment that the federal prosecutors/government starts out highlighting the importance of their

case could not have been able to move forward without the help and assistance of the confidential informants.

- Jasmine: After being a federal prosecutor for several years, I eventually left and became a defense attorney for white-collar cases. What troubled me the most was how the federal prosecutors would overcharge the defendant with exaggerative charges from other defendants who participated in the crime. Therefore, I was forced out indirectly by my peers due to constantly questioning our legal obligation of information that came from the federal confidential informants that were many times unverifiable. I was told many times if the defendants did not commit this crime in question, they most likely did some other crime that they got away with.
- Dale: The statement of legal obligations, in general, is the meaning of the term obligation; this is a duty to do or not to do something, so if the evidence shows and proves that all defendants made this decision to be a part of the crime, why would there not be a legal obligation for all? In its legal sense, the obligation is a civil law concept. So, obligation can be created voluntarily from a contract quasi-contract, or unilateral promise is why using federal confidential informants has different types of legal problems, obligations, and burdens.
- Frank: I recently made an argument in the federal court regarding the legal obligation of confidential informants as well as all the problems that their false and untrue allegations create towards innocent defendants. One point

that my argument legal highlighted is that authorizing confidential informants to engage in illegal activity as well as many times paying them or rewarding them with no jail time for their crimes is giving them a license to commit a crime, as well as granting them executive privileges to leverage their lies later for more profit. The judge has yet to rule on my motion.

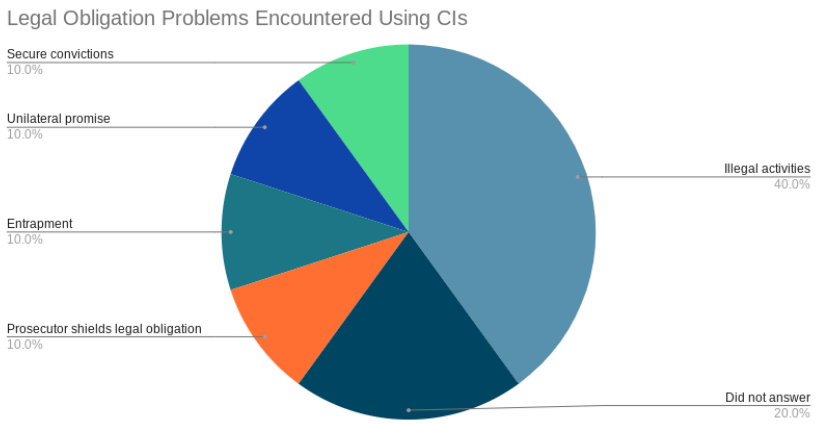
- Lee: The facts to this question are elementary and straightforward; regarding the legal obligation of confidential informants, what types of problems were encountered using federal confidential informants? The bottom line is the federal prosecutor/government is only interested in closing their caseload and getting convictions by any means necessary. The courts have recognized that the government's use of federal confidential informants is lawful and often essential to the effectiveness of properly authorized law enforcement investigations.
- Keisha: No matter what defense attorney you ask this question to, their answer would most likely be, regarding the legal obligation of confidential informants, what types of problems were encountered using federal confidential informants? The answer would go something like this: the federal prosecutor/government does not care. They see and understand that confidential informants or known as simply "CI," are looked at as individuals who decide to assist federal law enforcement agents in making arrests of other people involved in criminal activity for their reasons and motives that benefit them.

- Taylor: Because of the power of the federal prosecutor and government, it's tough to have legal obligations of confidential informants because if a defendant makes a motion to reveal the identity of a CI, the court will evaluate the circumstances and evidence in the case and more than 95% of the time rule against the defendant knowing the identity of the federal confidential informants. Because the courts have recognized that the government's use of federal confidential informants is lawful, therefore, when I was in law school, my dad and brother, who are both attorneys, explained to me that the federal prosecutors are like Las Vegas; they run and control the entire game. But they told me to stay optimistic and concentrate on changing things one case at a time. Even though I did learn a lot after law school by working as a prosecutor, I'm happy I decided to go into private practice and become a defense attorney.

Figure 7 presents a pie chart regarding participants' responses to Question 6.

Figure 7

Participant Response Pie Chart for Question 6



Describe the Federal Confidential Informants' Most Frequent Role.

- Brad: All Federal confidential informants' primary purpose is to assist federal law enforcement agents in obtaining information and evidence against other suspects believed to be involved in committing federal crimes.
- Erin: What makes confidential informants' most frequent role critical to federal prosecutors is they have a secret source of information through their contacts that would never give information on criminal activity to FBI law enforcement agents.
- Desmond: The textbook answer how to describe the federal confidential informants most frequent role according to the Confidential Informant guidelines states that a confidential informant or "CI" is any individual who provides valuable and credible information to the FBI agent and federal prosecutors regarding felonious criminal activities.

- Hannah: All federal confidential informants' most frequent roles are to find out and report and supply information to the FBI, always on a personal basis. We must remember that federal confidential informants are not hired or trained employees of the FBI, and their street names are called rats and snitches. Although they may receive compensation in some instances for their information and expenses, their overall goal is not to go to prison. Or to try to control and manipulate the system to continue their criminal activities with immunity.
- Jasmine: What I learned about why the federal confidential informants' most frequent role works are because they are regular folks like you and I, who many have made bad decisions and have a fear of prison. So, I describe the federal confidential informants' most frequent role in my dealing as a federal prosecutor and defense attorney as individuals who are willing to do or say anything for the benefit of themselves.
- Dale: The federal confidential informants' most frequent role in white collar crimes defendants is very much considered low lives for many reasons. They are usually individuals who participate in the crime or orchestrate it. When they get indicted, they are the first ones to voluntarily cooperate to receive leniency or no prison time at all. I have more respect for drug and gang confidential informants. They know their life is on the line because the people they testify against are dangerous. But, white-collar crimes are Federal criminals, in most cases of Boy Scouts, and don't have much fear of any

repercussions from their peers. So, if you understand my point, this means they are willing to create any scenario to hurt someone to help themselves regarding what happened for leniency because they know the person they are telling on is a Boy Scout. Therefore, in my eyes, the federal confidential informants' most frequent role is to create and give up their peers to save themselves.

- Frank: When I became a federal prosecutor, my supervising attorney explained to me that federal confidential informants' most frequent role might be involved in criminal activities or enterprises themselves; therefore, the FBI may recruit them because of their access and status, and since they will not testify in court, usually can preserve their anonymity. Lastly, I was told that my job is to build and stack as much evidence or accusations against the defendant with the use of confidential informants to make them plea their deal and never consider taking their case to a jury trial.
- Lee: Below is textbook 101 on how to describe the federal confidential informants' most frequent role. CIs are classified into the following categories: Organized Crime, General Criminal, Domestic Terrorism, White Collar Crime, Confidential Source, Drugs, International Terrorism, Civil Rights, National Infrastructure Protection/Computer Intrusion Program, Cyber Crime, and Major Theft and Violent Gangs. And each federal confidential informant's overall goals are to give up or turn on whomever they need to save themselves, which is their most frequent role.

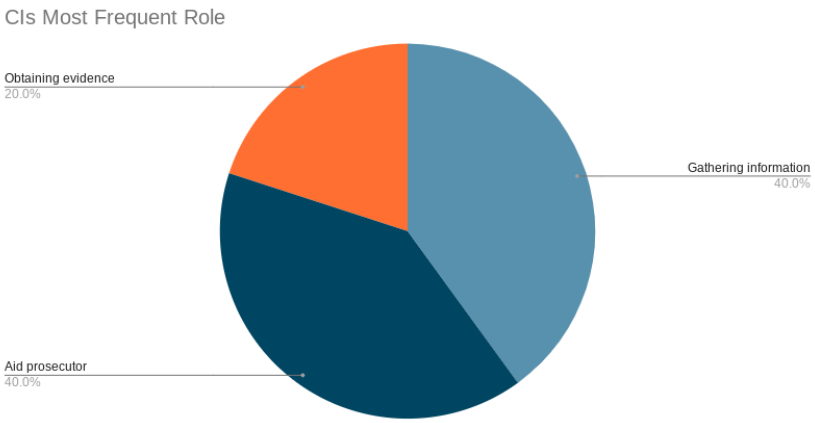
- Keisha: I see and understand the best way to describe the federal confidential informants' most frequent role comes from the help of the Prosecutor and FBI agents to micromanage them. CIs in drug cases are unique among criminal informants who have been proven to be the most difficult to manage. Unlike federal bank wire fraud defendants who take very little to no risk to save their ass. Either way, both federal confidential informants' most frequent role is to point the finger and blame others and cooperate to give information and other cases that the Federal prosecutors and FBI agents are unaware of, guaranteeing themselves no prison time. I also learned over decades that most criminals who commit white-collar crimes are sophisticated and intelligent. So, these individuals use the FBI agents and Federal prosecutors because they know they are willing to look the other way to arrest the target, person, or group they want more. A perfect example that the world is aware of is when the federal prosecutors made a deal with Sammy the bull to turn against the mobster crime boss John Gotti.
- Taylor: Most Attorneys may also agree that the best way to describe the federal confidential informants' most frequent role is to convince the FBI agents and Federal Prosecutors that their information is compelling and that the source of information is credible. Therefore, I have witnessed Confidential informants who the FBI approached to help leverage the government for enormous sums of funds and perks for their services. I'm giving you numbers off the top of my head, so please verify. But Federal agencies have paid out to

federal Confidential informants as much as $500+ million in 2021 for the Federal Bureau of Investigation (FBI) and Drug Enforcement Agency (DEA) for their information, which are taxpayers' dollars. So many people may agree that crime does pay, and becoming a Federal Confidential informant is exceptionally profitable.

Figure 8 details participants' responses to Question 7.

Figure 8

Participant Response Pie Chart for Question 7



Under What Circumstances Does an Active Federal Confidential Informant Get Charged With a Crime They Commit While Acting as a Federal Confidential Informant for the Federal Agency?

- Brad: This is a difficult question because federal confidential informants have immunity. In white-collar crimes, it's more challenging to prove the crimes is why the help of a confidential informant is needed. Whereas a drug informant, you may be required to participate in a set number of drug buys or arrests before your charges are dropped or reduced. Believe it or not, you will be

amazed at how many active federal confidential drug informants get charged with a crime for using drugs or dealing them because they are addicts.

- Erin: As federal prosecutors, we do grant federal confidential informant immunity if they follow the guidelines. However, the more season informant often finds ways to break the law. But they are often still not charged if they help to bring down the enterprise the FBI is seeking.
- Desmond: As a federal prosecutor and FBI agent, it's vital to attempt to put the necessary fear into your informant regarding the consequences of breaking the law while being an active federal confidential informant. But even when they violate the law, they will most likely not be charged because their help is needed to make the arrest. But the FBI agent has often figured out the active federal confidential informant weaknesses to keep them from committing a crime. Also, therefore millions of dollars are paid to these informants to keep them as honest as possible.
- Hannah: Active federal confidential informants should also know what you cannot do while serving as a confidential informant. However, many times, it's understood the need to break the rules to make the individual the FBI has targeted not get suspicious that they may be acting in the capacity of a confidential informant. Prosecutors and FBI agents prefer that the federal informants don't have an attorney because it gives them more latitude legally to take advantage and prolong their services. Many times, the prosecutor and FBI agents are using the inside information to position themselves to have

multiple confidential informants working on the same target to better help them to identify who is telling the truth and who is being untruthful. The wide range of power that the government has, which is infinity, is why they have close to a 100% conviction rate.

- Jasmine: As a defense attorney, you learn quickly that the federal prosecutors and FBI agents are willing to do just about anything to maintain their high conviction rate and to force your clients into a plea deal for less prison time or no prison time. So many times, they will serve the active federal confidential informant with a superseded indictment regarding other crimes that they have participated in for additional leverage to make them continue to cooperate. The prosecutors and FBI agents will and have repeatedly broken their word to the active federal confidential informant to close the case.
- Dale: Drug and gang active federal confidential informants are more likely to get charged with a crime they committed while acting as a federal confidential informant than a white-collar active federal confidential informant. The reason being is gangs and drugs is a very dangerous game to be a part of for anyone. Therefore, many times the active federal confidential informant may have to defend themselves to save their lives by hurting or killing the targeted person to save their life, which may be hard to prove self-defense. Over the years, I have seen Federal prosecutors charge active federal confidential informants with new charges due to lousy assault charges or death regarding gangs and drugs cases.

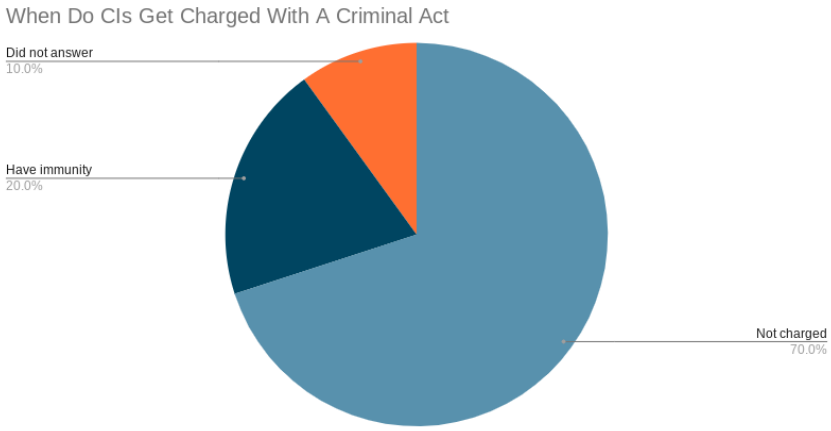
- Frank: White-collar active federal confidential informants are most likely not to be charged under minimal circumstances because they are in less dangerous situations and are not overall harmful or dangerous individuals. The significant difference with white-collar active federal confidential informants is that they fear prison and are most likely to be educated and have families. The facts and statistics prove they will be more willing to cooperate faster than a gang or drug-active federal confidential informant. Also, it's important to remember that the more you help the Federal prosecutors and FBI agents, the better your odds are of receiving a 5K1 letter, which is a letter prepared by the United States Attorney that is sent to the sentencing judge detailing the extent of the cooperation of the defendant for the judge to take into consideration leniency when sentencing an individual. A 5k1letter, a letter or notification that a federal prosecutor gives to a court to indicate that a defendant cooperated, is the most powerful sentencing reduction tool available in the federal system.
- Lee: I was a federal prosecutor for three years before I became a defense attorney. Under no circumstances have I witnessed an active Federal Confidential Informant in a white-collar case be charged with an additional crime while acting as a Federal Confidential Informant for the federal agency. However, I have witnessed the federal prosecutor and FBI agents threaten active federal confidential informants with extra criminal charges all the time if they went outside the guidelines of the agreement.

- Keisha: It's important since you asked this question to point out that under most circumstances, the federal prosecutor will be in a better position to charge an active federal confidential informant in a drug case than a typical white-collar case. The significant difference between the two is the white-collar case crime has been committed by the time the FBI agents finish the investigation. But FBI agents often go undercover with drug-active federal confidential informants to make more arrests or the initial arrest. So, the active federal confidential informant activities are more closely monitored.
- Taylor: I'm happier now being a defense attorney versus a prosecutor attorney because it allows my law firm and me more opportunities to help the defendants against the active federal confidential informants we represent. The power and leverage that we have as defense attorneys are to get the best plea bargain deal because the confidentiality of informants has long been affirmed in federal law as an absolute need to convict a white-collar defendant. The Federal prosecutors need an active federal confidential informant to help them receive a conviction. Therefore, is the primary reason an active federal confidential informant won't get charged with a crime they commit while acting as a federal confidential informant for the federal agency?

Figure 9 offers a pie chart detailing participants' responses to Question 8.

Figure 9

Participant Response Pie Chart for Question 8



Where Are Federal Confidential Informant Records Stored and for How Long?

- Brad: Unfortunately, this may be a question that's impossible to answer, or a question that has many different answers. The first reason is confidential informants' records are sanitized or redacted. Therefore, if you were ever to get a copy, all the legal pertinent information would not be legible. However, to my knowledge, government records can be requested through the FBI Freedom of Information Act (FOIA). But the answer you would most likely be giving is all federal records are in the National Archives and Records Administration (NARA). They are the independent agency that oversees the management of federal government records. I would say that these records are stored forever.
- Erin: It would help if you remembered that the DOJ, The Department of Justice, is under the United States Attorney General (AG), who is the chief

law enforcement officer of the federal government of the United States. And the FBI is under the DOJ. And the GAO, which is the Government Accountability Office, only makes policy recommendations. My point is these records can be stored anywhere and most likely forever.

- Desmond: Your question is most likely above my pay grade, but I feel comfortable saying that the records would be stored forever. Federal confidential informant records have some of the highest classified information used to get many powerful individuals to plea bargain some federal deal. So, this information is likely to have copies in multiple federal agencies. I would also feel comfortable saying the information is on some federal database and if not forever.
- Hannah: The best answer to your question is no matter where the federal confidential informant records are stored, and for how long they are there, you or I will never get a copy. And if we got a copy, it would be so redacted you do not know any more information than you know before you received a copy. But I think that it's multiple copies within each Federal agency involved. Always remember that federal agencies work independently and often don't share information. So, if the FBI is in charge of the Federal confidential informant, they may only share the need-to-know information if they need the DEA's help. So, the federal confidential informant records can be stored in many places and for a very long period, or for a short period as well.

- Jasmine: I would guess the textbook answer is to advise you that confidential records and information will always be sanitized. Therefore, any copies you ever received would likely give you zero information. However, the records would most likely be between three offices, which would be the AG, DOJ, or the FBI, or possibly a copy would be at all three agencies. From a legal standpoint, the Federal confidential informant information was needed to take down the person, group, people, or enterprise, so it would be safe to say the records would be a permanent part of the investigation.
- Dale: In law school, I learned the best way to request or get any federal records is to order them under the Freedom of Information Act (FOIA). But to know exactly what database and where the federal confidential informant records are stored and for how long? I would say the department of justice, the Attorney General, or the FBI, and I would have to believe because of the level of privacy and confidentiality that the government records are stored forever. Nevertheless, I have inquired in the past from all three agencies and received three different answers.
- Frank: Every lawyer who does federal white-collar crime knows that the only chance you have of seeing a federal confidential informant record is to take the case to trial. However, it's still a strong possibility that the records may be denied. But the answer to your questions would be that the records are stored between the Attorney General, FBI, and DOJ, as well as the National Archives and Records Administration (NARA). With few exceptions, records

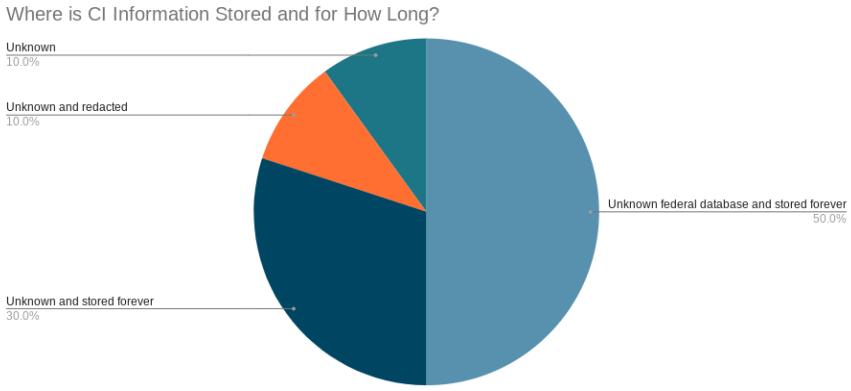
in the physical possession of a federal agency are subject to the Freedom of Information Act. Agencies do not, however, have to retain indefinitely all records created by or submitted to them, under the Federal Records Act, 44 U.S.C.

- Lee: Where are federal confidential informant records stored, and for how long? All federal government records about confidential informants due to privacy and immunity will most likely be stored indefinitely by the DOJ and FBI.
- Keisha: As an attorney, I have requested many Federal government records from different agencies under the Freedom of Information Act (FOIA) because any person except fugitives, federal agencies, and foreign intelligence agencies can request information. Nevertheless, in my many years of practicing law, I don't believe that the FBI would ever release any confidential informant records. But because of all the privacy laws, rules, and regulations, it would make sense that these federal confidential informant records are stored for a lifetime.
- Taylor: I have had many clients inquire about how they would go about getting a copy of the federal confidential informant records. Who was falsely accusing them of a crime? The only answer I give my clients is impossible to never because the courts have recognized and ruled that using a federal confidential informant is legal. Also, I explain that these records are highly classified and probably stored forever.

Figure 10 outlines participants' responses to Question 9.

Figure 10

Participant Response Pie Chart for Question 9



I applied careful analysis to support the participants' responses to the study's research question. I reviewed, revised, and refined the noted patterns during the second cycle of coding to provide an accurate representation of the data and theoretical framework. Four categories were identified using the three coding mechanisms: policy participant knowledge, federal agent policy knowledge, participant CI experience perspectives, and participant recordkeeping perspective. There were no discrepant cases or nonconfirming data reported. Table 5 displays each category, the associated codes, and the descriptions.

Table 5

Categories, Codes, and Descriptions

Category	Code	Description
Prosecutor policy knowledge	Evaluation	"All good prosecutors and defense attorneys are aware of the GAO policy"; "…essential to know and understand how all the GAO policy works"; "It's mandatory that I know and understand the mandates of the GAO policy"; "I learned in law school"; "I was told, are trained early on how to leverage, and manipulate the system"; "There is no way an attorney can practice law properly without being aware of the mandates of the GAO policy."
Federal agent policy knowledge	Evaluation	"It would be difficult to say how well most federal agents understand the GAO policies"; "They understand the GAO policies about the role they are actively involved"; "The FBI Academy covers the importance of the GAO policy during their 20 weeks of the training program."
Participant CI experience perspectives	Emotion	"…isn't very easy because it means CIs are not being appropriately watched with adequate oversight by the FBI"; "…very problematic when CIs tell the FBI their side of the story, which could be untrue for their reasons"; "…horrible for defense attorneys"; "…very unfair because CIs overall are great liars."
Participant policy recordkeeping perspectives	Values	"Records are stored forever"; "…stored anywhere"; "…on some federal database"; "No matter where the records are stored, no one will get a copy"; "Copies issued are redacted"; "…always sanitized"; "…records only seen at trials."

Note. CI = Confidential informant; GAO = Government Accountability Office.

I identified and captured the essence of each emerged theme. According to Saldana (2016), three key issues of a study can be identified after the second cycle of coding. Therefore, three themes emerged: convictions, power, and illegal activities. The convictions theme centered around the rates of prosecutorial convictions based on CI cooperation. The power theme related to the government and legal entities who stand to benefit from CI involvement in federal white-collar cases. The illegal activity theme was supported by the credibility or lack thereof of CI testimonials in federal white-collar cases as purported by the participants. Table 6 lists the summary of emerged themes elicited from the participants' responses in groups of players and descriptions and Figure 11 presents a theme trilogy.

Table 6

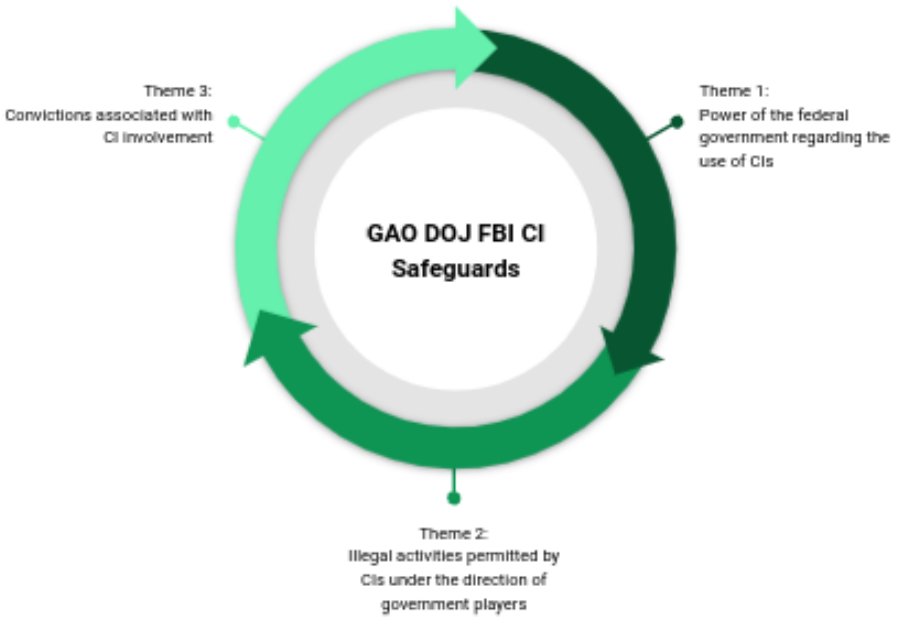
Summary of Emerged Themes, Players, and Descriptions

Theme	Player	Description
Power	Federal government, defense, and prosecutor attorneys	"…power the GAO is it reports and performs work at the request of Congress"; "GAO engages in audits and investigations, but has little enforcement power"; "…prosecutor has too much power"; "…government has infinite range of power"; "…best plea deals represent power and leverage of defense attorneys."
Illegal activities	CIs federal agents, and prosecutors	"FBI has unlimited power and discretion that is not legal on many levels"; "…prosecutor would never admit that illegal activity was used"; "Illegal tactics may have been used to gather evidence or make arrests based on wrongdoing from the CI"; "CIs engaged in illegal activity can facilitate their usefulness as a source of information to the government."
Convictions	Federal government and prosecution	"Without using a CI, it was impossible to gain a conviction"; "…100% conviction rate"; "…getting convictions by any means necessary"; "Innocents are taken advantage of by the power of the government bureaucratic system to seek a conviction."

Note. CI = Confidential informant; GAO = Government Accountability Office.

Figure 11

Theme Trilogy



Emerged Themes Description

Three major themes emerged from data analysis. The first was power. The theoretical framework depicted the use of CIs' fulfilled integrity and purpose. In contrast, after reviewing the literature review, the power dynamics were clearly defined. The power held by the FBI in this circumstance is daunting and full of intimidation.

The second theme to emerge was illegal activities. With respect to the routine active theoretical framework, participants conveyed that the federal government did not adhere to GAO DOJ FBI CI policy safeguards, which caused confusion. Although this sentiment does not confirm or refute federal involvement in illegal activities, with the absence of a capable guardian, the GAO DOJ FBI CI safeguard policy fluctuation may enable illegal activities.

The third theme to emerge was convictions. Based on participants' responses, and aligned with the convenience theoretical framework, convictions were laced with matters of convenience. Ultimately, after taking a closer look at the literature review, the convictions dynamics were essentially defined. CIs are highly coveted by law enforcement agents and prosecutors to secure court convictions of white-collar crimes.

Summary

This chapter presented the analysis results, connected the analysis back to the research questions, and demonstrated consistency of the analysis with the general qualitative methodology. Ten participants were interviewed for this general qualitative study. Interview questions were structured to understand private practice attorneys with defense and prosecutor experience in addressing CI involvement with federal white-collar case convictions. All participants were current or former private practice attorneys. Consistent with general qualitative methodology, there were three levels of analysis, coding, pattern grouping, and emerged theme detection.

All 10 participants were active, not retired private practice attorneys. Further constant comparison analysis was conducted to discover the relationships between and within the codes, leading to a trilogy of themes. The three themes that resulted from this study (convictions, power, and illegal activities) summarized the contributing factors that impacted private practice attorneys with defense and prosecutor experience who addressed the involvement of CIs in federal white-collar cases that resulted in convictions.

Based on participants' responses, the private practice attorneys were acutely aware of the GAO DOJ FBI CI safeguard policies. However, not all of the safeguards were utilized or recognized by the population. For instance, CI registration written authorization and recordkeeping did not appear as common knowledge to any of the participants. In fact, participants claimed to have no knowledge of where CI information was kept nor for what amount of time CI information was stored.

CI safeguards in recruitment cultivation and registration by the federal government have made great strides in developing the GAO DOJ FBI CI safeguard policies. However, it is evident in the research results that other factors interfere with the proper implementation of CI safeguards and adherence to the policy safeguards. Thus, there is not full implementation of the outlined GAO DOJ FBI CI policy safeguard guidelines. Chapter 5 includes the summary for the critical analysis and discussion about the three emerged themes.

Chapter 5: Discussion,
Conclusions, and Recommendations

The purpose of this historical research qualitative study was to explore the literature related to whether GAO DOJ FBI CI policies of safeguards influence the national use of CIs to obtain convictions in federal white-collar cases based on the perspectives of private practice attorneys with defense and prosecutorial experience. The gap in literature this study addressed was a lack of research involving CIs and federal white-collar criminal investigation. To add to the body of literature, I used a modified version of the validated Confidential Informant Survey introduced in the Jones-Brown and Shane (2011) study. I conducted in-depth semistructured interviews to understand the perspectives of private practice attorneys with defense and prosecutor experience concerning the use of CIs in federal white-collar crimes that resulted in convictions. The research question that guided this study was the following: How do the legacy GAO DOJ FBI CI policies use of safeguards, or lack thereof, impact the outcome of federal white-collar criminal justice cases resulting in convictions? This question was answered by the summary of key findings.

According to the participants, the lack of CI safeguard policy specific to CI written registration adherence by federal agents severely impacted federal white-collar cases using CIs to secure convictions. Participants confirmed that the lack of the CI safeguard policy, specific to recordkeeping knowledge, impacted the integrity of convictions secured. Although participants possessed both defense and prosecutorial experience, each profession had a different perspective of CIs used to secure convictions

in federal white-collar cases. For instance, private practice prosecutors relied on CI use in federal white-collar cases that resulted in convictions. However, private practice defense attorneys were frustrated by the layered secrecy with the use of CIs in federal white-collar cases that resulted in convictions.

Findings indicated that all active private practice attorneys had knowledge of and understood the GAO DOJ FBI CI safeguard policies. Participants noted that GAO DOJ FBI CI safeguard policy knowledge was either taught in law school or reviewed early in the prosecutors' careers. Second, participants thought the policy was burdensome because the guidelines were, at times, not followed by the federal agents regarding CI illegal activity involvement and proper CI registration. Third, participants gave mixed responses when asked if federal agents were aware of GAO DOJ FBI CI safeguard policies. Fourth, participants shared that whether federal agents were aware of GAO DOJ FBI CI safeguard policies or not, federal agents rarely sought approval from prosecutors before the recruitment of CIs. Fifth, participants declared the only way to officially know if a CI was properly registered was to have it revealed in trial court. Sixth, the legal obligation regarding the use of CIs was described as a slippery slope by the participants. Participants from a defense attorney perspective were frustrated by the authorization of illegal activities that CIs were permitted to do to secure a conviction. However, participants from a prosecutor perspective appreciated the value of CI illegal activity that benefitted federal white-collar case convictions.

Seventh, participants agreed that the most frequent roles of CIs mostly benefitted the prosecution and/or the personal interest of the CI where CIs were used as long as

possible. Eighth, participants stated that CIs getting charged with illegal activity is another slippery slope. Participants concurred that CIs are authorized to commit certain illegal acts to secure a federal white-collar case conviction. However, participants also noted that the need for frequent use of CIs often negates the need to charge CIs with illegal activity that occurred beyond authorization of federal white-collar cases. Lastly, participants had little to no knowledge about the recordkeeping storage or the duration of storage regarding CIs in federal white-collar cases. There were three major themes that emerged from the data: power, illegal activities, and convictions.

Interpretation of the Findings

I used data triangulation to confirm, disconfirm, and extend knowledge in the criminal justice discipline by the comparison of peer-reviewed literature described in Chapter 2. Data findings were also analyzed and interpreted in the context of the theoretical framework discussed in Chapter 2. Constant comparison analysis was exercised using word clouds from the latest version of NVivo to discover selective patterns that emerged into themes. The latest version of NVivo software released in March 2020 had no assigned number (QSR International, 2021). By deducing the emerging theme trilogy, the researcher interpretations did not exceed the data, findings or the scope.

Data Triangulation for Theme Trilogy

Data triangulation was conducted with a theoretical framework combined with the literature review and interview data to interpret the data collected properly. Data were coded, patterned, and themed to demonstrate participants' perspectives of CI involvement

in federal white-collar cases that resulted in convictions. Emerged themes identified were power, illegal activities, and convictions.

Figure 12

NVivo Word Cloud for Theme 1 Power

Power

The theoretical framework depicted the use of CIs' fulfilled integrity and purpose. In contrast, my review of the literature indicated the power dynamics were clearly defined. With respect to the procedural component, police held almost all of the power over informants and implicitly threatened informants with a complete loss of liberty, specifically prison (Hunt, 2018). The power held by the FBI in this circumstance is daunting and full of intimidation.

The evolution of CI use did not include proper government reporting practices. Power, fear, and money represent the leverage prosecutions yielded over white-collar defendants and CIs involved in white-collar cases. Lastly, the defense counsel has three strategies to help defendants against the wrath of federal prosecution: negotiate before formal charges, question CIs on the stand, and accept declination statements.

Based on previous research, there was apparently no statewide database of information to record how CIs are recruited, cultivated, or used (Jones-Brown & Shane,

2011). Also, there was little consistency between the existing written policies, and there was evidence of insufficient oversight to achieve compliance with those policies (Jones-Brown & Shane, 2011). According to my interview data, power favored the prosecution and law enforcement. One participant noted "I'm sure there would be many legal obligations and challenges when using a CI. However, it looks like the federal agents don't seek approval."

Participant responses confirmed the statements sourced from data triangulation in the following ways. Participants confirmed previous studies that the GAO engaged in audits and investigations but had little enforcement power. Participants also confirmed that the prosecutor has too much power and that the best plea deals represent power and leverage of defense attorneys.

Figure 13

NVivo Word Cloud for Theme 2 Illegal Activities

Illegal Activities

With respect to the routine active theoretical framework, current participants conveyed that the federal government did not adhere to GAO DOJ FBI CI policy safeguards, which caused confusion. However, this sentiment does not confirm or refute federal involvement in illegal activities. With the absence of a capable guardian, the

GAO DOJ FBI CI safeguard policy fluctuation may enable illegal activities. Tarwacki (n.d.) noted that there was no ethical defense for the continued use of tainted informants after exposure to FBI officials. Motivated offenders were individuals who were not only capable of committing criminal activity but were willing to do so (Gottschalk, 2018). Some CIs used by law enforcement in undercover settings engage in independent crimes for additional self-serving benefits. However, not all CIs are criminals or have a history of criminal behavior. Jones-Brown and Shane (2011) confirmed that the element of an illegal activity connected to law enforcement was recognized. GAO DOJ FBI CI safeguards are supposed to mitigate CI corruption and are critical to maintenance of the integrity of the criminal justice system. My findings indicated illegal activities favored law enforcement. One participant noted "I would think that a CI would never get arrested as long as they were doing what the FBI and federal prosecutor needed to get a conviction."

The participant responses confirmed that illegal activity existed within the use of CIs. Participants stated that the FBI has unlimited power and discretion that is not legal on many levels and that the prosecutor would never admit that illegal activity was used. Participants also declared that illegal tactics may have been used to gather evidence or make arrests based on wrongdoing from the CI. Lastly, participants claimed that CIs who engaged in illegal activity can facilitate individual usefulness as a source of information to the government.

Figure 14

NVivo Word Cloud for Theme 3 Convictions

Convictions

Based on participant responses and aligned with the convenience theoretical framework, convictions were laced with matters of convenience. CIs are highly coveted by law enforcement agents and prosecutors to secure court convictions of white-collar crimes. The FBI and federal prosecutors looked for felonious criminal activities, information, and knowledge from CIs to secure indictments for convictions (Bunin, 2019).

When the FBI targets an individual or a corporation, it relies on CI cooperation to gain inside information of wrongdoing that results in prosecutor convictions. Everyone involved in the criminal justice system, from judges to prosecutors to police to defense attorneys, agreed that informing had become a pervasive part of the legal system (Natapoff, 2007). Even though the prosecution has plenty of advantages, applications, and workarounds to secure favorable convictions, not all cases are guaranteed courtroom convictions.

Without a mandatory state policy, it appeared that local authorities were granted a significant advantage in prosecuting drug cases (Jones-Brown & Shane, 2011). According to my findings, convictions favored the prosecution. One participant noted "I would think that a CI would never get arrested as long as they were doing what the FBI and federal prosecutor needed to get a conviction." However, the participant responses both confirmed and disconfirmed the data triangulation results. For instance, participants confirmed that without using a CI, it was impossible to gain a conviction.

In contrast, participants disconfirmed the literature review by claiming there was a 100% conviction rate from prosecuting attorneys. Additionally, the literature review did not confirm the participants' claims that prosecutors were getting convictions by any means necessary. Lastly, the literature review did not confirm the participants' statements that innocents are taken advantage of by the power of the government bureaucratic system to seek a conviction. Based on my study's strengths and limitations, further research is warranted.

Limitations of the Study

The first limitation was the access to my population of private practice attorneys with defense and prosecutor experience. My revision to the first limitation was that although I had access to my population, not one member of my population agreed to be recorded for the in-depth interviews conducted over the phone. The second limitation was the use of the modified Jones-Brown and Shane (2011) validated instrument, the Confidential Informant Survey, because it only pertains to CIs and CI policies.

There were no revisions to my second limitation as the validated instrument was modified to collect open responses from the participants and capture perspectives accordingly. My third limitation was the use of the convenience purposeful snowball sampling method with at least 10 participants, which was limited to the historical research qualitative design methodology. In summation, there was no revision regarding participant recruitment because the convenient snowball sampling method permitted me to contact an adequate number of voluntary participants. My population satisfied my goal of data saturation, which I described fully within the interpretation of the study's findings.

Recommendations

My participants were active private practice attorneys with defense and prosecutor experience involving CIs in federal white-collar cases. Future research should conduct a qualitative research-based study with federal agents to measure the response to working with CIs and prosecutors to secure convictions in white-collar cases. An additional strength and limitation of my study was the modified Confidential Informant Survey, which helped capture the participants' perspectives.

My literature review focused on defense attorneys, prosecutors, federal agents, CIs, and whistleblowers. To further this study's research, a mixed-method case study with judges who have both grand jury and trial experience with CIs in federal white-collar case convictions is recommended. These recommendations I suggest for current researchers did not exceed my study's boundaries. In addition to the aspects of future

research, there were implications of social change that were appropriate and consistent with this empirical study.

Implications

Through this study, I aimed to increase the focus and investigation into how federal law enforcement agents and prosecutors make arrests with the use of CIs regarding federal white-collar crimes. My study would demonstrate positive social change should the perspectives of private practice attorneys with defense and prosecutor experience encourage federal law enforcement agents to recognize the validity and accountability of GAO DOJ FBI federal policy safeguards regarding the information CIs provide in federal white-collar cases.

My findings did not determine that any federal white-collar case convictions were considered wrongful or unjust. However, if a high conviction rate is attributed to failed CI safeguards within the justice system regarding federal white-collar cases, there is a program that offers recourse for innocent persons wrongfully convicted in a court of law.

According to the Bureau of Justice Assistance (BJA; 2021), upholding the Rule of Law and Preventing Wrongful Convictions grant program supports Wrongful Conviction Review entities that provide high quality and efficient postconviction representation for defendants in postconviction claims of innocence. The BJA also declared that this program is committed to protecting the integrity of the criminal justice system and the consistent application of due process for all. Where possible, the program seeks to identify actual perpetrators of crimes, bring justice to victim(s), and enact measures that

prevent future errors and ensure justice, thereby enhancing public safety (U.S. DOJ Office of Justice Programs BJA, 2021).

As a past recipient of this grant, New York's Suffolk County's (2019) Conviction Integrity Bureau greatly benefited as an awardee. Suffolk County's mission of the Conviction Integrity Bureau is to seek the truth and do justice. Recently, Suffolk County (2019) District Attorney, Timothy D. Sini, and New York Law School announced that the District Attorney's Office's Conviction Integrity Bureau was awarded more than $849,000 in federal grants from the U.S. DOJ to aid in the investigation of wrongful conviction claims.

The grants also included a $275,000 partnership grant awarded to the District Attorney's Office and New York Law School (Suffolk County, 2019). The authors further stipulated how this innovative partnership model sets an example for how law students and prosecutors can work together in new ways. With respect to federal white-collar cases that use CIs to secure convictions, my recommendation for practice follows the specific mission of the Conviction Integrity Bureau. Finally, my social change implications did not exceed the study's boundaries.

Conclusion

The use of CIs in federal white-collar cases to secure convictions should follow every aspect of the GAO DOJ FBI CI safeguard policies. Private practice attorneys with both defense and prosecutor experience acknowledged the value of the GAO DOJ FBI CI safeguard provisions to assist the integrity of federal white-collar case convictions. However, there is a thin line, or slippery slope, of discretion among federal agents or

prosecutors regarding the full implementation of the GAO DOJ FBI CI safeguard policies to secure convictions in federal white-collar cases. That line relies on federal agents' integrity, the prosecutor's agenda, and the federal government's recordkeeping practices to implement the official GAO DOJ FBI CI policy procedures in all federal white-collar cases.

The purpose of my study established the answer to the research question concerning the perspectives of active private practice attorneys with defense and prosecutor experience using CIs to secure convictions in federal white-collar cases. Several factors influence whether the federal government, prosecutors, and federal agents properly implement the GAO DOJ FBI CI safeguard provisions to secure white-collar case convictions. Although legacy GAO DOJ FBI CI safeguard policy provisions attempt to address CI protection needs, the effectiveness of the efforts remain dependent upon CI recruitment, authorization for illegal activities, proper registration, and certain transparency of federal CI recordkeeping.

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Appendix A: Permission to Modify and Use Instrument Request

To Whom This May Concern,

Hello to you and I hope this email finds you well! My name is Richard Dwayne Britt, I'm a lifetime member of the ACLU non-profit and non-partisan organization, and a doctoral student in the Criminal Justice doctoral program at Walden University. My dissertation title is Attorney Perspectives: Use of Federal Confidential Informants in White-Collar Crimes. The purpose of my qualitative study will be to explore the gap in literature related to the use of confidential informants in federal white-collar cases based on the defense and prosecutor experience of private practice attorneys. With my Chair's direction, I wanted to introduce myself and ask your permission to use and modify the ACLU instrument, Confidential Informant Survey, for data collection in my study. I was impressed with the article Jones-Brown, D., & Shane, J. M. (2011). An Exploratory Study of the use of confidential informants in New Jersey. Although this study discussed the use of confidential informants in drug cases, I found the instrument to be a pivotal success in data collection from attorneys, confidential informants, and officers.

That said, will you please accommodate this request to use and modify the Confidential Informant Survey instrument for my study?

Thank you in advance for your time and consideration! I look forward to hearing from you soon.

From: jon shane <[redacted]>
Date: May 3, 2021 at 1:37:16 PM PDT
To: [redacted]
Subject: **you request to modify the confidential informant survey**

Hello Richard Dwayne
Feel free to modify the confidential informant survey and cite the original accordingly.
Thank you for your interest.
Dr. Shane

Appendix B: Attorney Referral Recruitment Email

My name is Richard Dwayne Britt and I am a Ph.D. (Doctor of Philosophy) candidate at Walden University in the Criminal Justice Program. I am conducting a study in partial fulfillment of my dissertation. I am recruiting 10 to 15 research participants who meet the following criterion:

1. Currently or previously a private practice attorney with prosecutor and defense experience.

2. Have experience with federal confidential informants regarding federal white-collar crimes.

3. Have knowledge of GAO DOJ FBI CI policy provisions.

Participants will be interviewed, which will consist of being asked to answer 3 demographic questions and 9 interview questions about individual shared perspectives with linking confidential informants in white-collar crimes. All interviews will be audio recorded and conducted via telephone calls. Each interview will take approximately 30–60 minutes. Participants will have the opportunity to ask me questions about the research study and interview process before the interview. There will also be a debriefing after the interview for additional questions to be asked. The results of the study will be provided to participants through a brochure/pamphlet. Additionally, findings of the study will be published in a professional journal.

This study is voluntary, and you are free to stop the interview at any time. You will not be penalized or punished in any manner for not participating in this study or withdrawing after beginning participation. Please note that this is an opportunity to provide your voice as a private practice attorney with prosecutor and defense experience regarding confidential informants in white-collar cases. This research study is in partial fulfillment of the requirements for the Doctor of Philosophy in Criminal Justice degree.

If you meet the criteria and are interested in participating in the study, please respond to this email.

Thank you all in advance for all consideration and time given to this matter!

Appendix C: Attorney's Interview

Interview Questions

Demographics

Ethnic Background

1. African American
2. LatinX
3. White
4. Asian
5. Native American
6. Other

Highest Education (mark all that apply)

1. College
2. Law School
3. Doctorate
4. Other

Years of Experience

1. 1 to 5 years
2. 6 to 11 years
3. 12 to 17 years
4. 18 or more

Gender

1. Female
2. Male

3. Non-Binary
4. Transgender Female
5. Transgender Male
6. Other

This section seeks to understand the Governance Accountability Office (GAO) Policy for the DOJ FBI provisions regarding Federal Confidential Informants:

1. How do you know about the mandates of the GAO policy regarding federal confidential informants?
2. What is the most burdensome part of this GAO policy and why?
3. How do you know when federal agents understand the GAO policy?

This section seeks to understand the compliance of FBI Agents with the GAO Confidential Informant Policy in Federal White-Collar Cases:

4. Under what circumstances do federal agents seek approval from the federal prosecutor's office before utilizing federal confidential informants?
5. How do you make certain that federal confidential informants are registered and have signed a written agreement before they can be utilized?
6. Regarding the legal obligation of confidential informants, what types of problems were encountered using federal confidential informants?
7. Describe the federal confidential informants' most frequent role?

This section seeks to understand the case handling of Confidential Informants in Federal White-Collar Crimes:

8. Under what circumstances does an active federal confidential informant get charged with a crime they commit while acting as a federal confidential informant for the federal agency?
9. Where are federal confidential informant records stored and for how long?