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# PROSECUTOR TO AUDITOR:

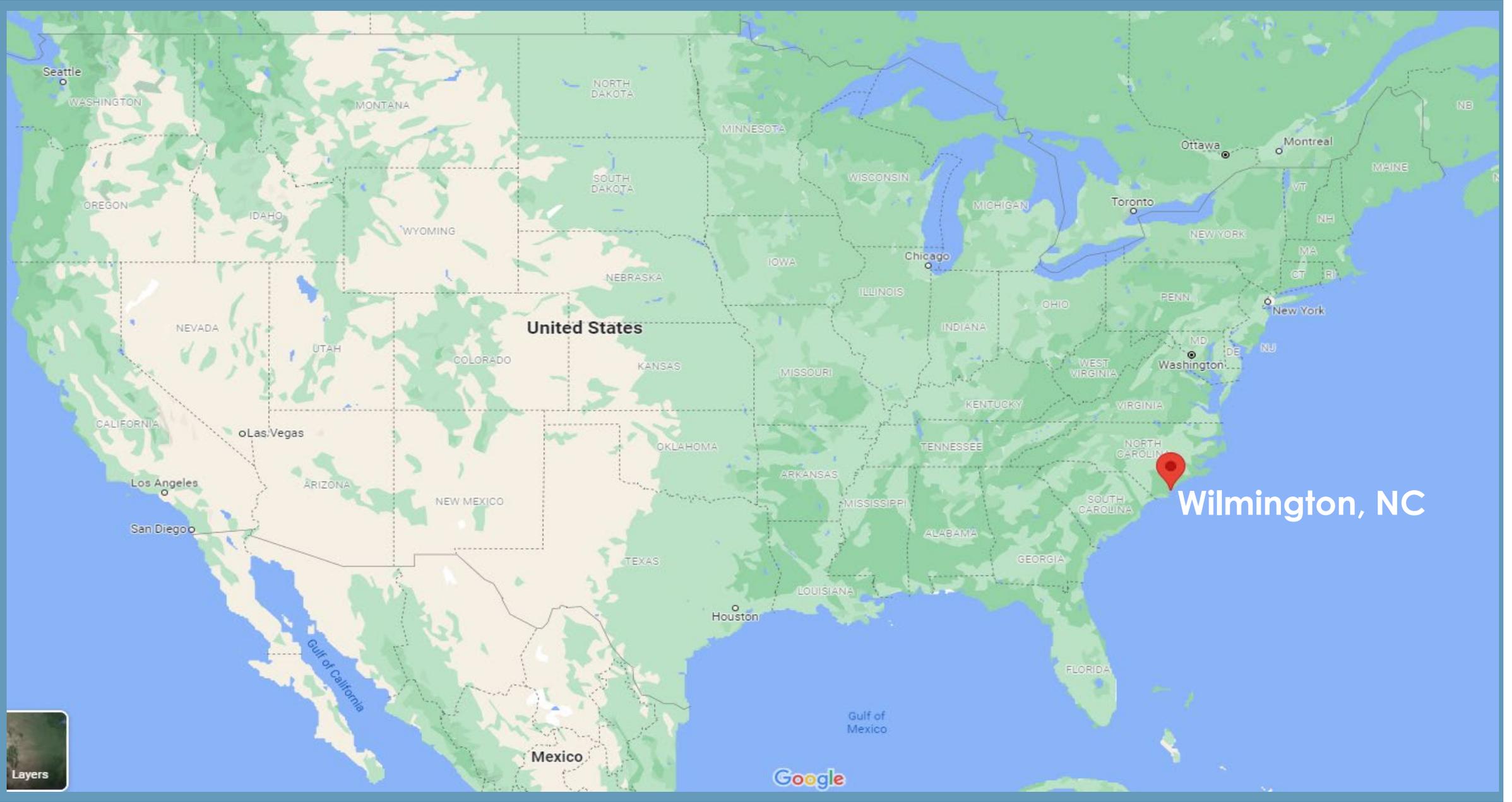
Learning to speak a common  
language to get maximum justice for  
your clients

District Attorney Ben David  
Wilmington, North Carolina  
United States of America

# The Message

- Zero tolerance for fraud
- We will prosecute 100% of the time
- No exceptions!





United States

Wilmington, NC

# Wilmington, NC

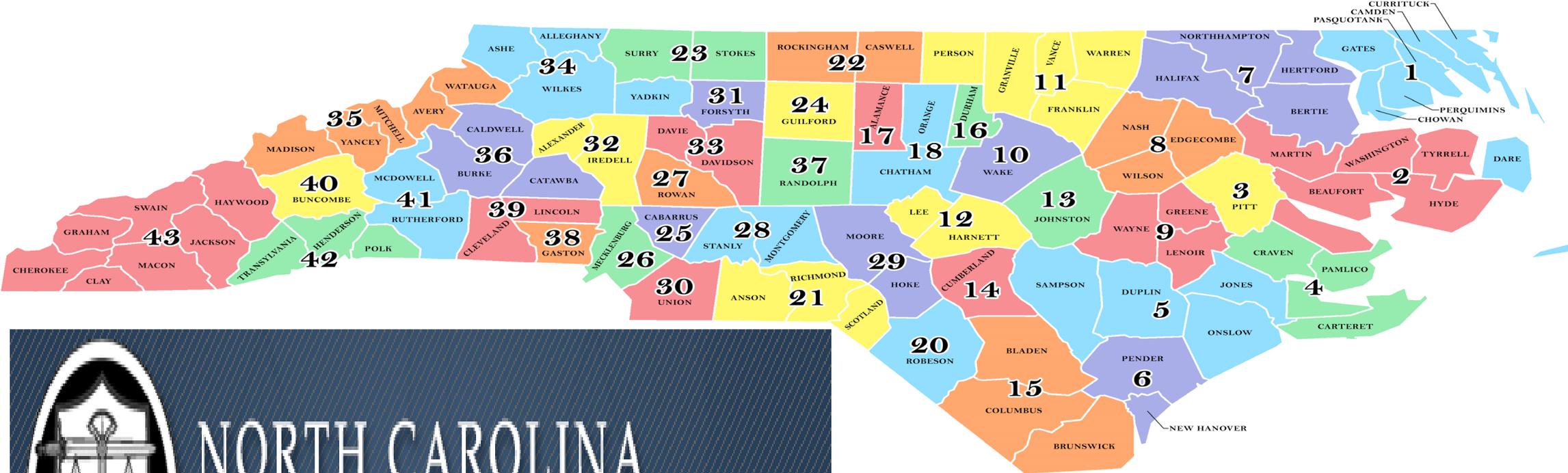




CORNING

**PPD**

# NORTH CAROLINA PROSECUTORIAL DISTRICTS



**NORTH CAROLINA**  
 Conference of District Attorneys

Effective 9/1/2021

# WHITE COLLAR CRIME



## Your Customers Are Vulnerable!

- 75% of companies worldwide experienced fraud in the past 12 months
- White-collar crimes cost over \$3.5 trillion worldwide



\$78 Billion in Accounting Fraud

\$7.4 Billion in Overstated Profits



**STEINHOFF**  
INTERNATIONAL HOLDINGS N.V.



\$6.1 Billion in Document Manipulations

# The Bigger Problem: Globally in 2020

- Most businesses lose 5% of annual revenue to employee fraud
- Only 56% of businesses investigated their worst fraud incident
- It is estimated that nearly 90% of fraud is not reported

# Why are White Collar Crimes Unreported?

- Shame and embarrassment
- Unlikely to get restitution
- Worried about countersuit from the accused
- Bringing suits might compromise customer confidence

# Involving a Prosecutor Covers These Concerns

1. Only prosecutors send people to prison  
(Your clients are more likely to get restitution in a criminal case)
2. Defendants cannot sue prosecutors  
(Litigants in civil court can be countersued; have no immunity)

# Crimes

- What are the most common financial crimes?
- How Do I:
  - Prevent them?
  - Detect and report them?
  - Convince a prosecutor to adopt them?

# Fraud Comes From Over the Walls and From the Inside of Companies

A recent global survey found a roughly even split between frauds committed by internal and external scammers at almost 40% each. The rest resulted from collusion between the two.



# External Threats



# Wendy George



Obtaining Property by False Pretenses

# Internal Threats

- Payroll Fraud
- Asset Misappropriation – Forged Checks
- Skimming – Transactions Not Recorded
- Online Banking – Transfers Funds to an Erroneous Account
- Falsifying Invoices – False Suppliers
- Financial Statement Fraud
- Intellectual Property Theft
- Tax Fraud
- Data Theft



# Employee Conspiracies

- Conflict of Interest
- Asset Theft
- Hiring
- Bribery
- Embezzlement
- Contract Schemes
- Falsified Financial Documents



# PREVENTION

A man in a dark suit, white shirt, and dark tie is shown from the chest up. A yellow caution tape with the word "CAUTION" printed in black is wrapped around his waist. The background is a dark, gradient grey.

**You're only as secure as your least secure employee.**

# Hiring Trusted Workers Means...

- Vetting service companies (janitors, security guards, landscapers)
- Bonding and Licensing
- Checking past clients
- Providing a copy of hiring practices and policies to employees
- Establishing social media policies for employees



# Internal Controls

## Divide Responsibilities to Manage Cash Transactions

Cash, check receipts recorded by 1<sup>st</sup> employee

Deposit Slip by 2<sup>nd</sup> employee

Actual Deposit by 3<sup>rd</sup> employee



# Create a Crime Watch Neighborhood

1. Cross-Training
2. Mandatory vacations
3. Mandatory background checks
4. Periodic credit checks
5. Closed-circuit TV in key locations
6. Periodic outside audits



# Ethics Committee



- Draft and Approve Policies
- Implement Rewards and Sanctions
- Training and Education Programs
- Establish a Reporting System and Anonymous Tip Line

# DETECTION AND REPORTING

# When Good People Go Bad: Rationalize = “Rational Lies”



# The Fraud Triangle

**MOTIVE**



**MEANS**

**OPPORTUNITY**

# Behavioral Signs of an Employee Gone Rogue

- Unexpectedly fails background screening
- Change in behavior
- Past employers didn't trust them
- Living beyond means
- Knows information they shouldn't
- Brags to co-workers about hacking skills
- Switches computer screens quickly when approached
- Works late and on the weekends, yet refuses to take vacations
- Leaves the company disgruntled



# When You Detect It

- Determine reach: Lone wolf vs conspiracy
- Digital footprint: Download 30 days of activity
- Do not confront defendant: Element of surprise

# Involving Investigators

- Pretext Calls: How SVU detectives catch a predator
- Government Action: Right to remain silent; Entrapment

# CONVINCE A PROSECUTOR

# Speaking the Same Language



# Why Prosecutors Do Not Always Take a Case

1. Complexity of cases: Voluminous files with lots of math involved – “This is a civil matter”
2. Foreign defendants: Extradition is more expensive than the amount of restitution owed
3. Emphasis on violent crime: Prison time and prosecutors’ priorities

# This is Not Insurance Fraud



This is Arson and Murder

# The Language of Legal Analysis

F – Facts

I – Issues

R – Rules

A – Analysis

C - Conclusion

# Five Types of Evidence

1. Direct
2. Circumstantial
3. Testimonial
4. Physical
5. Other crimes





THU	FRI	SAT
 40%	 60%	 70%
90	86	84
	73	73



Meteorologist Brad Sowder



Expert Witness



# Five Defenses

1. Some Other Dude Did It (SODDI)
2. Of Course I Did It
3. The Devil Made Me Do It
4. I Didn't Do It
5. Maybe You Did It

# SODDI: Corporate Malfeasance



Oliver Wells



# Of Course I Did It: Embezzlement



Guy Williams



Wilmington Plastic Surgery

# The Devil Made Me Do it: Embezzlement



Beverly Brown



Elijah's Restaurant

# I Did Not Do It: Follow the Money



**More Serious Felony**

**Less Serious Felony**

**\*\*\* Effective for Offenses Committed on or after 10/1/13 \*\*\***

**FELONY PUNISHMENT CHART  
PRIOR RECORD LEVEL**

**OFFENSE CLASS**

	<b>I 0-1 Pt</b>	<b>II 2-5 Pts</b>	<b>III 6-9 Pts</b>	<b>IV 10-13 Pts</b>	<b>V 14-17 Pts</b>	<b>VI 18+ Pts</b>	
<b>A</b>	<b>Death or Life Without Parole</b>						
	<b>Defendant Under 18 at Time of Offense: Life With or Without Parole</b>						
<b>B1</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>DISPOSITION</b> <i>Aggravated Range</i>
	<i>240 - 300</i>	<i>276 - 345</i>	<i>317 - 397</i>	<i>365 - 456</i>	<i>Life Without Parole</i>	<i>Life Without Parole</i>	
	<b>192 - 240</b>	<b>221 - 276</b>	<b>254 - 317</b>	<b>292 - 365</b>	<b>336 - 420</b>	<b>386 - 483</b>	
	<i>144 - 192</i>	<i>166 - 221</i>	<i>190 - 254</i>	<i>219 - 292</i>	<i>252 - 336</i>	<i>290 - 386</i>	<i>Mitigated Range</i>
<b>B2</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	
	<i>157 - 196</i>	<i>180 - 225</i>	<i>207 - 258</i>	<i>238 - 297</i>	<i>273 - 342</i>	<i>314 - 393</i>	
	<b>125 - 157</b>	<b>144 - 180</b>	<b>165 - 207</b>	<b>190 - 238</b>	<b>219 - 273</b>	<b>251 - 314</b>	
	<i>94 - 125</i>	<i>108 - 144</i>	<i>124 - 165</i>	<i>143 - 190</i>	<i>164 - 219</i>	<i>189 - 251</i>	
<b>C</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	
	<i>73 - 92</i>	<i>83 - 104</i>	<i>96 - 120</i>	<i>110 - 138</i>	<i>127 - 159</i>	<i>146 - 182</i>	
	<b>58 - 73</b>	<b>67 - 83</b>	<b>77 - 96</b>	<b>88 - 110</b>	<b>101 - 127</b>	<b>117 - 146</b>	
	<i>44 - 58</i>	<i>50 - 67</i>	<i>58 - 77</i>	<i>66 - 88</i>	<i>76 - 101</i>	<i>87 - 117</i>	
<b>D</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	
	<i>64 - 80</i>	<i>73 - 92</i>	<i>84 - 105</i>	<i>97 - 121</i>	<i>111 - 139</i>	<i>128 - 160</i>	
	<b>51 - 64</b>	<b>59 - 73</b>	<b>67 - 84</b>	<b>78 - 97</b>	<b>89 - 111</b>	<b>103 - 128</b>	
	<i>38 - 51</i>	<i>44 - 59</i>	<i>51 - 67</i>	<i>58 - 78</i>	<i>67 - 89</i>	<i>77 - 103</i>	
<b>E</b>	<b>I/A</b>	<b>I/A</b>	<b>A</b>	<b>A</b>	<b>A</b>	<b>A</b>	
	<i>25 - 31</i>	<i>29 - 36</i>	<i>33 - 41</i>	<i>38 - 48</i>	<i>44 - 55</i>	<i>50 - 63</i>	
	<b>20 - 25</b>	<b>23 - 29</b>	<b>26 - 33</b>	<b>30 - 38</b>	<b>35 - 44</b>	<b>40 - 50</b>	
	<i>15 - 20</i>	<i>17 - 23</i>	<i>20 - 26</i>	<i>23 - 30</i>	<i>26 - 35</i>	<i>30 - 40</i>	
<b>F</b>	<b>I/A</b>	<b>I/A</b>	<b>I/A</b>	<b>A</b>	<b>A</b>	<b>A</b>	
	<i>16 - 20</i>	<i>19 - 23</i>	<i>21 - 27</i>	<i>25 - 31</i>	<i>28 - 36</i>	<i>33 - 41</i>	
	<b>13 - 16</b>	<b>15 - 19</b>	<b>17 - 21</b>	<b>20 - 25</b>	<b>23 - 28</b>	<b>26 - 33</b>	
	<i>10 - 13</i>	<i>11 - 15</i>	<i>13 - 17</i>	<i>15 - 20</i>	<i>17 - 23</i>	<i>20 - 26</i>	
<b>G</b>	<b>I/A</b>	<b>I/A</b>	<b>I/A</b>	<b>I/A</b>	<b>A</b>	<b>A</b>	
	<i>13 - 16</i>	<i>14 - 18</i>	<i>17 - 21</i>	<i>19 - 24</i>	<i>22 - 27</i>	<i>25 - 31</i>	
	<b>10 - 13</b>	<b>12 - 14</b>	<b>13 - 17</b>	<b>15 - 19</b>	<b>17 - 22</b>	<b>20 - 25</b>	
	<i>8 - 10</i>	<i>9 - 12</i>	<i>10 - 13</i>	<i>11 - 14</i>	<i>12 - 15</i>	<i>13 - 16</i>	
<b>H</b>	<b>C/I/A</b>	<b>I/A</b>	<b>I/A</b>	<b>I/A</b>	<b>I/A</b>	<b>A</b>	
	<i>6 - 8</i>	<i>8 - 10</i>	<i>10 - 12</i>	<i>11 - 14</i>	<i>15 - 19</i>	<i>20 - 25</i>	
	<b>5 - 6</b>	<b>6 - 8</b>	<b>8 - 10</b>	<b>9 - 11</b>	<b>12 - 15</b>	<b>16 - 20</b>	
	<i>4 - 5</i>	<i>4 - 6</i>	<i>6 - 8</i>	<i>7 - 9</i>	<i>9 - 12</i>	<i>12 - 16</i>	
<b>I</b>	<b>C</b>	<b>C/I</b>	<b>I</b>	<b>I/A</b>	<b>I/A</b>	<b>I/A</b>	
	<i>6 - 8</i>	<i>6 - 8</i>	<i>6 - 8</i>	<i>8 - 10</i>	<i>9 - 11</i>	<i>10 - 12</i>	
	<b>4 - 6</b>	<b>4 - 6</b>	<b>5 - 6</b>	<b>6 - 8</b>	<b>7 - 9</b>	<b>8 - 10</b>	
	<i>3 - 4</i>	<i>3 - 4</i>	<i>4 - 5</i>	<i>4 - 6</i>	<i>5 - 7</i>	<i>6 - 8</i>	

**A** – Active Punishment      **I** – Intermediate Punishment      **C** – Community Punishment  
Numbers shown are in months and represent the range of minimum sentences

Revised: 09-09-13

# Maybe You Did It: Public Corruption



Billy Williams



Lee Cowper

# Turn Weaknesses to Strengths

1. Shame → Innocent victims
2. Extradition → Getting justice at home
3. Violent Crime → Greatest harm
4. Complex → Follow \$ to higher charges

19<sup>th</sup> EDITION

# CRIME & COMMUNITY IN THE CAPE FEAR

A Prosecutor's Guide to a Healthier Hometown

BENJAMIN R. DAVID



[www.Benjaminrdavid.com](http://www.Benjaminrdavid.com)