



**PARLIAMENT OF NEW SOUTH WALES**

**COMMITTEE ON THE ICAC**

**R E P O R T  
O N -**

**Sixth International  
Anti-Corruption Conference**

**22 - 25 November 1993**

**A N D**

**United States Study Tour**

**29 November - 2 December 1993**

# COMMITTEE MEMBERSHIP AND STAFF



M J Kerr MP  
(Chairman)



B J Gaudry MP



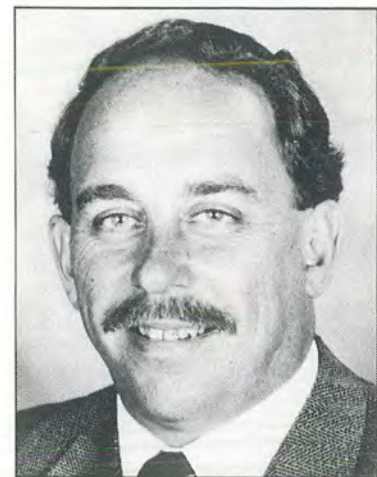
J E Hatton MP



P R Nagle MP



AA Tink MP



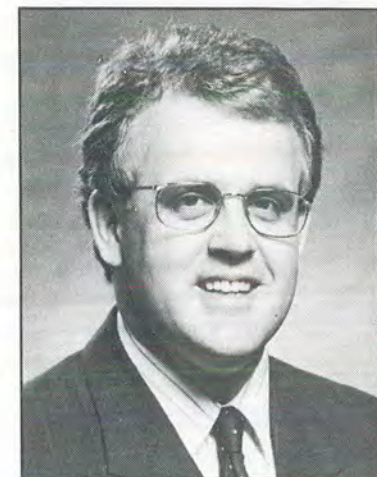
J H Turner MP



Hon J C Burnswoods MLC



Hon D J Gay MLC  
(Vice-Chairman)



Hon S B Mutch MLC

*Staff: Clerk*

*Project Officer*

*Assistant Committee Officer*

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*Ms R Miller*

*Mr D M Blunt*

*Ms G C Penrose*

# ***COMMITTEE FUNCTIONS***

## ***INDEPENDENT COMMISSION AGAINST CORRUPTION ACT 1988***

- "64 (1) The functions of the joint Committee are as follows:
- (a) to monitor and to review the exercise by the Commission of its functions;
  - (b) to report to both Houses of Parliament, with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed;
  - (c) to examine each annual and other report of the Commission and report to both Houses of Parliament on any matter appearing in, or arising out of, any such report;
  - (d) to examine trends and changes in corrupt conduct, and practices and methods relating to corrupt conduct, and report to both Houses of Parliament any change which the Joint Committee thinks desirable to the functions, structures and procedures of the Commission;
  - (e) to inquire into any question in connection with its functions which is referred to it by both Houses of Parliament, and report to both Houses on that question.
- (2) Nothing in this Part authorises the Joint Committee -
- (a) to investigate a matter relating to particular conduct; or
  - (b) to reconsider a decision to investigate, not to investigate or to discontinue investigation of a particular complaint; or
  - (c) to reconsider the findings, recommendations, determinations or other decisions of the Commission in relation to a particular investigation or complaint."

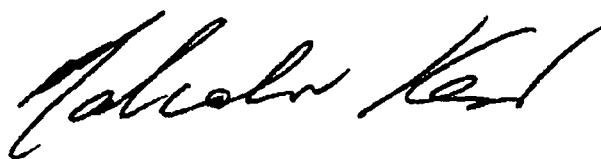
## **CHAIRMAN'S FOREWORD**

**T**his report provides a thorough account of the Sixth International Anti-Corruption Conference, held in Mexico in November 1993, and the brief US study tour conducted after the conference by the Committee's delegation. The Committee's delegation was made up of John Hatton MP, the Hon Stephen Mutch MLC and the Committee's Project Officer, David Blunt. Peter Nagle MP also attended the conference independently, at his own expense.

As the account of the conference makes clear, NSW can now rightly claim to be a world leader in the development of effective anti-corruption strategies. The NSW delegates at the conference including those from both the ICAC and the Parliamentary Joint Committee were able to make a significant contribution to the conference and the feedback from other delegates indicated that they would be taking home a number of lessons from the NSW experience. The various papers presented to the conference by NSW delegates are reproduced in the report.

The delegation's brief US study tour involved two days of briefings in each of Washington and New York. The report contains an account of these briefings and reproduces a number of documents which the delegation collected. The Committee has already been able to apply some of the lessons learnt on this study tour as it prepares to play its role in the appointment of Mr Temby's successor as Commissioner of the ICAC. In New York the delegation received detailed briefings on some of the most innovative and successful approaches to combating organised crime and corruption being undertaken anywhere in the world. It is hoped that law enforcement agencies and governments in Australia will take a close look at the strategies which have been developed by the agencies discussed in that section of the report.

On behalf of the Committee I would like to extend my sincere thanks to the following people who were of great assistance to the delegation: Herb Jackson of Daniel Travel; Mary Frasche of the Australian Embassy in Washington; and Olga Kislica of the Australian Consulate General's office in New York.



Malcolm J Kerr MP  
Chairman



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***PART ONE***

**Sixth International  
Anti-Corruption Conference**

**22 - 25 November 1993**

## **BACKGROUND**

**I**n late 1981 the Hong Kong Independent Commission Against Corruption (ICAC) hosted an Inter-Agency Discussion on Anti-Corruption Work. Out of that discussion emerged the concept of an International Anti-Corruption Conference. The first International Anti-Corruption Conference and Economic Crime Against Government Conference was held in Washington DC in 1983. Further conferences were held in New York in 1985, Hong Kong in 1987, and Sydney in 1989. The Fifth International Anti-Corruption Conference was held in Amsterdam in March 1992. The Parliamentary Joint Committee on the ICAC sent a delegation of two members and one staff to this conference. The Committee subsequently produced a report on the conference which was tabled in the NSW parliament and widely distributed. The delegation found the conference to be a useful forum for the exchange of ideas about anti-corruption strategies and learnt a great deal.

Earlier this year Committee members received invitations to attend the Sixth International Anti-Corruption Conference, to be held in Cancun, Mexico, between 22 and 25 November 1993. In view of the significance of the Fifth International Anti-Corruption Conference the Committee resolved that it should send a delegation to this conference. Following discussions with the Speaker it was determined that the Committee's delegation would be made up of John Hatton MP, the Hon Stephen Mutch MLC and David Blunt, Project Officer. Peter Nagle MP decided to attend the conference as well, at his own expense.

The Sixth International Anti-Corruption Conference was attended by over three hundred delegates from over seventy countries.



## *PLENARY SESSIONS*

**T**he conference was divided in three sections; plenary sessions; workshops; and free papers. The plenary sessions involved the formal presentation of papers each morning to the entire conference.

### *Monday 22 November*

The conference began with a welcome from the Governor of the State of Quintana Roo, the state in which Cancun is located. The conference was then officially opened by Maria Elena Vázquez Nava, Secretary of the General Comptrollership of Mexico, and President of the Organising Committee of the conference. She spoke about recent reforms in Mexico including deregulation of the economy, strict controls on public sector expenditure and the establishment of the organisation which she heads, the General Comptrollership. Amongst other things this organisation receives complaints from members of the public about the actions of public officials.

The conference was then addressed by the Commissioner of the Hong Kong ICAC, Bertrand BED de Speville. He spoke about the importance of changes in community values in tackling corruption and explained the changes in attitudes to corruption which had occurred in Hong Kong since the establishment of the ICAC. He also referred to corruption perception surveys undertaken in 1989 which measured the public confidence in the ICAC and included a cost benefit analysis of the work of the ICAC. This analysis included a list of what the community received for each \$US1 million spent by the ICAC in terms of prosecutions, complaints dealt with, corruption prevention projects and public education programs.

The conference was then addressed by Jorge Carpizo McGregor, the Mexican Attorney General, who spoke about the link between drug trafficking and corruption. Hew also referred to efforts to reduce corruption in his own department, noting that in the past year 361 public servants had been dismissed from the Attorney General's Office. Finally the conference heard from Cao Qigze, Minister of Supervision of the People's Republic of China. He addressed the new forms and scale of corruption which had emerged in China with high rates of economic growth and the methods used to address these problems.

***Tuesday 23 November***

The plenary session on Tuesday 23 November was opened by Jorge Madrazo Cuellar, Chairman of the Mexican Human Rights Commission. He spoke about the roles of various agencies in Mexico including the General Comptrollership, and the Human Rights Commission/Ombudsman.

The conference then heard from Robin Theobald, Principal Lecturer in Sociology from the University of Westminster. He discussed corruption in terms of theories of the state and the ways in which state apparatus are conceptualised. He also sought to place the study of corruption in a wider context of long-term social and economic change. Specifically, he referred to the effects of the cuts to the public sector and privatisation of government services which have been advocated under neo-conservative policies throughout the west in the 1980's. He said these effects included reductions in opportunities for public scrutiny of activities previously undertaken by government, and the increase in opportunities for the use of government for private interests. However, he identified three factors which could work together to redevelop the public domain. These were: the end of the cold war meaning that dissent and criticism would be viewed as less of a threat; the growing voluntaristic ethos and the growth of issue based associations; and the revolution in information technology enhancing the ability of voluntary associations to co-ordinate their activities.

The next two speakers were from Indonesia. The Chief Justice of the Indonesian Supreme Court, H R Purwoto S Gandasubrata, spoke about the scope of corruption in Indonesia and the role of the judiciary in combating corruption. The Indonesian Attorney General, S H Singgih, then spoke about measures to prevent corruption in development projects in Indonesia. He also provided details of a number of corruption cases which had been prosecuted in Indonesia in recent years.

The key note speaker on Tuesday 23 November was Professor Michael Johnston, Chair of Colgate University in New York. He spoke about social development as an anti-corruption strategy. He defined social development as enhancing the vitality of civil society, increasing the interaction between civil society and government and building a more even balance between political and economic opportunities in society. He suggested that a number of forms of constructive conflict within societies could assist in the process of social development. These included conflicts about: the extent of elite accountability; the extent and structure of inter-elite competition; the extent and control of mass participation; and conflicts about the nature of the relationship between the public and private spheres.

The last two speakers on Tuesday 23 November were from Argentina. Alberto R Abad, General Comptroller, and Hector Masnata, Auditor General, spoke about corruption control strategies being applied in Argentina. They coined the term "hyper-corruption" to describe the extent of corruption within Argentina.

### *Wednesday 24 November*

The plenary session on Wednesday 24 November was opened by Luis Vázquez Cano, Undersecretary of the General Comptrollership of Mexico. Mr Vázquez Cano described the anti-corruption measures adopted in Mexico in recent years. He made particular reference to the role of the General Comptrollership which appears to act as a sort of giant Ombudsman dealing with citizens complaints about government and also channels funds for small scale infrastructure development projects through local citizens committees.

Solebad Mestre Garcia of the Spanish National Justice Council then addressed the conference on the inter-relationship of politics, ethics and the law in dealing with corruption. She emphasised the importance of political culture and the role of the free press in reducing corruption.

The third speaker on Wednesday 24 November was Ian Temby QC, Commissioner of the NSW ICAC. Mr Temby spoke on the topic "Preventing and Fighting Corruption as a Government Priority". His paper included a description of the ICAC and its work and an assessment of the reasons for its effectiveness. Mr Temby identified a number of factors which had contributed to the ICAC's effectiveness. These included high levels of public interest in its work, its accountability, and the responsiveness of government administration. Mr Temby's paper was very well received. It was perhaps the most practical of all the papers presented to the conference and generated considerable discussion amongst delegates. Mr Temby's paper is reproduced later in this report.

### *Thursday 25 November*

Most of the plenary session on Thursday 25 November was taken by the presentation of summaries of the material presented at the various workshops during the conference. In this regard it is significant to note that both John Hatton MP and Peter Gifford, as chairs of their respective workshops, had the honour of reporting back to the full conference on their workshops. Before the conference was formally closed it was announced that the Seventh International Anti-Corruption Conference would be held in Beijing in October 1995. Members of the Committee during the Conference had been supportive of Beijing's intentions to host the Seventh International Anti-Corruption Conference.

## **WORKSHOPS**

**T**here were three workshop sessions during the conference. During each of these sessions five workshops were held concurrently. There was therefore a limit to the number of workshops which members of the Committee's delegation were able to attend. It should also be noted that on some occasions the subject addressed by a particular speaker did not match up with the topic of the workshop.

### ***Workshop One: Planning the Fight Against Corruption and Preventive Programs***

This workshop was chaired by John Hatton MP. Mr Hatton opened the workshop by delivering a paper which discussed mechanisms of accountability, decentralisation of power and openness in the fight against corruption. He cautioned against approaches to corruption control which relied upon centralisation, secrecy and coercive powers. Rather he called for an open democratic approach which emphasised decentralisation of power, openness and accountability. He spoke about the Swedish Ombudsman model, the Canadian Auditor General, the need for public education and the role of the Parliamentary Joint Committee on the Independent Commission Against Corruption. Mr Hatton's paper provoked considerable discussion. It is reproduced later in this report.

Thomas Chan, Assistant Director of Corruption Prevention with the Hong Kong ICAC, spoke about the work of the Hong Kong ICAC, with particular reference to its corruption prevention and public education work. Roy Ferouge of the Netherlands Court of Audit spoke about the role of the Court of Audit and the scope of the corruption problem in the Netherlands. Jorge Maldonado Cabrera, from the Banco Nacional de Comercio Exterior of Mexico, spoke about the importance of public education and ethics in reducing corruption.

Following the presentation of the papers there was a lively discussion chaired by Mr Hatton. The topics discussed included: the balance between coercive powers, accountability and human rights; the question of how to involve citizens in the fight against corruption without turning them into spies; and the role of the Ombudsman. In summary Mr Hatton said that the preferred model for tackling corruption emphasised openness and accountability.



***Workshop Two: Strategies, General Anti-Corruption Guidelines and Investigative Mechanisms***

This workshop was chaired by Peter Gifford, Director of Corruption Prevention with the NSW ICAC. Mr Gifford outlined a number of principles which could form the basis for the development of anti-corruption strategies. He spoke about some of the factors which had enabled the ICAC to be effective and he described the ICAC's investigative mechanisms. Mr Gifford's paper is reproduced later in this report.

Other speakers at this workshop included Carlos Velazco Picazo, Comptroller of the Mexican state of Jilisco, and Dr Jon Quah from the National University of Singapore, who spoke about the experience of Singapore in combating corruption.

***Workshop Three: Social and Economic Factors of Corruption***

This workshop was chaired by Enrique del Val Blanco, from the Mexican Social Development Secretariat. He spoke about social and economic causes of corruption, including cultural attitudes to gift giving, inequitable distribution of income, and low incomes of public servants. He raised the question of the responsibility of international organisations such as the World Bank in minimising corruption in developing countries and he emphasised the need for public education about the detrimental effects of corruption.

This workshop was also addressed by Peter Nagle MP. Mr Nagle spoke about the advantages and disadvantages of public inquiries in corruption prevention. Mr Nagle's paper carefully balanced the arguments in favour of and against the use of public hearings in investigations into corruption, and drew on the experience of the NSW ICAC. Mr Nagle concluded that public hearings are effective as corruption prevention mechanisms but that they could limit the credibility of an anti-corruption body through the bitterness of innocent people whose reputations are damaged in the process. Mr Nagle's paper provoked considerable interest and was the subject of considerable discussion amongst conference delegates. It is reproduced later in this report.

***Workshop Four: Trade Relations of Multinational Corporations as a Factor in Corrupt Practices***

This workshop was not attended by any members of the Committee's delegation as it clashed with other workshops. However, the Committee Secretariat has copies of the papers delivered at this workshop by Michael Hershman, a representative of the organisation Transparency International, and Victor Bernal Sahagún, a researcher from

the National Autonomous University of Mexico.

***Workshop Five: The Issue of Bank Secrecy in Fighting Corruption and Mechanisms to Seize Funds or Assets Derived from Corrupt Practices and their Allocation***

Again, this workshop was not attended by any members of the Committee's delegation as it clashed with other workshops. However, the Committee Secretariat has a copy of the paper delivered by John Hume of the UK Ministry of Defence Fraud Squad, who spoke about mechanisms for investigating fraud and money laundering and international co-operation in this area.

***Workshop Six: The Legislative and Judicial Systems in Preventing and Fighting Corruption***

The Hon Stephen Mutch MLC spoke at this workshop. He outlined reforms to legislative bodies, penal sanctions, the provision of proof of corruption to the courts, and the prevention of judicial corruption in NSW. Mr Mutch's paper was well received and he was asked a number of questions about the mechanisms for investigating judicial corruption in NSW. Mr Mutch's paper is reproduced later in this report.

Other speakers at this workshop included José Trinidad Lanz Cárdenas, a judge of the Mexican Supreme Court, Lin Youhai of the Chinese Supreme People's Procuratorate, and Helge Røstad, a judge of the Norwegian Supreme Court.

***Workshop Seven: Professional Training of Police Forces***

This workshop was not attended by any members of the Committee's delegation as it clashed with other workshops. However, the Committee Secretariat has copies of the papers presented by Jan Wiarda, Commissioner of the Utrecht Police in the Netherlands, Michael Bishop, of the Hong Kong ICAC, and Gustavo Salas Chávez, of the Specialised Prosecution Office of Mexico.

***Workshop Eight: Organised Criminal Groups and their Corporate Structure***

This workshop was not attended by any members of the Committee's delegation as it clashed with other workshops. The only paper provided by the conference organisers was that presented by Luo Ji of the Chinese Supreme People's Procuratorate.

***Workshop Nine: The Fight Against Drug Trafficking as a Factor of Corruption in Public Administration***

This workshop began with presentations from Jorge Tello Peón, Commissioner of the Mexican National Institute Against Drug Traffic, and Gabriel de Vega Pinzón, Director of Drug Control with the Columbian Ministry of Justice. They outlined the nature of corruption related to drug trafficking and measures taken to deal with this problem in their countries. Glenn Cooper of the US Drug Enforcement Agency (DEA) then spoke about the risk of corruption within drug enforcement agencies. He described the DEA's Integrity Assurance Program which sought to minimise the dangers of corruption occurring in the agency through professionalism, education, compensation, strong management and thorough investigations of corruption.

Peter Ijzerman, president of the board which co-ordinates the Netherlands twenty police forces, then delivered a provocative paper. He argued that the war against drugs was unwinnable and the criminalisation of drugs was leading to an interweaving of the underworld and normal society. He called for the World Bank to undertake an investigation into the social and economic effect that would be produced by the decriminalisation of drugs.

***Workshop Ten: Fiscal Simulation and the Process of Money Laundering***

This workshop was chaired by Mario Possamai, a former journalist and now senior investigator with Lindquist Avey Macdonald Baskerville Inc, a Canadian firm of forensic accountants and corporate investigators. During the later 1980's his firm was engaged by the governments of Romania and Trinidad and Tobago to trace and recover assets corruptly acquired by former heads of state. Mr Possamai described these cases and made a number of observations about investigative strategies to trace assets corruptly acquired and laundered. Papers were also delivered by Alfredo Solloa, General Director of Tax Auditing in the Mexican Treasury, and Marcos Kaplan Efrón, an investigator in the Instituto de Investigaciones Jurídicas UNAM in Mexico.

***Workshop Eleven: Organisations Specialised in Detecting, Preventing and Fighting Organised Crime***

This workshop was not attended by any members of the Committee's delegation as it clashed with other workshops. The only paper provided by the conference organisers was that presented by René González de la Vega the Deputy Attorney General of Mexico.

***Workshop Twelve: Citizens in the Face of Corruption and Society's Participation in Government Programs to Prevent and Fight Corruption***

This workshop was chaired by Eddie So, the Director of Community Relations with the Hong Kong ICAC. Mr So's paper was one of the most thorough and practical presented at the conference. He gave an account of the Hong Kong ICAC's public education work and addressed a number of essential features for a public education strategy to deal with corruption. He included material on strategies to foster public consensus about corruption, methods to motivate citizens and channels of public participation in anti-corruption campaigns. He concluded with a call for policy makers to give proper priority to public education when allocating resources for anti-corruption efforts.

A number of other papers were presented at this workshop, including one by Professor John Gardiner of the University of Illinois. However, the conference organisers did not provide copies of these papers.

***Workshop Thirteen: Private Enterprise and the Role Played by the Media and Universities in Fighting Corruption***

This workshop was chaired by Rolando Cordera Campos, Director General of Nexos TV in Mexico. He opened the workshop by suggesting a number of general steps that private enterprise, universities and the media could take to assist in the fight against corruption. The workshop was then addressed by Stephen Tanner, Associate Lecturer in the Department of Political Science at the University of Tasmania. His paper provided a case study of media reporting of aspects of the Tasmanian bribery royal commission. He contrasted what he saw as responsible media reporting of the lead up to the royal commission, including the arrest of Edmund Rouse, with the media reporting of the royal commission hearings which he felt was less objective and created a number of victims.

***Workshop Fourteen: The Role of International Mechanisms and Bilateral and Multilateral Agreements in Fighting Corruption***

The workshop was not attended by any members of the Committee's delegation as it clashed with other workshops. However, the Committee Secretariat has copies of the papers delivered by Jan Koers, a Senior Public Prosecutor from the Netherlands, and Héctor Dávalos Martínez, from Mexico's National Commission on Human Rights.



***Workshop Fifteen: International Mechanisms to Prevent Corruption***

Again, this workshop was not attended by any members of the Committee's delegation as it clashed with other workshops. However, the Committee Secretariat has copies of the papers presented by Stefan Danila, a judge of the Supreme Court of Romania, Paolo Bernasconi from Switzerland, and David Alejandro Ruelas Terrazas, a Peruvian judge.

## OPEN PAPERS

**P**rovision was made by the conference organisers for papers to be presented by delegates on topics other than those which were covered in the plenary sessions and workshops. These were presented as open papers. Some of these were presented orally. Others were not presented orally but summaries of these were read out during the final plenary session.

Some of the more interesting open papers which the Committee Secretariat has copies of are listed below.

- ◇ *Young Jong Kim, Acting Dean of Social Sciences, Soong-Sil University, Korea, "Preventing Corruption in Korea: A Comparative Perspective Among Korea, Singapore and Hong Kong"*
- ◇ *Doménico Pisani, Commandant in the General Command of the Carabinieri, Italy*
- ◇ *A Ruzindana, Inspector General of the Government of Uganda, "The Struggle Against Corruption in Uganda"*
- ◇ *Derek Thomas Waites, Detective Chief Superintendent, Royal Ulster Constabulary, Northern Ireland, "Blood Money Fundraising in Northern Ireland"*
- ◇ *Khozro Bhiznahi, Iranian Embassy in Mexico, "The Role of the Legislator, the Judiciary and the Supervisory Authorities in Crime Prevention"*

# **NSW CONTRIBUTION TO CONFERENCE**

**P**apers presented by:

- ◇ *Ian Temby QC*  
*Commissioner, ICAC*
- ◇ *Peter Gifford*  
*Director of Corruption Prevention, ICAC*
- ◇ *John Hatton MP*  
*Member, Parliamentary Joint Committee on the ICAC*
- ◇ *The Hon Stephen Mutch MLC*  
*Member, Parliamentary Joint Committee on the ICAC*
- ◇ *Peter Nagle MP*  
*Member, Parliamentary Joint Committee on the ICAC*

## PREVENTING AND FIGHTING CORRUPTION AS A GOVERNMENT PRIORITY

Ian Temby QC  
Commissioner  
Independent Commission Against Corruption (ICAC)  
New South Wales, Australia

The Government of New South Wales established the ICAC in March 1989. Its annual budget for 1992/93 was \$15 million, and its staff establishment is 150. Established by statute, the Commission aims to minimise public sector corruption using three methods: i) investigations of individual conduct, which involve public hearings and reports, and aim to expose and discourage corrupt conduct ii) corruption prevention, which is conducted in consultation with public sector managers, and aims to improve bureaucratic systems and procedures, thereby reducing corruption opportunities, and iii) public education, which provides citizens with information about the proper conduct of those in public office, and what can be done when they appear to have used their authority improperly.

The Commission has powers to investigate allegations of corrupt conduct by those elected to public office, including Members of Parliament, State Government Ministers, Local Government officials and Judges, as well as public sector employees, including Police. Reports of public investigations provided to Parliament have targeted elected and appointed public officials involved in diverse functions, including criminal investigation, driver licensing, unauthorised release of government information, purchasing and supply, and planning and development.

Features of the ICAC Act which have contributed to its effectiveness include investigatory powers which exceed those of the police and courts, independence from the government of the day, mechanisms for accountability to Parliament and the community, and a requirement that public sector managers seek out and report corrupt conduct which occurs within their administrations.

Social conditions have also enabled the Commission to be effective. Both the commitment of resources and lack of interference by government have been important. One feature of Australian society is its openness with respect to the flow of information, and public interest in the Commission's work has been high from the outset.



## The social context

Australia occupies a large space on the world map, but its population of 17.5 million is mostly located in coastal cities. Its multiracial make-up is the product of British colonisation of Aboriginal land and culture, and much immigration from many places over the past 50 years.

New South Wales was Australia's first place of European settlement, and has the largest population of the seven Australian States and Territories. As Sydney, the capital of NSW, and Australia's largest city, embarks on seven years of preparation to host the Olympic Games in the year 2000, Australians are rethinking their national identity. A central question concerns whether or not Australia should sever ties with the British monarchy and become a republic. Australians enjoy a democratic political system in which issues of national importance are debated openly and vigorously in an atmosphere of comparative peace. There are none of the massive social upheavals experienced by other nations confronting political change.

International visitors will find a society in which poverty is not highly visible, and where the elected government has an active and effective role in regulating personal and commercial life, and delivering a diverse range of infrastructure and social services.

Business is conducted in an environment where information flows freely and people want to know what powerful government and private corporations are doing.

*There is a deep mistrust in the Australian community of the idea that powerful organisations could be expected to behave with responsibility and restraint.*

*(Mackay 1993:255<sup>1</sup>)*

While it would be wrong to draw a picture of Australia as a society riddled with corruption, this mistrust is not without some recent justification. The 1980s saw much large-scale tax avoidance, and bankruptcies involving several big private corporations which cost taxpayers and small investors dearly. Instances of mismanagement of government finances and of corruption in the conduct of government functions were also exposed. The media has played a valuable role in bringing some of these events to public scrutiny.

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<sup>1</sup> Mackay, Hugh *Reinventing Australia* 1993, Angus & Robertson, Australia.

In NSW some specific events increased public concern about the integrity of public administration. They included the imprisonment of a Chief Magistrate, a Cabinet Minister and several senior officials, and a cleaning out of the police force, including the discharge in disgrace of a Deputy Commissioner.

In 1988, the incoming government responded to the community demands for an anti-corruption body in NSW. The Independent Commission Against Corruption (ICAC) was established by statute as a standing body, chartered to expose and minimise corrupt conduct by elected and appointed state government officials.

The NSW government genuinely and with foresight introduced an anticorruption initiative that was powerful, innovative, and appropriately supplied with strong powers and a broad charter. A considerable financial commitment was made to the operation of the Commission at a time of economic recession, and when public sector functions and structures were being reviewed. The creation of the ICAC represented a significant and symbolic public statement by government that corruption will not be tolerated and that steps will be taken to eradicate it.

### **ICAC structure and functions**

The Commission was established in March 1989, and immediately commenced operations. The specialist nature of the work, the lack of local exemplars and the strong public interest in the Commission made it important to act quickly on matters referred, and to build the organisation's expertise and structure incrementally. Within three years of operation the projected staff establishment of close to 150 was reached, and the three statutory functions were operating.

The Commission's charter is to expose and minimise public sector corruption using three methods, described here in the sequence in which they became operational.

#### Investigations

Corrupt conduct is broadly defined as involving the improper exercise of public authority by a public official. Under the ICAC Act 1988 (*the Act*) it must be conduct that could constitute grounds for a criminal charge, disciplinary action or dismissal.

Allegations of corrupt conduct may originate from members of the public, chief executives of public authorities, the Parliament, or inquiries initiated by the Commission.

Not all allegations of corrupt conduct reported to the Commission are subject to formal investigation. Legislation provides for an Operations Review Committee (*ORC*), with community representation, to assist the Commission to decide whether or not a matter will be formally investigated. Preliminary enquiries conducted by Commission staff assist the *ORC* in making these decisions.

The Act provides the ICAC with wide powers of investigation once a decision has been made to formally investigate an allegation. To date the Commission has exercised its formal powers in 67 investigations. One important provision is the ability for the Commission to decide whether to conduct public or private hearings (s31). Any formal investigation which involves a public hearing must be the subject of a report to Parliament, and 29 such reports have been tabled in Parliament and made public (Appendix 1).

It would have been impossible to predict the categories of conduct and public officials that would come under the Commission's scrutiny. This is partly because of the hidden nature of both the conduct and consequences of corruption. Also, because complaints are necessarily identified by citizens exercising their judgment about what constitutes right and wrong conduct for public officials, based on their experience, values and expectations.

As a consequence of allegations made to the Commission, and formally investigated, reports to Parliament cover a wide range of public sector functions and conduct. The following examples illustrate this:

- . acceptance of bribes by driver licensing examiners in exchange for the issue of licences
- . unauthorised release of personal information, held as confidential, by State and Commonwealth employees to private inquiry agents, not always in exchange for money
- . award of government contracts to suppliers by a government purchasing officer in exchange for a personal benefit
- . overstating quantity of carpet used on public housing contracts by private contractors to government maintenance officers

- . approval of development applications by a local government planner who conducted private work preparing the applications
- . provision of unreliable evidence to court, including admissions to serious crimes, from prisoners who expected, and often received in exchange, rewards from police and prison officers
- . partiality by a government department in letting a contract for a landfill operation to a private company, the owner of which was a personal friend of the government Minister responsible for the department

The public nature of Commission investigations and reports is an effective mechanism for increasing accountability of public officials, and shaping and reflecting community opinion about what constitutes proper and improper conduct. It has drawn attention to the extensive harm that corruption can cause. Investigations have exposed financial costs to government through misuse of government funds and the loss of tax revenue on income generated through corrupt activity. Serious social and human costs of corruption have also been exposed through findings that the integrity of regulatory and security functions has in some instances been seriously eroded.

Public exposure is necessary but not sufficient to minimise corruption, and the Commission's preventive and educative functions contribute to long term change, by involving the public sector and the community.

### Corruption prevention

External scrutiny of corruption allegations which involve a specific government function provides a mechanism for identifying the conditions that might have allowed corrupt conduct to occur.

While some corruption is the result of deliberate efforts to exploit a system for personal gain, it also occurs opportunistically, when people are confronted with bureaucratic weaknesses, and can see a way to exploit them, or simply to get around them for mutual convenience. Corrupt conduct can occur when system weaknesses exist, such as outdated policy, unenforceable legislation, inadequate instructions, cumbersome procedures which promote delay or frustration, excessive discretion and lack of effective supervision. There is an even greater risk when resources and staff morale are low.

Corruption prevention work is based on the following assumptions:

*Prevention is better than cure*

- . it is more effective to actively prevent corruption than simply to react to specific allegations as they arise

*Corruption prevention is a management function*

- . along with their responsibility to deliver appropriate, efficient, effective and economic services public sector managers have a responsibility to introduce measures which promote the integrity of their organisations' systems and culture

*Accountability makes for committed management*

- . clear lines of authority and accountability are central to ensuring that managers at all levels of the organisation understand and carry out their responsibilities.

The work involves assisting public sector managers to introduce internal measures for maximising integrity within their organisations.

Systems and procedural change can be pursued by providing advice about changes to existing procedures that might aim to reduce actual opportunities for corruption, or increase the transparency of the decision-making processes, thereby reducing the potential for outsiders to perceive that corruption has occurred. In some instances a detailed examination of a particular system is conducted by Commission staff, with the assistance of the government body. This co-operative approach provides the benefits of an independent and critical approach to review, which can take full account of the business environment of the target organisation, and recommend changes that maximise integrity, without compromising efficiency and economy.

The educative value of this advice and review work is realised through the publication of the work. Where the issues raised in corruption prevention work are relevant to a number of government bodies, or the Commission is seeking comment on proposals for change, the aim is to produce a publication. Since May 1990, the time that the corruption prevention function became operational, 18 corruption prevention publications have been released (Appendix 2). These include reports of reviews of particular systems, discussion papers about particular government functions that present an integrity issue,

and descriptive summaries of corruption prevention issues raised by the Commission's work.

While the work is largely conducted with public sector managers, there is increasing interest by private sector companies which have dealings with government. They are becoming aware of the importance of meeting integrity requirements of government if they are to win government business.

Seminars and workshops are also conducted, and topics include measures which can be introduced by managers to shape the ethical culture of an organisation. Codes of conduct, fraud control plans and mechanisms for reporting corrupt conduct are regarded by the Commission as essential components of a public sector organisation's package of integrity measures.

### Public education

Media reporting is important in the public exposure of the Commission's work. While this has been extensive in the area of investigations, it cannot be relied upon as the sole mechanism for facilitating public understanding of the Commission's broad charter and work methods.

Publicity campaigns conducted by the Commission aim to present the public with images of the social harm that corruption can cause. Commission staff address audiences which represent a wide range of community interests. School students, community organisations and professional bodies, are informed about the damaging nature of corruption and the contribution they can make to minimising it. Public education targeted to a particular audience can also increase awareness and harness support, with the aim of reducing corruption in a particular government function where the incidence has been high.

The public nature of the Commission's work provides an accountability mechanism. To be effective it requires public interest and confidence in its work. Surveys of public attitudes about corruption and what can be done to expose and prevent it, have provided valuable indicators of the level of interest and knowledge of corruption and of the likelihood that it will be reported.

Recent attitude research has focused on public sector employees' judgments about whether particular acts should be considered corrupt and their willingness to report. They are in a position to both identify corruption opportunities and take preventive action, and to



observe and to report corrupt conduct, and are central to efforts which aim to maximise public sector integrity.

### The three-pronged approach - driver licensing

The three methods are best used in association with each other. To give but one example, this was done following allegations of corrupt conduct in the issue of driver licences by the Roads and Traffic Authority of NSW (RTA).

An investigation found widespread and systematic corruption in the driver licensing process. Licensing examiners had for a long time been accepting bribes from driving school instructors to pass students, who might not have been capable of passing the test on their merits. In a ten year period more than \$3 million passed as bribes, usually in \$20 to \$50<sup>2</sup> amounts. Police were able to report serious instances of negligent driving by recently licensed drivers.

Prior to the release of the public report of the investigation the Commission conducted a public education campaign in conjunction with agencies involved with non-English speaking communities. The investigation had shown that bribes were frequently solicited from non-English speaking people. The need for newly arrived migrants to obtain a licence quickly, perhaps to obtain work, and their limited knowledge of the English language and of Australian society made them more vulnerable. The message of the campaign was that in Australia no-one needs to pay more for government services than the stipulated fees.

The RTA agreed to assist the Commission to undertake a corruption prevention project. The project reviewed the licensing system, identified points in the licensing process which allowed corrupt conduct to occur, and recommended administrative changes which could reduce the risks. One change was the introduction of a system for random allocation of work to examiners which prevented examiners from being the sole contact for a particular driving school, an arrangement which had previously resulted in informal agreements to bend the rules for mutual benefit. Computerisation of the question/answer component of the driving test removed the opportunity for manipulation of applicants' responses by examiners responsible for allocating marks.

The Commission's efforts were not intended to usurp the responsibility of the RTA, but

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<sup>2</sup> Equivalent to the cost of a meal for two in an inexpensive restaurant.

to assist the RTA in organisational change. Education and awareness raising for staff was introduced across the RTA through the activities of its own Fraud Awareness Campaign unit. This included leaflets, newsletters, signs for the workplace, videos, staff seminars, and management training activities. Considerable progress has also been made by the RTA in implementing the agreed systems and procedural changes. For the first time in 50 years there is no systemic corruption in the driver licensing system.

### **Factors contributing to the effectiveness of the ICAC**

Legislative provisions which enable the Commission to investigate and report publicly, and to adopt a preventive or educative response to reports of corrupt conduct, contribute to its effectiveness. Several other provisions are also worthy of mention in this regard.

#### Investigatory powers

The ICAC has powers, which exceed those given to the police, to perform its investigative functions. Authorised officers may: require a public authority or public official to produce a statement of information (s21), require any person to produce specified documents or things (s22), search premises (s40), take copies of any documents (s23), apply for authority to use a listening device (s19) or intercept telephone calls. Judicial warrants are needed in some cases.

The Act also empowers the Commissioner, or an Assistant Commissioner, to conduct hearings for the purposes of an investigation (s30). While it is not a prosecuting body, the Commission's powers exceed those of the courts. Witnesses may be summonsed to appear at a hearing to give evidence or produce documents or both (s35) and to answer questions, even if under objection. Evidence given under objection cannot be used in criminal or civil proceedings.

#### Public sector reporting requirements

Section 11 of the Act requires the chief executive, or head, of every public sector body to report to the ICAC known allegations of corrupt conduct affecting their administration. To do this effectively they need to ensure that staff are informed of how they can identify and report instances of suspected corrupt conduct. The requirement provides a mechanism for the Commission to be actively assisted by senior managers in striving to maximise public sector integrity.

Reports made to the ICAC under this provision give the Commission valuable information about the nature and extent of reported corruption throughout State government organisations. This assists the Commission to make decisions about where to target its own work and resources to achieve the most effective outcomes. Where a public sector organisation is known to have in place effective mechanisms for investigating and responding to particular reports of corrupt conduct then the Commission will generally request that the organisation pursue the matter, and direct its own resources elsewhere.

The ICAC has statutory power to refer matters to other public sector bodies for investigation or other action. Conditions can be imposed on the body to which the matter has been referred in relation to the action to be taken, including reporting back to the Commission. If dissatisfied with the action taken the Commission may as a last resort report to Parliament.

### Independence and accountability

Independence is essential for the public to have confidence that an anti-corruption body is not biased, or subject to the dictates of government Ministers or instrumentalities. The ICAC has sometimes investigated a matter and found nothing wrong has been done by any public official. The public can be satisfied of the integrity of an individual or organisation when such an investigation is completed by a body which is independent of the government of the day.

Unlike other public sector organisations, the Commission is not responsible to a government Minister. It is accountable to the Parliamentary Committee on the ICAC, the membership of which is representative of the Parliament as a whole, not just the dominant political party.

The functions of the Parliamentary Committee include monitoring and reviewing the exercise by the Commission of its functions, examining Commission reports and reporting on relevant matters, and examining trends and changes in corrupt conduct. The Committee conducts these functions by requesting the Commissioner to give evidence before it in public hearing twice yearly, by the referral of unsolicited complaints from members of the public to the Commission for response, and by conducting inquiries on particular topics.

## **An effective body?**

Academics and other social commentators are best placed to comment fully and objectively on the place achieved by the ICAC in NSW public life, and on the social, political and economic conditions which have contributed to this. However, from a Commission perspective there are several factors that have been instrumental in its effectiveness.

### Public interest

Consistent with the interest shown by Australian citizens and the media in the activities of powerful government organisations, interest in the work and operation of the ICAC is high.

The Commission's public attitude surveys reveal a widespread view that corruption exists in the NSW public sector, and that something must and can be done about it. The existence of a high profile organisation which is independent of government and openly investigates reports of improper conduct by public officials provides a reporting mechanism which is both widely known and enjoys public confidence. By targeting the widest possible range of reported conduct (much of which does not constitute a criminal offence) and of public functions and public sector bodies, it has charted the territory of corruption.

### Government systems and structures

There is a tradition of openness and accountability in the Australian Federal and State governments. They are elected democratically, and structured in accordance with the Westminster system, with a clear separation between the legislative, judicial and executive functions.

In NSW the Parliament acts both as an accountability mechanism for the ICAC, and a significant source of referrals. The existence of a standing body with an anti-corruption charter provides the Parliament with a mechanism for referral of matters that threaten to seriously discredit individual Members, or which raise serious concerns about government policy or practice. Such matters can be investigated and reported far more quickly and efficiently than would occur if special purpose inquiries had to be established in every case. To date there have been two referrals from Parliament, both of which involved government Ministers. One was formally investigated and publicly reported, and the

other is current.

Judicial review provides a further accountability mechanism through which the territory of corruption and the Commission's powers can be disputed. Litigation initiated by witnesses to Commission proceedings, and by the Commission, has led to review of the interpretation of provisions of the ICAC Act. These proceedings have focused on the Commission's powers, under certain conditions, to make findings of corrupt conduct, to conduct public hearings and to require that information be provided by witnesses. The results of litigation have contributed to the legislative review conducted by the Parliamentary Committee on the ICAC, which resulted in the recently released report *A Review of the ICAC Act (June 1993)*.

Commission critics have expressed concern about individual rights being sacrificed by the Commission's coercive and investigative powers, and have argued that they should be diminished. One suggested measure for protecting individual rights is that hearings be conducted in private, thus restricting public access to evidence being canvassed and conclusions drawn. It is hard to imagine how this proposed change would enhance public confidence in the independence and quality of the Commission's work.

At the level of government administration other external scrutiny bodies, including the Auditor-General and the Ombudsman, are empowered to scrutinise aspects of public administration. Both have special powers of investigation and the ability to make public reports. There are occasions when the boundaries between the ICAC and these organisations must be negotiated.

#### Responsiveness of government administration

Finally, the existence of strong government administrations with the resources and skills needed to respond to the demand for improved integrity is critical to the effectiveness of a body such as the ICAC.

Investigation and public exposure have a significant deterrent effect. However, effective preventive and educative measures are essential to achieving long-term change. These strategies are most effective where the financial, organisational and human resources exist to deliver services effectively and efficiently.

The statutory requirement for senior managers to report to the ICAC known instances of suspected corrupt conduct within their administrations places on them a responsibility to

actively manage integrity, probity and accountability, in the process of achieving the organisation's outputs.

Some senior managers who have been slow to act have blamed the Commission for their own failure to meet higher standards of integrity and accountability. Some have wrongly viewed this objective as being incompatible with the pursuit of efficiency. In contrast, others who have taken seriously the challenge to increase integrity have found that, the removal of needlessly cumbersome procedures can both reduce the incentive for corruption and increase efficiency.

In some organisations senior management has become actively involved in shaping organisational culture. Fundamental to this is the creation of an environment in which staff are informed about what might constitute corrupt conduct and the mechanisms through which they can report, either direct to the ICAC or to the chief executive. If staff are to be encouraged to report internally they need also to be informed of the mechanism through which feedback will be given; and to be confident that management will protect the confidentiality, and prevent victimisation, of those who report. Additional strategies used to create an ethical environment are: featuring integrity in the corporate plan, implementing an organisation-specific code of conduct and corruption prevention plan, and establishing a visible and specialised fraud and corruption prevention structure.

Public sector organisations are staffed by a large body of people representative of diverse community interests and opinions. Their role in the day to day conduct of government functions places them in a special position to observe bureaucratic weaknesses that are the cause of frustration and delay to both providers and recipients of government services. They may observe particular instances of misuse of official authority by peers or supervisors, or may simply observe that the incentive and opportunity is there. Public servants' views about what might constitute corruption, what they can do about it, and the likely outcomes of any action they might take are critical in fighting corruption. Two Commission surveys, one of the readers of investigation reports, and another on public sector employees' views about corruption, have sought information which will assist the Commission in working with the public sector.

The reader survey revealed that 42% of respondents who requested Commission reports were public servants, many whose interest in reports was work-related rather than personal. A preliminary review of responses to the attitude survey indicates that while there is considerable agreement between public servants views about more blatant types of

conduct being corrupt, there is less consensus for those types of conduct which are less clear cut (either due to mitigating circumstances or the apparent minor nature of the activity). Furthermore, simply identifying conduct as corrupt does not necessarily lead public servants to take action about corruption. For example, the belief that people who report corruption will suffer for it or that there is no point reporting corruption as nothing will be done about it, both may contribute to this reluctance to report. Such information may be used by the Commission in its educative and corruption prevention work with public sector employees.

The NSW Parliament recently introduced legislation which aims to protect *whistleblowers*. This legislation will make a significant contribution to creating an environment in which public sector employees who report corrupt conduct are supported rather than personally or professionally damaged by the experience.

### **An integrated approach - criminal investigation**

Finally, recent work conducted by the ICAC, focusing on the conduct of Police involved in criminal investigations, illustrates an approach which has employed the Commission's different work methods in parallel.

In November 1992 the Commission commenced public hearings to aid an investigation into the relationship between police and criminals. The focus was on the conduct of police involved in criminal investigations including armed robberies and illegal gaming. There has been much evidence of inappropriate associations and dealings between criminals and police officers, who are of course sworn to fight crime. The report will be published at the end of January 1993.

Preliminary investigations exposed serious deficiencies in the management of criminal investigations. Rather than delay the process of reviewing management practices until the report of the investigation was issued, the Commission commenced a preventive project concurrent with the investigation.

The corruption prevention project concentrated on management, administration and accountability in criminal investigations. Research was conducted through an examination of selected case studies and the conduct of interviews. It involved Police at all levels of the police hierarchy, and who worked at central and outposted locations.

The first phase of the project ended in the publication of a discussion paper. The



discussion process provides a valuable mechanism for obtaining comment on the findings and recommendations of both the target organisation and affected members of the community. Discussion groups have been used as a means to facilitate involvement of police at all levels, and to obtain the maximum benefit of their knowledge, experience and opinions. Joint announcements by the ICAC and Police Commissioners in relation to the project have established a spirit of co-operation. Summary and video presentations of the discussion paper have been used as educative tools which aim to increase police access to, and interest in, the issues raised.

This integration of work methods aims to ensure that the process of organisational reform does not begin or end with the Commission's investigation. It is already clear that the early involvement by the Police Service in this preventive work will facilitate their acceptance and implementation of the recommendations.

## **Conclusion**

This paper has outlined our progress in establishing an effective anti-corruption body in NSW. Its development has responded to its environment and social context. Its success is attributed to a number of factors. Challenges continue as both environment and context change.

## APPENDIX 1

### Public Reports of ICAC Investigations

Report on investigation relating to/into (the):

- . Park Plaza Site - October 1989
- . Raid on Frank Hakim's Office - December 1989
- . Silverwater Filling Operation - February 1990
- . North Coast Land Development - July 1990
- . Registration of DP787 368 at the Land Titles Office - July 1990
- . The Randwick College of TAFE - August 1990
- . Dealings Between Homfray Carpets and the Department of Housing - September 1990
- . The Walsh Bay Re-development Project - October 1990
- . Driver Licensing, Volume 1 & 2 - December 1990
- . Harrassing Telephone calls made to Edgar Azzopardi - December 1990
- . Stait, Dainford and Waverley Council - January 1991
- . Sutherland Licencing Police - February 1991
- . Neal and Mochalski - April 1991
- . Police and Truck Repairers - May 1991
- . Tendering for Vinyl Floor Products - July 1991
- . The Maritime Services Board and Helicopter Services - July 1991
- . Planning and Building Department of South Sydney Council - December 1991
- . Road Works in the Shire of Kyogle - January 1992
- . N.S.W. Film Corporation and Pepper Distribution - March 1992
- . Local Government Public Duties and Conflicting Interests - March 1992
- . Sydney Water Board and Sludge Tendering - May 1992
- . Metherell Resignation and Appointment - June 1992
- . Conduct of Peter Blackmore - July 1992
- . Unauthorised Release of Government Information, Vols. 1,2 & 3 August 1992
- . (Second) Metherell Resignation and Appointment - September 1992
- . State Rail Authority, Trackfast Division - September 1992
- . Use of Informers Volumes 1 & 2 - January 1993
- . SRA, Northern Region - March 1993
- . Office of the Ombudsman - June 1993

## APPENDIX 2

### ICAC Corruption Prevention Publications

#### Issues booklets:

- . The First Two Years, 19 Key Issues - March 1991
- . In Whose Interest, 18 Issues to Consider - March 1992
- . Pitfalls or Probity: Tendering and Purchasing Case Studies - June 1993

#### Reports:

- . Department of Housing, Maintenance Contracts - February 1992
- . Roads and Traffic Authority, Driver Licensing - April 1991
- . Purchase and Sale of Local Government Vehicles - December 1991
- . Allocation of Boat Moorings by the NSW Waterways Authority - March 1992
- . Department of Health, Cash Handling in Public Hospitals - July 1992
- . Secondary Employment of NSW Police Officers - August 1992
- . Plant Hire (Heavy Machinery) - December 1992
- . Local Government Speaks! - March 1993
- . Department of Housing Maintenance Contracts - April 1993
- . Sponsorship Principles - October 1993
- . A High Risk Area: the Management of Criminal Investigations - October 1993

#### Others:

- . Recruitment of Former Members of Parliament to the Public Service & Related Issues October 1992
- . Nature and Management of the Relationship between Police and their Informants - May 1993
- . Integrity of Public Sector Recruitment - March 1993
- . Just Trade? Proceedings of Seminar on the ICAC Report on the Unauthorised Release of Government Information - February 1993

## VI INTERNATIONAL ANTI-CORRUPTION CONFERENCE: CANCUN, MEXICO

### WORKSHOP 2: Strategies, General Anti-Corruption Guidelines and Investigative Mechanisms

Chairman - Peter G. Gifford,  
Director, Corruption Prevention,  
Independent Commission Against Corruption,  
New South Wales, Australia

The subject of this workshop, "Strategies, General Anti-Corruption Guidelines and Investigative Mechanisms" is central to the general objective of our conference.

In yesterday's first plenary session the papers relating to the major subject "Preventing and Fighting Corruption as a Government priority" started our thinking. They provide a backdrop for our discussions and our analysis of the main problems faced by governments in their attempts to minimise corruption.

Our opportunity this morning is to consider and answer a series of questions. Our challenge is to develop conclusions and recommendations which will help the efforts and performance of all at this Conference, all of us dedicated to fighting corruption.

The questions which the organising Committee has asked us to consider are in two groups:-

The first -

Is it possible to incorporate a strategy and general guidelines and help countries with similar characteristics to solve this problem?

The second group looks at the "What is?" of corruption and the "How to?" of investigating it.

Is corruption a behavioural phenomenon of relations between the public and private sector? How are public actions controlled to prevent this feedback process?

How have the mechanisms to investigate corrupt practices been developed? What are the mechanisms to investigate large scale public fraud, bribery, nepotism and illicit enrichment?

In my view the answer to the first major question is an emphatic "yes". I contend that it is possible to incorporate a strategy and general guidelines to help countries with similar characteristics to solve problems of corruption. I justify that on three grounds:-

Firstly, the world is shrinking because of advances in communications and transportation technologies. As a result, we have better opportunities for sharing our knowledge and experience to the benefit of others. Some adaptation may be necessary and that can be determined as we learn about what has worked for others.

Secondly, international co-operation to solve the most urgent and serious problems faced by the world is increasing and, I suggest, increasingly effective. This conference and the broadening range of participants is but one example. I read with interest the most recent newsletter of Transparency International - The Coalition Against Corruption in International Business Transactions. Transparency International reports many firsts. For example, Michael Hershman a U.S. T.I board member, who is here at our Conference, last week attended the first Latin American Conference on the Struggle against Administrative Corruption in Bogata, Columbia.

Thirdly, the object of our efforts (corruption) is transnational. Corruption is a global phenomenon which is linked to the growing globalisation of economies, markets, services, etc.

I suggest that some principles can be stated which should win general acceptance and be useful as a guide to developing and refining our approach to a general strategy.

Principle one: Preventing and fighting corruption must be a priority of government.

Principle two: Government demonstrates its priorities by the allocation of resources and the anti-corruption body can be neutralised if it is starved of funds or staff.

Principle three: Involvement of the other structures and groups in our society-business, non-governmental organisations, and the people, the individual members of our states or countries is critical to our success.

Principle four: Exposure of corruption and what it costs is essential.

Principle five: Longer term and lasting improvement in integrity and probity will be achieved through preventive work, undertaken in parallel with investigation.

In the second group of questions we are invited to think about relations between the public and private sector. All of us can tell of examples in each of those sectors.

Our experience in Australia has shown that at the intersection of the public and private sector there are many opportunities for corruption especially when public funds are used to purchase goods and services from the private sector. Much of the work undertaken in my own department, Corruption Prevention, is focused on helping people in both sectors to avoid traps when government is dealing with business.



Examples of corruption at that point of intersection mentioned by ICAC Commissioner Temby in his paper yesterday, included:-

- \* the award of government controls to suppliers by a government purchasing officer in exchange for personal benefit.
- \* false records about the quantity of goods supplied or work done by private contractors.
- \* partiality by a government department in letting a contract for a landfill operation to a private company, the owner of which was a personal friend of the government minister responsible for the department.

Turning now to the control of public actions to prevent the so called feedback process, I suggest that no country or government has the ability to control totally the actions of its individual citizens or business or other organisations.

There are however some actions that can be taken that will help to reduce the possibility of corruption at that intersection between the public and the private sector.

Some of the elements that have helped us in the context in which the ICAC works are:-

- \* clear leadership by government showing that corruption will not be tolerated and that steps will be taken to eradicate it.
- \* creating laws and institutions with strong powers and broad scope.
- \* demonstrating a commitment to values which will influence the relationship between itself and the private sector; for example the NSW Government requires private sector organisations in the building and construction industry to commit themselves to ethical principles and to follow the codes of practice which are based on those principles; it will cease to do business with companies which fall short of that standard.
- \* inquiries to expose and measure the extent of corruption are given appropriate publicity.
- \* a free and effective media exposes corruption and its costs.
- \* publicity campaigns conducted by the Commission present the public with images of the social harm that corruption can cause.
- \* Commission staff address a wide range of audiences and inform them about the damaging nature of corruption and the contribution they can make to minimise it.

- \* within government organisations there is a active involvement by Senior Managers in shaping the organisation or culture including the way it does business with the private sector; staff are informed about what might constitute corrupt conduct and the mechanisms through which they can report either direct to the Commission or to their Chief Executive; if staff are to be encouraged to report internally they need to know how they will be protected and avoid victimisation.
- \* creating an ethical environment by featuring integrity in the corporate plan, implementing appropriate codes of conduct and fraud and corruption prevention plans, and establishing a visible and specialised structure for preventing fraud and corruption.

Let us focus now on the final questions about investigative mechanisms.

Many different approaches have been tried and as different options are explained today we should test carefully whether they might apply in our circumstances.

The approach adopted to investigation by the ICAC has been effective in response to instances of public fraud and bribery, those forms of corruption come within our charter. We have departed from the traditional approach of law enforcement agencies in Australia, an approach typified by the allocation to the task of one or more general officers or even trained investigative staff , but without any other expertise or support available.

We have developed an approach which uses multi-disciplined teams including investigators, analysts (who study all the information available and assist the investigators to focus their efforts on that information which is likely to yield the best results) lawyers (as a part of the investigative effort rather than just as providers of advice) and support staff (who carry the administrative load, thus freeing the specialists to concentrate their talents to the task at hand). This approach, combined with an effective case management and screening system has ensured the achievement of effective investigatory outcomes, at least cost.

On particularly complex cases especially those involving the Police Service, we will often form a joint team, combining resources from both the Commission and the Police Service.

The legislation which established the Commission provides it with wide powers of investigation, those powers exceed the powers given to the police; authorised officers may:-

- \* require a public authority or public official to produce a statement of information.
- \* require any person to produce specified documents or things.
- \* search premises.



- \* take copies of any documents.
- \* apply for authority to use a listening device or intercept telephone calls.

The act also empowers the Commissioner to conduct hearings for the purposes of any investigation. Whilst it is not a prosecuting body, the Commission's powers exceed those of the Courts. Witnesses may be summoned to appear at a hearing to give evidence or to produce documents or both and to answer questions, even if under objection.

I do not suggest that the model I have outlined has all the answers to your questions.

I have provided just a few examples of the way in which these issues are addressed in our jurisdiction. Now we have an opportunity to hear and learn from colleagues around the world.

# **Sixth International Anti-Corruption Conference**

**Cancun, Mexico**

**22 - 25 November 1993**

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**Paper to be presented by**

**John Hatton MP<sup>1</sup>**

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**at Workshop One**

## **Planning the fight against corruption and preventive programs**

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<sup>1</sup> Independent member of the NSW Legislative Assembly, Sydney, Australia and Member of the NSW Parliamentary Joint Committee on the Independent Commission Against Corruption

## **Mechanisms of Accountability, Decentralisation of Power and Openness in the Fight Against Corruption.**

Experience over eighteen years in the Australian scene dictates that centralisation of power, the capacity to cover-up through secrecy and the absence of effective mechanisms of accountability and external scrutiny (power without accountability) create an ideal climate for corruption.

In simple terms, one is faced with alternatives of the creation of a super Police Force, secret files, secret surveillance, power of search and entry, telephone tapping, eavesdropping, access to mail, photography, computer technology, in short all the power of science and technology or the alternative model, of minimisation of the use of coercive powers, secrecy and intelligence gathering, and emphasis by Government and its agencies on decentralisation of power, openness and accountability.

They are not however mutually exclusive. The ideal is a mix with the balance tipped in favour of the open democratic approach. Masses of centrally stored intelligence material, of dubious accuracy, are not only dangerous (misinformation) but marketable, and so illegally obtainable.

Central crime agencies such as the National Crime Authority (Australia), Australian Security Intelligence Organisation, the F.B.I., the C.I.A., M.I.5, are dangerous models. These are open to abuse by individuals and Governments from time to time for use as an awesome extension of power by an individual or by Executive Government. What place has the legislature, the public interest and the rights of the citizens in these models?

Is secrecy and privacy a myth? Secrecy must be seen in the context of an information market. Money and technology available to organised crime dictate the assumption that with sufficient skill, power, patience and resources, one can buy into any organisation.

The control over information adds to power and to price (financial or political) as e.g. Edgar Hoover, the C.I.A. emphasise.

The "money trees", drugs, illegal gambling, prostitution, and racketeering depends on a very public market. Its axiomatic therefore that public officials are involved. Police, Customs Officers, civil servants and so organised crime is not an malevolent force outside of the state, against the state, but in fact is part of the state. Organised crime thrives on centralisation, secrecy and abuse of this concomitant power. The decentralisation of power, openness and mechanisms of accountability will do much to reveal corrupt officials and minimise opportunity for corruption.

All organisations are made up of people. Who does one trust in the C.I.A., A.S.I.O., M.I.5, the Police Force, F.B.I., the Public Prosecutors' Office, Customs, Internal Revenue, and even the judiciary? The might of secrecy, coercive powers, intelligence gathering, phone tapping, search, interrogation and arrest must be balanced by accountability.

### How Is The Balance Achieved?

In Sweden, the Parliamentary Ombudsman is the public window to every document, even of high security rating. Where relevant the Ombudsman is bound by secrecy laws. The Ombudsman is appointed by acclamation, that is, bi-partisan agreement in the Parliament. The Ombudsman in turn is subject to scrutiny by a bi-partisan Constitution Committee.

In New South Wales the appointment of the Independent Commission Against Corruption, the Ombudsman, Auditor General, the Director of Public Prosecutions are subject to veto by an all-Party Parliamentary Committee, thus there is ultimate accountability.

In Sweden the Ombudsman monitors the operation of the court system; cannot interfere with judicial independence but can investigate and report publicly, unlike the Judicial Commission in New South Wales, a commission of judges and ex-judges judging judges in private.

The Independent Commission Against Corruption (I.C.A.C.) in New South Wales has a bi-partisan oversight committee of Parliament as does the Office of Ombudsman. The Auditor General is answerable to a bi-partisan Public Accounts Committee. These Committees report to Parliament. The Ombudsman, the Police Board and I.C.A.C. are also windows into the N.S.W. Police Force. A proposal is before the New South Wales Parliament for a Legal Services Commissioner (Ombudsman).

The Auditor General in Canada, in the cases where Provincial Police are under contract to the Federal Agency, can monitor Police performance and publicly report.

If one maintains the view that some intelligence gathering is essential and secret files must be maintained as a vital tool to combat organised crime, then an Information Commissioner appointed on a bi-partisan basis but preferably an Ombudsman, should be there to ensure efficacy.

The massive expenditure by Government is a great temptation. In Sweden the National Audit Bureau has for thirty years had "System S" in its accounting procedures which allows it to look at patterns of acquisition of goods and services in any Government Department. Protocol for tendering, contracting, acquisition are important functions of Auditors General. Focus must be on systems of financial

management, performance, risk management, corruption prevention, education procedures, protocols, and adaptability of methodology to keep up with the play.

Convictions of individuals must be seen as incidental to structures and causes. Law reform, education, management audit, and other mechanisms of accountability, decentralisation of power, precinct area responsibility are examples.

Incompetence is an ideal climate in which corruption thrives.

Operation Milloo by the Independent Commission Against Corruption in New South Wales, and a Parliamentary Committee of Inquiry into lines of communication in the Police Force in New South Wales, revealed that lost files and sloppy record keeping was rife. Detectives able to carry briefs with them, without central recording, gave them enormous power over criminals and power to become involved in crime.

### **Finally Education.**

Education in risk management procedures, a striving for excellence in administration, F.O.I. and education of school students in social and economic importance of corruption. The question must always be "not who is perpetrating the crime, but what structures in society, protocols in management and procedures allow it to occur?"

Crime responds to opportunities and market forces. Catching crooks in the absence of a wholistic approach is "shooting ducks in a gallery", individuals pop up to take the place of those knocked down.

# **Sixth International Anti-Corruption Conference**

**Cancun, Mexico**

**22 - 25 November 1993**

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**Paper to be presented by**

**THE HON STEPHEN MUTCH MLC<sup>1</sup>**

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**at Workshop Six**

## **The Legislative and the Judicial System in Preventing and Fighting Corruption**

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<sup>1</sup> MA LLB, Member of the NSW Legislative Council, Sydney, Australia and Member NSW Parliamentary Joint Committee on the Independent Commission Against Corruption

## **The Role of the Legislative and Judicial Systems in Preventing and Fighting Corruption.**

European settlement in Australia began with the establishment of a penal settlement at Sydney Cove in 1788, and it is indeed the proud boast of many contemporary Australians that they are tainted with the stain of convict ancestry. Others are descended from colonial officials who were often more venal than the convict mass, many private fortunes being made from the illicit trade in rum. However, despite these inauspicious antecedents, it would appear that official corruption is by comparative international standards a lesser problem in Australia than elsewhere, and the general population demands high levels of fiscal propriety from elected representatives and appointed officials.

Indeed, our response to the nevertheless perennial "corruption" problem, in a framework of democratic government, pervasive media activity, high literacy and generally low poverty levels (though with some extremely worrying pockets), is quite promising. To use a term of modern jargon - our approach is increasingly "pro-active".

Australian parliaments have sought to respond to growing levels of public disquiet about the problem of corruption in a number of ways. These include the establishment of special powerful investigative bodies, improving the efficacy of sentencing regimes, streamlining the court process, establishing parliamentary standing committees and establishing tighter judicial accountability.

The major investigative bodies established in Australia are the National Crime Authority (NCA) at a federal level, the Independent Commission Against Corruption (ICAC) in the state of New South Wales and the Criminal Justice Commission (CJC) in the state of Queensland.

The NCA was established in 1984. It investigates organised crime in order to assemble evidence for criminal prosecutions. For its first five years of operation the NCA focused on drug trafficking and tax evasion. More recently, the NCA has directed its attentions to the investigation of white collar crime and money laundering.

In 1989 the NSW government established the ICAC. Its function is to investigate official corruption with a view to reporting its findings to Parliament. "Official corruption" is defined widely. The key concepts are breach of public trust and misuse of office by public officials. "Public official" is also defined widely and includes Ministers, members of parliament, judges, police and local government staff and councillors.

The primary object of the ICAC is to make findings of fact about the circumstances surrounding conduct seen to be "corrupt". In the pursuit of this function, the ICAC uses public hearings and sometimes in camera hearings, in accordance with the "Royal Commission" model. The ICAC is sometimes referred to as a standing Royal



Commission. Detractors have referred to it as an "Inquisition" or a "Star Chamber". In addition to these investigative functions, the ICAC has an important role to play in corruption prevention, generally through public education and the wide circulation of its reports, which often contain salutary examples for public officials of what not to do.

The CJC was established in Queensland in 1989. It has a wide role in reforming the justice system in that state, including the investigation of complaints of "official misconduct", defined as "of a sort that could warrant criminal charges, disciplinary action or dismissal." The CJC was established on the recommendation of the Fitzgerald Royal Commission (Commission of Inquiry into Possible Illegal Activities and Associated Police Misconduct). That inquiry found considerable evidence of widespread corruption in the police and a nexus between police and government administration in this regard.

Other inquiries have in recent years been conducted into official misconduct and financial mismanagement in the states of Western Australia, Tasmania, South Australia and Victoria. These inquiries have been in response to widespread community indignation arising from the expose of major scandals in these states.

Corruption is a secret crime. It usually involves an exchange of some sort between consenting parties and it is rare for a victim of corruption to come forward with information about a crime. The various investigative bodies outlined above have been created so as to enable the circumstances of corrupt activity and complex crime to be uncovered and evidence assembled. These investigative bodies have been given significant powers to enable them to achieve this objective. The powers include; a power to obtain statements of information; a power to apply for warrants to obtain listening devices; a power to summons persons to attend a hearing and give evidence. Perhaps the most important power the ICAC has is that which prohibits a witness at a hearing from declining to answer questions on the grounds of self incrimination.

The ICAC and other special investigative bodies in Australia do not have the power to conduct their own prosecutions. The bodies may make recommendations that consideration be given to the prosecution of an individual and may forward evidence to the relevant Director of Public Prosecutions (DPP). It is the responsibility of the DPP to decide whether or not to commence prosecution. This provides a check or balance. There is a separation between the investigative and prosecutorial functions.

The Office of the Director of Public Prosecutions was indeed established as a result of growing public disquiet over executive interference in the prosecutorial function. Prior to the establishment of the DPP, an elected representative, the Attorney-General (a Cabinet Minister) had the power to award what is known as a "no bill" - a decision not to proceed with prosecution. This discretion might well be an appropriate intervention where a prosecution has been launched but where it becomes apparent that the case would fail, either for want of evidence or new evidence coming forward. However, accusations were made that this discretion had

been abused in some cases, and so it was determined to establish an independent office of the DPP to put this discretionary power at arms length from elected representatives.

The DPP is appointed by government for a fixed term. However, recently in NSW a further step has been taken to ensure the independent nature and integrity of the DPP, and indeed the ICAC Commissioner, the Ombudsman and the Auditor General. Under the Statutory Appointments Legislation (Parliamentary Veto) Amendment Act 1992 these appointments are subject to the exercise of a veto by bi-partisan parliamentary oversight committees. It remains to be seen how well this system works, because the first appointment under the new system is to occur shortly with the expiration of the fixed term of the Commissioner for the ICAC. An attempt has been made to differentiate the system from the United States senatorial veto system which has at times degenerated into a witch hunt. Under the NSW scheme the examination of the government nominee is conducted in camera by the relevant parliamentary committee and even the fact that a nominee has been rejected is subject to a confidentiality provision.

The development of parliamentary standing committees is a major means by which Australian parliaments have sought to respond to public demand for greater accountability in public administration. This process began in the 1970's with the development in the Australian Senate of a system of standing committees based on the United States model. These committees are responsible for the scrutiny of broad areas of government administration.

Checks on the fiscal aspects of administration are made by standing "Public Accounts" committees which examine the efficacy of expenditure. In addition, more attention to the detail of expenditure has been provided for in the establishment of "estimates" committees which dissect the detail of budgetary expenditure.

In my own state of NSW, a modus operandi has developed of establishing standing parliamentary oversight committees to watch over the activities of special investigative bodies, in particular the ICAC and the Office of the Ombudsman. In general these committees examine the functions of the investigative bodies. They do not "second guess" operational matters or complaints. Of course from time to time select committees are established by Parliament to examine particular matters of concern. One has recently examined police administration in NSW.

Australian parliaments have taken a number of initiatives in the area of sanctions against corruption and organised crime. Provision has been made for the forfeiture of the proceeds of crime in a number of jurisdictions. Sentences for some crimes, particularly drug trafficking, have been substantially increased. In NSW "truth in sentencing" legislation has been introduced to ensure that the sentences served by criminals accurately reflect the sentences imposed. Under "truth in sentencing" judges are required to set a minimum sentence and a maximum sentence, creating a window period for remissions to aid in the aim of rehabilitation, but also satisfying the public

demand for deterrence and punishment.

Prior to truth in sentencing, even in a case where a judge might mark a prisoner's papers "never to be released", there remained a potential for executive intervention whereby a government Minister might establish early release schemes. Under such schemes panels of experts might be established to review sentences or a blatant system of release at the absolute discretion of the Minister might operate. Indeed this in fact did occur and one previous Minister became an accomplished clockmaker in one of our more salubrious penal institutions. So truth in sentencing, while preserving judicial discretion and precluding "mandatory" type sentencing, provides some degree of certainty and indeed "truth" in the sentencing regime.

Delays in the criminal justice system provide an incentive and an opportunity for corruption. They are also unacceptable as a matter of justice to individuals. It is said that justice delayed is justice denied, and many measures have been introduced by the NSW government to reduce delays in the court system and to overcome backlogs. New procedures have been introduced to assist the judiciary to manage large case loads. New rules have been introduced to speed up complex matters such as fraud trials.

One novel approach being "trialled" in NSW is "indicative" sentencing under the Criminal Procedure (Sentence Indication) Amendment Act 1992. This is a pilot programme whereby persons charged with indictable offences, who have pleaded not guilty and are awaiting trial in the District Court, may seek an indication from a Judge of the likely sentence to be imposed for the offence. This indication would be based upon the facts of the case as alleged by the Crown and Defence and to be put to the Court. There are said to be "no strings attached", so that an accused person may elect to disregard the "indication" and proceed to trial in the normal manner. However, such an election would preclude the accused from any entitlements to a shorter sentence. Under the trial scheme a judge conducting the sentence indication hearing has discretion to make suppression orders to avoid prejudice in the event that the matter does eventually proceed to trial.

During the 1980's judicial conduct received considerable attention in Australia. In 1985 the NSW Chief Stipendiary Magistrate, the head of the lower courts in NSW, was gaoled for perverting the course of justice. Around the same time a Judge of the High Court of Australia was also charged with perverting the course of justice. This matter aroused intense political controversy. The matter went to court on a number of occasions, and a parliamentary inquiry and commission of inquiry were held. However, the controversy was not satisfactorily resolved and continued until the death of the judge in October 1986. In 1989 commissions of inquiry were conducted into the conduct of two Queensland judges. One of the inquiries found that the conduct of a Judge of the Queensland Supreme Court, involving the giving of false evidence in a defamation case and taxation matters, warranted his removal from office. The Queensland parliament subsequently did so. There was also considerable community concern in NSW during the 1980's about inconsistencies in sentencing practices, with



particular reference to a series of "soft" sentences given to persons convicted of drug trafficking.

As a result of the cases of judicial misconduct and the community concern which thereby arose, the NSW parliament passed the Judicial Officers Act 1986 establishing a Judicial Commission. The Commission is a permanent body comprising six official members (heads of judicial divisions) and two appointed members (one lawyer and one layperson). It has two principal functions. First, it assists the courts to achieve consistency in sentencing by providing relevant up to date information to judicial officers and by improving continuing educational opportunities for judicial officers. The major mechanism used to meet this objective is the sentencing information system, a computerised database of legal and statistical information pertaining to sentencing. The Commission undertakes and publishes research reports on sentencing and disseminates this information to judicial officers, as an aid to judicial discretion which has been preserved in sentencing. Secondly, the Commission considers and deals with complaints about judicial conduct, including bias, unfairness, incompetence and incapacity. The process for dealing with complaints includes a preliminary investigation prior to the classification of complaints as either minor, or serious. Serious complaints are referred to the Conduct Division. This consists of three judicial officers appointed for each matter by the full eight member Commission. The Conduct Division may convene public or private hearings in the investigation of the complaint. The number of complaints made to the Commission have been small (about twenty each year) and there have been no complaints which have resulted in a report being tabled in parliament, although in one instance a matter relating to the mental capacity of a judicial officer was the subject of a Conduct Division report to the Governor. The judicial officer involved resigned and it was not necessary to refer the matter to parliament.

One criticism of the Judicial Commission is that if a judicial officer resigns prior to the classification of a complaint as either minor or serious, the Commission is required to dismiss the complaint and the judicial officer involved is free to pursue a legal career in another capacity. This does not satisfy those who believe that all complaints should be properly examined and the offending judicial officer called to account. In defence of the Commission, in a matter classified as serious, the speedy removal of the judicial officer involved from a judicial position seems to be the major rationale of the activities of the Conduct Division, and the effect of resignation is an effective way of achieving this objective without the highly embarrassing procedure of parliamentary removal. The judicial officer involved would still be subject to the sanctions of the criminal law where that is relevant.

The appointment of judges in Australia has been in the hands of the Attorneys - General at State and Commonwealth level. The process by which judges are selected has been ad hoc and generally not open to scrutiny. The NSW and Commonwealth governments have recently begun work to review the judicial selection process. Appointment protocols are being developed covering selection criteria and appointment mechanisms. The object is to provide a more open and accountable

system for judicial appointments.

Undoubtedly, the most important feature of the judicial system in Australia working to expose corruption is its inherent openness. All except a small minority of court proceedings in Australia are conducted in public. Public and media scrutiny of court proceedings provides an essential and effective means of bringing to light questionable practices.

Australia is a pluralistic society where the balance of power and responsibility ebbs and flows. It is somewhat like our famous Great Barrier Reef - constantly evolving, constantly changing but hopefully forever remaining the same. In order to keep things as good as they are in our genuinely lucky country, we are constantly devising new approaches and refining a working system in order to combat and prevent the scourge of corruption.

**THE ADVANTAGES AND DISADVANTAGES  
OF PUBLIC INQUIRIES  
IN CORRUPTION PREVENTION**

A PAPER PRESENTED TO THE INTERNATIONAL ANTI-CORRUPTION CONFERENCE  
AT CANCUN, MEXICO

By Peter R Nagle MP<sup>1</sup>

The social effect of Corruption Prevention needs to be examined as it effects people's lives. In a democracy, corruption is the most infallible symptom of constitutional liberty.<sup>2</sup> This is demonstrated in the form of political and bureaucratic power. Or, as Shakespeare said, "*the purest treasure moral times afford is spotless reputation*".<sup>3</sup> This is the dichotomy of interest and worth - self interest in corruption and worth in reputation.

New South Wales' ICAC Commissioner Mr Ian Temby QC has said that;

*"Public hearings are essential to expose corruption and also to generate a valuable source of information for the Commission."*<sup>4</sup>

The Honourable A R Moffett has also said,

*"A leading consideration was that organised crime and corruption flourishes on secrecy, codes of silence and on the difficulty of exposing it by criminal proceedings and that revealing it by open investigation is a step towards depriving it of these benefits of the cloak of secrecy. Openness also aids the public confidence in the integrity of the inquiry. It helps to move*

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<sup>1</sup> Peter Nagle is a lawyer and a member of the NSW Legislative Assembly - elected in March 1988. Mr Nagle sits on the Parliamentary Committee that oversees the ICAC in accordance with the ICAC Act.

<sup>2</sup> Edward Gibben, 1737-1794, p. 21.

<sup>3</sup> Shakespeare, William, Richard II, Act I, Scene I.

<sup>4</sup> Collation of Evidence before the ICAC Committee, 15 October 1993, p. 95, answer to Question 9.4, Mr Ian Temby QC is the NSW Independent Commission Against Corruption Commissioner.

*public opinion concerning organised crime and corruption, so that the public demand will accept action against it.*"<sup>5</sup>

How does one deal with a clever and evasive criminal and bring him to account in public or have his schemes exposed. Because all forms of sophisticated crime, be it corporate, fraud or corruption, will thrive in secrecy.<sup>6</sup>

Therefore, to expose corruption there needs to be a public manifestation and exposure of the secrecy, the code of silence, and the conspiratorial nature of corruption.<sup>7</sup>

Since November 1990 there has been a large number of public inquiries in NSW Australia, including one inquiry against the then Premier and Minister for Environment, and the then ex-Minister for Education and a Parliamentary backbencher.<sup>8</sup>

The inquiry resulted in the resignation of all three Ministers.

The result of the public inquiry was that the political careers of the three men were destroyed.

In response to a question put to Mr Ian Temby this year, concerning the micro-consequences to a person's reputation and the financial cost to them of a public inquiry he said,

*"This is a matter of sincere regret. Whenever collateral damage is done, it is a matter of genuine regret; but, it is no worse than what happens when somebody is charged by the police with a criminal offence of which they are objectively not guilty and for which they are*

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<sup>5</sup> Parliament of NSW Committee on ICAC, Discussion Paper prepared for the Committee by the Hon A R Moffett, August 1990, p. 3, 1.2.2.

<sup>6</sup> *Ibid*, p. 7, 14.0.43.

<sup>7</sup> *Ibid*, p. 7, 14.0.45.

<sup>8</sup> Ex-Premier Nick Greiner, Tim Moore, Dr Terry Metherell and Mr Brad Hazzard respectively. The backbencher still sits in Parliament.

*acquitted.*"<sup>9</sup>

As Mr Temby then went on to say *"It remains a case of public exposure of corrupt activity which is, in itself, a significant deterrent."*<sup>10</sup> Nevertheless, from my many years of legal practice in criminal law, I have found that most people, if they are desperate enough, do not think about the consequences of their acts.

This is reinforced in a recent investigation report of the ICAC in the northern NSW coastal town of Coffs Harbour. Mr Peter McClelland QC said,

*"After preliminary inquiries the decision was made to hold private hearings. The material collected at private hearings suggested that the public hearings would further the investigation and be appropriate. In particular, it was apparent that if the Coffs Harbour people were informed of an investigation and the nature of the allegations, further relevant evidence may be forthcoming... This proved to be the case and significant evidence was obtained in the direct response to publicity given by Coffs Harbour media to the investigation."*<sup>11</sup>

A witness came forward to give evidence in relation to the activities of Mr and Mrs Zouch. Therefore, the exposure and the bringing forth of evidence for further investigation was achieved through a public inquiry.

### **DAMAGE TO REPUTATION AND PRIVATE HEARINGS**

Time heals all hurt done to one's reputation.<sup>12</sup> However, when the damage to reputation becomes the dismissal from one's employment as a consequence of corrupt allegations being made, and no

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<sup>9</sup> Report of the Evidence taken before the Committee on the ICAC at Sydney, 15 October 1993, p. 42.9.

<sup>10</sup> *Ibid*, p.40.

<sup>11</sup> Report on Investigation into the Conduct of Brian Zouch in November 1993.

<sup>12</sup> Peter Nagle, Sydney, November 1993.



prosecution ensues, then not only is your reputation hurt; but, also your capacity to earn income for your family is effected.

The NSW Bar Association has submitted that unfair or reasonable damage to reputation is a ground for an application for a private hearing; but, the words should be "*grave damage*" to reputation.<sup>13</sup>

Moreover, Mr Peter McClelland QC advocated that one should remove the presumption in favour of public hearings and that an alternative Parliamentary amendment is required to conduct a hearing in private whenever certain conditions were met.<sup>14</sup> The ICAC argued that this was unnecessary because it could end up obstructing the Commission in its investigative work.<sup>15</sup>

Section 31 (1) of the ICAC Act makes a clear presumption in favour of public hearings and therefore, public hearings should be ordered in accordance with the Act.

Nevertheless, there are strong arguments for and against private inquiries.

To protect people who come before the ICAC at public hearings a document titled *Procedure at Hearings* was adopted by the ICAC in March 1992.

An attempt to limit hurt to reputation is found in Item 14 which says that hearsay and other inadmissible material would generally only be received into evidence insofar as it appears to the person presiding that it furthers the investigation. The Commission will not permit public hearings to become vehicles for the relaying of gossip, rumour or speculation. Questions must not be asked of, or propositions put to a witness, without justification on the basis of the knowledge of, or instruction given to the person asking the questions. When questions are put to witnesses if they go to credit, then no other evidence will generally be permitted to be called on collateral issues.<sup>16</sup>

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<sup>13</sup> First Report of the ICAC Committee, November 1990, *op cit*, p. 21, 14.3.2.

<sup>14</sup> *Ibid*, p. 21, 14.3.3.

<sup>15</sup> *Ibid*, p. 21, 4.4.1.

<sup>16</sup> ICAC Procedure at Hearings, p.3, Item 14.

This provision goes part of the way to controlling the media in dealing with sensational "man bites dog" hearsay statements that should not be given more credence than they deserve.

For example, a solicitor, Mr Val Bellamy, was and is a criminal lawyer who acts in criminal trials for such men as Neddy Smith. There was TV file footage of Smith and Bellamy walking together some years prior to the ICAC inquiry. Over some days Bellamy was called before the ICAC in relation to Smith's evidence on the Milloo inquiry and he was shown on local TV walking in the street with Smith; thus, giving the impression that every day Smith and he were attending the ICAC inquiries together. In fact, Smith was in custody and the file footage was meant to create a sensational impact at the inquiry. The film did not note that it was old file footage.

On the other hand, the disadvantage of a private investigation being made public was reflected in the Randwick TAFE investigation which could have been held in private. However and because of circumstances, it was dealt with in public. No recommendations were made for prosecution or disciplinary action, nor any implementation of corruption prevention systems. Therefore, some bitterness was left with witnesses.

In giving evidence before an ICAC Parliamentary Committee about private hearings, Mr Temby said,

*"It had been put to me that we should have done Milloo in private. Now that would have suited some people. It would have been easy from our viewpoint. However, the effect upon the Police Service as rumour and speculation, much of it misinformation, were oared round at a great speed and with the fervour at which it would have been severe. So far at least now everyone knows that we are interested in some discreet areas in a limited number of individual officers. It is known what we are doing. I think that is worthwhile."*<sup>17</sup>

Moreover, Mr Temby claimed that a survey was taken when Milloo was in private session and there was a marked decline in the public's awareness of the functions and activities of the ICAC.<sup>18</sup>

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<sup>17</sup> *Op cit*, Public Hearing before Parliamentary ICAC Committee, 15 October 1993.

<sup>18</sup> *Ibid*, p. 26. The Milloo hearing dealt *inter alia* with police corruption, culture, attitude and practices of the NSW Police Force.

### SUPPRESSION ORDERS

Suppression Orders could be used in sensational and hearsay inquiries, particularly when a witness wishes to announce a sensational and/or hearsay matter without advising the ICAC staff or the ICAC has allowed it in, because of the perceived value in obtaining evidence about allegations of corruption.

A further disadvantage of this type of evidence is that, there could be an eventual trial of an accused person and the trial could be prejudiced. It is argued that a public inquiry will not cause any more pre-trial prejudice than an ordinary Preliminary Committal (Australia) or a Grand Jury (US) procedure will create.<sup>19</sup> I beg to differ because hearsay and sensational evidence can cause enormous damage not only to reputation; but, can also prejudice a fair trial in future criminal proceedings. In a committal proceeding hearsay and irrelevant evidence is inadmissible, but not an ICAC hearing. Therefore suppression could be issued to protect a future criminal trial.

However Mr Costigan QC, a Commissioner of a Federal Government inquiry was of the opinion that the effect of public hearings on subsequent trials had been overstated. He pointed to the Lindy Chamberlain case where, despite the extraordinary level of publicity, the case was able to proceed. He expressed faith in the jury system and its independence.<sup>20</sup> Yet, Lindy Chamberlain was convicted, but it was on the evidence of the media hysteria.

### ADMINISTRATION COURT PROTECTION

In Australia, the UK and the US, the safe-guarding of individual rights and the interest thereof, should

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<sup>19</sup> *Ibid.*

<sup>20</sup> Mr Costigan QC, ICAC Parliamentary Inquiry into Commission Procedures, November 1990, p. 13. Lindy Chamberlain was alleged to have murdered her baby at Ayres Rock in 1980. However, Lindy Chamberlain was found guilty, but later pardoned on new evidence and she was compensated for the imprisonment. A media frenzy and great prejudice was inflicted on Lindy Chamberlain before the trial.

be accessible to the supervision of administrative courts in the exercise of their prerogative power.<sup>21</sup>

The right of appeal is reinforced by the comments of Mr Peter McClelland, "*The inquiry process must be modified to ensure that allegations which could never amount to corrupt conduct are not ventilated.*"<sup>22</sup>

It is a point of fairness; but, is it fairness in procedure or so that a future criminal trial is not in jeopardy?

In Chaffey's case, Cole J, after examining the police connections to criminals, said that the public inquiry constituted procedural unfairness.<sup>23</sup> However on appeal, the Court of Appeal said that the Commission's decision to hold the hearing in public did not contravene the requirements of procedural fairness or deny the Plaintiff right of natural justice.<sup>24</sup> Moreover, the Court said it was a fallacy that a public inquiry was a danger of harm to reputation which requires the observance of procedural fairness to the conclusion that fairness requires the proceedings to be conducted in all respects to minimise damage to reputation.<sup>25</sup>

This year Mr Temby assured the NSW Parliamentary ICAC Committee that the Commission had in place, measures to minimise the effect of public hearing on people's reputations and they had been largely successful. He said there was no suggestion that the publicity attaching to people in the ICAC investigations had been any more or less harmful to reputation than litigation, Royal Commissions or other tribunal hearings or inquiries. It is generally only people who have adverse findings made against them who attract continuing bad publicity.<sup>26</sup>

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<sup>21</sup> *Op cit*, Moffett, p. 12.

<sup>22</sup> ICAC First Report, p. 44.

<sup>23</sup> Combating Corruption - Judicial Review and Decisions, p.33, Chaffey and Others -v- ICAC, Supreme Court of NSW decision 1992.

<sup>24</sup> *Ibid*, p. 33.

<sup>25</sup> *Ibid*.

<sup>26</sup> Mr Ian Temby QC before the Parliamentary Committee, 15 October 1993, *op cit*.

I do not believe that at this stage the effect of public inquiries on reputation and fairness in trials has been sufficiently investigated primarily because of the shortness of time since the ICAC came into being.

The procedures in paragraphs 10 and 14; ie, that the Commission is not bound by the Rules of Evidence and it can take any matter it considers appropriate into consideration, it must have as little formality and technicality as is possible and as little emphasis on the adverbial approach to ensure that inquiries are fair and less sensational is primarily left to the judgement of the Presiding Commissioner or his assisting Counsel, and in the sifting of credible evidence to be adduced by the ICAC staff.

### **OTHER ANTI-CORRUPTION ORGANISATIONS**

In Queensland (Australia) the Criminal Justice Commission (CJC), the equivalent of the ICAC, does not hold public inquiries on a regular basis; but, when it is in the public interest then a public inquiry is held. It has been submitted to me that the CJC, in adopting this practice, does not fully fulfil its obligation to expose public corruption. I cannot agree with that proposition because a more statistical evaluation needs to be done and this assertion needs more investigation before any conclusion of the success or otherwise of the CJC can be measured.

In Hong Kong, the ICAC has no public inquiry powers and carries on all its investigations privately. Moreover, it has been said that the ICAC in Hong Kong is a super police force and even if that is so, it still has been very successful in its anti-corruption prevention system and in convicting people involved in private and public corruption with the necessity of a public inquiry mechanism.

A then senior officer of an anti-corruption body once observed to me that the possible end of the ICAC in NSW could rest in its public inquiry powers.<sup>27</sup>

With the greatest respect I do not think that he is right; but, a caveat is submitted in the Moffett

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<sup>27</sup> Peter Nagle, discussion on the NSW ICAC with a then senior officer of the Hong Kong ICAC.

Discussion Paper,

*"Public views change, so support for investigative bodies can change to doubt, even opposition so rightly or wrongly, the McCarthy label can be placed on those who inquire, as same unjustly alleged against Mr Costigan QC and later Mr Fitzgerald QC, in each instance because the alleged unjust and over-exposure of reputations. In the end these attitudes can be promoted by political or other powerful forces and do much to negate the work of the institution. An unjust cloud still hangs over the Costigan innovative work."*<sup>28</sup>

### **FINDING OF FACTS AND OTHER PROBLEMS**

It may be an advantage to find favour of a person affected that there be no prosecution and /or disciplinary action to be taken; but also that there is no corrupt conduct whatsoever.

I would submit to this conference that public inquiries are only one of many tools in weeding out corruption within the society.

There is a further disadvantage in that the public inquiry system can take up to 40 % of the ICAC annual budget in legal and witnesses fees, administrative costs of hearings, and it may be necessary for a cost-benefit analysis to be done to ensure value for money.

The final disadvantage I submit, is the legal costs to the person who seems significantly affected by an inquiry. The problem of bankruptcy or severe financial strain will react on a person who may have to attend some portion only of the inquiry. However, the way inquiries need to "run" a person and/or his legal representative will have to be in attendance for most of the inquiry; unless, various sections of the inquiry can be split to accommodate the people so affected or the witness called.

Legal costs can be crippling and are a major concern to people who may be or are directly and

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<sup>28</sup> *Op cit*, Moffett Discussion Paper, August 1990, p. 9.

significantly affected by the inquiry. Particularly if one is found to be innocent of the allegation of corruption or a person is subsequently acquitted of the charge. Mr Brad Hazzard MP paid over US\$ 70,000 in legal costs for his appearance in the Greiner/Metherell inquiry.<sup>29</sup>

It has been said that, if the jury or the inquiry do not get the affected person then the Bankruptcy Court will.

### CONCLUSION

The advantages and disadvantages that I have attempted to discuss are not exhaustive and are as I perceive them to be.

It is not said that the public inquiry system is foolproof and perfect. There is room for reform in procedure, the sifting of evidence, fairness in procedure and in the handling of witnesses appearing before the Commission.

I do not think that the destruction of the NSW ICAC rests in its public inquiry powers, but its credibility as an essential body in exposing corruption may become limited through the bitterness of innocent people who have appeared before it.

Nevertheless, public inquiries are useful, not only in having a deterrent effect; but, in the way in which they can change the cultural mentality of the public service (bureaucracy) with regard to its administration and in the avoidance of the taking of bribes and/or in the misuse of power for personal gain by persons in power.

Irrespective of all the problems, the public inquiry system as a corruption preventative mechanism is effective and should be maintained.

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<sup>29</sup> Mr Brad Hazzard MP, Member for Wakehurst, NSW Legislative Assembly.

Finally, I want to publicly thank Mr Ian Temby for his five years of service in the ICAC because his term is ending in March 1994. There was difficulty in setting up the ICAC in NSW and in the organising of investigative work and the conducting of inquiries against corruption. The people of New South Wales now know there is an ICAC in Australia which aims to eradicate corrupt conduct and this in no small part goes to the efforts of Mr Temby.

Thank you.



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# ***PART TWO***

**United States Study Tour**  
**29 November - 2 December 1993**

## ***BACKGROUND***

**W**hen the Committee received approval to send a delegation to the Sixth International Anti-Corruption Conference consideration was also given to adding a brief study tour at the end of the conference. There were two objects in the study tour. Firstly, a visit to Washington would enable the delegation to receive briefings from relevant congressional committees on mechanisms for overseeing independent agencies, and ethics issues. Secondly, a visit to New York would enable the delegation to receive briefings and conduct discussions with two of the agencies at the forefront of innovative efforts to combat organised crime and corruption.

[The original approval for the delegation to attend the conference entailed business class air travel between Sydney and Los Angeles. By flying economy class the delegation was able to fully fund the brief US study tour within the original budget for the trip.]

## WASHINGTON

The delegation had two days of briefings in Washington, Monday 29 and Tuesday 30 November.

### *Embassy briefing*

The delegation's first appointment was at the Australian embassy. The delegation received a comprehensive briefing from Denise Fisher (counsellor) and Mary Frasche (Congressional Liaison Officer) in relation to recent political scandals, the President's political reform agenda and congressional reform. The recent political scandals that were discussed include the House bank, post office, Keating Five and Barney Frank scandals - all of which involved members of congress or senators. It was pointed out that the relatively high vote received by Ross Perot in the 1992 presidential election represented large scale public disillusionment with the political system. The record high number of freshmen members of congress elected at the last congressional election had also contributed to place political reform and congressional reform firmly on the agenda of the Clinton administration and the current congress.

There was some discussion of the national performance review, undertaken by Vice President Al Gore. This involved a six month review of government programs with a view to cutting costs and making the delivery of services more efficient. In September 1993 a report entitled *From Red Tape to Results: Creating a Government that Works Better and Costs Less*, and known as the Reinventing Government report, was published. The report discusses four broad types of reform: cutting red tape; putting customers first; empowering employees to get results; and cutting back to basics. The report makes recommendations for reform across a range of agencies and claims that the implementation of these recommendations would achieve savings of over \$US100 billion between 1995 and 1999. The Committee secretariat has provided a copy of the report to the NSW Parliamentary Library.

Four areas of congressional reform were discussed. These were: the work of the Joint Committee on Congressional reform; campaign finance (in relation to which a bill is being considered which would provide partial public funding and a limit on the amount

which can be spent during election campaigns); disclosure rules for lobbyists; and action on allegations of unethical behaviour against members of congress and senators.

### *Senate Intelligence Committee*

The delegation then travelled to the Hart Senate office building where it met with Mr Britt Snider, General Counsel to the Senate Select Committee on Intelligence. The delegation was keen to receive a briefing on the work of the senate and house intelligence committees because these committees had provided the model for the establishment of, initially, the Parliamentary Joint Committee on the National Crime Authority and then the Parliamentary Joint Committee on the ICAC. In view of the role the Committee on the ICAC will play in early 1994 in vetting the proposed appointment of the next commissioner of the ICAC the delegation was particularly interested to find out about the processes used by the senate intelligence committee in the confirmation of senior appointments to the intelligence agencies.

A small number of senior appointments in the intelligence agencies are subject to confirmation by the Senate. For instance, in relation to the CIA the position of Director, Deputy Director and Inspector General are subject to confirmation by the Senate. When the Senate receives the President's nomination it is referred to the Intelligence Committee for investigation and report back before a vote is taken.

Mr Snider said that the rules or procedures used in the confirmation process differ from committee to committee. The Intelligence Committee adopts the following steps:

- (1) a questionnaire is sent to the nominee seeking details on the nominee's background, views on particular issues and financial situation;
- (2) the FBI provides the Committee with access to (but not a copy of) a report on the nominee's integrity;
- (3) because the nomination is public the Committee will often receive submissions from members of the public in relation to the nominee's suitability for the position - these are analysed by the Committee staff and may be addressed in Committee hearings;
- (4) any questioning of the nominee about particular intelligence operations in which they have been involved and which give grounds for concern takes place in private hearings;
- (5) public hearings are conducted at which the nominee is questioned.

In relation to the public hearings, Mr Snider said that the Committee focussed its questioning on the nominee's understanding of his/her statutory accountability obligations and their commitment to proper oversight and accountability. In this way the Committee extracts pledges from the nominee to be properly accountable. These pledges can then be referred to in future when concerns arise about the persons commitment or approach to being accountable to the Committee.

At the end of this process the Committee votes on the nomination, rarely along party lines. The Committee then reports its recommendation and the reasons for that recommendation to the Senate in a public report. Individual Committee members may record their own views at the end of the report. Attached by way of example is the first few pages of the report on the nomination of Robert Gates to be Director of Central Intelligence, dated 24 October 1991, which summarises the process by which the Committee considered the nomination.

The delegation was provided with a copy of the following report, which is held by the Committee Secretariat:

- ◇ *Senate Intelligence Committee report on the Nomination of Robert M Gates to be Director of Central Intelligence*

### ***House Ethics Committee***

The delegation then travelled to the Capitol building where it met with Bernard Raimo, Chief Counsel, and Edward Hosken, Counsel, to the House of Representatives Committee on Standards of Official Conduct. The delegation's interest in the congressional ethics committees arises from a reference the Committee on the ICAC has before it to review the pecuniary interest disclosure provisions applying to members of parliament and to examine the need for a code of conduct for MPs. During the course of hearings into these issues in 1992 a number of witnesses before the committee made reference to the operation of the congressional ethics committees. Some supported the concept of ethics committees while other suggested the experience of the congressional ethics committees indicated that there were difficulties with the concept. The delegation was therefore anxious to find out first hand as much as it could about the work of the ethics committees.

The house ethics committee was established in 1967. It has equal numbers of Republicans and Democrats (14 in total) who are chosen by the party leadership. Up until now members have been reluctant to serve on the committee due to being uncomfortable sitting in judgment on their peers. The committee's major functions include the investigation of allegations of wrongdoing against members and staff, the

provision of ethics advice to members and staff, and the provision of ethical education to members and staff.

There are three sources of the committee's work: a resolution of the house; the committee's own initiative; and formal complaints. The committee has published a booklet which sets out the rules by which it operates, including a detailed process for the consideration of complaints. This process includes the following steps:

- (1) a preliminary assessment of a complaint by the committee staff;
- (2) a formal resolution of the committee whether or not the complaint will be investigated;
- (3) a sub-committee is established (of 6 or 8 members) to investigate the complaint including the conduct of hearings (usually in private);
- (4) if the first sub-committee finds the complaint to be sustained, a second sub-committee involving all remaining members of the committee is established to conduct a full inquiry into the complaint, again involving hearings;
- (5) the full committee then reconvenes and recommends appropriate action to the house; and
- (6) the house considers the committee's report and determines any action to be taken.

The sanctions available to the house include reprimand, censure and expulsion.

In answer to questions from the delegation Mr Raimo and Mr Hosken made a number of observations about the operations of the committee. They indicated that media coverage of complaints about the conduct of members was leading to pressure for any possible wrongdoing to be investigated. The referral of matters to the ethics committee used to mean that the political heat was removed from a complaint as it was dispassionately investigated but recent investigations have continued to attract considerable attention. The committee was conscious of its role in dealing with false allegations and the two part investigative process was designed to avoid the same members acting as both judge and jury. Mr Raimo said that there was a need to ensure that ethics committee investigations were conducted in a less adversarial manner.

The committee's educative role included the provision of advice to members and staff on their financial disclosure requirements. Over 2,000 requests for such advice would be received during each congress. Seminars are held on various ethics issues, such as financial disclosure requirements, gifts etc. The ethics committee is involved in the

orientation program for new members of congress which is run by the Committee on House Administration. The orientation process takes one week and the School of Government at Harvard University also takes a role in the process. The ethics committee is also involved in orientation sessions for spouses of members and key staff.

The delegation was provided with copies of the following documents which are held by the Committee Secretariat:

- ◇ *Rules of the Committee on Standards of Official Conduct*
- ◇ *Ethics Manual for Members, Officers and Employees of the US House of Representatives*
- ◇ *Historical Summary of Conduct Cases in the House of Representatives*
- ◇ *Rules of the House of Representatives*
- ◇ *Instructions for completing the Financial Disclosure Statement required by the Ethics in Government Act of 1978*

### ***Administrative Conference***

The delegation then returned to the Australian Embassy for a brief meeting with Richard Lubbers, Research Director with the Administrative Conference. The Administrative Conference is an independent federal agency which has the function of advising the government and congress on issues of administrative law and administrative procedure. Mr Lubbers said the Administrative Conference operates as a permanent think tank on government administration. The conference works by engaging outside consultants to prepare reports which are then reviewed by staff and members of the conference before publication. Since its establishment in 1964 the conference has published a large number of reports. The delegation received a list of the reports of the conference and some examples of these reports, which are held by the Committee Secretariat. One report that interested the delegation dealt with the Federal Government in the Sunshine Act, which requires that government boards conduct their meetings in public or at least publish the minutes of their meetings.

### ***House Intelligence Committee***

The delegation's first appointment on Tuesday 30 November was with Michael Sheehy, Chief Counsel to the House Permanent Select Committee on Intelligence in the Capitol



building. Unlike the meeting with Mr Snider from the senate intelligence committee which focussed on the confirmation process, the meeting with Mr Sheehy concentrated on the oversight functions of the house intelligence committee.

Mr Sheehy emphasised that the ultimate sanction which made the committee an effective accountability mechanism was its program specific authorisation of agency budgets. 70 hours of hearings are held by the committee each year in the budget authorisation process. This provided the committee with considerable leverage in relation to the intelligence agencies and ensured that they provided full and frank information to the committee. Nothing is sacred from the committee, including covert operations. The committee cannot stop a covert operation from being commenced, however, there is a requirement for the committee to be advised within 48 hours of an operation's commencement and the committee can put a stop to a covert operation through the next budget authorisation process. To date there have been no problems with members or staff of the committee releasing confidential information. The sanction for unauthorised disclosure of information by staff is dismissal, and for members is investigation by the ethics committee with a view to a recommendation for appropriate action being made to the house.

In relation to the committee's general oversight function Mr Sheehy said the committee had access to the written records and staff of the intelligence agencies. the committee made a detailed review of the work of the Inspectors-General of the agencies, particularly their reports.

Mr Sheehy said there is a waiting list for members to join the committee. The committee attracted a certain prestige during the Iran - Contra affair, and in any case there is an attraction for members to have access to otherwise classified intelligence information. In previous years the committee had been dominated by senior members who often had many other commitments. In recent years younger members with more time have joined the committee leading to greater activity. Mr Sheehy said there was less risk of members being co-opted by the intelligence agencies than exists with other committees because of the fact that the intelligence agencies are not in a position to bring material benefits in terms of capitol works or funding programs to their constituents. There is also a rule that members cannot serve more than six years at a time on the committee.

### *Senate Ethics Committee*

The delegation's last meeting in Washington was with Elizabeth Ryan, Counsel to the Senate Select Committee on Ethics in the Senate Hart building. The senate ethics committee has a similar role to that of the house ethics committee. The committee is made up of six members, with an equal number of Republicans and Democrats. The

committee staff includes five counsel.

Senate rules 34 to 43 constitute the senate code of official conduct. The code of conduct covers such issues as: public financial disclosure; gifts; outside earned income; conflict of interest; prohibition of unofficial office accounts; foreign travel; franking machine and radio and television studios; political fund activity; employment practices; and constituent service. The committee investigates alleged breaches of the code and provides advice to senators and members in relation to the code.

Ms Ryan described the investigative process. She said that after a preliminary investigation the committee might engage counsel to present its case at a committee hearing. A senator whose conduct was under investigation could also be represented by counsel at the hearing. She said that there was no prohibition upon evidence taken during an inquiry being used at a subsequent trial. If the committee came to the view that there had been a breach of the code the committee could reprimand the senator or make a recommendation for a more severe sanction to the senate. The most common complaints about alleged breaches concern the use of franked mail and the use of senate facilities for campaign work.

Ms Ryan said that most of the committee's energy went into training and the provision of advice. This included advice on the financial disclosure requirements and the provisions of the code relating to gifts. The committee had issued a number of advisory publications, such as a sample agreement on the establishment of blind trusts. In view of the experience of the committee in the provision of advice the committee is in the process of preparing a manual akin to the congress ethics manual. The senate ethics committee also assists in orientation processes organised by the Sergeant at Arms, and conducts seminars for the staff of senators.

The delegation was provided with the following documents, copies of which are held by the Committee Secretariat:

- ◇ *An Overview of the Senate Code of Conduct and Related laws*
- ◇ *The US Senate Code of Official Conduct*
- ◇ *Rules and Procedures of the Select Committee on Ethics*
- ◇ *The Senate Select Committee on Ethics: A Brief History of Its Evolution and Jurisdiction*
- ◇ *Expulsion and Censure Actions Taken by the Full Senate Against Members*

- ◇ *United States Senate Public Financial Disclosure Report*
- ◇ *Report of the Select Committee on Ethics on Investigation of Senator Alan Cranson*
- ◇ *Sample Blind Trust Agreement*
- ◇ *Various public documents on investigation into Senator Bob Packwood*

## *NEW YORK*

*F*ollowing the final meeting in Washington the delegation travelled by train to New York. Two days of meetings followed, which were arranged by the Australian Consulate General.

### *Mollen Commission*

The first meeting on Wednesday 1 December was with the members and senior staff of the Mollen Commission. The Mollen Commission was appointed by the Mayor of New York City in July 1992 to determine the extent of corruption within the New York City Police (NYCP), analyse the ability of the NYCP to deal with corruption within its ranks and to make recommendations to address police corruption in the future. The delegation met with a number of the members of the commission, including the chairman Judge Milton Mollen, and senior staff including the chief counsel Joseph Armao. Like Judge Mollen, each of the members of the commission are former senior judges and have provided their services to the commission on a voluntary basis.

Judge Mollen outlined the background to the establishment of the commission. The incident which sparked the inquiry was the arrest of a NYCP officer by police in a neighbouring county on charges relating to drug trafficking and the revelation that a wider group of NYCP was involved in drug trafficking. More fundamentally, Judge Mollen outlined the development of police corruption in New York. The Knapp commission in the early 1970's revealed systematic police corruption linked to gambling, prostitution and vice generally. Since the explosion of the crack problem and the rise of the drug culture in the 1980's police corruption had become related to the drug trade.

During its first year the commission conducted a proactive investigation, and examined a huge volume of documentary evidence. Although subpoenas were served on the NYCP it was later revealed that a number of key documents were withheld. This became evident when a whistleblower within the NYCP provided copies of some key documents to the commission. The commission held two weeks of public hearings in mid 1993 which attracted considerable media coverage and led to a change in public attitudes as the scope of the corruption problem within the NYCP became known. The NYCP officer arrested

in 1992 co-operated with the commission and gave evidence at those hearings. Following the hearings the commission held a number of round table discussions with relevant experts to discuss reform strategies. The commission produced an interim report to the new Mayor on 31 December 1993. A final report is to be presented by the end of March 1994.

Judge Mollen summarised the major findings that the commission would be making. Firstly, the commission had found that there was significant corruption within the NYCP but that, unlike the 1970's it was systematic throughout the department. Rather it could best be characterised as "pockets of corruption" which occurred in areas of the city where there was a high level of drug activity. Secondly, the commission had found that the NYCP were almost totally ineffective in dealing with corruption within its own ranks.

Thirdly, the commission would make recommendations to deal with the corruption problem in the future. Two sets of recommendations would be made. On the one hand, certain internal procedures of the NYCP would need to be overhauled. These included selection procedures for new recruits, education and training, better supervision including a higher ratio of sergeants to officers, and incentives for recruitment to the internal affairs branch. On the other hand, there was agreement between all the experts consulted by the commission that an external agency needed to be established. Three models for an external agency were considered: an inspector general, a special prosecutor or a permanent commission. It appears that the commission will recommend the establishment of a permanent commission based on its own model.

Following this thorough briefing on the work of the commission from Judge Mollen there was a very productive exchange of views and information. Members and staff of the Mollen commission were interested in the views of Mr Hatton and Mr Mutch on reforms to the NSW police over the last ten years. They were most interested in the role and functions of the NSW Police Board, police education and training in Australia (including the university based model in Queensland) and efforts to change the police culture.

Two key issues came out during the discussion. Firstly, the staff of the commission emphasised the link that they had established between police brutality and police corruption - those officers who ignored civil liberties and used brutality in their policing were often the same officers who engaged in corrupt activities related to drugs. Secondly, a number of people mentioned that at times when there was political pressure to put a large number of extra police on the street within a short space of time the integrity testing of applicants suffered and within a few years a large group of corrupt officers would emerge from within the wave of new recruits.

[Some discussion also touched upon the power of the police union , the PBA, as an inhibitor on reform to the NYCP. Interestingly, on the same day as the delegation's visit

*The Village Voice* newspaper published a major expose on corruption within the PBA itself. The delegation brought back copies of this expose, which are held by the Committee Secretariat.]

This was a most productive meeting. Not only did the delegation receive a detailed and interesting briefing but it was also clear that the members and staff of the Mollen commission picked up some useful ideas from the NSW experience.

### ***Inspector General of the New York City School Construction Authority***

The delegation then travelled into The Bronx where it spent the afternoon at the Office of the Inspector General of the New York City School Construction Authority. The delegation held discussions with Thomas Thacher (known as Toby Thacher), Inspector General, and Kevin Ford, First Assistant Inspector General and Counsel, toured the premises and met a range of senior staff.

The delegation visited this rather esoteric sounding organisation at the suggestion the Committee Chairman, Malcolm Kerr MP. In March 1992 Mr Kerr attended the Fifth International Anti-Corruption Conference in Amsterdam. Thomas Thacher spoke at that conference and Mr Kerr was most impressed by what he had to say. In fact the Committee on the ICAC published Mr Thacher's paper to that conference in its report to the NSW Parliament. Mr Kerr suggested that the delegation visit Mr Thacher to find out as much as possible about the role of the Inspector General, the pre-qualification process adopted, and the role of investigative auditors.

The New York City School Construction Authority (SCA) was established in 1988 to rebuild New York's rundown education facilities, a huge \$US 4.3 billion public works program. New York's construction industry has been associated with the *cosa nostra* and other organised crime groups for many years and public works contracting has been an area of endemic corruption. The Office of the Inspector General (IG) of the SCA was established as an attempt to protect this new agency and the huge public works program which it was undertaking from organised crime and corruption.

In 1985 the New York State organised Crime Task Force (OCTF) commenced an investigation of corruption and racketeering in the New York construction industry with a view to recommending proactive approaches to the problem. Toby Thacher was the executive director of this project. The OCTF's report, published in December 1989, concluded that investigations and prosecutions were an ineffective response to the problem. The report provided an historical account and analysis of the problem and called for institutional responses which would change the way in which the construction industry operated so as to reduce incentives and opportunities for corruption. When the

SCA was set up Toby Thacher was given an opportunity to put his views into action when he was asked to take on the position of IG.

A copy of Toby Thacher's paper to the Fifth International Anti-Corruption Conference is reproduced later in this report as it continues to provide the best summary of the work of the IG.

One of the most important strategies used by the IG is the pre-qualification process. Before a company can tender for a contract with the SCA it has to pass a rigorous pre-qualification procedure. This involves the company completing a detailed questionnaire, a copy of which is reproduced later in this report. At the end of the questionnaire is a certification which must be signed by applicants which acknowledges that any false answers will disqualify the company from contracting with the SCA, will provide sufficient basis for a contract to be terminated and will lay the company open to criminal charges. The answers to the questionnaire are then reviewed against the IG's intelligence database. This is based upon publicly available information such as financial reports, court transcripts, prosecutors' press releases about indictments and newspaper clippings. It also includes the IG's own intelligence from telephone taps, informants etc. Any deliberately misleading statement results in automatic disqualification. (However, there is a system by which companies are advised of the IG's intention to make such a decision and are provided with an opportunity to respond to the concerns. Companies are also ultimately able to challenge a decision of the IG in the courts.) Any misleading statement discovered after a contract is entered into results in termination of the contract and the taking of civil action against the company, in addition to criminal charges.

The other innovative approach of the IG has been the use of investigative auditing firms. This is used when a company acknowledges previous wrongdoing but is still deemed to be worthy of consideration by the SCA. The IG seeks an undertaking from such a company to engage an investigative auditing firm to advise on corruption prevention programs within the company which must be implemented before the company will be able to tender for work with the SCA.

The IG has debarred over 100 companies from tendering for work with the SCA. The IG has taken civil action against a number of companies and criminal charges have been laid against a number of organised crime figures as a result of the IG's work. More importantly, there has been a significant and growing effect upon the way the construction industry operates in New York city, at least in relation to public works contracts.

The delegation was most impressed with a number of aspects of the work of the IG. These included the pre-qualification and investigative auditing firm approaches, and also the reliance upon publicly available intelligence by the IG.





## FIFTH INTERNATIONAL ANTI-CORRUPTION CONFERENCE AMSTERDAM

### Combatting Corruption and Racketeering: A Successful New Strategy for Reforming Public Contracting in New York City's Construction Industry

Remarks by Thomas D. Thacher II\*  
to the  
Fifth International Anti-Corruption Conference  
Amsterdam, March 11, 1992

#### INTRODUCTION

The theme of the presentation I make to you this morning is in one respect starkly different, and perhaps at variance, with the traditional view of corruption and organized crime experts on control strategies. Most criminologists have focussed on the control of corruption and organized crime racketeering as a law enforcement challenge. They have called for the design of strategies to be executed by police, prosecutors and the courts. I, on the other hand, believe that so long as government places sole responsibility in the law enforcement community to protect society from the cancer of organized crime, government will surely fail. The courts, the police and prosecutors, acting alone, simply do not have the power to block the myriad opportunities for organized crime's successful exploitation of legitimate and illegitimate industries. Nor do they have the means to reduce the incentives for individuals and businesses to reach out for the illegitimate services which organized crime syndicates can provide.

I say this not as a detractor of police and, prosecutors, or of the performance of

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\*Thomas D. Thacher II is Vice President and Inspector General of the New York City School Construction Authority. He formerly served as Executive Project Director of the Construction Industry Project of the New York State Organized Crime Task Force directing investigations and prosecutions of corruption and racketeering in the New York City construction industry and supervising the preparation of a report by the Organized Crime Task Force, entitled Corruption and Racketeering in the New York City Construction Industry (New York University Press, N.Y. and London, 1990.)

the judiciary in meting out sufficiently severe prison sentences. To the contrary, I have been fortunate to have worked in and with the finest federal, state and local prosecutorial and investigative offices operating in New York City. In the past ten years these offices have produced some extraordinary, indeed historic, prosecutions. Life time incarceration of the most important bosses of the city's Cosa Nostra crime families has been achieved; criminal monopolies have been broken up; powerful labor racketeers, business executives and political leaders have been sent to jail. The resulting media coverage of these successful prosecutions has often given the impression that the organized crime groups are on the run. But the impression is illusory.

As important as these prosecutions have been, they have by no means succeeded in significantly controlling the domination and/or influence of organized crime in many of New York City's legitimate and illegitimate industries. New crime bosses have emerged; different organized crime monopolies are being formed; another set of mobsters is taking the reins in unions where labor racketeers have been purged through criminal convictions; companies convicted of frauds and other economic crimes have reappeared like chameleons under new names with different corporate composition.

It is thus apparent that more need be done -- that the law enforcement initiatives of the past have not, by themselves, been enough. I submit that this a principally because in certain industries *the opportunities* to engage in racketeering are so many and *the incentives* to reach out for the services of racketeers are so great that criminal sanctions alone cannot possibly constitute a sufficient deterrence. A truly comprehensive corruption and racketeering control strategy must therefore look beyond prosecutions and incarcerations to a plan for changing those

structural and economic industry characteristics that generate motivation and opportunity to act corruptly. While criminal investigations and prosecutions will always play a critical role in identifying the particular industry traits that generate corruption, law enforcement can only play a limited role in forcing reform of these characteristics.

Because such reforms often require altering the most fundamental ways in which an industry conducts its business, meaningful change can be exceedingly difficult to achieve. In many instances, it will require modification of the practices and procedures long followed by the major institutions which comprise the particular industry. While implementation of such institutional reform can be imposed through legislation, regulation or judicial decree, it stands far better chance of success if voluntarily adopted by the institutions affected.

This morning I would like to discuss one approach which has recently been adopted in New York City to bring about such institutional reform in a large niche of our construction industry. The vehicle for that reform has been creation within a major construction agency of a new kind of office with powers, resources and roles never before consolidated in or made available to a stand alone crime-control office. This office is known as the Office of Inspector General, and it has been given the mandate to protect a 4.3 billion dollar (or 7.3 billion guilders) New York City construction program from victimization by organized crime groups, criminal monopolies and cartels, fraud, corruption, bribery, extortion, racketeering and the many other crimes so endemic to the City's construction industry.

By describing why this office was created, how it is structured, the powers it possesses or has access to, what roles it plays and some of its successes, I hope that I might provide you with a perspective on how control of corruption and racketeering can be

accomplished through means and institutional reform not exclusively within the realm of law enforcement.

### **Why the Office Was Created**

In April 1988, a report was released by the New York State Organized Crime Task Force that documented in frightening detail an incontrovertible fact. New York City's largest industry - the construction industry - was then, as it had been for the past century, dominated by corruption and racketeering. The report provided a fascinating analysis of why this particular industry has been so susceptible to racketeering and corruption and it described how organized crime syndicates had so successfully exploited this susceptibility. The picture painted was a depressing one -- an industry victimized by bid rigging, price fixing, illegal cartellization among contractors and suppliers, labor racketeering, bribery, extortion and frauds.

One of the sectors of the construction industry where corruption, racketeering, fraud, waste and abuse had wreaked particularly tragic consequences had been in the City's school construction program. New York's school system is enormous and is dependent on an equally enormous infrastructure. It serves one million students, employs a staff of over 100,000 and is comprised of over 1,000 facilities or buildings. Its annual operating budget is close to 7 billion dollars, larger than that of many countries in the world. In the past several decades, however, billions of dollars have been wasted on a school construction program which has left the educational infrastructure in a deplorable state -- bathrooms, closets and gymnasiums converted into makeshift, overcrowded classrooms; deteriorating roofs, windows and walls leaking and collapsing; dangerous and inadequate heating and electrical systems (many schools still being heated with coal fired furnaces); and a severe shortage of almost every type of school

facility.

In response to this crisis condition, the New York State Legislature created a new, independent School Construction Authority (SCA) and charged it with reconstructing the entire educational infrastructure. The Authority was given an initial five year budget of 4.3 billion dollars (or 7.3 billion guilders) and sweeping powers to expedite the design, site acquisition and construction processes.

While the SCA appeared to many as an extraordinarily bold step toward the reconstruction of our deteriorated school facilities, to others it represented an agency extremely vulnerable to exploitation by all sorts of criminals -- Cosa Nostra mobsters, labor racketeers, cartels of contractors and suppliers, corrupt inspectors, etc.

The Trustees of the new Authority had no illusions about this vulnerability, and in the Spring of 1989 invited me to a discussion of how I might design a mechanism to protect the Authority from the endemic criminality which so infects the construction industry. At that time I was directing a strike force of close to 100 prosecutors, investigators, accountants, analysts and support personnel focussed exclusively on prosecuting corruption and racketeering in the City's construction industry. It was exciting work and we were making some very significant cases. I was thus not enthusiastic about the prospect of leaving the world of law enforcement with its powerful investigative and prosecutorial tools, to enter into a construction bureaucracy destined to grow to close to 1,000 people.

But the trustees spelled out a challenge that was impossible to reject. They pointed out, "You have been part of an investigative initiative focussed on construction industry racketeering which has been more comprehensive, intensive and sustained than any before it.

That initiative has developed an extensive intelligence base spelling out who the criminals are, how they are organized, how they operate and whom they victimized. But," they pointed out, "you have nonetheless concluded in the Report issued by the Organized Crime Task Force that the industry's systemic corruption and racketeering can never be controlled by law enforcement alone. You have called for institutional reform of those structural characteristics of the industry which generate motivations, ability and opportunity to act corruptly. Here then is our challenge -- we are willing to put our money where your mouth has been. Design a strategy and mechanism to protect this Authority and to support institutional reform. If you conclude that it can't be done, then much of your writings can only be judged as academic theorizing and glib thoughts that are never likely to be implemented."

Once the challenge was framed in these words, it was impossible to reject. And so commenced endless discussions and debate on how to design a non-law enforcement office which could realistically hope to keep a \$4.3 billion construction budget from getting into the hands of the crooks and racketeers who are so pervasive in this industry. The office we designed is known as the Office of the Inspector General (IG) of the New York City School Construction Authority (SCA).

In designing this new office we immediately recognized certain principles which would have to be reflected in whatever structure we put together. Some of these included the following:

- 1) While not statutorily (nor could it constitutionally be) a law enforcement agency, the IG could not succeed without the strong support of law enforcement. Only law enforcement has the investigative tools to really determine who is doing what to whom and how (e.g., wiretaps, grand juries, informants generated through promises of immunity or lenient prosecutorial exposure, search warrants, and sting operations). Anti-crime

commissions and regulatory agencies which have lacked these powerful tools have generally failed in effective crime control, as much from a lack of current, detailed information as from a lack of sufficient punitive powers to generate true deterrence. Thus, a means for integrating law enforcement agencies into the IG operations would have to be found. In this way, law enforcement could operate as the engine which would drive reform.

- 2) The IG must have a state-of-the-art intelligence operation. In the business of crime control, information is a sin qua non. Intelligence must not only be aggressively collected and constantly expanded and updated, it must also be organized so as to be immediately retrievable and simultaneously useable by multiple disciplines -- investigators, accountants, analysts, prosecutors, civil attorneys, etc. Above all, the intelligence must be institutionalized and not, as is so often the case, in the heads or files of "experts" of "specialists" in the office. Thus, the IG would have to be dependent on an advanced computer operation managed by a highly trained Management Information Services Unit.
- 3) One of the IG's principal goals would have to be deterrence of corrupt activity. Its operations would have to generate a perception and a reality that wrongdoing would be detected and would result in significant punishment -- prosecutions, civil law suits and/or administrative sanctions (ranging from the withholding of construction progress payments to debarment from future work).
- 4) Another equally important goal would have to be to block opportunities and reduce incentives to act corruptly. Thus, its structure must include experts in loss prevention analysis, public administration theory and management methodology. And it must be empowered to assure that institutional reform measures be adopted by the SCA.
- 5) The IG could not succeed unless the SCA itself were prepared to accept in some instances a short term diminution in speed, efficiency and cost savings in order to assure that operations are conducted lawfully and ethically. One of the factors which has always driven corruption and racketeering in this industry is that "time is money". By cutting corners, bending rules or paying bribes to avoid compliance with time consuming requirements, money could be saved, profits increased and projects delivered more quickly. Management at the SCA would have to be forced to resist the temptation "to get the job done at whatever cost or means."
- 6) Finally, the IG as an office would have to be so positioned within the SCA that it could play a major policy role in shaping the SCA

organizational structure, as well as its daily construction operations. Thus the IG would have to have a defined *internal* role within the SCA. On the other hand, the IG must simultaneously be capable of maintaining some degree of autonomy. Some of the IG's actions or recommendations might not be well received by the SCA; the IG would therefore have to be protected from inappropriate retaliation or co-opting by the SCA.

With these principles in mind, we turned to (1) defining a mission statement for the IG; (2) designing a methodology for accomplishment of that mission; and (3) structuring an office to implement that methodology. The mission statement we settled on is the following:

### Mission

The mission of the IG is to protect the SCA from victimization by racketeering, fraudulent schemes, wasteful practices and all manner of crimes perpetrated by those doing business with, as well as those employed by, the SCA -- e.g., billing for services or supplies not delivered; bribery and extortion in the inspectional services; bid rigging, price fixing, illegal cartelization among contractors or suppliers; labor racketeering by union officials and corporate officers; no-show employee payrolls; sham minority group extortions. By reducing corruption, fraud and racketeering, and by supporting civil suits for the recovery of monies that have been lost, the IG will save the SCA money. It should further serve the objective of attracting greater private sector participation in the SCA's construction programs.

We designed the methodology to accomplish this mission as follows:

### Methodology

The IG's efforts will follow a two-pronged approach: *deterrence* and *opportunity blocking*. Deterrence is to be accomplished by creating both a perception and reality in the construction community of a substantial likelihood that crimes, frauds, and wrongdoing perpetrated against the SCA will be both detected and punished. The mechanisms of detection and punishment must be creative and multi-faceted. Thus, investigations will employ sophisticated auditing, surveillances, undercover operations and stings as well as traditional law enforcement techniques. The IG will additionally develop a network of individuals (both in the construction industry and within the SCA itself) who will provide



information to the IG about criminality impacting on the SCA. Investigations must not be merely reactive to complaints; rather they must pro-actively scrutinize areas of operations previously identified as prone to corruption or criminal exploitation. In order to be "pro-active," investigative initiatives must be informed by a comprehensive intelligence base and guided by sophisticated analysis of corruption and crime problems affecting the SCA. Likewise, deterrence must be based upon a wide range of sanctions including use of such civil remedies as forfeiture, treble damages, restitution and injunctive relief as well as criminal fines and incarceration. Sanctions must also include significant punitive administrative actions to be taken by the SCA against those proven to have victimized it (e.g., debarment from future contracts).

Experience has shown that deterrence by itself will not be sufficient to control the kind of systemic criminality that threatens the SCA's mission. Therefore, the IG will work with the operating units of the SCA to design systems, strategies, practices and procedures which reduce opportunities and incentives to engage in criminal and fraudulent schemes. However, the IG will approach its institution building task sensitive to the impact that recommended organizational or systems reform might have on the SCA's ability to build schools efficiently and expeditiously. It will avoid the pitfalls of some previous anti-corruption efforts which have imposed systems, procedures and multiple layers of oversight that have inadvertently contributed to organizational paralysis and dysfunctional conflict, thereby ironically increasing incentives for corrupt payments to expedite the process.

In order to implement this methodology, we designed a structure of multiple units, each with defined responsibilities, but highly dependent on each other to accomplish their respective tasks. The structure we designed is as follows:

#### Structure

The IG has three component parts: an operations division, a counsel's office and an administrative support team. (See chart attached hereto.)

**Operations.** Operations is comprised of an *Investigations Bureau* and a *Policy and Analysis Bureau*. These two units combine the tools and expertise of five discrete disciplines -- legal, investigative, analytic, accounting and engineering -- in order to accomplish the IG's mission of deterrence and opportunity blocking.

The principal subdivisions of the *Policy and Analysis Bureau* are the Intelligence Unit and the Research and Analysis Unit.

Intelligence: The IG cannot succeed without a steady flow of information about the actors and organizations with whom the SCA is in contact. Comprehensive information about vendors, contractors, and types of fraud and criminality affecting the SCA must be collected in order to plan investigative strategies and to design the opportunity blocking systems which support the IG's primary mission. Therefore, the Intelligence Unit will have three responsibilities: 1) to obtain information from a wide array of sources both within and without the IG's office; 2) to oversee an aggressive field associate program; and 3) to manage the storage and retrieval of intelligence information.

Research and Analysis: This unit will utilize the information generated by the Intelligence Unit and by the Field Investigations and Criminal Investigations and Prosecutions Units to prepare two types of analytic reports: 1) strategic assessments of patterns of criminal activity that impinge upon the operations of SCA; and 2) systems analyses that identify practices and procedures within SCA operations that create incentives and opportunities for corruption. The strategic assessments will be used by field operations in planning and implementing investigations; the systems analyses will be used to design more effective regulations, practices, and procedures for SCA. Research and Analysis will further be responsible for drafting recommendations and IG position papers for submission to the President and the Board of Trustees.

The *Investigations Bureau* is comprised of the Field Investigations Unit and the Criminal Investigations and Prosecution Unit.

Field Investigations: This unit will be staffed by attorneys, investigators, accountants and engineering/design audit experts, assisted by tactical analysts from the Research and Analysis Unit. The unit will investigate complaints that come into the SCA, as well as initiate its own audits and investigations based upon reports from the Intelligence Unit and on strategic assessments from the Research and Analysis Unit. It will be responsible for conducting investigations of entire projects, specific contracts, and categories of construction activities believed to be corruption-prone. Information generated by its investigations will be transmitted to the Intelligence and Research and Analysis Units. Research and Analysis will in turn prepare strategic assessments identifying patterns of criminality in particular trades or operations affecting the SCA. These assessments will be used to direct future investigations to be undertaken by the Field Investigations Unit. Where criminal prosecutions might result from an investigation, the Field Investigations Unit will work with and support the Criminal Investigations and Prosecution Unit.

Criminal Investigations and Prosecutions: This unit will be comprised of personnel detailed from three law enforcement agencies -- the New York State Organized Crime Task Force, the New York County District Attorney's Office, and the New York State Police. This unit brings to the IG law enforcement tools traditionally unavailable to administrative agencies and IG offices. This law enforcement presence will bolster deterrence and generate critical information for the IG.

The Operations Division will be supported by (and will in turn support) the Counsel's

Office. This office will function as follows:

**Counsel.** The IG's Office operates in a comprehensive and complex web of specialized civil and criminal laws. Therefore it requires full-time counsel to advise it on the multitude of civil, criminal and regulatory legal issues the IG confronts on a daily basis.

Counsel will also play the critical role of chief civil enforcement specialist and strategist. S/he will review all investigative initiatives to determine whether civil or administrative remedies would be appropriate -- e.g., civil OCCA and RICO, forfeiture, anti-trust, and injunctive actions. Where appropriate, counsel will co-ordinate liaison with the SCA general counsel as well as with various federal, state, and local agencies that are responsible for bringing such specialized actions.

Counsel will review all recommendations and position papers prepared by Research and Analysis. Where recommendations involve proposals to modify existing procedures or contract provisions, counsel will work with Research and Analysis in the drafting of such recommendations.

Finally, supporting the whole IG is an Administrative Support Service team, which will function as follows:

**Administrative Support.** Support Services will have two principle responsibilities: security and administration. Security includes plant security, motor pool, background checks, internal investigations of the IG office, subpoena control, safekeeping of evidence and maintenance of technical equipment. Administrative responsibilities include finances, purchasing, budgeting, support staff supervision, office procedures and related matters.

#### **How the Inspector General relates to the School Construction Authority**

The traditional relationship of an IG to the agency it is designed to protect is that of an outside entity, independent from the operations it is charged with investigating. How else, it is

argued, can the inspector general assure that its investigations and ability to criticize the subject agency's operations will not be compromised by manipulation of budgets, personnel policies and allocation of resources? What commissioner or agency CEO, it is asked, will not seek to emasculate an office whose investigations and reports might embarrass his or her agency? Conversely, how much independence and initiative can an IG be expected to demonstrate when his salary enhancements and promotional opportunities are in the hands of the very people he is supposed to be investigating? Thus, the standard model for inspectors general in New York City is as an independent agency with no structural role or reporting responsibilities inside the agency over which it has oversight responsibilities.

This model, however much it might advance an IG's investigative independence, seriously undercuts the IG's ability to influence policy and procedures within the subject agency. If acting as an outside, independent agency, the inspector general must often rely on the threat of embarrassment through critical published reports or leaks to the media in order to generate reform of the agency's policies and procedures. Actual use, or threatened use, of such leverage necessarily results in an adversarial relationship between the inspector general and the subject agency. Recommended reforms are rarely well received when proposed by an adversary.

Thus, we faced a dilemma in structuring the relationship of the SCA to its Inspector General. If we were to succeed in controlling racketeering and corruption through institutional reform then the IG would have to play a role as a senior policy maker within the SCA. How, then, could it protect itself from being co-opted or how could it effectively carry out its covert investigations?

The answer we arrived at tilted in favor of institutional integration but provided important

safeguards. The IG was designated a senior vice-president of the SCA, reporting directly to and working closely with the President/CEO. The IG attends every cabinet meeting and is involved in the formulation of all policies and procedures. As I shall describe later, no contractor may bid on an SCA construction project unless the firm has previously been approved by the IG and no contract can be awarded unless first signed off on by the IG.

However, to protect its independence, the IG office is physically located in a different part of New York City than the SCA headquarters. And most importantly, the IG not only reports to the President/CEO but also to the Board of Trustees which appoints the President/CEO. This dual reporting gives to the IG a role that is simultaneously both internal and external to the SCA. In our short history, I am pleased to say that there has been no lack of support and cooperation from the President/CEO for either our investigations or recommendations for institutional reform.

**Snapshot of investigative planning and execution  
and the multiple remedial results made possible**

Perhaps the best way to illustrate how the many units described above interact is to describe a hypothetical initiative undertaken by the IG office and the variety of remedial actions thereby made possible. As you will see, the success of the IG in accomplishing its mission is dependent on each unit being supported by, and in turn supporting, every other unit.

Let us suppose that we have reason to believe that the roofing industry in New York City is mob controlled and engages in multiple forms of criminality. Such belief could have arisen from an indictment of some industry members, from allegations determined to be credible or from information gained from unrelated investigations. With over 1,000 buildings in the school

inventory and plans to construct many new ones, it is clear that the SCA is a major source of income for the roofing trade and would stand to lose millions if victimized by rampant criminality in this industry.

The first thing we would do would be to direct a strategic analyst from the Research and Analysis Unit to prepare an assessment of the patterns of corruption and racketeering in the roofing industry throughout the city. That analyst would start by requesting from the Intelligence Unit all information relating to the local roofing trade. The analyst would also conduct its own research of the issue (and feed the results of his or her research back to the Intelligence Unit).

Intelligence will have a computerized base of information drawn from such sources as federal, state and local indictments, investigative reports, newspaper articles, books, periodicals, and legislative and commission reports that would be analyzed and digested. Informants from the Field Associates program, as well as law enforcement investigators and prosecutors, would be interviewed. Companies identified as having mob connections, criminal histories or suspicious associations would be subjected to corporate background analyses to identify affiliations with other companies and sources of capitalization. Computer runs of Board of Education contracting files would be requested in order to identify what roofers had participated in the school building program over the past several years and who their suppliers were.

Based on this information and more, the strategic analyst would prepare a report presenting an assessment of how the roofing industry had been infected by past criminality and how the SCA might be vulnerable. Let us suppose a cartel of roofing contractors had been identified in one indictment. Certain frauds in the underperforming on contracts had been

exposed in another investigation. An informant described how invoices could be falsified to defraud the Authority. Certain Cosa Nostra connections with various companies could be established or suspected. All of this information would be set forth in the strategic analyst's criminal assessment.

This assessment would then be forwarded to the Investigation Bureau. An investigative team would be assigned to develop and execute an investigative plan. The team might be comprised of two investigators (interviews and surveillances), an engineering auditor (field inspections of current roofing projects), an accountant (analysis of books and records), and a tactical or investigative analyst. The investigative plan would draw on the criminal assessment to set forth an investigative strategy for determining whether SCA's roofing contractors are engaging in any of the patterns of conduct identified in the criminal assessment. As the investigations proceeds, reports would be generated daily by each member of the team, and these reports would be fed to the Intelligence Unit which, through its computerized network linking it with all units in the office, would make the information immediately available to the rest of the organization.

As the investigation proceeds, other units and disciplines would become involved. The law enforcement personnel in the Criminal Investigations and Prosecutions Unit would pursue criminal leads utilizing such investigative tools as wire taps, subpoenas, grand juries, etc. Where appropriate and legally permissible, they could feed information back to the Intelligence Unit. As wrongdoing (criminal or otherwise) is identified, the systems analyst would review the investigative findings to determine whether SCA policies and procedures could or should be reformed to block opportunities to engage in such wrongdoing (e.g., a different approach to job



site inspections, invoice auditing, contractor or supplier selection). The Counsel would review the investigative findings to determine whether civil relief might be available (e.g., contract actions, forfeiture of contractor assets, treble damage civil racketeering suits, injunctive relief).

At the conclusion of the investigation, it is therefore possible that a number of different deterrent and opportunity blocking strategies might have been made possible -- indictments and civil lawsuits against certain individuals and companies; debarment of contracting firms from future work; and recommendations for reform of SCA internal policies and procedures.

The foregoing is, of course, only one of many ways in which the IG may initiate investigations. An IG Hot-Line telephone number is prominently displayed at hundreds of construction sites urging the public to report allegations of wrongdoing. Other investigations may be initiated by the law enforcement personnel assigned to the Criminal Investigations and Prosecutions Unit. By virtue of their integration into the IG office, police officers can utilize their informants and undercover operatives to further their investigations into labor racketeering, official corruption and corporate frauds. The IG can also sponsor undercover companies to bid on SCA construction work, and place undercover operatives in the Authority where they can pose as inspectors, engineers or managers and approach construction company personnel who are targets of investigations.

As a result of these investigations and the many varied kinds of sanctions they make possible, deterrence of criminal conduct can be substantial. As importantly, the need for institutional reform can be documented and revisions of policies and procedures imposed so as to block opportunities to criminally victimize the SCA.

Another effective tool in attacking racketeering companies lies in the power of the IG to

direct the SCA to refuse to do business with any company that it deems to be lacking in "a reputation for honesty and integrity". By virtue of that simple phrase, the IG can accomplish more in a few days to cripple a mob controlled company than a criminal investigation can do in a year. By refusing to do business with a company, we are not only cutting off a part of the mobs "legitimate" livelihood, we are also preventing it from engaging in the many illicit activities it would have pursued on SCA projects.

In recognition of the powerful economic tool we possess, the SCA has instituted a prequalification procedure in which the Office of the Inspector General plays a key role. No firm can do business with the SCA without first having passed a prequalification review by the Inspector General.

Based upon our experience with organized crime and the construction industry, we have developed a comprehensive questionnaire that not only allows us to identify corrupt companies, but helps us to ferret out the alter egos, successor companies and dummy corporations that frequently enable organized crime figures to remain in business even after exposure or criminal conviction.

The prequalification process frequently involves all the various components of our office. Because some organized crime figures can be highly sophisticated in hiding the true ownership and control of a company, we often have to marshal the talents of our intelligence specialists, research analysts, criminal investigators and accountants to track down leads and verify information which would lead us to conclude that the company should not be permitted to bid for SCA contracts. Some of these prequalification reviews have generated criminal investigations and some significant prosecutions.

It is our experience that no matter how adept a group is at constructing a corporate veil, it is often in the area of finances that the veil is finally lifted. Invariably, it is only when one examines bank accounts or the personal indemnifications that insure or bond a company, that one finally begins to see who truly owns or controls a firm.

In our first year and a half of operation we have been highly successful in penetrating these corporate veils and debarring companies for a period of up to five years. The effect of these sanctions are compounded as other public agencies, based on our findings, also bar these companies from government work. We are now in the process of expanding the prequalification process to include subcontractors and vendor/suppliers as well. By extending prequalification to these latter groups we also prevent corrupt companies and individuals from earning our money indirectly, as well as directly.

### **QUANTIFYING OUR ACCOMPLISHMENTS**

Because the IG office has only been fully operational for just over a year and a half (and fully staffed for much less than that), it is difficult to quantify many of its accomplishments. One reason is that many of our investigations (and the prosecutions, civil suits and recommendations for institutional reform which will result therefrom) are still at a stage where need for confidentiality precludes public disclosure and discussion. Nevertheless there are still some impressive results which can reported.

#### **Prosecutions**

Some of the prosecutions we have generated or to which we have made substantial

contributions include the following:

Two indictments and convictions of individuals running "boiler room" operations in New York City and California that generated counterfeit surety bonds. Because surety bonds protect the owner against default by its contractors, the SCA and numerous other agencies had been put at great financial risk by the submission of these phony bonds. An IG analytic task force is preparing a report based on the investigative findings to recommend reform of bonding practices.

One indictment of a contractor for submitting fraudulent bills to the SCA and another indictment of a vendor for defrauding the United States Army Corps of Engineers and the SCA in a \$1.6 million phony billing scheme.

Conviction of a contractor for attempting to bribe an SCA employee.

Conviction of the "Godfather" of the Greek Organized Crime Family in New York City and several of his associates for concealing the mobster's hidden interest on a prequalification application submitted to the SCA. The Godfather, whom many in the city's Greek community considered untouchable, is serving a one year jail sentence.

The anticipated indictment in the very near future of a contractor who defrauded the SCA by more than \$500,000. The underlying investigation was structured not only to develop evidence of crimes but also to identify assets which the SCA will seize in a civil suit that will parallel the criminal prosecution.

While prosecutions such as these and the many others that will surely follow serve a valuable deterrent role, they do little on their own to reduce the myriad opportunities that construction contractors and vendors have used to defraud public agencies such as the SCA. As stated earlier, this protection can only be brought about through institutional reform of the practices and procedures by which the SCA conducts its business.

### **Institutional Reforms**

(1) *Prequalification of Contractors.* Perhaps the most immediately beneficial reform generated by the IG was adoption of the extraordinarily rigorous prequalification process referred to above. Throughout the world where contracts are awarded through competitive bidding, most public agencies do not scrutinize the moral worth and performance capability of their potential contractors until after bids are submitted. Only then is the one company with the lowest bid subjected to such scrutiny. Reviewing a company's moral worth at this late point in the contracting process presents several problems. First, there is generally inadequate time to do an in depth analysis of the firm, its principals and other affiliated companies. Construction firms are extraordinarily adept at operating like chameleons -- disappearing one day only to reappear the next with different names, principals, addresses, etc. It is therefore extremely important although time consuming to conduct an adequate background investigation, especially of those corrupt firms who have gone to great lengths to conceal their hidden owners and unethical past dealings. Secondly, there is a strong possibility that if an agency rejects a company that has submitted the lowest competitive bid, that company will sue the agency and possibly delay award of the contract to any other company for many months -- a potentially disastrous occurrence to an agency with a need to move its contract forward immediately. Finally, if the pool of contractors submitting bids contains a corrupt or racketeer influenced company, other reputable and honest companies may not submit bids as a result of threats or perception of a violent retaliation.

The IG therefore designed a process which required prequalification of all contractors -- no company may even seek to do work with the SCA or submit a bid unless it has first been

found qualified to do business. One of the criteria for prequalification is that the company have a reputation for and a record of law-abiding and ethical conduct. As described above, the IG scrutinizes each company's financial history, the background of its owners, officers and all affiliated companies. To date the IG has conducted over 2000 background evaluations in connection with prequalification and contract approvals. Over 60 firms have been debarred, many of whom had ties to organized crime or were alter egos of firms with prior legal or debarment problems. (See attached newspaper articles.)

(2) *Advisories and Certifications.* Any debarment recommended by the IG must be sustainable in a court of law in the event of legal challenge. Consequently, there are occasions where there may be circumstantial evidence about the fitness of a firm but insufficient evidence to sustain a debarment in the event of judicial review.

In such instances we may issue an Advisory to the SCA whereby we caution the appropriate personnel closely to supervise the firm in the event it is awarded a contract. Because of our background review, the Advisory can pinpoint particular areas where project managers should be on guard for corrupt activity.

In other instances where we are concerned about a company's past behavior or possible associations, we may ask the applicant to complete a sworn Certification in which the principals either pledge to refrain from certain types of behavior or vow that they will have no involvement with specific individuals or companies. To date, we have issued over a dozen Advisories and two dozen Certifications. In one instance where a firm was found to have violated a Certification promise not to permit a corrupt individual to have any involvement with the firm, we terminated the firm's contract and saved hundreds of thousands of dollars by

claiming the firm had fraudulently induced the SCA to enter into the contract.

(3) *The Independent Auditing Firm.* A dilemma we sometimes face in prequalification reviews is whether or not a firm should be punished for the acts of one individual, especially where the firm has since severed all connections with that person.

A case in point involved the E. W. Howell Company, a major construction firm in the New York area. Howell had several SCA contracts, and was about to be awarded an additional \$32 million project, when the IG learned that they were the subject of a pending criminal investigation. Our own investigation disclosed the strong possibility that two former principals of Howell might shortly be indicted for fraud in connection with a five year old construction project.

Under SCA standards we could have caused Howell to be debarred from future work and terminated from their two existing SCA contracts. We recognized, however, that the suspect employees had left the firm, that new owners were in place and that the new owners, anxious to "turn a new leaf," had cleaned house and adopted rules for a more tightly run operation.

Moreover, we recognized that if Howell were to be disqualified from the pending contract, the SCA would have had to spend an additional \$2.5 million by awarding that contract to the next lowest bidder, and might have been forced to terminate Howell's two other contracts.

In an effort to be fair to the new owners, but at the same time mindful that the company had benefitted from corrupt activities in the past, the OIG fashioned an historic and novel solution (see attached briefing paper) whereby the contract was awarded to Howell under the following conditions:

- Howell was required to adopt a strict Code of Business Ethics, and agreed to extensive training of all Howell staff on both the new Code and related ethical

issues.

- Howell designed and implemented a comprehensive Corruption Prevention Program to prevent any criminal or unethical conduct from occurring on SCA jobs.
- Howell was required to retain the services of an Investigative Auditing Firm (IAF) at Howell's expense, to monitor and enforce Howell's adherence to the Code of Ethics and to the Corruption Prevention Program. Howell was further required to provide the IAF access to all of Howell's books, records and operations. The IAF is to report all findings to the IG.

The agreement provides the SCA with an unprecedented measure of protection. We can monitor, via the internal perspective of the IAF, this contractor's compliance with strict standards of ethics. And the company, not the taxpayer, foots the bill. Moreover the agreement represents an important step in the direction charted by the SCA trustees, its President/CEO and the Inspector General by shifting the primary responsibility for preventing and detecting corruption and racketeering from law enforcement to private industry. The bottom line is simple: Howell must, at its own expense, hire an investigating/auditing firm that will detect and report any corrupt activity to the IG.

If Howell fails to live up to its agreement, the SCA may bar the company from bidding on future contracts and rescind any or all existing contracts with the company. Interestingly, when the indictments were unsealed two weeks ago, the E.W. Howell Company, as a corporate entity, was not named as a defendant. One of the principal reasons publicly cited by the prosecutors for not naming Howell as a defendant was the firm's willingness to adopt the IAF agreement in its dealings with the SCA.

(4) *Procedural Reforms.* As one would expect with a billion dollar a year program, SCA operations are governed by a detailed and lengthy Policies and Procedures manual. Every



procedure is scrutinized by the Research and Analysis Unit from a loss prevention perspective. Furthermore, every allegation of corruption and every investigative finding is analyzed to determine if further modification of procedures or adoption of new ones are warranted. As a result of this process, the Research and Analysis has concluded over 15 studies which have produced recommendations that have saved or in the future will save millions of dollars.

### **Recognition of the OIG's Efforts**

We are beginning to receive indications that the approach and organizational philosophy of the IG is being recognized as a model for possible replication elsewhere. We have been receiving an increasing number of inquiries from public agencies, legislative groups, academicians and news reporters seeking information on our prequalification and other procedures and approaches.

Law enforcement groups have also begun to recognize the value of working with such a uniquely positioned office. We are now working on significant criminal investigations with federal, state and local law enforcement agencies. Because we combine elements of law enforcement with administrative responsibilities, we can provide these agencies access to information that few prosecutors could easily obtain. For example, through the prequalification process we can compel an individual or firm to release information that no law enforcement body could ever obtain through voluntary release. Moreover, prosecutors are discovering that we are in a singular position of being able to assist undercover companies in getting prequalified. Several prosecutors have approached us about assisting an undercover company obtain work from the SCA.

One of the most significant endorsements of the IG's efforts came from the John F. Kennedy School of Government at Harvard University. The Kennedy School obtained a grant from the United States Justice Department, National Institute of Justice, to study the Office of the Inspector General so as to determine if the office represents a model for combatting corruption that should be replicated on a national level.

In describing the Office of the Inspector General, the grant proposal states that "the Office of the Inspector General represents a significant departure from prior models of inspectors general such as those found at the Federal level; indeed the consolidation of power, resources and roles comprising this agency may never before have been made available in a similar constellation to a stand-alone crime control office." The Kennedy School has particularly singled out the blending of traditional law enforcement procedures with research and analytical tools "as a significant new effort to prevent and control organized crime through a variety of non-traditional remedies and reforms."

\* \* \*

In conclusion, the Office of the Inspector General for the New York City School Construction Authority gives us the opportunity to combat criminal activity using both traditional and non-traditional methods. In addition to standard criminal investigations, we have the power to sue individuals and companies civilly to recover monetary damages and we can prevent them from doing work with the SCA under any corporate name or form. Moreover, by being directly involved in the policy making mechanisms of the Authority, we can influence how the SCA does business and thus further block opportunities to engage in corrupt activity.

While protecting the SCA from victimization by the unscrupulous elements in the construction industry is our primary goal, there are other benefits to be derived from any success that we may achieve. It is a common knowledge that many of the more reputable and ethical construction companies in New York have in the past refused to bid on government work because of their distaste for all the corruption and organized crime influences that have historically been associated with government contracting. One of our successes in the first year has been that, as we have begun to weed out the criminals and corrupt companies, we have sent a message to the industry that has not gone unnoticed. Slowly, major construction companies that have never bid on public work before have begun to bid SCA projects. If our efforts convince more of these companies to join the SCA family we will improve the quality of public construction immeasurably while generating serious competition to the cartels (some of which are mob controlled) which have long dominated aspects of school construction.

Most of the staff of the IG office have a background in law enforcement. In the end, the real excitement and rewards of working this office lie in the fact that we can through administrative steps, informed and supported by law enforcement initiatives, do so much more to penalize and prevent corruption and racketeering than we were able to do when working exclusively in law enforcement agencies.

# NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY

## PREQUALIFICATION APPLICATION

### I. INTRODUCTION

The New York City School Construction Authority (SCA) was created in 1988 by the New York State Legislature for the purpose of constructing and renovating educational facilities throughout the five boroughs. The SCA enters into contracts with general contractors, architects, engineers, trade contractors and other businesses. The SCA will only award contracts to firms that are prequalified with the exception of vendor contracts valued under \$10,000. All firms seeking prequalification must complete the attached questionnaire.

The questionnaire will be evaluated by SCA, taking into consideration, primarily, the following factors:

- Experience
- Quality and timeliness of past performance
- Financial capability (where applicable)
- Reliability and responsibility
- Compliance with equal employment requirements including LBE, MBE and WBE programs
- Compliance with wage, hour and other fair labor standards
- Integrity of the firm and its Key People

**Note: Firms intending to bid as joint ventures should submit a separate prequalification questionnaire for each joint venturer.**

### II. INSTRUCTIONS

- A. This form shall be completed on behalf of the firm by an individual who is knowledgeable about the past and present operations of the firm and its policies.
- B. A response must be provided to each question on the questionnaire. If a particular question does not apply, the response must state "Not Applicable" ("NA").

**The SCA will return the form if any answers are missing or incomplete.**

- C. The firm may expand on the answers given or the information submitted by attaching additional pages. Use 8 1/2" x 11" paper, marking each page with the firm's name and Tax ID# (also known as Employer Identification Number - EIN). Individual contractors who do not have a Tax ID# should enter their Social Security Number.
- D. The answers to the questions on the form and its attachments should be typewritten.

E. In addition to the application form, the following attachments are required, as applicable:

1. Financial Statement

All trade contractors, general contractors, and firms specializing in environmental work must attach a copy of the firm's three most recent annual audited financial statements, including auditor's report, balance sheet, statement of income and retained earnings and footnotes.

OR

Provide the firm's three most recent annual financial statements and complete signed copies of its Federal Tax Returns to accompany unaudited statements. (A Sole Proprietor must submit complete signed copies of the three (3) most recent personal Federal Tax Returns.)

All other applicants are exempted from this initial requirement, but will be required to submit complete financial statements upon request.

2. Certification

All current Key People of the applicant firm (identified in question #12) and representatives of each current affiliate (identified in question #14) must file a notarized certification on the form provided. (Appendix A may be duplicated as needed for each individual)

3. Resumes

All officers, partners, owners and managers with experience in the fields for which the firm is requesting Prequalification must attach their resumes to this application. (Not required for vendors)

4. Licenses

All architects, engineers, electricians, plumbers, asbestos inspectors/handlers and all firms that require licenses to perform work must attach copies of their current license, license registration, certificate or certification.

**III. SUBMITTAL**

Please submit one (1) original and one (1) copy of the completed form together with other attachments to:

**Prequalification Unit  
NYC School Construction Authority  
30-30 Thomson Avenue  
Long Island City, NY 11101**

The name of the company should be on the envelope.

**IV. VENUE**

Any dispute arising out of this application, or relating to prequalification in general, shall be heard and determined either in the courts of the State of New York, located in the City of New York, County of New York, ("New York State Courts"), or in the courts of the United States located in New York City ("Federal Courts").

If an action or proceeding is commenced against the Authority in other than the above courts, and the Authority is forced to compel compliance with this provision through motion practice, the Key People of the applicant shall be liable for all expenses, including attorney's fees, incurred by the Authority in its effort to compel compliance.

**Note: In the event of changes in ownership, address, circumstances, conditions or status of the firm that would require amending the answers to this questionnaire, the applicant must notify the SCA in writing of such changes within one month after the change has occurred.**

Tax ID# \_\_\_\_\_  
 (or SS#) \_\_\_\_\_

**PREQUALIFICATION APPLICATION**

**General Identification Questions**

1. Name of applicant firm \_\_\_\_\_  
 D/B/A \* name, if any \_\_\_\_\_  
 Applicant's address \_\_\_\_\_  
 City/State/Zip \_\_\_\_\_  
 Mailing address (if different) \_\_\_\_\_  
 City/State/Zip \_\_\_\_\_  
 Phone No. (\_\_\_\_\_) \_\_\_\_\_ Fax No. (\_\_\_\_\_) \_\_\_\_\_  
 Contact person \_\_\_\_\_ Title \_\_\_\_\_

2. a. Has the applicant firm changed address(es) in the past five years?  
 No  Yes
- b. Has the applicant firm operated under any other name(s) in the past five years?  
 No  Yes
- c. Does the firm have offices, plants or warehouses at other addresses?  
 No  Yes

If 'yes' to question 2 a, b, or c provide details below.

NAME	ADDRESS	FROM (MO./YR.)	TO (MO./YR.)

\*D/B/A means "doing business as."

Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

3. What type of prequalification is being requested ?

- Architect
- Engineer
- Asbestos abatement contractor
- General contractor
- Construction manager
- Trade contractor (Specify in #4 below)
- Vendor of goods or services (Specify in #4 below)
- Professional services, non-construction related (Specify in #4 below)
- Environmental consultant (Specify in #4 below)
- Laboratory testing & analysis (Specify in #4 below)
- Other (Specify in #4 below)

4. List the applicant firm's specific area(s) of expertise:

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5. Has the applicant firm been certified as a Locally Based Enterprise (LBE), Minority Business Enterprise (MBE), Women Business Enterprise (WBE), Disadvantaged Business Enterprise (DBE) or Small Business Enterprise (SBE)?

- No  Yes

6. Will the applicant firm be requesting certification from the SCA for any of the above mentioned categories of certifications?

- No  Yes

If 'yes' to question 5 or 6, please contact the EEO Division of the SCA at (718) 472-8000.



Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

**Business Organization and History**

7. Date the applicant firm was formed \_\_\_/\_\_\_/\_\_\_

8. Type of organization (check one box, answer all related questions)

Sole proprietorship

Corporation

State in which incorporated \_\_\_\_\_

Number of shares authorized to the corporation \_\_\_\_\_

Number of shares issued to individuals or entities \_\_\_\_\_

Partnership

General     Limited

County where partnership agreement filed \_\_\_\_\_

State where partnership agreement filed \_\_\_\_\_

Not-for-profit organization

Other (explain) \_\_\_\_\_

9. Was firm purchased as an existing business by its present owner(s)?

No     Yes (If yes, provide information below)

Date purchased \_\_\_/\_\_\_/\_\_\_

Previous Owner(s) Name(s): \_\_\_\_\_

10. Does the applicant firm own, rent, or lease its office facilities?

Own

Lease/Rent (If leased or rented, provide information below)

Owner name: \_\_\_\_\_

Phone #: (\_\_\_\_) \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

11. Does the applicant firm share office space, staff, or equipment (including telephone exchanges) with any other business or organization?

No  Yes (list below)

TAX #	FIRM NAME	NATURE OF SHARED FACILITIES

12. Identify all Key People

Instructions: On the following page, fill in the required information on all present and past Key People for the past five years. "Key People" include:

- Proprietors, partners, directors, officers
- Shareholders of 5% or more of the firm's issued stock
- Any manager or individual who participates in overall policy-making or financial decisions for the firm
- Any person in a position to control and direct the firm's overall operations

"Shareholders" are owners of stock or other securities that can be converted to stock that, if exercised, would constitute 5% of the firm's issued stock. Other securities include stock options, secured or unsecured bonds, warrants and rights.

Be sure to include all those who fit the definition of Key People for the past five years whether or not they are currently with the applicant firm. Copy the table on the following page if more space is required.

**Note:** Applicant firms that are publicly held corporations should list the president, treasurer, shareholders of 5% or more of the firm's issued stock, and only those officers and managers who will have direct responsibility for SCA contracts.

Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

(Question #12 continued)

KEY PEOPLE TABLE  
COMPLETE ALL BLANK AREAS

	PERSON #1	PERSON #2	PERSON #3	PERSON #4
NAME AND HOME ADDRESS				
DATE OF BIRTH				
SS#				
TITLE				
FROM (DATE)				
TO (DATE)				
% OF OWNERSHIP				
NUMBER OF SHARES OWNED				
HOW SHARES WERE ACQUIRED				

Each current Key Person of the applicant firm must file a NOTARIZED certification on the form attached (Appendix A).

Tax ID# \_\_\_\_\_  
 (or SS#) \_\_\_\_\_

13. Number of employees (not including key people): \_\_\_\_\_

14. At present or during the past five years:

- a. Has the applicant firm been a subsidiary of any other firm?  
 No  Yes
  
- b. Has the applicant firm consisted of a partnership in which one or more partners are other firms?  
 No  Yes
  
- c. Has any other firm owned 5% or more of the applicant firm?  
 No  Yes

If 'yes' to question 14 a, b, or c, list the other firms below and indicate the percent of stock owned in the applicant firm.

	FIRM #1	FIRM #2
TAX ID#		
FIRM NAME		
ADDRESS		
RELATIONSHIP TO APPLICANT FIRM (CO OWNER, PARTNER, ETC.)		
% OF APPLICANT FIRM OWNED		
FROM (DATE)		
TO (DATE)		
*REPRESENTATIVE NAME/TITLE		

\* A representative of each firm listed above whose affiliation continues to the present must file a NOTARIZED certification attached (Appendix A).

Tax ID# \_\_\_\_\_  
 (or SS#) \_\_\_\_\_

15. At present or during the past five years:

a. Has the applicant firm had any subsidiaries?  
 No  Yes

b. Has the applicant firm owned 5% or more of any other firm?  
 No  Yes

If 'yes' to question 15 a or b, list the firms below and indicate the percent of the other firm's stock owned by the applicant firm.

TAX ID#	FIRM NAME AND ADDRESS	% OWNED BY APPLICANT FIRM

16. At present or during the past five years have any of the Key People of the applicant firm served as a Key Person (see definition on page 4) or owned 5% or more of any other firm (including firms that are inactive or have been dissolved)?  
 No  Yes

If 'yes,' list below.

FIRM NAME & ADDRESS	TAX ID#	KEY PERSON	POSITION HELD	% OWNED

All firms listed in questions 14, 15 and 16 will be referred to in the following questions as "Affiliate Firms."

Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

17. Are any Key People of the applicant firm:

a. present or past employees of the SCA?  
 No  Yes

b. related by kinship or marriage to any present or past employee of the SCA?  
 No  Yes

If 'yes' to question 17 a or b, provide names of such individual(s) and indicate relationship to the current/former SCA employee.

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18. During the past five years, has any Key Person, employee or any consultant of the applicant firm served as an elected official, political party officer, community board or district school board officer, or non-elected governmental appointee or employee of New York City Board of Education, or New York City or State government?  
 No  Yes

If 'yes', provide name(s) of such individual(s), nature of position, organization and the dates any such position(s) were held.

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**Financial Information**

19. For each business bank account held by the applicant firm, provide the following:

TYPE OF ACCOUNT	NAME/ADDRESS OF BANK	ACCOUNT #	NAME/PHONE # OF BANK OFFICER	NAMES OF ALL SIGNATORIES*

\*SIGNATORIES are authorized signatures for the account.

Tax ID# \_\_\_\_\_  
 (or SS#) \_\_\_\_\_

20. For each line of credit, unsecured or secured loan provided by a lending institution, provide details below. If none, please indicate.

AMOUNT OF CREDIT	OUT-STANDING BALANCE	TERM-INATION DATE	NAME AND ADDRESS OF LENDING INSTITUTION	NAME AND PHONE # OF LOAN OFFICER

21. At present or in the past five years:

- a. Has the applicant firm been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more?  
 No  Yes
  
- b. Have any of the applicant firm's Key People been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more, for the benefit of the applicant firm?  
 No  Yes
  
- c. Has the applicant firm pledged any of its stock to guarantee any of the above obligations?  
 No  Yes  N/A
  
- d. Has any individual or firm been a guarantor, co-maker or co-signer of any of these obligations on behalf of the applicant firm?  
 No  Yes  N/A

If 'yes' to any portion of question 21, provide details below.

NAME OF CREDITOR	NAME OF BORROWER	AMOUNT OF LOAN	TERMS OF PLEDGE OR LOAN	NAME OF GUARANTOR, OR CO-SIGNER

Tax ID# \_\_\_\_\_  
 (or SS#) \_\_\_\_\_

22. Has the applicant firm, including its affiliates or any of its Key People been a party to a bankruptcy or reorganization proceeding?  
 No  Yes

If 'yes,' provide details below.

CAPTION	DATE	DOCKET #	COURT	COUNTY

23. During the past five years, has the applicant firm ever:
- a. been the subject of a lien or claim of \$25,000 or more by a subcontractor or supplier?  
 No  Yes
  - b. failed to complete a contract for a commercial or private owner?  
 No  Yes

If 'yes' to question 23 a or b, supply details below.

AGENCY/OWNER	CONTRACT #	DESCRIBE CIRCUMSTANCES	DATE OF EVENTS	NAME/PHONE # OF AGENCY CONTACT PERSON

**Experience/Performance**

24. On the following table summarize the work completed by the applicant firm for the last three years.

FISCAL YEAR END	NUMBER OF PROJECTS/CONTRACTS DURING THE YEAR	TOTAL \$ BILLED ON PROJECTS/CONTRACTS
19		
19		
19		



Tax ID# \_\_\_\_\_  
 (or SS#) \_\_\_\_\_

25. On the following two pages, list the applicant firm's four (4) LARGEST government prime contracts or subcontracts completed within the last five (5) years; if no contracts with government agencies\*, provide details on the four largest commercial or private prime contracts or subcontracts.

	#1	#2
Agency/Owner		
Contract #		
Name/Location of project (N/A for Vendors)		
Applicant's surety company for this job (N/A for Vendors)		
Describe goods or services provided (Specify whether applicant was sub or prime contractor/consultant)		
Start date		
Completion date		
Contract \$ amount		
Name & phone number of Supervisor familiar with performance		

\*GOVERNMENT AGENCIES include city, state & federal public agencies, quasi-public agencies, authorities & corporations, public development corporations and local development corporations.

Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

(Question #25 Continued)

#3

#4

Agency/Owner		
Contract #		
Name/Location of project (N/A for Vendors)		
Applicant's surety company for this job (N/A for Vendors)		
Describe goods or services provided (Specify whether applicant was sub or prime contractor/consultant)		
Start date		
Completion date		
Contract \$ amount		
Name & phone number of Supervisor familiar with performance.		

Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

26. Does the applicant firm have a bonding capacity?  
 No  Yes

If 'yes' provide information below on all surety companies that have agreed to furnish the applicant firm with performance and payment bonds for work it will undertake for the SCA and answer all related questions:

a. Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Agent: \_\_\_\_\_  
Phone#( \_\_\_\_\_ ) \_\_\_\_\_

b. In writing bonds for the applicant firm, does the surety company rely on the indemnity of any other firm(s) or individual(s)?  
 No  Yes

If 'yes' supply names of others \_\_\_\_\_  
\_\_\_\_\_

c. What is the applicant firm's bonding capacity:  
Single Job: \$ \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_

27. Does the applicant firm carry Errors and Omissions Insurance?  
 No  Yes

If 'yes' provide information below on insurance companies that have agreed to provide the applicant firm with Errors & Omissions Insurance.

a. Company Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
Agent: \_\_\_\_\_  
Phone#( \_\_\_\_\_ ) \_\_\_\_\_

b. What is the applicant firm's Errors & Omissions policy limits:  
Single: \$ \_\_\_\_\_ Aggregate: \$ \_\_\_\_\_

Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

28. List officers, partners, owners and managers with experience in the fields for which the applicant is requesting prequalification. (Not required for Vendors)

**Attach resumes**

NAME	PRESENT POSITION WITH APPLICANT FIRM	YRS. OF RELATED EXPERIENCE

29. Provide information below on all licenses necessary for work the applicant firm will perform. This should include asbestos investigator licenses and laboratory licenses/certifications for any firm that plans to do its own analysis of samples. If none, please indicate.

**Attach copies of the current licenses, license registrations, certificates or certifications**

TYPE OF LICENSE	INDIVIDUAL NAMED ON LICENSE	LICENSE NUMBER	EXPIRATION DATE

30. Have any officers, partners, owners or managers had any business related licenses, certificates or certifications revoked in the past 5 years?  
 No  Yes (If yes, explain below)

\_\_\_\_\_  
\_\_\_\_\_

**Compliance Information**

31. In the past five years has the applicant firm or any of its affiliate firms been the subject of any of the following actions by any government agency\* :
- a. been suspended, debarred, disqualified, had its prequalification revoked or otherwise been declared ineligible to bid?  
 No  Yes
  - b. been barred from bidding or denied a contract as a result of refusal of Key People to testify before a grand jury or administrative board?  
 No  Yes
  - c. been barred from bidding or denied a contract as a result of failure to meet statutory affirmative action or MBE/LBE requirements?  
 No  Yes
  - d. been denied a contract despite being the low bidder for any other reason?  
 No  Yes
  - e. been defaulted on any contract?  
 No  Yes
  - f. had a contract terminated?  
 No  Yes
  - g. been given a final unsatisfactory performance determination or deemed a poor performer (by letter or formal proceedings)?  
 No  Yes
  - h. been prevented or barred from bidding for any other reason?  
 No  Yes
  - i. been denied a contract for failure to obtain surety or otherwise provide required security?  
 No  Yes
  - j. had liquidated damages assessed against it upon completion of a contract?  
 No  Yes

\*GOVERNMENT AGENCIES include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations and local development corporations

Tax ID# \_\_\_\_\_  
 (or SS#) \_\_\_\_\_

If 'yes' to any portion of question 31 supply details below.

AGENCY	CONTRACT #	DATE OF ACTION	DESCRIBE ACTION	NAME/PHONE # OF AGENCY CONTACT PERSON

32. a. In the past five years, has the applicant firm or any current or past Key People or affiliate firms been a plaintiff or defendant in any lawsuits arising out of public or private construction projects?  
 No  Yes
- b. At the present time, is the applicant firm or any of its Key People or affiliate firms engaged in any litigation with or against the SCA or another public agency?  
 No  Yes

If 'yes' to question 32 a or b, supply details below. Indicate in P/D column whether applicant firm, Key People or key firms were plaintiffs (P) or defendants (D).

CAPTION OR ACTION	P/D	COURT	INDEX/DOCKET NO.	DATE	STATUS

33. In the past ten years has the applicant firm, or any of its current or past Key People or affiliate firms:
- a. been the subject of an investigation\* involving any alleged violation of criminal law?  
 No  Yes
  - b. been arrested, indicted or named as an unindicted co-conspirator in any indictment or other accusatory instrument?  
 No  Yes
  - c. been convicted, after trial or by plea, of any felony under state or federal law?  
 No  Yes
  - d. been convicted of any misdemeanor involving business-related crimes?  
 No  Yes
  - e. entered a plea of nolo contendere to a charge of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property or a violation of the antitrust law?  
 No  Yes
  - f. entered into a consent decree?  
 No  Yes
  - g. been granted immunity from prosecution for any business-related conduct constituting a crime under state or federal law?  
 No  Yes
  - h. taken the Fifth Amendment in testimony regarding a business related crime?  
 No  Yes

If 'yes' to any portion of question 33, supply details below.

AGENCY OR COURT	NATURE OF ACTION	PERSON OR ENTITY NAMED	DATE	STATUS/OUTCOME

\* An INVESTIGATION includes an appearance before a grand jury by representatives of a business entity, any oral or written inquiry or review of the entity's documents by a public agency, temporary commission or other investigative body, or questioning of employees concerning the general operation or a specific project or activities of such business entity.

Tax ID# \_\_\_\_\_  
 (or SS#) \_\_\_\_\_

34. Do any current or past Key People listed in this application have any felony or misdemeanor charges pending against them that were filed either before, during or after their employment with the applicant firm?  
 No  Yes

If 'yes', provide details below.

AGENCY OR COURT	NATURE OF CHARGES	KEY PERSON NAMED	DATE OF CHARGES

35. a. In the past ten years has the applicant firm or any of its current or past Key People or affiliate firms been the subject of an investigation of any alleged violation of a civil antitrust law or other federal, state or local civil law?  
 No  Yes
- b. In the past ten years has the applicant firm or any of its current or former key people or affiliate firms been the subject of an investigation of any alleged violation of a federal, state or local regulation by any public agency including, but not limited to, federal regulatory agencies such as the HUD or SEC?  
 No  Yes
- c. At present, are any administrative charges pending against the applicant firm or any of its current or past key people or affiliate firms?  
 No  Yes

If 'yes' to question 35 a, b or c supply details below.

AGENCY OR COURT	NATURE OF THE INVESTIGATION/CHARGES	DATE	STATUS OR OUTCOME



Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

36. In the past ten years, has the applicant firm or any of its current or past Key People or affiliate firms been found to have committed:
- a. a violation of any labor law or regulation including prevailing wage rates, fair labor practices, and Labor Law 220?  
 No  Yes
  - b. an OSHA "serious violation"?  
 No  Yes
  - c. a violation of federal, state or local environmental protection laws or regulations?  
 No  Yes
  - d. any other administrative, statutory or regulatory violations?  
 No  Yes

If 'yes' to any portion of question 36 supply details below.

AGENCY OR COURT	NATURE OF THE VIOLATION	DATE OF CHARGES	STATUS OR OUTCOME *

\* If the action resulted in a fine indicate if the fine was paid or is still outstanding.

37. In the past ten years has the applicant firm or any of its current or past Key People or affiliate firms engaged in any of the following practices:

- a. filed with a government agency or submitted to a government employee a written instrument which the applicant firm or any of its Key People or key firms knew contained a false statement or false information?  
 No  Yes
- b. falsified business records?  
 No  Yes
- c. given, or offered to give, money or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official?  
 No  Yes
- d. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?  
 No  Yes
- e. agreed with another to bid below prevailing market rate?  
 No  Yes
- f. agreed with another to submit identical or complimentary bids or otherwise not to bid competitively?  
 No  Yes
- g. agreed with another not to submit competitive bids in another's territory established either by geography or customers?  
 No  Yes
- h. agreed with another to take turns in obtaining contracts by pre-determining which firm shall submit the lowest bid?  
 No  Yes

If 'yes' to any portion of question 37, explain below.

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Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

38. In the past five years has the applicant firm participated in state-approved apprenticeship programs?  
 No  Yes (list below)

\_\_\_\_\_

39. Does the applicant firm have any labor agreements with New York labor organization?  
 No  Yes (list below)

\_\_\_\_\_

40. Is the applicant firm using another firm's labor agreements?  
 No  Yes (list below)

\_\_\_\_\_

41. Does the applicant firm allow other firms to use its labor agreements?  
 No  Yes (list below)

\_\_\_\_\_

42. Does the applicant firm have a code of business practices for its officers and employees?  
 No  Yes

43. Would the firm be interested in receiving a model code of business practices for consideration?  
 No  Yes

44. Provide any supplemental information the applicant firm desires to have considered as part of its application.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Tax ID# \_\_\_\_\_  
(or SS#) \_\_\_\_\_

**APPENDIX A**  
**CERTIFICATION**

This certification must be completed by each current Key Person of the applicant firm identified in response to question 12 and by a representative of each firm that is currently an owner or partner of the applicant firm, identified in response to question 14. Certifications must be notarized when signed.

A MATERIAL FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF THE APPLICATION OR REVOCATION OF A PRIOR APPROVAL THEREBY PRECLUDING THE APPLICANT FIRM FROM DOING BUSINESS WITH, OR PERFORMING WORK FOR THE SCA EITHER AS A VENDOR, PRIME CONTRACTOR, SUBCONTRACTOR, PRIME CONSULTANT, OR SUBCONSULTANT FOR A PERIOD OF THREE YEARS. IN ADDITION, SUCH FALSE SUBMISSION MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO CRIMINAL CHARGES, INCLUDING NEW YORK STATE PENAL LAW SECTIONS 175.35 (OFFERING A FALSE STATEMENT FOR FILING) AND 210.40 (SWORN FALSE STATEMENT) AND/OR TITLE 18 U.S.C. SECTIONS 1001 (FALSE OR FRAUDULENT STATEMENT) AND 1341 (MAIL FRAUD).

I \_\_\_\_\_, being duly sworn, state that I am \_\_\_\_\_  
(full name) (title)  
of \_\_\_\_\_, and that I have read and understood the questions  
(firm name)  
contained in the attached application and its appendices.

I certify that to the best of my knowledge the information given in response to each question and the appendices is full, complete and truthful.

I acknowledge that the New York City School Construction Authority (the "Authority") may, by means it deems appropriate, determine the accuracy and truth of the statements made in the application.

I recognize that all the information submitted is for the express purpose of inducing the Authority to award a contract.

I authorize the Authority to contact any entity named in the application for purposes of verifying the information supplied by the applicant.

\_\_\_\_\_  
Name (print) Date

\_\_\_\_\_  
Signature Title

Sworn to before me  
this \_\_\_ day of \_\_\_ 199\_\_

Notary Public

TAX ID# \_\_\_\_\_

(or SS#) \_\_\_\_\_

APPENDIX B

SCI CONTRACTOR CODES

SITework - DIVISION 2

- \_\_02010 SUBSURFACE INVESTIGATION
- \_\_02050 DEMOLITION
- \_\_02100 SITE PREPARATION
- \_\_02140 DEWATERING
- \_\_02150 SHORING AND UNDERPINNING
- \_\_02160 EXCAVATION SUPPORT SYSTEMS
- \_\_02200 EARTHWORK
- \_\_02300 TUNNELING
- \_\_02350 PILES AND CAISSONS
- \_\_02450 RAILROAD WORK
- \_\_02480 MARINE WORK
- \_\_02500 PAVING AND SURFACING
- \_\_02600 PIPED UTILITY MATERIALS
- \_\_02660 WATER DISTRIBUTION
- \_\_02680 FUEL DISTRIBUTION
- \_\_02700 SEWERAGE AND DRAINAGE
- \_\_02750 RESTORATION OF UNDERGROUND PIPELINES
- \_\_02770 PONDS AND RESERVOIRS
- \_\_02780 POWER AND COMMUNICATIONS
- \_\_02800 SITE IMPROVEMENTS
- \_\_02900 LANDSCAPING

CONCRETE-DIVISION 03

- \_\_03100 CONCRETE FORMWORK
- \_\_03200 CONCRETE REINFORCEMENT
- \_\_03250 CONCRETE ACCESSORIES
- \_\_03300 CAST-IN-PLACE CONCRETE
- \_\_03370 CONCRETE CURING
- \_\_03400 PRECAST CONCRETE
- \_\_03500 CEMENTITIOUS
- \_\_03600 GROUT
- \_\_03700 CONCRETE RESTORATION AND CLEANING

MASONRY-DIVISION 04

- \_\_04100 MORTAR
- \_\_04150 MASONRY ACCESSORIES
- \_\_04200 UNIT MASONRY
- \_\_04400 STONE
- \_\_04500 MASONRY RESTORATION AND CLEANING
- \_\_04550 REFRACTORIES
- \_\_04600 CORROSION RESISTANT MASONRY

TAX ID# \_\_\_\_\_

(or SS#) \_\_\_\_\_

SCI CONTRACTOR CODES(cont'd)

METALS-DIVISION 05

- \_\_05010 METAL MATERIALS
- \_\_05030 METAL FINISHES
- \_\_05050 METAL FASTENING
- \_\_05100 STRUCTURAL METAL FRAME
- \_\_05200 METAL JOISTS
- \_\_05300 METAL DECKING
- \_\_05400 COLD-FORMED METAL FRAMING
- \_\_05500 METAL FABRICATIONS
- \_\_05580 SHEET METAL FABRICATION
- \_\_05700 ORNAMENTAL METAL
- \_\_05800 EXPANSION CONTROL
- \_\_05900 HYDRAULIC STRUCTURES

WOODS AND PLASTIC-DIVISION 6

- \_\_06050 FASTENERS AND ADHESIVES
- \_\_06100 ROUGH CARPENTRY
- \_\_06130 HEAVY TIMBER CONSTRUCTION
- \_\_06150 WOOD METAL SYSTEMS
- \_\_06170 PREFABRICATED STRUCTURAL WOOD
- \_\_06200 FINISH CARPENTRY
- \_\_06300 WOOD TREATMENT
- \_\_06400 ARCHITECTURAL WOODWORK
- \_\_06500 PREFABRICATED STRUCTURAL PLASTICS
- \_\_06600 PLASTIC FABRICATIONS

THERMAL AND MOISTURE PROTECTION-DIVISION 7

- \_\_07100 WATERPROOFING
- \_\_07150 DAMPPROOFING
- \_\_07190 VAPOR AND AIR RETARDERS
- \_\_07200 INSULATION
- \_\_07250 SHINGLES AND ROOFING TILES
- \_\_07400 PREFORMED ROOFING AND CLADDING/SIDING
- \_\_07500 MEMBRANE ROOFING
- \_\_07570 TRAFFIC TOPPING
- \_\_07600 FLASHING AND SHEET METAL
- \_\_07700 ROOF SPECIALTIES AND ACCESSORIES
- \_\_07800 SKYLIGHTS
- \_\_07900 JOINT SEALERS

TAX ID# \_\_\_\_\_

(or SS#) \_\_\_\_\_

DOORS AND WINDOWS-DIVISION 8

- 08100 METAL DOORS AND FRAMES
- 08200 WOOD AND PLASTIC DOORS
- 08300 SPECIAL DOORS
- 08400 ENTRANCES AND STOREFRONTS
- 08500 METAL WINDOWS
- 08600 WOOD AND PLASTIC WINDOWS
- 08650 SPECIAL WINDOWS
- 08700 HARDWARE
- 08800 GLAZING
- 08900 GLAZED CURTAIN WALLS

FINISHES-DIVISION 9

- 09100 METAL SUPPORT AND FRAMES
- 09200 LATH AND PLASTER
- 09230 AGGREGATE COATINGS
- 09250 GYPSUM BOARD
- 09300 TILE
- 09400 TERRAZZO
- 09500 ACOUSTICAL TREATMENT
- 09600 STONE FLOORING
- 09630 UNIT MASONRY FLOORING
- 09650 RESILIENT FLOORING
- 09680 CARPET
- 09700 SPECIAL FLOORING
- 09780 FLOOR TREATMENT
- 09800 SPECIAL COATINGS
- 09900 PAINTING

SPECIALTIES-DIVISION 10

- 10100 CHALKBOARDS AND TACKBOARDS
- 10150 COMPARTMENTS AND CUBICLES
- 10200 LOUVERS AND VENTS
- 10240 GRILLES AND SCREENS
- 10250 SERVICE WALL SYSTEMS
- 10260 WALL AND COVER GUARDS
- 10270 ACCESS FLOORING
- 10280 SPECIALTY MODULES
- 10290 PEST CONTROL
- 10300 FIREPLACES AND STOVES
- 10340 PREFABRICATED EXTERIOR SPECIALTIES
- 10350 FLAGPOLES
- 10400 IDENTIFYING DEVICES
- 10450 PEDESTRIAN CONTROL DEVICES
- 10500 LOCKERS
- 10530 PROTECTIVE COVERS
- 10550 POSTAL SPECIALTIES
- 10600 PARTITIONS

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SCI CONTRACTOR CODES (cont'd)

- \_\_10650 OPERABLE PARTITIONS
- \_\_10670 STORAGE SHELVING
- \_\_10700 EXTERIOR SUN CONTROL DEVICES
- \_\_10750 TELEPHONE SPECIALTIES
- \_\_10800 TOILET AND BATH ACCESSORIES
- \_\_10880 SCALES
- \_\_10900 WARDROBE AND CLOSET SPECIALTIES

EQUIPMENT-DIVISION 11

- \_\_11010 MAINTENANCE EQUIPMENT
- \_\_11020 SECURITY AND VAULT EQUIPMENT
- \_\_11030 TELLER AND SERVICE EQUIPMENT
- \_\_11040 ECCLESIASTICAL EQUIPMENT
- \_\_11050 LIBRARY EQUIPMENT
- \_\_11060 THEATER AND STAGE EQUIPMENT
- \_\_11070 INSTRUMENTAL EQUIPMENT
- \_\_11080 REGISTRATION EQUIPMENT
- \_\_11090 CHECKROOM EQUIPMENT
- \_\_11100 MERCANTILE EQUIPMENT
- \_\_11110 COMMERCIAL LAUNDRY AND DRY CLEANING
- \_\_11120 VENDING EQUIPMENT
- \_\_11130 AUDIO-VISUAL EQUIPMENT
- \_\_11140 SERVICE STATION EQUIPMENT
- \_\_11150 PARKING CONTROL EQUIPMENT
- \_\_11160 LOADING DOCK EQUIPMENT
- \_\_11170 SOLID WASTE HANDLING EQUIPMENT
- \_\_11190 DETENTION EQUIPMENT
- \_\_11200 WATER SUPPLY AND TREATMENT EQUIPMENT
- \_\_11280 HYDRAULIC GATES AND VALVES
- \_\_11300 FLUID WASTE TREATMENT AND DISPOSAL EQUIPMENT
- \_\_11400 FOOD SERVICE EQUIPMENT
- \_\_11450 RESIDENTIAL EQUIPMENT
- \_\_11460 UNIT KITCHENS
- \_\_11470 DARKROOM EQUIPMENT
- \_\_11480 ATHLETIC, RECREATIONAL AND THERAPEUTIC EQUIPMENT
- \_\_11500 INDUSTRIAL AND PROCESS EQUIPMENT
- \_\_11600 LABORATORY EQUIPMENT
- \_\_11650 PLANETARIUM EQUIPMENT
- \_\_11660 OBSERVATORY EQUIPMENT
- \_\_11700 MEDICAL EQUIPMENT
- \_\_11780 MORTUARY EQUIPMENT
- \_\_11850 NAVIGATION EQUIPMENT



TAX ID# \_\_\_\_\_

or SS#1 \_\_\_\_\_

#### FURNISHINGS-DIVISION 12

- 12050 FABRICS
- 12100 ARTWORK
- 12300 MANUFACTURED CASEWORK
- 12500 WINDOW TREATMENT
- 12600 FURNITURE AND ACCESSORIES
- 12670 RUGS AND MATS
- 12800 INTERIOR PLANTS AND PLANTERS

#### SPECIAL CONSTRUCTION-DIVISION 13

- 13010 AIR SUPPORTED STRUCTURES
- 13020 INTEGRATED ASSEMBLIES
- 13030 SPECIAL PURPOSE ROOMS
- 13080 SOUND, VIBRATION, AND SEISMIC CONTROL
- 13090 RADIATION PROTECTION
- 13100 NUCLEAR REACTOR
- 13120 PRE-ENGINEERED STRUCTURES
- 13150 POOLS
- 13160 ICE RINKS
- 13170 KENNELS AND ANIMAL SHELTERS
- 13180 SITE CONSTRUCTED INCINERATORS
- 13200 LIQUID AND GAS STORAGE TANKS
- 13220 FILTER UNDERDRAINS AND MEDIA
- 13230 DIGESTION TANK COVERS AND APPURTENANCES
- 13240 OXYGENATION SYSTEMS
- 13260 SLUDGE CONDITIONING SYSTEMS
- 13300 UTILITY CONTROL SYSTEMS
- 13400 INDUSTRIAL AND PROCESS CONTROL SYSTEMS
- 13500 RECORDING INDUSTRIAL INSTRUMENTATION
- 13550 TRANSPORTATION CONTROL INSTRUMENTATION
- 13600 SOLAR ENERGY SYSTEMS
- 13700 WIND ENERGY SYSTEMS
- 13800 BUILDING AUTOMATION SYSTEMS
- 13900 FIRE SUPPRESSION AND SUPERVISORY SYSTEMS

#### CONVEYING SYSTEMS-DIVISION 14

- 14100 DUMBWAITER
- 14200 ELEVATORS
- 14300 MOVING STAIRS AND WALKS
- 14400 LIFTS
- 14500 MATERIAL HANDLING SYSTEMS
- 14600 HOIST AND CRANES
- 14700 TURNTABLES
- 14800 SCAFFOLDING
- 14900 TRANSPORTATION

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(or SS#) \_\_\_\_\_

**MECHANICAL-DIVISION 15**

- 15050 BASIC MECHANICAL MATERIALS AND METHODS
- 15250 MECHANICAL INSULATION
- 15300 FIRE PROTECTION
- 15400 PLUMBING
- 15500 HEAT GENERATION
- 15650 REFRIGERATION
- 15750 HEAT TRANSFER
- 15850 AIR HANDLING
- 15880 AIR DISTRIBUTION
- 15950 CONTROLS
- 15990 TESTING, ADJUSTING AND BALANCING

**ELECTRICAL-DIVISION 16**

- 16050 BASIC ELECTRICAL MATERIALS AND METHODS
- 16200 POWER GENERATION
- 16300 HIGH VOLTAGE DISTRIBUTION (Above 600 Volts)
- 16400 SERVICE AND DISTRIBUTION (600 Volts and below)
- 16500 LIGHTING
- 16600 SPECIAL SYSTEMS
- 16700 COMMUNICATIONS
- 16850 ELECTRIC RESISTANCE HEATING
- 16950 TESTING

### ***New York State Organised Crime Task Force***

The delegation spent the whole of the final day of its study tour, Thursday 2 December 1993, with the New York State Organised Crime Task Force (OCTF) in White Plains, about one hours drive out of New York city. The delegation met with Ronald Goldstock, Director of the OCTF and Professor of Law, Cornell University. The delegation also met with Robert Nicholson, Chief investigator, and Wilda Hess, Director of Strategic Analysis and Information Services.

Mr Goldstock outlined the history of the OCTF, particularly since its reorganisation to become an effective agency in 1981. He described a decade of astounding success in efforts to disrupt organised crime during the 1980's. During that time the OCTF was instrumental in the prosecution and conviction of many key organised crime figures, public officials who had been corrupted by organised crime, and organised drug cartels. The OCTF had also developed innovative strategies to deal with organised crime. These include the report on the construction industry referred to above, which resulted in the establishment of the IG on the SCA, and similar studies of other industries, and the use of civil remedies.

[Mr Goldstock provided the delegation with a copy of the OCTF's budget submission for the 1993-94 financial year which contained the most recent summary of the task force's operations and achievements. This submission is reproduced below.]

Mr Goldstock emphasised that the OCTF combines investigative, prosecutorial and research functions in the one agency. He said that the separation of investigative and prosecutorial roles was out of date and inhibited effective action against organised crime. The OCTF operates through the use of investigative teams which may be assigned either to a specific geographical area or an industry. The OCTF also makes constant use of strategic analysis in its investigations and research. Where a team is dealing with an industry which has been associated with organised crime groups, the interaction between the industry and government (eg inspection) is an important aspect as this is the locii of much corrupt activity.

The delegation was provided with the following documents, copies of which are held by the Committee Secretariat:

- ◇ *OCTF, Corruption and Racketeering in the New York City Construction Industry: Final Report to Governor Mario Cuomo, December 1989*
- ◇ *RAND, Racketeering in Legitimate Industries: A Study in the Economics of Intimidation, in October 1987*

- ◇ *Ronald Goldstock, The Prosecutor As Problem Solver*
- ◇ *Ronald Goldstock, Some Ruminations on the Current and Future Status of Organised Crime in the United States and on Efforts to Control Illicit Syndicates and Enterprises*
- ◇ *Ronald Goldstock and Harry Robins, The Americanisation of Italian and Chinese Organised Crime: A Comparative Analysis*
- ◇ *Ronald Goldstock and others, The Independent Private Sector Inspector General*
- ◇ *New York State Commission on Government Integrity, The Midas Touch: Campaign Finance Practices of Statewide officeholders, June 1989*
- ◇ *State of New York Commission on Government Integrity, Ethics in Government Act: Report and Recommendations, April 1988*
- ◇ *State of New York, Office of the Commissioner of Investigation, Report on the Activities and Associations of Persons Identified as Present at the Residence of Joseph Barbara Sr, at Apalachin, New York, on November 14, 1957, and the Reasons for their Presence, April 1958*

Partly as a result of the meeting with the Mollen commission the day before, much of the discussion with Mr Goldstock focussed on police corruption and the drug trade. Mr Goldstock shared his own views on the drug problem and provided a copy of a short paper he had published on this issue. That paper is reproduced below. Mr Goldstock recommends an approach which would reduce demand for illicit drugs, not just by way of education, but also by use of such strategies as: saturation law enforcement in drug ravaged neighbourhoods; civil injunctions to prevent named persons from entering certain areas which would be designated drug free zones; and undercover officers selling or scattering large amounts of harmless imitations of drugs in order to destabilise the drug markets.

NEW YORK STATE  
DIVISION OF THE BUDGET  
ALL FUNDS BUDGET REQUEST FY 1993-94  
STATE OPERATIONS

AGENCY: Organized Crime Task Force      FUND TYPE: State Purpose  
FUND: State Purpose                      ACCOUNT: Law Enforcement

INTRODUCTION

**Background**

There have now been ten budget cycles since the reorganization of the Organized Crime Task Force, and this is the first budget to come out of the law enforcement section of DoB. As an aid to the section in determining the level of funding for OCTF in the coming years, this introductory statement reviews the contributions this agency has made during the past decade and assesses what we ought to be doing in the next ten years.

Professor Michael D. Maltz, a professor of quantitative methods at the University of Illinois' Department of Criminal Justice, in his scholarly "Measuring the Effectiveness of Organized Crime Control Efforts," concluded that a "credible and useful evaluation" of those efforts could be accomplished, but fell short of producing a precise ruler with which to complete the measurement. He did, however, suggest that there were two important and distinct impacts for which they should be accountable and assessed. The first was their "direct" impact on organized crime itself. The second were the "indirect" impacts they had by providing assistance and influencing the activities of others.

If the question is then, "in the ten years since the reorganization of the Task Force, has this agency made a difference, and if so, how, and to what extent?", an objective review of our efforts demonstrates success in the most dramatic of ways; for OCTF, a comparatively small office, with at most two staff members for each county of the state, has literally changed the face of organized crime, and of organized crime control. It is fair to say that this time has, for us, been a decade of innovation and achievement.

With the extraordinary developments in organized crime control in recent past, it may be difficult to recall just what the world of organized crime seemed like ten years ago. While a few leaders of mob families had been indicted and convicted, such an occurrence was rare and erratic. It virtually never happened on the state level. The destruction of crews or upper echelons of such groups was virtually unheard of. Indeed, on the one hand, while some academics continued to debate the existence of Cosa Nostra, there were seasoned practitioners who argued that the mob was a "multi-headed hydra" which was virtually invincible. Unions which

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were captives of the mob remained so, despite repeated attempts by prosecutors to remove their corrupt officers.

The government's organized crime control efforts are just as difficult to recall. Investigations in virtually every case seemed to end with the conclusion of the prosecution. Civil remedies were used only occasionally, and even then, without great impact. Tactical analysts were a rare breed, and research or strategic analysts were essentially unknown. Though we have since learned their value, ten years ago the idea of market studies to identify the susceptibility and profitability of industries to organized crime hardly existed.

The approach this agency took in 1981 was dramatically different from anything that had previously existed. To be sure, some measures which were innovative then might still produce controversy, even within OCTF. However, concepts in organized crime control which this agency pioneered have since become accepted as if each had always been a part of the Organized Crime Task Force and law enforcement landscape. These include the equality of disciplines -- attorney, investigator, accountant, analysts -- in teams; regional and market-by-market assignment of teams; use of civil and non-traditional remedies; an orientation to problem-solving rather than incident response; and the prosecution of major cases in our own name or as cross-designees.

And just how innovative was this 1981 reorganization of the Task Force? Indeed, as late as 1988, President Reagan's Commission on Organized Crime believed it was breaking new ground when it recommended that the Attorney General undertake just such efforts. It urged him to consult with a number of law enforcement agencies, analyze the marketplace industry-by-industry, and use "intervention techniques" to produce not a "random series of investigations and prosecutions," but "jail sentences... forfeiture of assets, and the dismantlement of organized crime-owned businesses that are irretrievably corrupted." Even so, the President's Commission still failed to recognize the need to use specialists from universities, industry and private security to identify the underlying features contributing to mob infiltration, influence or domination of particular industries, and to restructure the industry to modify those features.

At bottom, no other organized crime control office looks like OCTF. Law enforcement agencies are either investigative (like a police department) or prosecutive (like a DA's office). Commissions and legislative committees hold hearings, issue

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reports, and propose statutory changes. Still others, such as the New York City Department of Investigation, the Comptroller's Office, and Federal inspectors general seek to establish internal control and loss prevention measures. The New York State Organized Crime Task Force does all of that; indeed, we do more. We regularly, for example, train others, conduct research, and develop new approaches to technological problems.

In the ten years, well over 500 defendants have been charged in nearly 200 OCTF indictments. To date over 400 defendants have been convicted, representing more than 90% percent of the defendants whose cases have been disposed of. Over 60% of those sentenced received incarcerative sentences. In analyzing these figures, it is crucial to understand that well over 50% of the total prosecutions initiated on the basis of OCTF investigations are brought by or in the name of local and federal prosecutors (in and out of New York State), some as a result of referrals, and frequently, others as cases prosecuted by cross-designated OCTF attorneys. In the last ten years, OCTF has prosecuted or referred cases to DA's in over 40 of New York's 62 counties. The following examples are meant to be illustrative of our efforts, they do not presume to be an exhaustive inventory of our accomplishments.

**The Achievements of OCTF -- 1982-92**

**MAJOR ORGANIZED CRIME GROUPS**

OCTF investigations and prosecutions have resulted in the indictment and conviction of major traditional organized crime figures and groups.

- \* The DeCocco and allied gambling operations in the Capital Region
- \* In federal Court in Massachusetts, use of OCTF evidence in the Springfield group's (allied with the New York mob) attempt to take over Albany rackets
- \* In the first Organized Crime Control Act (OCCA) prosecution outside New York City, the Pagano faction of the Genovese family
- \* In Buffalo, another OCCA prosecution involving the Nicoletti faction of the Todaro family
- \* In a federal case, with a cross-designated OCTF team, the Ralph Mosca crew of the Gambino Family.
- \* The Lucchese Crime Family Long Island Carting Cases and the New York Commission case which are noted in detail below

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- \* The Federal and State John Gotti cases
- \* Salvatore "Sam" Cardinale, a Capo in the Todaro family in Buffalo, convicted of weapons possession

ORGANIZED CRIME IN THE NON-URBAN COUNTIES

We tend to think of organized crime problems as involving the major syndicates in large urban areas. As a practical matter, however, organized crime figures have often been free to operate in smaller locales without any expectation of interference. That expectation may be due to corruption or simply the ineffectiveness of local law enforcement and the inattention of others. Often the effect on the locality is significant. OCTF has removed any expectation that such activity can continue unimpeded. Among those organized crime figures prosecuted for crimes committed in the suburban and rural counties of the State are:

- \* Cafaro in Ulster County for drugs
- \* Manuli in Rockland County for drugs and loansharking
- \* Riviello in Rockland County for extortion in the takeover of restaurants and bars
- \* Vacarrelli in Albany for loansharking and soliciting an undercover to break a delinquent borrower's kneecaps
- \* Sacco in Orange County for the murder of a confederate in a dumpsite; Sacco had already been plead to a federal RICO (corruption) based in part on OCTF evidence.
- \* Lofaro in Federal court, based solely on OCTF evidence, for RICO with murder and drugs as predicate offenses.
- \* Cannone in Tioga County for contempt and Quinlan for bookmaking



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CONTROL OF ORGANIZED CRIME AND PUBLIC CORRUPTION

Historically, there has existed a more than casual relationship between public corruption and organized crime. OCTF has prosecuted such matters throughout the State.

Among the many defendants convicted are:

- \* Tuxedo Police Chief Mottola
- \* DEC Sanitary Engineer White
- \* Huntington EnCon officials, Ignatow, Romersa, and Biondo.
- \* Suffolk County DMV Official Finnerty.
- \* Mt. Vernon Deputy City Clerk Hurst
- \* NYC Supervising Building Inspector Emmolo
- \* Orange County Republican Committee Member Livingston
- \* Tutoni in Putnam County for attempting to bribe the County Executive.
- \* State Senator Schemerhorn was convicted in federal court as an outgrowth of the Lofaro investigation and on evidence produced by OCTF.
- \* And where insufficient evidence for prosecution existed, OCTF sought to use civil remedies as in the case of CECOS International, Harry Williams and Donald O'Hara, the City Manager of Niagara Falls.

FRAUD INVESTIGATIONS AND PROSECUTIONS

Fraud has reached epidemic proportions in the United States, and certainly New York has seen its share of the problem. OCTF has attacked the problem in a variety of interesting ways.

- \* In one of our earliest cases, Boncimino was convicted with conspirators for a scheme to defraud the provider of school lunch programs
- \* Three companies in the business of producing parts for gas turbine engines, and their principals, pleaded guilty to commercial bribery for their part in the theft of General Electric industrial secrets
- \* In Albany, the Alfano/Crawford bust-out scheme
- \* In Oneida County, a million dollar fraud of a finance company involving inflated mortgages
- \* In Buffalo, a telemarketing scheme which defrauded coin investors of hundreds of thousands of dollars
- \* In Albany, the falsification of a grant application in order to skim \$250,000 from a fund to be used for AIDS research

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- \* In Seneca County, Klionsky, the Republican County chairman, and his successors in interest in a scrap metal concern, who were responsible for the fraudulent removal of \$440,000 worth of precious metals from the largest company in Seneca Falls.
- \* Donald Carter, head of the world's largest proxy solicitation firm plead guilty of theft and tax fraud for stealing over \$2.75 million from firm clients.

In 1981, fraud resulting from counterfeit credit cards provided a major challenge to law enforcement. OCTF's approach was not limited to the seizure of the cards and prosecution of the counterfeiters -- although those cases were in themselves impressive, viz.,

- \* In Queens, Cardella and Steinbuck convicted for possession of 3000 cards, and associated documents, with a potential cost to the banks of \$10 million.
- \* In Orange County, Pappalardo with 222 cards
- \* In Queens, Ruben with 400 cards
- \* In raids in Manhattan and New Rochelle, the seizure of 35,000 cards and printing equipment, with a potential bank loss of \$500 million.
- \* In Staten Island, cases involving organized crime figure Joseph Chilli.

Perhaps the most important aspect of OCTF's work involved the active encouragement of credit card companies to utilize holographs as an opportunity-blocking technique, so that by 1986 the problem was only a minute fraction of what it had been five years earlier.

**NARCOTICS TRAFFICKING**

The enduring drug crisis will only be eased when government and the private sector are able to provide a substantial reduction in the demand side. Nonetheless, OCTF is committed to obstructing the formation, and disrupting the operation, of enterprises and syndicates engaged in narcotics trafficking. To the extent that we can also interrupt distribution patterns within the state, even if temporarily, we seek to do so.

The number of major drug cases that OCTF has investigated and prosecuted is so substantial that it is virtually impossible to refer to even a majority. (Only a few are mentioned and each name refers to a case, often with numerous defendants.)

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- \* Twenty members of the Pagan Motorcycle gang were convicted of federal conspiracy to manufacture and distribute in excess of 1000 grams of methamphetamine (speed). All defendants pleaded guilty before and during a two and one half week trial in the Northern District federal court. The major defendant, Leonard Portello was sentenced to twenty-three years, no parole; sentences of other defendants ranged from probation to twenty-two years.
  
- \* A separate joint investigation by OCTF and State Police into methamphetamine distribution in the Oswego County area led to the conviction in federal court of four individuals for conspiracy to distribute in excess of 1000 grams of methamphetamine relating to the manufacture of methamphetamine in California and its transport to Oswego, New York, for distribution. Fifteen other individuals from around the country were also indicted federally.
  
- \* Anthony Cunzio and more than eight of his co-conspirators were convicted in federal court in Albany, after a joint OCTF/State and local Police investigation, of operating a cocaine distribution ring in Ulster County, and another part of the case was given to the Ulster County District Attorney for prosecution.
  
- \* Compitello (organized crime - connected kilo dealer from Ulster County);
- \* "Operation Snowflake" (the conviction of eighteen defendants and the record seizure of \$1.4 million in a cocaine distribution network located in Erie and Cattaraugus Counties);
- \* Heinze (a Kingston-based cocaine receiving his supply from a Cuban drug group);
- \* Ronning (a drug dealer who, with financing supplied by a Colombo crime family associate, operated a cocaine distribution network in Warren and Saratoga Counties, where he also maintained a law practice);
- \* Cefola (a Florida - based drug dealer supplying cocaine by the kilo to the Utica area);
- \* Soto (one of a group of Puerto Rican drug dealers based in Utica who were buying cocaine from Colombian suppliers in the Bronx);
- \* The "Kilo Fairy" (a drug importation conspiracy case involving the ill-fated attempt to fly 400 kilos of cocaine directly from Colombia into Buffalo, a plan which failed when the overloaded plane crashed into the Colombian jungle on take-off);

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- \* Weaver (a Florida drug dealer who shipped pounds of cocaine by U.S. Mail to Tompkins and Cortland Counties);
- \* Ojeda (New York City - based dealer supplying kilo weight cocaine to dealers in Syracuse);
- \* Panaro (one of eight defendants convicted in large-scale cocaine distribution ring in Buffalo);
- \* Cannizzaro (one of five defendants convicted in an Erie County cocaine distribution operation headquartered in a pizza parlor and in which cocaine was delivered in pizza boxes);
- \* Spina (former Oneida County deputy sheriff distributing cocaine in Utica);
- \* Seal (a kilo weight cocaine dealer in Tompkins County);
- \* Fuente (one of several convicted in a conspiracy to bring into the Rochester area from Florida multi-kilos of cocaine);
- \* Battaglia (California - based cocaine dealer supplying multi-kilos of cocaine to Buffalo distribution group);
- \* Duker (kilo-level distributor of cocaine in the Albany area);
- \* Alimonte (a California drug dealer transporting kilo weight cocaine and methamphetamine to dealers in the Binghamton area); and many, many more.

The six-year long Cali Cartel investigation that is being conducted jointly with Troop K of the New York State Police is perhaps one of the most significant and successful series of drug cases to be investigated and prosecuted in the country. Moreover, the cooperative effort between Troop K and OCTF is undoubtedly the paragon of interagency partnership in New York State.

Jaime Orjuela, a Cali-based director of operations for the New York area, and numerous co-conspirators were named in two OCTF indictments which allege that (a) the Cartel, through a highly organized and compartmentalized structure, distributed huge quantities of cocaine and reaped enormous profits in return; (b) the Cartel is run from its headquarters in Cali, Colombia, by its leaders who direct the managers and other employees of the Cartel in both the distribution of the cocaine to, and the collection of money from, customer groups; (c) the Cartel has employed managers to oversee the business in the United States in general, and in New York in particular, attending to such details as "acceptance, safekeeping, and sale of the imported cocaine, certain administrative and monetary matters, and the acquisition and maintenance of suitable operational, storage and communications facilities;" and (d) the customer groups, selling in wholesale quantities to the retail vendors, acted in the same manner as franchisees -- following the business practices established by the

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Cartel. Thus, it is alleged that it was the role of the customer group leader to place orders for cocaine directly with the directors or their assistants in Cali. The Cali directorate would then contact the local New York regional Cartel manager to arrange for the delivery of the cocaine to the customer group. Often included in the instructions passed onto the managers would be such details as the time, place and manner of the delivery. The managers and their assistants would also be given instructions for the collection, storage and transfer of monies from the customer groups to the Cartel.

Among the noteworthy events which occurred as a part of the investigation were the following:

- \* \$7.8 million was seized from a house in Bayside, Queens.
- \* 2,041 kilos of cocaine and another \$2.2 million was seized from a Queens location.
- \* Six defendants, including Hernando Rizo, a Cartel manager, were convicted after an OCTF trial.
- \* The search of a house in Williston Park, Long Island, revealed 1,025 kilos of cocaine and \$561,000 in cash.
- \* Another 100 kilos were discovered in a vehicle in New Jersey.
- \* A contemporaneous search of a house and a vehicle in Westchester County uncovered 415 kilos of cocaine.
- \* Holmes Ortiz, a manager for the Cartel operating in New York, and Hector Rosado, a disbarred attorney employed by the Cartel, were convicted after an OCTF-conducted trial. Ortiz's other associates were also convicted.
- \* Pablo Rojas, another Cartel manager for New York, was arrested following the recovery of over \$1.8 million in cash and checks from a house in Douglaston, Queens, and the seizure of 100 kilos of cocaine from a second location.
- \* Alonzo Arbelaez, who was a delivery car operator responsible for transporting cocaine to and money collected back from customer groups, and three of his workers were arrested following the searches of four Manhattan apartments and a house in Elmhurst, Queens, which disclosed \$769,000 in cash, two kilos of cocaine and associated drug records.
- \* Pursuant to a search of a Queens warehouse, investigators found 562 kilos of cocaine and \$1.1 million in U.S. currency and in a related search of a vehicle in New Jersey, another \$2 million was seized.
- \* Oscar Gonzalez, a Cartel manager, and three of his workers were convicted on drug distribution and conspiracy charges.

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In the Cali Cartel cases overall, nearly two hundred defendants had been taken into custody, and over 5,700 kilos and nearly \$24 million seized. Additional property confiscated includes nearly seventy-five vehicles, many assault and other weapons and real property valued at nearly \$1 million.

ORGANIZED CRIME AND THE CONSTRUCTION INDUSTRY

In June 1985, Governor Mario Cuomo requested OCTF to undertake a comprehensive investigation of corruption and racketeering in New York City's construction industry. Utilizing its staff and personnel cross-designated from other agencies, OCTF initiated criminal investigations and embarked upon a review of previous investigations, prosecutions and governmental and academic studies. Our approach involved continuous consultation with specialists in economics, history, loss prevention, policy studies, labor relations, law enforcement and construction.

In December 1987, Governor Cuomo created the Construction Industry Strike Force (CISF), comprising attorneys, investigators, analysts, accountants, and support staff from both OCTF and the New York County District Attorney's Office. CISF has carried forward OCTF's construction industry investigations and initiated new ones. The Final Report to the Governor: Corruption and Racketeering in the New York City Construction Industry extended the previously-issued Interim Report's description and analysis of corruption and racketeering, provided new material on official corruption and fraud in public construction, and offered extensive recommendations for executive and legislative reforms and other remedial action. Both the Interim and Final Reports were published by university presses (Cornell and New York University, respectively) based upon their analysis of the product as having transcended the traditional government report to the academic and scholarly.

The report itself has received critical acclaim both nationally and internationally. Indeed, officials from Atlanta are considering the approaches we proposed as that city gears up for the massive construction necessitated by its role as host city for the 1996 Olympic Games. The work of the CISF has likewise been noteworthy.

\* John O'Connor and other officials of Carpenter's Local 608 convicted of bribery, extortion, perjury, and bribery.



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- \* In federal court, based on OCTF evidence and tried by a Task Force Attorney cross-designated as an AUSA, convictions of Peter Vario and co-conspirators for running Laborers Local 66 through a pattern of racketeering activity.
- \* Simone Russo, the business agent for Laborers Local 1298 convicted of bribe receiving
- \* Louis Moscatiello, President of Plasterer's Local 530, pleaded guilty to bribery.
- \* Benedetto Schepis, Business Agent of Carpenters Local 17, convicted after trial of bribery and related offenses.
- \* Arthur Colasanto, the Secretary-Treasurer of District Council 20 of the International Brotherhood of Painters and Allied Trades (IBPAT), pleaded guilty to bribe receiving.
- \* Dominick Calvino, the business manager of IBPAT, Local Union 122, representing painters working in Orange County, pleaded guilty to attempted bribe receiving.
- \* Ross Muscolino, former Vice President of the Robert Martin Company, one of the largest real estate developers in Westchester County, pleaded guilty to two felonies in connection with his receipt of over half a million dollars in kickbacks from subcontractors of the Robert Martin Company.
- \* Donald Volkes, a member of the Metallic Wire Lathers Union of New York and Vicinity, Local 46, pleaded guilty to one count of Grand Larceny for extorting payments from Kings County contractors by threatening to report their use of non-union labor.

It was in the Final Report that OCTF introduced the concept of the private inspector general by establishing the "Certified Investigative Auditing Firm Program." Even outside the construction industry, OCTF has required that corporations found to have engaged in illegal and unethical behavior employ, at their own expense, a Certified Investigative Auditing Firm, which will scrutinize and replace those business practices which presented the opportunities for the previous criminal conduct.

The CIAF program has been utilized by OCTF a number of times in the environmental, construction, and financial industries. The School Construction Authority -- an institution which itself grew out of the report recommendations -- is now attempting to make a regular practice of utilizing CIAF's. OCTF is discussing the possibility of adopting the practice on a regular basis with New York State Department of Environmental Conservation, and the Port Authority of New York and New Jersey. An entirely new private sector initiative has sprung up around the concept, and regular

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meetings among the principals of such firms are taking place to set standards, criteria, and other policies for continued use. Indeed, major investigative and big eight accounting firms are now requesting that we denominate them as CIAF's. As a result, we are hopeful of being able to promulgate guidelines for the certification and selection of these private inspectors general.

ENERGY AND THE ENVIRONMENT

From the first days of its reorganization, the Organized Crime Task Force focused attention on the growing problems of organized crime involvement in energy and environmental issues. The agency has clearly become the leader within the state in investigation and prosecution of the most complex of this type of criminal activity.

- \* Tri Chem was the first company held liable for unlawful dealing in hazardous waste in the history of New York. OCTF's later referral to the State of Connecticut resulted in their largest case of that type to the present.
- \* The owner of the Orleans Sanitary Landfill, and one of his corporations, was found guilty of filing false documents with DEC and tax fraud.
- \* In Seneca County, Superior Disposal Services, Inc. plead guilty in connection with its acceptance of waste incompatible with its permit.
- \* In the first case of its type in New York State history, a Rochester businessman James R. Polvino was convicted in Onondaga County of homicide in connection with an incident of "Midnight Dumping," in which the defendant was said to have caused the death of the man he had hired to illegally dispose of a quantity of hazardous chemical wastes which were located on the property of a Rochester business Polvino had recently purchased.
- \* In Orange County, Anthony and Barbara Litrenta, the owners of Coachman Carting, plead guilty to felonies and were sentenced to incarcerative sentences in connection with the illegal storage of tens of thousands of pounds of regulated medical waste at the company's premises.
- \* Eugene Montepare, Richard Walsh and Nicola Diamante have been indicted by a Greene County Grand Jury in connection with a scheme to bribe the Mayor of Coxsackie -- who cooperated with OCTF in the investigation -- in order to obtain the franchise to run the village transfer station



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- \* Also in Greene County, the corporation operating a construction and demolition landfill, and the on-site supervisor, have been convicted of feloniously under-reporting to the Department of Environmental Conservation the volume of material accepted at the site. In addition, as part of the settlement of the criminal prosecution against it, the Corporation has hired a CIAF to monitor its ongoing shale mining business
  
- \* The Long Island Carting Industry investigation is noted in detail below (see "OCTF Technical Unit and Electronic Surveillance")

During the course of the Long Island Carting Case, OCTF secured a grant from the National Institutes of Justice to cross-designate a Rand Corporation economist as an OCTF analyst. The joint OCTF/Rand effort which resulted analyzed the industry and recommended structural changes to reduce the incidence of racketeering and corruption which had become an endemic part of waste collection in New York. The study -- Reuter, Racketeering in Legitimate Industries -- is now being studied by the City of New York's Department of Consumer Affairs, as a model to reform that problem industry.

OCTF is now concluding work on a second study, partially funded by NIJ, relating to Organized Crime's role in the disposal of Specialty Waste, including hazardous, medical, construction & demolition debris, and asbestos.

OCTF TECHNICAL UNIT AND ELECTRONIC SURVEILLANCE

The Organized Crime Task Force's extraordinarily capable technical unit has routinely been called upon to do sophisticated work for other offices, including the Drug Enforcement Administration, several district attorneys' offices and organized crime control units in this and other states. In OCTF investigations, its work has included the interception of oral communications of two mob bosses, Anthony "Tony Ducks" Corrallo (through a bug in his driver's car) and John Gotti (in the private room attached to his social club), and Corrallo's underboss, Salvatore "Tom Mix" Santoro (in his place of business).

The Corrallo and Santoro bugs were a part of the most celebrated and significant energy and environment investigation in New York State -- the so-called Long Island Carting Case -- which

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resulted in thirty-eight convictions of organized crime figures, public officials, and carting companies and perhaps, as importantly, ultimately and directly led to the "Commission Case," the most important organized crime prosecution in American history. The latter case resulted in the RICO convictions of the heads of the New York families, including the boss and underboss of the Lucchese Family, who were sentenced to a hundred years imprisonment. United States Attorney Rudolph Giuliani noted that, in referring the matter for federal prosecution, OCTF had "put the public good ahead of any narrower concerns."

The Gotti bug resulted in the interception of conversations which, if heard by an untainted jury, would likely have caused the conviction of John Gotti for the shooting of corrupt union leader John O'Connor. In any event, the tapes proved critical in an entire series of federal cases resulting in the convictions of over two dozen mob figures, including Gambino underboss Joseph Armone and consigliere Joe N. Gallo. Indeed, a number of the intercepted conversations were used, and OCTF testified, in the recent, successful RICO prosecution of John Gotti.

LOCAL ASSISTANCE AND TRAINING

The work of the New York State Organized Crime Task Force has included more than just the production of investigations, prosecutions, reports and innovative programs.

Attorneys and investigators from several district attorneys' offices have been cross-designated as OCTF staff and participated in its investigations. By such means, the attorneys and investigators, and their respective offices, have become familiar with the structure, techniques and investigative and legal expertise of OCTF, and have brought that knowledge back to their own agencies. One such instance led to the creation of a labor racketeering unit, modeled on OCTF's team concept, in the New York County District Attorney's Office; the new Queens' DA's office is likely to follow suit, as are units in Rhode Island, Pennsylvania and elsewhere.

OCTF has also taken seriously its mandate to aid local law enforcement by offering training programs in a variety of important areas.

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- \* Hundreds of New York's prosecutors and investigative attorneys have participated in OCTF's organized crime seminars at Cornell, and programs throughout the State have introduced more than two hundred prosecutors to the new Organized Crime Control Act.
- \* More than a thousand state and local investigators have been trained by OCTF in the techniques of tactical analysis, and hundreds of other investigators have also received instructions from OCTF's Technical Unit in the use of sophisticated electronic equipment.
- \* Over 175 prosecutors and municipal attorneys in New York State attended training sessions which focused on both complex issues of civil practice and the significant changes to the state's forfeiture law enacted during the 1990 legislative session.
- \* In addition to the training sessions referenced above, OCTF's Civil Remedies attorneys have travelled the State conducting seminars for hundreds of additional attorneys and investigators in conjunction with programs sponsored by the New York State Bar Association, Drug Enforcement Agency, the NYS Department of Environmental Conservation and the Law Enforcement Coordinating Committee.

## LEGISLATIVE EFFORTS

OCTF has taken the lead in drafting and negotiating a variety of significant new statutes in aid of organized crime investigations, including the 1986 Organized Crime Control Act, the 1987 Money Laundering statute, the extensive 1988 revision of the State's eavesdropping provisions, and the 1990 amendments to the state forfeiture and money laundering statutes. OCTF has also played an important role in the development of new legislation designated to strengthen and improve New York's civil forfeiture laws.

## CIVIL ENFORCEMENT AND FORFEITURE

Undoubtedly, one of the by-products of forfeiture training will be the increased use of the state forfeiture statute, a prospect which will not only deprive felons of their ill-gotten

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gains, but, significantly, will produce much needed revenue for the New York State Office of Alcohol and Substance Abuse Services (OASAS) (formerly the Division of Substance Abuse Services or DSAS), which, according to the statute, receives a substantial share of the proceeds of such actions.

The Civil Enforcement and Remedies Division of OCTF has prepared and initiated more than 150 actions seeking forfeiture, restitution, damages and other forms of civil relief, since 1987. We have recovered and distributed millions of dollars in cash, and numerous vehicles. Together with the U. S. Attorney's office for the Southern District, we have brought a federal civil RICO action against the Carpenters' Union, and our two offices are presently putting the final touches on a civil RICO action against another union. Much of the evidence in these cases were developed during OCTF's construction industry investigation.

**OCTF -- THE FIRST DECADE**

At a 1986 Harvard dinner, Tom Sheer, then head of the New York office of the FBI, was asked to comment on the Organized Crime Task Force's striking record of accomplishment, particularly in comparison to the federal efforts. His response was thoughtful, kind, and accurate. He described OCTF as "an elite vanguard in the fight against organized crime; imaginative and unencumbered by bureaucracy, it could move quickly and decisively, scoring important victories in uncharted territory." The FBI he went on to say, was "like the Third Division" -- it took them forever to get geared up to reach the scene of the battle, but once they got there, "they could wipe out any opposition."

Six years later, with FBI now there, the synergistic effect of the sociological changes within the mob and enhanced law enforcement efforts has become apparent. Mob figures, disenchanted with the organizations of which they were a part, choose to cooperate with law enforcement more and more frequently. The effects are dramatic. With the top people in prison, on trial, or awaiting trial, the Families are undergoing further dissolution. Vacated positions are being filled by members who have moved up without training and testing. More experienced and competent criminals, who in an earlier day would likely have assumed leadership positions, have sometimes stepped back rather than attract law enforcement interest. The Peter Principle is at work. The result is incompetence, factionalization, and friction.

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The primary purpose of syndicates -- and this is what makes organized crime organized -- is to serve as a government for the underworld, providing services, allocating resources and territories, and settling disputes. With experienced leaders distracted by their prosecutions and new leaders having neither the ability nor the standing to operate effectively, internecine disputes have been grown in number and seriousness, violence has become commonplace, and instability is evident both within and between families.

Moreover, inexperienced members who may in the past have run only a gambling or loansharking operation are now in positions of power within the Family. As a result, they represent its interests in complex legitimate industries characteristically comprised of large numbers of businesses, unions and criminal syndicates. In New York, examples include construction, carting, the waterfront, and the garment center. In the past, those who operated within these various entities, legitimately and illegitimately, reached numerous interlocking accords with each other, allowing them all to coexist. The new representatives of the families, however, unaware of the history and the reasons for past accommodations, often seek to use their new-found power to make changes in these delicate relationships that may temporarily increase their illicit profits, but also contribute to destabilization.

With instability at all levels and with continuing sociological change inevitable, if current law enforcement efforts are maintained in the next five to ten years, the Mob is likely to be rendered totally unrecognizable from what it has been for the last sixty years.

THE CURRENT ORGANIZED CRIME OBSTACLES FACING LAW ENFORCEMENT

The first challenge must be to continue efforts against traditional organized crime groups. The second is to address emerging, ignored and non-traditional organized crime syndicates. The third is to address comprehensively the underlying criminal activity in which those syndicates engage.

While there are a number of ways that non-traditional syndicates can be analyzed, conceptually they tend to fall into five groups.

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- \* Ethnic Predecessor-Based Immigrant Groups. The first category is comprised of groups with histories similar to Cosa Nostra. The paradigm example is the Chinese Tongs.

They tend to be comprised of members of a single ethnic group from a country with a tradition of illegitimate and oppressive government. In part for this reason, social norms were largely medieval and feudal. Man and property were protected not by lawful authority, but by personal and family influence, by courage, and by self-reliance. Loyalty and solidarity were paramount values. Members of these groups came to the United States in mass migrations and tended to settle in ethnic enclaves. Some members retained the prominence they had attained in their predecessor organizations. As they became organized in this country, they preyed on members of their own ethnic groups. Over time, they also attained positions of prominence in local social institutions, giving them new opportunities to expand their criminal activity.

- \* Urban Minority Drug-Based Groups. The second category is comprised of members of particular minority groups living in urban ghettos who developed substantial capital and power by dealing in narcotics. Certain black and Hispanic drug groups fall into this category.

- \* Gang-Based Groups. Third are the multi-crime gang-based groups, including motorcycle and prison gangs.

- \* Multi-Crime Ethnic-Based Groups. Fourth are the multi-crime ethnic-based groups, which include organizations of Cubans (including the Marielitos), Israelis, and Irish. These groups vary in the extent to which they are organized. Some have formal hierarchies, while others do not. Like other organized crime groups, however, they engage, more or less on a full-time basis, in a wide variety of crimes including not only drugs and gambling but also counterfeiting, fraud, and auto theft.

- \* External Drug-Based Groups. Fifth are the external drug-based groups operating from a foreign country but selling heroin and cocaine in the United States. Some, like the Colombians, are vertically-organized cartels controlling narcotics trafficking from production to sale. Others,

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like the Pakistanis, are less sophisticated in approach.

Today's syndicates are involved in a large number of enterprises, some of which are wholly illicit, such as gambling and narcotics trafficking, and others of which exist within the framework of otherwise licit industries, such as construction, carting, the waterfront, and the garment center. These legitimate industries provide enormous incentives for the syndicates to develop and engage in anti-social behavior. Those incentives, however, can be reduced. To do so, however, requires an analysis of each industry's racketeering susceptibility and potential and the use of a wide range of non-traditional remedies. Indeed, only an agency with both a law enforcement perspective and one which thinks in economic, political, historical, and analytic terms is capable of achieving real reform.

**OCTF -- THE NEXT DECADE**

If the first decade has been an extraordinary time of innovation and achievement, the second decade holds the promise for an entirely new level of leadership and accomplishment. Such futurist planning (that is, attempting to figure out what the world of organized criminality will look like down the road, and then designing a method of control) is made more difficult by the current economic atmosphere, requiring that any such plans take into account the severe fiscal restraints under which we now operate.

With full scale implementation impossible, we have sought to position ourselves to again serve as an "elite vanguard," using a variety of disciplines to effect -- or demonstrate how to effect -- changes in spheres (whether they be industrial, criminal service, geographic, institutional, or other) in which traditional or non-traditional groups are likely to operate. We have thus determined our priorities and, though hampered by a severely limited budget, have aligned our staff to concentrate analytic, investigative, and prosecutive efforts on the following areas:

**Environmental & Construction Racketeering:** As our knowledge of these industries grew, and as we became more sophisticated in our analyses of the role of organized crime within each, the intricate relationships between the two became more and more evident.

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There are, of course, some obvious points where waste and building have direct contact. Cases involving construction and demolition debris (C&D) fit neatly into either industry and affect both. Indeed, commercial solid waste and construction are also linked by C&D; new business for solid waste carters is often obtained by leaving dumpsters at construction sites starting with the C&D roll-off and eventually securing the waste hauling business of the owner or tenant of the building being constructed.

Asbestos removal (abatement, transport, and disposal) is linked to the demolition and remodeling aspects of construction with a number of asbestos abatement firms the offspring of general purpose contractors.

The insurance/bonding business is a critical secondary player in both industries. The same brokers, representing the same insurers, infiltrated by the same OC members or associates provide essential financial services (often fraudulently) to businesses in both waste and construction.

This relationship is likely to become, if anything, more significant in the future as the waste business becomes directed by developments in disposal technology. Whatever their merits, recycling and incineration are likely to be important aspects of New York's solid waste future.

Incinerators will constitute multi-billion dollar construction projects in the 90's. Who designs, builds, and operates these facilities will be hotly contested issues. Ultimately, the operators will have extraordinary influence over the collection, transport, and disposal components of the waste industry.

Ironically, the relationship will come full circle if recycled material -- everything from glass, to metal, to discarded tires and even incinerated ash -- becomes, as is likely, the raw material for the construction industry. That relationship can only be enhanced as the same mob influenced unions operate in both spheres.



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It is thus clear that successful investigation and analysis of one of these industries requires not only an appreciation of the other, but shared intelligence, and the development and execution of consistent strategies.

Rockland/Mid-Hudson Organized Criminal Activities: With the enormous pressure the FBI is currently exerting Cosa Nostra in New York City and with the construction and development of Stewart Airport and other commercial ventures in the Mid-Hudson region, several of the Families have begun to expand what was once a modest presence in the counties north of the City. In response, OCTF has decided that, despite its successes in the past against organized crime in this region (see references to Pagano, Sacco, Manuli, et al., above), it made sense to conduct a comprehensive examination of racketeering in Rockland, Orange, Dutchess and the other counties comprising the Mid-Hudson Valley.

Food industry(s): Over the years there have been a series of probes of the infiltration by organized crime into various segments of the food industry. As is the case with the carting and construction industries, the food industry -- from trucking and the markets to restaurants and supermarkets -- and the unions which service the industry, seem to present high levels of racketeering susceptibility and potential.

While a recent federal investigation revealed the dominant presence of organized crime in the operation of the Fulton Fish Market, and a twenty year-old investigation by the New York County District Attorney's office of organized crime's control of the meat industry (for a fascinating rendition of this investigation, see Kwitny, Vicious Circles), there has been no detailed analysis of the entire industry.

OCTF contemplates that such an analysis, and the investigations, prosecutions and the employment of other remedies to combat organized crime which are likely to flow from such an inquiry will lead to the formulation and adoption of strategies to control corruption from the industry and stem the flow of cash to organized crime. As Vicious Circles points out in sickening detail, the success of organized crime in siphoning monies from the food industry has lead to a severe deterioration in the quality of the food the consumer

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purchases. It is likely that the public health will benefit significantly from the successful development and deployment of the strategies we hope to explore in conducting this study.

**Soviet-emigre OC:** With the breakup of the former Soviet Union, greater access to information and law enforcement personnel in the Republics, and increased travel between the States and the Republics by nationals and expatriates of the former Soviet Union, the opportunity to study the emerging phenomena of Soviet-emigre crime and to determine the nature and scope of its organization presented itself.

In an effort to engage in a comprehensive examination of "Russian" organized crime (recognizing that those former citizens of the former Soviet Union may have originated from the Ukraine, Georgia, Turkmenistan or any of the other Republics), OCTF has joined together with the New Jersey State Commission of Investigation, the Pennsylvania Crime Commission and the New York State SIC to form the "Tri-State Joint Soviet-emigre Organized Crime Project."

The purpose of the project, in which OCTF, as the only prosecutive organization has been denominated the lead agency, is to undertake a joint intelligence and investigative/prosecutive effort to determine whether a Soviet-emigre organized crime problem exists within the region which may be traced to influences of criminal groups from the former U.S.S.R. To aid us in this effort OCTF has arranged to work closely with a United States - based Senior Inspector of the Belarus state police who maintains an ongoing investigative relationship with police authorities throughout the former Soviet Union and who is able to acquire information from the Republics regarding emigres to the United States of the former Soviet Union.

**Official corruption:** Organized crime has traditionally thrived through corrupt relationships with public officials. OCTF will continue to investigate corruption when it is connected to organized crime activities, multi-county or when we are requested to do so by the Governor or the local district attorney. OCTF is currently engaged in a highly-publicized, resource-intensive investigation into corruption in one of the State's largest cities.

**Narcotics investigations:** The investigation into the Cali Cartel continues to produce high level prosecutions and investigatory leads, and OCTF, together with Troop K, plans to continue to

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pursue those leads vigorously. Indeed, we have recently expanded the Cartel section to incorporate a cross-designated attorney and investigator from the Queens District Attorney's office to undertake a parallel investigation into a different high-level distribution group of the Cartel. Moreover, the money laundering team attached to the Cartel section has had a good deal of initial success in uncovering what appears to be a major scheme to launder millions of dollars in drug trafficking proceeds.

In addition to the multi-front attack on the Cali Cartel, OCTF, together with the Special Investigations Unit (SIU) of the State Police, has initiated an investigation into the role Dominican drug groups play in the delivery of drugs to, and the consequential distribution of the drugs throughout, the central and western portions of the State. The investigation will seek to determine the extent to which the importation of cocaine into the Rochester area from New York City and its subsequent distribution from Rochester to Buffalo, Syracuse and the other outlying, smaller cities and towns is organized by the Dominican drug gangs which appear to be the primary recipients of the cocaine sold by the Colombians. Of course, as always, our aims include the disruption of any distribution scheme, the interference with any supply routes we uncover and the implementation of other remedies which will make the use of those routes unprofitable to the distributors.

**Pre-conviction Forfeiture:** One of the basic tenets upon which this Agency operates is that the role of the prosecutor is not merely to prosecute, but to invent and invest in strategies designed to prevent crime, as well as investigate it, to deter and discourage criminals, as well as prosecute and convict them, and, in an all-encompassing way, assume the role of the problem solver (See, Goldstock, Prosecutor as Problem-Solver [published as part of the Occasional Papers Series by New York University School of Law]). One of the strategies we hope to pursue in our overall effort to effect a deleterious impact on the drug distribution networks throughout the State is a concentrated effort to implement the "pre-conviction" forfeiture provisions of CPLR Article 13-A.

Since its adoption in 1984, the State civil forfeiture law (contained in CPLR Article 13-A; hereafter "13-A") has provided that, in cases involving the sale or possession of drugs, a forfeiture action could be brought without the necessity of ever securing a conviction of the defendant for the underlying criminal conduct. While such pre-conviction 13-A actions have been brought,

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OCTF is the first agency in the State to dedicate personnel to the task of undertaking narcotics trafficking investigations for the explicit purpose of using the pre-conviction provisions of 13-A as the primary remedy.

As did the Legislature in enacting these provisions originally, we believe that the judicious and aggressive use of this remedy will hobble organized narcotics distribution networks by depriving them of both their profit and the means by which they have been carrying out their illicit business and, at the same time, provide to law enforcement -- and to OASAS -- desperately needed resources.

**OCTF'S BUDGET REQUESTS**

**Summary**

We are requesting a budget increase of \$3,542,271 representing an increase in Personal Services of \$2,792,171, and an increase in NPS of \$750,100. In addition, we are requesting authority to spend up to \$2,000,000 out of the Special Account (maintenance undistributed) representing forfeited funds. The total figure requested is approximately 2.5 million dollars above this year's total authorized expenditures.

**Recent budget history**

To fully appreciate the budgetary needs and requests which follow, it would be instructive to understand in detail how a mistaken reduction in the agency's funding in 1989-90 has been perpetuated and has exacerbated what would in any event be a tenuous fiscal situation. While we have previously detailed what follows in previous correspondence with DoB, it bears retelling.

The error made in the budget process four years ago inadvertently reduced OCTF's staff by twenty positions. When the error was discovered, ten of those positions were added back through a supplemental allocation to our general fund. The ability to maintain the other ten was achieved, on a temporary basis, when we were authorized to fund those positions with forfeited monies. The FY 1990-91 Executive Budget submitted by the Governor to the Legislature would have explicitly, and more permanently, rectified the previous year's error by including within the proposed increase of \$1,148,300 million (\$973,400 in personal services) not only



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funds for new initiatives, but -- more importantly -- for those ten positions.

Despite the efforts of the staffs of the Governor's office and OCTF, the Legislature unwittingly treated all of this money as part of "new initiatives," cutting it from our budget in the closing hours of the painfully long budget process. Despite assurances from the Legislative staff that we would be "called day or night" if our budget (as reflected in the Executive Budget) were to be cut, we were not notified until after the bill had been passed. The leaders of both houses expressed their willingness to include in the anticipated clean-up bill the restoration of the funds (intended by the Governor to restore monies erroneously cut) they agreed were mistakenly eliminated. Unfortunately, since there later was agreement that the clean-up bill was to include no additional funding, the leaders told us that restoration would have to await the funding of the 1991-92 budget. Instead of restoration, there were further cuts in both the 1991-92 and the 1992-93 budgets. Since these cuts were largely accomplished through a percentage reduction of our base, the consequential decrease in our budget base further aggravated the impact of the original error. Moreover, because we are housed in leased, rather than government-owned, space for which our rents are fixed by contract with private landlords, every percentage reduction has a disproportionately greater negative impact on those funds available for discretionary spending than those agencies, recipients of the same percentage cuts, which occupy space in state office buildings.

Likewise, even assuming that this year some modest increase were to be forthcoming for state agencies, awarding OCTF an increase based on a percentage of its base, without further augmentation, would be unfair because it would not take into account the budget base diminished in error.

The cumulative impact on our ability to function has been just short of disastrous. Not only is OCTF a small agency, but it is also a lean agency to begin with which has always functioned in a frugal manner. Even in the years which preceded the across-the-board percentage cuts in the budgets of state agencies, we operated on an austerity basis. However, we are now at a point where many of the teams have vacancies, and we are finding it increasingly difficult to fulfill our statutory mandates in the innovative and aggressive manner which has earned OCTF a nationwide reputation.

**Current budget needs**

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When the Agency was reorganized in 1981, and the State consolidated into three "regions," each with an office, it was determined that there would be a need for a minimum of four teams in the Northern (Albany) and Western (Buffalo) Regions. In addition, because of the mandate to create the Construction Industry Strike Force, staff the Cali Cartel Section and be in a position to investigate criminal activities by both traditional organized crime (i.e., Cosa Nostra) and emerging crime groups, there was a need to staff an additional ten teams. Despite the fact that these staffing goals are reasonable (they would amount to one team for every four to five counties), we have never achieved these levels.

However, due the uncertainty attendant to relying on the forfeiture funds the Legislature would have us spend on salaries, we are now precariously close to losing altogether our ability to service the Western Region and, there, to proceed with the investigation into the Dominican cocaine supply routes, and to being unable to carry forward with worthwhile investigations into construction and labor racketeering in New York City and its suburbs and with the Food Industry Project. In order to proceed with this work and to staff the minimum number of teams necessary to carry it out, the funding we have requested will include the minimum amount to fund those positions necessary to fill the vacant team positions caused by attrition.

**Other than personal services:**

The reduction of NPS (OTPS) has been equally catastrophic. For example, the FY '93 budget allocates \$1,548,900 for "Contractual services." Our annual cost for those services which, inter alia, include rent, utilities and telephone service, is, however, \$2,200,000! Similarly, the other components of the NPS budget are underfunded. For example, we are appropriated \$53,000 for Supplies and Materials, while our annual cost is approximately \$75,000. The "Equipment" allocation is \$57,700, while the actual expenditure exceeds \$110,000. In all, we are underfunded by more than three-quarters of a million dollars.

The gap between allocation and funding has resulted in our inability to upgrade and replace our surveillance equipment and automobiles and to implement anything more than the most rudimentary of computerized data bases. Intelligence and our sustained ability to gather and analyze it are our lifeblood. Without a real opportunity to replenish our equipment and resources, our condition is likely to deteriorate rapidly. In order to meet our fixed expenses and to recover the technological



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advantage we need to combat successfully the wide range of organized crime problems we face, we are requesting an increase in NPS of \$750,100.

In these last several years, when we have been forced to divert virtually all of our forfeiture funds just to maintain the status quo, we have been, after all, quite fortunate. In the same time period, OCTF's Civil Enforcement and Remedies Division has forfeited more than \$4.5 million in actions and claims brought under Article 13-A. In addition to OCTF, the forfeitures, fines and restitution which have been awarded to other agencies in the State include the following:

- \* More than \$1.5 million (\$1,522,251.00) has been distributed to the Division of Substance Abuse Services;
- \* Nearly \$2 million (\$1,865,174) has enriched the general funds of various counties and the City of Buffalo;
- \* More than \$200,000 (\$213,314.00) has been distributed to the New York State Police;
- \* More than \$128,000 (\$128,078) has gone to local police departments throughout the state;
- \* \$165,000 has been distributed to the victims of crime;
- \* \$97,500 has gone to the New York State Department of Taxation and Finance; and
- \* \$13,735 has gone to the New York State Department of Environmental Conservation.

Moreover, OCTF currently plans to use state law (Article 13-A) for all future forfeiture actions arising out of the Colombian Cartel investigation, which will result in large distributions to OSAS. In the last several months, a total of \$1,660,000 in cash and money orders has been seized, and will be forfeited under CPLR Article 13-A. Currently subject to attachment is approximately \$2.8 million in bank and investment accounts alleged to be involved in a scheme to launder the narcotics proceeds of the Cartel (Goldstock v. Restrepo, et al.). Approximately \$400,000 of the attached funds should be forfeited within the next few months by way of default judgment, and the remaining funds are subject to settlement discussions or pre-conviction forfeiture actions.

We will only succeed in our efforts to ensure that New York State's OCTF remain the "elite vanguard" in the ongoing battle against organized crime if our funding is restored to the minimum levels detailed in this Request. Given our singular success against organized crime in our first decade, the continued commitment to service the other law enforcement agencies of the State and our aggressive use, and our unique mastery, of the State forfeiture law, we suggest that the increase in funds we are requesting is money the State really cannot afford not to invest.

## *ATTACKING DEMAND*

Recent calls for legalization or "medicalization" of narcotics, as misdirected as they are, still point out the frustration felt with the inadequacy of the traditional approach to what is now considered our most serious and intractable social problem.

The linchpin of our current strategy -- prosecuting and imprisoning sellers -- has not only completely failed as a deterrent, but threatens to bring our already collapsing criminal justice system to a complete halt overwhelming police, prosecutors, courts and prisons. The major tactic for developing evidence against sellers -- the undercover buy - has imperiled, indeed cost the lives, of numerous police officers. Moreover, the arrest of individuals facing long prison sentences and with access to large amounts of cash from their illicit activity has fostered corruption throughout the law enforcement community.

Interdiction efforts, too, are largely ineffective, given that but a fraction of the narcotics sent into the country are intercepted. Even if our borders could be sealed, we would not be much better off. Domestic production, including the manufacture of dangerous synthetic substitutes, would inevitably soar, with little ultimate effect on consumption.

The challenge is clear, if daunting -- we need to affect drug abuse, reduce the problems associated with our current approach, and avoid the dangers inherent in legalization. It may indeed be possible to do all three by re-directing our efforts to focus almost exclusively on demand.

While talk of reducing demand -- generally by increasing educational programs -- is not novel, we still have yet to develop a comprehensive strategy designed to discourage elective users and to drive addicted users to seek treatment. In fact, there are numerous methods of creating inconvenience and uncertainty, or inflicting penalties and other adverse consequences to the buyer which have the potential of dramatically effecting drug use.

The design of such a strategy must recognize the crucial role of treatment. Treatment, which must be available on demand, will have enhanced success if the addict actually seeks results rather than fulfilling an externally imposed requirement that he or she attend a designated program. At the same time we ought to reject tactics which would contravene basic rights or be perceived as being unfair and unrealistic as was the case with the "zero tolerance" policy.

Individuals tend to purchase drugs where they can do so easily, in neighborhoods with a high concentration of buyers and sellers, and minimal interference by police or community -- a place where they can be reasonably assured of receiving what they pay for. Thus, an interesting, if predictable, result of police saturation programs is the increased demand for treatment which follows the disruption of such a stable situation.



This suggests the following tactics to reduce demand:

*\* Saturation law enforcement programs in drug-ravaged neighborhoods in which seizure of drugs rather than arrest of sellers is stressed. Beyond disrupting patterns of purchase and supply and forcing some buyers into treatment, these programs appear to have benefits which outlast the enforcement efforts, such as the establishment of community groups devoted to keeping neighborhoods resistant to drug crime.*

*\* As a component of these programs, civil injunctions should be employed prohibiting named persons from entering defined neighborhoods -- drug free zones -- altogether. Such injunctions would not only seek to accomplish their purpose directly, but they would also be far simpler to enforce than existing criminal laws, which require gathering evidence and subjecting it to often interminable court proceedings.*

*\* "Reverse sales," in which undercover officers, instead of posing as buyers, destabilize established markets by selling harmless powder to those seeking to purchase drugs. Indeed, crack vials containing imitation, non-toxic crack might be scattered in market areas, likely producing the same effect in the drug economy as the introduction of massive amounts of counterfeit money would in a financial economy.*

*\* Enforcement of "padlock" and other laws to shut down shooting galleries and crack houses.*

At the same time, those who use illegal drugs should be penalized in manner designed to provide sufficient incentive to forego the strong compulsion of experimentation or addiction. For example,

*\* Forfeiting cars used to facilitate drug purchases. Increasing the use of forfeiture remedies aimed at other assets would also have a potent deterrent effect.*

*\* Eviction programs, in which those who possess and use drugs are threatened with losing their residences. Such programs would also allow neighbors to reestablish control of housing and provide much needed space for the deserving homeless.*

*\* Arresting and incarcerating buyers for very brief periods, utilizing work camps whenever appropriate. Since one of the major benefits to be derived from a user-based approach is the reduction of dependency on prisons, punishment should be inflicted without resort to high security institutions.*

*\* Suspension or revocation of driver's licenses, business and professional licenses, and other licenses or permits.*

Corporate America can have a significant effect on at least one segment of the drug-using population. By utilizing the power of the corporate culture and by undertaking detection and assistance programs, companies can reduce employee problems and improve their bottom line.

Expanded drug testing, including random testing in some workplaces and systematic testing of persons who come into the criminal justice system will help to identify users and result in adverse consequences to them. Such testing of course must meet rigorous Constitutional safeguards and be done in a manner to assure accuracy.

Finally, public education must become a serious national priority within and without the school system. Any serious approach to reducing demand requires that social mores be changed and the public recognize intellectually and emotionally that the use of certain drugs is harmful and counterproductive.

\* \* \*

Supply-side enforcement efforts should be continued only against individuals engaged in violence, who show particular sophistication by engaging in practices such as money laundering, and who operate gangs or other organized groups.

This approach otherwise ignores sellers. But it makes little sense to continue spending so much money and endanger so many lives, and to clog our courts and prisons, in an impossible war of attrition. The profits of the drug business are simply too high to discourage existing sellers or to create meaningful barriers to entry. Imposing additional costs on sellers merely allows for an increase in drug price which encourages additional illegal behavior by users.

Unquestionably this strategy is unorthodox and controversial, rejecting traditional means of combatting the drug problem. It ought not be adopted without considerable thought, or rejected without some. It is not designed for all communities, many of which might succeed using standard approaches if the magnitude of the problem is manageable. But in appropriate circumstances the benefits may prove substantial, reducing the consumer population and in the process, freeing prison space for other than the seller.

Ronald Goldstock  
Ithaca, New York  
January, 1990

## THE INDEPENDENT PRIVATE SECTOR INSPECTOR GENERAL

### Introduction

1. This report represents the development of the Independent Private Sector Inspector General ("IPSIG") concept by a Working Group comprised of representatives of law firms, investigative organizations and public agencies with experience in the implementation of the concept and related fields.<sup>1</sup> The IPSIG concept was described by the New York State Organized Crime Task Force in its 1989 Report on Corruption and Racketeering in the New York City Construction Industry, and has since been applied in several cases, described in Attachment A. This report develops and defines the IPSIG concept in considerably broader terms.

### Primary Definition

2. An IPSIG is an independent, private sector firm with legal, auditing, investigative, and loss prevention skills, employed by an organization (voluntarily or by compulsory process) to ensure compliance with relevant law and regulations and to deter, prevent, uncover and report unethical and illegal conduct by, within and against the organization.
3. Where the culture of the organization is primarily legitimate or amenable to reform, the IPSIG may, in addition to the prevention and control of illegal or unethical conduct, be a major participant with management in enhancing the economy, efficiency and effectiveness of the organization. Where the

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<sup>1</sup> The Working Group consists of representatives of the law firms of Getnick & Getnick and Stier, Anderson and Malone, the investigative firms of Decisions Strategies, Inc., the Fairfax Group Ltd., Investigative Group, Inc., Katz Associates, Inc. and Kroll Associates, Inc., and the following public agencies: the New York State Organized Crime Task Force and the School Construction Authority's Inspector General's Office.

The principal authors of this report are Lesley Skillen, Ron Goldstock, Barry DeFoe and Wilda Hess, working in conjunction with the New York State Bar Association Commercial and Federal Litigation Section Civil Prosecution Committee chaired by Neil V. Getnick.

culture is primarily illegitimate and hostile to change, the IPSIG's role may be essentially adversarial, limited to instituting internal controls and monitoring organizational activities.

#### The IPSIG concept

4. In its Construction Industry Report, OCTF envisaged that IPSIGs (termed Certified Investigative Auditing Firms ("CIAFs"))<sup>2</sup> would be compulsorily hired by general or prime contractors on public construction projects in excess of \$5 million, with a minimum of 2% of the project cost dedicated to funding the CIAF. The role of the CIAF was primarily to scrutinize the revenues and expenditures of the contractors to expose payment of bribes and to design and monitor programs and strategies to deter and detect corruption. OCTF cited as precedents (*inter alia*) requirements under SEC regulations that public corporations disclose certain financial information and hire certified public accountants to undertake periodic audits, and laws relating to the monitoring of casino gambling and hazardous waste disposal.<sup>3</sup> The concept described by OCTF has since been adopted in several cases. These are briefly described in Attachment A.
  
5. Despite the genesis of the IPSIG concept in the reduction and control of pre-existing corruption and fraud within organizations, IPSIGs in fact have much broader application, both to organizations seeking to correct corrupt and fraudulent conduct and those seeking to prevent it. As the second paragraph of the definition set forth above indicates, the role, functions and objectives of IPSIGs will have different emphases according to the predominant culture of the host organization. This cultural variance is best explained by reference to a continuum: at one end, an organization (such as a union which has been placed in trusteeship under federal or State racketeering laws) which operates within an almost totally corrupt milieu, at the other a legitimate and stable organization which seeks to stay that way. At this end of the continuum, IPSIGs provide corporations with an model and

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<sup>2</sup> In that Report the concept was described as a "private inspector general, hired by general or prime contractors on large public construction projects to insure compliance with relevant law and regulations ... and to deter, prevent, uncover and expose unethical or illegal conduct." (p. 139)

<sup>3</sup> at pp. 167-168.

vehicle for compliance with the Federal Organizational Sentencing Guidelines issued in November 1991.<sup>4</sup>

6. The IPSIG concept builds upon existing models for the control

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<sup>4</sup> The Federal Guidelines for the Sentencing of Organization became law on November 1, 1991. Although they relate to sentencing, the Department of Justice has indicated that its policy is to take into account compliance with the Guidelines in the decision to prosecute. They provide for the sentencing of organizations to be determined by three factors:

- (a) the steps taken by the organization prior to the offense to ensure that it has an "effective program to prevent and detect violations of the law";
- (b) whether high level personnel either participated in, condoned or were wilfully ignorant of the criminal activity;
- (c) whether the organization reported the offense it detected promptly, fully cooperated in the investigation and accepted responsibility for its criminal conduct.

The "effectiveness" of the "program to prevent and detect violations of the law" is determined by the extent to which it conforms to certain standards which are also set forth in the Guidelines. These include monitoring of compliance through auditing and reporting systems and taking steps to prevent future violations by modifying its prevention and detection systems. The Guidelines further provide that the larger an organization, the more formal its standards and procedures should be.

The practical effect of the Guidelines should be to compel every responsible corporation to review its existing compliance program and determine whether it conforms with the Guidelines.

The Guidelines represent a radical departure from the way in which the criminal law has hitherto dealt with corporations and other business entities by shifting principal responsibility for crime control from the State to the corporation and placing a positive duty on the corporation to keep its corner of the universe clean. While the traditional approach to compliance seeks to protect the corporation from internal fraud by focusing on detection and on distancing the corporation from the offending employee, the sentencing guidelines make the corporation responsible for the prevention of fraud, as well as its detection and reporting. The corporation, far from being able to dissociate itself from a defaulting officer, is held responsible for his or her actions where it has failed to implement adequate procedures to prevent the violation in the first place.

and reform of organizations by external entities, such as court-appointed trustees, auditors and independent counsel. The IPSIG has precedent, for example, in the appointment of monitors to oversee the activities of corrupt unions under federal racketeering laws<sup>5</sup> and in the use of special investigative counsel by the SEC as part of a consent decree.<sup>6</sup> What the IPSIG brings to bear upon organizational issues is its unique expertise, which combines legal, investigative, auditing and loss prevention skills in a complementary and mutually supportive interrelationship.

7. Unlike receivers and some court-appointed trustees, IPSIGs do not perform a managerial function; rather they support and/or monitor the activities of the organization's management. In this way, an IPSIG installed by or in conjunction with a court-appointed trustee under federal or State racketeering laws would enhance the efficiency of this mechanism for the reform of corrupt organizations. This proposed structure is further explored in Attachment B.

#### Roles, functions and objectives

8. An IPSIG may be imposed involuntarily on an organization (by the court, a regulatory or other government agency, a trustee, etc.) or the organization may elect, of its own volition, to hire an IPSIG. There are various motives which might lead an organization to adopt an IPSIG, including:

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<sup>5</sup> Not all RICO "trusteeships" have involved the removal of the union leadership. Some have left the leadership intact and appointed monitors with roughly similar powers to the IPSIG to oversee the union's activities: Local 6A and District Council of Cement and Concrete Workers, Laborers' International Union of North America trusteeship, March 19, 1987; Roofers Local 30/30B trusteeship, May 23, 1988; International Brotherhood of Teamsters trusteeship, March 14, 1989.

<sup>6</sup> In re LTV Securities Litigation, 89 F.R.D. 595 (N.D. Tex. 1981), the court discussed the appointment of a Special Officer as part of a consent order between the SEC and LTV. The court described the role of Special Officer as "to investigate questionable accounting and auditing practices to determine how they can be brought into compliance with SEC standards, and to investigate the conduct of the corporation and to advise whether legal action should be taken for material misconduct found ... Special investigative counsel are an increasingly common element of SEC consent decrees."



- a. compliance with the Federal Sentencing Guidelines;
  - b. a desire to protect and promote the organization's reputation for integrity and fair-dealing;
  - c. a desire to reform the organization and re-establish its credibility in the marketplace after a criminal or civil investigation and/or criminal or regulatory proceedings;
  - d. a desire to minimize the intrusiveness of government regulation;
  - e. a desire to cut costs and improve efficiencies by controlling fraudulent or unethical practices amongst its employees, prompted, perhaps, by a suspicion that such practices are occurring.
9. Even when voluntarily hired by an organization, the IPSIG remains independent in every sense. It is autonomous and self-sufficient (although interactive with the organization) and unconstrained by organizational biases. Without detached and objective judgement, the IPSIG will lack credibility, and may prove not only ineffective but counterproductive by providing the organization with no more than a facade of legitimacy.
10. To ensure the IPSIG's integrity and credibility as an independent agent, it must be free to report violations of the law as appropriate (see paragraph 15), without the authorization of the host organization. Organizations may, of course, choose to engage units without reporting independence to perform functions similar to an IPSIG. Such an entity, however, would not be an IPSIG with its attendant guarantees of adherence to professional standards, particularized skills and official certification. (See further, paragraphs 13-16 below.)
11. Usually, an imposed IPSIG will be installed in a host organization with a primarily criminal (or previous criminal) culture, and an IPSIG which is hired voluntarily will serve the needs of a host organization with a primarily legitimate culture. As sub-paragraph 8.c. above suggests, however, an organization which has been the subject of criminal or regulatory proceedings (or the threat thereof) may have compelling reasons to hire an IPSIG of its own volition; alternatively, a prosecutor might base his or her decision not to prosecute in part on the organization's hiring of an IPSIG.

12. Depending upon where it stands on the legitimacy/illegitimacy continuum described above, the organizations's needs will vary, and the IPSIG may perform one or more of the following roles:

- a. Monitoring and investigating the activities of the organization to detect illegal and unethical conduct and to report possible violations of the law to relevant law enforcement authorities.<sup>7</sup>

The IPSIG acts essentially as a "cop", performing a reactive role by detecting violations and reporting them to the appropriate authorities.

- b. Designing and supervising the implementation of programs and procedures to prevent violations of the law and related unethical conduct, including:

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<sup>7</sup> In the performance of this function, the IPSIG would have such powers as the court or other authority which installed the IPSIG specifies. These might include those listed below. In IPSIGs created to date, the powers such as those set forth in paragraphs ii. through v. have been vested in the government or the court, to be exercised on the recommendation of the IPSIG, rather than directly by the IPSIG.

- i. access to all the books, records, files, accounts and correspondence of the organization;
- ii. power to subpoena witnesses and documents and to take testimony formally or informally, under oath or otherwise in the discretion of the IPSIG;
- iii. power to hold hearings, discipline, dismiss, remove and replace officers, employees and members of the organization;
- iv. power to withhold salaries, fees and benefits from persons who have misappropriated funds from the organization;
- v. powers of review and veto with respect to certain business operations of the organization, such as a requirement that the IPSIG approve major contracts entered into by the organization;
- vi. ability to receive the assistance of law enforcement authorities upon request and without charge to the IPSIG or the organization.



- i. preventing fraud and other illegalities by, against and within the organization;
- ii. ensuring that laws, rules and regulations relevant to the business of the organization are complied with.

This represents the proactive functions that are contemplated by the federal Sentencing Guidelines, and describes a "compliance officer" role, both to protect the organization against fraud from within its ranks and to prevent it from committing violations through its employees. This role might include all or some of the following: financial audit; internal security (i.e., detection and prevention of fraud within and against the corporation by its employees); compliance with laws and regulations relevant to the business of the organization (e.g., environmental laws and regulations, anti-trust laws, nuclear safety laws and regulations, securities laws and regulations); and prevention of fraud by the organization against others through its employees.

- c. Designing and implementing programs to raise and maintain ethical standards within the organization.

This comprehends the role of "facilitator" in the process of organizational cultural change.

- d. Assisting in the design and implementation of policies and procedures to enhance the economy, efficiency and effectiveness of the organization.

The role of "efficiency expert" will in many cases, although clearly not all, arise automatically as a consequence of functions associated with the elimination of fraudulent and corrupt behavior. This role nonetheless exists independently of the IPSIG's other functions, and parallels the statutory goals assigned the federal Inspectors-General: "to promote economy, efficiency and effectiveness in the administration of [government departmental] operations" and "to prevent and detect fraud and abuse in such programs and operations." Promoting efficiencies also includes supporting the commercial viabilities and potentials of the organization, and the IPSIG should be aware that the implementation of countermeasures to fraud and abuse should not inhibit or frustrate the organization in the

'conduct of its business and profit-making ventures.<sup>8</sup>

What is required of an IPSIG in order to properly define it as such?

### Skills

13. As noted in the introduction, what distinguishes the IPSIG from existing models for organizational control and reform is the integration of functions (discussed in the preceding paragraphs), the combination of skills required for the performance of those functions and the interdependency of those skills. The four skills are:
  - a. Legal (to identify illegalities and regulatory violations and to provide legal advice and counsel to the IPSIG)
  - b. Investigative
  - c. Audit (both compliance and financial)
  - d. Loss Prevention (defined as the design and implementation of cost-effective countermeasures to illegalities, waste and abuse.)
  
14. The IPSIG's tasks are to monitor, investigate and analyze the business and operations of the host organization, to determine where fraud and other illegalities (including violations of relevant law and regulations), waste and abuse are occurring or likely to occur, to report violations of law and regulations in conformity with appropriate standards (see paragraph 15), to devise internal controls to counteract problems thus identified and to monitor the implementation of those solutions. The relationship between the four skill areas is symbiotic. In other words, the investigative and auditing functions generate information for the purpose of

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<sup>8</sup> Where an organization has existed in a fundamentally corrupt milieu, eliminating its ability to get things done via corrupt means may well result in inefficiencies by disrupting the traditional means of getting the job done. In the more usual case, an IPSIG which is over-zealous in its efforts to ensure that every paper clip and cab fare is accounted for may well be operating in a manner counterproductive to the organization's profit making capabilities. Paradoxically, some IPSIGs have been imposed precisely because the only alternative is to put the organization out of business by prosecuting it and/or seizing its assets.

legal and loss prevention analysis, which identifies violations of law and regulations and formulates strategies and procedures to prevent future illegalities, abuse and inefficiencies. The implementation of these strategies and procedures are then monitored by the investigators and auditors. The key element is continuing interaction and dialog among the four groups.

#### Standards

15. In order to qualify as an IPSIG, a firm must possess all four skills and an ability to apply the methodologies associated with loss prevention.<sup>9</sup> In addition, the firm must comply with appropriate standards of conduct, including ethical and procedural standards. These will include standards relating to reporting requirements, fees, confidentiality, access to reports, privilege, conflicts of interest, indemnification and qualification as an IPSIG, and procedures for such matters as RFPs, engagement letters and form of reports.

#### Certification

16. In order to ensure that high professional and ethical standards are maintained, IPSIGs are required to be certified and licensed by a regulatory, administrative or law enforcement agency relevant to the organization's area of

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<sup>9</sup> Only a few existing firms have all four skills residing permanently within them. Other firms possess one or more of the skills, accessing the absent skill or skills by creating alliances with other firms for the purpose of particular projects. These networks permit IPSIG personnel to be selected on the basis of their experience or aptitude for the particular project in question, e.g., an IPSIG servicing a company concerned with environmental issues would benefit from, or even require, a member with that expertise.

For purposes of certification, the distinction is made between, on the one hand, the firm that engages in the business of setting up IPSIGs, and, on the other, the IPSIG that is created to serve the needs of a particular organization. The entity to be "certified" would be the latter rather than the former. The certifying agency would be required to approve each IPSIG, rather than to certify firms which are thereby authorized to set up IPSIGs without need for further approvals.

business.<sup>10</sup> In OCTF's Construction Industry Report, the relevant agency is the New York City Department of Investigation.<sup>11</sup> In the cases described in Attachment A (other than two involving court orders), the certifying agencies were OCTF, the Department of Environmental Conservation and the School Construction Authority (through its Inspector-General). The IPSIG is required to provide reports to the certifying agency (or other agency nominated by the certifying agency) on a predetermined basis.

#### Conclusion and Recommendation

17. The IPSIG offers a comprehensive and adaptable mechanism for the prevention and control of illegal or unethical conduct by, within and against an organization. It is applicable to a broad continuum of business organizations from the primarily legitimate to the essentially corrupt.
18. At the fundamentally corrupt end of the continuum, IPSIGs, through scrutiny of business operations and exposure of illegalities, permit the prompt detection of offenses as well as providing information and intelligence to assist law enforcement in the design of long-term anti-corruption strategies, all at little or no direct cost to the taxpayer.
19. Further along the continuum, the installation of an IPSIG allows corporations which might otherwise have had no choice but to dissolve to remain in business and assists them in the process of acquiring or regaining legitimacy. Companies with dubious histories can be awarded public contracts (often at considerable savings to the government), in circumstances in which they would otherwise have been disqualified. Companies with damaged reputations as a result of scrutiny by criminal or regulatory authorities can re-establish their credibility in the marketplace. IPSIGs represent good business as well as effective law enforcement.
20. At the other end of the continuum, for legitimate mainstream

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<sup>10</sup> Alternatively, an IPSIG may be appointed by the court.

<sup>11</sup> The DOI is a mayoral agency whose role is to increase government's accountability to the public, and whose functions include uncovering corruption and criminal activity and developing standards to prevent fraud, waste, abuse and criminal activity in government operations.

businesses, the unique combination of skills and the focus in the exercise of those skills on loss prevention analysis provide industry with a model and vehicle for compliance with the deterrence and detection imperatives of the federal Sentencing Guidelines. Indeed, the philosophy which guides IPSIGs, although preceding the Guidelines, is entirely consistent with them: organizations have a positive responsibility to prevent crime within their ranks, not merely to detect and report it.

21. The Commercial and Federal Litigation Section of the New York State Bar Association endorses the IPSIG concept and recommends that it be implemented in the manner described in this report.

## ATTACHMENT A

### APPLICATION OF THE CIAF CONCEPT DESCRIBED BY OCTF IN 1989

1. In U.S. v. Salerno, S.D.N.Y., March 26, 1990, the court ordered one of the defendants, who was convicted of racketeering, to forfeit his interests in a number of concrete companies and authorized their sale to certain purchasers identified in the order. At the same time, the court appointed a Monitor to "oversee the activities of [the purchasers and their companies] ... to audit [their] financial affairs and business operations ... at all times [having] full and free access to the books and records of the [companies] and their affiliates." The cost of the Monitorship was to be borne by the purchasers. The government was given authority to veto certain actions of the purchasers, including the appointment of company officers and the disposal of company assets.<sup>1</sup>
2. On July 25, 1990, OCTF entered into an agreement with a Wall Street proxy solicitation firm whose principal had pled guilty to charges relating to the overbilling of clients for non-existent services and tax evasion. Under the terms of the agreement, the firm agreed to pay \$1 million in restitution and to hire a CIAF "for the purpose of assuring that its business practices remain free of the kinds of criminal activities which were the subject of the conviction of its former President." The CIAF was also responsible for supervising the restitution process.
3. On October 3, 1990, OCTF, the Department of Environmental Conservation ("DEC") and the New York State Department of Taxation and Finance entered into an agreement with a company which operated a landfill whereby the company agreed, as a condition of the resolution of criminal and civil charges against it, to hire a CIAF (at its own expense) to ensure the company's future compliance with environment laws and regulations and to prevent fraud, tax law violations and any other form of criminal activity. The company and its principal also agreed to plead guilty to one count of offering a false instrument for filing (Penal Law § 175.35) and to pay close to \$4 million in forfeitures and penalties.

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<sup>1</sup> The Monitor in fact uncovered evidence in the course of his Monitorship indicating that one of the purchasers was making illegal payoffs to organized crime and union officials. That individual was indicted on June 11, 1992.



4. In June, 1991, the New York City School Construction Authority ("SCA") entered into an Agreement with a Long Island construction firm which was about to be awarded a \$32 million building contract by the SCA. The SCA desired to accept the company's bid for the contract which was \$2 million less than the next bidder, but learned that the company was the subject of an ongoing criminal investigation into alleged offenses occurring several years before and while the company was under a previous ownership. As a condition of the award of the contract, the company agreed to adopt a strict Code of Business Ethics, to design and implement a Corruption Prevention Program and to retain (at its own expense) a CIAF to assist in the design and implementation of, and to monitor and enforce the company's compliance with these Programs.<sup>2</sup>
  
5. Although not described as a CIAF, the Special Master appointed in April, 1992, to oversee the sale of trucking companies owned by two members of the Gambino crime family, performs similar functions. Thomas Gambino, his brother, Joseph, two co-defendants and four trucking companies under their control pled guilty in February 1992 to charges that they ran a mob-connected cartel that controlled trucking in New York City's garment industry. The defendants, as part of their plea agreement with the New York County District Attorney's Office, agreed to pay \$12 million as a fine and compensation to victims, and to subject their activities to the control and scrutiny of a court-appointed Special Master. In addition, the Gambino brothers agreed to sell or liquidate their trucking companies within a year, and cease forever their involvement in the garment center trucking industry.

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<sup>2</sup> The SCA is about to announce a second such agreement involving a company, two of whose former officers had previously been convicted of offenses relating to bribery and bid rigging.

## ATTACHMENT B

### A PROPOSED STRUCTURE FOR IMPROVING THE EFFECTIVENESS OF COURT-APPOINTED TRUSTEESHIPS

1. As noted in the Introduction, the IPSIG's primary function is monitoring/investigative/reporting/loss prevention rather than managerial. IPSIGs do not replace the management of the organization and do not administer its daily affairs; rather, they support and/or monitor the activities of the management.
2. Trustees appointed under federal and state racketeering laws, depending upon the terms of the court order of appointment, have performed both managerial and monitoring functions, or monitoring functions alone. For example, the trustees of Teamsters Locals 560, 814 and 295, and LIUNA Local 6A were installed both to run the union and to eliminate corruption within the union and its benefit plans.<sup>1</sup> The orders placing Teamsters Locals 6A and 30/30B and the International Brotherhood of Teamsters in trusteeship, on the other hand, allowed some or all of the existing leadership to remain in place, with the trustees assigned powers to oversee the operations of the union, review, approve and veto its decisions, investigate corruption and illegality and discipline and dismiss officers and members.
3. Once the difference between the managerial and monitoring roles is recognized, the means by which IPSIGs can complement the work of trustees becomes clear and compelling. In circumstances warranting the removal of the existing leadership, a court seeking an equitable remedy under RICO or a corresponding State enactment would appoint two entities:

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<sup>1</sup> The trustee of Local 560, for example, was "given all authority and power to act as he may, in his good judgment, see fit to administer the affairs and fulfill all of the responsibilities of Local 560, and to create and foster conditions under which reasonably free, supervised elections can be held by Local 560." (Order of Judge Ackerman in the U.S. District Court, New Jersey, June 23, 1986.) The order appointing the Trustee of Local 295 is much more specific and equally comprehensive, empowering the trustee, *inter alia*, "(b) To investigate corruption and abuse within Local 295 ...; (c) To conduct, administer and supervise the daily affairs of Local 295 ...; (q) To refer possible violations of the law to federal or local law enforcement agencies ..." (Order of Judge Nickerson, U.S. District Court, Eastern District of New York, April 29, 1992.)



- \* A receiver/trustee to run the union or corporation as its President, at the same salary as the previous President.<sup>2</sup>
  - \* A IPSIG to deter, prevent, uncover and report illegal activity within the union or corporation, to ensure that relevant laws and regulations are complied with and to develop loss preventive programs. The IPSIG would be funded by a percentage of the union's existing income, to be determined by the court.<sup>3</sup>
4. In those cases in which the circumstances did not warrant removal of the union leadership, an IPSIG alone could be installed.
  5. Union trustees who have been invested by the court with comprehensive powers and authority have run unions on a day to day basis, representing members' interests, standing on picket lines and supervising collective bargaining. They have established democratic systems and held elections. They have designed and implemented procedures to make the business of the union more efficient. They have, in addition, investigated and exposed illegalities and reported them to the

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<sup>2</sup> The salary of the President of Local 295 when it was placed in trusteeship was \$133,000.

<sup>3</sup> Existing union trusteeships are, for the most part, funded by the union's usual sources of income. In some cases, forfeitures and recoveries of dissipated assets are applied to fund the trusteeship. The court order appointing the Trustee of Local 295, Tom Puccio, for example, established an escrow account to receive forfeited assets, the account to be used for the sole purpose of funding the trustee and his staff (paragraphs 2(k) and 6, Order of Judge Nickerson, U.S. District Court, Eastern District of New York, April 29, 1992).

The cost of the proposed structure should, if properly managed, be less than the costs presently incurred by unions in trusteeship, which can be remarkably high. In addition to salaried and full time officers such as the trustee (the Local 295 Trustee's salary was set by the court at \$250,000 per annum), the deputy trustee (if any) and their staff (in Local 295 the Deputy Trustee has hired two business agents, an office manager and a secretary), there is also a need for accountants and investigators to be hired from time to time for particular undertakings. The hourly fees commanded by accounting firms add up to considerable expense which could well be reduced if an IPSIG were installed instead. If the Trustee's salary were limited to that of the immediate past President, the IPSIG would be the only additional cost to the union. (The Trustee's hired staff should not be a significant additional cost since they replace previous union officers).

authorities. Distinguishing between the roles of manager and monitor/investigator, properly defining them and placing them in different hands eases the conflict that a trustee inevitably faces between the role of the leader/manager and the role of the cop. The trustee would be free to do his or her job, i.e., to represent the interests of the members or to pursue the interests of the corporation, without being directly responsible for the investigation and exposure of illegalities. The trustee may still have ultimate responsibility to report violations for the purpose of prosecution, but he or she would be distanced from the day to day policing of the union's or corporation's activities.

6. The proposed structure also has the virtue of resolving the conflict which necessarily arises from the trustee's role as both the agent of endeavor and the agent of control. The manager's job is to run the business and to get things done; the monitor's (*inter alia*) is to ensure that the proper procedures are followed and that relevant laws and regulations are complied with. There is a creative tension between these two objectives which ought to be maintained, lest the business become mired in bureaucracy on the one hand or fall into unethical or illegal practices in the interests of getting the job done on the other.
7. Ultimately, as the affairs of the corporation or union acquired legitimacy, direct control of its daily business should not be necessary, and the trustee could retire. The IPSIG would remain in place to monitor the transition to new management and ensure that the corporation or union did not resume its old ways. The IPSIG may well remain indefinitely, for example because it was desired by the new management as indispensable to the efficiency, reputation and integrity of the corporation.