

The City of New York

Commission to Combat Police Corruption

**PERFORMANCE STUDY:
THE INTERNAL AFFAIRS BUREAU'S
INTEGRITY TESTING PROGRAM**

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March 2000

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I. INTRODUCTION

A. OVERVIEW

In 1995, the New York City Police Department's ("Department") Internal Affairs Bureau ("IAB") instituted an integrity testing program to further enhance its corruption control efforts. An integrity test is a "sting operation" -- an artificial situation designed to test a subject officer's adherence to the law and Department guidelines. Undercover IAB officers create typical police encounter scenarios -- involving, for example, narcotics or domestic violence -- and then monitor the responding officer's behavior. IAB investigators also use surveillance equipment to monitor the subject officer and are careful not to restrict the subject's freedom to perform during the test.

The Department has one of the most sophisticated and successful integrity testing programs in the country.¹ Integrity testing has the potential to be a critical component of the Department's overall anti-corruption program by acting as a deterrent to corruption as well as a valuable tool in gathering evidence against corrupt officers. Witnesses to police corruption are often civilians who are themselves criminals or, at times, a subject officer's colleagues, and therefore reluctant to cooperate in an investigation or provide testimony at a criminal trial or administrative hearing. Accordingly, tests that are targeted at a specific officer and are part of an investigation of an allegation of corruption² may at times provide a critical means of developing a provable case against that officer. Additionally, well-executed tests that create a scenario

¹ IAB's integrity testing program has been a subject of several Internal Affairs conferences sponsored by the Department that have been attended by representatives from police departments across the country.

² This type of integrity test is known as a "targeted" test.

without regard for who will be the ultimate subject³ can in appropriate circumstances create a strong corruption deterrent within the Department, transforming every assignment into a potential integrity test in the mind of a police officer.

Since 1994, several reports released by the Commission to Combat Police Corruption ("Commission"), and other agencies, have analyzed the effectiveness of random tests conducted by the Department.⁴ These studies have noted strengths as well as weaknesses in the Department's integrity testing program and have included recommendations to enhance its effectiveness. Over the past five years, the Department has cultivated integrity testing into a comprehensive program to combat and deter corruption. The Department has increased the number of tests conducted and has dedicated efforts to attempt to raise the quality and complexity of the test scenarios. In the current study, the Commission focused on the present state of both targeted and random testing and evaluated the overall effectiveness of these tests, as well as their compliance with current Department standards.

B. SUMMARY OF FINDINGS

Integrity testing is and should continue to be an important element of the Department's overall anti-corruption program. The Department commits a great deal of effort and resources to the program, and it has proven to be successful in many aspects. In some instances, evidence derived from targeted tests became a cornerstone in convicting corrupt officers. In addition, the increase in the vouchering of small amounts of currency and drugs since the inception of the

³ The Department refers to this type of integrity test as a "random" test.

⁴ See *First Report of the Commission*, March 1996; *Second Annual Report of the Commission*, October 1997; Mollen Commission's *Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department: Commission Report*, July 1994.

program may be attributable, in part, to the Department's effort to create a sense of IAB omnipresence.

Despite these successes, however, based on a review of a sample of random and targeted tests conducted in 1998 and 1999, the Commission found that the program -- particularly as it relates to random tests -- now requires a fresh look to make it more innovative and creative. The Commission's review determined that the scenarios employed in random tests are unrealistic at times and the preparation for such tests is sometimes inadequate. Efforts to memorialize evidence in both random and targeted tests were often hindered by the failure to record the test on audio or video tapes, or because of technical difficulty with recording devices. The Commission also found that training opportunities were not fully exploited. There is no doubt that IAB is capable of conducting integrity tests that employ realistic scenarios that fulfill the program's objectives, as a number of the tests in the sample demonstrate. Through the implementation of several improvements, the program can continue to be a powerful tool in the prevention and investigation of corruption.

C. PREVIOUS STUDIES

1. The Mollen Commission Report

Targeted testing of officers alleged to have committed corrupt acts has long been an element of the Department's investigative strategy. However, prior to 1994, only a handful of tests were performed. Following the report published in July 1994 by the Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police

Department ("Mollen Commission"),⁵ the Department developed a more organized integrity testing program that included regular targeted and random tests.

The Mollen Commission made several recommendations to increase the effectiveness of integrity tests. Most significantly, it suggested that IAB increase the quantity, regularity and quality of both random and targeted tests. Further, it stressed that IAB should administer tests under the guidance of a prosecutor and tailor tests to the type of corruption being investigated. Finally, the Mollen Commission recommended that integrity tests be aimed at officers or commands "exhibiting a reasonable basis for inspecting corruption."⁶ Thus, it was recommended that even random tests should concentrate on commands with identified corruption trends or hazards.

2. First Report of the Commission

Following the Mollen Commission's report, the Department dramatically increased the number of random tests performed. In 1995, for example, the Department conducted hundreds of tests.⁷ In the First Report of the Commission ("First Annual Report"), published in March 1996, the Commission preliminarily assessed the Department's integrity testing program. In the First Annual Report the Commission found that overall the tests reviewed were well conceived, planned and executed -- especially those used to test specifically targeted officers. IAB's

⁵ See note 4, above.

⁶ *Commission to Investigate Allegations of Police Corruption and the Anti-Corruption Procedures of the Police Department, Commission Report*, July 1994, at p. 140.

⁷ IAB believes it is best for members of the Department not to be aware of exactly how many integrity tests are conducted. The Commission agrees with view and therefore chose not to reveal, in this report, any actual numbers of integrity tests performed by the Department.

technical equipment used in integrity tests was state-of-the-art and highly sophisticated. The scenarios were elaborate and reasonably recreated the types of circumstances in which corrupt conduct occurred. The Commission concluded that so long as the testing level remains sufficiently high and tests are conducted in a sophisticated manner, the testing program itself may be an effective deterrent to the commission of corrupt acts. However, in contrast to the Department's views, the Commission found that the testing program was not a good indicator of corruption levels in the Department.

In order to better evaluate the validity and effectiveness of the testing program, the Commission announced, at the time of the First Annual Report, its intention to enlist outside experts to analyze the testing program in greater detail. To this end, the Commission engaged the accounting firm of KPMG Peat Marwick LLP ("KPMG") to conduct an audit of the Department's random testing program.

3. KPMG and the Second Annual Report of the Commission

KPMG, using a representative sample of 40 random tests from the first six months of 1996 and interviews of integrity testing experts both inside and outside the Department, drew conclusions as to the effectiveness of the random testing program. The standard applied by KPMG was based on the Department's four identified goals of the Random Integrity Testing Program. In its then most recent guide to integrity testing, the Internal Affairs Bureau ("IAB") memorialized these objectives:

- Create additional anti-corruption tools in an effort to identify and catch corrupt police officers;

- Create a corruption measurement, which when combined with other factors is capable of at least a limited analysis of corruption within the Department;⁸
- Establish a sense of omnipresence throughout the Department with the goal of having members of the service handle each assignment as if it were an integrity test;
- Identify training needs for police officers and communicate these needs for appropriate follow-up.⁹

KPMG found that the program, while successful in some aspects, failed to meet all of the Department's intended goals. Random tests were found to be ineffective in identifying and weeding out corrupt officers. KPMG reached this conclusion based on the fact that so few tests uncovered corrupt behavior by members of the service.¹⁰ Additionally, KPMG found that random testing was not an effective method for measuring corruption within the Department. Out of all the random tests conducted from January 1995 through June 1996, only one resulted in a criminal failure.

⁸ The Department recognizes that random test results alone do not provide an accurate measure of corruption in the Department.

⁹ Occasionally, the subject of an integrity test will take actions that, while short of misconduct, reveal the need for re-training in procedural issues, such as appropriate steps for vouchering property.

¹⁰ Although identifying corrupt officers is still one of the objectives of the random integrity testing program, the Department has developed other methods of identifying corruption within the Department, including the Enforcement, Debriefing, Intelligence and Testing ("EDIT") program. This program utilizes IAB personnel in proactive enforcement efforts that result in the arrest and debriefing of prisoners to gather possible corruption-related intelligence.

KPMG also found the random testing program to be a potentially significant tool for identifying training needs. At the time of the KPMG study, IAB regularly submitted informal training recommendations arising from integrity tests to commanding officers. These recommendations, however, were not memorialized and there was no uniform manner by which to record or track training needs. KPMG recommended that IAB establish official written procedures, including a standard form in every case file memorializing any training needs uncovered by the test, thus allowing IAB to identify areas in which further training was necessary or appropriate.

KPMG additionally proposed that documents detailing pre-test planning and post-test critiques be completed and included in every case file. Also, KPMG noted a need for additional technical equipment training, as many video and audio recordings were unclear or inaudible.

Based on the study conducted by KPMG and the Commission's continued review, in its Second Annual Report published in October 1997 the Commission made several recommendations to improve the effectiveness of the integrity testing program. The Commission suggested that the Department increase the number of targeted tests and reduce random testing. In addition, the Commission recommended obtaining more information regarding a subject police officer or location prior to the test through the enhanced use of Integrity Control Officers¹¹

¹¹ Every precinct is assigned an Integrity Control Officer ("ICO") who is responsible for monitoring the overall integrity of an individual precinct. For more information regarding the role of the ICO, see the Commission's report, *The New York City Police Department: The Role and Utilization of the Integrity Control Officer*, December 1996.

and other intelligence sources. Because uncertainty as to the number of tests actually conducted could increase perception within the Department that any assignment may in fact be a test, the Commission recommended that the Department discontinue publishing the number of random and targeted tests performed. Finally, the Commission recommended that test scenarios be revamped by using methods other than "911" calls to draw officers to test sites.

II. NEW YORK CITY POLICE DEPARTMENT GUIDELINES REGARDING INTEGRITY TESTING

As part of its integrity testing program, IAB prepared a comprehensive guide for use in integrity testing.¹² According to the Department, the guide is an effort to provide IAB investigators and supervisors with a uniform blueprint for the development, execution and memorialization of integrity tests. However, the specifications set forth in the guide are not all necessarily applicable in every test and according to IAB, use of the guide is to be adapted to each individual test.

In preparing this study, the Commission reviewed the guide and found it to be an excellent handbook for the development and execution of effective integrity tests. As part of its analysis, the Commission compared the quality of the tests in the sample to the standards set forth in the Department's guide and concluded that many shortcomings found in the tests could be alleviated by a stricter adherence to the guide. The following is a detailed description of the relevant portions of the guide.

¹² The guide has been in use for approximately three years and is updated periodically.

A. THE NYPD INTEGRITY TESTING GUIDE: GENERAL CONSIDERATIONS

In addition to defining the objectives of the integrity testing program, the guide discusses the differences between targeted and random tests. According to the guide, in a targeted test, an identified member of the service is the subject of the test. These tests are usually conducted as part of an investigation of a specific allegation of misconduct or when a pattern of potential wrongdoing is detected in allegations against a particular member of the service.

In contrast, random tests do not target individual officers. They are, however, usually conducted to address statistically identified corruption trends. As set forth in the guide, random integrity tests are intended to be one of the measurements of corruption in the Department. The goal as described is to perform a sufficient number of tests to either refute or confirm statistically perceived trends of corruption within the Department. According to the guide, the results of these tests provide the Department with information which, when combined with many other factors, indicates an approximate level of corruption in the Department. In addition, the guide describes the random tests as serving as a deterrent to all members of the service. The guide defines the number of random tests performed as determined by the amount of time, preparation, and follow-up required, in relation to IAB's resources.

B. THE NYPD INTEGRITY TESTING GUIDE: DEVELOPMENT OF AN INTEGRITY TEST

The guide emphasizes the importance of determining what type of integrity test is appropriate in a given situation. The guide sets forth several steps for the investigator to take in

order to make this determination.

1. Summary of Guide Provisions Regarding Intelligence Sources

According to the guide, one way to determine what test scenario may be the most effective is to draw on different intelligence sources in order to examine the allegation in a targeted test or identify a corruption trend in a random test. In targeted tests, prior complaints and cases involving the subject officer should be analyzed and reviewed to identify patterns of corruption. In random tests, the investigating officer should determine whether there is a pattern of allegations within a command where no particular officer is identified as a subject and review prior similar cases within the command. The guide also advises the investigator to confer with the Corruption Prevention Division¹³ for assistance in identifying patterns and trends within specific geographic areas. According to the Department, many random tests are conducted based on the group captain's knowledge of corruption trends in the command being tested. Statistical information gathered by CPD greatly assists group captains in identifying corruption trends.

To enhance the background information available regarding a particular officer or area prior to a test, the guide advises the investigator to confer with other IAB units that have knowledge of the subject officer or command, either through previous investigations or from

¹³ The Corruption Prevention Division ("CPD") acts as IAB's central repository and clearinghouse for various types of intelligence information. The CPD gathers this information from a variety of Department-wide sources and synthesizes the data into statistical reports which are distributed to IAB executives and supervisory staff. For more information regarding the role of the CPD, see the Commission's report, *A Review of The New York City Police Department's Methods for Gathering Corruption-Related Intelligence*, August 1999, pp. 5-15.

experience working in a particular command.

In compliance with the Department's policy of informing and involving precinct Commanding Officers ("C.O.") in open corruption cases,¹⁴ the guide advises investigators to consider contacting the subject's or precinct's C.O. prior to the test. In addition to valuable insight regarding the subject or precinct, the C.O. may provide information regarding any special enforcement operations taking place that could interfere with a test.¹⁵

2. Summary of Guide Provisions Regarding the Test Scenario

After all intelligence is gathered, the investigator is ready to construct an appropriate scenario. The guide stresses that the scenario must be compatible with the allegation. The scenario should also mirror prior allegations. Investigators are encouraged to keep scenarios as simple as possible and to keep in mind, among other considerations, safety factors, legal considerations, resources and time limitations.

3. Summary of Guide Provisions Regarding the Test Site

Once the scenario is developed, the investigator must choose a test site and conduct a site

¹⁴ In its 1995 report, "Police Strategy No. 7: Rooting Out Corruption; Building Organizational Integrity in the New York Police Department," the Department articulated a "policy of inclusion" under which "police commanders become the trusted colleagues of the Internal Affairs Bureau, supervisors become skilled, effective front-line managers, and all police officers become allies in the drive against corruption and brutality."

¹⁵ The guide also suggests that C.O.'s can help to facilitate a test by placing a subject officer at a particular post, assignment, or with a particular partner or by actively participating in the test itself. The guide also recognizes that inclusion of the C.O. could compromise the test and cautions that the C.O. should be used only when there is no risk that the subject will be made aware of the test.

survey. According to the guide, the site survey should include conferring within IAB to determine whether other investigations in the area would interfere with the test, a check to ensure that no members of the service live at the location who may inadvertently interfere with the test, a check on the criminal activity at the location, a check for other law enforcement activity, and if possible a physical inspection of the site on the same day of the week and time of day as the anticipated test. The guide recommends that the site be within the officer's sector or at a location where prior allegations have occurred. Any electronic equipment that is to be used at the site should be tested at the proposed site.¹⁶ Immediately prior to the test the equipment should be checked for malfunctions. The site itself should be realistic given the chosen scenario and appropriate props should be utilized to lend credibility to the location.

4. Summary of Guide Provisions Regarding the Use of Undercovers

Undercover IAB officers are often used in integrity tests. The Department guide recognizes the critical role of the undercover and sets forth the criteria for the selection and behavior of an appropriate undercover. An undercover should physically fit the scenario and location of the test and should have a fictitious identification that has been checked for open warrants, as well as a prepared "cover story" to explain his/her presence in case of recognition by

¹⁶ Sites where electronic transmission is problematic should be avoided because of safety and evidence recovery concerns. Where necessary the Technical Services Unit, which specializes in the use of the equipment, should be contacted to assist a team with electronic equipment they may not be proficient with.

the subject.¹⁷ Furthermore, undercovers must be credible in the role they are playing and therefore should be familiar with the role and the location of the test. The guide suggests that practicing role-playing prior to the test may be advisable depending on the undercover's level of experience.

5. Summary of Guide Provisions Regarding the Tactical Plan

Prior to any test involving field operations, the guide requires that a formalized tactical plan be developed and approved. The tactical plan is to list all personnel taking part in the test and their respective assignments. All equipment is to be itemized and an equipment manager should be designated. The tactical plan is to also include a map or diagram of the area surrounding the test site, a list of the staging areas and any conferral telephone numbers that may be necessary.

6. Summary of Guide Provisions Regarding the District Attorney Liaison

Prior to all targeted tests, the appropriate District Attorney Liaison is to be contacted to discuss any legal considerations regarding the test.

C. THE NYPD INTEGRITY TESTING GUIDE: THE TEST

The guide specifies the tasks of all members of the team during the test. The individual responsibilities of the undercover, team leader, technical team, and surveillance team are

¹⁷ In order to protect the validity of the test, the undercover should view photographs of officers scheduled to work at the time of the test to identify any who might recognize the undercover.

addressed. In addition, as stated above the guide recognizes the importance of the undercover's performance during an integrity test and states the undercover's responsibilities in detail. Most critical is that the undercover is credible in playing the determined role, and the first step to a credible performance is knowledge of the script. The guide specifically sets forth the conduct expected of an undercover during an encounter with officers responding to the test site. The undercover must comply with all commands given by the subject officers and keep movements slow and deliberate to avoid any escalation of the situation. The guide makes clear that the undercover should not antagonize the subject and should be aware that the subject may follow the undercover from the test site.

D. THE NYPD INTEGRITY TESTING GUIDE: POST-TEST

Once a test is completed, the test team's work is not over. Equipment must be accounted for, tapes logged and stored for safekeeping and worksheets completed by all members of the team. The guide provides samples of all documentation that should be present in the test folder. The test result sheet is to include a critique of the subject officer's behavior and the performance of all members of the testing team. In addition, all training needs, both internal and external to IAB, should be identified in the test folder.

* * *

As described above, the NYPD's integrity testing guide provides thorough and comprehensive instructions for the formulation, performance and recording of integrity tests. If

followed carefully, the guide can assist in the design and performance of effective integrity tests.

III. THE PRESENT STUDY

A. METHODOLOGY

In preparing this study, the Commission obtained a list of all integrity tests performed between November 1, 1998, and February 28, 1999. The list contained the total number of tests performed and identified the tests by test number, the date of the test, whether the test was random or targeted, and the geographical or specialized group that conducted the test. Also included in the list, where applicable, was the "C" number corresponding to the investigative case file.¹⁸

Of the tests in the list, approximately 62% were random and 38% were targeted. The tests were conducted by IAB's borough-wide geographic and specialized citywide groups.

In total, roughly 20% of the total number of tests were selected for inclusion in the study. The Commission was interested in obtaining a sample for the study that would provide a basis to evaluate both random and targeted tests. In addition, the Commission wanted to examine the performance of individual IAB groups over a period of four months. Therefore, a sample was selected that mirrored the percentages of random and targeted tests in the entire pool of tests.

¹⁸ A "C" number is an internal classification assigned by IAB to cases that involve allegations of corruption or serious misconduct. "C" numbers are assigned by IAB to these internal investigations. When a case is assigned a "C" number an investigative file is opened and the case is assigned to an investigating officer. Random tests do not have "C" files since there is no underlying investigation associated with the test. A targeted test may not have a "C" file if the test is triggered by something other than an ongoing investigation.

Tests were also selected based on the date they were conducted. Here too, the sample roughly represents the overall percentage of tests performed during each month of the pool of tests. In addition, the borough-wide geographical and citywide groups are represented in proportion to the number of tests performed by each borough or group in the universe of tests.

Although the tests selected for the sample included in this study were not selected by purely random or scientific means, the test files were not reviewed prior to their selection for inclusion and the only criteria considered in the selection process are specifically outlined above.¹⁹ The Commission recognizes that a sample of tests drawn from only a four-month time period -- although the sample represents 20% of the tests conducted during that time -- has inherent limitations. These limitations may include quality variations that are attributable to specific personnel; a broader time frame would reflect the work of a larger number of IAB investigators. Additionally, a larger sample might provide a better indication of the pervasiveness of certain issues identified in the Commission's sample. While these limitations should be kept in mind, the Commission's conclusions regarding the integrity testing program mirror observations made in earlier studies of the Commission as well as information gathered during the course of the Commission's regular monitoring functions. The Commission believes, therefore, that while the sample may have limitations, meaningful conclusions may be drawn about the Department's integrity testing program.

¹⁹ It should be noted that the final sample chosen for inclusion in the study did not contain tests of excessive use of force and therefore the Commission is not offering views as to those tests.

Once the Commission selected those tests to be included in the sample group, the Department provided the Commission with copies of the corresponding test files and, where applicable, any audio or video tapes of the tests. In addition, the Commission was given access to the original "C" case files for tests that were part of ongoing investigations. All of these materials were reviewed by the Commission.

B. DISCUSSION

1. Overview

The Commission's review of the sample group of tests focused on both the Department's objectives and expectations of the testing program as outlined in IAB's integrity testing guide, and the Commission's own evaluation of the effectiveness of the integrity tests reviewed. As set forth above, the Department's guide to integrity testing provides an exemplary manual for developing and executing integrity tests. For the purpose of this study, the Commission evaluated the effectiveness of the tests in the sample group and compared them to the recommendations in the Department's guide to determine whether the tests met the Department's standards. Of particular interest to the Commission was whether the targeted tests were effective tools for gathering evidence of corruption against specific officers, and whether or not any deterrent effect of the random testing program was reaching its full potential.

As explained above, there are fundamental differences between random and targeted tests. First, unlike targeted tests, which are aimed at a specific officer and are part of an open

investigation, random tests are created without regard for who will be the ultimate subject. In addition, the goal of a targeted test is to gain evidence against a specific officer who is suspected of corrupt activity, whereas random tests, while theoretically capable of detecting corrupt officers, are performed more as a corruption deterrent within the Department. In general, the Department's guide to integrity testing does not differentiate between random and targeted tests. However, the Commission found that how random tests were carried out differed from targeted tests. Therefore, in the present study the Commission evaluated random and targeted tests separately and within the context of their individual objectives.

2. Random Tests

Among the random tests in its sample, the Commission identified several problems in the execution of these tests. These problems included a lack of realism and creativity in test scenarios and a failure to memorialize and document the tests through audio and video recording and post-test reports. While the Department has emphasized the need to conduct a large number of tests to meet its deterrence goals, the Commission found that as a result the quality of random tests sometimes suffered.

a. Realistic Scenarios

Perhaps the most important element of any integrity test is the degree of realism of the scenario. A test that does not closely resemble a scenario an officer may actually encounter during the regular course of his duties, is less likely to be effective. Since it is well publicized

that the Department regularly conducts integrity tests, an unrealistic scenario could alert the officer that a test is being conducted. As stated above, the Department in its integrity test guide, recognizes the importance of a realistic scenario.²⁰ In the random tests reviewed by the Commission, several scenarios were found to be based on fact patterns not wholly representative of typical police encounters. Furthermore, several other scenarios would have been more believable if the undercover's performance was more realistic.

A number of the random tests reviewed by the Commission could have been constructed in a more realistic manner. Several of these involved testing for improper vouchering of property or theft of property. The manner in which the officer came into contact with the "bait" could have been more authentic, and the "bait" itself could have been made more attractive and accessible to the responding officers. For example, several more realistic tests reviewed involved a subject officer coming into contact with the property in the context of responding to an unrelated situation, resulting in a more genuine scenario. In those tests the bait was available to the subject officer but was not the focus of the scenario.

Since random tests do not target a specific officer or allegation, in constructing the test the investigator is free to conceive of a scenario that is realistic without being constrained by the particular facts of an allegation. Unfortunately, the tests reviewed often did not exhibit sufficient

²⁰ The Department has also stated that tests that are recognized by the subject to be a test may serve as a deterrent to corruption. The rationale behind conducting these tests is that the Department anticipates that the tested officer will return to his command and report the test to his colleagues, thus furthering IAB's goal of creating the impression of omnipresence.

creativity, and many similar scenarios were routinely utilized as a matter of course.²¹

The Department recognizes some of the limitations of these tests, noting that these shortcomings are offset by the large number of tests conducted to meet deterrence objectives.²² The Department also maintains that even if a random test is recognized as such, the subject officer is put on alert that IAB conducts tests, thereby increasing the deterrent effect of the testing program.

Other random test scenarios might have been realistic based on the description of the test in the proposal. However, the lack of believability in the undercover's performance rendered the test potentially unrealistic or less effective. In one test involving two undercover IAB officers allegedly involved in a dispute, the undercovers waited for over twenty minutes for the subject officers to respond to the set location. During this time, the undercovers did not stay in character and one undercover was laughing as the patrol car of the subject officers pulled up. While it is not possible to determine whether the subject officers observed the undercover laughing, such a risk should have been eliminated by the undercover remaining in role. In another test, the undercover failed to adhere to the script and thus failed to direct the subject officer to the "bait." Finally, another proposed test scenario recognized that the undercover's script directing the

²¹ In a recent survey of former members of IAB conducted by the Commission, a number of former investigators expressed their frustration with the routine nature of integrity tests and indicated that scenarios being used are unlikely to result in failures.

²² The stated objective of the Department is to test, on an annual basis, every tour of each of the City's Precincts, Transit Districts, and Housing Police Service Areas.

subject officer to the "bait" lacked an explanation for the undercover's knowledge of the "bait" and its location. The solution to this shortcoming was that the undercover was instructed to briefly describe the location of the "bait" to the subject officer and then leave the set abruptly so as to avoid any further probing by the subject officer. During the test, the undercover ignored the original test proposal and instead stayed with the subject officer for several minutes until the subject actually discovered the "bait."²³

Another scenario common to several random tests, involved an undercover IAB officer interacting with responding officers in a variety of street encounters. The realism of this type of test is greatly affected by the quality of the performance by the undercover. For example, in two of the tests undercovers posed as drug dealers in a scenario that would potentially subject them to a stop and frisk by responding officers.²⁴ While the general scenario used in these two tests was fairly realistic and created an opportunity for the testing of FADO,²⁵ property and other possible violations, enhancing the credibility in the undercovers' performances as drug dealers would have increased the effectiveness of the tests. The undercover officers used in these two tests did not exhibit indicia of drug dealing, and in one instance, the props used were inconsistent with those used by drug dealers.

²³ The Commission does not know what the undercover said to the officer during the test because the test was not recorded on audio and the worksheets do not describe the conversation in any detail.

²⁴ A corrupt officer may be more likely to steal from a drug dealer than from an otherwise law-abiding individual.

²⁵ The acronym "FADO" signifies violations involving force, abuse of authority, discourteousness, and offensive language.

b. Recording Random Tests

An issue identified during the course of the Commission's review was the lack of audio and/or video recording of the test. In some instances the equipment malfunctioned, while in others no attempt to record the test was ever made.

More than two-thirds of the random tests reviewed by the Commission were not captured on audio tape. In most of these tests, audio recording was never attempted²⁶ and in others, the tapes were inaudible due to the malfunction of equipment or errors made by the recording member of the team which caused the tape to be blank or unclear. According to the Department, an audio recording is not always attempted in tests which are conducted at locations where the ambient noise would cause a clear audio recording to be difficult if not impossible to obtain. The problem of outside noise interfering with audio recording may have been present in most of the random tests reviewed by the Commission in which audio recording was not attempted. However, other random tests in the study did not present this impediment to audio recording and yet none was attempted. Furthermore, the random tests that were recorded successfully were conducted in noisy locations.

In one-third of the random tests reviewed, the test team did not attempt to video tape the test, and in another third, the video equipment malfunctioned. Video malfunctions consisted of

²⁶ The Commission recognizes that the audio recording of one of these tests may have been illegal under the state eavesdropping statute, or impractical.

conditions being too dark for recording²⁷ and technical malfunctions.

Failure to record an integrity test has a number of potentially negative repercussions. In the event an officer fails the test, the evidence of the test is limited to the team's recollections. The team's testimony at a criminal trial or administrative hearing would not be supported by any physical memorialization of the test, thus weakening its impact. Furthermore, an IAB supervisor's ability to critique the performance of the subject officer and the test team is limited and as a result, training opportunities may be missed.

In discussions with the Commission, the Department agreed that it is always preferable to record a test. However, it is the Department's view that the commitment of resources and time makes it preferable to conduct a test even if it is not possible to record the test at that time. For example, if personnel become available and can be used to conduct a random test, despite the unavailability of audio or video equipment, the performance of a test is given priority over awaiting more optimum testing conditions. Additionally, the Department has noted that there may be tactical reasons, including safety issues, for not attempting an audio recording of a test. While the Commission recognizes that tactical concerns must be assessed when determining the appropriateness of audio recording a test, these issues were not prevalent in the sample.

In addition to audio and video recording, written documentation of the test is essential to the overall effectiveness of the integrity testing program. In order to better the program,

²⁷ Among other things the Department explained that only limited training has been conducted as to the use of night cameras.

supervisors must be able to review tests and determine what improvements can be made. Although the vast majority of random tests result in a pass, in the event of a failure, the documentation can serve to refresh an investigator's recollection as to the events of the tests. Considering that many months may pass from the time the test is performed to the time when testimony regarding the test may be required, either at a criminal or administrative proceeding, detailed documentation can become essential for accurate recalling of the test. Furthermore, in the event that the subject of a random test later becomes the target of an investigation, the information regarding the officer's conduct during a previous random test, whether it resulted in a failure or a pass, could be valuable to the investigation. The prior test could aid the investigators in developing a test for the allegation or help to confirm or refute the allegation. If the test is not recorded or adequately documented, information about the test may be limited to discussions with personnel who were directly involved in the execution of the test.

In reviewing targeted test files and the accompanying "C" case files, the Commission noted the detailed documentation, generally present, of all steps in the investigation, including the integrity test. This documentation was not present in most of the random tests reviewed. Although, according to the Department guide, nearly all members of the team are supposed to complete worksheets documenting their observations and activities during the test, in random tests, generally, only the undercover's or investigating officer's worksheet was included in the test file. These worksheets also gave only a cursory description of the execution of the test and did not detail the subject officer's activities during the test. In a few of the random tests

reviewed involving FADO violations, a lack of documentation may have prevented adequate recognition of training needs.²⁸

c. Test Preparation

As noted above, the Department's guide to integrity testing sets out several steps for planning an integrity test. The guide requires that a tactical plan be approved prior to the execution of a test. A tactical plan is a worksheet that details the specifics of an undercover operation including but not limited to the identities and roles of the individuals who are to take part in the operation, the exact location of the operation and the nearest hospital in case of an emergency. Tactical plans are used in all undercover situations to ensure that the operation runs smoothly and safely. Since every integrity test involves some degree of danger in that there is a potential of criminal activity by the subject officer or of contact with the subject officer, a tactical plan is important for the safety of the testing team. In addition, a tactical plan ensures that all members of the team, whether undercover or not, understand their responsibilities during the test and are familiar with the location.

The random tests in the sample group included several files without documentation indicating that a tactical plan had been approved. In discussions with the Commission, IAB

²⁸ In one random test involving a street encounter that presented several opportunities to test violations of search and seizure law, there were no worksheets describing the actual test and no commentary regarding possible training issues. In another random test, the Commission learned from IAB that the subject officer failed to follow Department procedures. This administrative violation was not noted in the integrity testing file. IAB has informed the Commission that the subject's Commanding Officer was contacted and appropriate corrective measures were taken.

stressed that random tests consisting of relatively simple scenarios used on a regular basis, in general, do not require a tactical plan or approval beyond the group captain. IAB also pointed out that a discussion regarding team assignments and duties is always completed even where no tactical plan is prepared.

The lack of documentation regarding the approval or existence of a tactical plan may be an indication of the level of preparation done before conducting some random tests. Half of the random tests in the Commission's sample suffered from some type of insufficient planning that became evident during the performance of the test. In one test, for example, the script for the undercover was never fully developed and as a result the undercover failed to direct the responding subject officers to the "bait." In other random tests, a failure to visit the test site resulted in the inability to record the test on video, because of either poor lighting or the logistics of the test location. Still other tests used unrealistic props in place of props less readily available, possibly an indication of insufficient planning.

The manner in which random tests are developed also affects the creativity of the test scenarios. Although the Department guide states that random tests should be simple in order to limit the number of possible problems, the guide also indicates that an investigator should use his imagination in formulating integrity tests. Several of the random test scenarios reviewed by the Commission were creative and resulted in effective tests. However, a number of random tests in the sample group consisted of property or drug scenarios that were executed in an uncreative manner.

d. Training Opportunities

The investigating officer and supervisor are required to complete an "Integrity Test Result Sheet." This form describes the test and provides a space for the supervisor to record a critique of the performance of the subject officer as well as the testing team. The Commission identified several areas of training possibilities (for both subjects and investigators) that arose in random tests. However, the "training needs" sections of the result sheet forms in the random test files reviewed were generally not utilized to take advantage of an opportunity to comment on training issues. As a matter of routine, the result sheets reviewed by the Commission contained only a perfunctory description of the test, for example, "test went as planned," and no critique of the test team's performance. The critique of the subject officer's behavior usually consisted of a single general comment such as "no FADO violations observed," without detailing other training matters that might have been exhibited by the subject's actions. Even tests that do not result in criminal or administrative failures could yield information that can be helpful in training not only the subject officer but officers in general.²⁹ The Department has stressed that all training issues are addressed at meetings with the Police Commissioner, the Department's executive staff, Borough Commanding Officers, Chief of Department and Chief of Patrol, in addition to conversations between IAB personnel and individual commands. Although training issues may be conveyed to the appropriate parties, relying on informal methods of communicating training

²⁹ The Commission recommends a more centralized and expansive method of disseminating training issues that arise during integrity tests. See discussion at p. 35.

needs risks losing these benefits from random tests.

3. Targeted Tests

In general, the targeted tests reviewed by the Commission were better prepared, more creative and better executed. In most tests, care was taken to document all steps in the development and execution of the tests. However, there are issues related to targeted tests that the Commission identified as in need of improvement.

a. Compatibility with Allegation

Unlike random tests, targeted tests are usually conducted within the context of an investigation into an allegation of a specific officer's misconduct. As recommended by the Department guide, targeted tests should be closely tailored to the underlying allegation. For example, if the underlying allegation involves drug use, a test should involve interaction between the subject officer and drugs, or simulated drugs. In addition, the more closely the test is tailored to the specific method of corrupt behavior alleged, the more likely the officer, if actually corrupt, is to repeat the misconduct during the test.

The Commission recognizes that at times, the complicated nature of an allegation may make it difficult to construct a test that mirrors the allegation. However, a number of the targeted tests reviewed by the Commission were not sufficiently compatible with the allegation. For example, one case involved an allegation that a particular officer was drunk and under the

influence of drugs while on duty, yet the test used was a property scenario.³⁰ In another, a test was constructed to obtain evidence of drug use despite a lack of a connection between the subject officer and drugs. A few allegations involved complicated schemes to steal money. Rather than develop a more complicated property test that more closely mirrored the alleged corrupt conduct, common property tests identical to those performed on a random basis were used.

Obviously, however well executed, the impact of a targeted test is negatively affected if the test is not compatible with the allegation.

b. Realistic Scenarios

In general, the targeted tests contained realistic scenarios. This was particularly apparent in tests that consisted of scenarios that closely resembled the facts of the underlying allegation. For example, in one test a subject officer was tested at the exact location where it was alleged that his corrupt acts had occurred and in the presence of individuals involved in those allegations.³¹

In contrast to the random property tests described above, targeted property tests also were more often creative and involved realistic situations and props. However, there were targeted property tests reviewed by the Commission that suffered from the same shortcomings as the

³⁰ In conversations with the Commission, the Department stated that property tests were appropriate for officers suspected of using drugs. Since, according to the Department, an officer who uses drugs is in all likelihood in need of cash, an integrity test that uses money as bait is compatible with an allegation of drug use. Although the Commission recognizes the connection between drugs and money, an integrity test using narcotics or simulated narcotics is more compatible with an allegation of drug use.

³¹ The Commission recognizes that a complete fit between a location named in an allegation and the site of an integrity test may not be possible in many tests.

random tests. These tests could also be improved with more authentic means of drawing the subject officer to the test and more realistic "bait." In one targeted test which took place at an improbable location, the subject officer seemed to be aware that a test was being conducted. This apparent awareness was exhibited by the deliberate manner in which he obtained the property from the undercover and the extreme caution he took to not only follow all procedures for recovering property, but to clearly verbalize each step as it was performed.³²

In general the undercover officers used in the targeted tests reviewed by the Commission fit the location and appearance necessary for the test. However, similar to what was observed in the random tests described above, the undercovers' scripts were not always credible and in particular, the "cover story" was not always fully established. In one test involving an undercover posing as a law enforcement agent, the investigator failed to fully establish the cover story. The subject officer attempted to contact the undercover after the test and discovered that no such officer existed. As a result, the subject officer filed a complaint against the undercover for criminal impersonation.

c. Intelligence Sources

In general, prior to the execution of the targeted tests reviewed by the Commission, investigators routinely ran intelligence checks on the location of the test. Most of the subjects of these tests in the Commission's sample had numerous prior complaints against them and in some

³² In discussions with the Department about this test, IAB has noted that opportunities to test the subject officer while on-duty were limited because of the nature of the officer's assignment.

instances the previous complaints were similar to the current allegation. However, while the Commission did find documentation that investigators had reviewed the corruption log summaries of prior complaints against an officer, the Commission did not find documentation that investigators had consulted with other IAB units regarding previous complaints against the officer or that underlying case files had been requested and reviewed. The Department has advised the Commission that intelligence sources are adequately reviewed prior to conducting tests but that this work is not necessarily documented. The Commission believes that all relevant intelligence sources should be mined for possible information before a test is formulated and conducted and that documentation of this investigative work will assist in future investigations or tests involving the subject officer.

d. Recording Targeted Tests

As noted above in the discussion of random tests, audio, video and written recording of an integrity test are crucial to the overall impact of the test. In contrast to the random tests in the study, the targeted tests were well documented. As in the random tests, however, the "training needs" section of the result sheet forms in nearly every case failed to identify any training issues.

In addition, although more care was taken in the audio and video recording of targeted tests³³ than random tests, problems with the technical equipment persisted. Half of the tests suffered from either malfunctioning video equipment or incomplete video recording of the test

³³ One of the random tests reviewed was initially planned as a targeted test. The test was being video taped, however, when the subject of the targeted test failed to respond to the test location and the test continued as a random test of the responding officers. The video camera was then turned off and the test was not recorded.

and half of the targeted tests were not audio taped at all.

e. Consultation with Prosecutors

Finally, although it is Department policy to contact the relevant local prosecutor prior to the execution of a targeted integrity test, in nearly half of the targeted tests reviewed by the Commission, consultation with the appropriate prosecutor was not documented in any detail and therefore it is unknown when and to what extent the prosecutor was involved in the test. In the tests in which worksheets were prepared detailing the consultation with the pertinent prosecutor, the conferring was limited to legal considerations regarding the test and did not involve the prosecutor in developing the test scenario.³⁴

The Department maintains that prosecutors are consulted prior to every targeted test. Generally, IAB involves prosecutors only to the extent that evidentiary or legal concerns are at issue or a prosecutor is needed for the arrest and processing of an officer who fails a test. In particularly complex tests, a prosecutor may be consulted during the development of the test scenario to ensure from the outset that all legal and evidentiary issues are addressed at the earliest opportunity. Prosecutors, at their own initiative, on occasion contact IAB to discuss specific tests and possible scenarios. The Department has informed the Commission that further input on the part of prosecutors would be desirable. The Commission believes that there should be meaningful consultation with prosecutors in most targeted tests. Not only can prosecutors

³⁴ In conversations with the Commission, individual prosecutors noted that at times they were not consulted prior to targeted tests or consulted too late to provide meaningful contribution to the development of the test.

address legal and evidentiary concerns, but they can contribute to the development of creative and effective tests.

C. CONCLUSIONS

Overall, the Commission found that integrity testing remains an important element of the Department's overall anti-corruption program and continues to serve as a deterrent. As the Department continues to dedicate resources to the integrity testing program attention should also be focused -- particularly in the random testing area -- to developing new and more creative test scenarios and more carefully documenting and recording tests. The Commission also found that training opportunities for both subject officers and members of the testing team were present but not fully exploited.

III. RECOMMENDATIONS

A. ENHANCE QUALITY WHATEVER THE QUANTITY OF RANDOM TESTS

In an effort to meet its objectives of corruption measurement and deterrence, IAB conducts a high quantity of random tests. Although the Commission does not disagree that this large number of tests may serve as a strong deterrent, in the event that the quality of these tests suffers, the entire program suffers. The Commission recommends that continued emphasis be placed on targeted tests and that the Department continue to conduct only as many random tests as practical without allowing the quality of the tests to decline.

B. MORE REALISTIC AND CREATIVE TEST SCENARIOS

Random tests that are transparent may theoretically serve to deter corruption but

generally fail to obtain evidence of corruption. And, if too blatant, even the deterrence value is suspect. Certain scenarios are overused and may have become obvious tests. In addition, IAB has grown, and the turnover of personnel re-entering the regular force has increased. As a result, officers returning to regular commands are familiar with test scenarios and could educate other officers.³⁵ Therefore, it is important that IAB continuously strive to develop more creative tests and limit the repeated use of the same scenario.

Furthermore, unrealistic scenarios do not advance the goals of the integrity testing program. The more realistic the test, the more likely a corrupt officer will fail. The Commission recommends that greater care be taken to use authentic props and develop credible scenarios and undercover scripts, especially in the random testing area. In addition, in targeted tests, scenarios that closely resemble the underlying allegation produce more genuine situations that are more likely to result in the subject officer repeating previous misconduct. Therefore, the Department should construct tests that are closely tailored to the subject officer's previous actions. To aid in the development of more realistic and effective scenarios, tests should be conducted after more in-depth consultation with the relevant District Attorney.

C. TAKE APPROPRIATE MEASURES TO ENSURE AUDIO/VIDEO RECORDINGS OF TESTS

As discussed in the report, the Commission found that in too many instances integrity tests were not recorded on either audio or video tape. While the Commission recognizes that at

³⁵ In a recent survey conducted by the Commission several former members of IAB expressed concern over this issue.

times tactical or safety reasons may make such recordings inadvisable, as a general matter IAB should make all efforts to attempt such recordings and ensure that adequate arrangements have been made for necessary equipment.

D. DEVELOPMENT OF BETTER METHODS OF IDENTIFYING AND DISSEMINATING TRAINING NEEDS

Since the Commission's recommendation to the Department to create a form to identify training needs discovered in an integrity test, IAB has included a "Training Needs" section to be completed on the Integrity Test Result Sheet. The Commission recommends that IAB stress the importance of completing this section and encourage supervisors to identify any training needs exhibited by the subject officer that do not necessarily rise to the failure of the test and to critique the performance of the test team as well. FADO violations in particular should always be analyzed and addressed with respect to subject officers. In addition, in order to more efficiently utilize the training information gained from testing, the Commission suggests that IAB assemble a monthly report of training issues that arose during tests to be disseminated to all C.O.'s and the academy.

E. ADHERENCE TO PROCEDURES OUTLINED IN INTEGRITY TESTING GUIDE

The Commission found that, if followed, the standards set by the Department for developing and executing integrity tests would produce an effective integrity testing program. However, it is apparent from this study that, particularly in random tests, standards are not always met, resulting in limited preparation and at times the development of unrealistic test

scenarios and ineffective tests. While rote adherence to the guidelines is not suggested, the standards should be applied more carefully on a test by test basis.

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PUBLISHED REPORTS OF THE COMMISSION

<u>First Report of the Commission</u>	April 1996
<u>The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Make False Statements</u>	December 1996
<u>The New York City Police Department: The Role and Utilization of The Integrity Control Officer</u>	December 1996
<u>The New York City Police Department Random Integrity Testing Program</u>	December 1996
<u>Second Annual Report of the Commission</u>	October 1997
<u>Performance Study: The Internal Affairs Bureau Command Center</u>	October 1997
<u>Monitoring Study: A Review of Investigations Conducted by the Internal Affairs Bureau</u>	October 1997
<u>Third Annual Report of the Commission</u>	August 1998
<u>The New York City Police Department's Disciplinary System: How the Department Disciplines Probationary Police Officers Who Engage in Misconduct</u>	August 1998
<u>The New York City Police Department's Disciplinary System: How the Department Disciplines Its Members Who Engage in Serious Off-Duty Misconduct</u>	August 1998
<u>Performance Study: A Review of the New York City Police Department's Background Investigation Process for the Hiring of Police Officers</u>	January 1999

A Review of the New York City Police Department's
Methods for Gathering Corruption-Related Intelligence August 1999

Performance Study: A Follow-up Review of the
Internal Affairs Bureau Command Center August 1999

The New York City Police Department's Disciplinary
System: A Review of the Department's December 1996
False Statement Policy August 1999

Fourth Annual Report of the Commission November 1999

Performance Study: A Review of the Internal Affairs Bureau
Interrogations of Members of the Service March 2000

The New York City Police Department's Internal Affairs
Bureau: A Survey of Former IAB Members March 2000

Performance Study: The Internal Affairs Bureau's Investigative
Review Unit March 2000

Performance Study: The Internal Affairs Bureau's Integrity
Testing Program March 2000

COMMISSION TO COMBAT POLICE CORRUPTION

The Commission to Combat Police Corruption was created pursuant to Executive Order No. 18 of 1995. The Commission is mandated to monitor the New York City Police Department's anti-corruption systems. To accomplish this, the Commission conducts audits, studies, and analyses regarding the Department's anti-corruption policies and procedures. This includes studies to determine the effectiveness of the Department's systems and methods for: investigating allegations of corruption; gathering intelligence; implementing a system for command accountability, supervision, and training for corruption matters; and such other policies and procedures relating to corruption controls as the Commission deems appropriate.

COMMISSIONERS

Richard J. Davis, Chair

Currently, Mr. Davis is a partner with the law firm of Weil, Gotshal and Manges. He was Assistant Secretary of the Treasury (Enforcement and Operations) between 1977 and 1981, where he supervised the activities of the Secret Service, the Customs Service, the Bureau of Alcohol, Tobacco and Firearms and the Federal Law Enforcement Training Center. He had previously served as an Assistant United States Attorney in the Southern District of New York from 1970-73 and as an Assistant Special Prosecutor for the Watergate Special Prosecution Force. In 1987 he was appointed to a Commission to review the operations of the Philadelphia Police Department. In 1993 he served on a panel of experts appointed by the Justice and Treasury Departments to provide advice in addressing situations which may occur in the future similar to those which took place in Waco, Texas.

Charles M. Carberry

Mr. Carberry is currently a partner with the law firm of Jones, Day, Reavis & Pogue. He is a former federal prosecutor, having served from 1979 through 1987 as an Assistant United States Attorney in the Southern District of New York (including service as Chief of the Securities and Commodities Fraud Unit and Deputy Chief of the Criminal Division). Pursuant to his appointment by the federal district court, from 1989 to the present, Mr. Carberry oversees investigations and administrative prosecutions of allegations of corruption and dishonesty involving the Teamsters Union. Mr. Carberry is on the boards of editors of the White Collar Crime Reporter, Business Crimes Bulletin, and the Money Laundering Law Report. He has written numerous articles and has spoken frequently at seminars on white collar crime, securities fraud, and money laundering.

Rhea Kemble Dignam

Ms. Dignam currently is a Vice President and Deputy General Counsel at New York Life Insurance Company. She is a former federal and state prosecutor, having served from 1976 through 1988 as an Assistant United States Attorney in the Southern District of New York (including service as Chief, Narcotics Unit; Chief, Public Corruption Unit; and Executive Assistant United States Attorney). From 1988-1989 Ms. Dignam was the Chief Assistant District Attorney in Kings County and served as the Executive Deputy Comptroller, City of New York from 1990-1993 in which position she gained extensive experience monitoring the work of City agencies.

Ann Hayes

Ann Hayes is the Chief Executive Officer of Strang Hayes Consulting, Inc., a leading New York City investigative management firm. She is a former Special Agent with the Federal Drug Enforcement Administration, having served from 1984 through 1988. As an undercover agent, Ms. Hayes was directly involved in infiltrating and combating organized crime, and later supervised numerous high-level, international investigations. Ms. Hayes was the first woman to graduate first in her class from the DEA Agent Basic Training Academy. Her law enforcement career began as a police officer following graduation from college. In 1987, Ms. Hayes served on the President's Organized Crime Drug Task Force. Ms. Hayes was recently appointed by Mayor Giuliani to the Mayoral Task Force on Police/Community Relations, which was established to improve the relationship between the police and community in New York City. She was also appointed to the Board of Directors of the National Center for Victims of Crime, an organization devoted exclusively to the needs of crime victims.

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