Federalism, Intergovernmental Relations, and the Illinois State Division of Safety Inspection and Education

William E. Darrell

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ILLINOIS STATE DIVISION OF SAFETY INSPECTION AND EDUCATION

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BY
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ABSTRACT

Federalism and Intergovernmental Relations (IGR) saturates the academic study and practice of public administration. The two are combined into a structure of government (federalism) and the flow of information and instructions within that structure (IGR). Forming a single and complex theoretical approach to public administration, they offer definition and clarification to the nature of American government. However, the approach is inherently biased – as currently offered. Deliberate or not, it stresses the supremacy of each level of government over lesser units – a clear hierarchical structure. A pyramid is often described with individual citizens as the foundation and national government leadership at the apex.

This thesis offers another viewpoint and rebuffs the current trend. States are complex entities. Although they often act for the federal government, either as bureaucratic intermediaries or allies; states retain the capability and capacity to act independently.

The thesis offers three frameworks to assess state operations. Two are familiar; the third is the basis of the thesis. Resting upon the nature of 'autonomy' and 'intrusion,' the three help define relationships between the federal and state government.
The first framework describes the state as a bureaucratic entity. States administer federal programs on behalf of, and under the oversight and review of, the national government. The second refers to the state as a federal government ally. The state has some autonomy to address its own concerns - yet remains junior to the federal government. The federal government still retains some authority over the state.

The third framework goes beyond the focus upon the federal government. Rather, it sees the state as an autonomous actor pursuing its own interest. The federal government does not possess authority over the state and does not directly or indirectly influence state operations (e.g., financial aid). States establish, fund, operate, and oversee programs and projects without federal interference. Such state operations do exist.

This thesis demonstrates the applicability of the third framework using the case study approach. The Division of Safety Inspection and Education (DSIE) of the Illinois Department of Labor (IDOL) is used to define and clarify the proposed framework. The federal counterpart is the Occupational Safety and Health Administration (OSHA) under the US Department of Labor enacted under the Occupational Safety and Health Act of 1970. DSIE operates under the third framework. It is an autonomous operation - free of
federal interference, intrusion, and oversight. DSIE is maintained and funded solely from state revenue.

Although largely forgotten in the rush to focus upon the national government; states remain a critical level of government when meeting the needs and concerns of their constituents. States will take action alone and without federal involvement or assistance. States are still the first bastions for change and will continue to serve this function well into the future, a function they never lost.
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>TITLE</th>
<th>PAGE</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Abstract</strong></td>
<td>i</td>
</tr>
<tr>
<td><strong>Table of Contents</strong></td>
<td>iv</td>
</tr>
<tr>
<td><strong>Index of Figures and Tables</strong></td>
<td>vi</td>
</tr>
<tr>
<td><strong>Chapter 1: Introduction</strong></td>
<td></td>
</tr>
<tr>
<td>A Review of Three Major Writers</td>
<td>1</td>
</tr>
<tr>
<td>Daniel J. Elazar</td>
<td>2</td>
</tr>
<tr>
<td>Deil S. Wright</td>
<td>7</td>
</tr>
<tr>
<td>David Osborne</td>
<td>9</td>
</tr>
<tr>
<td>IGR and Federalism</td>
<td>10</td>
</tr>
<tr>
<td>Autonomy</td>
<td>12</td>
</tr>
<tr>
<td>Federal Intrusion</td>
<td>15</td>
</tr>
<tr>
<td><strong>Three Frameworks</strong></td>
<td></td>
</tr>
<tr>
<td>The State as a Bureaucratic Layer</td>
<td>21</td>
</tr>
<tr>
<td>The State as a Federal Ally</td>
<td>23</td>
</tr>
<tr>
<td>The State as an Autonomous Entity</td>
<td>25</td>
</tr>
<tr>
<td><strong>States as Independent Actors</strong></td>
<td>26</td>
</tr>
<tr>
<td><strong>Research Questions and Methodology</strong></td>
<td>31</td>
</tr>
<tr>
<td><strong>Chapter 2: OSHA and the State of Illinois:</strong></td>
<td>39</td>
</tr>
<tr>
<td>The Return to the Third Framework</td>
<td></td>
</tr>
<tr>
<td><strong>Introduction</strong></td>
<td>39</td>
</tr>
<tr>
<td><strong>OSHA</strong></td>
<td>42</td>
</tr>
<tr>
<td>Development</td>
<td>42</td>
</tr>
<tr>
<td>Growing Opposition</td>
<td>45</td>
</tr>
<tr>
<td>OSHA Standards</td>
<td>46</td>
</tr>
<tr>
<td>State Participation</td>
<td>47</td>
</tr>
</tbody>
</table>
Illinois and OSH

1970 - 1984
Establishment of DSIE
OSH Standards
DSIE Training and Funding
DSIE and IGR Communications
Summary

Chapter 3: Conclusion: The Third Framework

Federalism/IGR Frameworks

Autonomy and Federal Intrusion

Inquiry Responses

Why Did Illinois Pursue A Separate OSH Program?
Is the Illinois Operation Truly A Sovereign Program?
What Type of IGR Communications are Exchanged?

Summary

Notes

Appendixes

Appendix 1: Interviews
Appendix 2: Interview Questions

References
<table>
<thead>
<tr>
<th>Figure/ Table</th>
<th>Title</th>
<th>Page Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2-1</td>
<td>Number of Industrial Safety Codes</td>
<td>41</td>
</tr>
<tr>
<td>2-2</td>
<td>Status of OSHA State Plan Program</td>
<td>51-52</td>
</tr>
<tr>
<td>2-3</td>
<td>OSHA State Plan Withdrawal by States after Plan Approval by OSHA</td>
<td>53</td>
</tr>
</tbody>
</table>
Chapter 1:  
INTRODUCTION

The theory of federalism and intergovernmental relations (IGR), as advocated by scholars such as Daniel J. Elazar (1984) and Deil S. Wright (1988) or drawing upon the works of other scholars such as David Osborne, is important in the study of public administration. Federalism describes the structural organization of the different levels of government within the federal system. Elazar (1984, p. 2) defines federalism as "the mode of political organization that unites separate polities within an overarching political system by distributing power among general and constituent governments in a manner designed to protect the existence and authority of each." Intergovernmental relations outlines the types and flows of communication and relations within and between levels of government. It is the central group of interactions or activities transpiring between the different types and levels of government (Wright, 1988). Combined, the two offer scholars a theoretical perspective about government structure and working relationships. The theory, however, contains a serious flaw.

The conceptual nature of federalism/IGR is founded upon the relationship between the federal and state/local governments. The theory, whether intentional or not,
stresses the supremacy of each level of government over its lesser units (e.g., federal over state and state over local). The theory, consequently, is biased because it assumes a pyramidal arrangement with the federal government at the top. This causes confusion because of the normative bias it creates and the empirical misperception which results.

A REVIEW OF THREE MAJOR WRITERS

IGR is heavily dependent upon the structure of federalism. In federalism, the states are often portrayed as subordinates of the central federal government. The relationship between state and federal government is discussed in terms of the amount of autonomy the state retains. However much the proponents of federalism attempt to separate the power of the various levels of government, their case studies and explanations invariably portray a pyramidal arrangement.

Daniel J. Elazar

Elazar's perception of federalism is one of federal, state, and local governments working together (sometimes with conflict) toward a common goal. Further, he sees the federal government responding to state desires (often
unstated) and compelling "errant" states to comply. Elazar views this arrangement as a partnership. Elazar (1984, p. 2) defines "federalism" as:

...the mode of political organization that unites separate polities within an overarching political system by distributing power among general and constituent governments in a manner designed to protect the existence and authority of both.

However, Elazar's attempt to apply this to cases within his book, American Federalism; A View from the States (Third Edition) (1984), demonstrates the subordination of the states to the federal government. For example, his discussion of the issue of racial integration clearly shows a strong central government directing state action (1984, p. 32-33):

The 1964 Civil Rights Act was the turning point. It represented, in certain respects, a "treaty" between the states and the federal government providing for a formal reallocation of power. The representatives of the states "in Congress assembled" consented to federal use of its powers to backstop the efforts of those states willing to exercise power to maintain the rights of racial minorities - and to force the states unwilling to do so to comply with national constitutional standards.

Elazar (1984) seems to perceive the Congress working on the behalf of the states in this passage. However, the members of Congress are not elected by state legislatures, but by citizens within the districts the Congress persons
represent. It is difficult to believe representatives of the states in opposition to forced compliance would support such measures.

Congressional support is understandable when viewed as the consequence of political pressures and public concerns (e.g., special interest groups, public opinion, constituency votes, campaign financial support, and party platform). Political support determines the ability of elected officials, Senators and Representatives in this case, to remain in office. Elected officials who ignore these political realities risk their reelection to office.

The outcry following the murder of three civil rights activists in Mississippi, deletion of voting restrictions (e.g., poll taxes) with subsequent increased black political participation, and the rise of public awareness, among other factors, led to a federal interventionist role. Busing and affirmative action both sprang from the federal court system and central federal government - not state action. However, Elazar's (1984) presentation erroneously leads the reader to believe the federal action was supported by the states through 'their' representatives in Congress.

Other Elazar (1984) cases, such as the federal regulation of interstate commerce, similarly demonstrate the power of the federal government and the subordinate role of states. Although Elazar uses his cases to argue the presence of a federal/state partnership, another viewpoint
is discernible. In Elazar's (1984) case of interstate commerce, Congress gave authority to the states over nationwide transportation and industrial systems within state borders. The states were unable to effectively deal with the large interstate systems (e.g., railway) of the post-Civil War period, especially in the face of hostile rulings of the Supreme Court. The railroads, for example, would simply cut a state off from other states in retaliation while the Supreme Court followed a 'constitutional dogmatism' limiting state power and favoring laissez-faire (Elazar, 1984).

In a bureaucratic arrangement, however, the higher authority grants subordinate authorities additional powers to cope with new problems as they are encountered. This is an example of delegation of authority, an implied characteristic of the attributes of bureaucracy espoused by Max Weber (1958). Hummel (1977) points to the first and second bureaucracy attributes in which Weber (1958) declares the authority of subordinate bureaucratic levels is defined by rules and that there are levels of graded authority. Hummel (1977, p. 80) states, "...hierarchy means the clear delegation of authority descending through a series of less and less powerful offices..." The states, effectively, had little authority over the nineteenth century interstate systems until granted power by the federal government. This
is a different picture than the partnership described by Elazar (1984).

Elazar's (1984) discussion of the impact of special interest groups fails to support his definition. If the states are viewed by the federal government as separate polities with autonomous powers over internal issues, Elazar's cases fail to convince. Elazar's examples of welfare reform and urban renewal are meant to demonstrate the partnership of federal and state government. He fails, however, to achieve his goal. Instead, he demonstrates how the federal government is used by special interests to force change upon the states and to provide these groups with increased power within state capitals.

Special interest and reform groups, unable to force state governments to "drastically enlarge" programs, turned to the federal government (Elazar, 1984, p. 40). "They turned to Washington for aid unobtainable from most of the states, hoping through Washington they would become powerful in their respective state capitals" (Elazar, 1984, p. 40). They succeeded. "Today the single-issue groups are trying the same tactic" (Elazar, 1984, p. 41). If states are not subordinate to the federal government, and are equals in a partnership (as Elazar frequently iterates), then his examples fail to support a partnership arrangement. His cases show clear federal supremacy and authority over the states - not partnerships.
Deil S. Wright

Deil S. Wright, another prominent writer on IGR/Federalism, is similarly affected by the pyramidal viewpoint. Although Wright seemingly appears less constrained, he nonetheless presents IGR and federalism within the pyramid arrangement. Wright's book, *Understanding Intergovernmental Relations (Third Edition)* (1988), also discusses federalism as a partnership between the national and local governments. Wright traces the growth of IGR and federalism from the establishment of the United States through the early Reagan administration's years in office. He notes the federal government increasingly penetrates the realm of state responsibility through regulations, preemption, financial support and restrictions, cooptation, and professionalization of state administrative structures (Wright, 1988).

The entire presentation rests upon the interaction of federal with state and local governments. These interactions largely seem to result from the use of federal authority to prescribe state administration of services, programs, and financial aid (Wright, 1988). Although not Wright's intent, a reader is led to believe a state is not an independent entity. Rather a state is part of a larger federal machine with some limited autonomy. This limited autonomy appears to exist in areas the federal government is
not prepared or willing to administer due to low or non-existent political pressures.

Wright (1988) informs us that federal intervention is probable if, (1) there appears to be a nation-wide problem, that is (2) not administered in the same manner from state to state, (3) has the support of strong special interests or the general populace, and (4) is politically advantageous. The elements used by the federal government to enact change range from influencing state decisions through financial incentives/disincentives to mandated compliance. This is not a partnership with equal participants; rather the federal government dominates the relationship.

Wright's cases offer the reader relationships in which the federal government directs action or offers financial assistance to induce states to make changes. Non-compliance by states when federal action is directed is often accompanied by legal and/or criminal implications. Whether discussing urban renewal, welfare, highways, or hazardous waste disposal, Wright (1988) shows the federal government as the primary motivation for change.

Additionally, Wright shows how the federal government becomes involved in state affairs through special interest groups and political pressures. His discussion of welfare, civil rights, and urban renewal clearly demonstrates the ability of special interests to directly approach the federal government to direct and institute programs within
states. In each case, special interests lobbied Washington
D. C. to institute stronger programs than believed
achievable within the individual states. Their approach to
Washington D.C. enabled the interests to obtain programs
cheaper than if they focused their attention upon the state
capitals (Wright, 1988).

David Osborne

Osborne's book, Laboratories of Democracy (1990), is a
study of how states are able to develop their economies.
The theme Osborne proposes is one in which the states
produce positive economic changes. The book gives the
impression of the states forging economic change without the
participation of the federal government. Osborne's book is
an attempt to portray states as independent actors.

Osborne's (1990) book is often cited by various writers
who emphasize the role of states as laboratories. Osborne
is frequently quoted by authors who cite his case studies
to advance one aspect of the federal/state relationship.
Osborne's principal line of discussion offers the idea of
states as laboratories for applying new concepts and ideas.
From these laboratories, the federal government may extract
that which works to apply to national programs and policies.

Osborne's book seems to imply the states perform these
laboratory functions separate from the involvement of the
federal government. However, this is not substantiated by his cases. Federal grants were used by Massachusetts, California, Pennsylvania, and Arkansas to address areas of concern and to implement programs for positive change. For example, New York used federal funds to explore new concepts in low income housing, and Pennsylvania obtained federal assistance to pursue the Ben Franklin Partnership as an avenue for economic development (Osborne, 1990).

The arguments and cases of Elazar (1984), Wright (1988), and Osborne (1990), reflect the limitations of the current federalism/IGR theory. The focus of Elazar and Wright were upon a strong central federal government operating within a weak state system. The states are portrayed as dependent upon the federal government for resources and direction. Osborne (1990) offers us a less constrained view of the states. States are able to develop new programs to meet the needs of their constituencies. Osborne's cases also demonstrate, however, the dependency of the states upon the federal government. The programs outlined in his book succeeded because of state use of federal resources.

**IGR AND FEDERALISM**

The theory of federalism and IGR depends upon two components, autonomy and federal intrusion, to categorize a
relationship between federal and state government(s). The two components, autonomy and federal intrusion, reflect the amount of control and influence the federal government exercises within a federal-state relationship. The applicability and validity of these elements, however, is limited to relationships within which the federal government is an active participant. Elazar (1984), Wright (1988), and Osborne (1990) use both elements to investigate and argue their cases.

The elements of autonomy and federal intrusion are not carried to their full range of application. They are not used to assess situations where the federal government is absent and not a player in state programs. There is a continuum upon which the full range of autonomy and federal intrusion can be represented. At one extreme, there is little or no state autonomy and federal intrusion permeates the state organization to the lowest level of operation. The states are essentially subordinates and functionaries of the federal government. States conducting autonomous operations without federal intrusion are at the other extreme. Federal government assistance, aid, guidance, requirements, oversight, and intrusion are absent. The state operates autonomously. Between the two extremes, states may be allies of the federal government. The states receive various types of assistance, financial and
technical, from the federal government. In return, the states pursue federal goals.

Autonomy

The first, autonomy, is advocated by Elazar (1984) and Wright (1988) in their discussions of federalism and IGR. Flawed as their cases are, the basic concept of autonomy is essentially correct. Autonomy is expressed in decision-making capacities and policy implementation. It is, in its purest form and as relates to federalism/IGR, the ability to pursue a desired program or policy independent and separate of the federal government. Autonomy may be present, restricted, or absent. The degree and type of autonomy is key to the relationship between state and federal government.

Almost every case presented by advocates of IGR and federalism (Elazar (1984), Wright and White (1984), Glendening and Reeves (1984), and Henig (1985)) assess autonomy using three criterion. These criterion establish the level of state autonomy within federalism/IGR; (1) financial structures, (2) regulatory requirements, and (3) administrative constraints.

The first criteria is the existence of financial structures. Financial structures provide for financial support, in some measure, of the state by the federal
government. The assistance may be in the form of grants, aid programs, subsidies, revenue sharing, or other direct and indirect financial ties. The degree of financial control is expressed in the amount of slack a state has in the use of the federal purse. According to Wright (1988, p. 201):

The central intent of federal assistance is to alter the behavior, output, programs, or decisions of state and local governments. Indeed, federal assistance often attempts to prescribe within fairly narrow limits the choices exercised by state or local officials.

The second criteria of autonomy is the nature of regulatory requirements. The federal government, as the central government, is generally said to possess preemptive authority over state/local governments. Federal authority has evolved into a complex and bewildering array of regulations over the daily conduct of state/local government and the lives of the citizenry. The regulations range from those associated with obtaining financial assistance through the control of programs.

The amount of control the federal government exercises is often associated with the amount of latitude permitted the states within the structure of the governing regulations and law; the length of the federal leash. Wright (1988, p. 22) explains:

Federal agencies, by contracts and grants, attempt to promote and produce program results through third parties.
State and local governments [author's emphasis] represent nearly 80,000 jurisdictional intermediaries, and state and local officials (both elected and appointed) constitute over 10 million individual intermediaries. Using these go-betweens, however, compels federal agencies to pursue administrative control strategies that emphasize regulation by such means as attaching national policy objectives, mandates, or "strings" to grant programs [emphasis added].

The third autonomy criteria, administrative constraints, stresses the degree to which a state is permitted to address its concerns through legislative and bureaucratic action. Are the states permitted to change, define, delete, or increase the programs, regulations, and requirements of the federal government? How much oversight is there on the part of the federal government? How heavy is the hand that controls the purse and the leash?

State and local officials act in an intergovernmental web in which the national government is the more visible partner. They continue to exercise great influence and discretion over how they utilize their influence. The decisions they make - even those garbed in the language of budgetary adjustment and bureaucratic reorganization are intensely political in the sense that they reflect conflicting interests among competing groups, and effect [sic] the distribution of power and resources among these groups. (Henig, 1985, p. vi)

Although not always addressing the criterion of autonomy, most works on federalism and IGR refer to some aspect of the three. Whether it is concerning financial aid
to urban areas, regulatory requirements regarding welfare programs, or the procedures established by federal agencies to administer programs, autonomy criterion cannot be avoided. Generally, most authors seem to assume some measure of federal assistance and control.

**Federal Intrusion**

The second concept, federal intrusion, frequently overlaps autonomy, yet is distinctly different. Federal intrusion focuses upon the depth of federal activity into state operations and programs, rather than the structural focus of autonomy. Two criterion reveal the extent of federal intrusion. The first is information flow, categorized as horizontal or vertical. The nature of the information is closely tied to direction. Vertical flow is usually associated with formal communications and horizontal with informal communications. Communications which direct action are, by definition, formal communications. Directive communications requires a superior/subordinate relationship. Horizontal communications are normally associated with informal communications, but may include formal communications which are not directive. Federalism requires vertical communications. Although horizontal communications may exist, they are optional and not required for Federalism to operate.
The second criteria is the extent to which federal government assistance and regulations intrude into the decision-making capacities and operations of the state. The criteria assesses the degree to which federal influence permeates the state organization or program.

Information flow, the first criteria and a component of IGR, looks at the types of communications and their movement within the structure of federalism/IGR. The flow is generally vertical, or directive, in nature for programs the federal government controls or provides assistance. Yet, this direction does not incorporate a multi-dimensional flow of information. Direction is essentially uni-dimensional since the federal government dictates a desired action. Multi-dimensional, or informal, flows indicate a minimum of a two party discussion in which the participants are not subordinated to each other. Free and open communications are pursued, absent of one party's ability to enforce a desired action upon the others. The states and federal government are equals in a multi-dimensional flow.

Wright (1984), and Glendening and Reeves (1984) describe the movement of information between layers of government as vertical and horizontal. They address horizontal movement as the informal exchange of information between professionals within a field or expertise. Informal IGR communications, unfortunately, seem restricted to specialized areas (e.g., environmentalists, engineers, and
health professionals). Federal regulatory requirements, regulations, and audits for example, are vertically directive by their very nature. However, not all information exchanged between the states and the central federal government relates solely to formal IGR communications. Frequently, discussions on proposed regulations and congressional bills flow between state and federal agencies.

Federalism/IGR scholars continue to view states as a level of government subordinate to the federal center. Even scholars attempting to address states as a means of development of new programs and initiatives, such as Osborne (1990), often fall into this mindset of federal predominance. Henig (1985, p. v) decried the scholarly focus:

States and localities are not dull or insignificant, but they have been made to seem that way. University catalogues and academic journals show a growing interest in the broadly defined field of public policy. All too often, however, the interesting and controversial policy issues are interpreted as coming under the more or less exclusive purview of the national government. During the 1960s and early 1970s, cities, in particular, were seen as the battleground on which existing issues having to do with race and class conflict were being resolved. Textbooks, today, however, give the impression that state and local government involves little more than balancing revenues against expenditures [emphasis added].
Common to federalism/IGR casework are passages acknowledging the federal government as a contributor, if not the sole contributor, of assistance (e.g., funds) necessary to begin or accomplish a major state program. The states studied by Osborne (1990) achieved their success through the contributions of the federal government. Grants, loans, and other financial instruments, were either directly provided or backed by the federal government. Certainly, the federal government's regulations and requirements were involved if federal funds were used. This is the second criteria of intrusion. It looks at the extent to which federal financial assistance and regulations intrude upon the decision-making capacities of a state program.

The degree of intrusion of the federal government into the routine operation of state and local governments is extensive. The influence of the federal government often permeates programs at the lowest levels of program management. Glendening and Reeves (1984, p. 74) relate in their book, Pragmatic Federalism; An Intergovernmental View of American Government:

Because of the greater specialization of categorical grant programs and their broader functional spread, as well as the increasing national tendency to regulate activities of the state and local governments, the federal influence penetrates deeper into state administration.
The federal government provides grants and program aid often critically necessary for the states to pursue programs and projects, even new ideas. Often, this 'assistance' is accompanied by guidelines on how the support may and may not be used. Reports and audits are not uncommon, even for the most liberal support. Glendening and Reeves (1984, p. 79) address this issue:

Regulations attached to grants may require planning, establish accounting and auditing standards, prescribe administrative procedures, or set out performance standards, among a host of other things. Each program has its unique set of conditions, often referred to as vertical conditions, with which state and local governments must comply to receive federal funds.

THREE FRAMEWORKS

Federalism/IGR theory currently offers two views, or frameworks, of federal-state relationships. The first looks at the state as a bureaucratic layer within a federal hierarchy. The state performs as a functionary for the federal government. The second framework observes the state as an ally of the federal government. The state-federal relationship is a partnership, although the state remains a junior partner. This thesis offers a third framework.

Federalism/IGR theory, as currently documented and portrayed, fails to address cases in which states pursue
their own interests separate from any federal entanglement. Specifically, it fails to discuss those programs and projects states establish and operate without federal funds, oversight, or direction to perform. The Constitution of the United States promotes the authority of the individual states to address the concerns and welfare of their citizens. This authority, outlined in the Tenth Amendment, often comes into conflict with the Federal Supremacy Clause of the Constitution's Article Six. Article Six grants the federal government preemptive authority over state constitutions and laws. Confusion between interpretations and division of authority are prevalent among scholars, government officials, and the general public (Wright, 1988 and Glendening and Reeves, 1984). However, the growth towards a powerful and centralized government overshadows the ability of the states to operate independently of the federal government.

The national government has become the dominant partner - legally, financially, and programmatically - under the federal arrangement; nevertheless, states still retain important political powers and governmental functions that make them a necessary part of the partnership. (Glendening and Reeves, 1984, p. 63)

Today, the average citizen looks toward the massive and complex federal power to address his or her individual needs. This often means the unacknowledged rejection of a level of government, by the general public and scholars
alike, that is frequently the better choice to address problems and concerns, the state.

The State as a Bureaucratic Layer

The current literature on federalism and IGR portrays states essentially within two frameworks. The first framework views the state as a bureaucratic layer. Here, the state is a formal part of the bureaucratic chain reaching from the individual citizen to the three branches of the federal government, and back to the citizen. The state is seen as an 'arm' of the federal government. Many of the programs usually associated with the state or local governments are, in reality, extensions of federal government activities (Anton, 1989). The state and local governments are acting as federal government proxies.

State governments operating as bureaucratic extensions of the federal government are strictly bound to perform in prescribed ways with little or no discretion. The federal government's concern is that the "national legislative and executive will is not thwarted" by the state and local governments administering federal programs (Goggin et al, 1990, p. 76). Federal program administrators use a variety of instruments to advance their aims and enforce compliance by the lower levels of government, such as partial and full preemption, "appropriations, moral suasion, technical
assistance, loans, standard operating procedures, regulations, and penalties" (Goggin, et al, 1990, p. 76).

Within the bureaucratic framework, a state is provided the funds and program to operate, but permitted little autonomy. Often, the amount of funds offered to the states is less than the program requires to operate. This viewpoint is frequently expressed in writings on regulatory federalism. The federal government gains at the expense of the states under this framework and relationship. Glendening and Reeves (1984, p. 83) provide a clear picture of this approach:

Prescription and compulsion have replaced the negotiation that previously was the prevailing norm in national-state relations. Furthermore, the use of states as enforcers of national rules and goals is a cheap way of evidencing Congressional support for certain problems. In addition, the use of states as enforcers of national policies is an inexpensive way for the national government to regulate in terms of both finances and political costs. State, rather than federal, employees are used to administer the regulations, thus avoiding the political and financial costs of a larger bureaucracy and leaving the states with the onus of being the regulator.

Until 1965, regulatory compliance was encouraged by federal agencies through the use of additional funds as enticements and/or by the threat of discontinued federal aid for a particular program (Glendening and Reeves, 1984). Congress changed tactics starting with the Highway
Beautification Act of 1965 by withholding funds allocated to other grant programs. As a result, other federal programs of assistance included the same type of provision. "For instance, the Energy Conservation Act of 1974, in an attempt to cut fuel consumption, prohibited the Secretary of Transportation from approving any [authors' emphasis] highway construction of projects in states with speed limits in excess of 55 miles per hour" (Glendening and Reeves, 1984, p. 80). The Health Planning and Resources Act was the apex of this movement. It forces states to participate in health planning or face the loss of federal funds for not only the act itself, but 41 other health assistance programs as well (Glendening and Reeves, 1984).

States may not have the choice of whether or not to participate. Even if they were to decide to risk the loss of federal funds, some federal programs can not be avoided (e.g., Civil Rights). The federal government may simply coopt the states. This is a change from the previous historical cooperative relationship between the states and the federal government.

The State as a Federal Ally

The state as an ally to the federal government is the second common framework of federalism/IGR. The state is provided broad guidelines and considerable room for
interpretation. Assistance is also provided, but the federal government oversight is usually relaxed. The alliance between the states and the federal government, however, is built upon a firm knowledge of federal preeminence. Anton (1989) argues that local officials fully understand the ability of the federal government to direct action and to control their behavior. Although federal courts may intervene to define limits to the federal government's "coercive authority," there remains the knowledge of the "legally coercive reality" of the federal government's power (Anton, 1989, p. 210).

Most block grants, aid programs, and revenue sharing programs fall within the second framework. The state is not independent of the federal government. The elaborate system of grants-in-aid is used by the federal government to induce the state and local governments to accomplish the desires of Washington (Berkley, 1984). The corresponding administrative and regulatory requirements establish limits to state and local government actions.

Although states are portrayed as partners to the federal government, they remain junior partners in the relationship. The federal government still dictates how funds are obtained, how they will be used, what the restrictions and requirements are, and what administrative controls must exist. The states are free to pursue their own agendas provided the federal agenda is fulfilled.
California is free to pursue its environmental activist programs provided the federal Environmental Protection Agency requirements are met first.

The State as an Autonomous Entity

I offer a third framework, the state as an autonomous entity. The state, in this descriptive model, pursues its own interests separately from the federal government. Federal funds are not used, federal regulations do not require state action, and the federal government does not possess oversight authority. The state elects to establish, fund, operate, and oversee programs and projects without federal interference. Such state operations do exist (e.g., Illinois' Division of Safety Inspection and Education).

Unfortunately, scholars and citizens alike no longer see the state as a functioning and autonomous level of government. They believe the federal government has become the preeminent power and the states and local governments are now only functionaries of Washington. Henig (1985, p. 2) discusses this perception:

Some citizens and some scholars have concluded that the national government has effectively elbowed the states and localities aside - leaving them to occupy themselves with carrying out federal policies and allowing them power only in the sphere of the trivial and mundane. This perceived nationalization of significant decision-making functions has contributed to a tendency to
underplay the distinct role of states and localities in formulating policies that determine the quality of our lives. (Henig, 1985, p. 2)

Logically, independent state operations will exist primarily within the public sector. A state's public sector is less open to interference from the federal government. A state's public sector is closely associated with the functions and authority of the state. The federal government is reluctant about interfering with the public sectors of states, largely due to the ambiguous constitutional division of powers between states and the federal government. According to Henig (1985), state and local governments continue to exercise considerable power directly in areas normally associated with the public sector. These include the delivery of services, regulation of businesses and professions, economic development, physical infrastructure, and law enforcement (Henig, 1985).

STATES AS INDEPENDENT ACTORS

The US Constitution does not permit interference with a state's government except under certain conditions. Although Article Six establishes federal supremacy, the Tenth Amendment reserves any and all powers not clearly assigned to the federal government to the states (Houseman, 1986). The conflict between federal supremacy and states
rights remains an issue. Supreme Court decisions provide a clear division between state and federal authority, but are sometimes reversed and changed, which creates confusion. Congress attempts to circumvent the confusion and the potential limitations upon its powers. Broad interpretations of various parts of the Constitution (e.g., Commerce Clause) are used by Congress to legitimize legislation otherwise violating the Tenth Amendment. For example, the Occupational Safety and Health Act of 1970 uses two constitutional references, the Commerce Clause and the mandate to provide for the general well-being of the public (Public Law 91-596, 1970). The broad interpretations of Congress and the Supreme Court, intentional or not, weaken the autonomy of the states.

Unfortunately, rather than supporting state autonomy, many scholars and citizens see a powerful central government as a necessity and look to this government for remedies to all of society's ills. The normative and common belief that states are not important and the federal government is all powerful is not correct. Nor is it a necessity or desirable in all circumstances. States have and do play a major role in the lives of American citizens - not as functionaries of the federal government, but as autonomous governments with capacities and resources of their own. Today, states operate multi-dimensionally. States may be a bureaucratic level for some federal programs and a ally of the federal
government in others. Yet, states are much more. They also operate independently and alone. It is this which is frequently ignored or overshadowed.

States as independent and autonomous actors is not new. States pursued their own interests well before the federal government gained ascendancy. Welfare programs, environmental protection projects, transportation enhancements, labor rights, and other issues were often addressed by the states well before the federal government became involved.

The welfare system of today is an excellent example. The current program is considered a product of the federal government. The federal program grew from the National Security Act of 1935 legislated during the Great Depression of the 1930s. From this foundation act developed many of the welfare programs of today. However, welfare was not a national program prior to the Great Depression of the 1930s. According to Henig (1985, p. 97):

Throughout early American history, welfare was marked by local efforts. Friends and neighbors provided aid to widows and orphans - the "worthy poor." During the nineteenth century, the states became gradually more active. It was not until the 1930s, in the aftermath of the Great Depression, that the national government moved onto center stage.
States were, and are, involved in areas other than welfare. The industrial states enacted and enforced safety and health laws well before the federal government established programs in these areas. The state of Illinois, for example, enacted legislation in 1936 (Health and Safety Act, Public Law 1935-36, Third Sp. Sess.) establishing minimum safety and health standards for industrial operations; 34 years before the passage of the federal government's Occupational Safety and Health (OSH) Act of 1970 (Illinois Public Act 87-245, 1982). Other states pursued environmental concerns (e.g., California) before such issues became a political necessity in Washington DC. In other cases, states established programs and operations to sell the products of their industries outside the boundaries of the United States and to attract foreign investments (e.g., Illinois, Michigan, and Kentucky). One, Illinois, opened 'trading centers' in foreign countries to promote economic development at home.

Osborne's (1990) portrayal of the state as a laboratory is a useful concept. Its use is not in looking at federally supported state programs, but in the autonomous actions of the states addressing the concerns and needs of their constituencies. Osborne applied his concept to programs receiving federal assistance, thereby reducing the effectiveness of the model's application. The laboratory concept is clearest when focused upon autonomous state
programs developed, operated, and maintained from strictly state resources - not federal. States did develop programs and guidelines for many areas of concern that are now the focus of the federal government. Yet many of these state programs were developed and accomplished without federal assistance, appropriations, or oversight. Gittell (1986) recognizes the importance of states as the source of many of the federal government's programs of today. She states "it would be difficult, in fact, to point to any national program that is not an outgrowth of some earlier local or state initiative" (Gittell, 1986, p. 2). Social policies, such as unemployment legislation, child labor laws, OSH acts, and disability support for blue collar workers can be traced to the northeastern and mid-Atlantic states. The western states' more recent stringent regulatory programs on pollution are causing industries look to Washington for less restrictive national legislation (Gittell, 1986).

The third framework, the state as an autonomous entity, is alive and still effective. This contradicts the prevalent portrayals of the state as a bureaucratic layer and the state as a federal ally. States remain capable of performing as independent entities. Not only are they capable, but they will proceed separately from the federal government when it is perceived in their best interests. The IGR/Federalist theory is not complete.
RESEARCH QUESTIONS AND METHODOLOGY

This thesis deals with the state as an autonomous entity. Through a case study, the thesis focuses upon how one state operates within the proposed third framework. I selected the state of Illinois' Division of Safety Inspection and Education (DSIE), a subordinate unit of the state's Department of Labor, to illustrate the third framework. The division operates solely within the public sector, does not receive any financial support from the federal government, and the program it administers is not required by federal statutes.

I look at the development of OSH within the state of Illinois prior to the OSH Act of 1970, the state's decision to disassociate itself from the federal program in 1974, the state legislature's decision to establish DSIE, and the growth of the state agency.

This foundation assists in developing the contextual situation used to analyze the state's operation. The autonomous nature of the state of Illinois' OSH program from federal control and direction establishes the viability and applicability of the third framework: the state as an autonomous entity. I consider the following questions:

1. Why did Illinois pursue an OSH program separate from OSHA? Illinois chose to be independent of the federal program. The state's history shows an active OSH concern.
The interests of the state and federal government appear to coincide.

2. Is the Illinois operation truly an autonomous program, separate from OSHA? If DSIE is responsible to OSHA in any manner, whether financially or through federal administrative and regulatory oversight, then the Illinois OSH operation does not support the proposed third framework.

3. What type of IGR communications are exchanged between the state and federal programs? State and local? Federal intrusion is the concern. A primarily vertical flow identifies the presence of a formal relationship between two organizations. If the primary flow of communications is horizontal, the indication is one of professional exchange of information.

The study indicates the deficiencies of the current IGR/Federalist discussion. The study illustrates how the current theory fails to account for the independent actions of states in which the federal government does not play a financial, regulatory, and oversight role(s). I also show how the inclusion of the third framework, the state as an autonomous entity, enhances IGR and offers a third view of federalism.

The use of the case study approach is often criticized for its lack of empirical comparisons. Scholars, such as McCurdy and Cleary (1984), White (1986), and Cleary (1992), dismiss the case study approach as unscientific. They
stress a more practitioner type approach based upon quantifiable data (Cleary, 1992).

There are, however, proponents of the case study approach. Bailey "argues that properly structured case studies will live up to the scientific standards of rigor, including generalizability, transferability, and replicatability" (1992, p. 47). She states researchers are being pressured to use "positivist social science methodologies thought to be associated with 'mature disciplines'" instead of case studies (Bailey, 1992, p. 48). Bailey points out that case studies are a key methodology used by the hard sciences, such as the work of physics and chemistry (Bailey, 1992). She concludes her argument with (Bailey, 1992, p. 53):

One of the basic problems in the discipline [public administration], which may partly explain why case studies are generally regarded as weak scientifically, is that social science programs do not generally stress the development of analytical or critical thinking skills. In the natural sciences, analytical skills are developed along with substantive knowledge through laboratory courses that are linked with classroom lectures...Scholars in public administration and the positivist social sciences need to understand that the case study methods does not necessarily equate with lack of theory development, and that theoretical research does not equate with usefulness. If advancement of the field is the goal, then all are equally important.
Box (1992) also challenges the recent emphasis upon the standards and techniques of one type of empirical research. He believes this "dramatically narrows the ways in which knowledge may be acquired, understood, and communicated" (Box, 1992, p. 69). He contends this is a value judgment which forces a specific view of knowledge and disregards all others (Box, 1992).

A properly constructed case study is a legitimate means of conducting scientific research. The case study itself is an analytical view of the relationship of reality to theory (Box, 1992). An analytical case study looks at common characteristics and relationships in a given situation or program. Its use is to determine if a theory is valid, reliable, and consistent with the case under study. Although the focus is upon the analytical process, certainly such a study may provide the basis for further empirical research.

This thesis is not a work of comparison between similar governmental agencies. Nor is it a work defining the degree to which one unit is more autonomous than another. Rather, it is a conceptual exercise directed towards explaining a deficiency in the current federalism/IGR theorem and offering an additional framework of explanation and study.

It is not my intention to disprove federalism/IGR, but to document the enlargement of the theory. This goal required the selection and in depth review of a case which
the theory, as currently discussed, fails to explain. This
same case must also demonstrate the validity of my proposal.

The criterion for the case study selection was based
upon the requirements expressed by the proposed addendum to
the theory. First, the operation had to be authorized and
administered at the state level. Second, the agency
responsible for the operation or program must be solely
funded through state revenues. No financial assistance in
the form of federal grants or loans could be within the
budget of the state agency. Third, the agency had to
operate without federal oversight or control. In summary,
the entire operation had to be strictly a state operation
without the formal involvement of the federal government.

It would be difficult to say the federal government
does not have any impact upon a state operation. Stretched
sufficiently, any writer can make a case of federal
intrusion from purely informal linkages. This only confuses
the issue and exaggerates the ability of the federal
government to control state and local governments.
Therefore, my thesis is restricted to the absence of overt
control and management elements such as financial, regulatory,
and administrative constraints. Informal connections
between state and federal agencies are acceptable provided
they do not impinge upon the autonomous nature of the state
operation. However, the existence of such informal channels
are discussed.
I selected the Illinois Department of Labor's Division of Safety Inspection and Education (DSIE) for the following reasons:

1) The operation meets the requirements of the proposed framework.

2) Research into the operation is unbiased by the presence of other studies and published material. The division has not been the subject of any previous serious scholarly study to my knowledge and the knowledge of the division's staff.

3) The age of the agency was another important factor. I did not want a new agency with less than five years of operation since sufficient information for the study may not be available.

My selection of government officials, both federal and state, to interview required each prospect meet certain criterion. Although these individuals are not the directors of the agencies I researched, they are knowledgeable and were willing to be interviewed. However, they were reluctant to be directly quoted for various reasons. The criterion I applied to the selection of interviewees was:

1) A member of the federal or state agencies directly involved in the research. The interviewees had to hold a position directly related to the research topic and case. For example: OSHA's Directorate of Federal/State Operations in Washington, D.C.
2) Fully knowledgeable of their agency's policies, programs, and procedures as related to the research topic and case. Corporate knowledge was also important which required individuals with several years employment with the specific agency.

3) Willing to participate in an interview conducted in person or by telephone. Personal interviewing was not possible with the majority of the prospects.

The techniques for elite interviewing espoused by Mannheim and Rich (1981) were followed to prepare and conduct the interviews. Appointments were made in advance with each individual, detailed explanations of the interview's purpose were avoided to prevent biasing, points of contact for verification of authenticity and purpose were provided, and follow-up contacts were made to ensure the interviews remained on schedule or were rescheduled as necessary. Since the majority of the interviews were performed over the telephone, special care was taken to ensure respondent concerns were met without jeopardizing the interview or research. The one in-person interview, although Mannheim and Rich (1981) do not recommend interviews with more than one interviewee at a time, was a joint session with two members of the state agency staff. However, the joint interview was necessitated by the constraints facing both the interviewer and interviewees.
An extensive questionnaire (Appendix 2) was prepared for the interviews. The interviews were informal and permitted the respondent to respond to the depth each felt appropriate. Not all the questions were asked of each respondent. Specific questions were extracted from the questionnaire for specific interviews. This was necessary to align the interviews to the agencies and positions of the queried individuals. Often, the answer to one question precluded the necessity of asking other questions of the same interviewee. This frequently occurred due to the breath and depth of the responses provided by the interviewee to questions asked earlier in the interview. At the end of each interview, the respondent was encouraged to provide any additional information or insight they felt might be beneficial to my understanding of the topic and case.
Chapter 2

OSHA AND THE STATE OF ILLINOIS: 
THE RETURN TO THE THIRD FRAMEWORK

INTRODUCTION

The passage of the Occupational Safety and Health (OSH) Act of 1970 offered American workers the prospect of a unified program dedicated to their health and well-being. Congress, the Executive Branch, and the public supported the idea. Occupational safety and health (OSH), however, was not a new concept. Prior to the enactment of the federal program, OSH regulatory guidelines and enforcement already existed. Some dated from the 19th Century, others were established during the early 20th Century. Enacted and managed by state legislatures, state OSH programs addressed the major concerns of the state populace and industry.

State OSH programs generally focused upon the types of industry located within their boundaries. For example: West Virginia emphasized coal mining and Pennsylvania's program included steel production. Various constituencies (e.g., labor, business, and child welfare interest groups) pressed state legislatures to enact laws concerning child labor, industrial workplace safety requirements, and other similar safety and health issues. The increasing strength of organized labor during the late 1930s through the early
1950s was reflected in the growth of state OSH regulatory efforts up to the passage of the federal OSH Act of 1970 (Curington, 1988).

State programs were different from state to state. State OSH efforts ran the gamut from negligible or low levels of state regulatory oversight to the fairly complex. Table 2-1 rank orders state programs based upon the number of state OSH codes and regulations in existence on the date of the passage of the OSH Act of 1970. The number of state OSH codes and regulations provide us with a fairly general idea of the diversity of state enforcement efforts before the enactment of the federal program.

States developed, enforced, funded, and administered their programs separately from one another and the federal government. In the 1960's, there emerged a growing awareness of the differences between state programs. Although national industry standards (e.g., National Electrical Code and National Fire Code) developed by the private sector were often incorporated as the mainstay of state programs, differences of interpretation and application did exist (Curington, 1988). Additionally, organized labor became increasingly concerned with areas of safety and health either not addressed or adequately covered by state programs. The diversity of programs between states was seen as a serious problem, especially since
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**SOURCE:** Extracted from William P. Curington's article, *Federal Versus State Regulation: The Early Years of OSHA*, in *Social Science Quarterly*, pages 342-343.

**NOTE:** "Health regulations and licensing qualifications for various occupations are excluded from the total number of regulations" (Curington, 1988, p. 343). School eye protection laws are also excluded (Curington, 1988).
standardization between programs did not exist. Organized labor believed a centralized and standardized program, operated by the federal government, was the cure to the problem (McGovern, 1987).

OSHA

Development

The 91st Congress (Second Session) passed Public Law 91-596 in December 1970. The law, entitled the Occupational Safety and Health Act of 1970, established the Occupational Safety and Health Administration (OSHA) under the administration of the U.S. Department of Labor (McGovern, 1987). The act was designed in response to a growing national concern, largely expressed by labor unions and similar special interests, regarding the safety and well-being of working men and women in the American workplace. Later designated 84 Stat. 1590, 29 U.S.C. 553, 651-678, the Act was Congress's attempt to meet these needs.

The Department of Labor and Congress were the recipients of heavy union lobby efforts. The Department of Labor was considered by many at the time to be sympathetic toward organized labor and the need for a national OSH policy. The issue of national safety and health standards
became politicized (Curington, 1988 and Calavita, 1988). The bureaucrats of the U.S. Department of Labor and the Department of Health, Education, and Welfare, as well as members of Congress, saw a federal OSH organization and program in an extremely favorable light (Mallino and Werner, 1973). Who could reasonably dispute the issue?

Differences arose between the two federal departments over the placement of the proposed OSH program. The Department of Labor (DOL) and the Department of Health, Education, and Welfare (HEW), and their supporters, argued among themselves and in Congress to gain control of the federal OSH program. The fight was not to establish and operate a national OSH program; rather it was which department of the Executive Branch would be the program's home. A legislative compromise provided each of the departments with defined jurisdiction and oversight (Public Law 91-596, 1970; McGovern, 1987; and Curington, 1988).

The Congress also moved to gain state support and involvement. The new law contains offers of grants and financial aid to those states willing to join the federal program. Congress eliminated the potential threat of active opposition by those states not willing to join the federal program. Either each state actively participates as a member of the federal program or OSHA assumes jurisdiction over the state's private sector economy (Public Law 91-596,
1970). Congress used the Commerce Cause of the U.S. Constitution as its authority for this action.

Two specific Constitutional references were used, commerce and the public's general well-being. Section 2, paragraph b of the act (Public Law 91-596, 1970) states:

The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.

The Act grants wide ranging powers to the federal government and encourages the active participation of state polities. The Congress proclaims the purpose of the act is:

To assure safe and healthful working conditions for working men and women; by authorizing enforcement of the standards developed under the Act; by assisting and encouraging the States in their efforts to assure safe and healthful working conditions; by providing for research, information, education, and training in the field of occupational safety and health; and for other purposes. (Public Law 91-596, 1970)

In effect, Congress created an agency and program to regulate the workplaces of America. The agency was granted legal authority to develop standards, inspect for adherence to these standards, and enforce the use of those standards through fine assessment and the judicial system. The two constitutional ties (commerce and the public's general well
being) prevented the Congress, however, from directly including state and local government employees.

Growing Opposition

During the first few months of OSHA's operation, approximately 4400 job safety and health standards were adopted from existing federal directives, industry codes, and consensus groups (McGovern, 1987). This number continued to grow and prompted complaints the standards were excessive and counterproductive. Critics charged the standards were often trivial, inflexible, and difficult to understand. Penalties, they stated, were often unreasonable for first offenses. The costs for compliance would also drive small businesses into closure (McGovern, 1987). These complaints came from the supporters of business.

Labor complained OSHA did not perform enough enforcement, and when it did, the enforcement was weak and sporadic. According to McGovern (1987), organized labor leaders frequently criticized the federal agency for acting too slowly to correct the thousands of potential OSH hazards.

Most of the complaints from both sides centered on OSHA's inspection efforts (McGovern, 1987). Business complained about any perceived problem such as overbearing inspectors or harsh reports. Labor complained management
was not held strictly to task. Labor, for example, would complain of weak or sporadic inspections (McGovern, 1987; Calavita, 1988; Rees, 1988; and Knudsen, 1988). Simply stated, business did not want OSHA around and felt OSHA was too tough; while labor felt OSHA was not tough enough. OSHA was caught in the middle, as was Congress. Mallino and Werner (1973, p. ii) observe:

Most congressmen had felt secure in voting for the Act (who could be against safety and health?), and they were astonished at the rapid proliferation of political problems. Their labor constituents were, in the words of George Meany, "screaming bloody murder" and their business friends were equally vocal. On the one hand labor was arguing "too slow...not enough" and on the other hand business was insisting "too fast...too much."

OSHA Standards

Section 6 of the Act authorizes the Secretary of Labor to designate any national consensus standard or federal standard as an OSHA standard. The Act requires such OSHA standards as improve the health or safety for specifically designated employees. A national consensus standard is defined in the Act as:

...any occupational safety and health standard...adopted and promulgated by a nationally recognized standards-producing organization under procedures...that persons interested and affected by...the standard have reached
substantial agreement on its adoption,...[and] was formulated in a manner which afforded an opportunity for diverse views to be considered and...designated as...a standard by the Secretary, after consultation with other appropriate Federal agencies. (Public Law 596, 1970)

The Act also states a federal standard is any existing standard used by a federal agency or enacted by Congress (Public Law 91-596, 1970). Examples of consensus standards are those of the American National Standards Institute Inc. and the National Fire Protection Association. The standards are broken into four major categories: general industry, maritime, construction, and agriculture (McGovern, 1987; and Public Law 91-596, 1970).

State Participation

Congress encouraged the participation of the states "to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws" (Public Law 91-596, 1970). Grants were offered for a period of up to two years to assist the states to identify "their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of state occupational safety and health laws, and to conduct experimental and demonstration projects in
connection therewith" (Public Law 91-596, 1970). The Act stated nothing in the legislation would prevent a state agency or court from exercising its authority under state law over occupational safety and health provided an OSHA standard was not in effect.

Under Section 18 of the Act, a state could assume responsibility for the development and enforcement of occupational safety and health standards for any related issues within the state. The state submits a plan to the Secretary of Labor for review prior to implementing the state program. The state's proposed standards had to equal or exceed federal standards. If the Secretary of Labor approves the plan, follow-up reports are required from the involved state. OSHA also performs inspections to ensure the state is within the plan. The Act set a deadline of two years, at which time the states would cease enforcing any private sector standards they had on the books. States were therefore able to legally continue their programs until the end of fiscal year 1973 (Public Law 91-596, 1970).

Section 23, paragraphs f and g, provided for the reimbursement of states to a maximum of fifty percent of their costs for the administration and enforcement of OSH state plans approved by the Secretary of Labor. The Act also authorized the Secretary of Labor to assign grants of up to fifty percent of a state's total costs to:

...promote, encourage, or...engage in programs of studies, information and
communication concerning occupational safety and health statistics; ... assist them in developing and administering programs dealing with occupational safety and health statistics; and...for the conduct of such research and investigations as give promise of furthering the objectives of this section. (Public Law 91-596, 1970)

The federal government, however, was unable to press the issue into the state's public sector. The OSH Act of 1970 expressly forbids federal preemption of state authority within the public sectors of states not participants in the federal program. The OSH Act of 1970 did grant the federal government control over the public sectors of program participant states. OSHA Plan States are required to adhere to OSHA requirements in both their private and public sectors to gain federal financial support (Public Law 91-596, 1970). OSHA is authorized to reimburse OSHA Plan States up to fifty percent of their OSH program expenditures. The financial support requirement enables the federal government to apply and enforce OSHA regulations and standards within the OSHA Plan States' public sectors.

Fifty-six separate jurisdictions (other than the federal government itself) were potential OSHA Plan States (Public Law 91-596, 1970). The Occupational Safety and Health Act of 1970 defines state as "a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands" (Public Law 91-596, 1970, Section...
3(7)). Currently, twenty-five states, territories, districts, and protectorates participate as OSHA Plan States. Two of these operate only within the public sector and receive federal financial assistance (OSHA, 1991). These states once operated the federal program within both sectors; private and public. Table 2-2 identifies the status of each of the fifty-six potential OSHA Plan States.

That only twenty-five states are OSHA Plan States indicates a strong reluctance on the part of potential participants to enroll in the federal program. Many explanations may exist for the position each state takes. Reasons for states to remove themselves from a program also vary from state to state (Table 2-3). The fact that less than fifty per cent of the potential candidates accepted the federal offer is interesting.

The low level of state acceptance, coupled with the passage of twenty-two years since enactment of the OSH Act of 1970 and the diminished power of OSHA, offers a unique portrayal of states operating to their own advantage separate from the federal government. The result is de facto resistance to federal intervention.
### Table 2-2

**STATUS OF OSHA STATE PLAN PROGRAM**

<table>
<thead>
<tr>
<th>STATE</th>
<th>INITIAL APPROVAL</th>
<th>FINAL APPROVAL</th>
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</thead>
<tbody>
<tr>
<td>Alaska</td>
<td>x&lt;sup&gt;b&lt;/sup&gt;</td>
<td></td>
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<tr>
<td>Arkansas</td>
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<td>Alabama</td>
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<td>Maine</td>
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<tr>
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<tr>
<td>Vermont</td>
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<tr>
<td>Massachusetts</td>
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<tr>
<td>Rhode Island</td>
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<tr>
<td>Connecticut</td>
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<td>xa, b</td>
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<tr>
<td>New York</td>
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<td>xb</td>
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<td>Pennsylvania</td>
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<tr>
<td>Delaware</td>
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<tr>
<td>Maryland</td>
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<td>xb</td>
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<tr>
<td>West Virginia</td>
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<tr>
<td>Ohio</td>
<td></td>
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<tr>
<td>Virginia</td>
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<td>xb</td>
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<tr>
<td>North Carolina</td>
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<td>xb</td>
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<tr>
<td>South Carolina</td>
<td></td>
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<td>Georgia</td>
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<tr>
<td>Mississippi</td>
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<td>Tennessee</td>
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<td>Kentucky</td>
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<td>Michigan</td>
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<td>Illinois</td>
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<td>New Mexico</td>
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<td>xb</td>
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<tr>
<td>Arizona</td>
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</tr>
</tbody>
</table>

51
Table 2-2 (Continued)

STATUS OF OSHA STATE PLAN PROGRAM (Con't)

<table>
<thead>
<tr>
<th>STATE 2</th>
<th>INITIAL APPROVAL</th>
<th>FINAL APPROVAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Utah</td>
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<td>Idaho</td>
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</tr>
<tr>
<td>Washington</td>
<td>Xb</td>
<td></td>
</tr>
<tr>
<td>Oregon</td>
<td>Xb</td>
<td></td>
</tr>
<tr>
<td>Nevada</td>
<td>Xb</td>
<td></td>
</tr>
<tr>
<td>California</td>
<td>Xb</td>
<td></td>
</tr>
<tr>
<td>Hawaii</td>
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<td>Xb</td>
</tr>
<tr>
<td>Puerto Rico</td>
<td>Xb</td>
<td></td>
</tr>
<tr>
<td>U.S. Virgin Islands</td>
<td></td>
<td>Xb</td>
</tr>
<tr>
<td>Washington D.C.</td>
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<tr>
<td>American Samoa</td>
<td></td>
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<tr>
<td>Guam</td>
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<tr>
<td>Trust Territories of</td>
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<tr>
<td>the Pacific Islands</td>
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</tbody>
</table>

NOTES:  
\(^a\) State Plans for State and Local Government Employees Only  
\(^b\) State Plans Certified by OSHA  
\(^c\) Status Not Identified by OSHA

<table>
<thead>
<tr>
<th>State</th>
<th>Reason</th>
</tr>
</thead>
<tbody>
<tr>
<td>Colorado</td>
<td>State legislature failed to provide funds for continued plan operation.</td>
</tr>
<tr>
<td>Connecticut</td>
<td>Legislature amended its OSH Act by repealing the private sector portion of the State Plan.</td>
</tr>
<tr>
<td>Illinois</td>
<td>State voluntarily withdrew its plan during its developmental stage due to political circumstances.</td>
</tr>
<tr>
<td>Montana</td>
<td>Enabling legislation rejected; State funding withdrawn.</td>
</tr>
<tr>
<td>New Jersey</td>
<td>Enabling legislation rejected; State funds withdrawn.</td>
</tr>
<tr>
<td>New York</td>
<td>No enabling legislation.</td>
</tr>
<tr>
<td>North Dakota</td>
<td>Enabling legislation rejected; State funding withdrawn.</td>
</tr>
<tr>
<td>Wisconsin</td>
<td>No enabling legislation; State funding withdrawn.</td>
</tr>
</tbody>
</table>

Notes:  
aOSHA has never withdrawn a State's plan. The above mentioned States voluntarily withdrew their plans.  
Date Plan Withdrawn (After Approval): June 30, 1975.

ILLINOIS AND OSH

The passage of the OSH Act of 1970 was the beginning of the end of Illinois OSH autonomy within its private sector. The process took ten years before federal preeminence was fully established. State autonomy within the public sector, however, remained outside the jurisdiction and control of the federal government. Although not legally required by the federal government to pursue OSH within the state's public sector, Illinois acknowledged its responsibility. The culmination of this acknowledgement is the establishment and empowerment of the Illinois Department of Labor's (IDOL) Division of Safety Inspection and Education (DSIE).

Illinois is a state with a divergent private and public sector base. Heavy and light manufacturing, maritime, agricultural, chemical, mining, transportation, construction, financial, medical, and many other types of industries are indigenous to the state. Few industries are new to the state and many existed in various forms well into the 19th Century. The public sector is equally diverse with a variety of forms and levels of government. Included are commissions, departments, agencies, special districts, committees, counties, townships, villages, various forms of municipal government arrangements, boards, and others.

Illinois is one of thirty-one states not participating in the national program. Operating solely within the public
sector, Illinois provides OSH education, inspection, and enforcement separate from the federal government. All levels and aspects of state and local government operations are subject to the purview of DSIE which is strictly a state agency. State municipal, county, special district, parks, and all other facets of the various units of Illinois government are serviced by DSIE. The jurisdictions of DSIE and OSHA are clearly defined by the division between the public and private sectors. The Illinois operation is a prime example of the third framework, states as autonomous entities.

1970-1984

The history of the federal program has its parallel in Illinois. Prior to the enactment of OSHA, Illinois was ranked fifteenth in the nation for the number of OSH codes (See Table 2-1) (Curington, 1988). Illinois legislators endeavored to address at least the minimum of the concerns and needs of Illinois workers. The state operated as an autonomous entity within both sectors of its economy. Federal interference was either very restricted (e.g., related to single issues) or absent.

When the federal act was legislated, Illinois passed enabling legislation (a revision of Public Law 1935-36, Third Sp. Sess., approved March 16, 1936, entitled Health

The Illinois Industrial Commission (IIC) was empowered to act as the focal organization within the state. The IIC, an organization under the state governor's office and largely comprised of political appointees, prepared the state's proposal to become an OSHA Plan State. Under the plan, the state was to assume the full responsibilities of OSHA within the state of Illinois, both for the public and private sectors. The state's plan mirrored the federal program in almost all aspects. Preliminary approval was granted by OSHA pending final approval by the Secretary of Labor (OSHA OAS Ltr w/Atchs, 1975; Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; Arlene Perkins, 19 April 1991, and 4 February 1992; Ronald Besson, 10 April 1991; Kenneth Gilbert, 20 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

The aggressive actions of OSHA during the initial years of the organization drew considerable opposition. Industry felt OSHA was generating standards too quickly, there were too many standards, and enforcement was too strict. In fact, industry leaders felt OSHA was going too far and, in
effect, stifling operations. Organized labor voiced concerns OSHA was too lenient and did not do enough.

The conflict was felt within Illinois. The two extreme viewpoints created potentially serious political costs to legislators and public officials. Both business and labor interests were sure to press their concerns about OSH. Business wanted a less constrictive policy, labor wanted stricter standards and inspections, and the state - not the federal agency - would be the primary focus of the conflicting interests. Compromise seemed unattainable, and the state found itself in a seemingly no-win situation. Further, although the fifty percent reimbursement of operating expenses would come from the OSHA, the state feared the required state expenditures to operate the program would exceed previous expenditures. What appeared to be a good idea quickly lost favor within the state's political circles.

The OSH Act of 1970 provided a way out without serious repercussions to the state. OSHA is granted power to pursue its OSH programs within the private sector of those states not designated OSHA Plan States (Public Law 91-596, 1970). OSHA, therefore, assumes all OSH regulatory and enforcement responsibility within such state private sectors. It meant the state need not allocate funds, assume any responsibility, and bear any costs (real or political) within its private sector. This offers the state the best
of two worlds. The state remains out of the conflict and the various private sector interests still receive OSH oversight. In other words, the state could essentially avoid the issue, leaving the responsibility and associated difficulties with the federal government. The public sector, however, was not included. OSHA could not regulate the public sector of the state under the Act (Public Law 91-596, 1970; Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; Robert Nichols and Janet Wright, 18 February 1992; and Arlene Perkins, 10 April 1991).

In 1974, Illinois took action to drop the proposed plan. In June, 1975, the state was officially withdrawn for political and financial reasons (OSHA OAS Ltr w/Atchs, 1975; Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; Robert Nichols and Janet Wright, 18 February 1992; and Arlene Perkins, 10 April 1991 and 4 February 1992). Illinois removed itself from the controversy then surrounding OSHA.

State legislation was not revised to reflect the change. The IIC retained responsibility for OSH regulatory code enforcement, as well as development. Illinois OSH statutes retained their application upon the state's private sector. This was in addition to activities on the part of OSHA. Unfortunately, the public sector was largely ignored.
Increasing pressure to enhance OSH within the public sector was brought to bear by a variety of groups ranging from concerned citizens to public employee unions. The asbestos issue is one subject, albeit one of the more publicized and widely discussed OSH problems, pursued by various interest groups within the state. These interest groups included maintenance workers, teachers, municipal officials, and clerical staff. The state attempted to resolve such issues under the existing framework of the IIC. It became evident the IIC was unable to effectively deal with the increasing demand for OSH guidelines, education, and inspection.

Simultaneously, the movement toward professional administrators was gaining strength within Illinois. Although a civil service structure did exist, many areas remained under the political system of patronage such as the IIC (Sherlie Scism, 26 September 1991). The Department of Commerce and Community Affairs (DCCA) and economic development is an example of the 1980s and 1990s. The movement is clearly seen in the cases brought before the Supreme Court against the state and the patronage system. The case of Rutan v. Republican Party of Illinois (Supreme Court Case 88-1872, decided 21 June 1990) expanded upon earlier cases (Elrod v. Burns, 1976 and Branti v. Finkel, 1980). The court stated the Illinois GOP patronage system violated the U.S. Constitution's First Amendment's right to
free speech by penalizing government employees and applicants for their political affiliation (Anonymous, 1990). These cases complimented a 'grass roots' concern that areas of complexity involving legal, moral, and ethical issues required educated, trained, and public service career committed individuals for effective management and operation. Such fundamental issues included OSH (Nichols and Wright, 1992).


The case ended the IIC's private sector involvement. Already under fire for its political patronage status and seemingly inept handling of IIC's various responsibilities
(of which OSH but one), the court's decision brought closer public and legislative scrutiny.

**Establishment of DSIE**

These three factors - IIC ineptitude and court recognized preemption by the federal government, increased pressure by special interest groups, and the movement towards professional administrators - all combined to lead to change. In 1985, a revision of existing legislation was introduced to establish a new organization within the Department of Labor.

In October, 1985, the state legislature revised the **Safety Inspections and Education Act** through Public Act 86-1435. The original act was passed on 18 July 1955 and underwent several revisions during its history (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991; and Illinois Public Act 86-1435, 1985).

The 1985 revision provided for the Division of Safety Inspection and Education (DSIE) under the Illinois Department of Labor (IDOL). The revision outlined the responsibilities of the division. The legislation empowered DSIE to perform OSH inspections within the public sector and to provide OSH education for state workers. The IIC remained empowered to promulgate standards and regulations (Illinois Public Act 87-245, 1982; and Illinois Public Act...
Illinois Public Act 86-1435 (1985) placed DSIE's staff positions under IDOL, thereby categorizing the positions under the state's civil service system. The effect was to align the state's OSH program under professional bureaucrats rather than political appointees. DSIE OSH personnel generally join the organization through entry level positions. As they obtain training and experience, DSIE personnel progress within the division's hierarchy (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

DSIE's first director, Mr. Jerald Pusch, developed the framework and strategy of the organization. He deliberately established DSIE as a state level mirror image of OSHA. Further, he negotiated an intergovernmental letter of agreement with IIC delegating to DSIE the authority to develop and otherwise promulgate OSH related standards and regulations. DSIE, however, initially focused upon state agencies and employees, not the lower levels of government (IGLOA between IDOL and IIC, 1986; Gary Smith, 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).
Although the language of the Act discusses commercial establishments, the intent was to cover only those operations performed by state employees and state facilities (Gary Smith, 20 February 1991, 9 April 1991, and 10 April 1991; Robert Nichols and Janet Wright, 18 February 1992; and Illinois Public Act 86-1435, 1985). Commercial establishments are exempt based upon the court decision of Simpson v Marietta Corporation (Illinois Public Act 87-245, 1982). The language of the Illinois Safety Inspection and Education Act, however, did not specify the apparent limitation to state employees.

Shortly after DSIE was established, the American Federation of State, County, and Municipal Employees (AFSCME) filed suit against IDOL on behalf of Illinois public sector employees. AFSCME is the largest of the public sector employee unions within Illinois. AFSCME stated the law did not limit OSH coverage to state employees. Non-state level government employees were wrongfully excluded by DSIE. The Cook County Circuit Court ruled in January 1987 the law extended to all Illinois public sector employees under the jurisdiction of the state. This included all state, county, municipal, school district, and park employees (Circuit Court of Cook County, General Chancery Case Number 85CH11947, 1986; Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February
1992). For the first time, the entire public sector was covered under a mandated OSH program. Overnight, DSIE's scope of operations expanded several fold.

The inclusion of the local governments increased the need by these polities for OSH training, consultative review, and inspection. DSIE conducts seminars and training sessions free of charge to state and local governments, as well as employee organizations and other interested groups. A variety of subjects are available, ranging from office safety through the more hazardous operations such as trenching. DSIE provides handouts and frequently uses audio-visual presentations obtained from the Region 5 office of OSHA (Ronald Besson, 10 April 1991; Gary Smith, 20 February 1991, 9 April 1991, and 10 April 1991; and Robert Nichols and Janet Wright, 18 February 1992).

DSIE spends a significant percentage of its enforcement activities within the municipalities (the Northern Illinois Area Manager reports upward of 80 percent for his area). These built-up areas, especially the larger cities, generally have the more hazardous operations. The largest share of complaints, concurrently, come from the employees of these large municipalities (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

Although cross-servicing does exist in cities crossing state boundaries (e.g., East St. Louis/St. Louis, and
Moline/Rock Island), DSIE does not claim jurisdiction over public sector work crews from another state performing tasks within Illinois. The state the crew comes from (whether Indiana, Missouri, or Iowa) retains jurisdiction. The OSH requirements for these states are as stringent, or more so, than those of Illinois (Gary Smith, 20 February 1992, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

**OSH Standards**

According to Mr. Smith (20 February 1992, 9 April 1991, 10 April 1991, and 6 February 1992) and Mr. Nichols (18 February 1992) every state uses OSHA standards as the basis for their internal programs. Federal standards are often supplemented by those developed internally by the states as well as those taken from industry. The state of Illinois, for example, uses the 1910 General Industry Standards. The adoption of OSHA and industry standards precludes the lengthy and costly development of state standards. Therefore, the operational standards of each state basically resemble each other (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

DSIE does not establish or use formal committees to review proposed public sector OSH standards. Reviews are
conducted internally with affected agencies contacted for
their input. The Illinois State Legislature's Joint Rules
Committee reviews any proposed DSIE standards or revisions
before they are placed into force (Gary Smith, 20 February
Robert Nichols and Janet Wright, 18 February 1992).

In 1988 DSIE initiated development of a new standard
under delegated authority authorized by the IIC/IDOL Letter
of Agreement (Gary Smith, 20 February 1991, 9 April 1991, 10
April 1991, and 6 February 1992; and Robert Nichols and
Janet Wright, 18 February 1992). This endeavor, the first
in the history of DSIE, consumed a year of work on the part
of the division and affected agencies (Gary Smith, 20
1992; and Robert Nichols and Janet Wright, 18 February
1992). The proposed standard dealt with fire
department/company equipment, supplies, clothing, and
training. DSIE attempted to gain the acceptance of local
governments, fire unions, and local fire companies. The
division contacted ten of the fifteen fire associations
representing constituent groups within the state. Each of
the ten associations were solicited for ideas and comments
on the DSIE prepared draft (Gary Smith, 20 February 1991, 9
April 1991, and 10 April 1992). Hearings, discussions, and
conceptual solicitations were held throughout the state to
acquire support and to develop a workable standard (Gary

Public hearings were held by the IDOL Hearing Section. The section conducts all IDOL hearings. Formal comments and recommended changes from the hearings (four hearings in all) were addressed individually to ensure each was fairly assessed. Prior to the proposed standard reaching the State Legislature's Joint Rules Committee, however, it was withdrawn (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

Local governments, particularly the small towns and rural areas, opposed the draft standard. The financial burden associated with the proposed standard often exceeded the fiscal ability of many local governments. Even the fire companies themselves were often less than enthusiastic with the proposal, perhaps seeing it as an attempt to increase the amount of red tape or bureaucratic interference within local operations (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

Pressure was placed on the state's political leadership, primarily by local government representatives. This was one aspect of efforts to stop the establishment of the proposed standard. The second, and concurrent, attack
upon the ability of DSIE to promulgate new standards was taken by the city of Champaign. Champaign filed suit against DSIE in the Sixth Judicial Circuit Court.

The city of Champaign stated DSIE was not lawfully empowered to develop new standards, only to enforce them. The city also alleged the Letter of Agreement between IDOL and IIC was illegal. IIC could not delegate its authority to another agency or organization. The court decided in favor of the city of Champaign. DSIE did not file an appeal, preferring to resolve the difficulty permanently and without further judicial entanglements (Circuit Court of the Sixth Judicial Circuit, Case Number 89-C-62, 1991).

DSIE, through IDOL, requested modification of the Safety Inspection and Education Act (Gary Smith, 6 February 1992 and Robert Nichols and Janet Wright, 18 February 1992). Specifically, the proposal empowered DSIE with the ability to promulgate OSH related standards and regulations. In 1991, the state legislature passed the revision with the effective date of 21 January 1992.

The city of Champaign's challenge of DSIE's authority to develop standards did not affect the division's ability to enforce existing OSHA standards. The authority was already granted within the 1985 legislation. DSIE is not required to adopt or enforce OSHA standards. The division selects standards believed applicable to the unique circumstances and needs of the state. The difference
between adopting existing standards and establishing new standards is not lost upon DSIE leadership and personnel. DSIE takes the stance they are using existing standards already in force throughout the country.

    DSIE is preparing to regain momentum with the reintroduction of the standard for fire departments/companies. The division does not intend to make the same mistakes of 1988. All the affected unions, agencies, and local governments will have the opportunity to participate in the process (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992). The 1991 legislative empowerment to develop and implement new standards provides DSIE with greatly enhanced authority and opportunities.

**DSIE Training and Funding**

    DSIE uses the OSHA Federal Training Institute in Illinois to train division personnel. Training is provided free to all public sector government officials with OSH responsibilities. The option is available for local government employees to attend the OSHA Federal Training Institute, although local Illinois government officials have not as yet (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991; and 6 February 1992; and Robert Nichols and


DSIE also makes maximum use of OSHA literature and forms within the Illinois program. The literature, educational material, and forms are all provided without charge to the state. Local governments are not required to use the OSHA forms, provided the same information is contained in the locally developed record documents. OSHA materials are generally available, without charge, to any public agency and the general public (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; Ronald Besson, 10 April 1991; Kenneth Gilbert, 20
February 1992; and Robert Nichols and Janet Wright, 18 February 1992). 

Technically, OSHA's supplying of training and materials could be construed as providing financial assistance. However stretched this argument may appear, it must be addressed. Illinois is not the only recipient of this type of support from OSHA. Training materials are readily available and free to any level of government involved in OSH related activity (e.g., federal, state, county, and municipal). None are charged since OSHA is the federal source for OSH information and the information is offered as a public service. Illinois is not required to participate, respond, or in any way reciprocate for these services (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; Arlene Perkins, 10 April 1991 and 4 February 1992; Ronald Besson, 10 April 1991; Kenneth Gilbert, 20 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

Illinois does receive a federal 7(C)(1) Consultation Program Grant from OSHA (OSHA/Region 5, 1990; Arlene Perkins, 4 February 1992; Gary Smith, 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992). This grant supports a private sector consultative OSH program administered by the state's Department of Commerce and Community Affairs (DCCA) (Arlene Perkins, 4 February 1992). DCCA is not a part of IDOL and is a political organization
established by the previous Illinois governor, James Thompson. DCCA is the state governor's lead organization for private sector economic development. The department uses the OSHA 7(c)(1) grant as an inducement to attract and retain businesses within the state (Arlene Perkins, 4 February 1992; and OSHA/Region 5, 1990).

The OSHA 7(c)(1) funds are not allocated to DSIE or enter state coffers for redistribution to DSIE through IDOL. DCCA requested the grant as a means of serving the special needs of businesses potentially relocating to the state. The federal grant is also used to assist existing businesses within Illinois to meet OSHA requirements (OSHA/Region V, 1990; Gary Smith, 6 February 1992; Arlene Perkins, 4 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

All DSIE funds are obtained purely from state revenues. DSIE submits annual budgets to the IDOL budget office for consolidation and submission through the Governor's office to the state legislature. A specific legislative line allocation for DSIE does not exist. DSIE defends its proposal to the Secretary of IDOL who, in turn, defends IDOL's budget request before the legislature. The budget request is subject to changes by IDOL, the Governor's office, and the state legislature. Once approved, funds allocated to IDOL are redivided to the department's divisions and offices. DSIE does not receive any federal

DSIE and IGR Communications

The majority of contacts between DSIE and OSHA are informal. The communication flow is horizontal. DSIE is not subject to the directions and requirements of OSHA. The relationship between DSIE and OSHA is not one of subordinate/superior, nor is it an alliance. Communications between the two agencies are largely those of professionals within a field of expertise discussing topics related to their area of responsibilities. Information related to OSHA standards, advice on specific issues or situations, and informational discussions on new federal legislation routinely pass between the two agencies. Although formal communications do exist between DSIE and OSHA, such communications are restricted to non-directive areas (e.g., training and acquisition of materials). At no time is OSHA permitted to direct, oversee, or in any manner become involved in DSIE operations.

Close intergovernmental relations between DSIE and OSHA's Region 5 office are characterized by informal
contacts. The Northern Regional Office of DSIE is located two blocks from OSHA's Region 5 offices. The Springfield OSHA center is also readily accessible to the DSIE main office. The personnel of the federal and state offices know each other and frequently contact each other informally (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; Ronald Besson, 10 April 1991; Kenneth Gilbert, 20 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

The informal relationship between the state and federal agencies is close. Both agencies work with each other. Inter-governmental referrals flow between the two. DSIE refers to OSHA any safety and health hazards DSIE compliance inspectors observe within private sector operations. OSHA Region 5 does the same, in return, for the public sector. Once referred by either office to the other, the matter is considered closed by the referring office. DSIE also regularly contacts OSHA Region 5 for technical information and advice (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; Ronald Besson, 10 April 1991; Kenneth Gilbert, 20 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

DSIE maintains informal and formal contact with the OSHA Federal Training Institute. Formally, DSIE sends its personnel to attend OSH courses offered through the Institute. Informally, DSIE personnel frequently call the Institute to discuss problems, obtain clarification, or to obtain advice (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

Local governments maintain both an informal and formal relationship with DSIE. The character of the relationship, unlike the one with OSHA, shows the subordinate nature of the local governments. Formally, these governments request training and assistance (e.g., advisory inspections) from
the division. The formal relationship is characterized by the official nature of the contacts, usually in writing. DSIE performs inspections, makes reports, reviews records, and provides training (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

The informal relationship is more advisory and usually involves telephone conversations. Conversations might relate to advice on a concern an employer may have about an upcoming project. It may simply be a personal discussion about how the DSIE employee thinks a particular program may progress (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991, and 6 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

DSIE began making professional contacts outside the state within the last few years. DSIE was relatively isolated from other states' OSH public agencies until 1990. DSIE representatives started attending the quarterly meetings of the OSH State Plan Association (OSHSPA). Association membership is limited to those states and territories with OSHA approved OSH state plans. Currently this number is 23 states and 2 territories (Gary Smith, 20 February 1991, 9 April 1991, and 10 April 1991; Arlene Perkins, 10 April 1991 and 4 February 1992; and OSHA Fact Sheet, 1991). Illinois attended as an interested party (Gary Smith, 20 February 1991, 9 April 1991, 10 April 1991,
and 16 February 1992; and Robert Nichols and Janet Wright, 18 February 1992).

DSIE also visited the Kentucky Labor Cabinet in 1990. Kentucky has an OSHA approved state plan similar to a preliminary proposal DSIE personnel were discussing. The Kentucky Labor Cabinet continues to maintain an informal relationship with DSIE (Gary Smith, 20 February 1991, 9 April 1991, and 10 April 1991). Otherwise, DSIE does not have working relationships with other states.

SUMMARY

Prior to 1970, OSH regulation and enforcement within the public and private sectors were pursued by state legislatures and bureaucrats. State OSH programs and laws reflected the concerns of the state populace and industry. The states frequently incorporated industry standards into their programs. Each state's program, however, was separate and different. The states developed, enforced, and operated the programs independent of one another and the federal government. The Congressional legislation of the Occupational Safety and Health Act of 1970 changed the focus from initial actors, the states, to the federal government.

Congress passed the Act in response to labor union, industry, and special interest group concerns about the diversity and effectiveness of state programs. These groups
believed a centralized and standardized federal program 
would resolve the problem. The federal bureaucracies of the 
Department of Labor and the Department of Health, Education, 
and Welfare supported the proposal. Congress was receptive 
and the general consensus supported a national OSH program. 
The Occupational Safety and Health Act of 1970 was the 
Congressional response.

The Act's statement of purpose contains references to 
the Constitution's Commerce Clause and the federal mandate 
to pursue the public's well-being. The references enable 
the federal government to circumvent restriction of federal 
involvement within state jurisdictions. The constitutional 
ties, however, limit federal OSH oversight of state public 
sectors. The Act grants the federal oversight agency, OSHA, 
public sector oversight of states voluntarily joining the 
federal government program as OSHA Plan States.

The prior record of Illinois in OSH regulatory and code 
legislation projects an image of a state whose OSH interests 
coincide with the federal government. The passage of the 
OSH Act of 1970 offers state legislators and regulators the 
opportunity to draw upon federal resources. The Act 
authorizes grants to investigate and develop a state program 
matching the new federal program. Training, materials, and 
fifty percent of operating expenses are offered as 
incentives to states to become OSHA Plan States. The 
benefits under the federal legislation seems clear. The
state benefits by reducing its outlay while addressing the needs of worker constituents.

Illinois moved to accept the federal government's offer. Existing legislation was revised to align the state with OSHA Plan State requirements. A single organization was established to head the state program and act as the primary OSHA point of contact. However quickly Illinois appeared moving towards OSHA Plan State status, public dissatisfaction with OSHA overtook the state.

The political costs associated with acting as a federal proxy became more than the state's political leaders were willing to accept. Organized labor and business interests were raising their voices against OSHA. If the state became an OSHA Plan State, the political costs would have serious and detrimental impacts upon the state's political leadership.

Not only would political costs be high, but so would the state's financial burden. The size of the required program, covering both public and private sectors, the number of businesses to be inspected, the associated administrative support, and other factors demanded a fairly sizable state operation. The state's share of fifty percent of the program costs was viewed as more than the state legislature was willing to allocate.

The withdrawal of Illinois from the OSHA Plan State Program left the state's private sector under federal
control. Legitimately, the only remaining sector for Illinois to administer was the public sector. Yet this sector was largely ignored until 1985.

The ten year period between 1975 and 1985 saw a gradual movement towards an active public sector OSH program. There was a movement towards a more professional government away the existing political patronage system. Dissatisfaction with the old system, disenchantment with IIC, and an increasing awareness of the need for an OSH program contributed to the 1985 legislation of a professional public sector OSH organization and program. The result was the Division of Safety Inspection and Education (DSIE) under the Illinois Department of Labor (IDOL).

Court decisions also defined the scope of Illinois's public sector OSH program. The 1986 AFSCME and 1990 city of Champaign cases led to broader powers and responsibilities for the new state OSH organization. The AFSCME decision required coverage of all public sector employees within Illinois; not just state employees. The court decision for the city of Champaign forced Illinois' legislature to formally grant DSIE the ability and authority to promulgate and enforce new OSH standards.

A long term advantage also exists. Should the state decide to reapply for OSHA State Plan status, the structure exists to assume the new role. Discussions within DSIE periodically occur about the possibility of pursuing OSHA
State Plan status. These discussions remain relatively informal due to the political and fiscal restrictions facing the state. Disagreement exists within DSIE about the benefits, feasibility, and even the wiseness of such a move.

DSIE's first director, Mr. Jerald Pusch, established the division as a mirror image of OSHA. OSHA was approximately fifteen years old and well established. Regulations and directives already existed and were readily available. OSHA standards were in use throughout the country and easily obtained. Copying OSHA to structure DSIE and to define its operations was the most cost effective and efficient means available to the new director. The time and money necessary to develop and structure an entirely new organization was unacceptable to the state legislature and governor's office. OSHA was an established organization, OSHA standards were nationally accepted, and the federal program's guidelines had already stood the test of legal application and time. Copying was an expedient means to an end. Copying OSHA also made it possible for DSIE to easily draw upon OSHA's educational, technical, and informational resources.

Although the division is a state level copy of OSHA, DSIE is separate and independent of the federal agency. DSIE's funding is through the state budgetary process and does not include any federal financial assistance. The division is purely a state organization without federal
oversight. The division, although a state level copy of OSHA, is not a functionary of OSHA and is autonomous of the federal program. Copying successful programs of other government entities is an acceptable practice whether discussing economic development, municipal organization, or a myriad of other topics. The federal government copies state programs and the states copy each other and the federal government.

The only true formal relationship between DSIE and OSHA is for training. DSIE uses the OSHA Federal Training Institute as the primary source of instruction for division personnel. DSIE uses the training to enable its personnel to effectively perform their duties. DSIE enforcement personnel positively progress within the division as they gain OSH experience and knowledge.

Although the federal government provides the training without charge, the state subsidizes its attendees with per diem and training pay. OSHA training is freely offered to any OSH public sector agency. Corporate personnel may also attend, provided openings exist in the classes. None of the organizations attending the training reimburse the federal government. Relations, otherwise, between the two agencies are characterized by informal communications.

DSIE and OSHA (represented by Region 5 of OSHA in Chicago and by the Springfield OSHA office) know each other. Information exchange is routine and the personnel of both
organizations maintain friendly relations. DSIE personnel frequently informally contact their OSHA counterparts for advice and technical data.

DSIE is a relatively new organization. The history leading to its enactment and empowerment provide an example of a state weighing costs, dangers, benefits, as well as attempting to determine the state's realm of responsibility. Illinois selected to refrain from becoming an OSHA Plan State. The decision was the result of weighing the costs involved with acceptance and refusal. The state gained federal oversight at a cost. The state lost autonomy to the federal government for private sector OSH enforcement. OSHA control of the state's private sector could not be avoided. OSHA would control the sector either through the state or directly. Illinois autonomy in the private sector for OSH ended with the passage of the OSH Act of 1970.

Illinois did not lose public sector OSH autonomy. Although largely ignored by the state until the mid-1980s, the public sector was closed to OSHA. Political necessity led to enabling legislation forming the Division of Safety Inspection and Education (DSIE) under the Illinois Department of Labor (IDOL). Pressures for a professional state OSH agency had gained supporters within the state's bureaucracy, legislature, unions, and the governor's office. This concern was perceived and addressed by the state without direction or requirement by the federal government.
Currently, DSIE maintains itself separate from OSHA. Although receiving educational and informational assistance from OSHA, the division remains a state agency without federal oversight.

DSIE supports the third framework, the state as an autonomous entity. The division is a state operation, funded from state revenues, authorized by state law, with oversight performed by the state legislature and Illinois Department of Labor. DSIE performs OSH enforcement, education, inspection, and review for the public sector of the state. The division's area of responsibility is outside the jurisdiction of OSHA which operates within Illinois' private sector. DSIE operates separately and independently of OSHA. The factors of autonomy and federal intrusion clearly show the absence of federal oversight and control of DSIE. Illinois' public sector OSH program is autonomous of the federal government.
Chapter 3

CONCLUSION: THE THIRD FRAMEWORK

The current theory of federalism/IGR fails to account for the autonomous actions of states. The theory's central focus views the federal government as the primary actor in federal-state relations. States are portrayed as functionaries or junior partners of the federal government. These portrayals reflect the two frameworks of federalism/IGR, the state as a bureaucratic layer and the state as a federal ally. Neither of the two frameworks explain programs states pursue independently and separately of the federal government.

FEDERALISM/IGR FRAMEWORKS

The first framework views states as a functionary level within a definite federal hierarchy, the state as a bureaucratic layer. The framework perceives the state as a formal part of a bureaucratic chain reaching from the individual citizen to the federal government. Within the bureaucratic framework, the state operates as a functionary of federal organizations. Program criterion are strictly defined and autonomy is severely constrained by the federal government. State participation may not be voluntary.
Cooptation is one method the federal government exercises to gain state participation.

The second framework, the state as a federal ally, depicts states operating within broad guidelines investing considerable room for interpretation. The federal government loosely prescribes state limits and responsibilities. Federal involvement and oversight are less rigid than under the bureaucratic framework. Federal-state financial arrangements are normally one of the more general categories of assistance and aid. Ties still exist, however, and the federal government retains authority and oversight. The state is a junior partner in the arrangement. The federal government dictates how funds are obtained and expended, the restrictions and requirements that apply, and the administrative controls the states must follow. The states, nonetheless, are able to pursue their own political agendas so long as they fulfill the federal goals.

I propose a third framework, the state as an autonomous entity. Autonomy and federal intrusion progress to the next logical step of diminishing federal control and presence - absence. The federalism/IGR continuum has the extreme of federal involvement outlined in the state as a bureaucratic layer. The state is a functional part of the federal bureaucracy with very limited, if any, autonomy. The federal government intrudes into the practices, procedures,
and routine operations of its state proxy even to the lowest level. The middle area of the federalism/IGR continuum is expressed by the framework of the state as a federal ally. The state has greater autonomy and more freedom of action. Federal intrusion is not as pervasive or stringent. The state, however, is not completely autonomous and free of federal intrusion. The federal government retains some authority and control. Although the state acts as a partner, the reality suggests the federal government is senior.

The third framework, the one proposed by this thesis, carries autonomy and intrusion to the other extreme end of the federalism/IGR continuum - full state autonomy and the complete absence of federal intrusion. The state pursues its own interests separate and independent of the federal government. The state allocates and expends funds from state revenues, not the federal government. Federal regulations do not mandate or require state action. Lastly, program oversight resides within the state. The federal government does not possess oversight authority. The state independently pursues a program or project to meet constituency needs and concerns. The programs are established, funded, operated, and overseen by the state - not the federal government. Logically, these independent state operations exist primarily within the public
sector. The state's public sector is less vulnerable to federal government interference.

**AUTONOMY AND FEDERAL INTRUSION**

The principal criterion underpinning the three frameworks are the concepts of autonomy and federal intrusion. Autonomy addresses the freedom of action and decision a state may possess. Three areas of concern within autonomy are the existence of federal financial structures, regulatory requirements, and administrative constraints. Financial structures assess the degree and type of federal financial supports of a state. Regulatory requirements define the restrictions and limitations imposed by the federal government. Administrative constraints considers the extent of federal bureaucratic arrangements the state must accommodate.

The second concept, federal intrusion, frequently overlaps autonomy. Unlike autonomy's structural focus, federal intrusion centralizes upon the depth of federal activity into state operations and programs. Two criterion reveal the extent of federal intrusion. The first is information flow. Information flow direction is categorized as horizontal or vertical. The nature of the information is closely aligned with direction. Vertical flow coincides with formal communications and horizontal with informal
communications. The second is the extent by which federal assistance and regulations intrude upon the decision-making capacities of the state. It assesses the degree to which federal influence permeates the state organization.

The first framework, the state as a bureaucratic layer, is characterized by limited or nonexistent autonomy. The parameters and restrictions on use and expenditure of federal funds constrains the state. Regulatory requirements impose restrictions upon the state's operation of federal programs. Federal agencies outline administrative constraints in strict terms. An extreme example of the first framework is federal government cooptation of state operations (e.g., Civil Rights). The framework defines the state as a bureaucratic level working for the federal government.

The second framework, the state as a federal ally, is less restrained than the bureaucratic framework. Substantial room for interpretation, broad guidelines, and fairly liberal use of federal funds characterize the framework. The states are free to pursue their own agendas, provided the federal agenda is fulfilled (e.g., California's environmental programs and the federal EPA requirements). The federal government retains a measure of control over state operations. The federal government mandates how funds are obtained and expended, restrictions and requirements related to the funds, and administrative controls. Although
the states are partners to the federal government, but they remain junior in the relationship.

The two frameworks do not explain state pursuit of programs and projects independent of the federal government. The logical extension of autonomy and federal intrusion to their absence establishes the third framework, the state as an autonomous entity pursuing its own interest. Federal funds are not used, federal regulations do not require state action, and the federal government does not possess oversight authority. The state elects to establish, fund, operate, and oversee programs and projects without federal interference (e.g., DSIE and OSHA). Logically, independent state operations exist within the public sector where the federal government is less able to intrude.

INQUIRY RESPONSES

The current frameworks, the state as a bureaucratic layer and the state as a federal ally, fail to explain Illinois' operation of the Division of Safety Inspection and Education (DSIE). DSIE does not fit the criterion of either framework. The current federalism/IGR theory is unable to categorize the operation since the necessary framework is not conceptualized. The theory lacks the ability to explain the full range of activities within the federal system of government.
The first framework, the state as a bureaucratic layer, is unable to accommodate the Illinois operation. DSIE is not a participant in the federal OSH program. The division does not perform operations on behalf of OSHA or any other federal agency. DSIE's program criterion are state generated and not established, directed, or defined by the federal government. The division's autonomy of action is not determined or constrained by OSHA. DSIE operates within the public sector while OSHA is restricted to the private sector by the Occupational Safety and Health Act of 1970 (Public Law 91-526, 1970). Oversight of DSIE is performed by the state of Illinois, not OSHA.

The second framework, the state as a federal ally, does not correspond to the DSIE operation. All of the same observations for the first framework demonstrate the inability of the second framework to define and categorize DSIE. Other measures further prevent categorizing DSIE as a federal ally. Federal financial structures do not directly or indirectly support DSIE's occupational safety and health (OSH) operations. DSIE is not subject to OSHA's regulations and administrative requirements. The Occupational Safety and Health Act of 1970 prohibits OSHA control of state public sector OSH operations except within states which voluntarily join the OSHA Plan State Program (Public Act 91-526, 1970).
Although DSIE is a mirror image of OSHA, the division remains separate and autonomous. The division uses many of the OSHA standards and regulations in its program.

OSHA was well established, the regulations and directives already existed and were readily available, and OSHA standards were in use throughout the country and easily obtained. Copying OSHA was the most cost effective and efficient method of establishing the new state agency. The time and money necessary to develop and structure an entirely new organization was unacceptable to the state legislature and governor's office. Patterning OSHA also made it possible for DSIE to easily draw upon OSHA's educational, technical, and informational resources. DSIE's funding is through the state budgetary process and does not include federal financial assistance. The division, although a state level image of OSHA, is not a functionary of OSHA and is autonomous. Emulating successful programs of other government entities is a common practice, the federal government replicates state programs and the states duplicate programs of the federal government and other states.

Illinois' public sector OSH agency conforms with the criterion of the proposed third framework, the state as an autonomous entity. All the reasons preventing the application of the first two frameworks are supportive of the third. DSIE is strictly funded through state revenues
and is free of federal government regulations and administrative requirements. Federal intrusion is absent. Information flow between DSIE and OSHA is horizontal and informal. Federal oversight is nonexistent and OSHA is unable to define DSIE operations.

I asked three questions in my introduction: 1) Why did Illinois pursue a separate OSH program?, 2) Is the Illinois operation truly an autonomous program?, and 3) What type of IGR communications are exchanged? The answers to these questions firmly establish the Illinois operation within the framework of the state as an autonomous entity.

Why Did Illinois Pursue a Separate OSH Program?

Three questions, as stated earlier, are pertinent to this thesis, although many could apply. The first asks why Illinois pursues a separate OSH program. Prior to the OSH Act of 1970, Illinois' involvement in OSH ranked the state fifteenth in the nation for the number of OSH codes and regulations (See Table 2-1) (Curington, 1988). The Act offered incentives to states voluntarily joining with OSHA as OSHA Plan States. The major incentive was federal reimbursement of fifty percent of state OSH program costs. Illinois' prior OSH interest seemingly coincided with the federal agency's charter. The added federal funding
incentive appeared to offer an excellent opportunity to the state.

Illinois moved towards joining the OSHA Plan State Program. The state legislature revised the Health and Safety Act, Public Law 1935-36, aligning the state's OSH program with the federal program (Illinois Public Act 87-245, 1982). The Illinois Industrial Commission (IIC) was empowered to act as the state OSH action agency and OSHA focal point. Illinois submitted a plan to OSHA mirroring the federal program in almost all aspects. Preliminary approval was granted by the federal agency pending the approval of the Secretary of Labor (OSHA OAS Ltr w/Atchs, 1975).

Illinois, however, was unable to complete the process. OSHA came under fire by industry and organized labor. OSHA adopted approximately 4400 job safety and health standards within the first few months of operations. The new standards were drawn largely from existing federal directives, industry codes, and consensus groups. Most of the criticism centered upon OSHA's enforcement program. Industry complained of overbearing inspectors and harsh reports. Organized labor criticized OSHA for weak and sporadic inspections which did not hold management strictly to task (McGovern, 1987). The outcry against OSHA was felt in Congress, the federal Department of Labor, OSHA, and Illinois.

94
The state of Illinois' legislature and public officials quickly perceived the potentially serious political costs. Industry and organized labor interests maintained strong political presences within the state. Each were sure to press their OSH concerns. If Illinois assumed OSHA's responsibilities, the state - not OSHA - would be the primary focus of these conflicting interests. The state would also be held to OSHA's regulations and administrative controls. The federal funding incentive, likewise, lost its allure. The Illinois share of fifty percent of program costs threatened to exceed the expenditure levels of the pre-1970 state OSH program. The state's political leadership (e.g., state legislators and governor) became adverse to continuing the pursuit of OSHA Plan State status.

Illinois requested withdrawal of the request in 1974 for political and financial reasons. In June, 1975, the Secretary of Labor officially accepted Illinois' withdrawal (OSHA OAS Ltr w/Atchs, 1975). The state gained and lost by this action and under the OSH Act of 1970. The Act empowers OSHA to pursue OSH programs within the private sectors of the states not designated OSHA Plan States (Public Law 91-596, 1970). This meant Illinois was not responsible for funding and performing private sector OSH regulatory and enforcement. The state avoided the conflict between labor and industry, abdicating responsibility to the federal
government. Yet, Illinois retained control over the state's public sector.

State private sector OSH authority was preempted by OSHA. Federal government preemption was recognized by the Illinois Supreme Court in *Simpson v Industrial Commission (Martin Marietta Corporation, Appellee)* (91 Ill.2d 452, 440 N.E. 2d 94 (1982)). The court ruled "the fact that the Illinois Industrial Commission "held that on June 30, 1975, its authority to enforce the Illinois Health and Safety Act was effectively preempted by the Federal Occupational Safety and Health Act (29 U.S.C. sec 651 et. seq. (1976)" (Illinois Public Act 87-245, 1982, p. 1, para 137).

Illinois' private sector OSH regulation and enforcement ended with the case. The court's decision brought closer public and legislative scrutiny upon the IIC. The IIC was already under fire for its political patronage status and seemingly inept handling of its various responsibilities. A movement within Illinois also existed for increased professional administration of state programs. The movement called for professional administrators to manage complex areas involving legal, moral, and ethical issues. Concurrently, a variety of interest groups were increasing pressure to enhance the public sector OSH program. The asbestos issue was one of the more publicized subjects which rallied diverse interests calling for a strong state program. The IIC was unable to effectively deal with the
increasing demand for OSH guidelines, education, and inspection.

The Illinois legislature responded to these three factors and revised the **Safety Inspections and Education Act** in October, 1985 (Public Act 86-1435, 1985). The Act established DSIE under the Illinois Department of Labor (IDOL). DSIE is chartered as the state's public sector OSH program agency.

**Is the Illinois Operation Truly an Autonomous Program?**

The second question assesses the autonomy question. Is the Illinois operation truly an autonomous program; separate from OSHA? As noted earlier, OSHA is unable to enforce its OSH program within the public sector of Illinois. The OSH Act of 1970 specifically prohibits the federal agency from operating within the public sectors of non-OSHA Plan States. OSHA cannot enforce its regulations and requirements upon the state program since DSIE operates strictly within the public sector.

DSIE was deliberately established as a mirror image of OSHA for expediency and ease. OSHA was approximately fifteen years old, its standards were commonly accepted, and the basic guidelines existed and were readily available. Copying OSHA was the most cost effective means available. The time and money associated with developing and
structuring a new organization was unacceptable to the governor and state legislature. The mirror image structure also made it easier for the division to draw upon OSHA's resources. DSIE, however, remains independent of OSHA and is strictly under the auspices of the state.

DSIE does not receive federal funding for its operations. Illinois receives an OSHA 7(C)(1) Consultation Grant. The grant is allocated to the Illinois Department of Commerce and Community Affairs (DCCA) for private sector consultations (OSHA/Region V, 1990). DCCA is not affiliated with IDOL or DSIE. The OSHA grant is used to attract and assist private industry.

DSIE is funded through state revenues. Each year, the division's staff prepares a budget request for submission to the Illinois Secretary of Labor. The request is reviewed and incorporated into the IDOL budget. The IDOL budget is submitted to the state's legislature through the governor's office. DSIE does not have a specific line allocation in the state budget. The division's funds are part of the overall IDOL budget and are not, directly or indirectly, derived from the federal government.

DSIE uses the OSHA Federal Training Center to obtain training. OSHA provides the training, without charge, to any public agency with OSH responsibilities. Private sector corporations are also permitted to send personnel. None of the states and companies are required to reimburse the
federal government agency. Illinois does pay DSIE personnel per diem and wages during their attendance at the center.

DSIE is not required to use OSHA standards. The division reviews OSHA standards and adopts those believed desirable to the state. DSIE officials assert every state follows this practice. This common activity provides the states with standards that are commonly accepted and often proven by time and court challenges. Copying also saves the state revenue, lengthy development, and reduces the potential for legal entanglements. Federal standards are often supplemented by state developed standards and those adopted from industry. DSIE, for example, adopted the 1910 General Industry Standards.

Illinois has not implemented a state developed standard. DSIE did initiate development of a new standard in 1988 for fire departments and companies. The standard's development was dropped after a year because of strong opposition and a court suit over the legal authority of DSIE to promulgate new standards. Local governments opposed the standard for financial reasons, fire departments and companies were suspicious of DSIE's reasons, and not all of the fire unions were consulted which created ill will. The city of Champaign filed suit against DSIE to prevent the new standard. The city alleged DSIE did not have the legal authority to develop and enforce new standards. The
political and legal pressure forced the division to drop the proposal until resolution of the legal question.

DSIE, though it resembles OSHA, is a distinct and separate agency. DSIE is not responsible to the federal government for public sector OSH activities. Financial support is solely from state revenues. Oversight of the agency is performed by IDOL and the state legislature, not OSHA. Finally, DSIE adopts only those OSHA guidelines, standards, and regulations useful and applicable to the state. These are revised and reviewed as needed by DSIE.

What Type of IGR Communications are Exchanged?

My last question concerns communications. What type of IGR communications are exchanged between the state and federal programs? State and local? IGR communications between DSIE and OSHA are horizontal. Vertical communications are virtually nonexistent. OSHA is unable to direct action by DSIE. DSIE communications with OSHA are characterized by informal contacts to obtain advice and information. The contacts are exchanges between professionals within a field of responsibility. These exchanges are similar to discussions of 'picket fence federalism' in which professionals within a field of expertise discuss topics affecting each other. Picket fence federalism, however, usually entails some form of formal
linkages between the agencies employing these professionals. Formal linkages do not exist between OSHA and DSIE. The personnel of DSIE and OSHA's offices (Region V and Springfield), however, do know each other and routinely converse on OSH topics. The majority of the contacts are performed by telephone. Formal contact does exist, but strictly for training allocations.

The relationship between DSIE and local governments is both horizontal and vertical. DSIE maintains a formal relationship characterized by the official nature of the contacts. DSIE performs inspections, prepares reports, reviews records, and provides training. Informally, local government officials and DSIE personnel discuss OSH issues. Telephone conversations frequently occur related to advice on a local government official's concerns or the progress of legislation or particular programs.

Illinois operates within the third framework, the state as an autonomous entity, for its public sector OSH program. The state responded to the need for a public sector OSH program and the concerns of the various interests within Illinois' borders. The case study firmly and clearly demonstrates the validity and reliability of the proposed framework. Consistency can only be established through the application of the proposed framework to other state operations.
SUMMARY

The current federalism/IGR frameworks provide us with only a limited understanding of federal-state relations. They do not provide us with a full continuum of explanations. The state as a bureaucratic layer provides us with an extreme view of autonomy and federal intrusion. The second framework, the state as a federal layer, rests within the middle area of federal-state relations. Beyond this framework lies an area largely ignored by scholars. A third framework is necessary to provide the researcher with the full spectrum of possible explanations from one extreme of the continuum to the other. Autonomy and federal intrusion provide the main criterion for defining the federal-state relationship. They must be carried to their logical extremes - fully autonomous state involvement and the absence of federal intrusion - necessitating the formulation of a third explanatory framework. The state as an autonomous entity satisfies this need.

State autonomy is a reality. States retain the ability to respond independently, even in this day of a strong and centralized federal government. State autonomy is moving into new arenas of operation. Technology and the demands of our rapidly changing society creates new opportunities for states. The accelerating pace of scientific discoveries and their subsequent applications often require changes to old
political responses, as well as new and innovative approaches. American society itself is changing. New pressures are placed upon society and the political system. These changes in society and science will continue to grow and expand. Flexible and innovative government is a necessity if the needs and concerns of citizens are to be met. The federal government is a critical player and will, no doubt, continue as a significant actor into the future. The states, however, are closer to their constituents. State leaders are able to allocate resources quicker than the federal government to meet the concerns and needs of their constituents. States are also able to concentrate their resources easier because their populations and geographic types are smaller and less diverse.

The ability of states to act as autonomous entities is not new. States are the first bastions of political action. Local needs and concerns are first expressed within state and local governments. The political leaders of these polities are responsible to their electorate. They can often address issues through the powers of their offices. Therefore, states are the first arena of political change - not Washington D.C. It is critical to remember that each state's needs and concerns are not necessarily shared with other states.

Nonetheless, if enough states address an issue, political pressure is sufficient, and if there exists strong
public interest and support - Congress usually reacts. States are the first arena of change, but the federal government retains the charge to address national issues. If a national consensus exists, the federal government can play a legitimate role. Until such a consensus is discerned, states can often effectively respond to the concerns and needs expressed by their constituencies.

Second, states often establish programs to address areas of concern not covered by federal government programs. Since each state is different, the concerns and needs of a state may not be fully addressed by a federal program. The ability of the federal government to respond to an issue may be limited by legal, constitutional, and legislative restrictions. These gaps in program coverage are often addressed by state programs.

Third, states are also constitutional powers however much the Congress may impinge upon state rights. The confusion caused by ambiguous and seemingly opposing parts of the Constitution contributes to the conflict within federal-state relations. States are not generally acquiescent to federal encroachment and often carry their case to the Supreme Court. The Supreme Court established itself as the final arbitrator of disputes over interpretations of the Constitution. Court decisions, however, contradict themselves adding to the confusion. The
decisions of the court supported states as well as the federal government.

This thesis demonstrates the applicability of the third framework to IGR and Federalism. States do pursue their own interests free of federal entanglements. States will establish and operate programs and projects without federal funds, oversight, or direction to pursue such objectives. The states' authority to address the concerns and welfare of their constituents is expressed within the Constitution of the United States.

The growth of a powerful and centralized authority - the federal government - overshadows efforts of the individual states. The public and special interest groups increasingly look to Washington D.C. to answer their problems and concerns. Yet states retain the ability to respond within their own borders. The states are often the better level of government to address constituent interests.

I endeavored to look at one independent operation established, funded, and operated by the state of Illinois. The Division of Safety Inspection and Education (DSIE) provides a strong case study to explain and represent the concept of 'The State as an Autonomous Entity.'
Federalism and Intergovernmental Relations (IGR) are presented as a single theory for the purposes of this thesis. Federalism provides the structural outline of the levels of American government. IGR describes the types of communication, focusing upon the two main linear flows — vertical and horizontal, between levels of government. The two combined provide a relatively clear guide for evaluating and discussing governmental relationships.

The landmark works of Elazar, Wright, and Osborne are the focus of my review. The authors and these specific books are widely cited by other writers within the field of Public Administration. The reviewed books form the foundation for other publications by their authors.

The continuum of the frameworks of federalism is best visualized using a pen. The pen has two ends or extremes, a top and bottom. If we visualize the top end as the first framework, the state as a bureaucratic layer, we start to understand the continuum expressed by autonomy and federal intrusion. The criteria of autonomy demonstrates minimal state autonomy while federal intrusion is maximized. The second framework, the state as a federal ally, is somewhat in the middle of our fictitious pen. Some measure of state autonomy is present and federal intrusion is reduced. However, a balance or equality between the two criterion may not exist. The two frameworks are known and discussed within the literature of federalism. However, we failed to identify and define the bottom, or point, of our pen. This extreme, or end of our pen, is the subject of the thesis. As we pass along our imaginary pen from the top to the bottom, we see increasing state autonomy and decreasing federal intrusion. Once these two criterion reach the bottom of our pen, their values are reversed. State autonomy is maximized and federal intrusion is minimized.

The book, Implementation Theory and Practice; Toward a Third Generation, by Goggin and et al is cited. I researched the book to determine why government establishes and implements programs with restrictions. Although the book discusses implementation theory, it is presented within the context of the existing system of interaction between the federal and lower levels of government.
Clear definitions of public versus private sectors are difficult to apply to actual cases. Every definition has weak points and exceptions. I do not expect mine to be exempt. However, for the purposes of this thesis, the public sector is defined as legislative, enforcement, and regulatory operations of state and local governments within the government itself or as relates to government services. The private sector embodies all activities and organizations which exist outside the government structure (e.g., private companies).

The Supreme Court decision in National League of Cities v. Usury prevented federal intervention within the public sector operations of a state/local government. This was reversed by Garcia v. San Antonio Transit Authority.

The term 'states', as used in the thesis, corresponds with the definition contained in the Occupational Safety and Health Act of 1970. The act defines state as "a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, and the Trust Territory of the Pacific Islands" (Public Law 91-596, 1970, Section 3(7)).

An employer, for the purposes of this thesis, is a governmental department, commission, division, agency, or other government organization, with facilities and/or public sector employees. The term, as relates to the public sector, does not include private sector contractors operating on behalf of a public sector employer.
# Appendix 1

## INTERVIEWS

<table>
<thead>
<tr>
<th>Name</th>
<th>Position</th>
</tr>
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<tbody>
<tr>
<td>Ronald Bessona</td>
<td>OSHA, Region 5, Litigation Enforcement Section; Chicago, Illinois. Solicitor. Interview: 10 April 1991 (Telephone).</td>
</tr>
<tr>
<td>Robert Nichols</td>
<td>IDOL, DSIE; Springfield, Illinois. Southern Region Area Manager. Interview: 18 February 1992 (Joint and in person with Janet Wright).</td>
</tr>
<tr>
<td>Sherlie Scism*</td>
<td>IIC; Springfield, Illinois. Support Staff Member. No longer affiliated with IIC. Interview: 26 September 1991 (Telephone).</td>
</tr>
</tbody>
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**NOTE:** *Interviews conducted in 1991. The 1991 questionnaire not included in Appendix 2. However, questions were similar.*
Appendix 2

INTERVIEW QUESTIONS

Respondent Information
1. What is your formal relationship to OSH?
2. What is the full title of your position?
3. What is your function in the agency?
4. How long have you been with the agency?
5. What other positions have you had within the agency?
6. Did you hold other jobs or positions before joining the agency? If so, what where they?
7. What is your educational level?
8. Have you received technical training for your position? If so, what and where?

OSH Activity Specific Information - OSHA Representatives

1. Is there a requirement for a state's public sector to follow OSHA of 1970? Is so, what is the requirement and what outlines the requirement?
3. Not all states are OSHA Plan States. Could you explain why states would and would not wish to participate in the program?
4. Who administers OSHA within the private sector of non-OSHA Plan States? Public Sector?

5. Are there OSHA Plan States for the public sector alone? Which states? Why only the public sector?

6. Are there OSHA Plan States for the private sector alone? Which states? Why only the private sector?

7. In how many states does OSHA administer the private sector without state involvement? Public sector? Both sectors?

8. How was OSH administered prior to OSHA of 1970?

9. Illinois withdrew its request to become an OSHA Plan State. What can you relate regarding to the events leading to this action as pertains to your agency?

10. Does OSHA administer OSH within the state of Illinois? Which sectors?

11. Does OSHA provide the state of Illinois financial aid and assistance for OSH? What kind?

12. The state of Illinois established the Division of Safety Inspection and Education within the Illinois Department of Labor. Does OSHA maintain relations with this agency? What kind?

13. Does the Illinois Division of Safety Inspection and Education receive any form of financial assistance from OSHA?

14. Does OSHA receive reports from the Illinois Division?
15. What is the authority of OSHA as relates to the activities and administration of the Illinois Division of Safety Inspection and Education?

16. Has OSHA been reapproached by the state of Illinois about OSHA Plan State status? If so, how and when?

17. How are reports of infractions handled when they are within the Illinois public sector?

18. How credible is the public sector OSH program within Illinois?

OSH Activity Specific Information - State Representatives

1. Is there a requirement for a state's public sector to follow OSHA of 1970? Is so, what is the requirement and what outlines the requirement?


4. How was OSH administered within Illinois prior to OSHA of 1970? What was the legislation? Agency(ies)?

5. Illinois withdrew its request to become an OSHA Plan State. What can you relate regarding to the events leading up to this action?
   a. Why did Illinois initiate the proposal to become an OSHA Plan State?
   b. What benefits did the state expect?
c. How was the program to be administered?
d. Which agency was responsible for OSH?
e. Was the agency civil service/professional or was the leadership and personnel politically appointed?
f. Why did Illinois take action to withdraw the application?

6. Following the formal withdrawal of the Illinois proposal and until the establishment of the current public sector program; what transpired?
   a. What agency assumed responsibility over what sectors of the state's economy?
   b. How was OSH administered by the state agency?
   c. Was there a clear dividing line between state and federal jurisdictions?
   d. What was the character of the relationship between the state agency and OSHA?

7. The Illinois Industrial Commission was legislatively responsible for OSH activities within the state:
   a. Upon what basis were IIC members selected? Political?
   b. What was the general background and qualifications of the IIC personnel?
   c. How credible was the IIC?
   d. How effective was the IIC?
   e. How was the role of the IIC in OSH perceived by the state political leadership?
8. In the case of Simpson v Industrial Commission (Martin Marietta Corporation, appellee), the Illinois Supreme Court recognized "the fact that the Illinois Industrial Commission "held that on June 30, 1975, its authority to enforce the Illinois Health and Safety Act was effectively preempted by the Federal Occupational Safety and Health Act."

a. Was the IIC actively regulating the private sector? Public Sector?
b. What impact did this decision make?
c. How as the credibility of IIC and the Illinois OSH program affected?

9. In October 1985, the state legislature revised the "Safety Inspection and Education Act" establishing DSIE within IDOL:

a. What caused this revision?
b. Who were the major proponents (groups and individuals)?
c. Why was DSIE placed under IDOL?
d. Upon what basis are DSIE members selected? Political?
e. What is the general background and qualifications of DSIE personnel?
f. What sector(s) of the state economy does DSIE have jurisdiction?
10. In 1985, AFSCME filed suit against IDOL and DSIE:
   a. Why was the suit filed?
   b. What was the intent of the state legislature regarding DSIE versus the interpretation of AFSCME and the court?
   c. What was the impact of this suit?
11. Does OSHA administer OSH within the state of Illinois? Which sectors?
12. Does the state of Illinois receive any financial aid and assistance from OSHA? What kind?
13. Does the Illinois Division of Safety Inspection and Education receive any form of financial assistance from OSHA?
14. How is DSIE funded? What budgetary process?
15. How is financial oversight of DSIE accomplished?
16. Does Illinois provide a public sector OSH program because of the possibility of withholding of federal assistance in other areas?
17. Other than state legislation, is there any federal legislation requiring the state pursue a public sector program?
18. Does the state feel the OSH Act of 1970 requires a state agency like DSIE for other than OSHA Plan States?
19. Is DSIE required to follow or administer OSHA regulations and standards?
20. Where is the dividing line between the jurisdictions of OSHA and DSIE within Illinois? Do they overlap?
21. If DSIE did not agree to an OSHA requirement and pursued its own policy, what would likely happen?
22. How much autonomy does Illinois have to pursue its own OSH concerns?
23. Why does DSIE so closely resemble OSHA? What function does this perform?
24. Did the structure of DSIE result from federal direction or suggestions? As a response to federal concerns?
25. Is the state able to change, delete, add, increase, decrease, or otherwise change OSHA regulations/standards to meet Illinois needs?
26. Why does DSIE use OSHA standards and regulations? To what degree do these standards and regulations permeate the organization?
27. Has DSIE attempted to develop its own standards and regulations? What occurred?
28. What differences are there between the state and federal programs?
29. Does the Illinois Division send reports to OSHA?
30. How is the flow of information between OSHA and DSIE characterized? What type of information is exchanged?
31. What is the authority of OSHA as relates to the activities and administration of the Illinois Division of Safety Inspection and Education?
32. If the OSHA intervened within Illinois' public sector, how would the state react?
33. Has the state of Illinois reapproached OSHA about OSHA Plan State status? If so, how and when?
34. How are reports of infractions handled when they are within the Illinois private sector?
35. How are DSIE personnel selected and what background must they possess?
36. How are DSIE personnel trained to perform their tasks?
   a. How is this training obtained?
   b. Who pays?
   c. Is DSIE required to send its personnel to the OSHA school?
   d. Is DSIE required to reciprocate in any manner for this training?
37. How are local government OSH programs administered?
   a. Are there local government OSH administrators?
   b. Who performs inspections, education, and employee complaint investigations?
   c. How are inspection reports handled? Employee complaints? Education requests?
   d. Do the local governments provide any financial reimbursement to the state for DSIE activities within their jurisdictions?
38. How does DSIE, or would DSIE, handle a private sector company's request for a consultation visit?
39. DSIE is authorized to levy fines upon employers if deemed necessary:
   a. What is the fine structure?
   b. How is a fine applied? Satisfied? Appealed?
   c. Does the fine increase with time for non-compliance?
   d. Can other funds to a local government be withheld until compliance? What types of funds?
   e. Have fines been levied? For what and to whom?

NOTE: a The interviews were informal and permitted the respondent to respond to the depth each felt appropriate. Not all questions were asked of each respondent. Specific questions were extracted depending upon the agency and position of the individual. Often, the answer to one question precluded the necessity of asking other questions. This frequently occurred due to the breath and depth of the responses provided by the interviewees to questions asked early in the interviews. At the end of each interview, the respondent was encouraged to provide any additional information or insight they felt might be beneficial to my understanding of the topic and case.
REFERENCES


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