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COMBATTING CORRUPTION AND RACKETEERING: A NEW STRATEGY FOR REFORMING PUBLIC CONTRACTING IN NEW YORK CITY'S CONSTRUCTION INDUSTRY*

THOMAS D. THACHER II**

I. INTRODUCTION

The theme of this article is in one respect starkly different from, and perhaps at variance with, the traditional views held by corruption and organized crime experts on control strategies. Most criminologists have focused 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. As long as government continues to place sole responsibility on the law enforcement community to protect society from the cancer of organized crime, government efforts 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.¹

This does not mean that police and prosecutors are not doing their job or that the judiciary is not meting out sufficiently severe prison sentences.

* This article was adapted from a speech given by Thomas D. Thacher II to the Fifth International Anti-Corruption Conference in Amsterdam on March 11, 1992.

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1. See generally NEW YORK STATE ORGANIZED CRIME TASK FORCE, CORRUPTION AND RACKETEERING IN THE N. Y. CITY CONSTRUCTION INDUSTRY: FINAL REP. TO GOV. MARIO M. CUOMO 129 (1989) (outlining past problems with corruption control in the New York City construction industry) [hereinafter CRIME TASK FORCE FINAL REP.]. For a comprehensive and detailed description of construction industry corruption in New York City, see CRIME TASK FORCE FINAL REP. 9-125. See also THE PRESIDENT'S COMM'N ON ORGANIZED CRIME, BUS. AND LAB. UNIONS, COMM'N REP. 217-40 (1986) (focusing on the organized crime influence in the New York City construction industry). For a broad treatment of the development of organized crime in the United States, see THE PRESIDENT'S COMM'N ON ORGANIZED CRIME, REP. TO THE PRESIDENT AND ATT'Y GEN., THE IMPACT: ORGANIZED CRIME TODAY 33-55 (1986).

To the contrary, the federal, state, and local investigative offices in New York City are quite capable of working efficiently. In the past ten years, these offices have produced some extraordinary, indeed historic, prosecutions. Lifetime incarceration of the most important bosses of the City's Cosa Nostra crime families has been achieved;² criminal monopolies have been broken up; powerful labor racketeers,³ business executives,⁴ and political leaders have been sent to jail.⁵ 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.

2. *See, e.g.*, *United States v. Salerno*, 868 F.2d 524 (2d Cir. 1989) (affirming the sentence of Anthony Salerno to 100 years in prison after convicting him on multiple counts, including RICO conspiracy, RICO violations and extortion), *cert. denied*, 491 U.S. 907, 493 U.S. 811 (1989); *United States v. Persico*, 774 F.2d 30 (2d Cir. 1985), 832 F.2d 705 (2d Cir. 1987) (affirming the conviction of Carmine Persico, the Boss of the Colombo Crime Family, for RICO conspiracy, extortion, bribery, and loansharking), *cert. denied*, 486 U.S. 1022 (1988).

3. *See, e.g.*, *United States v. Cody*, 722 F.2d 1052 (affirming the conviction of John Cody for RICO violations and tax evasion for which he was sentenced to concurrent prison terms of five years), *cert. denied*, 467 U.S. 1226 (1983). Prior to his conviction, Cody served as President of Local 282 of the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America which represents truck drivers who deliver building materials to construction sites throughout New York City. 722 F.2d at 1053. Local 282 had the power to paralyze the construction industry by refusing delivery of supplies if Cody's demands for bribes and benefits were not met. *Id.* *See also* CRIME TASK FORCE FINAL REP., *supra* note 1, 9-128 (cataloging corruption and racketeering in the construction industry); *United States v. Walsh*, 700 F.2d 846 (2d Cir.) (affirming the conviction of Charles Walsh, senior partner and owner of BWA, an engineering and consulting firm, of seven counts including RICO violations, RICO conspiracy, and extortion), *cert. denied*, 464 U.S. 825 (1983).

4. *See, e.g.*, *United States v. Schwimmer*, 924 F.2d 443 (2d Cir.) (affirming the conviction of Martin Schwimmer, a consultant to Teamster Local 810 and Sheetmetal Worker Local 38, of multiple counts including conspiracy to conduct the affairs of an enterprise through a pattern of racketeering activity and conspiracy to defraud the United States), *cert. denied*, 502 U.S. 810 (1991). Mario Renda, president and owner of a money brokerage firm, was also convicted of multiple counts including racketeering and tax evasion. 924 F.2d at 444-46.

5. *See, e.g.*, *United States v. Biaggi*, 853 F.2d 89 (2d Cir.) (affirming the conviction of Mario Biaggi, a member of the House of Representatives since 1968 and a senior Congressman from New York City, of accepting gratuities in return for performing official acts and obstructing justice and also affirming the conviction of Meade Esposito, former chairman of the Kings County, New York Democratic Committee, for paying gratuities to Biaggi in return for official acts), *cert. denied*, 489 U.S. 1052 (1988).

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.

The law enforcement initiatives of the past have not, by themselves, been enough. This situation exists 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 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.

One approach has recently been adopted in New York City to bring about such institutional reform in one sector of the construction industry.⁶ 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 School Construction Authority Office of Inspector General,⁷ and it has been given the mandate to protect a 4.3

6. N.Y. PUB. AUTH. LAW § 1727 (McKinney 1994) (establishing the public benefit corporation to be known as the New York City School Construction Authority).

7. See Selwyn Raab, *School-Building Agency Changes the Old Rules*, N.Y. TIMES, Oct. 18, 1989, at B6 (announcing the creation of the office of the Inspector General as the first major administrative policy adopted by the New York City School Construction Authority); *School Construction Authority Taps Top Corruption Expert to Build First-of-a-Kind Inspector General*, PR NEWSWIRE ASS'N, available in LEXIS, Nexis News

billion dollar school 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.⁸

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, one gains perspective on how control of corruption and racketeering can be accomplished through means and institutional reform not exclusively within the realm of law enforcement.

II. WHY THE OFFICE WAS CREATED

In December, 1989, 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 construction industry was then, as it had been for the past century, dominated by corruption and racketeering.⁹ The report provided a detailed 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.¹⁰ 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 approximately one million students,¹¹ employs a staff of over 100,000¹² and is comprised of over 1000

Library, Oct. 18, 1989 (announcing the establishment of the inspector general's office to target corruption in the \$4.3 billion school construction program).

8. See Raab, *supra* note 7, at B6.

9. See CRIME TASK FORCE FINAL REP., *supra* note 1, at 9-128.

10. See *id.*

11. NEW YORK CITY PUB. SCH. DIV. OF STRATEGIC PLANING, RESEARCH AND DEV., OFFICE OF EDUC. DATA SERVICES, CITYWIDE DAY SCH.: REGISTER BY GRADE AND SCH. GROUP ON OCT. 30, 1992 (reporting the total number of students enrolled in the New York City Public Schools, grades kindergarten through twelve, as 999,485).

12. NEW YORK CITY PUB. SCH. DIV. OF STRATEGIC PLANING, RESEARCH AND DEV., OFFICE OF EDUC. DATA SERVICES, 1992 ELEMENTARY-SECONDARY STAFF INFO. (EEO-5) REP. TO WASH., STAFF STAT. AS OF OCT. 31, 1992 (reporting the total full-time staff of the New York City Public Schools as 112,701).

facilities or buildings.¹³ Its annual operating budget is close to seven billion dollars,¹⁴ 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)¹⁵ and charged it with reconstructing the entire educational infrastructure.¹⁶ The SCA was given an initial five-year budget of 4.3 billion dollars and sweeping powers to expedite the design, site acquisition and construction processes.¹⁷

13. NEW YORK CITY PUB. SCH. OFFICE OF EDUC. DATA SERVICES, CITYWIDE SUMMARY OF PUB. SCH. ORG. FOR 1992-1993 BY LEVEL (reporting the total number of New York City public schools as 1070).

14. THE UNIV. OF THE STATE OF N.Y., THE STATE EDUC. DEP'T, ANN. EDUC. SUMMARY 1991-1992: STAT. AND FIN. SUMMARY OF EDUC. IN N.Y. STATE FOR THE YEAR ENDING JUNE 30, 1992, at 28 (1992) (Table 23: Public School General, Debt Service and Special Aid Fund Expenditures (Amount and Percent of Total), New York State, 1991-1992) (reporting the total general, debt service and special aid funds for the New York City public schools to be \$7,114,584).

15. N.Y. PUB. AUTH. LAW §§ 1725 to 1747 (McKinney 1994).

16. *Id.* § 1728(5) (charging the SCA with "design[ing and] . . . reconstruct[ing] . . . educational facilities . . ."). The legislative findings supporting the New York City School Construction Authority Act state:

The legislature hereby finds and declares that the elementary and secondary schools of the city of New York are in deplorable physical condition. . . . If the quality of education in New York city is to be improved, the city's schools must be modernized, expanded and restored to a state of good repair. . . . The legislature finds that extraordinary measures must be taken to reverse this deterioration of educational facilities. . . . [A] new public authority should be established to manage the acquisition, design, construction and major rehabilitation of New York City schools.

Id. § 1725 Historical and Statutory Notes (McKinney 1988) (Legislative Findings and Declaration).

17. See Alan Breznick, *Building Authority for Schools Ready to Tackle Lessons*, CRAIN'S N.Y. BUS., June 29, 1989, at 7; Neil A. Lewis, *Schools to Get \$4.3 Billion For Repairs*, N.Y. TIMES, June 17, 1989, at 25; Sylvia Moreno, *44 New Schools Slated for NY*, N.Y. NEWSDAY, Oct. 19, 1989, at 39 (stating that "[f]orty-four new schools will be built and another 83 renovated under a five-year, \$4.3 billion capital plan . . ."); Raab, *supra* note 7, at B6 (stating that "[a] new agency responsible for rebuilding New York

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 School Construction Authority had no illusions about this vulnerability, and in the Spring of 1989 invited me to design a mechanism to protect the SCA from the endemic criminality which so frequently 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. Initially, the idea of leaving the world of law enforcement, with its powerful investigative and prosecutorial tools, and entering a construction bureaucracy destined to grow to close to 1000 people did not appeal to me.

The trustees, however, spelled out a challenge that was impossible to reject. In essence, they were willing to put their money where my mouth had been. My conclusion that law enforcement alone cannot control the construction industry's systemic corruption and racketeering prompted the trustees to ask me to design a strategy and mechanism to protect the SCA from corruption. The trustees presented the opportunity to put my writings and conclusions to the test of practice. Otherwise, the SCA trustees suggested, my writings were nothing more than academic theorizing and glib thoughts never likely to be implemented.

Once the challenge was framed in these words, it was difficult to reject. Endless discussions and debate then commenced on how to design a non-law enforcement office that could realistically keep a 4.3 billion dollar 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.¹⁸

City's crumbling schools has adopted procedures it says will speed a \$4.3 billion construction program and reduce corruption.”).

18. *New York City School Construction Authority Issues Statement on Contract Agreements*, PR NEWSWIRE ASS'N, July 29, 1991, available in LEXIS, Nexis News Library (stating that the trustees and president of the SCA created the Inspector General's office) [hereinafter *SCA Statement on Agreements*]; see Raab, *supra* note 8, at B6 (discussing how, “[a]uthority officials said the first major administrative policies adopted by the agency include the following: . . . Creating an inspector general's office with extensive powers to investigate corruption and racketeering and to advise the authority on internal policy matters”); *School Construction Authority Taps Top Corruption Expert to Build First-of-a-Kind Inspector General*, PR NEWSWIRE ASS'N, Oct. 18, 1989,

In designing this new office we immediately recognized certain principles that 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 agencies have 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 *sine qua non*. Intelligence must not only be aggressively collected and constantly expanded and updated, but it must also be organized so as to be immediately retrievable and simultaneously useable by multiple disciplines—investigators, accountants, analysts, prosecutors, civil attorneys, and others. Above all, the intelligence must be institutionalized and not, as is so often the case, in the heads or files of experts or 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, the IG's office started working to achieve three goals: first, defining a mission statement for the IG; second, designing a methodology for accomplishment of that mission; and third, structuring an office to implement that methodology. The mission statement we settled on is the following:

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.¹⁹

Furthermore, we designed the methodology to accomplish this mission as follows:

The IG's efforts 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

19. NEW YORK CITY SCH. CONSTR. AUTH., MANUAL OF POL'Y AND PROC., at IG-1 (1993) ("Inspector General" section) [hereinafter SCA MANUAL].

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.²⁰

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:

20. *Id.* at IG-3 to IG-4.

The IG has three component parts: an operations division, a counsel's office and an administrative support team.

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 is 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 is supported by (and in turn supports) 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 also plays 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 coordinate 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 reviews 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.²¹

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

Administrative Support. Supporting the whole IG is an Administrative Support Services Team, which has two principal 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.²²

III. 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

21. *Id.* at IG-1 to IG-3.

22. *Id.* at IG-3.

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.

Even though it might advance an IG's investigative independence, this model 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 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.

The dilemma we faced was structuring a meaningful relationship between the SCA and 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,²³ reporting directly to and working closely with the President/CEO of the SCA.²⁴ The IG attends every cabinet meeting and is involved in the formulation of all policies and procedures.²⁵ 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.²⁶

23. *New York City School Construction Authority Issues Statement on Contractor Agreements*, PR NEWSWIRE ASS'N, July 29, 1991, available in LEXIS, Nexis News Library.

24. SCA MANUAL, *supra* note 19, at IG-1.

25. *See id.*

26. *Id.*, at CA-1 ("Contract Administration" section). *See* N.Y. COMP. CODES R. & REGS., tit. 21, § 9600.2(a) (1994) (stating that "[a]ll interested contractors, . . . are required to complete a prequalification application."); *id.* § 9600(c) ("[t]he authority will maintain lists of disqualified firms, as well as prequalified firms. The authority will update these lists at least once a year."); *SCA Statement on Agreements*, *supra* note 18 ("[the IG] must approve and sign every contract awarded by the agency . . ."); NEW YORK CITY SCH. CONSTR. AUTH., PREQUALIFICATION APPLICATION 1 (declaring that the SCA will only award contracts to prequalified candidates).

However, to protect its independence, the IG office is physically located in a different part of New York City than the SCA headquarters.²⁷ Most importantly, the IG not only reports to the President/CEO of the SCA but also to the Board of Trustees which appoints the President/CEO.²⁸ This dual reporting gives to the IG a role that is simultaneously both internal and external to the SCA. In the SCA's short history, there has been no lack of support and cooperation from the President/CEO for either our investigations or recommendations for institutional reform.

*A. Snapshot of Investigative Planning and Execution
and the Multiple Remedial Results Made Possible*

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. The success of the IG in accomplishing its mission is dependent on each unit being supported by, and in turn supporting, every other unit.

For example, 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 1000 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 independent research of the issue (and feed the results of his or her research back to the Intelligence Unit).

The Intelligence Unit will have a computerized database 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.

27. The IG's office is located at 188 West 230th Street, Bronx, NY; the SCA headquarters is located at 30-30 Thomson Avenue, Long Island City, NY 11101.

28. SCA MANUAL, *supra* note 19, at IG-1.

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 checks 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, the strategic analyst prepares a report presenting an assessment of how past criminality infected the roofing industry 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; or certain Cosa Nostra connections with various companies may be 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 investigation 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 such as wire taps, subpoenas, and grand juries. Where appropriate and legally permissible, they could feed information back to the Intelligence Unit. As wrongdoing (criminal or civil) 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 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 a reputation for honesty and integrity.²⁹ 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, but 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 the IG possesses, the SCA has instituted a prequalification procedure in which the Office of the Inspector General plays a key role.³⁰ No firm can do business with the

29. See N.Y. COMP. CODES R. & REGS., tit. 21, § 9600.3(d) (1994) (requiring that companies seeking to do business with the authority must have a reputation for and a record of "law-abiding conduct and ethical business practices."); SCA MANUAL, *supra* note 19, at CA-3 ("Contract Administration" section) (stating generally the requirement that firms must demonstrate a record of 'honesty and integrity' as well as listing numerous factors which would constitute bases for debarment).

30. See generally, SCA MANUAL, *supra* note 19, at IG-1 to IG-4.

SCA without first having passed a prequalification review by the Inspector General.³¹

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.³²

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.

During our first five years—1990 to 1995—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 the prequalification review to these latter groups we also prevent corrupt companies and individuals from earning our money indirectly, as well as directly.

IV. QUANTIFYING OUR ACCOMPLISHMENTS

It is difficult to quantify many of the IG office's accomplishments. One reason for this difficulty is that many of our investigations (and the prosecutions, civil suits and recommendations for institutional reform which result therefrom) are still at a stage where need for confidentiality precludes public disclosure and discussion. Nevertheless there are still some results which can be reported.

31. See *supra* note 29 and *infra* note 42-46 and accompanying text.

32. See NEW YORK CITY SCH. CONSTR. AUTH., PREQUALIFICATION APPLICATION.

A. Prosecutions

IG investigations have resulted in 59 arrests of contractors and SCA and Board of Education employees, with 37 convictions to date.³³ These prosecutions put a stop to a number of organized, systematic schemes to defraud the City's taxpayers and school children of tens of millions of dollars:

- One set of prosecutions that arose out of an investigation code named "*Operation Monopoly*" stopped a \$7 million bid rigging and bribery scheme involving principals of seven private construction firms and two SCA contracting officers. Under the scheme, the contractors paid more than \$140,000 in bribes to inflate bids on some \$31 million in contracts. In a so-called "delta derby," SCA contracting officers inflated the successful bids of contractors at bid openings and altered bid documents. Contractors and the SCA employees split the "delta" between the actual bid and the inflated winning bid.³⁴

- Another investigation—"Operation Tightrope"—revealed a widespread conspiracy among contractors, landlords, and Board of Education employees whereby officials were bribed in return for contract payments and sweetheart lease deals. Under the scheme, senior Board of Education officials received more than \$250,000 in bribes and contractors defrauded the Board of Education out of approximately \$4.6 million. The four year investigation involved the use of undercover agents, search warrants, wiretaps and covert surveillance.³⁵

- The indictment and conviction of the owners of an engineering firm and laboratory providing consulting, monitoring and compliance testing services in connection with asbestos abatement and removal in public schools who engaged in racketeering, conspiracy, and mail and wire fraud to obtain \$1 million worth of contracts.³⁶

33. This number (59) does not include scores of other arrests resulting from investigations conducted by other agencies to which the IG made significant contributions. See, e.g., *People v. DiNapoli*, 4381/95 (N.Y. Sup. Ct. filed May 15, 1995); *People v. Kohl*, 5751/95 (N.Y. Sup. Ct. filed June 23, 1995).

34. *Two City Officials Arrested in School Repair Scam*, UPI, Apr. 20, 1993, available in LEXIS, Nexis News Library.

35. *Board of Ed Bribery*, UPI, May 19, 1994, available in LEXIS, Nexis News Library.

36. *Engineering Firm Indicted in School Asbestos Fraud*, UPI, June 25, 1992, available in LEXIS, Nexis News Library.

- One indictment of a contractor for submitting fraudulent bills to the SCA³⁷ 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.³⁸

- Conviction of a contractor for attempting to bribe an SCA employee.³⁹

- 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.⁴⁰ The Godfather, whom many in the City’s Greek community considered untouchable, is serving a one-year jail sentence.

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.⁴¹

37. OFFICE OF THE SCH. CONSTR. AUTH. INSPECTOR GEN., ARREST LOG (May 15, 1995) (referring to the indictment of Clyde Porter of Clyde Porter Associates) [hereinafter SCA ARREST LOG].

38. *Id.* (referring to the indictments of Martin Leshner, Arthur Leshner, and Rafael Lopez of the Equitable Blueprint Company); See Jennifer Preston, *Guilty Plea in Bribery*, N.Y. NEWSDAY, Nov. 9, 1991, at 10; *3 Indicted in Scheme to Defraud U.S., City*, N.Y. L.J., Apr. 5, 1991, at 2.

39. SCA ARREST LOG, *supra* note 37 (referring to the indictment of John Contreras, President of Polonia Restoration Inc.); see Nick Chiles, *Construction Firm President Charged with Passing Bribe*, N.Y. NEWSDAY, Dec. 11, 1990, at 19.

40. SCA ARREST LOG, *supra* note 37 (referring to the indictments of Spiro Velentzas, alleged “Godfather” of Greek Organized Crime in New York City, Panagotia Velentzas, and Nick Vorrias, all of Vorrias Construction); see T.J. Collins, *“Godfather” Pleads Guilty*, N.Y. NEWSDAY, Oct. 3, 1991, at 22; *School Construction Authority Announces Fraud Conviction*, PR NEWSWIRE ASS’N, available in LEXIS, Nexis News Library, Oct. 2, 1991 (discussing the conviction of Spyridon Velentzas for falsely concealing his ownership interest in Vorrias Construction on a Prequalification Application).

41. See generally CRIME TASK FORCE FINAL REP., *supra* note 1, at 5, 129-30 (noting the failure of law enforcement alone in tackling the problems of corruption in the construction industry and concluding that lasting change can only be brought about through broader institutional reform).

B. 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.⁴² 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 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 a perception of 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

42. A description of the prequalification process includes the following:

In determining whether a prospective bidder qualifies for inclusion on a list of prequalified bidders, the authority [the SCA] shall consider (1) the experience and past performance of the prospective bidder; (2) the prospective bidder's ability to undertake work; and (3) the financial capability, responsibility and reliability of prospective bidders. The authority may also consider such other factors as it deems appropriate.

N.Y. PUB. AUTH. LAW § 1734(3)(b) (McKinney Supp. 1995); see William K. Rashbaum, *Concrete Case: Firm Allegedly Tied to Mob Helps Build Federal Prison*, N.Y. NEWSDAY, Jan. 23, 1995, at 3 (stating that "Thacher's office [the IG] conducts rigorous background examinations on prospective school contractors").

or submit a bid unless it has first been found qualified to do business.⁴³ One of the criteria for prequalification is that the company have a reputation for and a record of law-abiding and ethical conduct.⁴⁴ 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 3500 background evaluations in connection with prequalification and contract approvals.⁴⁵ Over 200 firms have been debarred, many of whom had ties to organized crime or were alter egos of firms with prior legal or debarment problems.⁴⁶

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 that is insufficient to sustain a debarment in the event of judicial review. Or there may be overwhelming evidence of a company's moral unworthiness but none of it appropriate or available for public disclosure.

In such instances we may issue an advisory to the SCA whereby we caution the appropriate personnel to closely 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. The IG has also used advisories to alert SCA project management to concerns that may have nothing to do with the integrity of a firm, but may go to its financial and operational ability to perform satisfactory work for the SCA.

In other instances where we are concerned about some aspect of a company's past behavior or possible associations, we may ask the applicant firm to complete a sworn certification in which the principals swear that our "suspicions" are factually unfounded. If we later prove those sworn representations to have been false, we can rescind all contracts subsequently awarded as having been based on fraudulent inducement and recover all money given under these contracts while

43. See N.Y. PUB. AUTH. LAW § 1734(3)(a) (authorizing the SCA to restrict bidding to those who have been qualified); NEW YORK CITY SCH. CONSTR. AUTH., PREQUALIFICATION APPLICATION (stating that contracts will only be awarded to prequalified firms).

44. See N.Y. PUB. AUTH. LAW § 1734 (3)(a); SCA MANUAL, *supra* note 19, at CA-1.

45. See NEW YORK CITY SCH. CONSTR. AUTH., LIST OF PREQUALIFIED/DEBARRED FIRMS (Feb. 25, 1994).

46. *Id.*; Selwyn Raab, *52 Companies Banned from School Construction Bids*, N.Y. TIMES, Aug. 27, 1991, at B1.

keeping the benefit of the work provided. We can further debar the company and any other companies in which these principals have an interest. Finally, we can support prosecutions of those who filed the false certifications.

To date, we have issued 100 advisories and more than 60 certifications. A number have generated substantial financial recoveries and criminal prosecutions. In one instance, where a firm was found to have violated a promise in a certification, the sanctions included a million dollar recovery, a criminal conviction, and debarment of several related companies.

Another case in point involved the Hercules Construction Company, a major construction firm in the New York area. Since 1990, Hercules has been awarded seven contracts with the SCA with an estimated value exceeding \$130 million. Earlier this year, IG investigators assisted in the execution of a search warrant at Hercules's corporate headquarters as part of an ongoing criminal investigation. At the time, Hercules was still performing work on projects scheduled to provide over 4000 new or modernized seats for students.

The pending criminal investigation against Hercules was an adequate basis for suspending the company from future work with the SCA. Moreover, our office had sufficient additional grounds to terminate Hercules from its existing SCA contracts. But in the view of SCA's management, doing so would have cost the SCA millions of extra dollars (exceeding project budgets) and would have imperiled on-time completion of critical projects.

The IG sought to get construction of new and modernized school space done on budget and on time—while still protecting the SCA from being victimized. In exchange for not being immediately terminated from all SCA contracts, Hercules was required by the IG to adopt a series of extraordinary anti-fraud measures:⁴⁷

1. Independent Audit and Investigation of Hercules's Performance on SCA Contracts: Hercules delivered to the IG \$300,000 in certified checks to fund an Investigative Audit Firm (IAF) or Independent Private Sector Inspector General (IPSIG), to monitor Hercules's performance. The IAF/IPSIG, selected by the IG, has been making regular reports to the IG;

2. Reduced Financial Risk to the SCA: Hercules further agreed to disgorge any profits for change orders for future work. In addition, retainage was increased from 5% to 8%; and

47. Agreement between the New York City School Construction Authority and Hercules Construction Corporation, Feb. 13, 1995 (copy on file with *New York Law School Law Review*).

3. Adoption of a Code of Business Ethics: Hercules agreed to adopt a Code of Business Ethics acceptable to the SCA and applicable to all Hercules employees, officers, and directors.

A half dozen other major construction contractors, suppliers and construction managers are now under the oversight of IG-mandated IAFs or IPSIGs.

3. The Independent Auditing Firm

A dilemma we sometimes face during prequalification review 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 on point involved the E.W. Howell Company, a major construction firm in the New York area.⁴⁸ 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.⁴⁹ Our own investigation disclosed the strong possibility that two former principals of Howell might 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

48. *N.Y. Area's Largest Construction Companies; Ranked by Total 1989 Contracts*, CRAIN'S N.Y. BUS., Dec. 31, 1990, at 60 (listing E.W. Howell Company as the 21st largest New York construction firm based on \$123 million in contracts for 1989); see *SCA Statement on Agreements*, *supra* note 18 (discussing how the E. W. Howell Company is a major construction firm located on Long Island).

49. See *SCA Statement on Agreements*, *supra* note 18. The Statement reads in relevant part

Earlier this year, Howell was again the successful low bidder on another SCA project, the planned construction of P.S. 7 in Queens. Howell's bid on the project was \$32 million. The second and third lowest bidders on the contract came in respectively at \$2 and \$2.5 million higher than Howell.

During the Inspector General's background review conducted in connection with that award of the . . . project, the office learned that Howell was being investigated by the Nassau County District Attorney's Office. Subsequent inquiries revealed that the firm was the subject of a joint probe by the District Attorney's Office, the Office of the New York State Deputy Attorney General . . . and the United States Department of Labor

Id.

contracts.⁵⁰ 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 over a new leaf, had cleaned house and adopted rules for a more tightly run operation.⁵¹

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 IG fashioned an historic and novel solution⁵² whereby the contract was awarded to Howell under certain conditions.⁵³

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

50. "The applicant, its affiliates, or any of its current or past owners or principals may be precluded from working for the authority until there is a favorable resolution of any of the following: (i) pending criminal investigation;" N.Y. COMP. CODES R. & REGS., tit. 21, § 9600.3(d)(2) (1994); see *SCA Statement on Agreements*, *supra* note 18 ("[i]n accordance with established standards, the SCA was authorized to deny Howell the . . . contract. SCA standards . . . allow the agency to preclude from bidding on and performing SCA contracts any firm that is the subject of an ongoing criminal investigation.").

51. See *SCA Statement on Agreements*, *supra* note 18. The Authority described the agreements as follows:

[I]t appeared the inquiry involved alleged improprieties committed by former Howell officers They assured the Inspector General's Office that Howell had undergone a reorganization since the acquisition of the firm by Obayashi Corporation and that there was no reason to believe any members of Howell's present management team had been involved in the conduct now under investigation.

[I]t was determined that Howell had been entirely cooperative with law enforcement agencies and was completely forthcoming in its efforts to apprise the IG of all aspects of the investigation to which Howell was privy.

Id.

52. See *id.* Then-Governor Mario M. Cuomo described the agreement as an "historic first step toward a future where government and private industry can work together with a renewed sense of public service and mutual trust By signing such agreements, building contractors acknowledge the special moral obligations they have when doing work for the public." *Id.*

53. The proposed draft agreement between E.W. Howell Company and the SCA was announced by the trustees of the SCA in a press release on July 29, 1991. The agreement provided E.W. Howell with a \$32 million construction project to build P.S. 7. See *SCA Statement on Agreements*, *supra* note 18. See also *New York Ethics Settlement Should be a Model for Others*, 227 ENGINEERING NEWS 58 n.6 (1991).

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 Firm⁵⁴ at its own expense, in order 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.⁵⁵

The agreement provides the SCA with an unprecedented measure of protection.⁵⁶ 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,⁵⁷ the SCA may bar the company from bidding on future contracts⁵⁸ and rescind any or all

54. See *SCA Statement on Agreements*, *supra* note 18 (discussing the requirement that the Independent Auditing Firm must be selected from a list of firms provided by the IG).

55. See *id.* The press release issued by the SCA described the function of the IAF as follows: "[t]he IAF will work with the Howell Company to accomplish three tasks: to design a Code of Business ethics; to implement a corruption program; and to monitor and audit compliance with both the code and the program." *Id.*

56. See N.Y. PUB. AUTH. LAW § 1734 (McKinney 1994) (discussing general rules governing contracts entered into by the SCA). See also *SCA Statement on Agreements*, *supra* note 18 ("the SCA has negotiated an agreement which could revolutionize the way the city does business with outside contracts. . . . [T]he ground-breaking agreement sets an historic precedent by placing the responsibility for corruption prevention and detection upon the contractor, rather than the city.").

57. See N.Y. COMP. CODES R. & REGS., tit. 21, § 9600.7 (1994).

A contractor's performance will be evaluated by the authority pursuant to the following criteria: (1) management of project; (2) quality of work; (3) recordkeeping; (4) subcontracting; (5) contract changes; (6) compliance with authority requirements; (7) compliance with prevailing wage standards; (8) recognition of approved apprentice programs; (9) adherence to safety procedures; and (10) fulfillment of work force requirements.

Id.

58. See N.Y. COMP. CODES R. & REGS., tit. 21, § 9602.5 (1994) (discussing procedure for disqualification and revocation of a firm's prequalification status).

existing contracts with the company.⁵⁹ Interestingly, when the indictments were unsealed, the E.W. Howell Company, as a corporate entity, was not named as a defendant.⁶⁰ 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

Advisories, certifications, and IAFs or IPSIGs are all examples of non-traditional, non-law enforcement tools to control corruption. Each of these has been successful at targeting corruption vulnerabilities in specific situations involving specific companies. The IG has also been successful in developing corruption control strategies with agency wide application. Utilizing information generated from its criminal investigations, prequalification reviews and analytic studies, the Research and Analysis Unit identifies weaknesses in SCA practices, contracts or procedures and recommends reforms.

IG recommendations have resulted in scores of reforms. Some examples have included the overhaul of change order procedures, reorganization of the procurement department, redesign of contractor selection practices, and strengthening of conflict of interest rules and regulations.

The IG designed a Fair and Ethical Business Practice provision for inclusion in SCA contracts.⁶¹ Contractor breaches of this provision have

59. A plaintiff-contractor, arrested for allegedly bribing SCA official, brings suit against SCA for termination of contract and failure to make payments. *See, e.g.*, *Christ Gatzonis Elec. Contr., Inc. v. New York City Sch. Constr. Auth.*, 23 F.3d 636 (2d Cir. 1994); *see also* N.Y. COMP. CODES R. & REGS., tit. 21, § 9604.3 (1994) (explaining the authority's required justification for the termination of a contract); *but cf.* N.Y. COMP. CODES R. & REGS., tit. 21, § 9605.11 (1994) (discussing complaints procedure for contractors); N.Y. PUB. AUTH. LAW § 1734 (McKinney 1994) (discussing procedure for claims and actions against the authority).

60. *See* Robert E. Kessler, *Three Charged in Hospital Construction Probe*, N.Y. NEWSDAY, Feb. 21, 1992, at 22. *See also* *Firm Gets Ethics Plan*, 227 ENGINEERING NEWS 14 n.5 (1991) (describing a former chief operating officer and job superintendent of the E.W. Howell Co. who were indicted in Nassau County Court for allegedly stealing from two Long Island hospital construction projects by submitting false invoices and rigging bids in February, 1992).

61. Under the current provisions, during the term of their contract with the SCA, neither a contractor, nor any director, partner, principal, officer or employee shall, on any contract either with the SCA or with any other party, (i) make a false filing with a government office or employee, (ii) intentionally falsify business records, (iii) bribe a labor official or a public servant or (iv) knowingly participate in the criminal activities

already enabled the SCA to withhold and recover millions of dollars from crooked contractors.

In response to pervasive violations of prevailing wage laws that give competitive advantages to corrupt companies, the IG initiated privatization of labor law enforcement.⁶² Responsibility for the fees earned by firms retained to enforce the law is contractually placed on offending contractors. Thus the resources available to enforce a heretofore largely unenforced law will be increased almost infinitely at virtually no cost to the SCA or the public.

5. Recovery of Money

From the outset it was recognized that the IG could not succeed unless its success translated to the SCA's bottom line. However valuable a corruption and racketeering control program is in ensuring that criminality is kept to a minimum, that control program will not survive unless it can demonstrate that it is cost effective.

The IG has done exactly that. It has virtually paid for itself by generating at least \$20 million in measurable revenues and savings in the past five years. Many additional millions of dollars of savings—the amount of which is difficult to measure precisely—have been achieved through loss prevention strategies. Some examples include the following:

One investigation resulted in a contractor “endowing” improvements valued at approximately \$1 million. Based on an IG finding that the contractor had fraudulently induced the SCA to award a contract, the contractor forfeited over \$1 million in payment requests for work *already performed* but not yet paid for. The contractor returned an additional \$100,000 already paid to it.⁶³

In another investigation, the IG found that a toilet partition supplier had intentionally failed to provide partitions that met Board of Education specifications. As a result, the supplier recently repaid the SCA and the Board \$430,000. The IG's investigative audit of invoices submitted by one asbestos abatement firm resulted in a settlement agreement with savings of \$1.1 million to the SCA. The IG initiated audits of contractors who participated in the emergency asbestos abatement program that shut down

of any organized crime group. See New York City Sch. Constr. Auth., *Bid and Contract Agreement* (form) (copy on file with the *New York Law School Law Review*).

62. State law requires public works contractors to pay their workers “prevailing wages,” set forth by either the New York State Department of Labor or, in the case of work performed by agencies of the city of New York, the New York City Comptroller. See N.Y. LAB. LAW § 220 (McKinney 1994). Prevailing wage requirements are also imposed by contract.

63. See *supra* note 36 and accompanying text.

the whole school system in 1993 which resulted in savings of approximately \$3 million.

For companies under criminal investigation, the IG has insisted on careful audits of millions of dollars of contractor invoices before payments are made. Much of the monies withheld pending these audits have ultimately been captured by the SCA through civil enforcement actions and settlements. Approximately \$2.5 million were withheld in SCA payments to defendants in the *Operation Monopoly* case alone. Yet another IG agreement with a contractor cooperating in a criminal investigation required the contractor to disgorge profits of \$300,000.

V. RECOGNITION OF THE IG'S EFFORTS

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.⁶⁴

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,⁶⁵ we are routinely privy to information that law enforcement bodies have great difficulty obtaining surreptitiously or even by subpoena.⁶⁶ In turn, we are able to use the

64. See NEW YORK CITY, OFFICE OF THE COMPTROLLER, NO MORE BUSINESS AS USUAL: KEEPING CITY CONTRACTS OUT OF THE HANDS OF DISHONEST CONTRACTORS (September, 1992) ("The mechanism set up by the [SCA], which closely scrutinizes construction contractors before and after they are hired and denies prequalification status to firms with questionable records and/or that fail to disclose pertinent information, should serve as a model for other government entities."); NEW YORK CITY, OFFICE OF THE PUBLIC ADVOCATE, CITY AS CONSUMER (October, 1994) ("Prequalification has worked at the [SCA]."). See also Harvy Lipman, *Governments Try to Steer Clear of Mob*, ALBANY TIMES UNION, Nov. 9, 1993 ("If the governor and the Legislature want to create a better system for keeping mobsters—or any other corrupt individuals—from getting state contracts, they don't have to reinvent the wheel. They could draw on any number of models . . . most notably the state created [SCA].").

65. See N.Y. COMP. CODES R. & REGS., tit. 21, §§ 9600.1-9600.3 (1994); N.Y. PUB. AUTH. LAW § 1734 (McKinney 1994) (discussing guidelines governing qualification of bidders); Raab, *supra* note 46, at B1 (discussing prequalification process and companies disqualified from bidding because of associations with organized crime).

66. See N.Y. COMP. CODES R. & REGS., tit. 21, §§ 9600.1-9600.2.

information we obtain from these investigations—a type of data rarely available to civilian policy makers—to design reforms of the SCA practices and procedures.

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.⁶⁷

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.⁶⁸

The Kennedy School has particularly singled out the blending of traditional law enforcement procedures with research and analytical tools “as a significant new model for the reform of public contracting projects.”⁶⁹

VI. CONCLUSION

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 SCA, 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

67. See PROGRESS IN CRIMINAL JUSTICE POLICY & MANAGEMENT, JOHN F. KENNEDY SCH. OF GOV'T, HARVARD UNIV., A PROPOSAL TO EVALUATE A NEW MODEL IN OPERATION: THE N.Y. CITY SCH. CONSTRUCTION AUTHORITY OFF. OF THE INSPECTOR GEN., June 25, 1991 (copy on file with the *New York Law School Law Review*).

68. *Id.* at 10.

69. *Id.* at 11; *see id.* at 28-32.

benefits to be derived from any success that we 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 works 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 in the IG's 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.