Taking the test

Policing integrity and professionalism in the MPDs

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A lack of creativity and political will is placing the country's Metropolitan Police Departments (MPDs) at risk of losing legitimacy, as management and councils pay lip service to evidence of dwindling organisational integrity. The introduction of targeted and random integrity tests within the departments is urgently needed to turn the tide on abuses of power, and can be implemented easily enough.

In 2003 the United States Embassy in South Africa hosted a videoconference between the New York City Police Department's (NYPD) Internal Affairs Bureau (IAB) and key stakeholders in the South African Police Service (SAPS), other government bodies, and the research community. The aim of the conference was for the IAB to share its experience of combating police corruption so that lessons could be transferred to South African institutions. The conference was thoroughly documented by Gareth Newham and the document widely disseminated.[1] Even so, the central message of the IAB has failed to result in substantial changes to any police organisation in South Africa. In the meantime such tests have been recommended and adopted by police organisations in Canada, Australia and Britain, among others.

This article revisits the central tenets of the conference, reiterates the need for integrity tests, and presents simple examples of how they might be applied in South Africa. It focuses on application in the country's MPDs, all of which have internal anti-corruption units that could easily pursue these strategies. However, the message is as relevant to the SAPS and other law enforcement agencies.[2]

CORRUPTION IN THE MPDS

Research suggests that within the public sector bribes are most often requested in relation to traffic policing, followed by regular policing.[3] This reflects particularly badly on metro police who are responsible for both traffic law enforcement and crime prevention. Public discourse around roadside bribery is particularly prevalent with one metropolitan area infamously earning itself the nickname 'Fifty Rand metro' in reference to the money required to ward off traffic fines.

Beyond victimisation surveys and public discourse it is difficult to quantify the prevalence of corruption in the MPDs. Disciplinary data are not published and difficult to obtain. Even when available, these data only reflect those instances where corruption has been exposed. This means little if one considers that in any police agency most corruption goes unreported, and that South African MPDs don't proactively seek to expose corrupt officers.

BEING PROACTIVE

Following the 1992 Mollen Commission of Inquiry into corruption in the NYPD, the Internal

Affairs Bureau was formed based on the premises that:

1. A proactive approach is necessary if police corruption is to be effectively addressed
2. An independent internal investigative police unit is the most effective and efficient structure for tackling police corruption[4]

While the SAPS Anti-Corruption Unit (ACU) was controversially closed down in 2002, the country's MPDs all have some form of anti-corruption unit built into their structure. One exception is the Durban MPD where the city Ombudsman's office assumes this role. Depending on the MPD, these units do some or all of the following:

- Ensure system compliance by officers and staff
- Conduct (mostly announced) inspections of officers and staff
- Investigate all reported misconduct and where necessary follow up with traps and surveillance of suspect officers[5]

While on the surface this mandate appears to constitute proactive action against corruption, it pales in comparison to the steps taken by the IAB in the form of field integrity tests. When police administrators don't act decisively in *detecting* and acting against corruption they indirectly legitimise it.[6] This is the case in South Africa, where rhetoric is often strong but creative, *proactive* action lacks.

Entrapment legislation for the state of New York is similar to that of South Africa. Both allow for the creation of an opportunity to commit a crime without providing undue incentive to do so. As stated in South Africa's Criminal Procedure Act the conduct must not 'go beyond providing an opportunity to commit an offence' unless state security is under threat.[7]

Through targeted and random integrity tests, the NYPD's Internal Affairs Bureau provides such opportunities for officers to commit crimes. These tests involve real life scenarios that police officers might expect to encounter in the course of their normal duties. The difference is that, unbeknown to the responding officer, the scenarios are purposefully constructed and closely monitored by IAB officials. One example given during the conference included staging an accident and leaving the vehicle with the police. Drugs planted in the car create an opportunity for a dishonest officer to remove these before booking the vehicle into the station. More elaborate tests are constructed by the IAB to ensure the legitimacy of random tests, or to target already suspect officers. These tests can involve weeks of preparation and can be resource intensive.

Within a South African context many may argue that such elaborate traps would be a waste of resources, while *random* traps and tests would consume the time of honest officers who could be attending to '*real*' crime. This point is valid. However, the perceived extent of police corruption in the country, and its link to a loss of faith in the police[8] requires that drastic proactive action be taken. If, after a year or two of constant testing, it is found that the majority of officers behaved professionally and ethically in test environments, then these tests could be toned down. But initially both complex and simple tests should be conducted randomly and across the board.

Numerous criminological theories, from Classical to Control, suggest that all of us are potential criminals. The argument follows that we all constantly ask ourselves questions such as: Who will know about this action? What is the likelihood of being caught (if my action is illegal/immoral)? How severe is the likely punishment?

Similarly, research conducted by the NYPD suggested the correlating factors among officers arrested for corruption were that:

- They were greedy
- An opportunity presented itself, and
- They did not believe that they were going to get caught

Frontline police with immense discretionary powers operate in isolation or in very small groups. This gives them ample opportunity to secretly engage in illegal acts. In the case of corruption the crime is often mutually beneficial, so the civilian involved may not report the incident. This is particularly true for MPD officers working in traffic

enforcement or vehicle licensing, but includes officers working in all manner of environments.

A major flaw in the management of anti-corruption efforts in South Africa's MPDs is the perception that the number of complaints received by the department accurately reflects the levels of corruption.[9] In other words, if complaints figures are low then corruption is under control. Units and managers who even entertain this argument immediately place their own legitimacy in question. The reality is that the more pervasive corruption becomes, the less faith the public is likely to have in the institution and the less likely they are to report the crime. Similarly, the more entrenched corruption is within organisational culture, the less likely it is that officers would report one another. The probability of this occurring is already extremely low.

If departments are to be seen to be taking corruption management seriously they should roll out a random and targeted integrity testing programme and publicise the percentage of passes and failures, as well as the action taken against those who fail. Like the NYPD, many police agencies prefer not to report on the exact *number* of tests conducted, so that officers are constantly kept guessing. Newham's report shows that while the IAB conducted around 1 000 tests per year; officers believed that closer to 6 000 were conducted. Clearly then, the IAB succeeds in projecting a sense of omniscience in the minds of officers. Importantly, officers who pass tests are not informed of this fact, but are left with the belief that they have simply completed another daily task. This means that they must treat every encounter as a potential test and engage it with professionalism and integrity.

INTEGRITY WITHOUT ENTRAPMENT

One of the reasons MPD internal affairs units give for not trapping or testing officers more often is an alleged difficulty in securing entrapment orders. Applying to the Director of Public Prosecutions for an order requires prior evidence of wrongdoing on the part of the suspect officer(s). Given that internal affairs units don't act against members unless they receive a solid complaint, evidence of wrongdoing is scarce and few entrapment orders are applied for. Units need to get more creative in *detecting* corruption.

The focus on entrapment orders is also incongruent with an organisational philosophy held by some senior managers – that one can't simply fire or prosecute an officer every time s/he is found wanting.[10] The logic in this approach is that an organisation has invested so much time and money in the development of officers that it is better to rehabilitate than to punish them. While it may not please some members of the public, this argument does hold value. Any form of justice should arguably focus on education and rehabilitation rather than punishment.

However, if a department knows it does not want to pursue criminal prosecution in the majority of cases, entrapment orders are not required for the setting of traps. Internal affairs units can conduct as many random tests as they please, as long as the evidence collected is only used for internal disciplinary hearings. If evidence of criminal activity is uncovered in this process, the Director of Public Prosecutions can *then* be approached to secure an entrapment order, and a targeted trap can be set.

It is important that tests and traps are implemented with sensitivity so as not to destroy the morale of good officers. In order to do this a number of strategies could be adopted. Most important would be clear communication of intentions – to improve the image and professionalism of the organisation. Random testing could be marketed within the organisation in a manner that encourages pride and a shift in organisational culture – one that embraces honest police and reports dishonesty.[11] One of the simplest ways to do this would be to replace the name 'anti-corruption unit' with 'professional standards unit' and sell the units as focusing on the improvement of professionalism. Units could also openly target specific groups, such as rookies or the recently promoted. Such targeting is easily justified, and those groups are then forewarned.

An important and non-punitive benefit of integrity testing is that it allows for the measurement of professionalism and the highlighting of unprofessional trends in an organisation. For example, tests might not reveal corruption, but may show flaws in the manner in which officers engage the public, using, for example, inappropriate language or force. By uncovering such trends through hard evidence, they can be addressed at training and institutional, rather than individual, levels.

RANDOM INTEGRITY TESTING FOR MPDS

Examples of tests that could be developed for the MPDs include:

- At a staged accident the drunk 'driver' (a sober actor with alcohol on his/her breath) verbally abuses the responding officer (testing public engagement and arrest compliance, creating opportunity for bribery)
- A 'suspect' is left in the custody of officers. The suspect provokes them (testing professionalism) or hints at bribe payment in exchange for release
- Monitored vehicles are sent through a road block to ascertain whether they are dealt with according to the operation's directives (i.e. vehicle search, roadworthy and licence check, alcohol awareness, overloading, seatbelt compliance)

The practical and legal subtleties of these and other scenarios would need to be developed by experienced metro officers in conjunction with a prosecutor or labour lawyer, so that they do not go beyond the normative professional experiences of officers and are conducted within the ambit of labour and criminal law. Nor should they unduly entice officers through aggressive persuasion to commit a crime.

Importantly, such testing would allow MPD management to ensure compliance of organisation-wide and operation-specific directives, both new and old. As such it need not be approached or communicated to staff as an anti-corruption mechanism, though ultimately this would be one of its major spin-offs.

CONCLUSION

The approach to integrity management outlined in this article is just as relevant to the SAPS as to the country's MPDs. Indeed, arguments could be made for a professional standards and integrity unit located within the SAPS, or entirely independent of all police organisations, but monitoring all law enforcement agencies. The country's MPDs are well positioned to spruce up and get serious about their anti-corruption and integrity management strategies. Without the kind of proactive monitoring of the police outlined in this article, MPDs (and other law enforcement organisations) risk developing an unstoppable momentum down the slide to illegitimacy.

NOTES

1 G Newham, Preventing police corruption: lessons from the New York City Police Department, 2003, http://www.csvr.org.za/docs/policing/preventingpolice.pdf (accessed 10 January 2009).
2 When I refer to MPDs I do not include the Swartland Municipal Police Service, which is comparatively miniscule, is not known as a corrupt agency and does not have any anti-corruption mechanisms.
3 R Pharoah, National Victim of Crime Survey: Overview of key findings, *ISS Paper* 175, Pretoria: ISS, December 2008.
4 Newham, Preventing police corruption.
5 A Faull, City blues: corruption and corruption management in South Africa's Metropolitan Police Departments, *ISS Paper* 170, Pretoria: ISS, November 2008.
6 Sanja Kutnjak Ivkovic, *Fallen blue knights: controlling police corruption,* New York & Oxford: Oxford University Press, 2005.
7 Criminal Procedures Act (Act 51 of 1977) 252A: (1).
8 See strong evidence for this in: R Mattes, Good news and bad: public perceptions of crime, corruption and government, *South African Crime Quarterly* 18, Pretoria: ISS, 2006.
9 A Faull, City blues.
10 Opinions expressed by senior MPD officials at a seminar on corruption management in metropolitan police departments, hosted by the ISS in Pretoria, 8th November 2008.
11 R Homel, Integrity testing, in Tim Prenzler and Janet Ransley (eds), *Police reform: building integrity*, Sydney: Hawkins Press, 2002.