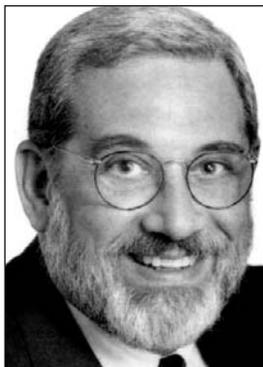


Independent Private Sector Inspectors General: Privately Funded Overseers of the Public Integrity

By Stanley N. Lupkin and Edgar J. Lewandowski

Introduction

On a clear morning on September 11, 2001 New York City's tallest buildings were reduced to 1.6 million tons of ruins.¹ The vast aggregate of twisted steel, pulverized concrete, and shattered glass left in the wake of terrorism is best fathomed as representing the equivalent of roughly one million cars, or the steel from 20 Golden Gate Bridges.² While natural disasters have resulted in greater quantities of debris, as in the case of Hurricane Andrew—which produced 15 million tons of rubble—they provide a feeble comparison to Ground Zero, where the destruction was centered within a 16-acre site.³ In addition to the sheer magnitude of the disaster, the efforts of relief workers were complicated by the perils inherent in working on what amounted to a macabre Jenga game, where removing the wrong beam could result in the collapse of an entire sector of the site or inadvertently fanning the long-burning fires.⁴ In addition to the physical hazards, an incalculable emotional toll confronted those laboring on what amounted to a gravesite and crime scene.⁵



Stanley N. Lupkin

Department of Transportation, was the first contractor on the scene. Soon thereafter Bovis Lend Lease LMB, Inc., AMEC Construction Mgmt., Inc. and Turner Construction Co. joined Tully at the scene.⁸ Each contractor was assigned to one of the roughly equivalent quadrants at the disaster site.⁹ Due to the emergency circumstances, the DDC executed four identical time and materials contracts, each worth an estimated \$250 million, without utilizing the competitive bidding process generally required for public contracts.¹⁰



Edgar J. Lewandowski

Pursuant to the emergency contracts, the contractors were paid on a "time and materials" basis, meaning that payments were based on the hours worked rather than the amount hauled.¹¹ Such contracts are particularly susceptible to abuse because little incentive exists to work quickly, and ample temptation persists to submit inflated invoices for phantom labor-hours and materials.¹² Nevertheless, the only significant construction-related fraud publicly reported during the course of the cleanup effort consisted of an alleged theft of 250 tons of scrap metal which were illegally transported to two sites in New Jersey and one site on Long Island.¹³ Subsequent to reports of the plundered steel, the Giuliani administration took the unusual step of requiring the hiring of four Independent Private Sector Inspectors General ("IPSIGs") in early October 2001, to "serve as 'watchdogs' to make certain that all contractors and sub-contractors perform this important public service work according to the highest standards of accountability."¹⁴ The construction compliance monitoring conducted by the IPSIGs included, among other things, background checks of all contractors and subcontractors, the tracking of personnel and equipment, surveilling and charting of all debris pick-ups and drop-offs, forensic audits of all billing requisitions submitted to New York City, surveilling worker sign-ins and sign-outs, manning a 24-hour confidential hot line to receive complaints, tips and investigative leads, etc.¹⁵

The balance of this article considers the role served by IPSIGs in combating corruption in New York City's construction industry generally, then prophylactically, in the emergency setting of Ground Zero and finally,

"The balance of this article considers the role served by IPSIGs in combating corruption in New York City's construction industry generally, then prophylactically, in the emergency setting of Ground Zero and finally, the application of this unique concept to similar problems across the Atlantic Ocean."

Within hours of the September 11th attack, the New York City Department of Design and Construction ("DDC"), which assumed overall responsibility for coordinating the cleanup,⁶ secured four construction and infrastructure management contractors to begin work at Ground Zero.⁷ Tully Construction Company, which had been working on a major state construction project on lower Route 9A (West Street) for the state

the application of this unique concept to similar problems across the Atlantic Ocean. Part I offers a brief overview of the historical backdrop of corruption and organized crime in New York's construction industry. Part II introduces the reader to a comparatively new means of preventing corruption and detecting wrongdoing: the IPSIG. We also consider the use of IPSIGs in rehabilitating corporations and other business entities tainted by scandal and those already found "non-responsible" for government contracts. Part III describes the monitoring effort at Ground Zero coordinated by the Department of Investigation, ("DOI"), and augmented by the efforts of four IPSIGs. As will become evident, the work at Ground Zero served as a test case for IPSIGs under exceptionally trying circumstances and demonstrates the potential for expanding their use. Part IV describes the current situation in Northern Ireland, post the so-called "1998 Good Friday Agreement," and the government of Northern Ireland's forward-thinking decision to borrow creative investigative techniques from its sister across the Atlantic and employ IPSIGs as a means of combating the pervasive pattern of the extortion of construction contractors by paramilitary organizations, which have re-directed their activities from bombings to shakedowns.

I. Historical Roots of Corruption in NYC's Construction Industry

A. Boss Tweed and the County Courthouse Debacle

Corruption has long plagued New York City's construction industry.¹⁶ Perhaps the most notorious example involved the construction of the old New York County Courthouse.¹⁷ The County Board of Supervisors allocated \$250,000 for the project in 1858, four years before Tammany Hall boss William Marcy Tweed and his supervisors acquired control over the Board. In the decade between the start of construction in 1861 and the Tweed ring's ultimate exposure in 1871, the project absorbed \$15 million in public funds without reaching completion.¹⁸ The paper trail ultimately uncovered the existence of dummy corporations, phantom employees on payroll and exceptionally creative accounting. Among other things, eight different painting contractors were paid to whitewash a single room, and 122,000 square yards of carpeting was paid for but never delivered—enough to carpet a two-lane highway from Manhattan to Albany.¹⁹

Bursts of reform continued in the 1870s after the Tweed ring was thrown out and Tweed himself sent to prison; the reformers fought for the adoption of a competitive bidding process for public contracts.²⁰ Despite the fact that the new administration created the Office of Commissioner of Accounts, or OCA, the precursor to today's Department of Investigation, and redesigned the contracting system to limit the discretion of city offi-

cial in awarding contracts, graft continued as a New York City tradition.²¹ Lincoln Steffens, writing in 1902, uncovered extensive corruption in the New York City Department of Buildings.²² A generation later, in 1931, the Seabury Commission exposed similar corruption in building regulation.²³ More recently, according to the 1989 report by the New York State Organized Crime Task Force, or OCTF, official corruption persisted into the final years of the twentieth century.²⁴

B. Racketeering and Organized Crime

Corruption in New York's construction industry has not been the exclusive domain of public officials and their cronies. Perhaps most pervasive is the influence of organized crime which has historically employed control over construction unions to create and maintain influence.²⁵ Through control of New York's construction unions—in a competitive and fragmented industry characterized by large numbers of general contractors and subcontractors²⁶—organized crime has plagued the city's economy by "introducing endemic corruption, intimidation, and cynicism; by stifling healthy competition; and by imposing a hidden 'tax' on the cost of doing business that is passed on to residents and consumers."²⁷

The major reasons cited by the OCTF for New York City's extremely high potential for racketeering were: (1) the enormous amounts of money involved; (2) large quantities of cash for illegal payments are easily acquired and concealed; (3) the existence of valuable non-monetary rewards, such as status, prestige and political power; (4) the cost of illegal payments can be passed on to the consumers in private construction; and (5) specific features of public construction—presenting an easier and more lucrative target for racketeers than private construction—provide special opportunities for profitable racketeering.²⁸ As a result, organized crime continues to profit at taxpayers' expense despite the constant threat of criminal prosecution.

While there have been rigorous criminal investigations, and numerous high-profile convictions of organized crime leaders in New York,²⁹ indictments alone cannot complete the job. As Manhattan District Attorney Robert Morgenthau stated in testimony before the City Council in 1996, commenting on indictments in the private waste hauling industry, "Systematic corruption must be addressed not only by the criminal law, but by the regulatory structure. Once law enforcement has done its job, there must be a regulatory structure in place with sufficient muscle behind it to ensure that systematic corruption cannot return."³⁰ The challenge public officials face is to strike a balance between vigilantly monitoring public contracts, lest the city be defrauded by corrupt officials and contractors, while also allowing sufficient flexibility in the contracting sys-

tem to ensure that the implementation of public works is not rendered unduly inefficient, difficult, and costly by red tape.³¹

II. Independent Private Sector Inspectors General (IPSIGs)

A. Introduction to the IPSIG Concept

Independent Private Sector Inspectors General, or IPSIGs, are privately financed but officially sanctioned “watchdogs” that monitor companies in order to ensure compliance with relevant law and regulations while deterring, preventing, uncovering, and reporting unethical conduct within and against the organization.³² IPSIGs consist of entities or groups of individuals with demonstrated legal, investigative, audit, and loss prevention skills.³³ Due to the unique skill combinations required of effective IPSIGs, they are often staffed by former law enforcement and investigative personnel with demonstrated expertise in detecting and preventing fraud.³⁴ The IPSIG operates as a multi-disciplinary team that works with management and staff to monitor, investigate and analyze the business and operations of

“Litigators negotiating terms of cooperation and plea agreements with prosecutors and/or regulators are, with increasing frequency, proposing that their business entity clients agree to be monitored by a qualified IPSIG to permit the government agency to make certain that the entity remains in compliance with legal and ethical requirements and/or the terms of the settlement.”

a host organization and to generate information concerning actual or potential fraud, waste and abuse. The data generated is then utilized in devising cost-effective internal controls to counteract the problems identified—while avoiding controls which would unduly impede the delivery of goods and services. Finally the data is used to design and implement codes of ethical conduct to ensure that corruption does not recur after it has been rooted out.³⁵

IPSIGs are a form of independent monitors utilized with great success in New York, often at the insistence of government prosecutors and regulators, to ensure that illegal and unethical activity in an industry or in a particular business entity will be placed under rigorous scrutiny for a defined period of time. Often IPSIGs have been appointed as part of a plea agreement or as a condition of a tainted company’s continued eligibility to

bid on public contracts. The IPSIG’s fee is paid by the “host” entity but the IPSIG reports periodically to the government agency, regulator or prosecutor. It is a means by which in-depth scrutiny can be applied to a troubled business entity without the government having to deploy limited manpower and resources to ensure compliance with legal and ethical standards and with the terms and conditions of a plea or cooperation agreement.

In order to avoid capture by their host organization, it is imperative that IPSIGs remain independent, autonomous and self-sufficient.³⁶ Furthermore, although an IPSIG is interactive within the host organization, it must be unconstrained by organizational biases which otherwise might cause it to protect corporate reputation at the expense of exposing unethical or illegal behavior.³⁷ While it is true that some contractors may seek to hire the least aggressive or competent IPSIG available, and some IPSIGs, in theory, might find it in their interest to accommodate their host company, requiring the government agency, prosecutor or regulator to appoint the IPSIG of its choice, ensuring that the IPSIG reports to that authority rather than to the company, and specifying that IPSIGs be certified by the government agency (in New York City’s case, DOI) encourages their continued independence.

While the use of IPSIGs has generally been imposed as a requirement for public contracts, increasing numbers of monitors have been voluntarily hired. For example, waste management companies have used IPSIGs as a marketing tool, before seeking funding from outside investors, to remove some of the stigma of operating in a traditionally corruption-riddled industry.³⁸ The versatility provided by the four symbiotic skill areas incorporated by IPSIGs (i.e., legal, investigative, audit and loss prevention) has resulted in their use in a wide variety of industries including construction, gambling, investment, utilities, health and real estate.³⁹

Litigators negotiating terms of cooperation and plea agreements with prosecutors and/or regulators are, with increasing frequency, proposing that their business entity clients agree to be monitored by a qualified IPSIG to permit the government agency to make certain that the entity remains in compliance with legal and ethical requirements and/or the terms of the settlement. The entity agrees (1) to pay for the IPSIG’s services for a defined period of time; and (2) to have the IPSIG report periodically to the government entity. Such continued oversight can sometimes provide the government with the “comfort zone” necessary to finalize the plea or cooperation agreement. The offer also operates as evidence of the entity’s “good-faith” *mea culpa*.

Parties in civil litigation have occasionally proposed the hiring of an IPSIG as a mechanism for ensuring that

the terms of settlements, court orders and consent decrees are obeyed. The invocation of an IPSIG can be incorporated into the settlement document, order or decree itself and can even be “so ordered,” thus providing the added authority of a court’s contempt powers to the sanctions otherwise available upon default.

Unlike the temporary invasion which results from a government prosecution, an IPSIG “sits in the bowels of an infected company.”⁴⁰ The IPSIG is uniquely situated to combat corporate corruption because, “you have to reduce both the incentives to cheat and the opportunities to cheat—and that can never be done externally. It has to be done from within.”⁴¹ Notably, because the IPSIGs that come into industries that are corrupt or threatened with corruption can stay long enough to root out corruption and inefficiency and prevent their recurrence, they can serve as vehicles for preserving corporate entities.⁴²

B. Origins of the IPSIG Model

The IPSIG concept can be traced back to the 1989 report “Corruption and Racketeering in the New York City Construction Industry,” published by the New York State Organized Crime Task Force (“OCTF”).⁴³ The report—which catalogs the corruption and racketeering endemic to the city’s construction industry—envisioned that IPSIGs (then termed Certified Investigative Auditing Firms, or CIAFs) would be compulsorily hired by prime or general contractors working on public construction projects in excess of \$5 million, with a minimum of 2% of the total project cost to be utilized as funding for the CIAF.⁴⁴ The primary role of the CIAF was to scrutinize revenues and expenditures of contractors to expose the use of bribes, while also designing programs and strategies aimed at detecting and deterring corruption.⁴⁵

The inspiration for the OCTF’s CIAF concept was the federal Inspector General Act of 1978.⁴⁶ The Inspector General Act created 12 Inspector General positions, or IGs, one for each of the major federal civilian agencies. The IGs were charged with ensuring accountability within the agencies to which they were assigned by preventing and detecting fraud, waste and abuse in the operation of the agencies programs.⁴⁷ Two factors made the IG office unique in the federal government: first, the combination of audit and investigative techniques; and second, the statutory guarantee of independence for the IG coupled with a responsibility to report directly to Congress.⁴⁸ These distinctive characteristics are paralleled by private sector IPSIGs which also combine broad auditing and investigative skill sets with an obligation to report to an outside party (such as a government agency, regulator or prosecutor) information regarding wrongdoing by the company.⁴⁹ The reporting obligations of IPSIGs stand in contrast to those of typi-

cal company compliance officers who may advise a company to disclose violations, but remain under no obligation to make such disclosures themselves.⁵⁰

Since the adoption of the corporate Federal Sentencing Guidelines in November 1991,⁵¹ the IPSIG has become increasingly relevant as a vehicle for compliance.⁵² The Guidelines, heavily aimed at the deterrence of crime, shift policing responsibility from the state to the corporation itself;⁵³ they provide carrot-and-stick incentives which reward companies that police themselves and punish those that do nothing to prevent, detect, or report fraud within their ranks.⁵⁴ Rather than allowing corporations to disassociate themselves from a defalcating officer, the Guidelines provide that the sentencing of the organization will primarily be determined by the following factors: (a) the steps taken by the organization prior to the offense to ensure that it has an effective program to prevent and detect violations of the law; (b) whether high level personnel participated in, condoned, or were willfully ignorant of the criminal activity; and (c) whether the organization reported the offense it detected promptly, fully cooperated in the investigation, and accepted responsibility for its criminal conduct.⁵⁵ Given the Guidelines’ emphasis on the positive obligations of organizations to prevent crime within their ranks, as well as detecting and reporting it, IPSIGs provide a model for complying with the guidelines.⁵⁶

C. Imposing IPSIGs as a Condition for Public Contracts: Monitoring Agreements

In order to afford rehabilitated contractors and vendors (i.e., those who have been found “non-responsible” for purposes of bidding on public contracts) an opportunity to demonstrate their restored integrity, DOI, in conjunction with the Law Department and individual city agencies, has negotiated and entered into monitoring agreements with individual contractors. Each monitoring agreement is designed to address the contractor’s specific outstanding responsibility issues.⁵⁷ Among the generic conditions included in these agreements is the requirement that the subject company retain, at its own expense, an IPSIG to review aspects of the contractor’s operations.

A standard IPSIG agreement requires the contractor to provide the IPSIG with unfettered access to its books, records, personnel, and operations. The IPSIG, in turn, maintains a 24-hour “hot line” telephone number used by employees or others to report instances of wrongdoing or corruption affecting or involving the contractor, especially with regard to the contractor’s performance of the city contracts. All findings made by the IPSIG during the course of its work are reported directly to DOI, which supervises the implementation of the monitoring agreement and works with the appointed IPSIG

to develop and implement a strict code of business ethics as well as a corruption prevention program. In addition, the contractor must agree to have all personnel undergo ethics training. Should the contractor fail to comply with its obligations under the monitoring agreement, the city may declare the contractor in default of the agreement and any existing city contracts being performed.⁵⁸

D. Tully Construction Company: A Monitoring Agreement Success Story

In 1996, for the first time, New York City agreed to do business with a company despite a “non-responsible” finding as a result of its alleged organized crime connections, failings in its VENDEX disclosures, environmental violations and tax difficulties. That company was Tully Construction, notably one of the four companies which would later work at Ground Zero. On February 13, 1996, Tully reached an agreement with the city that allowed reinstatement as a responsible bidder; central to the agreement was the condition that Tully consent to the presence of an IPSIG to oversee its operations.⁵⁹ In addition, the reinstatement agreement required Tully to adopt a Code of Business Ethics and introduce an ethics training program for its employees. The city selected the Fairfax Group⁶⁰ (later Decision Strategies and now Vance) as Tully’s IPSIG at an annual cost of approximately \$300,000.⁶¹

A Code of Business Ethics acceptable to the city attached as an exhibit to the settlement agreement, required: (1) specific standards for employees, officers and directors to follow in their business in regard to bribery, fraud, collusion and any other criminal or unethical act; (2) a policy under which the company would dismiss any employee, officer, or director who is convicted under state or criminal law for business-related activities, or, absent a conviction, to diligently investigate any charges against any employee, officer or director where they bear upon the business integrity of the company, (3) a policy barring the company from engaging any member or associate of an organized crime group as an owner, officer, director, consultant, or employee; and (4) a requirement that the company’s owners, employees, officers and directors report to the IPSIG and the city any illegal or unethical conduct or other improprieties with respect to any city contracts, whether committed by an owner, employee, officer or director of the company, any subcontractor, vendor, labor official, city employee, or anyone else.⁶²

In addition to specifying Tully’s obligations, the monitoring agreement also sets forth the duties and mandates of the IPSIG, appointed for an initial monitoring period of three years, plus a potential two-year extension at the sole unreviewable discretion of the city.⁶³ The IPSIG’s mandate, which Tully had no right to

direct or control (although it could appeal to the city if it felt the IPSIG exceeded the scope of its duties) included: monitoring and investigating the company’s compliance with the terms and conditions of the agreement and monitoring and investigating the actions, conduct, operations, or omissions of the company, or any of its officers, directors, principals, employees, or affiliated companies or entities, that, in the judgment of the IPSIG or the city, may relate to the assessment of the vendor responsibility of the company.⁶⁴ In order to aid the IPSIG’s work, Tully was also required to facilitate access to all books, files, accounts, computer records and correspondence. Finally, Tully also authorized the IPSIG to immediately report “to the city and to appropriate law enforcement authorities any suspected or actual criminal activity or any suspected or actual unethical or irregular business activity on the part of the company, its employees, officers, directors, subcontractors, suppliers and vendors, or labor officials, without notice or disclosure to Tully.”⁶⁵ The Tully settlement agreement expired on February 13, 2001.⁶⁶

By entering into the monitoring agreement, the city was able to rehabilitate a substantial construction company that is traditionally very highly regarded for the quality of its work and for its low bids, and in doing so preserved another potential bidder for public construction, thereby ensuring the continued operation of a competitive bidding system. The success of IPSIGs in rehabilitating industries involved in public contracts is not limited to Tully, or even to the construction industry. Similar success stories abound in the efforts of the New York’s School Construction Authority⁶⁷ and the Trade Waste Commission.⁶⁸

III. Combating Corruption During Chaos: September 11, 2001

The work at Ground Zero was “much tempered by a real sense of patriotism,” and perhaps some “reluctance by those who otherwise might have been inclined to do wrong.”⁶⁹ Nevertheless, one constant accompanies every crisis: people and businesses who willingly exploit tragedy. The aftermath of the World Trade Center destruction proved no exception. According to one watchdog group, con artists seeking “donations” sent out e-mails less than two hours after the airliners impacted the towers.⁷⁰ In the days and weeks following the attacks, there were instances of price-gouging by gasoline stations,⁷¹ identity theft,⁷² insurance fraud,⁷³ and looting at the site itself.⁷⁴

In the wake of reports that steel from the World Trade Center site had been stolen, the Giuliani administration took a bold and creative step when it announced on October 4, 2001 that the city had entered into monitoring agreements under which each of the four

Ground Zero construction companies were required to engage the services of an IPSIG selected and designated by DOI.⁷⁵ The monitoring effort was coordinated by DOI along with DDC, the FEMA Inspector General, local District Attorneys, and the United States Attorneys of the Southern and Eastern Districts of New York.⁷⁶

Despite the fact that the move to hire IPSIGs came almost a month after work began, the decision to retain them was reportedly made before reports of stolen debris.⁷⁷ Hiring IPSIGs to monitor a disaster scene proved an unusual and unexpected move.⁷⁸ The determination to hire IPSIGs surprised construction industry experts, who felt the appointment of the IPSIGs, absent any indications of fraud or theft, unfairly tainted the entire industry.⁷⁹ In the words of Lou Coletti, chairman of the City Building Trades Employers' Association: "If the city's desire is to improve processes, we would all be supportive, but the whole industry is being broad-brushed because of the actions of a few small operators."⁸⁰

The frustration voiced within the construction industry, however misplaced, was likely the result of the fact that the use of IPSIGs at Ground Zero represented a shift away from their more typical use in city construction projects. Previously, as demonstrated by Tully's 1996 Settlement Agreement, they were imposed as a condition of doing business where the construction company's "responsibility" had already been called into question. While IPSIGs had not previously been a condition of emergency no-bid contracts in the city, the size of the World Trade Center contracts dwarfed previous cases.⁸¹ In 1999 and 2000 combined, the city signed only \$77 million in emergency no-bid contracts.⁸² In light of the circumstances, not only were the IPSIGs justified, but the general absence of reports of racketeering and abuse after their work began supports the conclusion that they were a vital part of a well-organized effort to actively prevent and detect fraud and other abusive practices.⁸³ The success of the monitoring effort belongs not only to the IPSIGs, but also to DOI, which is addressed in the following section before taking a closer look at provisions and implementation of the monitoring agreements.

A. The New York City Department of Investigation

Among government entities in the United States, New York City is unique in having a large executive agency whose primary undertaking is to investigate and prevent official corruption. That agency is the New York City Department of Investigation.⁸⁴ Perhaps better known for its investigations of possible cases of corruption with an emphasis on prosecution,⁸⁵ DOI played a more preventative role during the World Trade Center cleanup. According to Edward Kuriansky, then-Commissioner of DOI, the Ground Zero construction integri-

ty initiative was intended to ensure that work at the WTC recovery met the same high integrity standards imposed on all other vendors doing business with the city.⁸⁶

While DDC retained responsibility for the site as a whole, DOI and its law enforcement partners worked together in order to "make certain that all contractors perform their work according to the terms of their contracts by properly allocating their equipment and personnel and disposing of all materials in an authorized manner."⁸⁷ To aid this process, DOI set up an "Integrity Hot Line," which operated 24 hours a day, 7 days a week, to enable anyone with information about wrongdoing involving fraud, waste, theft, abuse, security breaches, and safety violations to confidentially report that information to the proper authorities.⁸⁸

Throughout the cleanup process, DOI maintained a two-way stream of communication with the four IPSIGs. In addition to any regular communication necessary, DOI also more formally met with the IPSIGs at least once a week to look at any findings, to consider how problems should be approached, and to determine proper audit protocols.⁸⁹ DOI was of "immeasurable help," and "kept everyone focused."⁹⁰ In addition to lending a unifying force to the monitoring efforts of the IPSIGs, the DOI was also able to ensure that the monitors reviewed what DOI felt was necessary.⁹¹ In turn DOI, well aware of its staffing limitations, valued the manpower and resources the IPSIGs brought to the operation.⁹²

B. The Quadrant System: Four Contractors and Four IPSIGs

DDC imposed a rough order on the World Trade Center site from the outset by dividing the area into quadrants. The zones were of roughly equal size with one construction company assigned to each quadrant.⁹³ While the quadrants were not strictly delineated on the ground, they did serve to concentrate each company's efforts on specific portions of the debris.⁹⁴ As work on the site progressed, numerous shifting arrangements blurred the delineation between the original quadrants as one company or another took responsibility for overarching tasks.⁹⁵ For example, Bovis Lend Lease became the Construction Manager at the WTC site in January 2002, with "overall responsibility for recovery, debris removal, demolition work, and construction of temporary structures."⁹⁶

Similarly, although each IPSIG was assigned to a specific construction company (and *de facto* to a specific quadrant), as the operation developed individual IPSIGs took on general overarching tasks. For example, Decision Strategies undertook real-time surveillance of all trucks carting away debris⁹⁷ and Thacher Associates

monitored many of the environmental aspects of the site.⁹⁸ The question arises why four IPSIGs were selected and compelled to work together rather than appointing one monitor for the entire site. Four IPSIGs were necessary, according to Steven Pasichow⁹⁹ of DOI, because of the “enormity of the project, which was simply too big for any one IPSIG.”¹⁰⁰ In addition, because each IPSIG used slightly different methodologies and protocols, they learned a great deal from each other’s monitoring styles and provided a means of assuring that all of the bases had been covered.¹⁰¹

C. A Closer Look at the Trade Center Monitoring Agreements

All four monitoring agreements between the City of New York and the respective construction companies were entered into on October 4, 2001 and are substantially identical.¹⁰² The first portion of the agreement sets forth “Contractor Integrity Standards” which include covenants that the “contractor will not engage a person to work on any aspect of the Contract who is an alleged member or associate of an Organized Crime Group,” and agrees among other things, to adopt business conduct standards for employees working on any aspect of the contract.¹⁰³ Notably, unlike earlier settlement agreements which are not limited to a particular contract with the city, all references are exclusively to work on the WTC contract. This limitation in scope is likely in recognition of the fact that none of the four companies was found “non-responsible.” Therefore, the emphasis was not on intrusive long-term alterations of company policy, but rather simply to protect against fraud, waste and abuse specifically in connection with this project.

Rather than attaching a lengthy model Code of Business Ethics and Standards of Conduct, as in prior settlement agreements, the WTC monitoring agreements condense these principles into a short list requiring that the contractor and/or its employees shall not: (a) file with the city or any government entity a written instrument that intentionally contains a false statement or false information; (b) intentionally falsify business records; (c) give or offer any money, gratuities, or any other benefit to a labor official; (d) give or offer any money, gratuities, or any other benefit to any city public servant; (e) attempt to make any agreement that seeks to rig bids, restrain trade by collusion or unfair trade or labor practices, or prevent the lowest responsible bidder from obtaining any subcontract related to or involved with the contract; and (f) knowingly participate in the activities of any organized crime group or permit any person allegedly associated with an organized crime group to participate in any of the business affairs of the contractor on the contract.¹⁰⁴

In addition, the monitoring agreement delineated the mandate and duties of the compliance monitors

(i.e., IPSIGs) in connection with the contract, and work involving the World Trade Center Complex disaster. These duties included:

- Monitoring and investigating the actions, conduct, operations, or omissions of the contractor, or any of its employees, subcontractors, consultants, suppliers, vendors, or other entities that have any connection with the contract and/or work involving the WTC disaster, that in the judgment of the compliance monitor or the city, may relate to the contractor’s responsibility as a contractor.
- Conducting audits and investigations to ensure: (a) compliance with all laws; (b) compliance with the terms of the contract; (c) that payroll and payment requisitions submitted to the city are complete, accurate and truthful; (d) that no reimbursements for expenses are incurred in connection with providing anything of value to government employees or labor organizations.
- Conducting on-site review and surveillance of the contractor, its vendors, suppliers and subcontractors. Such review includes, but is not limited to, demolition, debris removal, carting and haulage firms, in the performance of the contract.
- Designing and implementing procedures—including developing questionnaires—to ensure that all vendors, suppliers and subcontractors possess the requisite integrity and qualifications to do business with the city.
- Conducting field investigations and on-site investigations as necessary.¹⁰⁵

Not only were the construction company executives made aware of the monitoring process, but in a letter from Rudolph Giuliani to all Ground Zero personnel the Mayor sought “assistance in assuring that nothing whatsoever occurs to tarnish the integrity of this great undertaking.”¹⁰⁶ The use of independent monitors was necessary, Giuliani wrote, because: “Regrettably, in these trying times, there may be some who will seek to profit unfairly by overcharging, underpaying, or cheating the government and their fellow citizens.”¹⁰⁷

In the following section we look at how the IPSIGs’ mandates were put into practice to deter the abuses that concerned Mayor Giuliani.

D. Monitoring in Action at the World Trade Center Site

Typically, an IPSIG at the start of its work has a six-month period during which substantial resources are dedicated to analyzing how the company operates: scrutinizing business records, screening subcontractors

and establishing an ethics program.¹⁰⁸ Having been thrown into the breach nearly a month after work at Ground Zero had begun, the four IPSIGs faced an abbreviated ramp-up period. Fortunately, Tully Construction, AMEC and Bovis all previously worked with Decision Strategies/Fairfax; Stier, Anderson & Malone; and Thacher Associates, respectively.¹⁰⁹ While this prior experience provided a valuable jump-start, the enormity of the accounting effort is demonstrated by the fact that the IPSIGs were continuing, even into July 2003, to scrutinize the invoices submitted by the construction companies.¹¹⁰

The monitoring effort fell into roughly two categories: (1) monitoring the invoices and other accounting-related matters, and (2) physically monitoring the human and capital equipment used at the site. Throughout their work, the IPSIGs submitted invoices to DOI detailing every aspect of the monitoring effort. The DOI, in turn, reviewed the charges before sending summary invoices, redacted of details, to the construction companies for payment. By use of this process, DOI continually monitored the IPSIGs and guided their focus while preventing the possibility of tipping off the construction companies with regard to where monitoring resources were deployed (for example, whether the emphasis was being placed on audit work or on field surveillance).¹¹¹

a. Monitoring Truck Movement

Although the forensic accounting examination of invoices was a lengthy and complex effort, the highest profile task of the monitoring effort was scrutinizing the debris removal process. In order to prevent material thefts, virtually every piece of debris removed from the Trade Center site was given a prescribed route and destination.¹¹² At first, Decision Strategies field investigators physically surveilled the routes from Ground Zero to the designated receiving sites, where law enforcement personnel sifted through the debris, and the trucks were outfitted with Global Positioning Satellite ("GPS") receivers to track their movement and to coordinate traffic patterns in and around the lower Manhattan worksite.¹¹³ Furthermore, because a favored means of abuse in hauling contracts is to use under-size trucks, thereby forcing more trips to the landfill, every truck was observed by IPSIG investigators and weighed as it left the site to ensure that it carried a full load.¹¹⁴ The trucks were also weighed upon reaching their destination to assure that no material was diverted along the way and logs were kept of what every truck hauled for every run, allowing for full documentation of the work completed.¹¹⁵

b. Field Surveillance

Detailed surveillance extended not only to movement into and out of the Trade Center site, but also to

the workers and machinery within the site.¹¹⁶ Among the objectives of the field investigations were to periodically inventory the equipment in the field, to literally count the number of cranes and backhoes, to check against the equipment the companies were charging the city for on a given day.¹¹⁷ Sign-in sheets were prepared for the construction crews working on each shift; after the shift had begun the sheet would be photocopied and replaced so that no additional names could clandestinely be added to it.¹¹⁸

While completing field investigations, the monitors generally wore identification badges marked with a large "M," clearly identifying their purpose on the site. At other times, monitors used unmarked identification, allowing them to observe the workers covertly without advertising their purpose.¹¹⁹ While neither DOI nor the IPSIGs commented on specific abuses or their discovery, there was a reported incident of an entire AMEC crew of 27 ironworkers thrown off the site for spending an entire shift doing nothing.¹²⁰ Finally, in addition to policing against payroll abuses, there was a need to maintain efficiency of operations as hundreds of pieces of heavy equipment engaged in what William Lange-wiesche described as a "dance of dinosaurs."¹²¹ Ensuring that the right equipment was available, and that everything was properly maintained and utilized to its fullest extent, considerably sped up the operation.¹²²

Despite the physical and emotional challenges presented to thousands of laborers, demolition specialists, ironworkers, engineers, and heavy equipment operators who toiled on the site, the WTC operation was completed ahead of schedule and well under projected cost estimates.¹²³ In a mere eight months, approximately four months faster than expected, the work was completed.¹²⁴ On May 30, 2002 the completion of an unprecedented recovery and cleanup effort was marked when the Trade Center's last steel beam was carried out during a wordless ceremony at 10:29 a.m., the exact time the second tower fell on September 11th.¹²⁵

By appointing IPSIGs, the Giuliani administration took a preemptive strike against corruption.¹²⁶ The move was justified not only because the city had been forced to suspend normal bidding rules in awarding the four \$250 million cleanup contracts, but also because the work at the World Trade Center was the focus of national attention, placing public confidence in government at risk. The monetary and emotional stakes at Ground Zero were extremely high, but it should be borne in mind that because city agencies enter into 40,000 contracts worth nearly \$7 billion each year,¹²⁷ the stakes are always high. While there are many lessons to be learned from the World Trade Center rescue and recovery effort, perhaps the most valuable with regard to public works is that by the use of IPSIGs as a means of "opportunity blocking," we free the hands of our

public officials to grant public funds on the basis of efficiency and quality while still preventing the construction abuses that have long plagued New York City.

IV. IPSIGs and Northern Ireland

New York's positive experience with IPSIGs generally and, in the case of the Ground Zero cleanup specifically, the invocation of IPSIGs on a prophylactic basis, has inspired the forward-thinking government of Northern Ireland to apply the IPSIG concept as a template to help it deal with Northern Irish paramilitary extortionists who have plagued the construction industry there.

For better than four decades, since the mid-1960s, religious, economic and political tensions in Northern Ireland gave birth to an endless and a seemingly irresolvable cycle of violent acts of terrorism perpetrated by paramilitary organizations in both the loyalist and republican camps of the conflict. By the mid-1990s, it was estimated that more than 3,500 people had been killed and multiples of that number injured and maimed.¹²⁸ Euphemistically referred to by the deceptively benign term "The Troubles," these escalating acts of violence continued at an often torrid pace notwithstanding numerous efforts to reach a political resolution throughout the period leading up to the mid-1990s.

Shortly after Tony Blair assumed the mantle of leadership of the United Kingdom in 1997, significant progress toward a permanent cease-fire was made, with former United States Senator George Mitchell serving as the prime catalyst. This peace process culminated in April 1998 in the so-called "Good Friday Agreement," which set forth a blueprint for the re-alignment of the constitutional governance of Northern Ireland, essentially placing Northern Ireland's future in the hands of its citizenry. Since then, despite occasional "brushfire" episodes of shootings and bombings and other traditional terrorist acts, spurred by lingering, deep-rooted suspicions, The Troubles, it seems, continue to fade into the past.

With the *de facto* de-commissioning of the paramilitaries on both sides of the conflict, however, the more steadfast segments of those organizations have turned their collective attention—not surprisingly—to some of the activities associated with more traditional organized criminal enterprises. They have unabashedly plagiarized pages, indeed entire volumes, from more classic organized crime groups such as The Mafia as well as the Russian and Asian organized crime gangs of a more recent vintage. Their arsenal of illegal activities have included highjackings, drug trafficking, loan-sharking, money-laundering, counterfeiting of currency and goods and, of course, extortion. These activities contin-

uously re-fuel the funding engines of these paramilitary organizations.¹²⁹

So prevalent have been the activities of these Northern Irish paramilitaries-turned mobster/terrorists, that the government and its Northern Ireland Office, or NIO, has been propelled into formulating a cohesive strategy and multi-agency offensive to combat this proliferation of organized criminal activities. In September 2000, NIO, borrowing a proven successful approach from United States federal, state and local multi-agency joint organized crime task forces, created the Northern Ireland Organized Crime Task Force, or Task Force. It is currently and most visibly comprised of the NIO itself, the Police Service of Northern Ireland, Her Majesty's Customs and Excise Service, the Ireland Revenue Service, the National Criminal Intelligence Service, the Home Office and the Asset Recovery Service.

Much of the extortion activity that has emerged as a serious threat has been in the context of the otherwise burgeoning construction industry. The economic landscape has been much improved over the past few years; new construction is almost always a barometer of the economy's health. Typically, the paramilitaries-turned-extortionists have utilized the time-tested "protection racket" as their primary vehicle for compelling illegal payments. A construction company executive or project foreman would be approached and either directly or obtusely told that if the job was to proceed without "unfortunate accidents" and acts of violence targeting construction company personnel and/or their family members, substantial payments would have to be made to the extortionist. Perhaps the payment would be directed to be made to a fictitious vendor or supplier. Because charities in Northern Ireland are not currently regulated, it has been reported that the paramilitaries often demand that the extortion victims make "contributions" to an unregulated "charity" which, of course, they control.

In its most recently published annual report, issued in 2004, the Task Force reports:

Extortion remains a cornerstone of fundraising among paramilitary organization in Northern Ireland. Much of the focus on extortion and racketeering over the past year has been to enhance existing provisions for the protection of witnesses to encourage more reporting. Victims often live in fear for their safety and livelihood and so frequently withdraw complaints before police can fully investigate the matter. The Home Office is currently reviewing the arrangement for the protection of witnesses and the OCTF will contribute to this.¹³⁰

So serious a problem has this been that NIO and the Task Force retained the expert services of Professor Ronald Goldstock,¹³¹ formerly Director of the New York State Organized Crime Task Force, to be its organized crime consultant. Professor Goldstock studied the emergence of organized crime in Northern Ireland for almost two years. In January 2004, he submitted a detailed report to the Secretary of State which reflected his investigative findings and recommendations for dealing with this serious problem. His excellent report is entitled *Organized Crime in Northern Ireland: A Report to the Secretary of State*.¹³² The reader is urged to read the report in its entirety along with the government's response by the Security Commissioner and Chair of the Task Force, Ian Pearson.¹³³

"It is nothing short of ironic, but nonetheless not surprising, that two great governments would be able to benefit by each other's experience in battling a common and pernicious enemy that speaks the same English language, but with different accents and dialects."

The cornerstone of Professor Goldstock's recommendations addressing the paramilitary extortion problem in the construction industry is "... continued and expanded [partnership with the private sector] including the use of Independent Private Sector Inspectors General ["IPSIGs"], particularly within the construction industry and for the regulation of charities."¹³⁴

Conclusion

NIO and the Task Force have embraced many of Professor Goldstock's recommendations, including the use of IPSIGs on a pilot project basis on a number of designated construction projects in and around Belfast, Northern Ireland. They have solicited "requests for proposals" from established IPSIGs for this pilot program. Not surprisingly, a number of the experienced IPSIGs from the New York metropolitan area, including some of those who were assigned by the City of New York to oversee the Ground Zero clean-up, have submitted substantive responses. The first few construction projects have already been identified by the Government of Northern Ireland and are expected to commence, with IPSIGs in place, in the Spring of 2005. Many of the very same techniques and investigative protocols employed at Ground Zero in New York are expected to be utilized by the IPSIGs and the Task Force in Belfast and its environs. New York's successful prophylactic Ground Zero

experiment with IPSIGs has become a dynamic template for Northern Ireland. It is nothing short of ironic, but nonetheless not surprising, that two great governments would be able to benefit by each other's experience in battling a common and pernicious enemy that speaks the same English language, but with different accents and dialects.

Endnotes

1. Jim Johnson, *WTC Cleanup Completed; 1.6 Million Tons of Debris Removed*, Waste News, June 10, 2002, at 5. The final figure of 1.6 million tons of debris removed was 25% greater than early estimates of 1.2 million tons. The earlier figure had been methodically calculated by looking at the World Trade Center's original plans and tallying up all of its ingredients. See James Glanz, *From Torn Steel, Cold Data of Salvage*, N.Y. Times, Oct. 9, 2001, at B13.
2. *AMEC Completes World Trade Center Recovery Work*, available at www.amec.com/news/news_2ndlevel.asp?pageid=71 (last visited Mar. 16, 2003).
3. Jim Johnson, *Trade Center Cleanup Moves At Snail's Pace*, Waste News, Oct. 1, 2001, at 1 (hereinafter *Cleanup Moves At Snail's Pace*); Kirk Johnson, *Challenges and Dangers in Disposing of Two Fallen Giants*, N.Y. Times, Sep. 13, 2001, at A7.
4. James Glanz & Eric Lipton, *The Excavation: Planning, Precision and Pain*, N.Y. Times, Sep. 27, 2001, at B1.
5. *Cleanup Moves At Snail's Pace*, *supra* note 3, at 1.
6. *September 11 Disaster Response*, 7 CityLaw 104 (2001). The decision to grant the DDC overall responsibility for the site was a departure from the city's official and secret emergency plans (written before September 11th) which called for the Department of Sanitation to clean up after a building collapse. William Langewiesche, *American Ground: Unbuilding the World Trade Center* 118 (North Point Press 2002).
7. "Cynics who later implied that the choice of these companies was in some way an insiders' deal were only superficially right. The four companies were simply the first that came to mind—and on the day of the collapse they responded altruistically in the face of enormous confusion, thinking at the most a few days ahead, without even the possibility of calculating gain." Langewiesche, *supra* note 6, at 89-90.
8. *Id.* All four companies had extensive construction accomplishments in New York City and elsewhere. The quadrant assignments were as follows:

Sector NW: AMEC Construction. Other AMEC projects have included 4 Times Square as well as the International Arrivals Terminals at JFK. AMEC had approximately 300 workers at the site.

Sector SW: Bovis Lend Lease. Bovis had been involved in the restoration of the Statue of Liberty and Ellis Island and the construction of Trump World Tower. Bovis had roughly 175 workers at the site.

Sector NE: Turner Construction. Turner is perhaps best known for its work at Invesco Field in Denver, as well as Arthur Ashe Stadium. There were 314 Turner workers at the site.

Sector SE: Tully Construction Company. Tully unlike the other three construction companies, which are multinational corporations, is a New York paving contractor with less structural experi-

ence but many trucks, heavy equipment and experienced workers. Among Tully's earlier projects were rebuilding the Staten Island Expressway and the West Side Highway. There were 350–400 Tully workers at the site.

Glanz & Lipton, *supra* note 4, at B1; see also Langewiesche, *supra* note 6, at 68.

9. *September 11 Disaster Response*, *supra* note 6, at 104.
10. Jennifer Steinhauer, *4 Companies are Hired to Oversee Contractors*, N.Y. Times, Oct. 5, 2001, at B11.
11. *Id.*
12. *Id.*
13. Gregg Gittrich, *Slow But Steady Progress Amid Ground Zero Rubble Precision Spurs Clean Up Efforts*, Daily News, Oct. 15, 2001, at 20. It bears noting that 250 tons of material represents a mere 0.0002% of the 1,642,698 tons of debris moved during the course of the recovery operation. While the precise value of the steel scrap removed from the Trade Center is uncertain, William Heenan, the president of the Steel Recycling Institute in Pittsburgh, estimated the steel scrap would be worth \$80 to \$100 per ton when sold to a steelmaker. Glanz & Lipton, *supra* note 4, at B1. Using the higher range of the estimated value of the scrap, the alleged theft represents no more than \$25,000.
14. Press Release #042-2001, Department of Investigation, *DOI Announces Compliance Monitors & "Integrity Hot Line" To Help Assure Construction Integrity and WTC Recovery Site* (Oct. 4, 2001), available at <http://www.ci.nyc.ny.us/html/doi/pdf/pr100401.pdf> (last visited Mar. 6, 2005) (hereinafter DOI Press Release).
15. *Id.*
16. 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* 102 (1989) (hereinafter *Corruption and Racketeering*).
17. *Id.* For further background on Tammany Hall and Boss Tweed, see Gustavus Myers, *The History of Tammany Hall (1901): Alexander B. Callow, Jr., The Tweed Ring* (Oxford University Press 1966).
18. Paul Grondahl, *Tweed Courthouse Tests Albany Firm's Restoration Skills*, Times Union (Alb.), Jan. 6, 2002, at G6.
19. *Id.*
20. Frank Anechiarico & James B. Jacobs, *Purging Corruption from Public Contracting: The "Solutions" are Now Part of the Problem*, 40 N.Y.L. Sch. L. Rev. 143, 145 (1995).
21. *Id.* See also *Corruption and Racketeering*, *supra* note 16, at 103.
22. Lincoln Steffens, *The Shame of the Cities* (New York: Hill & Wang, 1904).
23. Walter Chambers, *Samuel Seabury: A Challenge* (New York: Century, 1932).
24. *Corruption and Racketeering*, *supra* note 16, at 101. "Inspectors general have told us that they believe that there is significant fraud on every major public construction project. Nevertheless, the city has no way to quantify the extent (either in terms of frequency or magnitude) to which it has been defrauded. A DOI report states that the potential for corruption in the New York City Department of Environmental Protection is enormous, and that '[t]here is reason to believe that collusive bidding, bribery, extortion, fraud, embezzlement, labor racketeering and conflicts of interest are commonplace occurrences in the agency's capital construction program.'" *Id.* at 129.
25. *Id.* at 46. "We are not dealing with a few organized crime racketeers who are at war with the legitimate labor movement. Organized crime and other racketeers have been entrenched in the building trades for decades." *Id.* at xxv.
26. *Id.* at 57. Imbalance in New York's collective bargaining structure, typified by strong unions but weak employer associations, contributed to the hold of organized crime over the industry. Where allegiance of the workers tends to run to unions rather than to the employers, supervisors "will be less likely to blow the whistle on workers engaged in systematic theft or 'mungo' rings, sabotage or slowdowns." *Id.* at 54–57.
27. *City of New York, Reengineering Municipal Services 1994–2001: Mayor's Management Report, Fiscal 2001 Supplement 53*, available at http://www.nyc.gov/html/rwg/ops/pdf/2001_mmr/0901_reengineering.pdf (last visited Mar. 6, 2005) (hereinafter, *Reengineering Municipal Services*). One example of the hidden tax imposed by organized crime is reflected by the substantial savings that resulted in garbage disposal costs when the New York City Trade Waste Commission, or TWC, targeted the cartel that dominated commercial waste-hauling in the city for fifty years. As a result of the TWC's work in the 1990's, "[b]y 1997, the World Trade Center's annual waste hauling bill plummeted from \$3 million to \$600,000." James B. Jacobs & Alex Mortis, *New York City as Organized Crime Fighter*, 42 N.Y. L. Sch. L. Rev. 1069, 1070 (1998) (citations omitted).
28. *Corruption and Racketeering*, *supra* note 16, at 62–64.
29. "Lifetime incarceration of the most important bosses of the City's Cosa Nostra crime families has been achieved; criminal monopolies have been broken up; powerful labor racketeers, business executives and political leaders have been sent to jail. The resulting media coverage of these successful prosecutions has often given the impression that the organized crime groups are on the run. But the impression is illusory." Thomas D. Thacher II, *Combating Corruption in the Construction Industry Combating Corruption and Racketeering: A New Strategy for Reforming Public Contracting in New York City's Construction Industry*, 40 N.Y.L. Sch. L. Rev. 113, 114 (1995) (citations omitted).
30. *Reengineering Municipal Services*, *supra* note 27, at 53.
31. Anechiarico & Jacobs, *supra* note 20, at 145.
32. See note 15, *supra*.
33. Ronald Goldstock, *The Independent Private Sector Inspector General (IPSIG) Program*, 4 Corp. Conduct Q. 38 (1996) (hereinafter IPSIG). Ronald Goldstock is the former Director of the New York State Organized Crime Task Force, where he developed the IPSIG concept. In addition, Mr. Goldstock has been an Inspector General of the U.S. Department of Labor and is a member of the faculty of New York University School of Law. As noted in Part IV, *infra*, he was retained as an organized crime consultant by the Government of Northern Ireland.
34. *Reengineering Municipal Services*, *supra* note 27, at 59.
35. Goldstock, *supra* note 33. Michael Cherkasky, a former Chief of Investigations for the Manhattan district attorney and more recently named Chairman and CEO of the scandal-ridden insurance giant, Marsh & McLennan Companies, described the four-step real estate program which epitomizes the ideal monitoring job: (1) Auditors go over the books and billing practices of the company which are double-checked by investigators who interview employees to ensure that what the company says about its systems is true; (2) Questionnaires are sent to all of the vendors or subcontractors with which the company does work in order to disclose whether they have been barred from bidding, whether they have been under indictment and what companies they are linked to. This information is checked by investigators; (3) A code of ethics is drafted which the company's managers and vendors must agree to; (4) As part of long-term monitoring there are periodic audits and checks at construction-site jobs.

36. “[IPSIGs] must be independent and institutionally free to expose corrupt activities. At the same time, they must be useful to project managers and protective of business and trade secrets. General and prime contractors must be encouraged to use [IPSIG] services as management tools without fearing that discoveries of improper practices could be used by competitors or by potential litigants in suits against the construction company.” *Corruption and Racketeering*, *supra* note 16, at 207.
37. IPSIG, *supra* note 33.
38. Wendy C. Schmidt & Jonny J. Frank, *Outside Monitors Attract Capital, Detect Abuses*, World Wastes, June 1996, at 6. One example of this phenomenon is Brooklyn-based waste management company ReSource NE Inc. which voluntarily accepted a monitor in order to calm the concerns of potential investors about operating in the New York City marketplace. *Id.*
39. IPSIG, *supra* note 33.
40. Interview by co-author Edgar J. Lewandowski of co-author Stanley N. Lupkin, who was then serving as Senior Vice President—Office of the President, Decision Strategies LLC, a pre-qualified IPSIG provider, in New York, N.Y. (Jan. 7, 2003).
41. Diana B. Henriques, *New York City Builds a Better Watchdog: Agency May Be a Model for Business*, N.Y. Times, Mar. 14, 1996, at D1 (quoting Thomas D. Thacher II).
42. Alison Frankel, *Fighting Corruption for Fun & Profit: Former Mob-Buster Michael Cherkasky Has Started up a New Monitoring Business at Kroll Associates. Can He do Good and do Well?*, Am. L., Apr. 1995, at 75.
43. *Corruption and Racketeering in the New York City Construction Industry*, New York State Organized Crime Task Force, December 1989. The report was republished in 1990 by the New York University Press.
44. *Id.* at 139; Report, *International Association of Independent Private Sector Inspectors General* (hereinafter IAIPSIG Report) (on file with authors).
45. IAIPSIG Report, *supra* note 44 at ¶ 4; Frankel, *supra* note 42. The deterrence-oriented objectives envisioned for the CIAFs parallels the OCTF’s overall strategy which, “flowed from its philosophy of organized crime control. Investigations and prosecutions are means and not ends. The ultimate goal is not to send corrupt persons to prison but to reduce industry opportunities for and susceptibility to corruption and racketeering.” *Corruption and Racketeering*, *supra* note 16, at 2.
46. Inspector General Act of 1978, Pub. L. No. 95-452, 92 Stat. 1101 (1978); see Ronald Goldstock, *On the Origins of the Independent Private Sector General Program* (prepared for a panel discussion on IPSIGs at the Association of the Bar of the City of New York) (on file with authors) (hereinafter *Origins of the Independent Private Sector General Program*).
47. Margaret J. Gates & Marjorie Fine Knowles, *The Inspector General Act in the Federal Government: A New Approach to Accountability*, 36 Ala. L. Rev. 473 (1985).
48. *Id.* at 475.
49. Independent Private Sector Inspectors General, Compliance Programs & Corp. Sent. Gdlns. § 8:15 (2002).
50. *Id.*
51. See 56 Fed. Reg. 22,762 (1991).
52. IAIPSIG Report, *supra* note 44, at ¶ 5.
53. IAIPSIG Report, *supra* note 44 n.4; Ilene H. Nagel & Winthrop M. Swenson, *The Federal Sentencing Guidelines For Corporations: Their Development, Theoretical Underpinnings, and Some Thoughts About Their Future*, 71 Wash. U.L.Q. 205 (1993).
54. IAIPSIG Report, *supra* note 44, at n.4; Nagel & Swenson, *supra* note 53.
55. United States Sentencing Commission Guidelines Manual, Chapter 8: Sentencing of Organizations 28 U.S.C. § 996; Neil V. Getnick & Lesley A. Skillen, *Combating Industry-Wide Corruption*. N.Y.L.J., Jul. 15, 1994, at 1.
56. Origins of the Independent Private Sector General Program, *supra* note 46; Getnick & Skillen, *supra* note 55.
57. *Reengineering Municipal Services*, *supra* note 27, at 59.
58. *Id.*
59. Agreement dated February 13, 1996 between Tully Construction Co., Inc. and the City of New York. Amended July 3, 1996. (hereinafter Tully Settlement Agreement); *Non-Responsibility Determinations*. 2 CityLaw 73 (1996); *Currently Appointed IPSIGs Listed*, 7 CityLaw 54 (2001).
60. The Fairfax Group later merged with Decision Strategies. In February 2001, Decision Strategies was acquired by the SPX Corporation. In January 2005, the name was again changed to Vance.
61. *Non-Responsibility Determinations*, *supra* note 59.
62. Tully Settlement Agreement, *supra* note 59, at 5–6.
63. The Tully IPSIG agreement was in fact extended; it expired on February 13, 2001. *Currently Appointed IPSIGs Listed*, *supra* note 59.
64. Tully Settlement Agreement, *supra* note 59, at 7.
65. *Id.* at 8.
66. *Currently Appointed IPSIGs Listed*, *supra* note 59.
67. See Thacher, *supra* note 29; Henriques, *supra* note 41.
68. See Jacobs & Mortis, *supra* note 27.
69. Lupkin interview, *supra* note 40; According to William Langewiesche: “The mob shied away from the job. There was little featherbedding, and no strong-arming of the New York kind. With the exception of the firefighters’ action, which was a special case, there were no threatened walkouts or strikes.” Langewiesche, *supra* note 6, at 181.
70. Associated Press, *Tragedy a Magnet for People Intent on Mischief and Deceit*, Guelph Mercury, Sep. 17, 2001, at A7; Melody Petersen, *Reports of Scams Preying on Donors are on the Rise*, N.Y. Times, Sep. 28, 2001, at A18.
71. Manimoli Dinesh, *Feds, States Slap Stations for Profiteering*, Oil Daily, Sep. 18, 2001.
72. Ed Vulliamy, *Tolls may be 1,000 Less than Feared*, Observer, Sep. 23, 2001, at 7.
73. Greg Wilson, *Insurers are on Alert for Phony Claims*, Daily News, Dec. 3, 2001, at 31; *Coalition Release Top 13 Insurance Schemes of 2002: Coalition Against Insurance Fraud Adds 13 to its Insurance Hall of Shame*, Best’s Review, Feb. 1, 2003, at 11. Included in the list of insurance crooks dishonored by the Coalition were Charles and Cynthia Gavett of Georgia. The Gavetts had falsely reported that Cynthia died in the September 11th attacks and tried to claim \$628,000 in life insurance payouts. *Id.*
74. Pete Donohue & Corky Siemaszko, *City Will Give Victims’ Kin Soil from WTC Site: Vendors, Looters Ripped by Rudy*, Daily News, Oct. 3, 2001, at 18. Among the most brazen looting attempts involved unsuccessful efforts by intruders to pry open or cut in from above the Bank of Nova Scotia’s bank vault which held a quarter of a billion dollars in precious metals. It is presumed that the intruders were construction workers, but “it never became clear who exactly they were, where they had come from, or how they had proposed to get through these ruins with more than just a few ingots.” Langewiesche, *supra* note 6 at 36.

75. IPSIGs were alternatively dubbed “Independent Project Integrity Compliance Monitors” and “Construction Compliance Monitors” in the agreements and press releases. Steinhauer, *supra* note 10, at B11; DOI Press Release, *supra* note 14. The IPSIG assignments were as follows: (1) Stier, Anderson & Malone was assigned to AMEC Construction Mgmt.; (2) Thacher Associates was assigned to Bovis Lend Lease; (3) PriceWaterhouseCoopers was assigned to Turner Construction; and (4) Decision Strategies/Fairfax Int’l was assigned to Tully Construction. *September 11th Disaster Response*, *supra* note 6.
76. DOI Press Release, *supra* note 14.
77. Katia Hetter, *Monitors for WTC Cleanup: Decision was Made Before Reports of Stolen Debris*, *Newsday*, Oct. 10, 2001, at A37.
78. Steinhauer, *supra* note 10, at B11; According to Louis Coletti, Chairman of the Building Trades Employers Association: “This is not normal on emergency sites. There are other cities that have procedures and guidelines for projects that come through a normal process, but I don’t know what any of this means. I have never heard of it under the kind of conditions that we have now.” *Id.*
79. *Cleanup Firms Face New Scrutiny*, *Engineering News-Record*, Oct. 15, 2001, at 12.
80. Quoted in, *Cleanup Firms Face New Scrutiny*, *Engineering News-Record*, Oct. 15, 2001, at 12.
81. This prophylactic use of IPSIGs by New York City at Ground Zero may well have been a factor in the decision by Northern Ireland to go forward with its IPSIG Pilot Project.
82. David Barstow, *Officials Are on the Lookout for Relief Effort’s Dark Side*, *N.Y. Times*, Sep. 22, 2001, at B11.
83. A 2003 news report alleged that the Genovese and Colombo crime families used their control of two powerful construction unions in order to demand cushy jobs for their cronies, such as stringing lights and tending generators. Nevertheless, it appears that the mob-connected employees had to do work for their money; and they actually completed 12-hour shifts. Investigators have not yet found substantiation for allegations of no-show pay. See Al Guart, *How the Mob Muscled in at Ground Zero*, *N.Y. Post*, Mar. 2, 2003, at 16. Even if these alleged abuses are true, they are likely far smaller than the abuses still generally riddling New York City’s construction industry. The same article reported that AMEC, one of the four Ground Zero construction companies, was recently named in an indictment that charged members of two prominent unions with setting up no-show jobs at other construction sites. The same unions (Locals 14 and 15 of the International Union of Operators and Engineers) worked at Ground Zero and according to the federal indictment, have been under mob control since 1997. The indictment charged 25 alleged gangsters, including Colombo boss Joel “Joe Waverly” Cacace, and 17 union members in pocketing more than \$4 million. *Id.* If anything, this recent report only serves to underscore the need for the expanded use of IPSIGs throughout the New York City construction industry.
84. Frank Anechiarico & James B. Jacobs, *Pursuit of Absolute Integrity* 75 (University of Chicago Press 1996).
85. *Id.* at 81.
86. DOI Press Release, *supra* note 14.
87. *Id.*
88. New York City Department of Investigation, *Significant Cases 2001*, at <http://www.nyc.gov/html/doi/html/sig-cases-2001.html> (last visited Mar. 29, 2003).
89. Lupkin interview, *supra* note 40.
90. *Id.*
91. Interview with Steven A. Pasichow, then-Assistant Commissioner, New York City Department of Investigation, in New York, NY (Feb. 10, 2003).
92. *Id.*
93. See *supra* note 6.
94. Langewiesche, *supra* note 6, at 68.
95. *Id.* at 179.
96. *Role of Bovis Lend Lease at World Trade Center Ground Zero Site in New York*, available at http://www.bovislendlease.com/llweb/bll/main.nsf/all/news_20020104 (last visited Mar. 6, 2005).
97. Lupkin interview, *supra* note 40.
98. Pasichow interview, *supra* note 91.
99. Steven A. Pasichow was, at the time the Assistant Commissioner of the New York City Department of Investigation. Mr. Pasichow, who was also an Inspector General in the New York City Housing Authority (NYCHA), had extensive experience in combating corruption in New York City’s construction industry. He currently serves as the Deputy Inspector General of Port Authority of New York and New Jersey. Among many achievements, other than work related to the World Trade Center cleanup, was Mr. Pasichow’s involvement in uncovering abuses related to the alleged theft of over \$245,000 from the NYCHA by a former construction company owner and his corporation. See Press Release, Office of New York State Attorney General Eliot Spitzer, *Construction Contractor Indicted for Stealing More Than \$200,000 from the New York City Housing Authority* (Aug. 8, 2002), available at http://www.oag.state.ny.us/press/2002/aug/aug08a_02.html (last visited Mar. 6, 2005).
100. *Id.*
101. Lupkin interview, *supra* note 40.
102. Agreement dated October 4, 2001 between AMEC Construction Mgmt., Inc. and the City of New York; Agreement dated October 4, 2001 between Bovis Lend Lease LMB, Inc. and the City of New York; Agreement dated October 4, 2001 between Tully Construction Co., Inc. and the City of New York; Agreement dated October 4, 2001 between Turner Construction Co., Inc. and the City of New York (hereinafter WTC Monitoring Agreements).
103. WTC Monitoring Agreements, *supra* note 102, at 2.
104. *Id.*
105. *Id.* at 3–5.
106. Letter from Rudolph W. Giuliani, Mayor of the City of New York, to All Ground Zero Construction Site Personnel (Nov 2, 2001) (on file with authors).
107. *Id.*
108. Lupkin interview, *supra* note 40.
109. Pasichow interview, *supra* note 91.
110. Guart, *supra* note 83, at 16.
111. Lupkin interview, *supra* note 40; Pasichow interview, *supra* note 91.
112. Glanz & Lipton, *supra* note 8.
113. Joseph McCann, *Global Positioning System Speeds Up Scrap Removal; Scrap; After Islamic Terrorist Attacks on World Trade Center*, *American Metal Market*, March 12, 2002, at 10.
114. Barstow, *supra* note 82.
115. Lupkin interview, *supra* note 40.
116. Contrary to what one might expect, having numerous workers on the site, who were not affiliated with any of the construction

- companies, being monitored did not complicate the tasks of the monitors. *Id.*
117. *Id.*
118. *Id.*
119. *Id.*
120. Langewiesche, *supra* note 6, at 181.
121. *Id.* at 175.
122. *Id.*
123. Jim Johnson, *Nightmare Cleanup Winding Down; Project is Months Ahead of Schedule and Well Under Budget, Officials Say*, Waste News, May 13, 2002, at 1. Preliminary calculations for the cost of the cleanup were as high as \$7 billion. Becky Orfinger, *Cleanup Crews Ahead of Schedule at WTC*, at <http://www.disasterrelief.org/Disasters/020124wtccleanup/> (last visited Mar. 6, 2005). Later estimates had pegged the cleanup at around \$2 billion, but one city official has said that the final price tag could be closer to \$600 million. Joseph McCann, *supra* note 113, at 10.
124. Johnson, *supra* note 3, at 5. Furthermore, it bears noting that: “[n]o one invoked in the WTC recovery was seriously injured, even though they were working around the clock in what was arguably the most dangerous construction site in history.” *AMEC Completes World Trade Center Recovery Work*, *supra* note 2.
125. *Id.*
126. Although the city prudently appointed IPSIGs to work at Ground Zero, there are still no requirements mandating the use of IPSIGs for all large emergency contracts or other special case exceptions to competitive bidding. There is arguably less cause for alarm with respect to emergency contracts, because they are triggered only by exigent circumstances and are generally limited in price and scope. By contrast, the special case exception, which allows for potentially expansive discretion on the part of city agencies, is somewhat more troubling, despite the fact that it does allow for the selection of contractors for valid reasons other than the price of their bid.
127. Anechiarico & Jacobs, *supra* note 20, at 143.
128. See Marie-Therese Fay, Mike Morrissey and Marie Smyth, *Northern Ireland’s Troubles: The Human Costs* (London: Pluto Press, 1999).
129. For succinct, yet highly informative further insight into the history of “The Troubles” and the political, religious, economic and social backdrop of the internecine warfare and the fragile accords reached in the late 1990s, see Landon Hancock, *Northern Ireland: Troubles Brewing* available at <http://cain.ulst.ac.uk/othelem/landon.htm> (last visited Mar. 6, 2005); Seamus Dunn, editor, *Facets of the Conflict in Northern Ireland* (London: Macmillan Press Ltd. 1995) available at: <http://cain.ulst.ac.uk/othelem/facets.htm> (last visited Mar. 6, 2005); John Darby, *Northern Ireland: The Background to the Peace Process* available at <http://cain.ulst.ac.uk/events/peace/darby03.htm> (last visited Mar. 6, 2005).
130. See *Threat Assessment 2004—Serious and Organized Crime in Northern Ireland*, Northern Ireland Organized Crime Task Force, available at <http://www.octf.gov.uk/extort.cfm> (last visited Mar. 6, 2005).
131. See note 33, *supra*, for Professor Goldstock’s professional credentials.
132. Goldstock, Ronald, *Organized Crime in Northern Ireland: A Report for the Secretary of State*, available at: <http://www.nio.gov.uk/press/040722.a.htm> (July 22, 2004).
133. *Id.*
134. *Id.*, at pp. 22–27.

Stanley N. Lupkin is currently a partner in the Great Neck, Long Island law firm of Ackerman, Levine, Cullen, Brickman & Limmer, LLP. He heads the firm’s “white-collar” criminal defense efforts as well as its investigative counsel and compliance, IPSIG, monitorship and integrity services. Mr. Lupkin is a graduate of Columbia College and N.Y.U. School of Law. He has served as First Deputy Commissioner and later as New York City Commissioner of Investigation at the Department of Investigation (DOI). He was one of the prime architects of New York City’s Inspector General network. He began his legal career as a prosecutor in the New York County District Attorney’s Office under the late and legendary District Attorney Frank S. Hogan. In the private sector, Mr. Lupkin spent 14 years as a partner in Litman, Ashe, Lupkin & Gioella, a white-collar criminal litigation boutique, and later held various high executive-level positions, including Executive Vice President of Decision Strategies, LLC, a global investigative consulting firm which has handled many IPSIG assignments for government agencies since the 1990s. Mr. Lupkin was the Project Executive for Decision Strategies on the Ground Zero IPSIG Project and serves as a member of the Board of Directors of the International Association of Independent Private Sector Inspectors General.

Edgar J. Lewandowski is currently an associate in the Global Securities Group at Milbank, Tweed, Hadley & McCloy LLP, where he works on a wide variety of capital markets transactions. He received his J.D. degree from the N.Y.U. School of Law where he was Article and Note Editor of the *Journal of Legislation and Public Policy* and recipient of N.Y.U.’s Thomas Stoddard Award. Mr. Lewandowski received his B.A. in history from Columbia College of Columbia University, *magna cum laude*. His interest in the New York City IPSIG Program was spurred by his research for a monograph he authored as a third-year writing project at N.Y.U. Much of his research related to the application of the IPSIG concept to New York City’s debris removal contracts at Ground Zero following the 9/11 terrorist attack. It was in the context of this writing project, much of which was incorporated into this article, that he met and interviewed his co-author, Stanley N. Lupkin, resulting in this collaboration.