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**GOVERNMENT OVERSIGHT: A STUDY OF THE DEVELOPMENT OF THE
OFFICES OF INSPECTORS GENERAL FOR THE STATE OF NEW YORK**

By

ANTHONY G. MARKERT

A dissertation submitted to the Graduate Faculty in Criminal Justice in partial fulfillment of the requirements for the degree of Doctor of Philosophy, The City University of New York.

2003

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This manuscript has been read and accepted for the Graduate Faculty in Criminal Justice in satisfaction of the dissertation requirement for the degree of Doctor of Philosophy.

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ABSTRACT**GOVERNMENT OVERSIGHT: A STUDY OF THE DEVELOPMENT OF THE OFFICES OF INSPECTORS GENERAL FOR THE STATE OF NEW YORK**

By

ANTHONY G. MARKERT

Advisor: Professor Warren Benton

An office of inspector general (OIG) is a branch of government with the responsibility to foster and improve government accountability. Their mission usually involves efforts to control or eliminate corruption, fraud, waste and abuse in government. The purpose of this dissertation was to study the development of OIGs in New York State. Included in this study were the Office of State Inspector General, the Metropolitan Transportation Authority Office of Inspector General, the Jacob Javits Convention Center Office of Inspector General, the Port Authority of New York and New Jersey Office of Inspector General, the Office of Welfare Inspector General, The Department of Labor Office of Inspector General and the Dormitory Authority Office of Internal Affairs.

In addition to describing the history of these offices, their missions, structure and major cases investigated, this research answered six research questions based on the literature on government bureaucracy and oversight. The findings related to these six questions were that: (1) these offices have increased New York State's capacity to reduce fraud, waste in abuse in state government; (2) most of these oversight offices practice what McCubbins and Schwartz (1984) characterized as routine "police patrol" oversight as opposed to "fire-alarm" oversight; (3) most of the OIGs studied have adopted what

Anechiarico and Jacobs (1994) called the “panoptic vision” of oversight; (4) most of the work of these OIGs falls under what Light (1993) defined as compliance accountability activities with only a few efforts found that incorporated performance and capacity building accountability activities; (5) the statutorily established OIGs had a higher level of independence than those that were not, but several of those that did not have statutory protection were able to exercise independence based on other structural or personal factors; and (6) New York State inspectors general were able to avoid contributing to government bureaupathologies and instead worked to improve government bureaucratic efficiency.

It is hoped that this research will encourage further improvements in the OIG model and serve as a basis for additional research that may develop a new model for government oversight.

ACKNOWLEDGEMENTS

I want to express my appreciation to the doctoral faculty at the John Jay College of Criminal Justice. They all have been helpful to me throughout my studies. I am especially grateful to Ned Benton, my dissertation mentor, for guiding me throughout the dissertation process. He recommended a topic and a methodology that was an excellent match to my background, interests, and temperament. I also want to thank my other committee members, John Kleinig and Barry Spunt for their guidance, encouragement, and prompt and careful review of my drafts. I want to thank the present and former Executive Officers of the doctoral program who were helpful to me, Todd Clear, Mary Gibson, and Jim Levine. And a special thank you to Christina Czechowicz, the person who keeps the program running smoothly and without whose help I would not have been able to navigate the doctoral process. I also want to acknowledge some of my other colleagues who provided encouragement and assistance: Michael Foley, Jane Fowler, Joel Goldstein, George Kain, Mary Kay Loomis, David Machell, Allen Morton, Paul O'Connell and Frank Straub.

I am grateful to the following IGs and other professionals who agreed to be interviewed for this dissertation study: Paul Balukas, Enrico J. Bianchi, Thomas F.X. Brennan, John D. Brill, James Bono, Richard C. Caccese, Stephen Delgiacco, Ramon Diaz, Edward T. Dominelli, Roland M. Malan, Gerald McQueen, George Moresco, Richard M. Nawrot, Matthew D. Sansverie, Brian P. Sanvidge, Joseph Spinelli, Elmer Toro, Robert E. Van Etten, and James P. White. I would like to acknowledge the special assistance given to me by Robert Van Etten, Paul Balukas, James Bono, and Roland

Malan in helping me understand IGs and in gaining access to these professionals and their organizations.

Most importantly I want to thank my wife Patricia, who encouraged me throughout the doctoral process. Without her help, I would not have finished this dissertation. I also want to thank my two sons, Kevin and James, for their encouragement and understanding.

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CHAPTER 1

INTRODUCTION AND RESEARCH QUESTIONS

Introduction

Over the past 25 years a unique type of government organization has increasingly been utilized for government oversight purposes. An office of inspector general (OIG) is a branch of government with the responsibility to foster and improve government accountability (see Appendix I for a complete list of abbreviations used in this study). As the Association of Inspectors General (2001) explains it, “the public expects OIGs to hold government officials accountable for efficient, cost-effective government operations and to prevent, detect, identify, expose and eliminate fraud, waste, corruption, illegal acts and abuse” (p. 3). These are unique types of government offices that combine the roles of auditor and investigator and may be positioned either as an office within a government agency or as a separate independent agency.

Statement of Significance

Research into such organizations has for the most part been limited to a few studies of federal OIGs (Moore and Gates, 1986 and Light, 1993) or of local anticorruption agencies (Winslow and Burke, 1993, and Anechiarico and Jacobs, 1996). There have been no substantial studies of state OIGs and few studies of OIGs within state agencies (see Straub, 1997, for a study of the New York State Department of Correctional Services [DOCS]). The written histories of the federal OIG system and the New York City Department of Investigation (DOI) are based on these few studies and some

additional research discussed in the literature review chapters below. In addition, theories have been proposed regarding the impact of these OIGs on government bureaucracies. Also, some viewpoints have been expressed regarding: the effectiveness of these organizations in dealing with fraud, waste, and abuse, the appropriateness and effectiveness of the tools used by OIGs, and the degree to which OIGs are independent of the agencies they oversee. Other than Straub's (1997) research, there have been no substantial studies of state oversight organizations. This dissertation research is intended to fill this gap in the literature by providing a history of the development of oversight agencies in a large state. This research will also summarize the leading issues regarding government oversight organizations that have been proposed in the literature and to examine these issues in light of the history of oversight in New York State (NYS). In addition, issues not previously focused on in the literature that were encountered during the course of this study will be discussed.

As will be discussed in Chapter 3, the study of IGs can be considered as part of the criminological literature on white-collar crime. This literature has so far neglected IGs and this dissertation will provide criminologists with an understanding of IGs as agents of social control with regard to white-collar crime laws.

This dissertation provides a study of the NYS Office of State Inspector General (OSIG) and the following additional New York State government oversight organizations:

- Dormitory Authority of the State of New York, Office of Internal Affairs (Dormitory Authority OIA),

- Jacob Javits Convention Center of New York, Office of Inspector General (Javits Center OIG),
- Metropolitan Transportation Authority, Office of Inspector General (MTA OIG),
- New York State Department of Labor, Office of Inspector General (DOL OIG),
- New York State Office of Welfare Inspector General (OWIG), and
- Port Authority of New York and New Jersey, Office of Inspector General (Port Authority OIG).

This dissertation is the first study of the development of OIGs in a large state. Methodologies useful for historical research were used in this research. The research employed oral history methodology and 15 separate interviews were conducted involving 19 current or former IGs or other senior oversight or operational personnel (See Appendix II for a list of the interviewees). This study also used other sources of data such as primary documents and secondary literature sources. In studying these IG offices, such issues as the scope of their activities, their measures of success, their independence from the agencies they monitor, their staffing levels, and their resources were reviewed. In addition, six research questions guided the study and will be considered throughout this dissertation.

Research Questions

A series of research questions will be considered related to a number of theories applicable to OIGs. Central to several of the questions is the practical question of whether: (1) “OIGs strengthen both the incentives and capabilities of government managers to minimize fraud, waste, and abuse, and thereby decrease the costs of

government”, or (2) OIGs “reduce government efficiency because they add costs to government operations, but produce no significant improvements” (Moore and Gates, 1986, pp. 3-4).

For this research, bureaucracy and related public administration research will provide the overall theoretical framework. The bureaucratic framework is needed to help guide questions about the place of IGs in government, and the effect that IGs have on government operations. The bureaucratic theoretical framework is also useful in guiding questions about the internal operations of IG offices and how IG offices compare to one another in structure and operations.

In answering these questions, the information provided by the interviews, and other primary and secondary sources will be used as data. The factors noted after each of the six questions will then be used for guidance in deciding how to answer each question for the seven OIGs studied.

Question No. 1 (Government accountability): Have NYS IGs increased the state's capacity to reduce fraud, waste, and abuse?

Underlying the theory of bureaucracy is the belief that bureaucratic government organizations provide a rational and efficient mechanism for carrying out society's goals (Weber, 1922/1946, and Wilson, 1989). Fraud, waste and abuse detract from the effectiveness of government and are therefore detrimental to the work of these bureaucracies. According to Moore and Gates (1986), IGs have the potential to improve government operations by strengthening government accountability and enhancing government's capabilities to minimize fraud, waste, and abuse. What have NYS IGs

done to accomplish this goal? This is an especially difficult question since there are no accurate measures of such variables as corruption (Jacobs, 1999). An examination of the development and history of the NYS IGs will be used to answer this question. Factors considered in answering this question are whether:

- OIGs were created because of a perceived lack of oversight;
- The formation of the OIGs was preceded by a major scandal and subsequent scandals have been reduced or eliminated;
- NYS's capacity to investigate fraud, waste, and abuse before the advent of NYS IGs was lower than the capacity since the formation of the OIGs (capacity will be measured by staffing levels and other resources devoted to these types of cases);
- The number of cases investigated increases over time;
- IGs devoted their attention to more difficult and complex cases that involve higher level employees and higher dollar amounts rather than smaller and easily investigated cases.

Question No. 2 (Proactive or reactive response in a political environment): With regard to the type of oversight they exercise, do NYS IGs fit the model of routine "police-patrol" oversight through routine investigations and audits rather than the model of "fire-alarm" oversight more common to scandal-oriented investigations?

Downs (1967) said that all governmental leaders are motivated by self-interest and by an interest in preserving their organizations. How to best accomplish this depends upon the organizational and political environment. McCubbins and Schwartz (1984) reported that oversight is conducted in a political environment. They discussed how

oversight is conducted through either “police-patrol” oversight using routine audits and investigations or by “fire-alarm” oversight by focusing on scandal-oriented investigations. McCubbins and Schwartz reported that in an oversight system where there is congressional involvement, there is a tendency for fire-alarm oversight (especially by publicity seeking incumbents who use public hearings to gain notoriety). Light (1993) also reported this tendency with federal IGs due to their dual responsibility to both the U.S. Congress and the president. Since NYS IGs appear to have less legislative involvement, there would seem to be support for the view that NYS IGs operate using the routine police-patrol model. Factors considered in answering this question are whether:

- NYS IGs were created by executive order rather than legislative action;
- NYS IGs involvement with the NY legislature is less than the federal IGs’ involvement with the U.S. Congress;
- Little media attention is associated with NYS IG cases;
- NYS IG cases are routine in nature and involve few high profile “scandalous” cases of public interest.

Question No. 3 (the panoptic vision): Have NYS IGs adopted the panoptic vision of oversight in carrying out their work?

Anechiarico and Jacobs (1996) concluded that NYC’s Department of Investigation had adopted what they labeled the panoptic vision of oversight (see Chapter 3), whereby all public officials are perceived as potentially corruptible and more rules, controls and oversight are needed. Tools used under this approach include corruption

vulnerability assessments, investigative audits, performance audits, and internal surveillance. Under this view, OIGs adopt more of a law enforcement role. This question will explore whether or not the NYS IGs have followed the history of the NYC DOI, resulting in an approach to corruption that reflects the paradigm that Anechiarico and Jacobs refer to as the panoptic vision. Factors considered in answering this question are whether:

- The primary mission of the OIG is to investigate and prevent corruption;
- NYS IGs focus on enhancing law enforcement aspects of the OIG role. Information on type of staff employed by OIGs (investigative over audit), development of police and investigative powers (towards more subpoena power and prosecutorial authority) and the background of the IGs themselves (i.e. law enforcement over accounting) will be considered;
- Law enforcement tools (such as undercover investigations, confidential informants, sophisticated video surveillance, wiretaps, etc.) are primarily used;
- Interviewees report borrowing ideas from NYC DOI;
- NYS OIGs adopted oversight tools similar to those of NYC DOI.

Question No. 4 (Forward thinking models): Do NYS IGs devote more attention to compliance accountability activities than performance and capacity building accountability activities?

NYS IGs have the potential to improve government efficiency if they focus on forward thinking work such as Light's (1993) performance and capacity building accountability models, instead of focusing only on the compliance model. Using these

three accountability models discussed by Light, this research will obtain an understanding of the model or models envisioned when the NYS OIGs were set up, and the models that have actually been adopted by the NYS IGs in their work.

The compliance model has been in existence the longest. It also shows the quickest results for the least cost. It would seem reasonable for bureaucrats to adopt a model that gives them apparent short-term success, even if it is at the expense of the long-term improvement of their organizations. Down's (1967) conclusion that organizations are self-serving could support this thesis with regard to the behavior of IGs. The concepts of trained incapacity and occupational psychosis discussed in Chapter 2 (as outlined by Merton, 1940/1952) may also support this conclusion. Light's (1993) study of the federal IGs and Anechiarico and Jacobs' (1996) study of the NYC Department of Investigation (DOI) support this outcome and similar results are expected for NYS IGs. Factors considered in answering this question are whether:

- The OIG's mission statements focus on compliance work as opposed to more forward thinking approaches;
- Cases and activities reported by OIGs indicate more cases of compliance audits and investigations as opposed to forward thinking approaches. These results may be inconsistent with the mission statements and with preferences reported by IGs for the type of work they would like to see their organization doing.

Question No. 5 (Independence): Do statutorily appointed IGs have a higher level of independence than those appointed by executive order?

How independent is the NYS OSIG from the rest of state government and how independent are the individual agency OIGs from the agencies for which they have oversight? Do they fit Light's (1993) model of the "lone wolf" or the "strong right arm" of the agencies for which they have oversight (see Chapter 4)? Factors considered in answering this question are whether:

- IGs are selected by an independent body, and not by the governor or agency heads;
- IGs have fixed terms of office and do not serve at the pleasure of the governor (for NYS OSIG) or agency head (for agency IGs);
- IGs' backgrounds are unrelated to their present agency;
- For agencies and authorities, the IGs report to more than one high level official (i.e. the chief executive and the chair of the board of commissioners);
- Significant support exists by the governor or senior agency/authority officials for an independent OIG;
- Compensation of the IGs is determined independently of the agencies for which the IGs have oversight;
- OIG budgets are determined independently of the agencies for which the IGs have oversight.

Question No. 6 (Bureaupathologies): Have NYS IGs contributed to an increase in bureaupathologies in government organizations?

Merton (1940/1952), Crozier (1964), Simon (1945/1952b), and Downs (1967) have discussed some of the basic elements of bureaupathologies. Anechiarico and Jacobs

(1996), Moore and Gates (1986), Light (1997), and Moore (1995) discussed how OIGs could contribute to bureaupathologies. A summary of bureaupathologies related to the work of anticorruption organizations will be discussed in Chapter 2. NYS IGs have the potential to reduce government efficiency by adding to the cost of government through the cost of the IG operations themselves, or by adding additional rules and procedures that result in decision-making delays, overcentralization, defensive management, goal displacement or other bureaupathologies. In attempting to answer this question, the issues of how NYS IGs have attempted to deal with these problems and how NYS IGs may have contributed to these problems will be reviewed. Factors considered in answering this question are whether:

- The cost of OIGs increases at the expense of agency programs;
- OIGs increase the number of rules and regulations that result in additional decision-making delays;
- Agency staff, departments, or organizational levels increase to comply with OIG rules and procedures.

What Is To Follow

In order to understand the present study, some background information is required. This will be provided through literature reviews of three pertinent areas. Chapter 2 will first discuss bureaucracy and government organizations. The subjects of white-collar crime, official corruption, and fraud, waste and abuse will then be discussed in Chapter 3. This will be followed by a discussion in Chapter 4 of the development of the inspector general function.

The research methodology will be discussed in Chapter 5 and following in Chapter 6 will be a discussion of several oversight organizations that preceded those covered by this study. After that, a chapter will be devoted to each of the seven oversight organizations studied. They will be presented based on the order of their formation, beginning with the MTA OIG created in 1983 and ending with the Dormitory Authority's Office of Internal Affairs established in 1995. Following these individual OIG discussions will be a summary discussion of the findings of this study and related policy implications.

CHAPTER 2

BUREAUCRACY AND GOVERNMENT ORGANIZATIONS

Introduction To Bureaucracy

The study of inspectors general is important to the study of bureaucracy in the public sector. As will be outlined below, attempts at reform and the use of IGs and other government fraud investigators affect how government operates.

The development of bureaucracy was preceded by the development of the division of labor in society. Early works on this subject came from Adam Smith (1776/1996) and Emile Durkheim (1933). Weber (1922/1946) described the characteristics of a bureaucracy. Weber said that a bureaucracy includes: a formal structure, a hierarchy with fixed levels of authority, the maintenance of records, established procedures, and positions occupied by experts trained in their respective fields who hold these positions as a full-time vocation. Weber said that office holding in private and public organizations “is not considered a source to be exploited for rents or emoluments” and that the “entrance into an office...is considered an acceptance of a specific obligation of faithful management in return for a secure existence” (p. 199). Weber also believed that bureaucratic organizations were advantageous as they had the technical advantages of “precision, speed, unambiguity, knowledge of the files, continuity, discretion, unity, strict subordination, reduction of friction and of material and personal costs” (p. 214).

Others also supported Weber’s favorable view of bureaucracy. Merton (1940/1952) initially agreed with Weber that the modern bureaucracy was the “ideal-type” of formal organization. But Merton also described a number of bureaupathologies.

Merton discussed Veblen's concept of "trained incapacity" where "actions based upon training and skills which have been successfully applied in the past may result in inappropriate responses *under changed conditions*" (p. 364) (emphasis in original). Merton also described Dewey's concept of "occupational psychosis", in which "as a result of their daily routines, people develop special preferences, antipathies, discriminations and emphases" (p. 364). Merton also talked of the "displacement of goals" where adherence to rules results in a situation where the means becomes an end in itself. These factors result in structural overconformity. The bureaucratic structure also creates a situation in which workers become more concerned with protecting their own positions than in helping their clients or their superiors. Merton also said that bureaucracy results in employees becoming impersonal and unresponsive to the problems of citizens and that the authority they have results in their becoming domineering toward the public.

Although disagreeing with Weber's view that bureaucracy was an ideal-type, Friedrich (1952) said that a bureaucracy was "capable of attaining the highest degree of efficiency and is in this sense formally the most rational known means of carrying out imperative control of human beings" (p. 24). Mannheim (1936/1952) was concerned about the overemphasis on bureaucracy when considering governments. He said that there has been an improper attempt to consider all problems of politics as problems of public administration.

Crozier (1964) considered power relationships important in understanding bureaucracies. He found that conflicts in organizations were related to power struggles. Crozier said that earlier rational theories of bureaucracy ignored the issue of power. The

power of one person to get another person to do something they would not otherwise do (based on Dahl, 1957), counters the rational belief that there is “only one best way at each level to achieve the assigned task, and one best way also to arrange the hierarchical levels and to assign the necessary tasks” (Crozier, p. 157). Power therefore creates uncertainties in bureaucracies. Rigidity and resistance to change were also forms of dysfunctions of bureaucracies discussed by Crozier. Although bureaucracies do not handle these problems as well as non-bureaucracies, Crozier believed that bureaucracies do change often.

Others also contributed to the study of bureaucracy and its allied discipline, organizational theory. Fayol (1916/1996) was one of the first to describe some general principles of management in organizations. He covered the basic concepts of division of work, authority and responsibility, discipline, unity of command, centralization, tenure of personnel, etc. (p. 52). Taylor (1916/1996) described four early principles of scientific management designed to improve the performance and output of organizations. These principles involved: (1) studying and recording all aspects of the work process and reducing them to rules, procedures, and formulas, making the work process into a science, (2) scientific selection of employees and continuously developing and training them, (3) bringing together the science of the work process and qualified employees with an appropriate reward system, and (4) a new division of work that includes the active participation of management.

Simon contributed to the study of bureaucracy by critically reviewing some of the principles of bureaucracy and scientific management (1945/1952a and 1946/1996). Simon believed that some of the principles only superficially described the operation of

organizations and that more careful criteria needed to be developed and that these criteria should be weighted. Simon said that there were limits to which rationality impacted organizational results and that this needed to be appreciated when considering any principles of bureaucracy. Simon (1945/1952b) also discussed the inducements needed for bureaucracies to retain workers, including belief in the organizational goals, salary, status derived from one's position in the organization, the value received from the relationships with fellow employees, and values derived from the size and growth of an organization. Simon discussed the principle of "conservation of the organization" meaning that employees may be loyal to the objectives of an organization and may resist changes to those objectives (p. 332).

Government Bureaucracies

Wilson (1989) stressed the importance of organizational systems in understanding how government agencies work. Successful organizations were those that made the right decisions on how to perform their critical tasks, had a sense of mission, and had sufficient autonomy. Wilson also reported on how such factors as beliefs, interests, culture, and mission affect how government performs. He considered the following as the three key constraints on government agencies. Wilson said:

government agencies: (1) cannot lawfully retain and devote to the private benefit of their members the earnings of the organization, (2) cannot allocate the factors of production in accordance with the preferences of the organization's administrators, and (3) must serve goals not of the organization's own choosing. . . . Government management tends to be driven by the *constraints* on the organization, not the *tasks* of the organization. (p. 115).

Wilson also saw the conflict between bureaucratization and professionalization. Professionals bring expert knowledge to their agencies, but are limited in their discretion by rules that say what they are required to do and how they are to be supervised.

In considering subordinate compliance with the agency's mission, Wilson stressed the importance of government managers having some control over their subordinates' reward system. Anechiarico and Jacobs (1996) believe that strong civil service and whistleblower laws hurt these efforts to get subordinate compliance because these laws can insulate a poorly performing government employee from disciplinary action. If a poorly performing employee in danger of being terminated reports an allegation of misconduct against a supervisor, whistleblower laws protect the employee while an investigation of the superior is performed. This can delay the termination of the poorly performing employee for several years.

Wilson argued that efficiency in government has not been judged solely on a monetary calculation based on the resources used versus the value of the output. Wilson believed that there are other valued outputs by government including: "a reputation for integrity, the confidence of the people, and the support of important interest groups" (1989, p. 317). Wilson believed that when considering efficiency in government, the concern should be with government's compliance with the constraints mentioned above. Notwithstanding this, Wilson considered rules to have advantages and disadvantages. Rules create minimum standards, but people hide behind rules and rules can become the maximum standard. Wilson proposed that there be some deregulation of government to eliminate all but the essential constraints.

Reforming The Government Bureaucracy

Light (1997) believed that Americans are ambivalent about government bureaucracy. He said:

Americans may believe that the federal government creates more problems than it solves, wastes the taxpayers' money, and turns even the simplest program into a morass of red tape and inefficiency, but they still think government could be more effective if it were just better managed. (p. 44)

Light also said that Americans support any change to reform the government bureaucracy and have supported a number of approaches over the 20th century.

An early approach at reforming government organizations came from scientific management. Light (1997) reported that Gulick was an early proponent of the use of scientific management in the field of public administration (also see Taylor, 1916/1996). The narrow spans of control necessitated the need for an ever-thickening organization. Gulick (1937/1996) detailed a number of principles of scientific management for bureaucracies including: division of labor, span of control, unity of command, and basic principles of organization management and efficiency.

Barzelay and Armajani (1992) summarized what was expected under the bureaucratic paradigm for government operations:

Administrative decisions should be made in a businesslike manner, that the executive branch should be organized hierarchically, that most agency heads should be appointed by the chief executive, that most positions should be staffed by qualified people, that materials should be purchased from responsible vendors based on objective criteria and that systems of fiscal control and accountability should be reliable. (p. 3)

But the recent trends in management science have focused on the need for managers to exercise more entrepreneurialship and for organizations to be more customer driven. Early proponents of this approach were Peters and Waterman (1982) with their

emphasis on going back to basics, on making sure the organization knows its customer, and having a hands on approach to managing the organization (management by walking around). Osborne and Gaebler (1992) fostered this approach for government in their book *Reinventing Government*.

While serving as the U.S. vice president, Al Gore (1993) worked on proposals to improve government. The goal was to improve government operations and lower costs. Gore criticized the bureaucratic model saying that it belonged to an earlier era and that government agencies need to change into entrepreneurial organizations. Under Gore, the National Performance Review established the principles of “cutting unnecessary spending, serving its customers, empowering its employees, helping communities solve their own problems, [and] fostering excellence” (p. 7).

OIG oversight accountability models

The office of inspector general is about monitoring government operations for compliance with organizational goals. Light (1993) discussed three types of government accountability that could be found using inspectors general. These were compliance, performance, and capacity building accountability. Compliance accountability involves post-activity audits and investigations where the focus was on rule violation and negative sanctions. Under compliance accountability, the focus of management was on supervision and discipline and detection of wrongdoing and enforcement of laws and rules. Such audits and investigations show quick results but the benefits of this approach are short-lived and there are few assurances that similar incidents will not reoccur. Light bases this assessment on the belief that accountability based on rules must be continuously reinforced to be effective, whereas accountability is more successful if it is

based on incentives and a positive organizational environment. Performance accountability involves a focus on positive incentives through bonuses and awards as opposed to negative enforcement. Management's function involves evaluation and benchmarking. The performance accountability approach is sometimes difficult to institute due to financial and civil service limitations.

Light's (1993) third form of accountability involves capacity building. This approach involves pre-activities initiatives including developing performance incentives, increased training, use of new technologies, and other organizational efficiency enhancements. Capacity based accountability is the most complex form of accountability, has long-term impacts on the organization, and involves management in the roles of advocate and steward.

In his study, Light (1993) found a trend of federal inspectors general toward the compliance accountability model. The focus was on audits and investigations that could result in short-term indictments or recovery of assets for the government. There was less focus on helping agencies to improve the delivery of the product or service that the agency was supposed to deliver or on helping agencies change operations in order to better serve the public.

In Gore's 1993 National Performance Review report, he questioned the focus of IGs on fraud (compliance accountability) and their adversarial relations with agency managers and its negative effects. He said that instead, IGs should focus on promoting efficiency and helping management evaluate and improve their management control systems.

Light's government reform movements

In separate research, Light (1997) studied government reform from 1945 to 1995 and reported its impacts on federal government operations and bureaucracy. He defined four types of reform movements or tides as he called them. Light attempted to carefully define each of these four reform movements using their goal, key input, key products, and key participants, defining moments and defining statutes. It can be argued that there is some overlap among these movements, especially between the war on waste and the other three tides. These four movements outlined by Light were:

- 1) scientific management, based on the work of Taylor, Gulick and others (see Taylor, 1916/1996 and Gulick, 1937/1996) (goal: efficiency, key products: structure and rules),
- 2) the war on waste, which focuses on the reduction of fraud, waste and abuse (goal: economy, key product: findings from audits and investigations),
- 3) the watchful eye, which focuses on fairness and due process using freedom of information laws, whistleblower statutes, ethics laws and conflict of interest public disclosure (goal: fairness, key product: information), and
- 4) liberation management, which focuses on empowering employees, going back to basics, creating public value, making government more market driven and responsive to its consumers. It includes elements of deregulation, decentralization, competition and privatization (see Osborne and Gaebler, 1993, and Gore, 1993) (goal: high performance, key products: outcomes and results).

Light believed that scientific management as a reform approach has been mostly out of favor since the 1950s although he cites the Chief Financial Officers Act of 1990 as

a recent example of this reform approach. The war on waste approach is an old form of reform that continues to be used today. Not only is the war on waste a popular reform approach in its own right, it is quite often attached by politicians to other approaches such as liberation management (see Gore, 1993). The war on waste reform approach gained its strength with the enactment of the IG Acts of the 1970s, and according to Light, new statutes creating more IGs are still popular with the U.S. Congress. The war on waste (and IGs) prefer the imposition of structure and the implementation of procedures and controls. It also involves elements of both centralization and decentralization. IGs like central control but also rely on “decentralized implementation of a host of procurement and acquisition rules” (p. 64). Light also found that the war on waste decreases administrative speed due to its imposition of additional rules and requirements and that it also decreases employee morale. The work of IGs responds primarily to the war on waste reform, with its focus on audit and inspection.

The watchful eye reform creates new monitoring systems to search for corruption. It is also decentralized in its approach. Many people are involved in this effort, including the media, whistleblowers, interest groups, and congressional staffers. This reform approach also enlists elements of the war on waste for its success. IGs monitor compliance with the watchful eye initiatives in such ways as insuring that the requirements of conflict of interest disclosure statements are adhered to. Both of these reforms result in the elimination of wasteful government agencies, but also results in the creation of new agencies, especially those designed to monitor government actions and employees. Even though the watchful eye reform approach is critical of government bureaucracy, it too accepts the value of structure and procedures in order to accomplish

its missions. The war on waste (especially the federal IG movement) and the watchful eye reforms were also attempts to shift power from the presidency to the Congress (Light, 1997).

Light (1997) reports that even the liberation management movement results in the addition of some government structure and procedures to insure that its philosophies are being carried out. In addition, new structures, such as performance-based organizations, are formed. These organizations work under a performance contract with their parent agency without many of the government regulations that the parent agency is subject to. These performance-based organizations focus on reaching predetermined goals and their employees work toward earning incentive payments.

Moore (1995) recognized the problem that public administrators have in trying new strategies to create more “public value”. He said that the traditional doctrine of public management agencies is that they are established by formal policy declarations that contain “concrete operational guidance to managers” and that “mandated purposes and means define the terms in which managers will be held accountable” (p.17). This creates a mindset (that is exacerbated by anticorruption efforts) in which managers’ orientation is more toward control of the agency and less toward achieving goals valued by citizens. This mindset also makes changing policy mandates difficult. Moore also reported that managers are discouraged from making positive changes in the focus of their organizations because it opens them up to accusations of corruption (p. 296).

Barzelay and Armajani (1992) called the effects of scientific management on government operations the “bureaucratic paradigm”. They sought to describe the liberation management (customer driven) as the “postbureaucratic paradigm”. Light

(1997) believed that what he called the neobureaucratic paradigm (the war on waste and watchful eye reforms) would create more of a challenge to the postbureaucratic paradigm than the bureaucratic paradigm would. Light's example below describes the effect of these two reform movements on bureaucracy, by comparing traits of the bureaucratic paradigm and the postbureaucratic paradigms (taken from Barzelay and Armajani) and then adding the impact of watchful eye and war on waste reforms (shown in italics, emphasis in original):

A bureaucratic agency separates the work of thinking from the work of doing. A customer-driven agency empowers front-line employees to make judgments about how to improve customer services, *provided that the integration does not create a conflict of interest, violate prohibitions against self-dealing, or otherwise create vulnerabilities to fraud, waste, and abuse.* (p. 195)

Light (1997) was concerned that the repeating "tides of reforms" have a number of negative consequences for government. Light said that periodic attempts at reform create additional layers of government. Past layers of government are not eliminated with each new reform, but rather the new layers are added on top of the old ones creating a thicker government (see Light, 1995). Light also found that the reforms are becoming broader and more comprehensive. Instead of trying a small pilot program, a large-scale reform is instituted before its efficacy is known. The reforms also create contradictory effects and the number of reform efforts seems to be accelerating. Light proposed a number of approaches to start to deal with these problems including: "strengthening institutional memory in Congress and the presidency, ...addressing the broader causes of the current climate, and ...creating an ethic of experimentation in management reform" (1997, p. 223).

Bureaupathologies caused by oversight agencies

Anechiarico and Jacobs (1996) criticized the impact that IGs and other corruption control organizations such as New York City's Department of Investigation (part of what they call the anticorruption project) have on public administration. Rather than improving bureaucracy as originally envisioned, the anticorruption project has increased the problems of bureaupathology. Anechiarico and Jacobs believe that the anticorruption project increases bureaupathology in a number of ways by causing or contributing to:

- (1) decision-making delays by increasing the levels of approvals required and by creating an environment of caution and fear,
- (2) overcentralization because of the anticorruption project's overemphasis on central control,
- (3) undermining of authority by the transfer of agency authority to central control and the emphasis on civil service and whistleblower protections that undermine a supervisor's ability to provide employees with positive or negative sanctions,
- (4) defensive management by increasing the focus on avoiding corruption or at least increasing the perception of being vigilant,
- (5) goal displacement by focusing on the rules rather than the organizational goals,
- (6) poor morale when employees are burdened down by external controls that limit discretion and curtail public employees' privacy,
- (7) barriers to interorganizational cooperation because of strict control mechanisms and conflict of interest of rules, and

(8) adaptive strategies such as privatization and the growth of public authorities not subject to as many controls as a way to avoid the constraints caused by the anticorruption project (pp. 174-185).

Doig (1997) criticized Anechiarico and Jacobs (1996) for overstating their case as to the extent of anticorruption control and its negative impact on government. Doig argued that Anechiarico and Jacobs' contention that "whistleblowing undermines authority and efficiency in public agencies" (Anechiarico and Jacobs, p. 70) is an example of this overstatement. Doig stated that the negative effects of whistleblowing might occur on occasion, but that it is unreasonable to assume that this is a significant problem. Doig said that the appearance of corruption is a problem that should be addressed "in law and regulation" (p. 39). Other areas where Doig disagreed with Anechiarico and Jacobs were with regard to their statements about the negative effects of: competitive bidding, drug testing of employees, and the use of undercover or sting operations to discover corruption. Doig also stated that systematic approaches to think about, identify, and analyze "corruption hazards" are important in reducing corruption in government. Doig said that the problem may not be with these approaches, but with the way it was executed in New York City.

Downs (1967) also studied bureaucracies and his findings may have implications regarding the future growth of OIGs. OIGs are bureaucracies and bureaucracies take steps to insure their survival. The criticisms of bureaucracies and the bureaupathologies previously described in this paper may also affect OIGs. Downs said that all public officials are motivated by self-interest. He also expressed some other conclusions about bureaucracies that may relate to OIGs. Downs found that: organizations become more

conservative with time; pressure results in agency heads acting more as conservers of their organizations; as organizations increase in size, control by the organizational head decreases; and that over time monitoring agencies (such as IGs) demand more reporting regardless of other factors (p. 262). OIGs have been established to reduce fraud, waste, and abuse in government, but as bureaucracies themselves, OIGs will face some of the same problems that they were designed to eliminate.

CHAPTER 3
WHITE-COLLAR CRIME, OFFICIAL CORRUPTION,
AND FRAUD, WASTE AND ABUSE

White-Collar Crime And IGs

Inspectors general are agents of social control. They are law enforcers who investigate crimes committed by government officials and employees during the course of their duties. IGs also investigate frauds committed against government organizations by contractors, vendors, and other suppliers of goods and services to government. Their findings can result in such actions as disciplinary procedures against employees, disbarment for government contractors and criminal prosecutions of offenders (see Chapters 7—13).

The study of IGs can be considered under the area of criminology defined as white-collar crime. For instance, the National White Collar Crime Center has developed a definition that was based on a consensus of criminologists and other specialists that attended a national conference to consider this topic (as reported in Coleman, 1998). They defined white-collar crime as “illegal or unethical acts that violate fiduciary responsibility of public trust committed by an individual or organization, usually during the course of legitimate occupational activity, by persons of high or respectable social status for personal or organizational gain” (p. 7). Coleman’s simpler definition would work here as well when considering IGs. He defined white-collar crime as, “a violation of the law committed by a person or group of persons in the course of an otherwise respected and legitimate occupation or financial activity” (Coleman, 1989, p. 5). Either of these two definitions is sufficient to describe the types of violations investigated by

IGs. As discussed in Chapter 1, the study of IGs has for the most part been neglected. A study of these investigators of corruption, fraud, waste and abuse is therefore useful to expanding the criminological literature on white-collar crime.

Official Corruption

Corruption in government is a difficult concept to define. Jacobs (1999) said, “corruption is a political and public administration problem as well as a crime problem. A corruption scandal can trigger a political and governmental crisis” (p. 74). Even though corruption is difficult to define, it still is of interest. As Ornstein said:

Focusing on corruption, immorality, and scandal is an American pastime, a time-honored tradition of the public, journalists, and political opponents. If we had scientific public opinion surveys for the eighteenth, nineteenth, and early twentieth centuries, chances are they would show that voters have always believed that corruption had reached its peak during their lifetimes (as cited in Anechiarico and Jacobs, 1996, p. 10).

As Anechiarico and Jacobs (1996) explained, corruption is not a legal term defined in the criminal code. Simpson (1977) explained a number of approaches to defining corruption in government. Some definitions focus on the private gain. Others stress the harm caused to the public interest. Additional definitions discuss corruption from a market viewpoint and describe it as a rational form of behavior. Simpson also discussed using a functional approach to explain corruption (developed by Merton, 1968). For example, the party machine can be explained by its functions. The party machine provided a mechanism for individual members and businesses to obtain assistance from the official government structure. The party machine also assisted the socially disadvantaged advance in a socially structured society where their opportunities were otherwise limited.

Burrows (1984) provided a simple and useful definition and explanation of corruption. He said:

Corruption in government [is] the betrayal of an office or duty for some consideration... Corruption has never denoted a specific kind or form of misconduct, much less a specific crime. No one has ever gone to jail for it. It is essentially only an accusation that encompasses a large and shifting ensemble of determinate abuses – bribery, fraud, graft, extortion, embezzlement, influence peddling, ticket fixing, nepotism – not all of which have always been recognized as improper; some of which continue to be regarded as more consequential than others; [and] most of which have been defined in different ways at different times. (p. 417)

Anechiarico and Jacobs (1996) argued that corruption is a socially constructed concept and that this concept changes over time. The changes come from the public, political leaders, and from those entrusted with rooting out corruption. What might have once been acceptable subsequently becomes unethical and finally becomes criminal. For example, in the area of conflict of interest, the definition of corruption has been expanding. A conflict of interest was once deemed to exist only where one exploited the public for private gain. This concept was expanded to include putting oneself in a position where one could benefit from private gain even if one makes a decision detrimental to one's own interest. Conflict of interest has now been further expanded to mean just being in a position in which the public could perceive that a conflict of interest exists (Anechiarico & Jacobs, p. 45-46). New York City provided an indicator of the confusion caused by recent developments in conflict of interest laws. Since NYC passed its Charter Ethics Code in 1989, its conflict of interest board has averaged each year about 400 formal requests for opinions and 1000 phone calls seeking informal confidential advice (Anechiarico & Jacobs, p. 52). Doig (1997) disagreed with Anechiarico & Jacobs' use of this and other examples and believes that they overstate

their case. Doig reported that these inquiries to the conflict of interest board represent requests from only about one-half of one percent of the approximately 300,000 city employees.

According to Anechiarico and Jacobs (1996, pp. 18-28), these government efforts at corruption control take from the energy and resources that could be directed toward the business of government. They refer to these governmental anticorruption activities as the “anticorruption project”. They defined four periods in the evolution of the anticorruption project:

- The antipatronage vision of corruption (1870-1900),
- The progressive vision of corruption control (1900-1933),
- The scientific administration vision (1933-1970), and
- The panoptic vision (1970-present).

The antipatronage period focused on machine party politics and the spoils system. The focus was on finding honest officials that would be more concerned with the public interest than in the existing spoils system. One of the primary antipatronage reforms was the development of the civil service system. Anechiarico and Jacobs said that the belief during this era was that a “revitalization would be brought about by a civil service system characterized by political neutrality, tenure in office, recruitment and appointment through special training and competitive exams, and standards for promotion, discipline, salary, and retirement” (1996, p. 19).

The progressive era focused on government integrity and on reforming the political system. The goal was to establish an apolitical public sector independent of the elected politicians. Woodrow Wilson, a progressive tradition president, believed that the

solution to corruption involved completely separating public administration from party politics. Insulating reforms included professionalizing the government by hiring apolitical experts to operate it, appointing these experts to fixed terms that outlasted the current elected officials, and labeling any activities that supported the political machine as corrupt. The progressive tradition is still active today (Anechiarico and Jacobs, 1996).

The scientific administration vision sought to introduce efficiency and look at the structural design of government. The proponents of scientific administration expanded the concept of corruption to include “waste and mismanagement, noting that a lack of hierarchy, standard operating procedures, and adequate supervision contributed to corruption” (Anechiarico and Jacobs, 1996, p. 22). Their belief was that good organization would lead to government integrity. Their focus was on span of control and emphasized the need for more accounting and auditing. They proposed a system of external control, where separate groups of experts or outside monitors would investigate government operations. See the Bureaucracy section (Chapter 2) for a further discussion of scientific management and its impact on government reform and corruption control.

Anechiarico and Jacobs (1996) used Jeremy Bentham’s panoptic prison in developing their panoptic vision of the current state of government oversight. Just as all prisoners are observable in a panoptic prison, all public officials are under constant oversight. Watergate, the fiscal crisis of a number of cities in the 1970s, and each successive corruption scandal created more lobbies for additional resources for oversight and expansions in the definition of corruption. It created a system in which all public officials are perceived as potentially corruptible and what is needed are more rules, more controls, and more oversight. Some of the tools available under the panoptic vision are

corruption vulnerability assessments, investigative audits, performance audits, and internal surveillance (Anechiarico and Jacobs, 1994). The scientific administration vision described the type of work that IGs were first asked to do. In a sense, the IGs were born out of that era. Under the panoptic vision, IGs increased their role. They focused on investigative work, assumed the role of law enforcement officers, and learned to use the tools just described.

Anechiarico and Jacobs (1994) reported several revisionist criticisms of these various reform movements. These included that these reforms were not consistent with efficient and effective government operations and that these new control systems added to the cost of government. Anechiarico and Jacobs and others share a number of additional concerns with the recent approaches to government oversight. See discussions on IGs (Chapter 4) and Bureaucracy (Chapter 2) for a further development of the role of IGs and the impact of these new oversight approaches on government operations.

Fraud, Waste, and Abuse

The concepts of fraud, waste and abuse became linked together with the development of the U.S. Inspector-General Act of 1978. Moore and Gates (1986) said that these seemingly dissimilar terms have only recently been linked together as one concept. They found the concept of fraud to be the clearest. Moore and Gates said that fraud “defines situations in which some potential claimant against the government...willfully misrepresents some fact that entitles him to something of value from the government...and the government provides the payment of service even though it is undeserved” (p. 17). Fraud is clearly a criminal act as it involves a willful deception

of the government. Moore and Gates believe that the concepts of waste and abuse are more ambiguous because although there is a loss to the government, the nature of the culpability of the person responsible is in question. Some acts that result in waste or abuse may be the result of negligence or mismanagement. In addition, with waste and abuse, it may be difficult to objectively determine the amount of the loss.

Moore and Gates (1986) said that waste and abuse involve questions about whether or not sufficient value was received from government programs and that this value is difficult to define. One approach is to look at whether the goals of the government program are met. This approach gives managers more flexibility in delivering services, but it makes it more difficult for IGs to review because the evaluation becomes subjective. Another approach is to specify all of the rules under which a program should operate. This makes it easier for the IG to conduct an objective evaluation of a program, but removes flexibility from managers to react to changing circumstances or resolve difficult or unusual cases.

CHAPTER 4

DEVELOPMENT OF THE INSPECTOR GENERAL FUNCTION

The Federal IGs

Corruption has existed in American government since the founding of the republic. As a result of a scandal involving George Washington's colonial army, the Continental Congress established the first American inspector general (Light, 1993, p. 26). Thereafter their function was mostly to examine government accounts and vouchers. The Budget and Accounting Act of 1921 established an executive branch agency called the Bureau of the Budget (later changed to the Office of Management and Budget) and a congressional accounting and auditing organization named the General Accounting Office. The first modern IG office was established in 1921 for the Department of State. The initial title was inspector general and comptroller. Under changes made in the Foreign Assistance Act of 1961, the comptroller title was dropped and the IG became a presidential appointment subject to senate approval. The role of the State Department IG changed and a "new mandate section created a significant oversight role for the OIGs, requiring that they assess whether the programs of assistance were aiding in the attainment of their objectives. Furthermore the words economy and efficiency appeared for the first time in connection with IGs" (p. 29).

The Department of Agriculture and the Housing and Urban Development Agency each created non-statutory IGs in the wake of scandals in their agencies in 1962 and 1969, respectively. According to Light (1993), the IG concept gained congressional supporters in the 1970s because of the political advantages of this type of fraud busting

and the need by congressional committees to gather information from various federal agencies. Congress saw that this type of corruption control could recover monies that were lost to fraud or waste and also that the publicity associated with these types of cases could be used to their advantage. Scandals at Health, Education and Welfare led to a 1976 act establishing an IG for that department.

The most significant legislation affecting federal IGs came in the form of the Inspector General Act of 1978 (Light, 1993). This year also included the passing of such additional reform legislation as the Civil Service Reform Act and the Ethics in Government Act. The Inspector General Act of 1978 and its subsequent amendments (IG Act) (see Inspector General Act, 2001) authorized the establishment of IGs for all federal agencies. The IG Act stated that its purpose was to:

Create independent and objective units: (1) to conduct and supervise audits and investigations relating to programs and operations of the establishments...; (2) to provide leadership and coordination and recommend policies for activities designed to prevent and detect fraud and abuse...; and (3) to provide a means for keeping the head of the establishment and the Congress fully and currently informed about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

In addition, the IGs have duties related to review and comment on existing and proposed legislation, and to recommend policies for efficiency and the reduction of fraud and abuse with regard to relationships among federal agencies, with state and local governments and with nongovernmental entities.

The head IG for each agency is appointed by the president and confirmed by the US Senate. The IG Act states that these IGs are supposed to be “appointed without regard to political affiliation and solely on the basis of integrity and demonstrated ability in accounting, auditing, financial analysis, law, management analysis, public administration

or investigations.” The president may remove any IG and in fact, upon his assuming office in 1981, President Ronald Reagan asked for the resignations of all Carter IG appointees, confirming that the positions were political appointments (Light, 1993). The IGs report to both the executive branch and to Congress. Reporting includes mandatory semiannual reports and immediate reporting of serious problems. The federal IGs have broad powers to investigate fraud, waste and abuse involving agency employees, programs and contracts. They are also authorized to conduct efficiency and evaluation studies. IGs were designated to receive and investigate complaints from agency employees “concerning the possible existence of an activity constituting a violation of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority or a substantial and specific danger to the public health and safety” (Inspector General Act, 2001). IGs are also mandated to report to the US Attorney General violations of federal criminal law that come to their attention.

The number of federal IGs has expanded. Light found that the number of IG operating units increased from 43 in 1980 to 68 in 1989 (1993, p. 176). Today, all federal agencies and corporations are required to have OIGs. The IG Act mandated the appointment of two assistant IGs, one for audit and one for investigation. Most agencies started with two units (one for audit and one for investigation). But as their organizations became larger and more complex, IGs added more units to their operations. For instance, Light found that Health and Human Services “expanded into five units – Administration, Audit, Health Financing Integrity, Investigations, and Program Inspections” (p. 178). Many federal OIGs also established their own office of general counsel and personnel departments.

Lone Wolf Or Strong Right Arm

In studying the development of the federal IGs, Light (1993) discussed the development of the job description of these IGs and the level of independence that they would have from the agencies they oversee. Would these IGs be close to their agency heads and effectively work as their strong right arm or would they be totally independent from these agency heads and function as lone wolves in their pursuit of fraud, waste and abuse in their assigned agencies? In their work, Moore and Gates (1986) used similar descriptors of “man’s best friend” and “junkyard dogs.” For the federal IGs, there would be a compromise on this question. For the most part, these IGs would work closely with their agency heads. They had to because of structural factors included in the IG legislation. The President appoints IGs and they serve at his pleasure without a fixed term. IGs have to negotiate their budgets with their respective agencies each year. And IGs are also subject to a bonus reward system that is overseen by their agency heads. On the other hand, the US Senate confirms IGs and if removed by the President, the reasons for the removal must be communicated to both houses of Congress. In addition, the IGs have a reporting responsibility to both the executive branch and to the US Congress.

In January 1981 President Ronald Reagan provided an early demonstration of the power that presidents exercise over federal IGs. President Reagan terminated all federal IGs currently in office the same month he assumed the presidency. Reagan told Congress that he needed to appoint his own IGs so that he would “have the fullest confidence in the ability, integrity and commitment of each appointee” (*Weekly Compilation of Presidential Documents*, January 26, 1981, as cited in Light, 1993, p.102).

Some IGs work well with their agency heads as they share a common goal of improving government. Other agency heads are antagonistic towards their IGs as they want to avoid any negative publicity that the IG's work may bring. Figura (1998) reported examples of these situations where under the Clinton administration, Health and Human Services Secretary Donna Shalala worked well with her IG, June Gibbs Brown. Although they did not always agree on all matters, they shared a common goal of "an absolute commitment to a zero tolerance for fraud" (p.12). Figura reported that the relationship between Housing and Urban Development Secretary Andrew Cuomo and IG Susan Gaffney was characterized as being difficult and tense. This may have been due in part to Andrew Cuomo's political ambition and his desire to avoid any negative publicity regarding his stewardship of his agency. The answer to how successful IGs will be in accomplishing the mission of their office may depend on a number of factors including the personal fortitude of the IGs in exerting their independence and at the same time winning over the chief executive of the agency to accept the mission of the OIG. The structural factors in establishing an independent IG are also important to the success of the OIG, but the personal factors may be just as important.

Local Government IGs

Although there was little perceived need for significant numbers of OIGs in federal government service until the 1970s, the need for corruption control existed in cities such as New York City, that were plagued throughout their history with political corruption and scandals. In 1873, the New York State Legislature established the Office of the Commissioners of Accounts (OCA) (Winslow and Burke, 1993). This city office

(subsequently renamed the Department of Investigation in 1938) gained subpoena power in 1883 and had the authority to investigate all aspects of New York City's administration. Initially with a small staff (15 in 1895), the OCA was involved in the examination of accounts. This mandate expanded in 1898 to the examination of contract work. The staff also expanded by this time to 74, including six engineers. By 1910, the city's population had grown to five times that of 1880 (this growth included the consolidation of the outer boroughs). The OCA mandate increased and it became involved in experiments and projects to improve the efficiency of public administration. From 1910 to 1913, the OCA was involved in a number of criminal investigations that resulted in 96 indictments, the ouster of the Queens Borough President and investigations into corruption in many agencies, including the city's police department.

Winslow and Burke (1993) reported that during the 1920s, the Commissioner encouraged citizens to file complaints against city workers and accepted complaints from public employees who accused the city of unfair treatment or termination. In 1934, reform mayor Fiorello LaGuardia took office and as a result of a revision in the city charter in 1938, the Commissioner of the Department of Investigation received the power to "make any investigation directed by the Mayor and Council...and is authorized and empowered to make any study or investigation which in his opinion may be in the best interests of the City, including but not limited to investigations of the affairs, functions, accounts, methods, personnel or efficiency of any agency" (NYC Charter, §803, 1938, as cited in Winslow and Burke, p. 32).

In 1970, Mayor John Lindsay issued an executive order requiring all city agencies to set up a designated receiver of complaints. Prior to this order, a number of agencies

had set up their own inspector general offices. After this executive order, all agencies set up their own IG offices. The IGs received the complaints, investigated disciplinary ones and referred criminal investigations to the DOI. During this time, criticism of the DOI came from the Knapp Commission for DOI's failure to investigate police corruption and from a city council hearing that accused DOI of a cover-up in connection with a municipal loan program. One positive outcome of the Knapp Commission hearings for the DOI was to raise concern to strengthen the city's anticorruption capabilities (Winslow and Burke, 1993).

In 1978, Mayor Edward Koch hired more investigators and expanded the IG program to 30 agencies. Koch's executive order empowered the DOI to "make any study or investigation...including but not limited to...the affairs, functions, accounts, methods, personnel or efficiency of any agency" and the agency IGs were mandated to engage in "the investigation and elimination of corrupt or other criminal activity, conflicts of interest, unethical conduct, misconduct and incompetence within their respective agencies" (Executive Order 16, 1978 as cited in Winslow and Burke, 1993, p. 66). Winslow and Burke reported that the DOI exercised greater control over the agency IGs and the DOI became a model for municipal corruption control both nationally and internationally. Eventually, in 1986, the mayor consolidated the agency IGs with the DOI and by 1989, the last year of the Koch administration, the DOI had a budget of \$27.7 million and a staff of 710. This consolidation of the city agency IGs into the DOI will be discussed further in Chapter 8.

State Government IGs

Some states have adopted the IG system. Massachusetts was the first state to establish a statewide OIG. This office was established in 1981 as the result of a 1980 legislative act after a construction procurement scandal (Massachusetts OIG, 1998). The New York State Office of Inspector General was instituted by executive order of Governor Mario Cuomo in 1984 (New York State Office of State Inspector General [NYS OSIG], 1990). In New Jersey, the state OIG was not established until 2000 (Zarate, 2000). Some individual state agencies have also established their own OIGs. Straub (1997) studied corruption control at the New York State Department of Correctional Services (DOCS). See Chapter 6 for a further discussion of the DOCS OIG and several other NYS oversight offices established prior to the federal IG Act of 1978.

CHAPTER 5

RESEARCH METHODOLOGY AND DESIGN

Introduction

This study uses the historical methodology research approach. This dissertation research is a history of the OSIG for the State of New York and for the oversight organizations at six NYS agencies or authorities. Histories and case studies have been written of the New York City Department of Investigation (Winslow and Burke, 1993, and Anechiarico and Jacobs, 1996). Straub (1997) studied corruption control and the OIG for the NYS Department of Correctional Services for the period 1970 to 1990. Moore and Gates (1986) and Light (1993) have written scholarly studies of the federal IGs' offices. This dissertation research will use methodology employed by Moore and Gates and Light and will also test some of their research findings for federal IGs using NYS IG data. This research on NYS OIGs also incorporated some of the research questions that Anechiarico and Jacobs used to study the NYC DOI.

Historical Research Methodology

This dissertation research involves the recording of the case histories of a total of seven NYS oversight organizations and background histories on several others. Denzin (1989) stated that a case history is "a history of an event or a process" and that it may be useful for case studies and case histories to accompany one another (p. 48). Shafer (1974) reported that there are many uses for history, especially in the United States in the areas of legislative, judicial, and political policies. He also said that historical studies are

useful for studies in areas such as “law, social and behavioral science, philosophy, and others” (p. 20). Gottschalk (1969) saw a connection between the historian and the social scientist as “both are interested in the past, the present, and the future...” (p. 32).

Gottschalk said that some historians are in effect social scientists of the past.

R. F. Clark defined the historical method “as a systematic body of principles and rules designed to aid effectively in gathering the source-materials of history, appraising them critically, and presenting a synthesis (generally a written form) of the results achieved” (cited in Garraghan, 1946, p. 33). Shafer (1974) said that there are three undisputed elements of the historical method: (1) learning about the categories of evidence, (2) collecting evidence, and (3) communication of the evidence.

There are many categories of evidence including documentary, physical, and oral evidence. Documentary evidence can come from either primary or secondary sources (Nelson, 1997). Nelson said that primary sources are “raw data or information without analysis or interpretation. They are the building blocks from which the analytical literature of the discipline is built” (p. 4). She also said that secondary sources “involve the selection, evaluation, analysis, or synthesis of data or information” (p. 5). See Gottschalk (1969) for general descriptions of a range of sources of written documents including: contemporary records, confidential reports, public reports, written questionnaires, government documents and expressions of opinions (pp. 89-117). Also see Nelson (1997) and Thurman, Parker, and O’Block (1999) for descriptions of a number of available historical sources applicable to criminal justice research and for other research guidance. Some of the documents needed for this dissertation involved research at the NYS Archives and the NYS Library (both located in Albany, NY) and

searching of this library material involved methods described by Carter (1981) and New York State Library (1997).

Shafer (1974) said that oral evidence could take the form of a personal interview of an eyewitness to the events under study. He indicated that when conducting interviews, questions of a person's truthfulness and memory needs to be considered.

Denzin (1989) described the problem of bias in personal accounts:

A story is always an interpretive account; but of course, all interpretations are biased. However, many times a storyteller neglects important structural factors that have impinged on his or her life. Or, if such forces are addressed, they are interpreted from the teller's biased point of view. Many times a person will act as if he or she made his or her own history when, in fact, he or she was forced to make the history he or she lived. (p. 74)

Checking information provided in interviews to documentary sources and to other interviewees can reduce some of these problems.

This research called for interviewing executives and former executives of OIGs about their participation in the development of these offices over a period of time. As a result, these interviews will share some of the elements of an oral history or personal experience story. Denzin defined an oral history as "personal recollections of events, their causes and effects" (1989, p. 48). Atkinson (1998) provided guidance on three steps involved in conducting these interviews. He said that the three steps are: (1) preparing for the interview, (2) conducting the interview, and (3) interpreting the interview. His preparatory steps included: deciding whom to interview, explaining the purpose, taking time to prepare, creating the right setting, and developing questions. Atkinson discussed the importance of guiding the questions and getting the information needed. In interpreting interviews, he discussed the importance of reviewing for internal

consistency, and checking validity through corroboration and by reviewing the interview story's persuasiveness.

After historical evidence is collected, it needs to be used. Shafer said:

Using evidence requires knowledge of (a) external criticism, which determines the authenticity of evidence; (b) internal criticism, which determines the credibility of evidence; (c) the grouping of evidence in relationships of various sorts; (d) the interpretation of evidence in the light of many factors and in the absence of others; and (e) exposition or the communication of evidence to others. (p. 117).

External criticism is a process of authentication of the evidence, especially with regard to authorship and dating. Internal criticism involves an understanding of the evidence, both the literal meaning and the real meaning of the words. Words have different meanings based on their time and place. Historians use "the rule of context" whereby they look to what precedes or comes after a passage to aid in interpreting the statement under consideration (Shafer, 1974, p. 142-3). Shafer also described a number of other sources of error in evidence to be considered, including: "ignorance...bias... falsification...cultural difference...self-delusion and mental imbalance, and the misuse of evidence by adherence to a dubious scheme of interpretation" (p. 144).

Other concerns include the ability of witnesses to have been in a position to actually make the observations that they are claiming to have made. Documents should also be critically examined to see if the writer was in a position to observe what is being reported, to ascertain the time relationship between when the event occurred and when the document was written, and to understand the intent of the writer in preparing the document. Gottschalk also reported that "the historian has to deal with documents whose authors, though otherwise competent to tell the truth, consciously or unconsciously tell

falsehoods” (p. 155). Shafer (1974) provided a useful checklist of questions for examining evidence for internal criticism (p. 157).

Shafer (1974) said that using evidence involves synthetic (mental process) operations. These operations involve analysis and synthesis. During this process, the historian needs to avoid bias and to strive for objectivity and to reduce subjectivity. The selection of relevant data is an important process, which is aided by developing working hypotheses or research questions. A final synthesis is then undertaken, involving such processes as interpretation, emphasis, arrangement (either chronologically, geographically, or topically), and inference. Gottschalk said that at the writing stage of a research project, a declarative thesis statement should be developed including four aspects that will guide in selecting what is relevant. He identified these aspects as “biographical, geographical, chronological, and functional” (p. 210).

An important point made by Gottschalk (1969), Garraghan (1946) and others about the historian’s report should be noted. Any historical report is not an entire history of the past (history-as-actuality). A historian’s work is only a limited selection from the available and credible recorded portion of the past (history-as-record).

Design Of This Study

Data and sample

This study was conducted using primary documents, secondary sources and semi-structured interviews. Primary documents included legislative records and reports obtained by visits to the NYS Archives and NYS Library in Albany, New York. Other primary documents obtained included executive orders issued by New York governors

and individual agencies or authorities, reports prepared by the IG offices, and some schedules and reports prepared by the IGs at my request. Secondary information obtained included newspaper and magazine articles obtained primarily from *The New York Times* and other New York City papers as well as other regional newspapers, other popular or professional newspapers and magazines, press releases, and scholarly journals.

Semi-structured interviews were conducted of 19 current and past IGs, IG senior staff and other agency officials related to the seven oversight organizations mentioned in Chapter 1. The interview questions were designed to elicit the history of each oversight office and to provide information regarding each of the factors to be considered in answering the six research questions as described in Chapter 1. Fifteen separate interviews were conducted, 13 were in-person interviews and two were conducted over the telephone. In four interviews, there were two individuals present (done at the request of the interviewees). For each OIG selected (see below), interviews were requested from each of the current and most recently retired IGs. In addition, an interview was requested from an additional agency or authority official in order to obtain an outside perspective of the work of the OIG. A list of the 19 individuals interviewed is included as Appendix II. The interviews were conducted using a script prepared in advance and most interviewees requested to review the script prior to the interview. Interview transcripts were coded using ATLAS.ti™ qualitative research software.

I also obtained membership in the Association of Inspectors General and attended three of their national conferences. In addition to attending many conference sessions, I gained access to numerous IG professionals and participated in many informal discussions regarding the issues raised in this dissertation.

A total of seven oversight organizations were examined in detail for this study and were subject to analysis using the six research questions. The Office of State Inspector General has primary responsibility for investigating fraud, abuse and corruption in all state agencies and authorities under the control of the governor. This OIG is examined in Chapter 8 and is discussed throughout this dissertation. As will be described in Chapter 8, the deputy IGs employed in each of the state agencies were merged into the OSIG. The impact of this consolidation will also be examined in Chapter 12 (DOL OIG) and Chapter 13 (Dormitory Authority OIA). The two significant statutory OIGs, the MTA OIG (Chapter 7) and the Office of Welfare Inspector General (Chapter 11) are also included. The Port Authority OIG is discussed (in Chapter 10), as this is a unique OIG overseeing a transportation authority with jurisdiction in the states of New York and New Jersey. The Javits Center OIG is included in this dissertation as it was a successful OIG and one that was eliminated after the worst corruption problems at that agency were eliminated and the remaining oversight functions transferred to other offices (Chapter 9).

The following other oversight offices, past and present, are also discussed in this dissertation but complete data analyses were not done on these organizations. Past oversight organizations include: the State IG for the NYS Militia, the Welfare IG of the 1970s, and the Program Assistance and Review Office of the Division for Youth (all discussed in Chapter 6). Current oversight offices discussed but not analyzed include: the NYS Department of Correctional Services OIG (DOCS) (Chapter 6) and the NYS Office of Temporary and Disability Services, Office of Audit and Quality Control (Chapter 11). Oversight at DOCS was examined by Straub (1997). The only other NYS OIGs not covered in this study were at the Department of Tax and Finance (briefly discussed in

Chapter 8) and the Workers Compensation Fraud OIG. Both of these OIGs deal with violations similar to those investigated by the DOL OIG and were therefore deemed unnecessary to include in this study. An OIG has been started for the state courts but due to its small size and recent formation, it was excluded. An OIG has also been started at the NYS Power Authority, but the IG for that office was on loan to a commission studying the New York City school system and he declined to participate in this study.

Seven current NYS OIGs were examined using the data analysis described below and five additional oversight offices were examined to a lesser extent. This selection of oversight offices should provide results that are representative of New York State OIGs. How well the findings of this research are generalizable to other states will be discussed in Chapter 15.

Data analysis

From the data collected, individual histories of each of the oversight offices were written and form the basis of Chapters 7—13. In addition, the data was reviewed for the factors needed to answer the six research questions. Data from any of the sources previously described that would be useful in providing insight into the factors related to each of the questions was considered (relevant factors are listed after each question in Chapter 1). The ATLAS.ti™ qualitative research software proved useful for this procedure. For instance, many interview questions were specifically designed to elicit answers related to one or more of the factors established in Chapter 1. All responses were coded for whatever factors that may have relevance to. All other data analyzed (from government reports, newspaper accounts, press releases, etc.) was also examined for the relevant factors for each of the research questions. Similar data was sought for

each OIG analyzed in order that any different findings amongst oversight offices would reflect differences in the evidence (the data obtained regarding the factors for a particular question) and not differences in data gathering.

Based on the data collected regarding the factors for each question, an assessment was then made whether the position stated in the question was either confirmed or contradicted. These findings are stated in one or more tables in each of Chapters 7—13. The findings in the tables are designated by the terms: strongly confirms, confirms, neutral, contradicts, and strongly contradicts. The basis of a finding of “confirms” indicates that the weight of the evidence (the data obtained regarding the factors for the question) supports the factors and therefore supports answering the question in the affirmative. Where such evidence is overwhelmingly favorable to the factors, a finding of “strongly confirms” is given. For example, as discussed in detail in Chapter 9 (the Javits Center OIG), Question No. 1 is answered “strongly confirms” because the evidence indicated that the actions of this OIG resulted in a significant reduction in organized crime at the Javits Center, which contributed to it becoming a profitable operation.

A “neutral” finding indicates that the evidence included in the analysis has a balance of confirming and contradicting factors. A finding of “contradicts” indicates that the weight of the evidence does not support the factors and therefore supports answering the question in the negative. Again, where the negative evidence is overwhelming, a finding of “strongly contradicts” is given.

The review of the history of the respective oversight organizations in each chapter includes descriptions of much of the data related to the factors for each question. In addition, each of these chapters also contains a discussion of the findings for each table

provided and these discussions highlight some of the most significant factors that determined the findings.

Protection Of Human Subjects

In conducting research it is essential to act in an ethical manner. Punch (1994) said that ethical concerns “revolve around issues of harm, consent, deception, privacy, and confidentiality of data” (p. 89). These issues are also discussed in the City University of New York (CUNY) (1999) *Principal Investigator’s Manual*. The CUNY focus is to minimize risk to research subjects through carefully planned research that has been subject to rigorous review and by insuring that there is informed consent by research subjects. In their discussion of interview techniques, Fontana and Frey (1994) also considered the issues of privacy, informed consent, and protecting subjects from harm. Prior to commencing this research project, an application for human subjects approval was submitted to, reviewed by, and approved by the CUNY Graduate School and University Center Office of Research and Sponsored Programs.

Summary

Using the methodology described above, this study will provide a history of seven NYS oversight organizations. Throughout this research, six research questions will be considered. These questions are:

Question No. 1 (Government accountability): Have NYS IGs increased NYS’s capacity to reduce fraud, waste, and abuse?

Question No. 2 (Proactive or reactive response in a political environment): With regard to the type of oversight they exercise, do NYS IGs fit the model of routine “police-patrol”

oversight through routine investigations and audits rather than the model of “fire-alarm” oversight more common to scandal-oriented investigations?

Question No. 3 (The panoptic vision): Have NYS IGs adopted the panoptic vision of oversight in carrying out their work?

Question No. 4 (Forward thinking models): Do NYS IGs devote more attention to compliance accountability activities than performance and capacity building accountability activities?

Question No. 5 (Independence): Do statutorily appointed IGs have a higher level of independence than those appointed by executive order?

Question No. 6 (Bureaupathologies): Have NYS IGs contributed to an increase in bureaupathologies in government organizations?

As mentioned in Chapter 1, what will follow next is a chapter that will briefly discuss several NYS oversight organizations that preceded those covered by this study (Chapter 6). After that, a chapter will be devoted to each of the seven oversight organizations studied (Chapters 7—13). They will be presented based on the order of their formation, beginning with the MTA OIG created in 1983 and ending with the Dormitory Authority’s Office of Internal Affairs established in 1995. Each of these chapters will include one or more tables and discussions summarizing the research findings as they pertain to the six questions noted above. The findings in the tables will be designated by the terms: strongly confirms, confirms, neutral, contradicts, and strongly contradicts. Following these individual OIG discussions will be a summary discussion of the findings of this study (Chapter 14) and a discussion of the study’s implications (Chapter 15).

CHAPTER 6
EXAMPLES OF NEW YORK STATE OVERSIGHT
ORGANIZATIONS THAT PREDATED 1978

A Brief Background On New York State

Before commencing a discussion of the oversight organizations for New York State, it might be useful to provide a brief description of the state and its governance. NYS has a population of approximately 19 million people and an area of 54 thousand square miles. It is home to international financial markets (including the New York Stock Exchange) and to the headquarters of the United Nations. The state has 62 counties, 62 cities and 1,485 towns and villages. Major elected offices (four year terms) include the governor, lieutenant governor, attorney general, and comptroller. The state has a two-house legislature with 61 senators and 149 assembly members (NYS Department of Economic Development, 2002).

New York state politics is very aggressive as it is in other states with annual battles fought by various interest groups including organized labor and business supporters. Republicans control the State Senate and the Democrats control the Assembly. There are about 2 million more registered Democrats than Republicans in the state (Perez-Pena, 2002c). Perez-Pena (2002d) characterized the rules covering lobbying, campaign financing, and gifts to public officials in NYS as lax. Rules in both houses of the legislature make forcing floor votes extremely difficult, resulting in the legislative leadership having tremendous power over the outcome of pending legislation and the operation of the legislature itself. Important legislation is usually negotiated between the

governor and the legislative leaders. The longtime legislative leaders are Senate Majority Leader Joseph L. Bruno and Assembly Speaker Sheldon Silver. Public hearings on pending legislation are rarely held (McKinley, 2002 and Perez-Pena 2002d).

Prior Oversight Organizations

The concept of government oversight in NYS developed prior to the federal government enacting the Inspector General Act of 1978. Although most of the oversight apparatus currently in place was developed after 1978, there were a number of NYS agencies working to reduce corruption, fraud, waste and abuse prior to 1978.

The New York State Militia

The use of the term inspector general has historically been associated with the military. Scandals were reported in connection with George Washington's Continental Army. The Continental Congress established an inspector general to deal with fraud and abuse in the military at the time of the founding of the country (Light, 1993). The first use of the term state inspector general for New York State also came from the IG office established to monitor the state's militia. State records are not complete in this area, but reports of the activities of the state IG for the militia were filed and retained by the NYS Library for the years 1852—1868 and 1893—1896.

The state IG for the militia was established in 1851 by a general order of the commander-in-chief of the state militia (the governor) pursuant to his authority under the Militia Law of 1851 (Inspector General of the State of New York [IGNY], 1852). The IG's role was "to promote organization of military units...aid in improving their organization...to inspect...and to make reports of all his proceedings to the Commander-

in-Chief' (p. 4). The IG traveled around the state inspecting the various state militia units. His work also included reporting on the collection of taxes to help pay for the militia. During this era, every able-bodied male between the ages of 18 and 45 was required to be part of a militia unit and annually appear in company parade or pay an annual tax of fifty-cents (commutation tax). Another role of the IG was to report on the collection of the debt that the federal government owed the state resulting from the War of 1812 (IGNY, 1854).

The Militia Act was amended in 1854 to include a statutorily created IG whose role was to inspect all aspects of the state military and to report to the commander-in-chief. During this time, the IG reported that the military was insufficiently funded due to the failure of local tax collectors to collect the commutation tax and a failure by the state to provide promised funding (IGNY, 1856). In 1862 the IG reported on the callout of the militia as a result of the start of the Civil War in 1861 (which the IG referred to as the "hostilities"). The IG reported that there was much confusion in the deployment of 30,000 troops and that soldiers were rushed to the frontlines without adequate supplies of arms, clothes, and equipment. Another role of the IG during 1861—1862 was to oversee the expenditure of \$3 million of funds received from the federal government for the NY military (IGNY, 1862).

With the enactment of the Militia Law of 1862, the term state militia was replaced with national guard (IGNY, 1864). The year 1863 appeared to be a difficult one for the IG. The IG was sent to New York City to report on the defenses there. The IG report indicated that the city was without troops to protect its forts and that all of the warships protecting the harbor had been relocated to other areas of the nation. The IG was given

the task to coordinate requests for troops to be assigned to the forts in NYC and Brooklyn. In addition, the IG reported on the draft riots of 1863. The IG criticized the draft and its implementation. His report said:

The Conscription Act was a new thing in this country. Its harsh features were repugnant to the ideas of our people, which repugnance was increased, rather than decreased. . . Many intelligent persons believed that it was being operated unfairly and with partisan discrimination against individuals, classes and localities. (IGNY, 1864, p. 24)

The later period for which reports are available (1893—1896) included discussions of musters and inspections of troops, facilities and equipment covering various units including cavalry, infantry, artillery, signal corps and naval militia. These reports mentioned such diverse activities as the militia's deployment during a trolley strike in Brooklyn and the fighting readiness of the state's naval battalion (IGNY, 1895).

It is interesting to note that the modern Office of State Inspector General would assume the role of reviewing the operations of the state's National Guard, as it is presently constituted (Chapter 8). A significant investigation of abuses of National Guard armory leases conducted under the leadership of IG Joseph Spinelli, resulted in the guilty plea by an armory superintendent on charges of receiving unlawful gratuities and the forced retirement of a National Guard colonel (New York State Office of State Inspector General [NYS OSIG], 1994). In another case that occurred during the leadership of IG Roslyn Mauskopf, the OSIG investigated the circumstances surrounding the failure of the National Guard's first attempt to certify a woman pilot for combat fighter pilot duty. This detailed investigative report totaling 215 pages serves as a comprehensive case study on the difficulties of gender integration in the military and

should be of interest to military and political leaders and students of gender issues (NYS OSIG, 1997a).

The Welfare Inspector General of the 1970s

A more recent example of IG oversight for NYS came in the 1970s with the establishment of the first NYS Office of Welfare Inspector General. This OIG was created pursuant to Chapter 601 of the Laws of 1971. On August 23, 1971, Republican Governor Nelson A. Rockefeller appointed George F. Berlinger to serve as the first OWIG IG. Berlinger was a businessman and philanthropist and previously served as the vice chairman of the NYS Board of Social Welfare (this board's functions were subsequently given to the State Department of Social Services). This first Welfare OIG was created during a time when the perception was that the welfare rolls were growing out of control (Ennis, 1986). According to OWIG's first annual report:

In 1970, welfare rolls in New York State stood at the highest level in history. In the decade 1960 to 1970, the number of welfare recipients had tripled, and the cost of this assistance had multiplied nearly ten times. Welfare, as a public program, was the object of increasing public concern. (New York State Office of Inspector General [NYS OWIG], 1972, p. 1).

During 1971 a total of 32 investigators were hired, almost 3,500 complaints were received, 98 cases investigated, with 92 being referred to local social service commissioners for follow-up and six cases referred to local district attorneys. Studies were also done of emergency housing practices and procedures that required employable welfare recipients to report to state employment offices (NYS OWIG, 1972).

Conflicts arose early between the Welfare IG and the NYC administration. From the following excerpt in Berlinger's first annual report, it was evident that there was

probably no spirit of cooperation between the city's social services administration and

OWIG:

Information from specific studies and inquiries indicated a general attitude of laxness in administration which appears to permeate the city system from top administrators down, a lack of concern about the fiscal aspects of welfare administration and widespread failure to follow established procedures. As a result of these shortcomings, record keeping in the City's system is so chaotic and unreliable...

Examples of haphazard administrative practices are legion...

Similarly, while there have been repeated assurances from the City Commissioner of Social Services that needed reforms are planned for the future, there is little evidence of immediate corrective action. Chronic administrative ills continue to plague the system unabated. (NYS OWIG, 1972, pp. 5-6).

According to Ennis (1986), during Berlinger's three years as Welfare IG, he "clashed frequently with local administrations of both parties in various parts of the state, particularly in New York City with the administrations of Mayors John V. Lindsay and Abraham D. Beame" (p. 28). In Berlinger's subsequent annual reports, he continued to attack NYC's administration of its welfare system, going so far as to say:

The present condition of the New York City Department of Social Services makes it virtually impossible to reorganize or re-orient the staff to produce a meaningful operation within less than five years. As our studies over the past year have shown, misadministration of welfare in New York City is a major scandal—haphazard administrative practices and poor performance permeate the entire system. (NYS OWIG, 1973, p. 25-26)

It should be noted that these claims were supported by his annual reports that detailed the results of specific investigations and studies of NYC's welfare operations.

Berlinger resigned his position as Welfare IG in 1974 in order to campaign for then Governor Malcolm Wilson and was replaced by his deputy IG, William F. Meyers (Ennis, 1986). Wilson failed to retain the governor's seat and Democrat Hugh L. Carey was elected instead. One of Carey's early acts was to terminate Myers and order the

abolishment of OWIG. Assembly Republicans argued that OWIG had saved the state millions. Democrats countered that the office was used to embarrass NYC and proposed instead that OWIG be made part of the state comptroller's office (Narvaez, 1975). After legislation was passed in May 1975, OWIG was transferred to the comptroller's office (then known as the Department of Audit and Control) effective July 1, 1975.

Richard V. Horan became the next Welfare IG on July 7, 1975. His office had a budget of approximately \$1.5 million, which was down approximately \$100,000 from the prior year. At that time, the total spent statewide on welfare programs was approximately \$6 billion, with 50 percent coming from the Federal government and 25 percent each from the state and local governments. The state's portion, approximately \$1.6 billion, represented 15 percent of the total state budget. Some local governments complained that welfare spending represented as much as 50 percent of their annual budgets (NYS OWIG, 1976).

OWIG continued to conduct studies and individual case investigations. While the newly located OWIG reported problems with specific programs in NYC, the tone of its reports were less confrontational toward the city. Horan's first annual report did conclude though that the conditions of the welfare system were rife with fraud, waste and abuse:

The Office of Welfare Inspector General, through a series of studies and analyses, has estimated that nearly \$1 billion, or almost 1/6 of the total welfare bill, is being dissipated through recipient and vendor fraud, administrative error, or unnecessary and overbilled services...OWIG believes that a stronger commitment must be made by the State and local administrators of Public Assistance and Medical Assistance Programs in order to insure that only the truly needy and deserving poor receive the benefits of our welfare system. (NYS OWIG, 1976. p. 23-24)

From July 1975, when OWIG became part of the state comptroller's office, until its dissolution in 1981, three individuals served as IG. In 1979, then Comptroller Edward V. Regan instructed OWIG to change its focus from investigating individual complaints received to using a more systems audit approach to identify fraud using "computer matches and sophisticated statistical methods" (NYS OWIG, 1980, p. ii). In addition, studies were conducted regarding the administrative costs to run welfare programs and to develop new ideas and procedures to improve the efficiency of the delivery of these services. The 1980 annual report (last report issued) no longer provided statistics on complaints received, cases investigated, etc. The 1979 annual report did report statistics for OWIG activity since inception, indicating a total of 33,146 complaints received, with 2,022 cases referred to district attorneys, 14,563 cases closed to files, and 16,411 cases referred to local social service commissioners (NYS OWIG, 1979, p. 17).

Governor Carey abolished the position of Welfare IG in 1981 and OWIG was defunded. Carey officially reported that OWIG was eliminated because it duplicated functions provided by other agencies (Ennis, 1986). OWIG was still viewed as being political with the implied mission of getting people off the welfare rolls and embarrassing NYC's administration (Balukas interview, 2001). OWIG's change to more systems and performance-based audits was not enough to fend off these criticisms and this shift also gave the governor an excuse to eliminate it since these types of audits were performed by other agencies (see Chapter 11).

NYS Department of Correctional Services

As mentioned above, oversight of state government departments and agencies was not solely a post-federal Inspector General Act of 1978 phenomenon. The NYS

Department of Correctional Services developed an inspector general function as of June 1, 1972 (Straub, 1997). Straub reported that the exact reason why this OIG was created is unknown, but that it may have been the result of the Knapp Commission's fostering the need for corruption control and the establishment of some OIGs at the federal and New York City levels. The formation of a DOCS OIG also followed the violent prisoner takeover of the Attica state prison on September 9, 1971 and the subsequent bloody retaking of the prison by corrections officers and state troopers. Straub found the new DOCS OIG had a number of purposes including "provid[ing] a medium through which the central office could further its control over the prison system," enforcing policies and procedures, intelligence gathering, and as a response to outside pressures for reform (pp. 52-53).

Straub (1997) wrote that in 1972, the DOCS OIG was initially staffed with only seven employees including the IG and three investigators (former corrections officers). The first IG, John J. McCarthy, was appointed by the DOCS commissioner and was given the titles of Chief of Correction Audit and Investigations and Inspector General.

The objectives of this early OIG were to:

Prevent problems by program review and monitoring; insure operations in compliance with law, policy, procedures and rules; develop and maintain a system of pertinent information to enhance sound operations; and to investigate incidents and complaints (DOCS Bulletin #59, May 22, 1972, as cited by Straub, p. 52).

The staff was subsequently supplemented with parole employees, but these employees still carried parole related workloads. In 1975, Benjamin Ward became the DOCS commissioner and changed the mission of the OIG to be similar to that of the New York City Police Department's Internal Affairs Bureau. By 1979, the staff had increased to 25 employees. IG Brian Malone narrowed the OIG's focus to corruption and

misconduct related cases. Other functions associated with OIGs, such as “program review, monitoring, and compliance became the responsibility of separate management functions under the direction of Deputy Commissioners for Operations, Programs, and Administration” (Straub, 1997, p. 73).

Straub (1997) reported on a 1990 audit conducted by the NYS Office of State Comptroller (OSC). By 1989, the staff had grown to 39 employees but because of increases in the number of inmates and DOCS’ facilities, the OIG was understaffed. In addition the OSC audit “questioned the IG’s ability to meet the demands placed on it, its independence from DOCS’ administration, and the performance of auditing and monitoring functions” (Straub, p. 91).

OSC subsequently conducted another management audit of the DOCS OIG. By 1997, this OIG had dramatically increased in size, with a staff of 104 employees and a total annual operating cost of approximately \$6 million. All of the OIG’s operating units are located in Albany, except the Escape/Absconder Unit (EAU), which is located in Queens, NY. The OSC audit described the expanded functions and staff numbers of the DOCS OIG:

Along with top management [IG and Assistant IG] and four clerical staff, the Office has five separate operating units. The EAU, consisting of 69 people, is responsible for apprehending inmates who abscond from work release facilities. The Narcotics Unit with eight staff, investigates allegations involving inmates, visitors, and/or employees bringing drugs into the prisons, and apprehends inmates who abscond from upstate work release facilities. The Internal Affairs Unit, with 14 staff, investigates allegations involving employee and inmate violations of Department rules and regulations and the Penal Law. The Sex Crimes Unit has 4 staff who monitor and investigate allegations of sexual activity between inmates and Department personnel. The Central Monitoring Cases Unit, with 3 staff, tracks the activities of certain inmates under special watch at all times. (New York State Office of State Comptroller [NYS OSC], 1999, p. 2)

All but seven OIG employees are also corrections officers and are considered peace officers under NYS law. The role of this OIG is significantly different from other OIGs and much of their work could be considered as operational as opposed to oversight in nature. Excluding the 69 employees in the Escape/Absconder Unit, the staff numbers drop from a total of 104 to only 35.

This more recent OSC audit did not report any criticisms regarding the OIG's ability to perform its missions related to the investigation of wrongdoing at the prisons or its ability to recapture absconders. Rather the OSC's audit focused on what it believed were "weaknesses in the Office's system of internal control and related Office management practices" (NYS OSC, 1999).

Division for Youth

As will be discussed in Chapter 12, the Investigation Section of the NYS Department of Labor preceded the Federal IG Act of 1978 by several decades. Various other state agencies began to develop their oversight activities over time. An early example of a state department where oversight developed was the NYS Division for Youth (subsequently the Office for Children and Family Services). This story involves Edward Dominelli, an experienced government professional who has worked in senior oversight roles at the Division for Youth (DFY), the Office of State Inspector General (Chapter 8) and the NYS Dormitory Authority (Chapter 13). Edward Dominelli became involved in the oversight function well before IGs became popular in state government. Dominelli was a graduate of the State University of New York (SUNY) at Plattsburgh with a bachelor's degree in political science and a MPA degree from SUNY Albany. He went to work as a civil servant at the Division for Youth doing labor relations personnel

administration. As a labor relations specialist he became involved in all phases of disciplinary actions, including the investigation, hearing, and arbitration processes. Not intending to become involved in oversight, Dominelli ended up in this field after a number of incidents occurred at DFY facilities during the mid 70s (Dominelli interview, 2002).

DFY operates youth correctional facilities throughout the state. The 1970s was an era of change for DFY. The large training schools operated by DFY were closed down for state fiscal reasons and some of the youths were shifted to facilities that were not in a position to handle them. A homicide occurred at a Rochester facility and arsons occurred at several facilities, including the Ithaca facility (Dominelli interview, 2002).

With decentralized facilities located throughout the state, DFY's management did not believe they were receiving all the information that they needed to monitor these operations. The belief was that management needed someone who reported directly to the central office who could go out to the field, see what was happening, make sure that any problems were reported to them, and that nothing was covered up. DFY's initial response was not to form an investigative unit but rather set up an audit function called Program Assistance and Review. The feeling at DFY was that an investigative unit would be viewed too harshly by DFY as a police type unit. Instead, a proactive review and assistance approach would be better received by the social work culture that was present in the 1970s youth correctional model that emphasized rehabilitation. Dominelli had investigative experience from dealing with employee disciplinary matters and he was asked to head up this unit to provide an "early warning system on these facilities." Dominelli said that the administration at DFY wanted:

A team of auditors essentially to go out and keep track of what's going on. Well, we went out, we did program audits but invariably again the system being what it was we had some criminal activity going on. You had drugs, you have sex abuse; you have all this type behavior going on. Well, who else to investigate this but me...Management felt it needed its own set of eyes and ears to see what was going on out there. (Dominelli interview, 2002)

This new audit function initially reported to the program deputy but this was changed by the director of DFY (a commissioner level appointment) so that Dominelli reported directly to the director. This gave Dominelli independence from the rest of the command structure and he could send his staff into any part of the agency as his authority came from the director. Over time Dominelli and his group developed more investigative expertise and handled the investigations and audits. In 1985 Dominelli hired a retired police officer, who was a trained investigator. Dominelli then reorganized the office and became the director of audit and investigation with the separate functions for investigations, program audits and fiscal audits reporting to him (Dominelli interview, 2002).

While some individual state departments and agencies were already setting up their own oversight functions, the Office of State Inspector General was formed in 1986 by Governor Mario Cuomo's executive order (NYS Executive Order No. 79, 1986). The executive order gave the State IG the authority to appoint deputy IGs who would be employed by the various departments and agencies under the jurisdiction of the State IG and would report to the State IG and to the department head that employed him or her. DFY was one of the departments covered under the original executive order. By this time, Dominelli was doing the type of work that was expected of the IGs. So in 1986, DFY's director sent Dominelli's name over to the new State IG, Joseph Spinelli, as his nomination for the deputy IG position for DFY. Dominelli went to see Spinelli and they

got along very well and after a short interview Spinelli appointed Dominelli as deputy IG for DFY. After this appointment, Dominelli's office continued being called the Audit and Investigations unit and he used the title of deputy IG. Dominelli continued to work as deputy IG at DFY from 1986 until 1989, when he went to work at OSIG directly for Spinelli (Dominelli interview, 2002).

The history of the development of the Office of State Inspector General will be continued in Chapter 8. Before discussing the State IG, Chapter 7 will discuss the history of the MTA OIG, the first of the post 1978 NYS OIGs.

CHAPTER 7
THE METROPOLITAN TRANSPORTATION AUTHORITY
OFFICE OF INSPECTOR GENERAL:
THE FIRST POST 1978 NEW YORK STATE INSPECTOR GENERAL

A New OIG Is Formed: 1983 To 1987

This chapter will discuss the Metropolitan Transit Authority Office of Inspector General, the longest operating of the current era NYS OIGs. The MTA OIG was the first of the current NYS OIGs to be created after the federal Inspector General Act of 1978 was passed. In addition, the MTA OIG, along with the NYS Office of Welfare Inspector General are the only two NYS OIGs established by state statute.

Introduction to the Metropolitan Transportation Authority

The Metropolitan Transportation Authority (MTA) is an independent state authority created in 1968 by the New York State legislature for the purpose of creating a “unified mass transportation policy” for the New York City region (Metropolitan Transportation Authority Office of Inspector General [MTA OIG], 1984, p.2). The MTA includes five transportation agencies: NYC Transit Authority, Long Island Rail Road, Long Island Bus, Metro-North Railroad, and Bridges and Tunnels. These components of the MTA “serve a population of 11.4 million people in the 5,000 square mile area fanning out from New York City through Long Island, southeastern New York State, and Connecticut” (Metropolitan Transportation Authority [MTA], 2002). The 2002 MTA operating budget totaled \$7.2 billion and as of December 2001 had a total of 64,377 employees. On an average weekday, the MTA transports 7.6 million passengers. It

operates a total of 8,231 rail and subway cars and 4,864 buses. The MTA includes some of the oldest mass transit operations in the country. The Long Island Rail Road was chartered in 1834 and the first NYC subway started operations in 1904. The Bridges and Tunnels unit was founded in 1933 under the era of Robert Moses, the legendary NYC coordinator of construction projects, whose goal was to connect all parts of the city to automobile traffic. The MTA manages seven bridges and two tunnels in the NYC area (MTA, 2002).

An OIG born out of scandalous conditions

Sidney Schwartz, the first MTA IG reported that the MTA had been subject to significant criticism including complaints about: “the condition of the aging physical plants and equipment, ever-increasing costs, inadequate service quality, low worker productivity, poor security, ineffective management, and insufficient public accountability” (MTA OIG, 1984, p.2). As a consequence of the 1970s New York City financial crisis, a significant amount of MTA maintenance was deferred, resulting in a decline in the overall state of repair of the tracks and other facilities (Sansverie interview, 2001). This condition resulted in a significant number of subway car derailments. A study done in 1983 found 600 locations where tracks were in such a deteriorated condition that derailment could potentially occur (MTA OIG, 1984, p. 13). Derailments peaked at 20 during 1983. Significant capital expenditures were being planned that would ultimately take the form of a five-year, \$8.5 billion capital improvement program (MTA OIG, 1986a). There needed to be some new mechanism created to insure that this money would be spent properly (Sansverie interview, 2001).

A legislatively created OIG with a new mission

In Governor Mario M. Cuomo's 1983 State of the State Message, he announced the creation of a study panel to review the MTA. The study panel recommended establishing an office of inspector general for the MTA. The governor's study panel said that the MTA OIG should have the "resources and status it needs to ... hear and act upon complaints about service deficiencies, to audit performance, to assure that appropriate follow-up action is taken on outstanding audit findings, and to investigate charges of fraud and abuse" (MTA OIG, 1984, p.2). The state legislature promptly passed a law (Chapter 427, Laws of 1983), which added a new section 1279 to the Public Authorities Law establishing an office of inspector general for the MTA. The concept of an inspector general was not a totally new concept in New York State. As discussed in Chapter 6, some other agencies established their own OIGs but the MTA OIG would be the first statutory OIG to appear in NYS government after the passing of the federal Inspector General Act of 1978. In addition, the setting up of this OIG would precede the establishment by executive order of the NYS Office of State Inspector General by about two years.

Section 1279 of the NYS Public Authorities Law provides that the role of the MTA IG is to:

(a) receive and investigate complaints from any source or upon his own initiative concerning alleged abuses, frauds and service deficiencies [at the MTA or its subsidiaries]... (b) to initiate such reviews as he may deem appropriate... (c) to recommend remedial action to be taken by the authority... to overcome or correct operating or maintenance deficiencies and inefficiencies that he determines to exist... (d) to make available to appropriate law enforcement officials information and evidence which relate to criminal acts... (e) to subpoena witnesses, administer oaths or affirmations, take testimony and compel the production of... records and documents... (f) to monitor the implementation... of recommendations made by the inspector general or other audit agencies.

The statute also provided that the governor would choose the IG, subject to ratification by the state senate. This appointment would be for a five-year term, but the statute provided that this appointment was to be served "at the pleasure of the governor." One interesting point is that no MTA IG has ever served more than one term, although there is nothing in the statute to prevent this. With regard to reporting requirements, the statute requires that the IG prepare annual reports and that the MTA prepare within 30 days, responses to the annual report and any other reports issued by the IG regarding whether it plans to implement the changes recommended in these IG reports. The MTA is also to provide quarterly reports with regard to the status of the implementation of the recommendations (part of a 1984 amendment to the statute).

Section 1279 of the Public Authorities Law states that "there is created in the Metropolitan Transportation Authority an Office of Metropolitan Transportation Authority Inspector General." In addition, funding for the office comes from the MTA. Based on these two factors one might think that the OIG is directly a part of the MTA. But by virtue of several provisions in the statute such as the appointment process for the IG, an appeal process if the MTA does not provide sufficient funding to the OIG, and the OIG's power to compel compliance with requests for information, the MTA IGs have considered themselves and their offices to be independent of the MTA. As one IG put it "We would view ourselves as very independent of the MTA... We are not the MTA. We report to the governor's office, not to the chairman of the MTA" (Sansverie interview, 2001).

MTA OIG opens for business in August 1983: Sidney Schwartz becomes IG

The MTA OIG started operations in August 1983 with Sidney Schwartz as its first IG. Schwartz divided the office into two main groups, an investigative group and an audit and analysis group. By the end of 1983, this OIG had hired a staff of 60 people (42 professional and 18 support). Previously in 1981, the MTA's NYC Transit Authority had established its own OIG and 32 employees from this Transit OIG became employees of the MTA OIG (included in the 60 person count). The new OIG occupied offices in Manhattan and Brooklyn. The Brooklyn offices were primarily for Transit Authority IG work (MTA OIG, 1984, p.3). The two separate offices would eventually be merged into one.

In its first year of operation (August to December 1983), the MTA OIG reported that it received 330 complaints. Complaints came from many sources including public officials, MTA management, legislators, and the public. After complaints were received, a determination was made within 48 hours either to investigate it internally or refer it to the appropriate MTA agency. Service complaints were generally forwarded to the agency involved, with OIG follow-up to see that the agency responded to the complaint. Other allegations were investigated internally. Between August and December 31, 1983, 25 new investigations were opened and another 58 were carried over from the prior Transit Authority OIG. By December 31, 1983, 11 cases had been referred to district attorneys' offices for possible prosecution and 38 cases were otherwise closed.

During this first year, the OIG publicly issued six reports summarizing its reviews. Reviews were either fiscal or operational in nature. Reviews contained specific findings and also recommendations for improvements of procedures. These 1983 public

reports included such areas as the investigation of the theft of funds from the Transit Authority money room to a review of Transit's emergency track repair program. Governor Cuomo also requested that the IG perform a review of the contracting practices related to legal services at the MTA. Schwartz reported that these reviews resulted in potential cost savings of \$2 million. Also during 1983, the OIG concluded that the MTA did not have systematic procedures to follow-up on recommendations made by auditors, consultants and others. The OIG did a survey of existing procedures and made recommendations for improvement of this area (MTA OIG, 1984).

In the cover letter to the annual report covering these first five months of operations, Schwartz reported problems experienced by his staff in obtaining access to information and data from the MTA. As of February 1, 1984, Schwartz stated that full cooperation had not been assured and that this was causing delays in OIG work. Also in his 1983 annual report, Schwartz set the goal of building a total staff of 93 people, including maintaining the 38 person staff levels previously set for the former Transit Authority OIG (MTA OIG, 1984).

Sidney Schwartz continued in his role as IG in 1984. That year, the staffing grew to 90 employees with a total budget of \$4.3 million (J. Bono, Schedule of staffing and budgets, 2001). Schwartz indicated that during 1984, relations with the MTA agencies improved with the OIG receiving better access to agency files. In addition, on September 1, 1984, the state legislature passed an amendment to the act establishing the MTA IG providing that MTA agencies were to regularly report on their progress in implementing MTA OIG recommendations. Under Schwartz, the OIG continued to conduct audits and investigations. The most significant areas highlighted in the 1984 annual report were

findings related to continual poor maintenance of subway tracks, substandard maintenance procedures in other agencies, and low productivity of MTA employees including “management acceptance of unrealistically low output, and poor screening and training of new and newly-promoted employees” (MTA OIG, 1985, p. 5). During this second year of operations, the OIG conducted 62 investigations including cases involving a payroll padding scheme, purchasing improprieties, and possible antitrust violations involving major capital purchases. The OIG also did a follow-up analysis of its recommendations made in reports prepared from August 1983 (inception of the OIG) to September 1984 and found that the agencies agreed to implement (either totally or partially) 70 percent of the recommendations.

Sanford Russell replaces Sidney Schwartz

In January 1985, Sanford E. Russell replaced Sidney Schwartz as IG when Schwartz decided to retire from public service. Russell had worked at the MTA OIG since soon after its inception in August 1983. Russell would serve as IG for the next three years until his retirement on December 31, 1987 (MTA OIG, 1988). Russell established a number of new operational guidelines for the OIG. The first operational guideline was to increase the investigations of fraud, waste and abuse. Also, Russell set additional goals of increasing investigations and reviews of safety issues, productivity and accountability. In the area of accountability, Russell focused on the development of performance standards and measures of conformity with the standards (MTA OIG, 1986a).

In May 1985, in order to increase the OIG’s investigations of fraud, waste and abuse, Russell established a fraud analysis task force consisting of experienced auditors

and investigators. The fraud analysis task force was drawn from the MTA OIG's two primary units: the audit and analysis unit which consisted of auditors, engineers and transportation and other specialists; and the legal/investigative unit, which included experienced investigators and former prosecutors. Russell also reported the use of a team approach, whereby auditors and investigators would be assigned to work together on assignments to maximize results. Russell also set up a toll free fraud and abuse hotline staffed to receive complaints. This hotline (800-MTA-IG4U) was promoted on 18,000 posters and signs posted throughout MTA's systems for employees and the riding public to see. Letters from the IG were sent to employees. The hotline generated 500 calls in its first year of operations (1985) resulting in 93 investigations. Overall, investigations increased to a total of 200 during 1985, up from 62 in the prior year. Also during 1985, the OIG staffing totaled 85 people (MTA OIG, 1986a).

In February 1985, Russell also reported that relations with MTA agencies had improved which implied that, like Schwartz, he also had experienced problems of cooperation from MTA staff. One way that communications was improved from the OIG side was for IG representatives to immediately report safety hazards found while in the field to the agency being reviewed. In addition, agencies were given the opportunity to provide written responses to draft reports, with these written responses included in the final IG report (MTA OIG, 1986a).

An example of the variety of work done by the MTA OIG can be found in a report done in 1986 under Russell (MTA OIG, 1986b). Governor Cuomo asked the IG to review MTA's own performance reports for 1984 and 1985. On April 1986, the OIG issued a report that was critical of the MTA's assessment of the Transit Authority's

progress in reducing unsafe conditions and in improving service. Russell's office did report that dangerous track conditions had been significantly reduced but that these troubled track areas still needed significant repairs. Russell acknowledged that derailments decreased from 20 in 1983 to 3 in 1985. Russell also criticized the on-time performance reporting by the MTA. In two tests where the Transit Authority reported on-time performance rates of 80.1 percent and 84 percent, the IG's staff found rates of 54 percent and 61.8 percent respectively. Russell also criticized the Transit Authority for an increasing number of car fires (from 2,147 in 1984 to 3,090 in 1985). Russell's report said that the increase in fires was not due to increased reporting as claimed by the MTA but due to an insufficient number of car inspectors and maintenance personnel, with cars not being inspected within the normal inspection period.

By the end of Russell's tenure in office, activities at the OIG included investigating a number of criminal cases. The OIG's 1987 annual report indicated that 103 investigations were begun in 1987 (Russell's final year) with a total number of active criminal investigations for the year of 144. These included cases involving: "bribery, kickbacks, frauds, larcenies, bid-rigging, favoritism, cronyism, harassment, improper overtime, and abuse of sick leave" and that some investigations were turned over to outside investigative or prosecutorial agencies and others were investigated jointly with outside law enforcement agencies (MTA OIG, 1988, p. 2). Also complaints increased from about 500 in 1985 (Russell's first year as IG) to 1,004 in 1987 (Russell's final year). The OIG also reviewed the accuracy with which MTA units reported their implementation of OIG recommendations and noted that there were no controls by MTA management over this reporting by operational personnel. For instance, the OIG found

that the Transit Authority inaccurately reported the implementation status of 29 out of 156 recommendations (p. 10).

Cops Take Over The OIG: 1987 To 1995

John Pritchard and his investigative focus

John S. Pritchard III succeeded Sanford Russell effective March 1, 1988. Pritchard was a former FBI special agent and focused his administration on an investigative model. Pritchard reported in a brief telephone interview (2001) that he used as a guide for operating his office the writings of Robert G. Blakely and Ronald Goldstock. Their works dealt with setting up rackets bureaus and on investigating and prosecuting organized crime (see Blakey, Goldstock and Rogovin, 1978). A quote that appeared in each of the four annual reports prepared by Pritchard reflects his view on the role of the OIG:

Since the Office of Inspector General is an investigative agency, one of its major responsibilities is to investigate criminality, fraud, waste, and abuse in the MTA and its constituent agencies. (MTA OIG, 1989, p.2)

During his first year in office, Pritchard reorganized the OIG. He eliminated the separate audit function in January 1989 and reorganized the office into five teams. Pritchard justified this new approach on the grounds that now any team would have the expertise to handle any type of investigation, that more work could be done, and that the work could be divided evenly amongst the teams (MTA OIG, 1989). The consolidation of the investigative and audit functions did not appear to mix well and a separate audit function was subsequently reestablished. By 1989, his second year as IG, Pritchard's

staff was budgeted at 83 and the OIG's annual budget had grown to \$6.0 million from \$4.1 million in 1984 (J. Bono, Schedule of staffing and budgets, 2001).

Under Pritchard the focus was on criminal investigations. The number of investigators increased at the expense of the audit staff. These new investigators were mostly former police detectives. During 1989 (Pritchard's first full year as IG), the number of investigations initiated was 210 as opposed to 103 noted above in 1987 (Russell's last year) (MTA OIG, 1990). Newly opened cases grew to 214 in 1991 (MTA OIG, 1992) and 267 in 1992 (MTA OIG, 1993). In 1992, Pritchard's last year as IG, the total number of active investigations was 378, which included 111 cases carried over from 1991 (MTA OIG, 1993). Cases investigated early in Pritchard's term (1989) included one conducted jointly with the NYS Attorney General's office involving employees repeated complaints of being forced to work in an asbestos environment and of being required to remove asbestos in a manner in violation of occupational health and safety laws. The OIG also conducted an undercover operation involving three individuals who were attempting to bribe a MTA official. This undercover investigation involved the videotaping of the individuals as they passed a total of \$13,000 to the MTA official and the case resulted in guilty pleas for felony bribery from the three involved (MTA OIG, 1990).

During Pritchard's tenure, a two-year investigation was conducted into inventory losses at Transit Authority facilities. Inventory losses were estimated by the Transit Authority to be in excess of \$2 million per year during this period. This investigation resulted in "the arrest of four New York City Transit Authority employees for thefts of over \$200,000 worth of New York City bus parts, ranging from shock absorbers to diesel

engines to a final undercover purchase of a brand new NYCTA tractor-trailer cab” (MTA OIG, 1991, p. 4). Another investigation involving the improper issuance of subway handicap passes “resulted in arrests for larceny, perjury and the filing of false instruments” (MTA OIG, 1990, p. 6).

A major case for Pritchard’s office involved alleged kickbacks to a MTA employee, the Director of Technical Support for Metro-North, who committed suicide in August 1990 (MTA OIG, 1992). This case was a joint investigation involving the OIG, the US Attorney’s Office, the FBI, the US Postal Inspection Service and the Internal Revenue Service. Federal indictments alleged that the former MTA employee had been paid more than \$650,000 to steer business to two corporations and that several defendants billed the MTA for “over \$500,000 for goods that were never delivered” (p. 6). Pritchard reported that his office was the first OIG to utilize federal civil forfeiture statutes and receive a share of the forfeited funds. Pritchard claimed that:

Recovery of some of these funds will enable the Office of Inspector General to increase its investigative functions and enhance its oversight operations. Because of the relative newness of the statute, to date, no other state or local Inspector General’s office has shared in federal forfeiture funds (p. 6).

“Gotcha approach” contributes to bad relations with the MTA

One investigation conducted by Pritchard’s office that received prominent disclosure in the 1989 and 1990 annual reports (MTA OIG, 1990 and 1991) was a situation involving Transit Authority employees, including two supervisors, who went golfing on company time. Pritchard stated that the case involved “possible charges of larceny and falsifying business records by TA supervisors” (MTA OIG, 1990, p. 5). Pritchard’s 1989 annual report also concluded, “through sophisticated and long-term surveillance and reviews of pertinent records, we determined that nine employees...had

regularly gone golfing over a period of weeks, while their time sheets indicated they were working” (p. 5).

One could point to Pritchard’s tenure at the OIG and to this investigation in particular as an example of a shift of the OIG to Anechiarico and Jacob’s (1996) panoptic vision of oversight. Pritchard used the rackets bureau concept in setting up his office, hired former law enforcement investigators, and conducted more investigations at the expense of the audit function. Panoptic oversight tools were used such as conducting an intensive investigation using video surveillance as opposed to using other methods to communicate this problem to management.

This “golfing” investigation and other similar cases created distrust between the MTA and the OIG. The OIG was accused of press leaks and taking cases to the press before they were discussed with MTA management (Malan interview, 2001). Roland Malan (who became IG in 1995) referred to this as Pritchard’s “gotcha approach.” Significant resources were devoted to the golfing case and the video was released to the media prior to MTA management reviewing the case. Malan believed that there were more important matters for the OIG to address at this time and that this protracted investigation was inappropriate. MTA management’s response to Pritchard’s investigation was not to punish the individuals involved but rather to promote them (Malan interview, 2001). After this and similar cases, the MTA would treat the OIG as the enemy. As Malan described it:

The OIG has never really been given the information to do their work in a timely manner, and in some cases has never been given the proper information. Pritchard exacerbated the situation because he liked to prosecute people and hang them out to dry causing a very negative response to requests from the OIG on information. (Malan interview, 2001).

Other Pritchard period initiatives

In addition to reorganizing his office around the investigative function, Pritchard had initiatives in other areas. He established a system in 1989 to process and monitor complaints coming to the OIG's attention. In addition, in 1988 Pritchard began a Service Review and Analysis Unit with the purpose of evaluating the MTA's service reliability. Techniques included reviews of historical data, monitoring operations in the field and sampling current MTA data in order "to produce 'report cards' on those aspects of service that most concern passengers" (MTA OIG, 1989, p. 9). One measure of the success of the OIG's Service Review Unit was that in 1991, the unit was awarded a federal grant to develop a "Passenger Oriented Subway Performance Model" and that the unit produced a number of conference papers and scholarly articles (MTA OIG, 1992, p. 9 and 1991, p. 8). Under the grant, the Service Review Unit published a performance review of subway on time performance for 1988-1990, documenting improvement over the years studied.

The unit also conducted bus performance studies in Manhattan, Brooklyn and the Bronx. The Manhattan study included "observations for more than 4,500 local buses in Manhattan during the midday" (MTA OIG, 1992, p. 10). Pritchard's annual report indicated that at this time MTA had a "virtual absence of relevant measures of bus service" and that "service was irregular on most routes examined" (p. 10).

After a tunnel fire in December 1990 and a derailment in August 1991 that resulted in five deaths, Pritchard decided to establish "an informal safety unit" (MTA OIG, 1992, p. 11). Members of this unit received training in accident investigation and attended MTA disaster drills, and provided recommendations for improving these drills.

John Pritchard left the MTA OIG on December 30, 1992, near the end of his five-year term as IG to accept an appointment as the First Deputy Police Commissioner for the NYPD. His First Assistant IG, James J. Miley was then appointed as acting IG. Miley held this position for only a few months before Henry P. Flinter was appointed as IG in early 1993. Flinter had previously served as Pritchard's First Deputy IG and then left the MTA OIG to serve as the IG at Jacob Javits Convention Center from February 1991 until 1993 (see Chapter 9). Flinter served as MTA IG for about 2-1/2 years and resigned in 1995. During the Flinter period, the OIG organization maintained a status quo. Malan described Flinter's tenure as a caretaker administration and that productivity and professionalism at the OIG were at less than desired levels (Malan interview, 2001).

Table 1

MTA OFFICE OF INSPECTOR GENERAL

John S. Pritchard III, IG (1987-1992)

Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste & abuse?	Strongly confirms
2. Used police-patrol oversight?	Contradicts
3. Adopted panoptic vision of oversight?	Strongly confirms
4. More attention to compliance accountability?	Strongly confirms
5. Statutorily appointed IGs exercise more independence?	Strongly confirms
6. OIG contributed to an increase in bureaupathologies?	Strongly confirms

Analysis using research questions: Pritchard period

Table 1 summarizes an analysis of the Pritchard period using the six research questions. This data analysis was performed in accordance with the methodology described in Chapter 5. Briefly stated, the factors related to each question (see Chapter 1) were examined using the data collected and an assessment was made as to whether the position in the question was confirmed or contradicted. The sources of data included the interviews, government documents, press releases and print media reports, and information obtained at three national AIG conferences. Also at the end of this chapter is an additional summary discussion of all three MTA OIG periods analyzed.

The MTA OIG was established during scandalous times because of a perceived lack of oversight of MTA's operations, especially the subway transit system. Beginning in 1983, the OIG provided much needed oversight. By 1989, the staff of the OIG grew to 83 people and an annual budget of \$6 million. The OIG conducted many audits and investigations and made recommendations to MTA management to reduce fraud, waste and abuse. This information would indicate that the creation of the MTA OIG significantly increased the *capacity* to reduce fraud, waste, and abuse at the MTA. Because there are no accurate measures of fraud, waste and abuse, it is difficult to estimate the actual impact of any anticorruption organization. But prior to establishing this OIG, there was little effort put into investigating, punishing or deterring fraud, waste and abuse at the MTA.

During Pritchard's term, there was an aggressive effort to reduce fraud at the MTA. But instead of using routine audits and investigations, attention was given to scandal-oriented investigations that drew the attention of the media. This approach is

similar to what McCubbins and Schwartz (1984) would define as “fire-alarm” oversight as opposed to routine “police-patrol” oversight.

By focusing on the investigative function and using a rackets bureau approach, Pritchard’s operations were consistent with Anechiarico and Jacob’s (1996) definition of the panoptic vision of oversight and Light’s (1993) definition of compliance accountability.

During his one term, Pritchard exercised a significant amount of independence in supervising his office and deciding on the types of investigations undertaken. IGs before Pritchard had tried to build a working relationship with the MTA, but the panoptic vision, scandal-oriented oversight approach used during this period led to tension with and a decrease in cooperation from the MTA.

Scientific Management Period: 1995-2000

Roland Malan succeeds Flinter

Roland M. Malan became IG in late 1995 at the age of 59. Malan came to this position with extensive experience in public administration and auditing. Malan had an undergraduate degree in business administration, a MBA from Pacific Lutheran University and a Ph.D. in public administration from the University of Washington. He had 26 years in government auditing in the state of Washington and 6-1/2 years with the NYS Office of State Comptroller as Assistant Deputy State Comptroller where he managed performance audits and a professional staff of 250 (Malan interview, 2001). Malan was the first MTA IG to be appointed by Governor George Pataki’s administration.

When Malan arrived, productivity at the OIG needed improvement. During Prichard's tenure, the shift had been away from audits and toward investigations. The number of investigators under Prichard increased at the expense of the audit staff. Malan even reported his concerns to Governor Pataki in the cover letter for the 1995 annual report (Malan's first) where he said:

Productivity of the Office was considerably less than what should have been expected of it. Steps have been taken to restructure the Office and set forth a strategic plan and definitive expectations in order to improve both the quality and quantity of our work. (MTA OIG, 1996)

One of the roles of the MTA OIG is to review the operations of the MTA and to make suggestions for improvement of performance. Malan encountered an IG office that itself was without management policies and procedures. He found a lack of effective management of the staff. There was "no discipline of the work" and the staff basically did what they wanted without supervision, coordination or accountability. The OIG's work was not subject to any outcome assessments. The investigators, many were former police detectives, continued to use the "gotcha approach" to their work. Previously, personnel policies that existed for MTA employees were considered as not to be applicable to the IG staff. The staff also had 23 vehicles when Malan arrived, which he believed was excessive. Investigators believed they had an entitlement to an automobile whether they needed it for investigative purposes or not. By the time Malan left office five years later, the OIG was down to five vehicles (Malan interview, 2001).

Malan reemphasizes the audit function

Malan sought to create a more productive and professional OIG and to that end moved quickly and terminated several top managers who resisted Malan's management philosophy. Malan also encountered resistance from some of the investigators. The

investigators had historically worked on tips and did not believe that proactive investigations would be productive. In addition, some investigators did not believe that their work should be subject to performance measures. Malan characterized the focus of past investigations as being on high profile cases that did not have a major impact on MTA operations. Malan wanted an office that could do effective audits in addition to investigations and about half the investigators were replaced with performance auditors. At the end of his term, the distribution between auditors and investigators was about even. This had been the distribution of staff before Pritchard arrived and put more emphasis on the investigative function of the OIG. Malan believed that his staffing changes resulted in more audits and better quality audits (Malan interview, 2001).

Malan's organization was designed along functional lines. Initially the major units were a legal and investigative unit and an audit and analysis unit. These two units were supported by a systems manager and an administrative services unit. The legal and investigative unit consisted of investigators and attorneys with experience in local, state and federal law enforcement matters. This unit also included at least one certified public accountant. The audit and analysis unit included "performance auditors, systems specialists, program analysts, a certified public accountant, a forensic accountant, an attorney, a transportation specialist and operations research analysts" (MTA OIG, 1997, p. 2). The service review unit set up by Pritchard was now housed in the audit and analysis unit. The administrative services unit provided clerical support, accounting, purchasing, personnel, library, computer and other services. In 1998, Malan added a forensic auditing group to the audit and analysis unit (MTA OIG, 1998). To the legal and investigative unit, he added a financial investigations group in 1998 (MTA OIG, 1999).

He also added a capital construction audit group and an intelligence function in 1999 (MTA OIG, 2000). Also in 1999, Malan identified a quality assurance function in his annual report (MTA OIG, 2000).

The OIG's first strategic plan

Malan developed the OIG's first strategic plan. This was an effort that involved obtaining input from all staff members in order that all staff would accept it. Malan (interview, 2001) reported that this first plan was somewhat rough. But out of this effort developed vision and mission statements, strategic goals and the strategic plan that became known as the OIG's first three year Strategic Business Plan, issued in January 1998 (MTA OIG, 1999, p. 1). This plan was updated during 1999 with a document that Malan was more satisfied with. The OIG's strategic goals were in part:

To proactively identify fraud, waste, abuse and service deficiencies; develop an annual work plan that results in high impact audits, investigations and reviews; provide the MTA with recommendations to improve operational management, cost-effectiveness, system safety and service quality; and communicate our findings and recommendations clearly, effectively and promptly.

To adhere to professional standards and applicable statutory requirements and, while maintaining the independence of the office, develop constructive, professional and cooperative relationships with the MTA.

To continuously improve our organizational capabilities and practices, and provide a stimulating and rewarding workplace with opportunities for participation and self-improvement for all employees. (MTA OIG, 1999, p. 2)

Early in Malan's tenure he instituted performance standards for all work, improved quality control, and developed a project based cost accounting system. The cost accounting system accounted for hours spent on audits and investigations and included hourly rates and overhead charges. The investigators at the OIG also resisted the implementation of this system. The argument used by investigators was that it was

unfair to compare the results of an individual investigation to the cost to complete that investigation because this did not factor in any future deterrence effect of the investigation. Malan also developed written investigative plans, professional standards and improved supervision (Malan interview, 2001). Also during Malan's period, the OIG's annual report became a more professional looking document using recently introduced desktop publishing computer technology. Information was clearly presented, more charts and graphs were added, and photographs were included (MTA OIG, 1997).

Malan developed a number of performance measures for the MTA OIG. For instance in the 1998 Annual Report, Malan devoted three pages to a discussion of this topic and quantified the results for the last six months of 1998. A summary of the performance measure outcomes reported were as follows:

Agencies agreed with 83% of the OIG recommendations.

Agencies implemented 76% of recommendations.

53% of recommendations targeted to key impact areas.

100% of OIG staff met professional training requirements.

62% of OIG trained in new audit and investigative approaches. (MTA OIG, 1999, pp. 14-15)

The 1998 Annual Report compared several of the performance measure outcomes for the OIG to national surveys by other professional organizations. What was disappointing was that in the subsequent 1999 Annual Report (MTA OIG, 2000) there was no attempt to repeat the reporting of performance measure outcomes in a similar format. There was a discussion of a number of types of performance measures used and only the actual numbers of recommendations, recommendations accepted and

recommendations implemented were reported. As discussed below, problems had developed between the OIG and the MTA by this time and this may have impacted the effectiveness of the OIG or the speed of the MTA's response to the OIG's recommendations.

Also during his tenure, Malan prepared the OIG for its first peer review of the OIG's audit staff, which was subsequently conducted early in his successor's term. As an indication of Malan's interest in professionalism for IGs, he served as the chair for the committee of the Association of Inspectors General that developed generally accepted principles and professional standards for OIGs. These professional standards cover the operation of the OIG, the conduct of investigations, audits, and inspections, evaluations and reviews. The AIG is a professional organization of primarily state and local IGs and their staffs. The AIG conducts conferences and training courses and provides a certification credential for IGs and their employees (Association of Inspectors General, 2001).

Malan's thrust was directed towards systems as opposed to just investigating individuals. He conducted proactive investigations and audits that were:

Designed to identify and eliminate fraudulent activity, government waste and ineffective programs. During my term we found several instances of fraud and abuse, reported our findings, and followed up to ensure systems were in place to prevent future such acts. We also identified many instances where the MTA was inefficient or ineffective, reported our findings, and put those projects into a follow-up program. (Malan interview, 2001)

Unlike Pritchard's early effort at teaming, where he attempted to merge the investigators and auditors into teams and eliminate their separate departments, Malan used a more limited teaming approach. Investigators and auditors were asked to be watchful for fraud while they did their work. On a case-by-case basis, auditors and

investigators would be teamed up to work on a specific case. Malan believed that both auditors and investigators needed the skills of their counterparts in order to successfully investigate fraud cases. Malan also attempted to increase the OIG's capacity to do analysis work by utilizing such quantitative management analysis techniques as queuing theory and regression analysis. MTA IGs had criticized the performance measures used by the MTA and Malan was no exception to this trend. He believed that:

The office should be involved in high impact analysis resulting in significant opportunities to improve the use of public resources and to protect the public assets that the MTA has responsibility over. High impact involves material expenditures and critical functions. (Malan interview, 2001)

Malan developed some in-house expertise in this area and hired some staff from the outside, but it was late in his term and he said his success here was limited.

Independence and cooperation

During the first 2-1/2 years of Malan's tenure in office, he had a free hand to make changes in the OIG and to conduct audits and investigations without interference.

Malan described it as:

For the first couple of years I was truly independent in the conduct of my professional duties. I checked in occasionally with the Governor's Secretary for Public Authorities and advised him of the progress we were making in restructuring the office and of sensitive audits and investigations. During that time, there was no explicit or implicit direction concerning the office from the Governor's Office – as it should be based on the authorizing legislation of the office. (Malan interview, 2001)

Access to documents, other information and authority staff is important to the success of any OIG. Previously there had been problems obtaining cooperation for information from the MTA and IGs had reported in their annual reports the efforts to make improvements in this area. Malan reported that this had always been a problem. Pritchard's past behavior put the MTA management in a frame of mind that the OIG

could not be trusted and that the OIG would try to embarrass the MTA whenever possible. Cooperation was at a low when Malan arrived and the MTA continued to treat the OIG as they had done in the past. Malan sought to improve relations with the MTA by operating in a professional manner. The OIG did not seek publicity and Malan did not use a full-time public relations person. Preliminary OIG reports were sent to the chairman and secretary of the MTA along with other key management personnel. When audits and investigations were completed, OIG staff would meet with authority officials to explain the OIG findings. Malan would routinely meet with the MTA chairman. Although Malan informed MTA management of his investigative and audit results before they became public and did not seek publicity, Malan was the first MTA IG to use a website. On this website he posted his annual reports and audit reports (Malan interview, 2001).

Measuring success and bureaucracy issues

Malan did not measure success by how many arrests were made or how much publicity the OIG received but rather by how much effective change was created as a result of his investigations and audits. On this topic Malan said:

I measure success by finding something that needs attention and the agency makes a change that you recommend or one that equally solves the problem. Our approach was that we did not need to take the credit for the change. We were happy when they instituted the recommended change even if they did it a year later. Success occurs when you have a positive impact on the use of resources and on service levels. I think we were moderately successful. We produced some reports that were substantive and some that were picky... There is a considerable opportunity for an independent, competent IG to develop high impact findings and potentially save the MTA a lot of money. (Malan interview, 2001)

Contrary to the opinion of some authors such as Anechiarico and Jacobs (1996), who proposed that OIGs may contribute to a reduction in government efficiency through

excessive rules and procedures that result in decision-making delays, over centralization, defensive management, etc. (see Chapters 2 and 4), the results of this research indicate that IGs believe that their role is a valuable one in improving how government operates and how government is perceived by the public. Malan's comments support this view, although he did indicate that defensive management sometimes occurs where there is inefficient management. In answering these criticisms of IGs, Malan said:

The part of the question that deals with defensive management is an accurate criticism. The balance is, I think, unwarranted. Most OIG offices I know of do not create rules and procedures that result in decision-making delays and over-centralization. If anything, the work of the OIG would be to identify those issues and recommend changes to increase efficiency and effectiveness.

With respect to management defensiveness, OIGs should select areas to audit or investigate carefully. An objective should be to assess how can you add value. If the outcome of the work is nothing more than adding to the bureaucratic process then the effectiveness of the OIG is in question. Try and do the opposite. Try and reduce the bureaucratic process or bureaucratic waste and identify fraud, abuse and illegal acts. The IG is not just existing to oversee but to add value. However, the plain fact of the matter is that no one, especially a high paid, important manager likes to be found inefficient, ineffective, or worse, be accused of a criminal act—the normal reaction is defensiveness. It is hard to avoid. (Malan interview, 2001)

An example of Malan's forward-looking approach to his work was an investigation early in his term into the larceny of \$1.2 million from the Metro-North Railroad. This OIG investigation involved Metro-North billings to outside companies for repairs never made in exchange for gratuities to Metro-North employees. This case did lead to the arrest of seven individuals and additional indictments of other individuals and companies. But the investigation also led to many recommendations by the OIG for improvements in internal controls that Metro-North implemented (MTA OIG, 1997, p.6). This improvement of the MTA systems was the impact that IGs like Malan look for from their work and went beyond the basic criminal investigation and prosecution process.

In the area of prosecution, Malan believed that his office's relationship with the various federal and local prosecutor offices was a good one. Malan did say that prosecutors don't always appreciate the value of IG cases or give them a high priority. Malan believed his work was about improvement in government and didn't think that the lower priority given to IG cases by prosecutors was necessarily a problem for him. Malan and other IGs did report a problem with prosecutor offices that would hold cases for long periods of time and never act on them. As Malan put it:

What was frustrating though was where you would show them a case and they would say they would look at it and then would just sit on it. The case would be tied up while they were reviewing it. We could not work on it while they have it. Would have preferred to have them reject the case so the OIG could complete the investigation and make recommendations. (Malan interview, 2001)

Malan's OIG also conducted a number of investigations of complaints involving MTA management decisions where the OIG concluded that the decisions were proper. These positive outcomes reported in the OIG's annual report included: the MTA's decision to restore the Grand Central Terminal sky ceiling, a decision to renegotiate a lease instead of opting to condemn the property, and a decision to outsource certain information and technology services valued at \$95 million (MTA OIG, 1998).

Malan's administration runs into conflict with the MTA

Malan continued to work on the relationship of the OIG and the MTA, but about halfway into Malan's five-year term, he encountered a case that would prove to cause irreparable harm to his relations with the MTA and the governor's office. A \$97 million contract was given to the Silverite Construction Company (Silverite) by the MTA for the purpose of conducting repairs to the Queens-Midtown Tunnel. Levy (1998) reported in *The New York Times* that Silverite was "owned by one of the biggest financial backers of

Gov. George E. Pataki and the Republican State Committee... , Angelo J. Silveri” (p. 31). The MTA had first rejected Silverite’s contract application, concluding that Silverite did not have sufficient experience to handle this four-year contract. Silverite then revised its application and resubmitted it. Around the time the contract was subsequently awarded to Silverite, several contributors with ties to Silveri donated a total of \$100,000 to the Republican State Committee.

Malan’s office commenced an investigation and requested documents from the MTA. The MTA refused to hand over the documents and rejected an OIG subpoena citing attorney/client privilege as the reason. The MTA had previously turned over these documents to an outside attorney who had been retained to assist the MTA in responding to grand jury investigations opened by federal prosecutors into the same matter (Levy, 1998). The use of the defense of attorney/client privilege in order to provide grounds to refuse to respond to an IG subpoena is apparently still unsettled law in New York State (Brennan interview, 2002). Malan did not want to pursue a legal court case to test this defense and attempted to use negotiation to solve this hindrance to his investigation. This stalemate over the failure by the MTA to provide documents continued until the end of Malan’s administration. He was not asked by the Pataki administration to continue on for a second term. At the end of his term, Malan closed out the investigation since no information was forthcoming from the MTA and he didn’t want the new incoming IG to have to deal with this difficult situation from Malan’s administration (Malan interview, 2001 and Malan AIG conference presentation, 2002).

This is not to say that the OIG office was ineffective in its investigations during the last couple of years of Malan’s term. In October 1999, the OIG issued a report

regarding a complaint it had received that the MTA had released a contractor, Rudin Management, from a contract to install two escalators at the Transit Authority's Times Square Station in exchange for an amount substantially less than what it would have cost the contractor to complete the contract. The OIG found that the \$1.3 million paid by Rudin Management was substantially less than the \$4 to \$5.9 million cost estimated by the OIG to complete the escalators (Bagli, 1999). In 2000, the OIG also issued a report that found that 507 Transit Authority records of track inspections had been falsified. The OIG found that many of these records indicated inspections by supervisors on dates when they were on their days off or on vacation (Kennedy, 2000). These two investigations are also examples of selected use of the media to bring attention to a problem that Malan did not believe would otherwise be adequately addressed by MTA management.

Table 2

MTA OFFICE OF INSPECTOR GENERAL

Roland M. Malan, IG (1995-2000)

Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste, & abuse?	Confirms
2. Used police-patrol oversight?	Confirms
3. Adopted panoptic vision of oversight?	Contradicts
4. More attention to compliance accountability?	Contradicts
5. Statutorily appointed IGs exercise more independence?	Confirms
6. OIG contributed to an increase in bureaupathologies?	Neutral

Analysis using research questions: Malan period

Table 2 summarizes an analysis of the Malan period using the six research questions. As discussed above in this chapter, this data analysis was performed in accordance with the methodology described in Chapter 5. At the end of this chapter is an additional summary discussion of all three MTA OIG periods analyzed. The MTA OIG continued its effort to reduce fraud, waste and abuse. The audit role was reemphasized and Malan's focus was more on improving systems and less on the investigation and arrest of individuals. As a result, there was more emphasis on routine police-patrol oversight and less use of the panoptic vision oversight tools of the Pritchard period.

The audit approach can be a tool for compliance accountability, but Malan tried to use the audit function as a tool for change. Capacity building accountability involves changes that will improve the delivery of services. It involves the use of new technologies and increased training opportunities for employees (Light, 1993). Malan developed performance measures based on efforts to improve organizational systems and did not use measures based on compliance accountability standards (i.e. number of arrests or number of deviations from established procedures). Malan's performance measures for the MTA OIG included the percentage of their recommendations that were implemented by the MTA and the percentage of their recommendations that targeted key impact areas at the MTA. Malan's performance measures also called for improved training for his own staff and he began the process of a peer review of his OIG. This information supports the position that Malan's OIG went beyond using compliance accountability and developed performance and capacity building accountability tools.

Like Pritchard before him, Malan was given the independence to hire the staff he wanted, to design the approach to his work, and to conduct the specific audits and investigations that he believed were appropriate. Due in part to the statutorily established independence of the OIG, there historically was a degree of suspicion of the OIG by MTA officials. Malan worked to improve the OIG's relationship with the MTA. In addition, Malan's office worked to avoid the types of bureaupathologies that Anechiarico and Jacobs (1996) believed had occurred in NYC agencies as a result of NYC DOI's activities. Malan appeared to be having some success in these areas until the Silverite investigation. During this investigation, Malan was able to maintain his independence (and his job) but at the cost of cooperation with the MTA and MTA officials increased their defensive management strategies when dealing with the OIG. But having independence has its limitations if the OIG does not have the full authority and power to carry out its functions. The unsettled state law involving use of the defense of attorney/client privilege by a state agency as a basis for refusing to turn over documents under subpoena by a state OIG needs to be resolved in favor of the OIG (just as it has been resolved at the federal level).

The Current Period: A Cautious and Balanced OIG Approach:

2001 To The Present

An experienced prosecutor assumes office

When Roland Malan's term expired in 2000, Matthew D. Sansverie replaced him. Sansverie graduated from Fordham University with a B.A. degree in political science. He went on to graduate from Fordham University Law School in 1983 and went to work

as an Assistant District Attorney (ADA) in the Nassau County District Attorney's Office. At the District Attorney's Office, Sansverie worked on a variety of cases, from street crimes to corruption cases. He also worked in the career criminal unit and the appeals bureau. After 12 years as an ADA, Sansverie worked from 1995 to 1999 in the State Attorney General's Office, first assigned to the criminal division and subsequently was in charge of the charities bureau. In both the criminal unit and the charities bureau, Sansverie became involved in joint audit and investigation cases and financial investigations. In 1999, Sansverie was appointed to the role of Internal Control Officer for the Battery Park Authority. Effective on October 23, 2000, he was appointed to serve as Acting MTA IG (Sansverie interview, 2001). Sansverie held the title of Acting IG until he was officially appointed as IG for a five-year term commencing in May 2002 (Bono interview, 2002).

Rebuilding bridges with the MTA

Sansverie took over following the troubled tenure of Roland Malan. Relations between the MTA management and the OIG had been strained after the Pritchard and Malan periods. Sansverie took great efforts to improve communications with both the governor's office and the MTA. During his first year in office, Sansverie would make contact at least once a week with representatives from the secretary to the governor, either in person or on the telephone. Sansverie said he also wanted to build a good relationship with MTA management and to that end he would meet or talk on the telephone with the MTA chief executive, agency presidents and others on a regular basis. Early in his term, Sansverie sent them a letter, which he characterized as "sort of a

contract” that described what his goals and objectives were and the kind of things he would and would not do (Sansverie interview, 2001).

In the cover letter to Sansverie’s first annual report he officially reported that:

One of my goals for 2001 is the establishment of greater and more productive communication between the Office of Inspector General and the MTA and its constituent entities. Our early experience in this regard has been uniformly positive. (MTA OIG, 2001)

In the next annual report (covering the first full year of Sansverie’s tenure) he said that:

Also in 2001, we firmly established open communications with the MTA agencies, soliciting ideas for joint projects and proving that we have more than criticism to offer. (MTA OIG, 2002).

Sansverie also cultivated a relationship with the audit committee of the board of directors of the MTA.

Based on the fact that this subject of communication with MTA management is referred to a number of times by MTA IGs in interviews and annual reports, and the problem of the alienation of the governor’s office discussed by Malan, communication with these parties was a significant problem that Sansverie inherited and that he has attempted to solve.

In addition to communication, Sansverie has attempted to improve coordination with the MTA by opening lines of communication with the MTA’s internal audit staff. The MTA operating agencies historically have had a number of separate internal audit units. In recent years the MTA has worked to centralize these operations under a single auditor general. Sansverie has exchanged work plans with the auditor general’s office so as to avoid duplication of work. The OIG and the auditor general’s office have not

actually done joint audits yet as Sansverie believed that this raises some independence and objectivity questions (Sansverie interview, 2001).

Maintaining the balance between the investigative and auditing functions

When Sansverie took over from Malan, the staff was about half audit and half investigation. By 2000, the total staff had declined to 75, with an annual budget of \$7.2 million (Bono, Schedule of staffing and budgets, 2001). With Sansverie's background as a prosecutor, the staff expected that there would be a shift to the investigative role again as there had been during the Pritchard period. This did not happen to the surprise of both the auditors and investigators. With regard to this issue Sansverie said:

To the shock and dismay of my audit staff, my being a former prosecutor, they were convinced that when I came in, all the auditors would be fired, we would hire nothing but investigators and run around trying to catch people breaking the law. While my experience may have suggested that, the fact of the matter is, I am very fond of the audit as a tool for change. And I have again to their surprise been very supportive of the audit side. In fact, we're going to be replacing or adding to the staff in the not so distant future. I want to make sure that we replace every opening on the audit side.

I'm not looking to change the mixture of the staff. So I certainly appreciate our audit role and I think that there are sometimes in dealing with the people that we deal with that the preferred tool is clearly the audit tool. It's to my mind a more scientific, seems to be in the right hands of course, more neutral. It's bottomed on generally accepted principles rather than this is my approach to finding out the facts, I went around and knocked on a lot of doors and sat in a car and waited for so and so to come home. It's a very very useful tool and I'm very fond of it. I'm as much auditor as I am investigator at this point. And I think the audit side was shocked. At the same time, I think the investigative side was a little disappointed but I think they're all over that by now. (Sansverie interview, 2001)

Organizationally speaking, the two largest functions in the MTA OIG have always been the investigative unit and the audit unit. This continued into Sansverie's administration. During prior IG administrations the name of the investigative unit had been changed to the legal and investigative unit but Sansverie changed the title back to

the more traditional title of investigative unit. A major unit added by Sansverie was a planning and coordination unit. This new unit has many functions. One primary function is to act as a central intake unit for work and to track all complaints and cases being worked on. It also serves to coordinate the efforts of both the investigative and audit staffs. The intelligence function has also been moved to this unit (previously it was housed in the investigative unit). The planning and coordination unit also prepares the OIG's budgets, annual and five-year audit and investigative work plans (MTA OIG, 2002).

In addition, the quality assurance function was reemphasized and this unit was also given the task of managing training for the staff. Computer systems and administrative services units also continue under the new administration (MTA OIG, 2002).

Although Malan declined to fill the public relations position with a full-time person, Sansverie established an office of Deputy IG for Intergovernmental and Public Affairs. This office acts as media and public relations center and serves an outreach function to the MTA, other governmental agencies and the public. Sansverie stated that his office does not actively seek any publicity. Some of his comments on this subject were:

My preference is a lower profile, because I really think that's more professional. You also run the risk, particularly with a job where nobody's really I think happy to get a phone call from the IG's office. I think that's a fair statement. It's hard to believe that that's going to lead to good news. I mean I take the view that it's all good news, because we're really not trying to hurt people, we're trying to help in the long run. It's part of maintaining I think an appropriate low profile. Not necessarily going out in a very big way to the press saying look what we've found. Facts are facts, if you're interested great, if you have questions, we'll help you, if you want a copy it's yours.

I think what I'm really trying to get at, you don't want the entities to think that you're in this for you, because that puts something in the mix that you'll never get

rid of. We're always giving people bad news, from their point of view, probably initially. I don't want there to be too much confusion about why it's bad news. I would like the understanding to be, what I believe it to be, that it's bad news because that's what the facts told me, and my analysis tells me. I would like to keep off the table any suggestion that I'm saying this is bad news because it's good for me to say it's bad news. I think you can do that once and probably ruin every bit of goodwill and working environment I've at least worked very hard to establish. I'm very sensitive on that issue. (Sansverie interview, 2001)

As with prior administrations, the hotline continued so that employees, the public and others could report complaints to the OIG. Sansverie reported that the website started by Malan was not an early priority of his administration (Sansverie interview, 2001). Subsequently, the website was updated to reflect information about the new administration. When Malan established the website, his office included annual reports, audit reports and some investigation reports on the website for direct viewing and downloading. Since the Sansverie administration has taken over, all of the audit and investigation reports were deleted from the website (MTA OIG, n.d.). The website does provide information regarding how to request reports directly by mail or telephone. But this is not as effective in providing the public with access to the results of the OIG's investigations and audits since the public may not even be aware of the existence of a report unless they have read about it in a subsequent annual report.

Early work focus and forward thinking program

During 2001 (Sansverie's first full year as IG), the OIG reported receiving a total of 520 complaints, of which 225 were referred to other agencies. The OIG conducted 61 investigations and audits, issued 23 reports and 55 recommendations (MTA OIG, 2002). Sansverie has developed a number of areas where he wants to focus proactive attention. These areas included "capital planning, capital projects, procurement contracts, third

party vendors, any type of double billing or false billing fraud issues” and dishonest employees. With regard to vendors Sansverie commented:

One of my primary concerns is how are vendors treating the MTA. There’s a \$9 billion capital and operating budget for the last year. I think it’s just fair to say there’s going to be some fraud. We know it’s out there. And I tend to be a little black and white about what’s acceptable and what’s not acceptable from the point of view of a vendor. My feeling is you put in a bid, you know how much it would cost, this was your best guess, you agree to abide by that system, I really don’t want to hear claims that, “well maybe we padded it a bit, but it’s the cost of doing business.” That doesn’t work. So we focus very clearly on vendors. There’s not really a lot of wiggle room with that. We try and get the message out there that its sort of a no nonsense approach to it, we don’t have a sense of humor for that. It’s not just business. I think the management of the different agencies probably appreciates that because it helps them deal with the vendors too, and keeps them from being pushed around. (Sansverie interview, 2001)

Major areas where Sansverie believes that a proactive approach is important in “procurement, cost containment and contract management” is in the proposed construction of a new East Side Access, Second Avenue Subway and the rebuilding efforts in lower Manhattan necessitated by the terrorist destruction of the World Trade Center (MTA OIG, 2002, p. 13). The Second Avenue Subway will be one of New York City’s most costly public works projects ever and Sansverie wants a long-term active role at all stages in this project. Sansverie believes that early participation by the OIG will save money in the long run due to the OIG’s experience in cost containment and that an active role by the OIG in the project “will help bring an added sense of integrity to the project if we can be at the table now.” Sansverie expressed his understanding of the concern that the presence of the OIG at the early stages means adding another party to this enormous project and that this might result in some additional up front time costs, but he believes he can work out an arrangement that would avoid any impediments to the system (Sansverie interview, 2001).

Measuring success and bureaucracy issues

Considering the aggressive plans that Sansverie has for his OIG, how does he plan on measuring the success of his office? As previously discussed, developing communication and cooperation was an important first mission for Sansverie himself. Sansverie discussed two other areas where he measures the success of his OIG. One area is in having an ambitious work plan where the OIG seeks to accomplish the most possible with its resources. The other area is the extent to which the MTA implements his recommendations. With regard to OIG recommendations Sansverie said:

We put a lot of work into the recommendations and those recommendations are based solely on our findings, not some theory or whim or guess. When we make a recommendation, we like to believe it's a solid recommendation. That being said, I like to believe they'd accept it. So to me one of our key measures of success is how we do with our recommendations, are they accepted, have we made them clear, have we gone overboard, are they reasonable suggestions, are they reasonable recommendations... I honestly believe that our recommendations are sound ones or I wouldn't have bothered making them. And I hope that if I've taken the trouble with the staff's efforts to make these recommendations, that they find their way into the system, and that they're accepted. They're not always, but we hope the vast majority of them are. That's how I think I'm able to tell if we're doing a good job. (Sansverie interview, 2001)

Sansverie, like Malan, believes that the quality of their recommendations should counter any criticism leveled against IGs that their work might increase bureaupathologies in government. To the criticism that IGs slow down the government decision-making process, Sansverie argues that government should be about good decisions and not necessarily about fast ones. He said: "it's a balance, and you can have a quick determination and a lousy one or you can have a more deliberate one and a more reliable one" (Sansverie interview, 2001).

Sansverie's administration is not immune to turmoil

Sansverie was appointed IG in May 2002 after serving as Acting IG since October 2000. Sansverie's appointment to a five-year term would seem to indicate that he was having some success in dealing with the problems that plagued past IG administrations. In fact, 2002 seemed to be a successful year, with increases in productivity at the MTA OIG. Sansverie's office reported issuing a total of 33 reports, "the highest number of reports ever issued by this office in a single year" (MTA OIG, 2003, p. i). The OIG also reported increases in the number of unannounced inspections. Investigations included allegations of: business fraud, forged documents, a fraudulently altered bid document, fraud under the government's Disadvantaged Business Enterprise program, theft of time by employees, encroachments on MTA railroad property, etc. The outcomes of some of these cases included criminal referrals to local or federal prosecutors, termination or disciplinary procedures against employees, disbarment of contractors, and recommendations for improvements in internal control procedures (MTA OIG, 2003).

During 2002, the MTA OIG reported working with a total of 42 other investigative, prosecutorial, governmental, and nongovernmental organizations. In addition, the MTA OIG planned to establish a new unit in 1993, a Financial Investigations Unit, to investigate economic crimes against the MTA. This new unit "will consist of attorneys, forensic accountants, and investigators, all with experience investigating and/or prosecuting complex economic crimes" (MTA OIG, 2003, p. 16).

The announcement of this new unit in the MTA OIG's 2002 annual report (dated February 1, 2003) came just before the MTA OIG would become embroiled in a media battle that has not yet fully played out. These scandals involve three issues: (1)

allegations of attempts by MTA officials and Governor Pataki's office to interfere with a MTA OIG investigation under Roland Malan into the renovation of the new MTA headquarters at Two Broadway; (2) allegations of widespread corruption at the MTA made by the then director of security, Louis R. Anemone and his assistant, Nicholas B. Casale; and (3) reports that the MTA had improperly stated its financial records in order to justify fare increases. All of these allegations raised questions about the MTA OIG's effectiveness.

The investigation of the Two Broadway construction project by Malan's office was dropped along with others because of resistance from the MTA and political interference from the governor's office (see prior section on Malan's administration and also Kennedy and Lambert, 2003). According to Flynn and Bagli (2003), two senior MTA executives were terminated in December 2002 because of allegations that they accepted bribes. The case was referred to the Manhattan DA's office and to date no criminal charges have been filed. One of the two individuals fired was also involved in supervising the Two Broadway project. No criminal connection has been found between these two former MTA officials and the Two Broadway project in an investigation that has been taken over by federal authorities. The investigation of the two MTA officials that led to their firings was initiated by Anemone, who brought in the MTA OIG.

At the same time these issues were being aired, Anemone alleged that there was significant corruption at the MTA and that the OIG has not been aggressive enough in its investigations. To support this contention, Anemone claimed to have a confidential informant. Anemone failed to produce the informant and Sansverie's office conducted an investigation that concluded that the existence of the confidential informant was a

fabrication by Anemone. Sansverie recommended that Anemone and Casale be fired (Flynn and Bagli, 2003). Anemone and Casale were both suspended and subsequently terminated. They deny that they fabricated the existence of the informant and said that they will sue (Lambert, 2003b).

Sansverie defended his office before a State Assembly hearing saying “I have concentrated on getting results, not headlines” and reported that in the last year he referred 15 criminal cases to prosecutors (Lambert, 2003a, p. B2). Regarding Anemone and Casale, Sansverie said in a separate interview, “they were simply ‘attempting to cloak themselves in the garb of whistleblowers before the M.T.A. could take action against them’” (Kennedy and Lambert, 2003, p. A34).

In another matter, State Comptroller Alan G. Hevesi, claimed that the MTA kept two sets of records. One set of records for internal use indicated a surplus for 2002 that could be used to offset 2003 budget deficits. The other set of records for external use, used the surplus to offset deficits in 2004, resulting in 2003 showing deficits. These 2003 deficits were used to justify fare increases that were approved in March 2003 (Kennedy, 2003). Although this was not an area that the MTA OIG has been involved with in the past, it indicated to the public that more oversight was needed at the MTA.

Analysis using research questions: current Sansverie administration

Table 3 summarizes an analysis of the Sansverie period using the six research questions. As discussed above in this chapter, this data analysis was performed in accordance with the methodology described in Chapter 5. At the end of this chapter is an additional summary discussion of all three MTA OIG periods analyzed.

The MTA OIG continues with its mission to reduce fraud, waste and abuse. In order to accomplish this mission, Sansverie emphasizes the audit and investigative functions. Sansverie does not want to be perceived by the MTA as being adversarial. This OIG has reduced the timely dissemination of its investigation and audit reports to the public. Sansverie operates his IG using a routine police-patrol form of oversight that avoids any accusation that the IG would use scandal to enhance his position. Sansverie has the panoptic oversight tools available to him and employs them when needed, but his emphasis is on proactive approaches. His goal is to go beyond compliance accountability to develop capacity building accountability approaches. Instead of just examining the proposed East Side Access, Second Avenue Subway construction project after it is completed, he wants his office to be involved from the beginning.

Table 3

MTA OFFICE OF INSPECTOR GENERAL

Matthew D. Sansverie, IG (2001-present)

Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste, & abuse?	Confirms
2. Used police-patrol oversight?	Strongly confirms
3. Adopted panoptic vision of oversight?	Neutral
4. More attention to compliance accountability?	Contradicts
5. Statutorily appointed IGs exercise more independence?	Confirms
6. OIG contributed to an increase in bureaupathologies?	Contradicts

Sansverie's appointment as IG provides him with statutory independence. Independence is no guarantee of success. In order to be successful, the OIG needs the cooperation of the MTA. This cooperation is earned through trust developed over time. Sansverie has taken some early steps that he believes will be useful in increasing cooperation between the MTA and the OIG. Like Malan, Sansverie measures his success based on the quality of his recommendations and their usefulness in improving the MTA's operations and avoids actions that he thinks would create bureaucratic pathologies at the MTA.

Summary And Additional Analysis

In the 20 years since the MTA OIG was created by statute, this organization has seen many changes. Each new IG has brought to the OIG his vision of what the role of this oversight organization should be. The direction of the OIG is clearly influenced by who is at the helm as the IG. The IG is the person who sets the priorities of the OIG and has total control over the hiring and firing of the staff. Although the mission of this OIG is set out in the enabling statute, each reigning IG has approached the task in a different way and each has tinkered with the structure of the organization and has hired staff with the same vision as their boss. For most of the 20-year history of the MTA OIG, the IGs have used a balanced approach similar to the federal IGs of utilizing both audit and investigative tools to work to improve the operations of the MTA. The exception to this philosophy was the tenure of John Pritchard. Pritchard came from a federal law enforcement background and approached the job as if he was running a racketeering bureau. Pritchard's OIG met the definition of the panoptic vision of oversight by aggressively

pursuing transgressions by MTA employees using such investigative tools as personal and video surveillance.

With regard to the question of whether the MTA OIG has increased the MTA's capacity to reduce fraud, waste and abuse the answer covering the last 20 years is yes. The OIG has completed hundreds of audits and investigations that have pointed out areas of inefficiency, waste and outright fraud. Employees and contractors have been arrested and prosecuted, others have been terminated, and the MTA has implemented the recommendations from many of these audits and investigations. Without the OIG and the legislative mandate that management respond to the OIG's recommendations, it is questionable if these improvements would have been made. The MTA itself has only recently initiated efforts at organizing its internal audit function. As previously noted, there are no accurate measures of fraud, waste and abuse and it is difficult to estimate the actual impact of any anticorruption organization.

At the same time they perform their work, the MTA IGs are aware that their role should not increase bureaupathologies and make a special effort to insure that their recommendations are useful in improving the operations of the MTA.

With regard to the type of accountability oversight work performed by these IGs, there is evidence that the MTA OIGs have not just focused on compliance accountability but have gone beyond this and even made attempts at capacity building accountability initiatives. Most of the work of these IGs has clearly been in the form of compliance accountability. Investigations that end in arrests and other negative sanctions fit this definition. Alternatively, some of the efforts of MTA IGs have been directed at making positive recommendations to improve the operations of the MTA and these IGs even

judge their level of success on whether MTA management is willing to implement their suggestions. In addition, IG work that includes pre-activity initiatives such as Sansverie's efforts to become involved in the Second Avenue Subway project before construction begins shows that he is looking beyond the traditional role of IGs as post-activity auditors and investigators and instead is attempting capacity building accountability initiatives.

The MTA OIG was born out of scandalous problems at the MTA. Although created by legislation, both Malan and Sansverie report little contact with the state legislature. Although some of the OIG's work has attracted the attention of the media, the MTA IGs have preferred for the most part to perform their work in a quiet professional manner without attracting media attention. The two most recent IGs showed no interest in becoming involved in the "fire-alarm" oversight common with scandal-oriented investigations. Instead, the recent IGs have preferred to operate using the "police-patrol" oversight model described by McCubbins and Schwartz (1984) which focuses on conducting the oversight function using routine audits and investigations.

Over the last 20 years, these IGs appear to have maintained their independence from the MTA. Malan and Sansverie both reported no conflicts in obtaining sufficient operating budgets from the MTA management. The financial resources available to the OIG have steadily risen from \$4.1 million in 1984 to about \$7.8 million today. The legislation creates a framework supporting this independence. This high degree of independence can have some negative consequences as it may create an atmosphere of distrust and a problem with cooperation. How IGs operate and the relationships they build with management can determine how successful they will be. Based on the

information reviewed, it seems that the MTA IG historically has not been considered as the “strong right arm” of management but rather as a “junkyard dog” to be kept at bay.

Like other government organizations, the MTA OIG faces the responsibility to operate in an open and public manner. This is an especially difficult mandate for an OIG that has to deal with many legal and practical confidentiality considerations. Some of these considerations include: protecting the identity of confidential sources, protecting the confidentiality of information obtained from grand juries, and protecting the confidentiality of ongoing investigations. Even with these restrictions, OIGs have an obligation to report their activities to the public. The statutory requirement to issue an annual report and the decision of the Malan administration to provide investigation, audit, and annual reports on the OIG’s website provided a mechanism for the OIG to satisfy this obligation to the public. It is hoped that the Sansverie administration will return to providing more disclosure on its website.

CHAPTER 8

THE OFFICE OF STATE INSPECTOR GENERAL

Establishment of the Office of State Inspector General

Under Democratic Governor Mario M. Cuomo

Hiring the first State IG

In June 1985, Judge William Webster, then the director of the Federal Bureau of Investigation had a discussion with Governor Mario Cuomo (NYS OSIG, 1990). Cuomo was concerned about corruption and did not want to experience the problems that New York City Mayor Ed Koch had recently experienced. The Koch administration was plagued with a number of scandals, the most notable one involved the corruption plagued New York City Parking Violations Bureau (see Newfield and Barrett, 1988). Joseph A. Spinelli, the first State IG recounted that:

Cuomo was obsessed with having a corruption free administration. He just, and I don't say obsessed lightly, he really wanted to insure that there was not going to be a replication of what had transpired in New York City with the Parking Violations Bureau. He wanted to make sure that when he left office himself, that he wouldn't be leaving under a cloud. (Spinelli interview, 2001)

Spinelli believed that Cuomo's obsession with corruption was why he was granted full autonomy and independence to operate the OSIG without political interference.

Webster and Cuomo discussed the concept of establishing an inspector general for the State of New York. While reviewing possible candidates, Webster went to a ten-year FBI veteran, Joseph A. Spinelli and asked him to speak to Cuomo.

Spinelli was working out of the FBI's New Haven, Connecticut office and served as the statewide coordinator for organized crime for the FBI. Spinelli was a graduate of

the John Marshall Law School in Atlanta and went to work for the FBI after graduation. While at the FBI, Spinelli specialized in primarily white-collar crime and political corruption cases. He had previously been assigned to the FBI's New York City political corruption squad and had worked on the federal corruption case involving U.S. Congressmen known as Abscam. At the time he was approached to speak with Cuomo, Spinelli was content to be living with his wife and children in the quiet town of Hamden, Connecticut where he had moved just a year before. At this time Spinelli had no plans to move again. Spinelli went to see Cuomo, thinking Cuomo wanted to talk to him about a corruption case and not knowing what Cuomo had planned. Cuomo and Spinelli knew one another from a prior New York State political corruption case that Spinelli had worked on for the FBI while Cuomo was lieutenant governor. Spinelli visited with Governor Cuomo at the World Trade Center in New York City and Cuomo proposed that Spinelli come to work for him as his first state inspector general and Cuomo wanted an answer right away (Spinelli interview, 2001).

At the age of 36, Spinelli left the FBI and went to work for Cuomo to put together a plan for an IG office. From July 1985 until January 1986, Spinelli held the title of special assistant to Lawrence T. Kurklander, the NYS Director of Criminal Justice for the Cuomo administration (Wilkerson, 1986). On January 8, 1986, Cuomo announced in his State of the State address to the legislature his proposal to establish a state inspector general. In that speech Cuomo said that "nothing hinders the operation of government as much as the taint of corruption. Our efforts in every area depend on the confidence of the public and the morale of State employees. Therefore, I will designate a State Inspector General to ensure honesty in government" (NYS OSIG, 1990 p. 7).

Executive Order No. 79

Subsequently on January 29, 1986, Cuomo issued NYS Executive Order No. 79, creating the Office of State Inspector General and appointed Spinelli as the first State IG. The order authorized the new State IG to investigate fraud, abuse and corruption in eight agencies: the “Office of General Services, The Department of Environmental Conservation, the Department of Transportation, the Division for Youth, the Department of Housing and Community Renewal, the State Insurance Department, the Division of the Lottery, and the State Liquor Authority” (NYS OSIG, 1990, p. 8). The reason given by Cuomo for these initial agencies was that they “handled large sums of money in contracts with local governments, community-based organizations and private corporations” (p. 8).

Republicans criticized this new IG proposal by a Democratic governor. Roy M. Goodman, the chairman of the NYS Senate Committee on Investigations, said the proposal was “a small but constructive first step.” Goodman’s committee had proposed that inspectors general be appointed for each of the 20 state agencies and that these IGs should report to the State Comptroller (Wilkerson, 1986, p. B2). In March 1986, the State Commission of Investigation also issued a report recommending the appointment of independent IGs at each of the state agencies. This and other recommendations were the result of a four-year investigation ordered in 1982 by then Governor Hugh L. Carey into practices in the public construction industry. This commission reported allegations of corruption in many aspects of government contracting, especially on government construction projects. The Commission of Investigation also accused both the Battery Park City Authority and the Port Authority of New York and New Jersey of engaging in featherbedding to avoid union disputes (Raab, 1986).

Staffing up the new OIG

Growth. The OSIG started out small, initially with a budget of \$300,000 and with a small staff consisting of the IG, a secretary, and three investigators (two in Albany and one in New York City) (NYS OSIG, 1990, p.11).

Spinelli recounted a story of the early days when the staffing was sparse:

Being the first IG I had no staff so I had to start from scratch. I had a secretary, that's it. So not being of sound mind, what's the first thing I do, I set up a statewide hotline to basically get information. And there's only one problem, who's going to answer the hotline. Me. So one night, just coincidentally I'm in the office in Albany at 8:30 and the hotline rings. I'm the only person in the office, who else can answer it but me, unless the secretary's there till five. So I pick up the phone and it's, the person says, "who is this." "This the state inspector general." "This is fabulous." "Who's this?" "My name is Adam Degurney and I write for the Daily News and I got to tell you, the State IG picking up the hotline at 8:30 at night himself." The next day a big article, "State IG watchdog serious about corruption answers own hotline." Publishes the [number], does me a real service, publishes the hotline number, and like 2,000 calls [come in]. (Spinelli interview, 2001)

Within the first four years, the staff grew to 29, with a total budget of \$1.7 million. This included the IG, a deputy IG and general counsel, 19 investigators and eight other staff (NYS OSIG, 1990, p. 11). By January 1992, the senior posts included the State IG, First Deputy IG, Counsel, and a senior investigator supervising each of the three offices (Albany, Buffalo and New York City) (NYS OSIG, 1992, p. 11). The geographic locations of the offices were modeled on the field office and resident agent principles of the FBI where staff should be located so that they could respond anywhere in the state within one to two hours (Moresco interview, 2001). The total budget of \$1.7 million and a staffing level of 29 would stay the same and were the amounts authorized for the 1995-96 fiscal year. It wasn't until June 1996, when there was a major restructuring of the OSIG under Governor George Pataki, that the budget and staffing

numbers increased significantly (NYS OSC, 2000). This reorganization will be discussed later in this chapter.

Staff backgrounds. Joseph Spinelli's background was that of a ten year FBI special agent with experience in white-collar crime, political corruption and organized crime. One of Spinelli's first hires was another FBI special agent, George F. Moresco. Moresco was a graduate of Notre Dame University (bachelor's degree in political science) and Fordham University Law School. He was a 26-year veteran of the FBI, an attorney and a former Marine Corps captain. Moresco had experience in investigating many of the crimes traditionally handled by the FBI including: organized crime, hijacking of interstate shipments, bank robberies, kidnappings, frauds, extortions and other major felonies. At the age of 53, Moresco left working for the FBI on a Friday in March 1986 and started the following Monday running a one-man office for the OSIG in New York City. Moresco would subsequently go on to become Chief Investigator for the New York Office of the OSIG, First Executive Deputy IG and on July 1, 1993 was appointed by Governor Cuomo to be IG after Spinelli resigned (Moresco interview, 2001).

Spinelli and Moresco both said that Cuomo gave them complete independence in hiring staff for the OSIG and that there was never any political interference with this effort. They reported that the Governor's appointments office occasionally sent them a resume, but that they almost always ignored these recommendations and hired based on their own recruiting efforts. Spinelli began by hiring experienced professionals, retirees from such agencies as the FBI, the Internal Revenue Service, and the New York State Police. To run his Buffalo office, Spinelli hired Donald Fuhrman, a former senior

investigator with 20 years of experience at the state police. For his office, Fuhrman hired investigators from the Internal Revenue Service, the FBI and the Buffalo Police Department; investigators with experience in white-collar crime or forensic accounting. Spinelli hired another former FBI special agent and attorney, Louise Shutler, who ran the Albany office's investigations. Shutler previously was head of the white-collar crime desk for the FBI's New York Office. In discussing the kind of people that Spinelli wanted to hire, he said:

I wasn't interested in people who were going to kick doors in. Those people weren't going to get these types of investigations done. I needed the people who knew how to conduct white-collar crime investigations and knew how to write and put reports together because when we did a prosecutive report, that was going to a prosecutor and they were going to use that very document to decide a lot of times whether or not they had sufficient evidence to bring a real prosecution... These are people, not only are they good at what they do, but they have access to great people, so well respected in their respective fields that they are going to be able to recruit and help me recruit the right people. That's how we built the office and that's why it had the success it did. (Spinelli interview, 2001)

All of the staff were basically investigators, but some had accounting backgrounds in order for them to be able to work on cases with complex money flows (Spinelli interview, 2001).

As noted above in Chapter 6, Edward Dominelli developed the oversight functions for the Division for Youth and served there as a deputy IG reporting to the DFY and to Spinelli. In 1989, about three years after meeting Dominelli and working with him as the deputy IG for DFY, Spinelli decided to hire Dominelli to help him develop the investigative audit function at the OSIG. Many of Spinelli's previous hires were former law enforcement officers and what the OSIG needed were investigators with knowledge of the organizational sciences and fiscal matters. Dominelli described the situation as follows:

[Spinelli] had a bunch of retired law enforcement guys...but they had a law enforcement mentality and nothing wrong with that, but it's tough when you bring a guy who's law enforcement and it takes a while to figure out the operations of an agency and how it is working. Bring a cop off the street so to say and then he is thrown into this bureaucracy and he doesn't know protocol, bureaucracy and it takes him a long time. So Joe wanted somebody working for him that didn't have that background, that knew the state bureaucracy, knew the paperwork, knew contracting, and audit and things like that. So he asked me to come down there and set up an investigative audit function for him. (Dominelli interview, 2002)

Dominelli hired a number of CPAs for his new investigative audit staff at the OSIG. Spinelli described the addition of several certified public accountants on his staff including one who came directly from KPMG and a CPA out of the state comptroller's office. Spinelli's way of putting it was that the accountants were useful in following the paper trail (Spinelli interview, 2001). Moresco said that those with accounting backgrounds were useful in conducting operations reviews and in understanding the overall "financial picture" of an organization under review (Moresco interview, 2001). Dominelli's investigative audit staff was involved in a number of significant cases including investigations involving the Olympic Regional Development Authority, the Division of Substance Abuse Services, and the Job Development Authority (Dominelli interview, 2002).

Moresco emphasized the value of hiring retired law enforcement personnel on the stability of the office. He said that the retired law enforcement investigators were selected because they had the necessary experience and because they had the financial independence to accept a position where there was no guarantee of future employment. The State IG serves at the pleasure of the governor and the staff also does not have any civil service protection and may be terminated at any time. Moresco commented that the OSIG did hire some younger workers, but that the older employees provided a steady

workforce, as they were not looking to jump from position to position (Moresco interview, 2001).

In addition to the federal, state and local investigators and CPAs noted above, Spinelli reported hiring several former federal IG staffers, and a couple of NYC DOI investigators. Spinelli and Moresco both reported that they had investigators from other agencies interested in coming to work for the OSIG. When they spoke at IG meetings and discussed the kinds of cases they were working on, this would generate a flurry of resumes from other IG offices. They credited this interest in the OSIG to their investigative focus and their successes in this area.

Investigative versus audit focus. Many IGs have separate investigative and audit staffs, as they are involved in investigations, audits and inspections. The NYS OSIG focused substantially all of their efforts on conducting investigations. The New York Office of State Comptroller has an active audit program conducting audits in many state agencies each year. As Spinelli reported:

We had to be careful about that for two reasons. One, what we didn't want to do was duplicate efforts that were being done by the State Comptroller, nor did we want to convey the impression that we were stepping on their toes. What we did do was and I found the best way to do it would be jointly with them. We did do some of our own audits, I don't want to give you the wrong impression but for the most part we did joint audits with the State Comptroller's office when we did them.

And we did what I call a vulnerability assessment program, which was proactively addressing potential problems and making certain that whatever we could do to enjoin those problems from coming to fruition we did. And we did a lot of that by the way. We did it in every agency every six months. And by the way, my state IGs, deputies in each agency, had to give me a report every six months on what they were doing relative to that. That helped also in quantifying potential savings for the state. (Spinelli interview, 2001)

Jurisdiction of the OSIG

Mission

Generally speaking, the executive orders under Governor Cuomo's administration gave the State IG the authority to investigate "fraud, abuse and corruption" in state agencies, departments, and divisions where the governor appointed or nominated the chief executive (Executive Order Nos. 79, 86 and 103). Under the Cuomo administration (State IGs Joseph Spinelli and George Moresco), the OSIG did not have any law enforcement powers and was only an investigative agency. The State IG was designated to receive complaints and to determine which ones should be investigated. The State IG would determine whether the complaints warranted the referral of the results of their investigations to other authorities for "disciplinary action, civil or criminal prosecution, or further investigation by relevant Federal, State or local agencies." (NYS Executive Order 103, 1987). The executive order also provided that the State IG should "help prevent fraud, abuse or corruption in covered agencies by periodically reviewing policies and procedures and monitoring day-to-day operations and making recommendations for improvement." To assist OSIG in carrying out its duties, the State IG was given subpoena power to compel testimony and the production of documents.

Oversight for individual state agencies

As previously discussed, NYS Executive Order No. 79 (1986) provided that the OSIG initially had jurisdiction over only eight state agencies. Spinelli reported that because of the initial successful investigations and recoveries of misappropriated funds, Cuomo agreed to broaden the OSIG's jurisdiction. Governor Cuomo issued Executive Order No. 86 just nine months after the office was opened. This revised order provided

that the OSIG would have jurisdiction over the initial eight agencies “and such other agencies as may from time to time be determined by the State Inspector General.” This effectively gave the state IG oversight jurisdiction for “all agencies, departments or divisions headed by appointees or nominees of the Governor” (NYS Executive Order No. 86, 1986).

Spinelli set up a two-part system to liaison with covered state agencies. OSIG investigators were assigned an agency to keep in contact with. The investigators had the responsibility to be knowledgeable about their assigned agency’s operations and problems, and also had the outreach role of educating agency employees about the mission of the OSIG. Each agency also assigned a contact person to maintain liaison with the OSIG (Spinelli interview, 2001).

In addition to the liaison approach, the State IG had the authority to appoint deputy IGs. The Cuomo executive orders gave the State IG the authority to appoint deputies and to assign them “to designated agencies, departments, and divisions of State government.” By January 1992, 28 agencies had deputy IGs. These deputy IGs were employed by the agency and reported to both the agency executives and to the State IG. This approach multiplied the effectiveness of the existing small staff of the OSIG by giving it access to and some supervision over additional oversight personnel. A number of agencies had established oversight functions prior to the OSIG’s founding. Some of these included OIGs set up at the Department of Correctional Services (Chapter 6) and the Office of General Services and other types of oversight offices established at the Division for Youth (Chapter 6), the Department of Social Services (Chapter 11) and the Department of Labor (Chapter 12). The executive orders provided that the existing

agency IGs would have dual appointments and would “ report to and follow the direction of the State Inspector General, as well as the commissioner or director of their respective agency” (NYS Executive Order 103, 1987). These agency IGs would also be designated deputy IGs for the OSIG.

Similar in structure to New York City’s Department of Investigation

Although Spinelli said that he did not copy his organizational structure from either the NYC Department of Investigation or from other oversight agencies, the deputy IG arrangement established at OSIG was similar to the system then existing at the DOI. What is interesting is that the NYS OSIG under the Cuomo administration retained this system long after the similar system at the NYC DOI was considered by some to be ineffective. This system was considered ineffective because the deputy IGs were under the direct employ of the agency heads and this situation created the possibility that the IGs could be pressured by their agency heads to ignore or conceal misconduct within the agency.

During 1986, the suicide of Donald Manes, the Democratic Party Queens County leader and borough president, and the federal or local indictments of a number of senior officials in several NYC agencies including the Parking Violations Bureau, the Taxi and Limousine Commission and the Health and Hospitals Corporation led to a reexamination of the structure of the DOI. This reexamination was done under the direction of a new DOI Commissioner, Kenneth Conboy. Conboy was a friend of Mayor Edward Koch and a member of Koch’s personal staff. In December 1986, a report by Conboy was sent to the mayor and also a separate report by the State Commission of Investigation was issued. Both reports concluded that the system of having IGs employed by the agency

head with additional reporting responsibility to the DOI was not effective and that the agency IGs should be consolidated into the DOI (Winslow & Burke, 1993 and Newfield & Barrett, 1988). As will be discussed below, during the subsequent administration of Governor George E. Pataki, the deputy IG system would change to reflect one that was similar to the new system adopted at DOI.

State IG interacts with agency deputy IGs

The State IG exercised some control over the hiring of these deputies. Prospective deputy IGs proposed by the agencies were sent to the OSIG for an interview with Spinelli and his approval before being formally hired by their respective agencies. Also during Spinelli's administration, regular reporting was developed between the deputy IGs and the OSIG. Spinelli held monthly meeting with the deputy IGs at which they discussed their ongoing investigations. The deputy IGs were also required to submit a 60-day report that detailed all fraud, abuse and corruption matters being investigated by their offices. In addition, Spinelli instituted a requirement that all deputy IGs perform vulnerability assessments for their assigned agencies. This was the first time this had been done statewide in New York (Spinelli interview, 2001). These vulnerability assessments were formalized into a six-month reporting process "that identifies programs and operations within the deputy IG's agency that might be susceptible to abuse or corruption in the future" (NYS OSIG, 1992, p. 16). These reports provided suggestions for improving internal controls at the subject agency and were also sent to the agency executive. The OSIG would also take suggestions from one agency and incorporate it into proposals for "new standardized policies and procedures at other agencies" (p. 16).

OSIG Investigates Corruption in New York State

Early secrecy

During the first 18 months of the new OSIG, the results of investigations were generally not released to the public but rather were confidentially submitted to the state Director of Criminal Justice, a Cuomo appointee. Further action on releasing these confidential OSIG reports and decisions to the public was at the discretion of the governor's director of criminal justice. The State IG was generally not allowed to speak publicly about them (New light in Albany, 1987). Spinelli said that during this early period in his tenure as State IG, he wanted to release to the public a summary of every one of his reports upon completion of the investigation. Spinelli reported that he experienced extraordinary resistance to this concept from the governor's staff (Spinelli interview, 2001).

Several investigations early in Spinelli's tenure would create some embarrassment for the governor and result in pressure to release the results of the OSIG's work. The first case involved a close aide of the governor who was his advisor on health and human services. The allegation in that case was that the aide "had helped her husband obtain state contracts to build residential-care centers for the mentally ill" (Kolbert, 1987b, p. A1). But a more significant case resulted in increased pressure on the governor's office to release the OSIG's reports. This case involved the executive director of the NYS Thruway Authority, Alexander A. Levine. Governor Cuomo and Levine had known each other for more than ten years. Levine had worked as the governor's director of administration and appointments secretary. The investigation involved a computer software company that Levine had helped establish. The software company had obtained

contracts from four engineering firms and these companies had received 30 percent of the Thruway Authority's engineering consulting business. In addition, Levine's daughter was an officer of and an investor in the software company. Other Thruway Authority employees served on the board of directors or were investors (Kolbert, 1987a & 1987c). Levine resigned from his position in state government.

With the Levine case in the news, Governor Cuomo issued Executive Order No. 103 on October 14, 1987. Executive Order No. 103 included a provision to provide for the release to the public of the State IG's reports with appropriate redactions to protect witnesses. It also provided that the release of reports or parts of reports could be delayed when necessary to protect ongoing investigations. The governor's office denied that the new executive order was issued in response to the criticism over the secrecy surrounding the State IG report prepared in connection with the Levine case and said that the decision to release the reports had been made in August 1986. Republican State Senator Roy Goodman continued his criticism of the OSIG. Goodman said that the OSIG lacked independence because the IG serves at the pleasure of the governor and that the OSIG should be abolished and replaced by 20 separate independent inspectors general (Kolbert 1987b).

According to Spinelli, the end result of the new executive order was that anyone could go to his office and request a copy of an investigation summary. By making the summaries available Spinelli said that the "actual final disposition of what we did would be made public and the reasons why" (Spinelli interview, 2001). An index of cases was also prepared and updated quarterly. In addition, Spinelli instituted a policy of preparing biannual reports that were widely distributed. The biannual reports described the mission

of the OSIG, its history, its staffing, procedures and operations. The biannual reports also discussed significant cases, including detailed descriptions of some investigations, the investigations' findings, the outcomes to the parties involved and the remedial work done by the affected agencies. These biannual reports were in excess of 50 pages each and the last one done in 1994 by George Moresco totaled 88 pages. The biannual reports also included photocopies of press clippings to show the positive results of the OSIG's work with such titles as: "Report details corruption in state militia" and "37 arrested in the selling of documents" (NYS OSIG, 1994). This report format was not unique to the OSIG. The Office of Welfare Inspector General that operated in the 1970s had adopted a similar format, including the use of photocopies of press clippings (NYS OWIG, 1973).

With regard to the importance of releasing the results of the investigations,

Spinelli said:

And you know what's good about it, it's not only good for the IG, to show that he or she is not covering anything up, it's great to vindicate people where there's been false accusations and allegations made against them because many of our final reports were vindications of people who had falsely been accused. And there's nothing worse by the way than some poor soul having to sit at a table with his two kids and they open a newspaper and see he's under investigation by the state inspector general so he must have done something wrong, because there's always that presumption of guilt, unfortunately. So, this was a good thing. And it was something I was absolutely insisting on. And it was a battle. Not Cuomo per se, but a lot of his people did not want it. But I won out on it fortunately. (Spinelli interview, 2001)

Complaints

Complaints are received by an OIG from many sources. For instance in the Alexander Levine case, the investigation began after several state legislators received an anonymous letter outlining the allegations against Levine. In its 1992 biannual report, the NYS OSIG reported five common mechanisms for providing complaints. These

were: “(1) a letter from an individual or state agency; (2) a telephone call from an agency; (3) a walk-in complaint at one of the OSIG’s offices; (4) a call on the OSIG’s Hotline; [and] (5) information developed by an OSIG investigator” (NYS OSIG, 1992, pp. 11-12). In addition, the agency deputy IGs provided information that developed into OSIG investigations. The most common source of complaints was state employees. The most common types of complaints reported to the OSIG for the 1990-1991 period are shown in Table 4.

Table 4

OFFICE OF STATE INSPECTOR GENERAL

Summary of complaints received (1990-1991)

Type of complaint	Number of reports
Time and attendance abuse	32
Employee misconduct	29
Public officers law violation	28
Waste/misuse of state resources	22
Official misconduct (penal law violations)	19
Offenses involving false written statements	15
Bribery and related offenses	15
Program mismanagement	14
(NYS OSIG, 1992, p. 12)	

After an investigation is received, a decision is made to either: (1) open an investigation by the OSIG, (2) refer it to a state agency to investigate and follow-up to determine if the agency handles it to the OSIG’s satisfaction, or (3) refer it to a state

agency because the OSIG lacks jurisdiction or the matter is minor. During the two years ended December 31, 1991, 1,161 complaints were received, of which 227 were investigated by the OSIG, 295 were referred to state agencies and monitored, and “639 were referred to entities outside of the OSIG’s jurisdiction for handling” (NYS OSIG, 1992, p. 13). After an investigation was completed, the investigator prepared a summary report and if warranted, a more detailed administrative report or a prosecutive report.

Most cases involved administrative reports and these were referred to agencies. These reports included recommendations for improving policies or procedures. Some reported misconduct by agency employees and the agency responses involved counseling, suspending or terminating employees involved. During the two-year period ended December 31, 1991, 204 investigations were closed, of which 54 involved administrative reports. The OSIG reported that of the “54 cases, 43 led to administrative and/or disciplinary action taken by the agency” (NYS OSIG, 1992, p. 14). Of those cases closed during that same two-year period, 13 involved prosecutive reports sent to outside prosecutors. As of August 13, 1992, those prosecutions led to 33 convictions.

In the last biannual report prepared by the OSIG under the administration of Governor Cuomo, Moresco reported that from the OSIG’s inception in January 1986 until January 1994, the office had received a total of 4,550 complaints, of which 1,595 had been investigated and 1,730 had been referred to other agencies outside OSIG’s jurisdiction for resolution. The remaining complaints were not investigated as they either lacked credibility or sufficient information to warrant follow-up (NYS OSIG, 1994, p. 3).

Major cases

As the types of complaints received by the OSIG indicate, most the work of this office related to misconduct by state officials, employees, contractors and others. The investigators at the OSIG were not designated as law enforcement officers, although many had backgrounds in that area. The OSIG did employ some of the tools that Anechiarico and Jacobs (1996) would characterize as being part of the panoptic approach to oversight. The OSIG had the power to subpoena documents and to issue subpoenas to compel testimony. At times they conducted undercover operations and on occasion participated in court ordered wiretapping operations during joint investigations with other law enforcement agencies. As with most law enforcement investigators, Spinelli said that he and other OSIG's investigators used their skills in interview and interrogation in gathering information for their investigations. Upon completion of their investigations, where they believed that they found criminal wrongdoing, the OSIG investigator prepared a prosecutive report. The prosecutive report described the facts and circumstances of the case and provided the prosecutor with the information necessary to pursue criminal charges (Spinelli interview, 2001).

During the Spinelli/Moresco era, the focus of the office was clearly on investigations of wrongdoing. Spinelli recounted several cases that came to mind as being significant and memorable to him. To Spinelli they also illustrated that his office was given the independence to investigate and pursue government officials connected with the Cuomo administration without interference or fear of reprisal from the governor's office. The Levine case described above was only one of several involving state officials who would be put under scrutiny by Spinelli and Moresco.

One investigation in 1991 that was an embarrassment for the Cuomo administration involved the Martin Luther King Jr. Institute for Nonviolence. Cuomo created this institute in 1988 “after a series of highly publicized racial incidents, including the Howard Beach attack case” (Verhovek, 1991, p. B3). The Institute’s mission is to promote the teachings of Martin Luther King Jr. and to reduce racial tensions. The Institute received about \$1.5 million of state funding each year. Spinelli’s investigation found poor management, a lack of internal controls, excessive payments to consultants, no-bid contracts and improper travel expenses and credit card use, including the Institute paying for travel of employees’ spouses and children. The Institute’s executive director resigned, new management was brought in and the OSIG’s recommendations for improvements in controls were implemented (NYS OSIG, 1992 and Verhovek, 1991).

In another prominent case, officials employed by the state agency that oversees the New York National Guard were found by the OSIG to be involved in corrupt activities. One employee who oversaw the Park Avenue Armory was accused by the OSIG of having accepted bribes “totaling tens of thousands of dollars, valuable items of merchandise, cases of liquor, sexual favors and other items from lessees and vendors” (NYS OSIG, 1994, p. 11). This superintendent was also accused of failing to submit some lease payments to the state and of defrauding lessees through improper billings for services. This superintendent agreed to cooperate with the Manhattan District Attorney’s Office and pled guilty to five misdemeanor accounts (Myers, 1993).

In a 1993 ethics violation case, the OSIG investigated state officials of the mental hygiene and substance abuse agencies who had authority to select outside contractors. Perspective state contractors allegedly treated these officials to various entertainment

venues, including a Grateful Dead concert. One computer contractor allegedly paid in excess of \$13,000 for the entertainment expenses of state officials over a four-year period. This case was referred to the State Ethics Commission (Private gifts, 1993). In another case, the president of the NYS Jobs Development Authority resigned after a 1994 investigation by Moresco's office. The authority's treasurer was allegedly fired after he brought questionable transactions of the president to her attention. The agency president resigned after the OSIG's investigation claimed she used \$10,000 of agency funds for personal expenses (Barron, 1994).

Although the OSIG did not have jurisdiction over the state legislature, it did have the authority to investigate state spending. One area of state expenditures that related to the legislature was what is known as "member items." The budget for member items was \$80 million in 1986. Legislators are allocated funds by the legislative leadership that they direct to projects in their districts. Historically, there had been no oversight over this funding. In a 1986 case early in Spinelli's tenure, he looked into a \$250,000 member item involving a contractor, Nova Research, which was supposed to be making films to educate children about the dangers of sexual abuse. After the OSIG investigation, the president of Nova Research was indicted for allegedly using state funds for personal purposes, including paying for a wedding ring and a honeymoon, a gambling trip, and gifts for his family (Schmalz, 1986).

Spinelli commented that prior to Governor Cuomo, there were no efforts to investigate these types of crimes. Spinelli said that Nova Research's president was surprised that he was arrested as he had been involved in this type of activity for years. Spinelli said that this investigation into a legislative member item done early in his tenure

“sent shock waves through the legislature” and also gave the OSIG credibility with the legislature as some legislators had been arguing that the State IG was unnecessary (Spinelli interview, 2001).

During the Spinelli and Moresco period, the deputy IGs at the state agencies were also active in conducting investigations. The deputy IG position for the Department of Motor Vehicles was established in 1989 and by January 1994, Moresco’s office reported that this deputy IG office had opened a total of 948 investigations involving employee misconduct and that 102 Department of Motor Vehicle employees and 73 others had been arrested (NYS OSIG, 1994).

Success and the issue of bureaucopathologies

When asked about his successes while he was State IG, Spinelli pointed to three main areas where he believed his office excelled. These areas were: (1) the quality of his staff, (2) the independence he maintained for the office, and (3) the many investigations that his office completed. Spinelli believed that Governor Cuomo was dedicated to having a clean administration both in appearances and reality and for that reason did not interfere with Spinelli’s office. As discussed above, Spinelli and Moresco hired a diverse group of seasoned criminal investigators to perform the investigations. And finally, Spinelli’s focus was on successfully investigating wrongdoing in NYS government. He boasted that he never had to go to court and testify as the OSIG cases that were prosecuted ended in plea agreements favorable to the state. Spinelli credited the quality of the prosecutive reports prepared by him and his staff as the reason for this (Spinelli interview, 2001).

These measures of success indicate that the NYS OSIG's focus was on what Light (1993) referred to as compliance accountability and what Anechiarico and Jacobs (1996) referred to as the panoptic vision of government oversight. With regard to the question of whether the OSIG under Spinelli and Moresco was successful in increasing NYS's capacity to reduce fraud, waste and abuse, Spinelli believed that oversight was significantly improved with the establishment of the OSIG, but he questioned if corruption could ever be totally eliminated. He said that there are some people who are always predisposed towards corruption. Further, Spinelli said:

What I think you can be is a deterrent in some instances. And that only comes in time and reputation and the fact that people know you're looking and how effective and how aggressive you are in each state agency in proactively going about your job. If your setting up procurement policies for a specific state agency for instance, I think people are less likely to think that they'll be able to play games with bidding contracts. If you are making certain that monies that are being allocated for various purposes for state agencies are expended the way they're supposed to be, ... that helps. The more visible you are, the more active you are, I think that serves as a deterrent that will give people probably a little more trepidation as far as wanting to even think about committing fraud. (Spinelli interview, 2001)

Moresco also believed that the office was somewhat effective in reducing corruption in state government. Based on the number of complaints the OSIG received, he believed that state employees and other citizens had confidence in the State IG and its staff. Moresco also said that the OSIG helped create a consciousness in the state about corruption and other forms of government mismanagement (Moresco interview, 2001).

Regarding the assertion by Anechiarico and Jacobs (1996) that oversight organizations can contribute to bureaupathologies, the focus of this OIG on cases of waste and fraud should support Doig's (1997) opposing position that eliminating corruption hazards is important to improving government and to insuring that the public

has confidence in their public officials. With regard to OIGs and good government

Spinelli said:

I don't see it as an agency that will stagnate government. If anything it's going to, I think, greatly enhance the confidence of the people in government and the citizenship in that area where they are conducting business. If you have an IG that is visible, credible, professional and will carry out the mandate that it was set out to do, in the most efficient way possible, that person will gain the respect of all of the employees that he or she will have jurisdiction over. They will get the cooperation of those people, they will do more for government to insure that there isn't waste and abuse of state monies...Fraud, waste, abuse and corruption, those things would bring governments down. Every one of them in a different way. If an IG can be instrumental in precluding that from happening, then I defy anybody to make that argument that they are going to stagnate government or they slow it down. (Spinelli interview, 2001)

Development of a profession

Many of the IGs that were interviewed for this research have been active in professional organizations, especially with the Association of Inspectors General. Spinelli was active in developing IG professionalism and worked on bringing together IGs into a professional organization even prior to the formation of the AIG (which occurred in 1996). Spinelli was one of four IGs who worked on the planning committee that put together the first national conference for IGs. Spinelli said that being on the steering committee for this conference had been a great honor for him (Spinelli interview, 2001). The conference was the first of several annual conferences initially sponsored by the Association of Government Accountants. The first conference was held in Annapolis, Maryland in February 1991 and was attended by more than 100 employees of federal, state and local OIGs. Governor Cuomo was a guest speaker at this conference. In his speech, Cuomo said of IGs that "...the country would have been better served if we had implemented the idea a long time ago" and that "disgust" for government by the public can be changed by IGs "working aggressively to eliminate, reduce, [and] prevent the kind

of inefficiency and corruption that has stigmatized government in this country” (NYS OSIG, 1992, pp. 68-69).

The second annual IG conference was held in Baltimore, Maryland in February 1992. One evening panel included Spinelli and John Pritchard, the Metropolitan Transportation Authority IG, discussing investigation techniques used in major cases (NYS OSIG, 1992, p. 69). Out of these early conferences developed the idea to form the AIG. Spinelli’s contributions to the these early conferences which led to the development of the IG’s professional society was confirmed in a brief interview with an AIG founder and officer.

Another area where Spinelli was active while IG was in performing charitable works. His first project was an adopt-a-school program where he went into P.S. 384 in Brooklyn with a professional athlete and educated the students about the problems of drugs. Spinelli took the then candidate for Brooklyn District Attorney, Charles Hines to his program and Hines committed that if elected he would repeat the program in other schools throughout Brooklyn (Spinelli interview, 2001). Hines kept this commitment and asked his assistant district attorneys to institute this type of program throughout Brooklyn. (NYS OSIG 1992, p. 70). Spinelli also reported that he approached several New York exclusive prep schools and was able to arrange scholarships for top students from public schools to attend these expensive private schools.

Changing of the guard

Spinelli had an unprecedented free reign as the NYS IG for eight years. Spinelli decided to leave state service on June 30, 1993. He had developed an office from an idea to an approximately 29 person staff of experienced professional investigators with an

annual budget of \$1.6 million. He left state service in 1993 for financial reasons. Spinelli talked about the difficulty of living on a state salary and the importance of his children having a good college education and the fact that his son had just reached college age. Spinelli went to work for the international accounting firm of Coopers & Lybrand to develop a forensic accounting unit and 14 months later moved onto KPMG in a similar role. Spinelli recommended to Governor Cuomo that he appoint George Moresco as his replacement, which Cuomo did effective July 13, 1993 (Spinelli & Moresco interviews, 2001, and Cuomo names ex-F.B.I. agent, 1993). This was a little more than one year away from the gubernatorial election that Cuomo would lose to George Pataki. This change to a Republican administration would have a dramatic impact on the OSIG that had worked hard to maintain its independence from the governor's office. What was to come with the arrival of the Pataki administration would be an almost total dismantling of the staff at the OSIG.

Analysis using research questions: Spinelli/Moresco period

Table 5 summarizes an analysis of the Spinelli/Moresco period using the six research questions. These two IGs' tenures are being considered together for several reasons including the fact that Moresco was one of Spinelli's first hires, Moresco held senior positions in Spinelli's office, Moresco's tenure as IG was only two years, and Moresco did not make any significant change in the operations of the OSIG after Spinelli's departure. This data analysis was performed in accordance with the methodology described in Chapter 5. Briefly stated, the factors related to each question (Chapter 1) were examined using the data collected and an assessment was made as to whether the position in the question was confirmed or contradicted. The sources of data

included the interviews, government documents, press releases and print media reports, and information obtained at three national AIG conferences. Also at the end of the chapter is an additional summary discussion of the two OSIG periods analyzed.

Table 5

OFFICE OF STATE INSPECTOR GENERAL

Joseph A. Spinelli, IG (1986-1993) & George R. Moresco, IG (1993-1995)

Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste, & abuse?	Strongly confirms
2. Used police-patrol oversight?	Confirms
3. Adopted panoptic vision of oversight?	Strongly confirms
4. More attention to compliance accountability?	Strongly confirms
5. Statutorily appointed IGs exercise more independence?	Strongly contradicts
6. OIG contributed to an increase in bureaupathologies?	Contradicts

Prior to the establishment of the OSIG by Governor Cuomo, the state had a limited capacity to deal with fraud, waste, and abuse in state government. A few state agencies and authorities had begun the work of establishing oversight offices within their organizations (i.e. the Division for Youth and the Department of Labor), but there was no consistent plan of implementation or even a requirement (except for the MTA) that they institute any oversight. The scandalous conditions that had existed in New York City caused the governor and others to be concerned that the same could occur at the state level. The creation of the OSIG was an important first step in increasing NYS's capacity

to reduce fraud, waste, and abuse. The many cases investigated by this office during its first 10 years in existence are an indicator of the importance of establishing a state OIG.

There will always be media interest in state level cases of wrongdoing, especially when corruption or abuse involves high-level state officials. The possibility exists that these events will be used by some for political advantage. A professional IG must work cautiously in order to avoid being accused of conducting scandal-oriented investigations that take on the air of a witch-hunt. This first period for the OSIG had a number of scandalous cases but the press reports indicate that this office attempted to work in a quiet professional manner using routine “police-patrol” oversight techniques. This meant conducting ongoing investigations without the release of any interim findings to the media and releasing a summary report to the media only at the conclusion of the investigation (and only after review by prosecutors where appropriate). And just as important as it is to release findings that indicate wrongdoing by state officials, Spinelli believed it was important to release reports that indicated that no wrongdoing was found in order to clear individuals who may have been the subject of rumors or accusations.

Anechiarico and Jacobs (1993) report that NYC DOI’s organizational setup and operation is an example of the use of the panoptic vision of oversight. The NYS OSIG would also be another example of this method of oversight. OSIG established a similar structure to that of DOI and employed similar tools of oversight, most notably the use of investigative techniques through subpoena, interview, and field investigation. There were some auditors on OSIG’s staff, but the mission was to investigate wrongdoing. The proactive work done was focused on vulnerability assessments for avoiding corruption and abuse. The types of cases investigated also support the view that the emphasis of this

OIG was on compliance accountability. This OIG investigated fraud and abuse. The IGs also reported the need to avoid duplicating work that is under the auspices of the Office of State Comptroller. In addition, OSC appears to be in a better position to conduct performance and capacity building accountability activities.

With regard to independence, the OSIG had the independence it needed without the advantage of statutory authority or a set term in office for the State IG. Although Spinelli and Moresco supported establishing statutory independence for this office, they were able to conduct the affairs of the office without it. During this period, the independence of this office was likely due in part to the support received from Governor Cuomo and in part to the independent personalities of these two former senior FBI special agents. Neither of these two individuals was from state government, nor did they owe any allegiance to party officials.

The focus of these first two state IGs was on reducing corruption and not on adding to the layers of government. Both were sensitive to the criticisms that there is a potential for IGs to create bureaupathologies in government. Their recommendations for changes in procedures came in areas where they found wrongdoing or corruption and where confidence in state government needed to be reestablished.

The New Republican Administration of Governor George E. Pataki

State IG office gets off to a rocky start after Moresco's staff is fired

If there was a question about whether the OSIG was independent of party politics, this question was answered in the negative with the election of George Pataki in November 1994 and the appointment of his new administration in early 1995. The State IG serves at the pleasure of the governor and the staff of the OSIG does not have any civil service protection. The staff of the OSIG from the Cuomo administration was fired by Governor Pataki's office in two rounds, about half in each round. The first firings came in April 1995. Employees were called into the executive deputy IG's office and given two days notice to leave. Staff had to meet with the new state director of criminal justice, Paul Schectman, on their last day to give him a status report on all their cases. Several OSIG staffers reported that they understood that their jobs were not permanent and that they might be let go by the new administration. What was a disappointment to them was that the work on ongoing cases was going to be wasted and that these cases were going to be lost during the abrupt transition between administrations. In the second round of firings in September 1995, George Moresco was also terminated.

A change in IG that serves at the pleasure of an elected official is not unexpected when there is a change in government. When Ronald Reagan was elected president in 1980, he requested the resignations of all of the federal IGs appointed under the Carter administration. Reagan subsequently replaced them and overall was a strong supporter of the federal IG system (Light, 1993). What was unusual with the NYS OSIG firings of 1995 was that the staff was terminated prior to the appointment of a new IG by the

governor, essentially shutting the department down along with most of the existing investigations until a new IG could be appointed and a new staff hired.

One of the first new appointments to the OSIG by the Pataki administration was that of a deputy IG named Donald B. Hutton. Hutton, who was called the “railroad cop from Buffalo” by several interviewees for this research, was reported to have had little investigative experience, but was politically connected. He was a former local Republican Party chairman and a railroad police detective (McCarthy, 1995). In an editorial in the Buffalo News, Hutton, a Coast Guard reservist, was called a “war dodger” for obtaining a reprieve from military service because he was running for state senator at the time of his call-up in 1990 for the Gulf War. The newspaper referred to him as “a railroad security guard” who ascended from a \$25,000 position with the railroad to an \$80,000 position at the OSIG (Political appointment, 1995).

In September 1995, Governor Pataki announced the appointment of Roslyn Mauskopf as State IG to replace George Moresco. Mauskopf, who was 38 at the time of her appointment, previously attended Georgetown University Law School and after graduation joined the Manhattan District Attorney’s Office in 1982. Her responsibilities at the DA’s office progressively increased and her last position there was as head of the fraud bureau. Glaberson (2002) reported Mauskopf was involved in prosecuting a number of “high-profile cases, including... organized crime’s control of trucking in the garment industry and the prosecution of a lawyer who stole millions of dollars from clients” (p. B2). Glaberson also reported that prior to Mauskopf’s appointment as IG, she was a registered Democrat and that after the appointment, Mauskopf did not list a party affiliation.

When Mauskopf arrived in October 1995 after the firings, there were only six employees at the OSIG. Mauskopf had the responsibility to restaff the OSIG and get it operating again (NYS OSC, 2000). Soon after her arrival, the office was faced with an accusation that Hutton had attempted to pressure OSIG investigators to curtail an investigation involving possible misappropriation of state funds at the Roswell Park Cancer Institute. A major fund-raiser for Pataki apparently had ties to this institute. On December 6, 1995, Hutton resigned from his position as First Deputy IG (McCarthy, 1995). Eventually, investigations by Mauskopf's office and the state attorney general would lead to the arrest of three researchers from Roswell Park on charges of theft. One researcher pled guilty and agreed to repay approximately \$30,000. The cases involving two other researchers, who were charged with thefts of \$2.2 million and \$250,000 respectively, were dismissed in 1999. The dismissal resulted from a State Supreme Court (NYS trial court) judge's ruling that the provisions of the state's Public Health Law that these two doctors were charged under were ambiguous (Gryta, 1999).

Staff rebuilding

Mauskopf hired new people and also hired back some employees from the Spinelli/Moresco period. To rebuild the office, Mauskopf hired staff with investigative and/or prosecutive backgrounds. For example, one of her staff members was Thomas F.X. Brennan who held several positions during Mauskopf's tenure as IG, the last as First Deputy IG. Brennan was a graduate of St. John's University Law School and after graduation went to work for the NYC DOI in August 1986. In 1989, he was appointed as DOI's deputy IG for the NYC Department of Correction. Subsequently, Brennan was appointed as First Deputy IG for the Correctional Services Division which is responsible

for the Departments of Correction, Probation and Juvenile Justice and served in that position until 1996. After serving the next two years at the Los Angeles Metropolitan Transportation Authority OIG, he returned to New York and took a deputy IG position at the OSIG. From 1996 to 1997, he served as Deputy IG for public protection (which included corrections). In 1997, he was appointed Acting First Deputy IG and was formally appointed to this position in 1998 (Brennan interview, 2002).

In 2000, Mauskopf reported the qualifications of her senior staff for the Office of State Comptroller (NYS OSC, 2000). Table 6 is a summary prepared from the information in that OSC report and shows prior employment categories and the number of employees in each category for the 35 senior staffers included in that report. The table indicates that most of the staff came from federal, state and local law enforcement, DOI, and prosecutors' offices. Several of the senior staff also had prior experience with state and local OIGs in addition to the experience noted in the table. Many of the senior staff had legal backgrounds. Brennan reported that the advantage to this was that prosecutors had "experience at conducting serious corruption investigations" and that the goal was to "build a staff that can handle anything that can come in the door." Another goal in hiring was also to find people who would accept that an OIG is not like other law enforcement agencies. Some law enforcement investigators are used to just catching criminals, whereas the OSIG needs people who are willing to learn about how government works and to not only conduct investigations and find any criminal activity, but also to identify and fix any problems found (Brennan interview, 2002).

Similarly, Deputy IG Stephen Delgiacco reported that the challenge in hiring IG staff was to find people that would "see the cases through the IG frame" which involves

both conducting investigations to find any wrongdoers and to change the procedures so that the problem does not reoccur as opposed to the strict law enforcement mentality that focuses only on criminal prosecutions (Delgiacco interview, 2002). Although there is no civil service protection at the OSIG, under the Mauskopf administration there was an effort to establish a career path for staff members so that the OSIG could hire bright young people who could grow professionally at the OSIG.

Table 6

OFFICE OF STATE INSPECTOR GENERAL

Summary of senior staff (2000)

Category of prior employment	No. of employees
Federal agents: FBI (3), DEA (2), IRS (2)	7
NYPD detectives	6
Other state and local police	<u>4</u>
Subtotal	17
Assistant district attorneys & attorneys general	5
NYC Department of Investigation	5
Various state agency investigators and auditors	4
Federal OIGs	2
Central Intelligence Agency	1
NYC Civilian Complaint Review Board	<u>1</u>
Total	35

(NYS OSC, 2000)

Adopting a structure similar to the new NYC DOI model

Under the previous executive orders, all of the deputy IGs were employees of the departments or agencies that they were assigned to. These deputy IGs had a dual reporting role to their respective department or agency heads and to the State IG. As

discussed above, this original structure was similar to the way the NYC DOI was set up prior to its consolidation in 1987. On June 17, 1996, Governor Pataki signed NYS Executive Order No. 39 entitled “Reforming the Office of State Inspector General.” Under the new executive order, the deputy IGs would now have to move to the OSIG payroll and would report only to the new State IG, Roslyn Mauskopf. This process took some time as budgetary adjustments had to be made for the transfer of these employees. A state comptroller’s report described the change and its financial implications for the OSIG:

OSIG was restructured in June 1996 pursuant to Executive Order 39, which provided for the consolidation of most of the State’s inspector general activities in a single office. The restructured OSIG replaces a group of separate semi-independent deputy inspectors general who covered 47 agencies. Total appropriations for the 1998-99 fiscal year were \$6.1 million, which was intended to support a workforce of 97. Although just 79 of the 97 positions were filled as of February 1999, this operation is a dramatic change from the one authorized for fiscal year 1994-1995, when appropriations totaling \$1.7 million were expected to support a workforce of 29. (NYS OSC, 2000)

In addition, there was some resistance to moving to OSIG by some of the deputy IGs, but for the most part the deputies had no choice. For instance, Brian Sanvidge, who functioned as a deputy IG at the Department of Labor, remained at that department and continues to use the title of IG internally there (see Chapter 12). Also, Edward Dominelli, the deputy IG at the Dormitory Authority, remained at that authority by relinquishing his deputy IG title and took the title of Director of Internal Affairs for the Dormitory Authority (see Chapter 13). Mauskopf then assigned OSIG deputy IGs to the Department of Labor and to the Dormitory Authority.

The new structure at the OSIG was similar to the structural change made by the NYC DOI in 1987. One of the primary reasons for the consolidation at the DOI was a

desire to improve the independence of the IGs at the various city agencies. The report by the New York State Commission of Investigation stated this conclusion as follows:

To the extent that public administrators desire to resist reform, minimize managerial error, or conceal misconduct, an inspector general is at odds with, and at times antagonistic to, those in control of agency operations. Independence, therefore, is an essential attribute of an effective inspector general system. (State Commission of Investigation 1986 report, p. 66, as quoted in Winslow and Burke, 1993, p. 75)

By having deputy IGs with responsibility for investigating agencies under the employ of a central IG office and not under the direct employ of the agency heads was believed to create an environment where the deputy IGs would not be under pressure by the agency heads to ignore or conceal misconduct within the agency. This may very well be true, but having the deputy IGs responsible for agency investigations under the central control of an IG appointed by an elected official (and who serves at the pleasure of that elected official) can also create independence questions. Situations can occur where pressure to minimize or cover up misconduct can come from an elected official who wants to avoid the negative publicity that these cases may bring to his or her administration. This pressure can come directly from the elected official to the IG and from the IG to the deputy IG who reports to and is employed by the IG and who serves without civil service protection. Or this result might happen when a close personal associate of the elected official is appointed as IG and the IG feels that it is also part of his or her responsibility to shield the administration from the negative publicity and political attacks that would occur from the disclosure of misconduct by an individual appointed by the current administration.

Some criticism was made of the effectiveness of the newly consolidated NYC DOI under its commissioner, Kenneth Conboy, who replaced Commissioner McGinley in

February 1986. Conboy was a member of Mayor Ed Koch's personal staff. Newfield and Barrett (1988) reported as follows that under Conboy and his successor Kevin Frawley (a former Koch campaign aide) DOI's productivity actually declined:

Under both Conboy and Frawley, the agency's productivity declined by virtually every measure, despite a claimed tripling of DOI's budget and doubling its manpower. The department was doing 1,400 fewer background investigations of high-level appointees than in the last full year under McGinley, and was taking an average of 169 days to complete one, more than twice the McGinley rate. The inspector generals in each agency, which had been put under DOI control in 1987 as a supposed reform, initiated 7,000 fewer investigations than the department had itself projected. (p. 453)

Newfield and Barrett (1988) also reported that in 1988, the corruption prevention unit closed the same number of cases as McGinley's office had done in 1985 and that the regular investigation unit closed 90 fewer cases than were closed during the scandal year of 1986. Although Newfield and Barrett criticized the success of DOI under Conboy, they did comment that Conboy, a former prosecutor, had the respect of then U.S. Attorney for the Southern District, Rudolph Giuliani (a Republican) and others and that Conboy was appointed as a federal judge by the end of 1987.

So the improvements in independence sought by the consolidation of individual agency IGs into a central IG office is debatable when the central IG office is also subject to possible independence questions. These concerns have been raised in news accounts about the Roslyn Mauskopf period of the NYS OSIG. But it should be noted that the consolidation of the deputy IGs into OSIG by Mauskopf could be cited as evidence of an effort to improve the independence of the deputy IGs. Brennan (interview, 2002) reported that there was never any attempt by Governor Pataki's office to influence any OSIG investigation and that no evidence of such influence has ever been cited by Pataki's

critics. This lack of evidence did not stop Pataki's political enemies from voicing their criticisms of the OSIG.

In 2000, criticism came from the Office of State Comptroller in connection with an audit they conducted of the OSIG. It should be noted that during the period of May 1993 to December 2002, H. Carl McCall (a Democrat) was the state comptroller. McCall used this office as a stepping-stone for an unsuccessful run for the NYS governor's office in November 2002. McCall lost to incumbent George Pataki. During the course of this research, several interviewees (who did not wish to be identified) said that audits done by McCall's office were politically motivated. Others reported no trouble dealing with the OSC. Mauskopf's office addressed criticisms that they believed were being generated by the OSC in their response to OSC's report of 2000 that reviewed some of the OSIG's operations:

This audit has an unfortunate history for which the Office of State Comptroller [OSC] must take full responsibility. OSC began this audit amid a campaign of innuendo and press leaks suggesting, without offering any evidence, that the Office of State Inspector General had engaged in misconduct by ignoring serious complaints of corruption. The integrity of this office was publicly impugned, even before OSC conducted a single audit task in this agency. In this audit report, OSC is forced to admit that there exists no shred of evidence to support these false and inflammatory allegations, and that the Office of State Inspector General fully and properly carried out its investigative responsibilities. (p. B-3)

Also in the OSIG's response to the audit report was a summary of some significant aspects of Mauskopf's office that were included to defend its integrity and professionalism:

In conducting its review, the Comptroller also reached other findings that underscore the professionalism of this Office:

- OSIG is in full compliance with its public accountability mandate as contained in Executive Order 39..., with nearly 1,000 reports of completed investigations included in a central registry in OSIG's office in

Albany. The registry and accompanying index are regularly examined by the public, legislative and agency staff, and the media.

- OSIG has implemented a state-of-the-art computerized case management system...that: documents the receipt and disposition of the approximately 4,000 complaints handled by OSIG since 1996; requires investigative staff and supervisors to document the steps taken and decisions made in investigation; and provides OSIG management with comprehensive data to monitor the status and progress of cases, the effectiveness of personnel and the allocation of resources...
- OSIG investigative staff, including the top five managers of the agency, are experienced professionals with the background, knowledge and proficiency required to carry out their important and difficult tasks. Investigators in this Office are hired and promoted based on merit, and, for the first time in the history of this Office, in accordance with minimum standards and qualifications as established through the Department of Civil Service.
- OSIG regularly provides training to investigative staff to augment their skill and knowledge, which enhances their effectiveness and enables them to develop further as professionally qualified investigators and supervisors. (pp. B-3, B-4)

Even after this audit, rumors about the credibility of the OSIG persisted. Again these attacks on the office's credibility may have been politically motivated. This issue made it to the newspapers in 2002, a year that included both the gubernatorial race and the nomination of Mauskopf (at the behest of Governor Pataki) to the position of U.S. Attorney for the Eastern District of New York. Glaberson, a reporter, said in a *New York Times* article regarding Mauskopf that "during her six years in Albany, critics have raised questions about whether she has been aggressive enough" (2002, p. B1). Glaberson also mentioned the OSC report and that Mauskopf issued "a furious response" and that "the response, both critics and supporters of Ms. Mauskopf say, was an example of a lifelong prosecutor's taste for attack" (p. B2).

Another political attack came from Andrew M. Cuomo, another Democratic primary contender for the governor's office. After the OSIG issued a report that indicated favoritism in the granting of contracts by the State University of New York to an architect who was a neighbor of Governor Pataki, *The New York Times* reported:

Andrew M. Cuomo, a Democrat running against Mr. Pataki, called the report "nothing more than a transparent attempt to deodorize the administration from its stench of graft and corruption" and said the matter should be referred to federal prosecutors. Mr. Cuomo...noted that the report was released on Holy Thursday and during Passover, in what he said was an attempt by the administration "to ensure that the least amount of people see the findings." (Perez-Pena, 2002a, p. B9)

Brennan reported that the findings of that report were forwarded to the State Attorney General's Office, the Manhattan DA's Office and the Albany DA's office for whatever further investigation or prosecution they deemed warranted and to his knowledge no further action has been taken by these offices. Also in response to these criticisms, Brennan reported that there were never any attempts by the governor's office to influence any OSIG investigation, that Mauskopf's office aggressively pursued criminal investigations, and that the office conducted in excess of 1,500 investigations, including 165 investigations that resulted in prosecutions with over 250 convictions recorded (Brennan interview, 2003).

Mission of the new IG and measures of success

Whereas the changes in the IG structure at the NYC DOI followed many revelations of corruption in NYC government, similar restructuring at the NYS OSIG did not come from scandal. According to First Deputy IG Brennan, the changes resulted from an effort to promote good government. Mauskopf's OSIG set up a structure where similar types of state agencies were grouped into separate OSIG units for oversight

purposes. The units were: public protection, construction, licensing (i.e. DMV and Department of Labor), health, economic development, and government affairs. The units were also divided into separate regional ones for downstate (NYC office), upstate (Albany office), and eastern region (Buffalo office). The structure at the OSIG was also designed to be flexible, so that an investigation could be reassigned from one unit to another unit depending on the expertise needed (Brennan interview, 2002).

The focus of the Pataki administration and the new State IG was on good government. Pataki's efforts were evident in a number of other areas, including the restructuring of a number of state agencies and the establishment of the Governor's Office of Regulatory Reform (GORR). GORR's mission is to streamline the state bureaucracy and to eliminate unnecessary regulations (Governor's Office of Regulatory Reform, n.d.). Mauskopf's office measured their success by their impact on government improvement. First Deputy IG Thomas Brennan reported that they believed that the office's primary role was to create positive change in government operations. This involved a regular and consistent impact on a wide range of agencies (Brennan interview, 2002).

The mission of the office was to insure the integrity and proper functioning of state government through the use of investigations. The office focused on several types of investigations including investigations involving allegations of criminal conduct and investigations not necessarily resulting in prosecutions but identifying flaws in processes and assisting state officials in addressing those flaws. The criteria used during the Mauskopf period for opening investigations was either: (1) an allegation of criminal conduct by a state employee, (2) an allegation regarding a senior agency official's

involvement in misconduct that did not rise to a criminal level (i.e. sexual harassment) or, (3) other major administrative matters of such public importance that required an independent review in order for the public to accept the results (Brennan interview, 2003). Even where no criminal activity was found or proven, the investigations resulted in carefully documented reports with detailed findings and recommendations. Although there were accusations noted above that the OSIG was not effective under Mauskopf, the office conducted over 1,500 investigations, produced many carefully written exhaustive reports detailing problems with the operations of state government and had cases that resulted in arrests.

Although investigations by the OSIG under Mauskopf resulted in referrals to prosecutors and subsequent arrests and prosecutions, arrests were not the primary benchmark for the OSIG. Some other IGs did consider the number of arrests as a measure of their effectiveness. Brennan stated that finding corruption, eliminating it, and making sure that the procedures were changed so that it didn't happen again were important goals of this OIG. Arrests were at times a part of the outcome of these investigations, but were not the only outcome sought. What was more important than the number of arrests was the quality of the arrests. Brennan said that the comprehensive approach taken during Mauskopf's tenure as State IG was to gather all the facts possible, hold the senior state officials accountable for any misconduct found, prosecute cases of criminal conduct when found, and take steps to eliminate the problems in the future. Thorough investigations were also important for clearing those falsely accused (Brennan interviews, 2002 & 2003).

Brennan is a strong supporter of the IG model as an important means to identify and deal with corruption. OIGs have a “window” into the operations of government organizations that is not generally available to other law enforcement organizations. He believes that the OSIG complements other law enforcement efforts in this area and the OSIG works cooperatively with other investigative and prosecutorial agencies. Brennan said “auditing is an important government function providing a systematic means of identifying problem areas.” OSIG did not want to duplicate the auditing functions provided by the Office of State Comptroller and the auditing units present within the state agencies. Mauskopf’s office viewed the investigation as the primary tool for accomplishing their goals. Auditors focus on compliance with standards and then highlight exceptions and bring them to management’s attention, whereas investigators require a higher standard of proof. The investigation goes beyond the audit in that the IG finds out why there was a deviation from the normal government processes, how it happened, and if there was any corruption associated with it (Brennan interviews, 2002 & 2003).

Examples of investigations conducted during the Mauskopf period

As previously discussed in Chapter 6, the investigation into the circumstances surrounding the failure of the state National Guard’s first attempt to certify a woman pilot for combat duty was an example of the detailed and comprehensive reports prepared by the OSIG under Mauskopf (NYS OSIG, 1997a). In another report issued in 1997, the OSIG detailed the results of an investigation into the issuance of false identity documents by employees of the Department of Motor Vehicles and also the Dutchess County Clerk’s Office. The report described how it was done, discussed the weaknesses in the DMV’s

policies and procedures and made recommendations for eliminating the weaknesses (NYS OSIG, 1997b). Investigations into this problem by the OSIG in cooperation with other agencies over several years did result in a number of arrests, including the arrest of five individuals in June 1999 (5 charged in scheme, 1999).

The OSIG was active in conducting a number of joint investigations with other law enforcement and prosecutorial agencies including an investigation conducted with the Manhattan DA's office into possible bid fixing in connection with the sale of twelve former state health facilities (Anastasi, 1999). Mauskopf's office also conducted investigations into misconduct at a number of state agencies including investigations into: alleged misconduct by the Chairman of the Adirondack Park Agency (NYS OSIG, 1998a); misconduct by the improper behavior by State Liquor Authority investigators (NYS OSIG, 1998b); and whether senior health officials showed favoritism towards some health care providers (Barry and Finkelstein, 2000).

As already mentioned, Mauskopf's office conducted an investigation into the State University of New York's awarding of contracts to an architect who was a neighbor of Governor Pataki and related to Pataki by marriage. The OSIG's investigation concluded that significant flaws existed in SUNY's procurement process and contracts were awarded not based on "the fair application of objective standards" but instead based on a "personal relationship" between the contractor and SUNY officials. The OSIG "investigation found no evidence that state officials or employees outside of the [State University Construction] Fund or SUNY Old Westbury had any involvement in the award of these contracts" (NYS OSIG, 2002, p. 49).

As a result of the investigation, two SUNY officials were fired, including the general manager of SUNY's construction fund and an assistant to the general manager. This general manager had been a long-time staff member of Pataki's, including working in both the Governor's office and Pataki's state legislative office (Perez-Pena, 2002a & 2002b). Other state officials have been terminated based on the results of OSIG investigations including a senior Department of Health official who was dismissed for failing to promptly report a bribe attempt (Finkelstein, 2000) and a deputy counsel of the State Workers Compensation Board for pressuring an employee to purchase tickets to a Republican fundraising event (McCarthy, 2001).

A significant case investigated by Mausekopf's office involved a former NYS Department of Labor Commissioner, James McGowan. McGowan was appointed by Pataki and was fired by the governor for his allegedly unsatisfactory performance at the Department of Labor, including McGowan's firing of his deputy commissioner. This deputy commissioner was subsequently reinstated (Jochnowitz, 2001). Mausekopf's office also initiated an investigation of McGowan based on allegations that "he received 'certain benefits' for helping a friend do business with the Labor Department" (Mahoney, 2001, p. 10). In January 2003, McGowan was "indicted on charges that he accepted bribes in return for directing federal grant money to a friend's driver-education companies" (Ramirez, 2003, p. B8).

Another recent case investigated by Mausekopf's office, together with the Dormitory Authority's Office of Internal Affairs, involved the arrest and guilty plea by a senior Dormitory Authority employee, Michael O'Connor on charges of grand larceny and bribe receiving. See Chapter 13 for a discussion of this case.

The issue of bureaupathologies

Brennan said that Mauskopf's OIG worked to improve government, to make positive government change, and to identify and rectify problems. With regard to the Mauskopf period, Brennan said the "we have had an impact on a wide range of agencies, a regular and consistent impact." The success was also indicated by the "quality of the cases and the sophistication of the cases." He also believes that the staff exhibited a high level of professionalism and that there was "careful attention to details." Brennan said:

The quality assurance of our reports is high. Reviews [are done] to insure that our reports present a neutral tone. We avoid inflammatory reports. Let the facts speak for themselves. We have high quality report writing, treat state employees respectfully, and teach the staff the IG perspective. The quality of the reports speaks for themselves. (Brennan interview, 2002)

After a review of several of the OSIG reports prepared during the Mauskopf period, this researcher can attest to their thoroughness and thoughtfulness.

Brennan reported that Mauskopf believed that there needed to be a balance between providing government services and corruption prevention. With regard to IGs and bureaupathologies, he described the Mauskopf approach:

Our goal is mutual respect between the OIG and agency officials. The Inspector General must respect that agency officials have responsibility for the affairs of their agency and not attempt to undermine or otherwise interfere with management prerogatives (Brennan interview, 2003).

We try not to tell managers how to do their jobs. We identify weaknesses or deviations so that they can fix them. We will work with them on a fix, but it is up to them to do the specifics of the fix... Taking "cheap shots," meaning finding something to criticize about an agency at the end of an investigation no matter how small or irrelevant, is counterproductive... [and] undermine[s] relations making it less likely that people will want to work with you in a cooperative fashion (Brennan interview, 2002)

Public reporting

As discussed above, initially the OSIG under the Cuomo administration did not release their reports. Instead, they were required to submit their reports secretly to the governor's office and the governor's staff then decided whether or not to release them to the public. Concurrently with the scandal surrounding Cuomo's executive director for the NYS Thruway Authority, the governor issued a new executive in October 1986 allowing for public release of the results of the State IG's work by the OSIG. To satisfy this new reporting requirement, the OSIG prepared summaries of all investigations and made them available at its office. Copies of its detailed reports were also made available to the public. Under Spinelli and Moresco, a biannual report was prepared detailing the operation of the OSIG and describing many of the investigations conducted.

Under the Pataki administration, Mauskopf's office discontinued the preparation of the biannual report. Investigations summaries have become the main source of information about the OSIG's work. These summaries are available for review at their Albany office. In addition, a few of their detailed reports are on file with the State Library in Albany and are available electronically from the library. Although many other state offices have set up websites, the website reserved for the OSIG (www.ig.state.ny.us) remained inactive. Brennan reported that the office had intended to use the website, but that it was a resource issue. OSIG's small information technology staff focused their available time on higher priority projects including developing a comprehensive case management system. With regard to doing an annual report, he said that he had no objection to it but that such a report requires an investment of management time and that

OSIG's management first had to focus on rebuilding the office and then the emphasis was placed on conducting quality investigations (Brennan interviews, 2002 & 2003).

With the criticism that the OSIG has received in recent years questioning its openness and effectiveness, reasonable steps could have been taken to counter these claims. Such projects do require the involvement by top management, but staff could do a substantial portion of the work. An annual report could have been prepared and circulated throughout state government and the media. In addition, the OSIG's website could have been utilized to make its completed investigative reports available to the media, its critics, and the general public as well as provide a vehicle to file complaints. This openness could have given the citizens of New York State a more accurate picture of the quality of the investigative work performed by the State IG under the Pataki administration.

Postscript

On September 3, 2002, Roslyn Mauskopf was sworn in as the U.S. Attorney for the Eastern District of New York. On December 17, 2002, Governor Pataki named Jill Konviser-Levine as the new State IG. Konviser-Levine was senior assistant counsel to Governor Pataki since 1997 and drafted "antistalking and antiterrorism legislation and helped establish the state's DNA databank" (Reeves, 2002, p. B6).

Analysis using research questions: Mauskopf period

Table 7 summarizes an analysis of the Mauskopf period using the six research questions. As discussed above in this chapter, this data analysis was performed in accordance with the methodology described in Chapter 5. At the end of this chapter is an additional summary discussion of both OSIG periods analyzed.

Table 7

OFFICE OF STATE INSPECTOR GENERAL
Roslyn Mauskopf, IG (1995-2002)
Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste, & abuse?	Confirms
2. Used police-patrol oversight?	Strongly confirms
3. Adopted panoptic vision of oversight?	Confirms
4. More attention to compliance accountability?	Confirms
5. Statutorily appointed IGs exercise more independence?	Strongly confirms
6. OIG contributed to an increase in bureaupathologies?	Contradicts

Mauskopf had to rebuild the office after most all of the IG staff from the prior administration was terminated. Yet with this handicap, Mauskopf was able to hire a staff of experienced investigators and prosecutors in order to continue OSIG's mission of investigating fraud, abuse, and corruption in state government. Approximately 1,500 cases were investigated during this period, arrests were made, and reports written. Time was also devoted to complex cases and to eliminating the conditions that allowed fraud and abuse to occur. Throughout Mauskopf's tenure, a routine "police-patrol" oversight approach was used. This OIG avoided publicity and quietly conducted investigations and let the subsequent reports issued speak for themselves. This avoidance of media attention regarding the activities of the office may have contributed to the accusations that the office was not sufficiently aggressive.

This IG administration can also be considered to have used the panoptic vision of oversight as it employed investigators and former prosecutors and continued to use the tools they were familiar with. Mauskopf also changed the structure of the OSIG to be similar to the new structure adopted by the NYC DOI. The one exception to this panoptic vision approach was that this OIG did not measure its success based on the number of arrests but rather on a broader range of subjective criteria not easily quantifiable. This issue of the panoptic vision is further considered in the summary that follows.

The mission of this OIG was to investigate fraud, abuse, and corruption. It used investigative techniques and wrote investigative reports that exhaustively described the problems found. Because of this, OSIG's focus can be considered to be directed towards compliance accountability. But it did not measure its success based on arrests but on finding and correcting problems in order to improve government operations. One could say that it engaged in a more sophisticated form of compliance accountability.

This OIG had difficulty showing that it was independent of party politics. From the beginning of the Pataki administration, there was criticism of the firing of the staff from the Moresco period and the appointment and actions of one of its first new deputy IGs. The reserved approach used by Mauskopf's office in providing information about its activities resulted in accusations that the office was not effective. While in compliance with its legal reporting requirements, additional public reporting (such as an annual report), easier access to its investigative reports (such as posting them on its website), and greater outreach to the media are needed in order to answer some of the independence and effectiveness criticisms directed at this office. The establishment of a

statutory State IG with a fixed term in office and additional mandatory public reporting may be the appropriate solutions in this highly charged arena of state gubernatorial politics.

The evidence examined for this OIG does not support the contention that IGs contribute to an increase in bureaupathologies in state government. Quite to the contrary, this OIG's efforts were devoted to exposing existing bureaupathologies in government and pointing them out to government officials so that these managers could develop their own solutions. The OSIG's reports exhaustively analyzed failures and problems in state government and then the OSIG worked with the agencies to develop solutions to these problems.

Summary And Additional Analysis

The NYS Office of State Inspector General was born out of scandalous times. The corruption found during the Democratic administration of NYC Mayor Ed Koch created the impetus for Governor Mario Cuomo to appoint the first State Inspector General. This obsession to wipe out corruption gave the first State IG a level of independence that might not be present in other administrations where the position of IG serves at the pleasure of the chief elected official. The early allegations of corruption at high levels of state government made it difficult for the first State IG to carry on routine "police-patrol" investigative oversight in situations where the media demanded headlines. But both the Cuomo period State IGs and the Pataki period State IG resisted any inclinations to operate in the "fire-alarm" oversight mentality that can occur in scandal-oriented investigative eras.

As the approximately 3,000 cases investigated by the State IG's office over the last 17 years indicates, there is a demand for their services. Fraud, waste, and abuse have been found to be problems in New York State as it has been in New York City. The creation of the OSIG has added a visible organization to provide oversight for NYS government. The State IGs discussed in this chapter have made great efforts to hire competent and professional staffs in order to meet the difficult assignment of increasing NYS's capacity to reduce fraud, waste and abuse.

The State IG was given the mission by Governor Cuomo to investigate allegations of "fraud, abuse and corruption" in state government. This mandate has been interpreted by the State IGs in such a way that they have set up their offices as investigative agencies and have hired staffs that are competent to conduct investigations into allegations of criminal and other forms of misconduct. In addition, they perform vulnerability assessments to further reduce corruption hazards. Light (1993) would call this work, compliance accountability activities. Considering that the OSIG has limited resources, that it is not a part of the agencies that it has jurisdiction over, and that it shares responsibilities with other state oversight organizations such as the State Comptroller's Office, compliance accountability activities may be the limit of its capacity. The mission of performance and capacity building might best be performed by other state organizations or the agencies themselves.

Anechiarico and Jacobs (1996) labeled the modern model of oversight as the panoptic vision. Yes, the State IGs have established their offices and conducted their work in a way that can be considered as fitting the basics of this model. But based on the corruption cases investigated by the State IGs over the last 17 years, it seems that there is

a need for this type of investigative agency. There has been misconduct and corruption uncovered by these IGs and the citizens of this state have the right to expect that there be a watchdog present to act as a deterrent to such wrongdoing and to deal with it when it is uncovered. These State IGs are aware of the possibility that IGs may contribute to bureaupathologies in state government and they take steps to instead improve government operations and to avoid stagnating them. Joseph Spinelli, the first State IG, reinforced Doig's (1997) comments on the necessity of corruption control when Spinelli said that the state government and its employees must maintain the confidence of the people of the state and that the existence of fraud, waste, abuse and corruption in state government is a great threat that could undermine government and cause it to fall.

CHAPTER 9
THE JACOB JAVITS CONVENTION CENTER:
CORRUPTION AND ORGANIZED CRIME

Cuomo Era Management And Oversight

Organized crime and labor racketeering

The Jacob K. Javits Convention Center of New York (Javits Center) is an oversight success story that differs dramatically from the other examples described in this research. The Javits Center is a state owned convention center located at West 34th Street in New York City. In 1979, the NYS legislature approved the issuance of \$375 million in state bonds to construct the convention center. It was anticipated that the Javits Center would create thousands of new jobs and result in \$2.4 billion per year of new spending (Jensen, 1995). The Javits Center opened in 1986 with great promise, even though it was \$80 million over budget and years behind schedule (Bruno, 1995). The Javits Center was constructed to replace the aging and crowded Coliseum at Columbus Circle in NYC. It was designed as a steel and glass structure that was to send “a message of cleanliness and transparency” (Connolly, 1995, p. 34). It was built to be a premier convention facility with low costs and with great intentions about keeping out organized crime. Prior to the convention center’s opening, several large unions negotiated contracts with the Javits Center. These contracts provided that the Javits Center would be a closed union shop, with favorable work rules for the union members and union control over who could be hired. These skilled laborers would bill their time directly to the exhibitors and were not employees of the Javits Center.

Raab (1991a) reported that by 1991, the Javits Center was experiencing such problems as high labor costs, featherbedding, and racketeering by the unions and organized crime. Theft was a significant problem. As noted above, union workers supplied by several different unions performed all work done at the Javits Center. Raab quoted a state police sergeant who said, "Everything walks out of this place, glass eyes, computers, jewelry, furs, stuffed animals—whatever is on display." The reported theft losses at the time ranged from \$0.5 to \$1 million per year. The Javits Center is located in a critical market for exhibitors and they felt they had to put up with the conditions there.

First IG is appointed

In February 1991, Fabian G. Palomino, a former top aide to Cuomo, and then president of the Javits Center proposed establishing an OIG and appointed Henry P. Flinter as the convention center's first IG. Flinter had previously worked as the first deputy IG for the MTA OIG under John Pritchard and was a former chief investigator for the NYS Organized Crime Task Force (Raab, 1991b).

There were a number of investigations and attempts to stop the corruption at the Javits Center. In a 1990 case, developed prior to Flinter's hiring, the federal government filed a RICO suit related to organized crime's involvement with the Javits Center.

Connolly (1995) characterized this period and the 1990 effort to deal with this problem:

The Gambino family's vice grip on Kennedy airport may have loosened in the past few years, but there is quite a bit of evidence to suggest that the Genovese family is living partly on money it squeezes out of Javits... Mob influence has persisted in the face of many efforts to eradicate it. In 1990, in the course of a RICO suit alleging corruption during the building of the center (which resulted in the racketeering conviction of Genovese boss Anthony "Fat Tony" Salerno), one Manhattan federal prosecutor called it "a hiring hall for mobsters and former convicts." (p. 34)

The 1990 RICO lawsuit also resulted in the appointment of Kenneth Conboy to investigate the electricians union. Conboy, the former head on NYC's Department of Investigation and a former federal judge, said that:

There is a strong basis to suspect that a very large number of the individuals on the list [workers who are eligible to work at the Javits Center] are indeed relatives or associates of members of La Cosa Nostra. (Connelly, 1995, p. 35)

Another investigation involved the Manhattan District Attorney's Office under D.A. Robert Morgenthau. On February 5, 1992, Morgenthau's office reported that 23 arrests were made in connection with a joint investigation conducted under the supervision of his office. The investigation focused on labor union racketeering and theft and resulted in the arrests of union officials, officers of several Javits Center contractors, Javits Center employees, and two state police officers involved in corrupt activities, including charges of possession of stolen property. One state trooper was also arrested for divulging an eavesdropping warrant. The arrests resulted from a grand jury investigation and involved other agencies including Flinter's office, the New York State Police, the OIG for U.S. Department of Health and Human Services, the NYS OSIG, and investigators from the NYS Department of Taxation and Finance, NYS Department of Labor, NYC Department of Finance, and the Waterfront Commission of New York Harbor. This case was an example of the kind of cooperation needed to deal with the types of problems that existed at the Javits Center (District Attorney, New York County, 1992).

In May 1992, three months after the arrests were made, Palomino announced an effort to reduce costs for exhibitors. Work rule changes were negotiated that allowed exhibitors to carry in small items and set up their own portable displays without having to

pay for a union laborer. For example, under the new rules an exhibitor would be able to screw in a light bulb or plug in an outlet without paying a union electrician \$72, which would have been the cost under the old work rules. In addition, hourly rates were lowered and laborers were to be paid only for time worked. Before the work rule changes they were paid for a full day if they started a job before 1 p.m. (Raab, 1992).

Crime continued at the Javits Center. For instance in June 1993, \$900,000 in gold, jewelry and precious stones was stolen from a locked storage room. The police reported that no signs of forced entry were found (Gems reported taken, 1993).

Corruption was considered such a problem at the Javits Center that in 1995, the *New York Post* reported that the NYPD had issued an order prohibiting their off-duty police officers from moonlighting as security guards at the convention center as guards for exhibitors because they considered the Javits Center a “corruption prone-location.” The *New York Post* also reported that there was some evidence that off-duty officers had “leaked confidential information about active probes to reputed mobsters” (Weiss, 1995).

Pipitone replaces Flinter

In 1993, Flinter left his position as the Javits Center IG and returned to the MTA OIG to become its IG. Sebastian Pipitone replaced Flinter at the Javits Center. Pipitone was a former NYPD detective and reportedly a former police bodyguard and occasional driver for Governor Cuomo (Dicker, 1995) and also the nephew of the governor (Dwyer, 1995). Pipitone continued Flinter’s efforts at oversight. One interesting procedure that Pipitone instituted was to have the Javits Center OIG hand out all paychecks directly to employees and only if employees presented a photo identification card. Apparently this caused a shakeup and employees that had not been seen at the Javits Center in years

showed up with their I.D. cards to try and collect checks (Connolly, 1995). Pipitone's actions would eventually lead the Manhattan DA's Office to investigate and then indict ten individuals including the president and vice president of the exposition employees local. One of the crimes alleged that a reputed "Westies gang kingpin" assumed the identity of a union member and utilized his health benefits (Robbins, 1996). Other crimes alleged in the indictments included loan sharking and illegally obtaining government and union benefits.

Pipitone conducted a surprise search of the Javits Center during the 1994 boat show and found over \$100,000 of stolen radar equipment in an air-conditioning duct. Under Pipitone's watch as IG, theft decreased "from \$1.3 million in 1993 to about \$300,000 in 1994" (Connelly, 1995, p. 35). Although there were signs of improvements at the Javits Center, the reduction in theft figures failed to disclose the true picture of exhibitors' dislike of the Javits Center. What was happening, according to Bob Finnegan, a Javits Center official, was that exhibitors were using the Javits Center for shows where they needed to focus on New York audiences, but for national shows, the exhibitors were going elsewhere, including to nearby Boston and Philadelphia (Connelly, p. 35).

New Management At The Javits Center Under The Pataki Administration

Pipitone is fired

Soon after his election in 1994, Governor George Pataki moved quickly to deal with the Javits Center corruption problem. The Pataki administration blamed Fabian Palomino, the Javits Center's chief executive and Sebastian Pipitone, his IG, for failing to ferret out the organized crime influence at the Javits Center. In early March 1995, two

months after taking office, Pataki asked Palomino and Pipitone to resign along with the Javits Center's 13-member board of directors. (Pataki did not have the authority to force them to leave and they did not resign en masse.) In a *New York Times* interview the week after his firing, Palomino said defensively that he was not a law enforcement person and that he had been given an impossible task in trying to route out organized crime and corruption at the Javits Center. He cited as an accomplishment the establishment of the IG's office and said defensively that with the IG, he instituted "innovations that they never had before to get rid of corruption[,]...deterred crime and corruption and...led to the detection of payroll fraud and padding. It has led to the firing of people who falsified records. It has done all those things, O.K." (Javits Center: Q. & A., 1995, p. 39).

According to a *Newsday* account (Dwyer, 1995) Pataki personally came to NYC to fire Pipitone (which only Palomino technically had the authority to do directly). Dwyer's article defended Pipitone and cited some of the accomplishments of the Fabian Palomino period including: collecting rents on rooms previously occupied by the unions where rents were unaccounted for, replacing a garbage hauler and a phone contractor with lower priced vendors, and eliminating no-show jobs using the photo I.D. checks.

Also in March 1995, State Senate Finance Committee hearings were held regarding the Javits Center. Pataki addressed the hearings and said that the Javits Center was a priority for him and that he was committed to eliminating corruption there, to turning the Javits Center around financially, and to making it a "first class convention center." Pataki reported that his administration had already spoken to the U.S. Attorney's Office and that they were working on indictments of union officials, that the Manhattan DA's Office was pursuing approximately 25 indictments, and that he would also have the

cooperation of Attorney General Dennis Vacco's office and the Organized Crime Task Force. Pataki also announced his intention to nominate Robert Boyle as the new chairman of the board of the Javits Center. Pataki said that Boyle had business experience in many areas and that he had "a record of turning failed enterprises into profit making ones" (Unpublished transcript of Remarks of Governor George Pataki, Senate Finance Committee Hearing, Jacob Javits Convention Center, March 16, 1995).

The Senate Finance Committee hearings appeared to be hastily put together according to a newspaper reporter who said "yesterday's five-hour hearing was scheduled on short notice, and there were times when that short notice and the legislator's little preparation were apparent" (Pulley, 1995a). One of the controversies raised at the hearings was an allegation that Palomino had recommended the hiring of two shop stewards for a local carpenters and joiners union. The shop stewards were responsible for handing out carpenters jobs and for contract negotiations and according to Pulley, "a Federal investigation has linked [the two shop stewards] to members of organized crime families and has alleged that they are using the Javits Center to provide employment to mobsters and their friends and family members." Palomino denied recommending the hiring of these two individuals and said that when he heard the shop stewards might have ties to organized crime, he provided this information to Kenneth Conboy, the Federal court appointed investigator for the carpenters union. Conboy's investigation alleged that the two stewards were "both in-laws of men involved in the Genovese crime family... and used their authority to give jobs only to people on a preferred list of about 100 workers, instead of to the entire union membership" (Pulley, 1995a).

Palomino's replacement, Robert Boyle, was a former chief executive of the Hudson Valley Hospital Center and served as Pataki's gubernatorial campaign treasurer (Crowe, 1995). State Comptroller, H. Carl McCall criticized Pataki's choice and reportedly indicated that "Governor Pataki had missed a chance to bring in an experienced convention expert to grapple with the center's problems" (Pulley, 1995b). McCall, a Democrat, also had criticized the Palomino administration of the Javits Center saying Palomino operated a "personal fiefdom" and that he "overrode appropriate policy, procedures and rules at his whim." Palomino characterized McCall's audit as "designed to support preconceived conclusions: a witch-hunt" (Pulley, 1995b).

An experienced organized crime investigator appointed as IG

Pataki nominated Gerald McQueen to be the new inspector general. McQueen was 58 when he started as IG at the Javits Center in April 1995 (the same age as Boyle). McQueen earned a bachelor's degree in criminal justice from the John Jay College of Criminal Justice in Manhattan and a master's degree in labor relations. McQueen worked for 30 years at the NYPD, where he had been a homicide detective and squad commander at several detective squads. He also ran the police department's Manhattan Homicide Task Force. While at the NYPD, McQueen took a one-year leave of absence and worked as the supervisor of investigation for the U.S. House of Representatives' Ethics Committee. During his tenure on the Ethics Committee, he worked on the house page scandal. During this scandal, a page made an accusation that a Representative made homosexual sexual advances towards him. This sexual harassment complaint was found to be unfounded when the page recanted his accusations during McQueen's investigation.

McQueen spent his last years at the NYPD working as a detective squad commander at the 17th precinct in Manhattan (McQueen interview, 2002).

After a thirty-year career with the NYPD, McQueen went to work for the Manhattan DA's Office and became the supervisor of all investigators in the DA's organized crime bureau. One the most famous cases McQueen worked on while at the DA's office was the John Gotti case where McQueen served as chief investigator. While working at the DA's office, McQueen heard about the Javits Center IG position from Brian Sanvidge, the NYS Labor Department IG. McQueen expressed his interest in the position, and then got a call from the governor. He was offered the position, which he said he didn't expect to last more than four years. McQueen would eventually go on to become chief executive officer of the Javits Center in January 1997 when Boyle left to become executive director of the Port Authority of New York and New Jersey. McQueen has now served more than eight years at the Javits Center (McQueen interview, 2002 and Gault, 1997).

Boyle and McQueen reorganize the labor force to fight corruption

The 1995-1996 Annual Report for the Javits Center prepared by Boyle's management team described conditions at the convention center when they arrived:

On April 1, 1995, Javits was an outdated, leaky, dirty building in serious disrepair, a trade show venue in precipitous decline, a mobbed-up labor house in notorious disrepute, a feudal management organization in total disarray. It dishonored the name and the family of the distinguished public servant for which it had been named, and it was a symbol of a New York disgrace. (Jacob J. Javits Convention Center of New York [Javits Center], 1996, p. 1)

The earliest and most successful step that Boyle proposed (after consultation with the Pataki Administration) to reduce organized crime was to change the Javits Center's relationship with the union workers. The existing system had the various union trade

workers employed by separate contractors who would employ the union labor and then bill the exhibitors. The labor system of the prior management was described by the annual report as:

Typically, the unions' shop steward parceled out work to members of organized crime, or union members with criminal convictions linked with organized crime activities. Honest, rank and file union members worked at the Javits Center only after the union leaders had taken care of their friends. It was clear to the new management that as long as freight moving and exhibit building were not managed directly by the Javits Center, they would be "managed" by mobsters. *A superbly nasty, overbearing, in-your-face, abusive attitude toward customers, unbelievably low worker productivity, and bloated labor costs all became the defining characteristics of the Javits "style" of doing business* (emphasis in the original). (Javits Center, 1996, p. 11-12)

Boyle's new system would have them all become employees of the Javits Center and then the Javits Center would bill the exhibitors for the work done for setting up and taking down their exhibits, etc. Javits Center management allowed existing union contracts to expire and negotiated new ones. Under the new system, the Javits Center management would decide who would work at the Javits Center, not the allegedly mob connected union officers. Employees would be hired based on their qualifications and dedication to customer service and would keep their jobs based on their work record. During a four-day period, June 30 to July 3, 1995, the Javits Center initially hired 600 employees from 2,700 interviewed (Javits Center, 1996).

Monitoring these new employees was the job of the IG, Gerald McQueen. A zero tolerance policy was adopted towards any form of misconduct or corruption. The day before the new hiring effort began, management decided that a show of force might be needed and arranged for the establishment of a NY State Police substation at the Javits Center. Approximately two-dozen uniformed state troopers took up posts at the Javits Center to insure an orderly transition to the new employment system (Allen & Weiss,

1995). Since 1995 the State Police presence has been continuous at the Javits Center and remains so as of this writing. In fact, as a result of the terrorist attacks on the World Trade Center on September 11, 2001, the presence of the State Police in New York City has increased and they use the Javits Center as a base of operations.

McQueen operated the Javits Center OIG with just one assistant IG, who also had a law enforcement background. From his previous careers, McQueen had many contacts with the NYPD, the FBI, the Manhattan DA's Office, and other investigative agencies including the NYS Labor Department OIG. This ability to work with other agencies helped McQueen in his efforts to deal with the organized crime influence at the Javits Center (McQueen interview, 2002). McQueen worked with these and other agencies and there were a number of successes.

In June 1996, the president and vice president of the Exposition Employees Local 829 were indicted by DA Morgenthau's office. This investigation involved the joint efforts of the DA's office, the NYPD, the US Labor Department and McQueen's OIG (District Attorney, New York County, 1996.) One week later, on June 26, 1996, national union officials of the carpenters union raided the New York City offices of the union and fired the NYC carpenters union leader, along with four other union officers. The national union's new president, Douglas J. McCarron, reportedly took this action because testimony in several criminal cases indicated that the New York office union leader was connected to the Colombo and Genovese crime families and because of "the hiring of mobsters for lucrative trade show jobs at the Jacob K. Javits Convention Center and in other sites at the expense of ordinary union members" (Raab, 1996).

Boyle, McQueen and others in management worked on other ways to reduce corruption and improve security at the Javits Center. Some of these efforts as reported in the 1995-1996 Annual Report included:

- Defending the new labor contract system in court against challenges by some members of the unions.
- Improving control over fixed assets and inventory and performing the first known inventory of these assets.
- Developing a new automated payroll system for the new labor force.
- Developing new training programs.
- Developing a new management information system.
- Improving purchasing procedures, including new standardized bidding procedures.
- Improving financial reporting and controls.
- Addressing and implementing all of the outstanding audit recommendations raised by the State Comptroller's office.
- Implementation of improved building security and an employee and visitor identification system.
- The hiring of a new director of security and improving equipment and management support for their public safety department (Javits Center, 1996).

In the annual report, the IG was singled out for being a key person because of his work in implementing the new labor force system, for improving security at the Javits Center, and for insuring that the Javits Center employees had the highest levels of integrity. The IG's job also included the education of the workforce on proper conduct

and enforcing a new work ethic of zero tolerance when it came to misconduct. McQueen was also given the task of monitoring revenues and expenses in order to look for waste and mismanagement. He was also responsible for overseeing the audits of the Javits Center (Javits Center, 1996).

Part of the IG's role included reviewing new applicants for Javits Center positions. One of McQueen's proposals was to have the state legislature pass a licensing bill. This bill would have given the Javits Center and its IG the authority to require fingerprint and criminal background checks on all employees, contractors and vendors. McQueen was not successful in getting this proposal through the legislature (McQueen interview, 2002).

McQueen reported that in the early days of his work as IG, there was a lot of resentment from some of the employees. These employees were used to the prior system that was more lucrative and comfortable for them. Although the IG position lacked any arrest authority, employees saw him as the law at the Javits Center. McQueen and his assistant were both former police officers and carried handguns during this early period. With organized crime an issue, McQueen said it would be a lie to say that he did not have a concern for his safety. But he said that he had no higher level of fear than in his prior days as a homicide detective (McQueen interview, 2002).

Measuring success

McQueen measured success at the Javits Center using a number of practical results oriented goals. First, his early role was to eliminate corruption, organized crime and what he referred to as "nasty and intimidating employees." In addition, turning the Javits Center from a money losing operation into a successful business enterprise was another important goal of McQueen (McQueen interview, 2002). Judging by the reports

in the general news and business press, McQueen and the rest of the Javits Center team were successful in accomplishing these goals. For example, in a *Wall Street Journal* article, a convention booth operator reported that in the past he had to carry a pocketful of \$20 bills in order to bribe workers at the center to do their jobs and that no matter how well he secured his goods overnight, there were always thefts. Convention operators reported that theft had been almost totally eliminated, that the work rules were much simpler, and that their costs were down. Whereas, a few years ago the convention center was not booked during much of the summer, it was now booked year round. After losing money for years, it posted a profit in 1997. And as one convention participant said, "suddenly everybody in the place became nice" (Starkman, 1997, p. B6).

In considering the issue of OIGs and bureaupathologies, McQueen said that yes, he added new policies and procedures, but that these were necessary to insure accountability and to reduce waste. Managers did not always like the new rules, but they were necessary. McQueen said that when he started at the Javits Center, there were no written procedural manuals. He had the vice presidents look at the operations of their departments and write their own manuals. McQueen thought it was important to get their input and have them write the proposed procedures so that they could be workable. He then reviewed the results. In the past, there were no internal control procedures, whereas now there is an audit checklist detailing all the internal control procedures required and the dates they are to be performed. McQueen said that the changes made since his arrival have not resulted in any real increases in bureaucracy but rather have improved the business operations of the Javits Center. McQueen emphasized this by referring to a wall chart that graphically showed the annual losses at the Javits Center in the prior years and

the profits in each of the recent years since the changes discussed in this chapter were implemented (McQueen interview, 2002).

A promotion for IG McQueen

On January 28, 1997, Boyle was nominated by Pataki to be the executive director of the Port Authority and McQueen was nominated to be the Javits Center's president and chief executive officer. In nominating McQueen, Pataki said that "he was a vital part of Bob Boyle's team as they rooted out corruption" (Lueck, 1997). McQueen has served as president of the Javits Center from early 1997 to the present. After his promotion, McQueen appointed James Grant, another NYPD alumni to the IG position. With the problems of corruption and organized crime under control, the board of directors decided to eliminate the IG position and Grant left the Javits Center on September 15, 1997. Currently there are no plans to replace the IG and instead the Javits Center plans on hiring more of a financial watchdog, a person knowledgeable in the area of internal auditing.

As president of the Javits Center, McQueen continues to maintain the highest standards of ethical conduct for Javits Center employees. A Javits Center employee newsletter reported that an outside show manager presented a Javits Center service manager with a "generous cash tip." The employee immediately reported the incident and turned the money over to management. McQueen commended the employee for adhering to their ethics policy. He also sent a letter to all outside show managers advising them that the proper way to show their appreciation for Javits Center employees is to send a letter to Javits Center management commending the employee. With regard to gifts to employees he wrote the following to exhibitors:

While the sincerity of the gesture is admirable, our employees have been instructed that under no circumstances are they to receive gifts or gratuities of any kind. I hope you understand the importance of this policy here at the Center. In order to avoid even the semblance of impropriety it is necessary that we make every effort to keep this policy in force... We hope to continue to bring you a level of service here at the Javits Center that you would expect from a world-class facility. (Javits Center, 2001, p. 9)

Past and future oversight

The Javits Center was built to be the preeminent convention center for the New York area. It suffered from organized crime infiltration from its earliest days. The OIG at the Javits Center was then established to help deal with this difficult corruption problem. Initially the OIG met with limited success in its mission. It was only after Governor Pataki appointed a new management team in 1995 and that team instituted workforce, internal control, and integrity initiatives, did significant improvements occur. From 1995 to 1997, the IG was a crucial position at the convention center. McQueen, an experienced and dedicated civil servant, worked within the organization and in cooperation with other law enforcement agencies to reduce corruption at the Javits Center. The end result of these successful efforts was that an OIG at the Javits Center was no longer considered necessary. Now others will be relied upon for investigative oversight. The NY State Police still have a strong presence at the Javits Center and management can also call upon the State IG, the NYS Department of Labor IG, and other law enforcement organizations if additional investigative oversight is needed.

Analysis Using Research Questions

Table 8 summarizes an analysis of the Javits Center using the six research questions. This data analysis was performed in accordance with the methodology

described in Chapter 5. Briefly stated, the factors related to each question (see Chapter 1) were examined using the data collected and an assessment was made as to whether the position in the question was confirmed or contradicted. The sources of data included the interviews, government documents, press releases and print media reports, and information obtained at three national AIG conferences.

Table 8

JACOB JAVITS CONVENTION CENTER OF NEW YORK

Gerald McQueen, IG (1995-1997) & chief executive officer (1997-present)

Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste, & abuse?	Strongly confirms
2. Used police-patrol oversight?	Neutral
3. Adopted panoptic vision of oversight?	Strongly confirms
4. More attention to compliance accountability?	Strongly confirms
5. Statutorily appointed IGs exercise more independence?	Strongly contradicts
6. OIG contributed to an increase in bureaupathologies?	Strongly contradicts

The Javits Center was an example of a state organization in need of oversight in order to address the fraud, waste, and abuse that existed there. Years of infiltration by organized crime resulted in scandalous conditions that were frequently recounted in the popular and business press. Through the efforts of investigators, prosecutors, the Javits Center management and especially the IG, corruption and waste were significantly reduced at this state owned convention center. It was done through aggressive actions

that might be characterized as “fire-alarm” oversight because of the continuing scandalous conditions that had existed at the Javits Center from its opening in 1986 through the 1990s. This aggressive involvement by the governor, the legislature, and the press were necessary at the time to save the Javits Center from financial failure. But once the initial actions were taken to gain control of the labor force, oversight at the Javits Center reverted to the traditional “police-patrol” oversight. IG McQueen’s method of operating was to carefully monitor the operations of the Javits Center to insure that those involved with it were adhering to the high ethical standards that he was instrumental in establishing.

Early in his tenure at the Javits Center, McQueen had to play the role of the cop on the beat. It was necessary to operate in a law enforcement mode until organized crime’s influence on the convention center was eliminated. Panoptic vision tools used to fight organized crime such as undercover operations, the presence of uniformed state police guards, grand jury inquiries, wiretaps, etc. were employed. Once the worst of the corruption problems were solved, fewer law enforcement investigative tools were needed, but the emphasis was still on close supervision of employees and a zero tolerance for infractions of the Javits Center’s ethical rules. While still keeping strict ethics rules in place, the Javits Center has recently adopted more of a business model of oversight, relying on traditional accounting oriented internal controls and oversight by a financially oriented auditor instead of a law enforcement investigator.

McQueen was not a statutorily appointed IG. He served at the pleasure of the governor and reported to the board of directors of the Javits Center. With this OIG, the mission was clear: eliminate organized crime’s influence on the convention center,

eliminate other forms of misconduct, and reduce waste at the Javits Center. McQueen approached his job with a no-nonsense, zero-tolerance attitude and the confidence gained from 36 years of law enforcement experience, many of them in senior investigative positions with the NYPD and the Manhattan District Attorney's Office. With his confident attitude and this clear mission, McQueen successfully operated as IG without the need for any statutory protection. And the lack of statutory protection for this IG job has allowed the Javits Center board of directors to eliminate the IG position and focus more on the convention center's future oversight needs as a viable business enterprise.

The history of oversight at the Javits Center challenges the assumptions of Anechiarico and Jacob's (1996) view that the "anticorruption project", especially in the form of panoptic vision oversight, results in an increase in government organizational bureaupathologies. Oversight (including the use of panoptic vision methods) was established at the Javits Center to deal with major corruption and organized crime problems. These problems threatened the viability of the Javits Center and the confidence that the business community and the public had in the government's ability to deal with corruption. This oversight did result in increases in internal controls, rules, and procedures. But instead of increasing bureaupathologies, these efforts reduced corruption and resulted in a viable enterprise that became financially successful and a resource for the citizens of the state.

CHAPTER 10
THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY:
OFFICE OF INSPECTOR GENERAL

Background On The Port Authority

The Port Authority of New York and New Jersey (Port Authority) is a large bi-state agency with the following mission statement:

To identify and meet the critical transportation infrastructure needs of the bi-state region's businesses, residents, and visitors: providing the highest quality, most efficient transportation and port commerce facilities and services that move people and goods within the region, provide access to the rest of the nation and to the world, and strengthen the economic competitiveness of the New York-New Jersey metropolitan region. (Port Authority of New York and New Jersey [Port Authority], 2002)

The Port Authority of NY & NJ was formed in 1921 and was the first port authority of its kind in the United States. It came into being during the era of the progressive vision of corruption control (1900-1933) where administrators such as Woodrow Wilson wanted to see a professionalization of government and the hiring of apolitical experts to run government organizations. The growth years of the Port Authority also coincided with the scientific administration era (1933-1970), and the Port Authority used the approaches developed from this new area of organizational science to build a successful agency (see Chapters 2 & 4). Doig, in his recently published history of the Port Authority, entitled *Empire on the Hudson* (2001) said:

Within a decade of its creation the Port Authority had evolved from an agency of vague and toothless charter into a vigorous engine of economic vitality—a public organization both marvelous and disturbing to behold. Marvelous, because it had accomplished great feats of engineering and carried them forward under a banner of interstate cooperation, with unexpected speed and without direct burden of the taxpayer. Yet disquieting, when measured by important American values, because

the new agency avoided close democratic controls and symbolized—indeed endorsed, showed the benefits of—efficiency as a goal, a goal that might best be achieved if democracy in its usual forms were put “on hold”. (p. 2)

Even today, the Port Authority is a self-supporting agency run on a business model. It is governed by 12 commissioners, six appointed by each state. Historically, the governor of New York has appointed the executive director (chief executive officer) and the governor of New Jersey has appointed the chair of the board of commissioners. The Port Authority receives no state funding and has no power to levy taxes. Its revenue comes from charges for its services, whether from fees, tolls or rents. It operates more than 30 diverse facilities including eight marine terminals, three major international airports (Kennedy, LaGuardia, and Newark Liberty), the George Washington Bridge and other bridges and tunnels between New York and New Jersey, the Port Authority Bus Terminal at 42nd Street in Manhattan and the Path rail service (Port Authority, 2002). The Port Authority was also responsible for the construction and operation of the World Trade Center in lower Manhattan. The Port Authority leased the Twin Towers to a private developer on a 99-year lease, prior to the destruction of the towers and other World Trade Center buildings as a result of the terrorist attacks on September 11, 2001.

The Port Authority occupied space in the Twin Towers for 2,000 of its employees at the time of the attacks and the destruction of the towers resulted in the deaths of 75 Port Authority employees including: Executive Director Neil D. Levin; the Superintendent of the Port Authority Police Department, Fred V. Marrone; and 36 other Port Authority police officers (Gilbert, 2001). The Office of Inspector General for the Port Authority occupied space on the 77th floor of Tower One. All of the OIG staff survived the terrorist attack and the subsequent collapse of the buildings. A meeting of

the Regional Inspectors General Forum, sponsored by the Port Authority OIG, was scheduled for September 12, 2001 at the World Trade Center.

The Port Authority is a large organization, employing 7,500 people. The 2002 budget estimated gross operating revenue to be \$2.6 billion. Other financial and miscellaneous income was estimated to be \$226 million. The Port Authority also expected to raise \$1.6 billion from issuing bonds and notes resulting in total funds to be received of \$4.5 billion. These funds were to be spent on about \$2 billion of capital expenditures, \$1.9 billion of operating expenses and the rest on debt service and other costs (Port Authority, 2002).

Oversight Begins At The Port Authority

The Port Authority has a number of departments and mechanisms that help provide oversight over this organization. These include the Port Authority Police Department, an agency of approximately 2,000 sworn police officers and other employees. The Port Authority has an internal audit department with a budgeted strength of about 79 employees. There is also an operational audit group, consisting of employees with mostly industrial engineering backgrounds that study efficiency at the Port Authority and recommend operational improvements (Brill interview, 2001). There is a legal department and an ethics board. The Port Authority also undergoes an outside audit of its financial statements by the international accounting firm of Deloitte and Touche. As an issuer of bonds and other financial instruments, the Port Authority is subject to reviews and due diligence work common to those types of transactions. And in addition

to the above, the Port Authority established a separate department known as the Office of Inspector General.

First attempt at an Office of Inspector General

Although established as a separate office in 1992, the IG function at the Port Authority goes back several years prior to that. In the 1980s, an investigative function was initiated as a part of the internal audit department. The position was established at the audit manager level and was called the manager of the office of inspector general. The title of IG was not officially used at this time. This OIG group was one of about six audit units at the time. Al Jackson, a former NYPD detective and attorney, was brought in to set up this unit and held this first OIG audit manager position (Brill interview, 2001).

The initial OIG unit within the audit department had only two people assigned to it. The OIG was treated as a minor division of the audit department. As the workload increased, the OIG borrowed staff from the other audit groups. The audit department was divided into several groups along the lines of the major businesses of the Port Authority. When the manager of the OIG needed staff for instance for an aviation related OIG audit or investigation, he would have to ask the aviation audit group for help. Basically, he was competing with the other needs of the audit department and asking other group managers to borrow staff to the detriment of their staffing needs. Jackson complained about this lack of resources. John Brill (current director of the audit department) reported that he sympathized with this problem and believed that during these early years, the OIG did not get sufficient resources to do an effective job. Jackson's staff was primarily made

up of auditors and they did not have the expertise to conduct and follow-up on criminal investigations (Brill interview, 2001).

The work of the audit department OIG was mostly reactive, responding to complaints from management, employees, contractors and vendors. Some of the referrals to the OIG audit manager came from other audits by the audit department. Most of the early work of the OIG was audit related and the wrongdoing investigated involved violations of the Port Authority's ethics rules. There were few criminal cases investigated in the early years of the OIG function. Al Jackson eventually transferred out of the OIG to work in the Port Authority's legal department and he was succeeded by a number of attorneys who were transferred in from the legal department. Jackson's first successor was Steven Kern and Kern was followed by Richard Williams, a labor attorney (Brill interview, 2001).

A more independent OIG is formed

According to Brill (interview, 2001) there were a number of cases of wrongdoing at the World Trade Center involving employees who had relationships with contractors that created conflicts of interest. These investigations eventually led to some arrests and these situations pointed to the need for a stronger IG function. In 1990, Stanley Brezenoff was appointed as the executive director of the Port Authority. Brezenoff had served as a deputy mayor for New York City under the Koch Administration and had experienced the political problems created by corruption scandals. Brezenoff was concerned about ethics and integrity and the political problems that scandals create for government. Brill reported that overall Brezenoff was pleased with the operation of the Port Authority's audit department but he believed that a separate more visible OIG with

more resources would be an improvement over the current setup. Van Etten (interview, 2001) reported that Governor Mario Cuomo also requested that the Port Authority appoint an inspector general. At a Port Authority board of commissioners meeting on July 16, 1992, the board approved the establishment of a separate Office of Inspector General, effective August 1, 1992.

Under this new setup, the OIG would be under the direction of the executive director. The board of commissioners' resolution provides that the OIG would have reporting responsibilities to the executive director, the board of commissioners and the audit committee of the board. The OIG mission includes receiving and investigating "complaints regarding wrongdoing, fraud, waste, and abuse by employees or third party individuals or organizations doing business with the Port Authority" (Port Authority, 1992, p. 321). Most of the duties of this new office involve the investigation of alleged criminal conduct. In addition, the OIG has the responsibility for the investigation of violations of the Port Authority's rules and regulations and violations of other federal, state and local laws that could have a significant impact on the Port Authority (Port Authority, 1992).

Between 1992 and 1996 several individuals held the title of IG in this newly created office. Al Jackson became the first IG for the newly created separate OIG. John Brill also served as an assistant IG for about a year and a half before returning to the audit department to become its director. With a new mandate from the board of commissioners to focus on criminal matters, Al Jackson went about working with the law enforcement community and began to use investigative techniques instead of relying on an audit approach as had been done in the past. Jackson began working with local and federal

prosecutors and some arrests were made of Port Authority employees involved in illegal dealings with contractors. During the 1992-1996 period, the OIG's staff increased to about eight or nine people, most of whom still had audit rather than investigative backgrounds (Brill interview, 2001). But for the most part, Jackson still referred criminal cases to outside agencies such as the FBI and these outside law enforcement agencies conducted the investigations rather than the OIG staff (Van Etten interview, 2001).

A Senior Level Law Enforcer Comes To The Port Authority

Robert Van Etten appointed IG

Jackson served as IG until his retirement in early 1996. With Jackson's retirement, Brill was asked to serve as acting IG, a title that he held for about six months concurrently with his position as director of the audit department (Brill interview, 2001). In September 1996, Robert Van Etten left the U.S. Customs Service at the age of 53 to take over the position of IG for the Port Authority. Van Etten was a graduate of Manhattan College in the Bronx, New York with a degree in business administration and while in federal government employ spent a semester at Harvard's Kennedy School of Government as a senior executive fellow. He initially served two years as a special agent with the U.S. Internal Revenue Service (IRS) and then spent the next 28 years in the U.S. Customs Service's Office of Investigation. He held several positions in Washington D.C., and served as special agent in charge of the Newark, New Jersey region. In 1992, Van Etten was appointed as special agent in charge of the New York Office of U.S. Customs. After a reorganization, he became special agent in charge of the New York

and New Jersey region that included a total complement of 500 employees (Van Etten interview, 2001).

Van Etten was approaching the mandatory retirement age of 57 for federal law enforcement special agents. Since the U.S. Customs Service in New York and New Jersey operates in many of the same places as the Port Authority (the ports and airports), it seemed a good fit for Van Etten to work for the Port Authority and take over the IG position. Van Etten said that at the time he looked forward to this new professional challenge. When Van Etten arrived, he found an OIG with about four investigators, two analysts and a secretary. The staff had come from the audit department and their expertise was primarily in forensic accounting and not in criminal investigations. He also inherited an inventory of about 630 open investigations. Van Etten reviewed the inventory of open cases and concluded that the OIG was devoting too much time and attention to “low-level investigations.” Van Etten developed a system where he would refer the minor complaints to the various operating directors and asked them to look into the matter and report back the results, especially if there was a systemic problem. Van Etten reduced the inventory of open cases to about 20 significant cases. He also changed the focus of the office toward predominately law enforcement investigations as the Port Authority already had a substantial internal audit department and he did not see the need for the OIG to do an audit function (Van Etten interview, 2001).

Staff building

The next step for Van Etten in developing his law enforcement focused OIG was to hire additional staff with criminal investigative experience. Van Etten’s request to increase staff came in his first year as IG and he was successful in receiving support for

this. He decided that the expertise he needed was in areas such as construction and bribery, organized crime, internal affairs, and labor racketeering. Van Etten's hires included a former director of internal security (internal affairs) from the U.S. Customs Service, two former investigators from the U.S. Department of Labor, two retired NYPD detectives, and two former special agents from the Internal Revenue Service. He also had two Port Authority Police Department detectives with backgrounds in internal affairs assigned to the OIG. He retained the four forensic auditors from the prior IG administration. By 2001 the OIG had a total complement of about 17 permanent staff persons. Van Etten also uses temporary contract staff from time to time to supplement his permanent core staff. Van Etten preferred to have a small staff of highly experienced criminal investigators. He said that his goal was to conduct quality investigations of serious matters and to handle minor matters administratively as described above (Van Etten interview, 2001).

The OIG under Van Etten received the support of the executive director and the board of commissioners for the staff increases. This support came despite a downsizing effort at the Port Authority that had commenced in 1995 and continued into 1996. As part of its effort to save costs, the Port Authority commissioned a study by Deloitte and Touche, the international accounting firm, to develop recommendations for reducing costs. Deloitte and Touche recommended the elimination of the OIG and proposed replacing it with one person who would refer cases to outside law enforcement. This proposal was in substance not that different than the previous IG structure at the Port Authority. Van Etten and Brill reported that this prior structure was not successful in finding significant cases of corruption. This past lack of activity was in contrast to a

number of early successful cases under Van Etten's OIG that resulted in the arrests of Port Authority employees. Based on these early successes, Van Etten received the support for increasing his department and the Deloitte and Touche recommendation was ignored (Brill and Van Etten interviews, 2001). Several of these significant cases will be discussed below.

Independence as a state of mind

Like several other New York State IGs, Van Etten serves at the pleasure of the executive director of his authority. The executive director also determines his salary. Although this is the case, Van Etten reported that he has been successful in maintaining his independence. His reporting responsibilities help in maintaining his independence. In addition to reporting to the executive director, Van Etten also reports to the audit committee of the board of commissioners. He prepares a quarterly report of the status of his work and this is given to the executive director, the four commissioners on the audit committee, and the Port Authority's general counsel. This gives the audit committee an understanding of the work he is doing and they have the potential to intercede if there were any matters of dispute between the OIG and the executive director (none have been reported). Brill (interview, 2001) believed that having the IG report to the executive director instead of the audit department has also increased the independence of the OIG. Brill indicated that hiring experienced law enforcement officers who have already completed a career and have their pensions established adds to their independence. This was a comment echoed by George Moresco in his interview about his career as the IG for the NYS OSIG. When asked whether Brill believed that Van Etten's OIG has independence from the rest of the organization he said:

I think they do... It is difficult I think for somebody who is a career person here to be an IG. Bob came in and brought other people from the outside with him so I think he has a good deal of independence. He doesn't have a lot of relationships with people and that kind of thing. You are not investigating someone you worked with for twenty-five years. I think that office has real good independence. They are separated physically, they are separated on the organization chart and [it is] one of the few offices that reports directly to the Executive Director and they are not career people. Both Bob and Mike Nester [the executive deputy IG]. (Brill interview, 2001)

Van Etten also has very strong views on maintaining his independence and said:

If you are going to be successful, you have to establish with your immediate supervisor and your board of commissioners your independence. If you don't do that from the very beginning, your biggest problems will come internally... I had one director early on say to me that, he gave us a case to do and we were doing it and then he said to me, "I don't think I want you to go to the U.S. Attorney yet." And I said "time out"... and he just wasn't realizing what he was saying or if he was he was testing the waters. And I said "you don't want to be in a position of ever telling me when I should take a case to the U.S. Attorney's office."... He switched gears and that was the end of that. It never came up again. (Van Etten interview, 2001)

Van Etten reported that after a couple of experiences like the one mentioned above where he asserted his independence, he did not have any interference with his investigations. Van Etten said that he recognized the fact that even his office has an obligation to accept supervision and direction, but believes that in investigating corruption cases his office should be "unimpeded and unrestricted."

Van Etten also needed to establish his independence and authority when dealing with other Port Authority executives and employees. Previous IGs at the Port Authority had not established this and initially this had to be overcome by Van Etten. He reported how he had to assert himself to the Port Authority management:

When I got here, you couldn't even get an appointment with a line director or chief. You would have to make an appointment. This type of work, you have to get people to know that you mean business, and you are not going to unduly interfere with their operations. Right from the start, the first time we need to talk to a chief or a line director, we call them down here and they say, the secretaries,

“when are you coming to see us?” “You don’t understand, please come to my office at two o’clock. “Well I have a—” “You don’t understand, please come to my office at two o’clock. It can’t wait, you will just have to reschedule your meeting.” Very professional, and after the fact you explain to them why.

It all fell into line. I wasn’t easy in the beginning, but internally it was the biggest problem. We had problems getting records from our own people. So we served them with a grand jury subpoena and that stopped... All of these things are very important, but they are past history. There is absolutely no problem now. (Van Etten interview, 2001)

These are problems that some other IGs have reported, but few have reported this much success in asserting their authority. As the interviews with Brill, Van Etten and others have indicated, this success with independence at the Port Authority OIG appears to come from having a former senior federal law enforcement executive assume the position of IG. Through his integrity and independence of mind, Van Etten has maintained the authority and independence that this position requires. In addition, Van Etten has also hired other experienced personnel who came to the Port Authority from distinguished law enforcement careers. And they also believe that keeping their professional integrity requires that they assert their independence even if they have no statutory job protection. Van Etten’s style of OIG has successfully worked now for seven years and through several executive directors.

Federal police powers—a unique status for a NYS OIG

Van Etten was able to provide his investigators with the legal authority to conduct bi-state criminal investigations by going to the U.S. Department of Justice and arranging for those of his investigators with prior law enforcement experience to be designated as Special Deputy U.S. Marshals. This is a mechanism that is also used by federal OIGs to give some of their investigators federal law enforcement officer status. The Port Authority OIG is the only OIG in this study with federal law enforcement authority.

Only one other OIG employs some New York State certified police officers as investigators (NYS Office of Welfare IG), one has investigators with peace officer status (NYS OSIG) and the remaining OIGs in this study have investigators with no police powers. The NYS Department of Labor OIG has employees with peace officer status who handle physical facilities security. The MTA OIG is the only other OIG that was part of this study that operates in two states (New York and Connecticut) and its investigators do not have police powers.

Criminal cases

During Van Etten's first full year with the Port Authority, his office was involved in investigating a number of interesting cases. One of the first cases brought to a conclusion under Van Etten's tenure was a federally prosecuted case brought against the chief maintenance supervisor for the Newark Liberty International Airport on a charge of extortion. This was the type of case that the Port Authority management was fearful existed within the organization and which the previous Port Authority OIG had little success in investigating. In this instance, the supervisor pled guilty on May 28, 1997 of extorting kickbacks from vendors and for filing false federal tax returns. The case was developed with the cooperation of the Port Authority OIG and the IRS Criminal Investigation Division (U.S. Attorney, District of New Jersey, 1997). This supervisor, an employee for 34 years, was sentenced to 18 months in federal prison and was ordered to pay \$7,200 in restitution to the Port Authority (Rudolph, 1997). In another 1997 investigation, the Port Authority OIG cooperated with the NYS Insurance Department and the NYC Department of Investigation. This was a case of alleged insurance fraud involving an individual and his corporation for providing fraudulent surety bonds to the

Port Authority (Office of the District Attorney, Nassau County, 1997). Neil D. Levin was the superintendent of the NYS Insurance Department at the time and was involved with the investigation. Coincidentally, he would later become the chief executive of the Port Authority and Van Etten's boss until Levin's death at the World Trade Center on September 11, 2001.

Another case involved the federal indictment in September 1997 and subsequent conviction in June 1998 of a Port Authority public affairs employee, a U.S. Secret Service special agent and an attorney engaged in private practice. The three helped a businessman arrange for a lease for space for a restaurant at Kennedy International Airport in exchange for cash payments and a 25% ownership of the business by the Port Authority employee and the Secret Service agent. The Port Authority employee and the Secret Service agent kept their ownership secret by having the shares first placed in their wives' names and subsequently in the name of the attorney also convicted. This investigation involved the Port Authority OIG and the U.S. Treasury Department's OIG (U.S. Attorney, Southern District of New York, 1997 & 1998a). These three early cases involved crimes that occurred before Van Etten was appointed as IG of the Port Authority, but were successfully moved forward by him and his experienced law enforcement staff.

Some of the cases that the Port Authority's OIG investigated involved contractors to the Port Authority. The Port Authority makes extensive use of outside contractors and other vendors for capital and maintenance projects. In 1998, an arrest was made of an employee of a company that the Port Authority had contracted with to test air quality during an asbestos removal project at the World Trade Center. This employee allegedly

extorted bribes in exchange for a promise to ignore any air quality problems that he might encounter (New York Attorney General, 1998). A major contractor case that was brought to trial in 1998 involved the conviction of three “reputed organized crime members convicted of racketeering, fraud and extortion” in connection with the construction of a monorail at the Newark Liberty International Airport (U.S. Attorney, District of New Jersey, 1998). This case involved the FBI, the U.S. Department of Transportation OIG and the Port Authority OIG.

Other cases involving vendors, contractors or other outsiders included a conviction of an insurance broker for fraudulent over billing in connection with performance bonds used to guarantee the completion of construction projects at Kennedy and LaGuardia International Airports. In this case, the insurance broker provided the inflated invoices to a contractor who then billed the Port Authority. This investigation was conducted entirely by an OIG investigator (Kreytak, 1999 and U.S. Attorney, Eastern District of New York, 2000). In another investigation, the Port Authority OIG cooperated with the School Construction Authority OIG. This case involved a contractor who worked on a number of projects for the Port Authority, including work at the Holland Tunnel, Newark Liberty International Airport and the Port Authority Bus Terminal, as well as working on a number of New York City school projects. The contractors pled guilty in Manhattan Supreme Court in connection with a fraud where they over billed the Port Authority and the School Construction Authority for labor and employee benefit rates and showed employees as working at more than one job at the same time. In this case, the individuals and the company involved agreed to reimburse \$110,000 to the Port Authority and \$374,000 to the School Construction Authority and

were permanently barred from doing business with the two authorities (District Attorney, New York County, 2001).

In November 2000, an investigation began at the Kennedy and LaGuardia International Airports based on a complaint to the OIG by Kennedy Airport managers. The airport managers suspected that cash was being embezzled from the parking lot facilities. A private company manages the parking lots. The investigation subsequently resulted in the arrest of nine airport workers for illegally using handicap-parking permits in order to qualify for the lowest priced parking rates. In some cases, the workers used the handicap-parking permits of deceased relatives. This investigation also found skimming from parking lot receipts and resulted in the arrests of an additional seven parking lot cashiers (Frank, 2001).

Port Authority employees were prominently represented in other Port Authority OIG cases. In one case, an employee was arrested in 1998 and pled guilty in 1999 for submitting vouchers for the payment of phony real estate commissions totaling over \$250,000. This employee was sentenced to one year in prison by a federal court. In connection with this case, a second employee and a realtor were also arrested (U.S. Attorney, Southern District of New York, 1998b, 1998c & 1999). In a case investigated by the Port Authority OIG in 2000, twelve Port Authority toll collectors were arrested for theft of toll receipts. The investigation found that the 12 employees had stolen an estimated total of \$420,000 (Bergen County Prosecutor's Office, 2000).

A recent Port Authority OIG investigation involved a complaint by a union representative that some employees were making false claims in order to obtain money from funds set up to help victims of the terrorist attacks on the World Trade Center. The

investigation resulted in the arrest of 12 Port Authority employees and five others. Allegedly 11 of the 12 Port Authority employees had escaped the collapse of the Twin Towers without injury and the twelfth employee had not been there at the time of the attacks. In addition, none of the 12 employees allegedly had suffered any financial hardship entitling them to any compensation. Previously in November 2001, 12 other Port Authority employees “were arrested on charges that they stole more than \$14,000 in disaster relief money from the American Red Cross by falsely claiming that they lost their jobs because of the attack.” These cases were being prosecuted by the Manhattan DA’s office (Worth, 2002).

“Police-patrol” oversight

As indicated above, the Port Authority OIG has investigated a number of significant cases. But this OIG operates in a quiet “police-patrol” oversight manner (McCubbins and Schwartz, 1984) and does not take any steps to attract publicity. The OIG does not prepare any press releases of its own, nor does Van Etten seek any press attention. Public information about its cases comes solely from press releases prepared by U.S. Attorneys and District Attorneys, once the indictments are handed down and the arrests are made. Van Etten believes that the activities of the OIG become available through these press releases and that this information becomes known within the Port Authority and the contracting community. As with other OIGs, its role includes an outreach function to employees of the Port Authority and those who do business with it. The OIG makes presentations to employees and has prepared a brochure for employees on what to do if someone offers them a bribe (Van Etten interview, 2001 and Port Authority Office of Inspector General, n.d.).

Complaint reporting and case statistics

Like the MTA OIG, Van Etten established a website for the Port Authority OIG, which is accessible directly from the Port Authority's website. Van Etten said that from an investigator's standpoint, the website does not yield many new cases. Many complaints made electronically do not relate to the Port Authority and some are minor matters. Van Etten said that he does answer each one of these web-based complaints. Those that are referred to line personnel for checking are also followed up on to insure that they are answered. Van Etten reported that about half of the OIG's cases come from their own proactive work of looking into potential problem areas and the other half of their work comes from referrals from other investigative and law enforcement agencies and directly from Port Authority employees (Van Etten interview, 2001).

Van Etten stated that his office averages between 60 and 100 cases in inventory, with about 35 new cases opened each year. He estimated that in the last few years, the cases investigated by his office generated approximately 25 to 45 arrests per year. Van Etten and Brill both reported excellent relationships between the OIG and the audit department. Van Etten indicated that the audit department provides the OIG with leads for new cases and that these leads have led to cases involving contractors violating minority business regulations and prevailing wage laws. Van Etten said that previously the Port Authority would just withhold payments for such violations but now serious violations are subject to criminal investigation and indictments (Van Etten interview, 2001).

The OIG also provides internal affairs investigations for the Port Authority Police Department for cases involving suspected wrongdoing by police personnel at the level of

captain or higher. This was done since the officer in charge of the internal affairs bureau is a captain and it would be difficult for the internal affairs bureau to investigate a police administrator at a rank equal to or higher than the internal affairs commander. Van Etten expressed a desire for the OIG to take over all internal affairs investigations for the Port Authority Police Department (Van Etten interview, 2001).

Proactive work by “the designated worrier”

The Port Authority OIG has also become involved in some other areas where Van Etten believes there is exposure for the Port Authority. As Van Etten said it, he is “the designated worrier” for the Port Authority. Although Van Etten had referred to his office as “junkyard dogs” in pursuing corruption at the Port Authority, in other ways he tries to work as “the right hand” to management in dealing with broad issues of fraud, waste and abuse (see Moore and Gates, 1986). One area where Van Etten was dissatisfied with the status quo was with the Port Authority’s sexual harassment policy. When Van Etten arrived, the Port Authority’s entire sexual harassment awareness program consisted of distributing a purchased brochure to employees. Van Etten said that this brochure didn’t even have the Port Authority’s logo on it. This created an environment where the Port Authority could lose a suit brought against it because it lacked an adequate employee education program in this area. Van Etten said that he pushed for a major change, and with the executive director’s support, developed an up-to-date online training program with a test that employees all have to pass (Van Etten interview, 2001).

During the August 2001 interview, another area that Van Etten expressed a desire to become involved with was security at the three airports under Port Authority management: Kennedy, LaGuardia, and Newark Liberty International Airports. (One of

the planes hijacked on September 11, 2001 was United Airlines Flight 93, which took off from Newark Liberty International Airport before crashing in Pennsylvania (Longman, 2002)). Van Etten said he was concerned with the poor quality of airport security workers whom were underpaid by the airlines. With regard to the Federal Aviation Administration, he said:

And FAA has a role in this, a responsibility which I think they're just waking up to. So they're going to change some rules, requiring, they can't necessarily require higher pay, but they can require more training and whatever and with that should come higher pay and a better system. And they have to know that we're going to test it along with the IG from the Department of Transportation. (Van Etten interview, 2001)

He also proposed that the Port Authority create its own office of security, with a director to oversee all security at the three airports.

Costs and bureaupathologies

Proposals enacted by the federal government for increasing airport security have resulted in increased personnel and costs since September 11, 2001, but few would argue against these proposals. With regard to the costs of other changes proposed by the OIG for the Port Authority, Van Etten said that the additional costs have been minor and for the most part his recommendations have focused on adding simple but logical internal controls. Van Etten also believes that improvements in internal controls can lead to cost savings that outweigh the costs to implement the controls (Van Etten interview, 2001). Brill also said that the OIG has not made any recommendations that could be characterized as contributing to bureaupathologies at the Port Authority. In discussing control recommendations and bureaupathologies, Brill said:

I don't think the IG has ever had the effect of creating additional levels of approval. I think in some cases that may be more in our area [the internal audit department] because we could be recommending additional controls more so than

probably the IG. They are looking, they are doing investigations and sometimes they recommend controls but pretty much that is left to us to recommend the controls. When we recommend controls, we always look at the cost/benefit of the controls and typically when we make recommendations it is a give and take between management and us. Pretty much they always go along with our recommendations. I think it is because we are reasonable and they understand it is to their benefit. They can see the risk. I think one of the things that we have to do when making recommendations is to clearly explain to them what the risk is. (Brill interview, 2001)

Professionalism

Van Etten has strived to have a staff with the highest level of professionalism by hiring experienced investigators. He also sends them to additional training in areas such as interview and interrogation and electronic surveillance and provides reimbursement for graduate study. Brill (interview, 2001) also commented about the high quality of the personnel that work at the OIG. Van Etten also continues to make efforts to improve the IG profession. He is a member of the board of directors of the Association of Inspectors General. He also has been effective in starting a New York regional IG forum that meets about four times a year for breakfast meetings where IG issues are discussed, IGs network, and guest speakers are brought in. Two other IGs interviewed for this study reported starting earlier versions of this regional IG forum, but they both gave Van Etten credit for the success of this latest version of it.

Analysis Using Research Questions

Table 9 summarizes an analysis of the Port Authority OIG using the six research questions. This data analysis was performed in accordance with the methodology described in Chapter 5. Briefly stated, the factors related to each question (see Chapter 1)

were examined using the data collected and an assessment was made as to whether the position in the question was confirmed or contradicted. The sources of data included the interviews, government documents, press releases and print media reports, and information obtained at three national AIG conferences.

Table 9

PORT AUTHORITY OF NY & NJ, OFFICE OF INSPECTOR GENERAL

Robert Van Etten, IG (1996-present)

Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste, & abuse?	Strongly confirms
2. Used police-patrol oversight?	Strongly confirms
3. Adopted panoptic vision of oversight?	Strongly confirms
4. More attention to compliance accountability?	Strongly confirms
5. Statutorily appointed IGs exercise more independence?	Strongly contradicts
6. OIG contributed to an increase in bureaupathologies?	Strongly contradicts

The original OIG was formed because of a perceived lack of oversight at the Port Authority. Although no major scandals at the Port Authority preceded the hiring of the first IG, there was a concern that corruption might be present in this large authority with many outside contractors and vendors. Based on the urging of Executive Director Stanley Brezenoff (a former deputy mayor of New York City during the Koch administration) and a request by NY Governor Mario Cuomo, a more independent OIG was created in 1992. Under IG Robert Van Etten, the Port Authority OIG has become an

elite law enforcement organization with federal police powers. No other New York State OIG operates in a similar way. Van Etten's OIG measures its success based on the number of high-level criminal cases the OIG investigates and the number of arrests resulting from these investigations. The number of significant cases investigated and arrests made based on the work of the OIG indicates that it is an aggressive corruption fighter. This history indicates that the Port Authority OIG under Van Etten has significantly increased this authority's capacity to reduce fraud, waste and abuse.

Van Etten's OIG operates in a manner that could be called routine "police-patrol" oversight (McCubbins & Schwartz, 1984). This OIG was created internally by its board of commissioners without the outside involvement of the New York or New Jersey state legislatures or the media. Some of the cases investigated by this OIG do draw the attention of the media but no attempts are made by the OIG to attract attention to itself. The Port Authority and the OIG do not issue press releases about the OIG's activities. A review of three years of press releases on the Port Authority's website (performed just prior to September 11, 2001) found only two crime related releases, one describing arrests by the PAPD for counterfeiting of bridge toll coupons and one story involving an injury to a PAPD officer. As previously noted, the OIG does not prepare press releases and information about OIG criminal cases only comes from area prosecutors.

The Port Authority OIG operates in a manner that would meet Anechiarico and Jacob's (1996) definition of panoptic oversight. This OIG operates like a federal law enforcement office and utilizes such tools as undercover investigations, payments to informers, search warrants, arrest warrants, and grand jury hearings. Most of the staff are former federal or local law enforcement officers. The OIG also engages in outreach

educational efforts to insure that all employees at the Port Authority are aware of their ethical and legal obligations and that the OIG is there to investigate any allegations of wrongdoing.

Most of the attention of this OIG is devoted to compliance accountability (as defined by Light, 1993). The mandate for this office calls for it to investigate matters of wrongdoing, fraud, waste, and abuse. The measures of success include the number of arrests and the seriousness of the crimes investigated. There are also other departments at the Port Authority, such as the internal audit department and the operational audit group, which could consider implementing other accountability models. The OIG does attempt to develop some capacity building forms of accountability under what Van Etten would call his “designated worrier” role.

As previously discussed in this chapter, Van Etten has achieved a substantial level of independence for an IG that is not protected by a fixed term in office or by an enabling statute.

The Port Authority spends about \$4 billion on capital and expense items each year. It seems reasonable then for this public authority to spend approximately \$3.5 million per year on an OIG in order to reduce fraud, waste and abuse. The evidence discussed indicates that this OIG does not contribute to government bureaupathologies. The focus of the office is on criminal investigations of wrongdoing. Recommendations made by the OIG are in high risk areas where not implementing simple additional internal controls may or already have resulted in significant costs to the Port Authority.

CHAPTER 11

OFFICE OF WELFARE INSPECTOR GENERAL

As discussed in Chapter 6, there was a previous NYS Welfare OIG included in the NYS Comptroller's Office. With a staff of approximately 90 employees, it was a large OIG for NYS. The office was viewed as being political, with an implied mission of getting people off the welfare rolls and embarrassing the New York City government. Governor Hugh Carey's administration viewed this Welfare OIG suspiciously. In 1981 it was defunded and the employees terminated, although the statute authorizing this OIG was never rescinded (Balukas interview, 2001, and Ennis, 1986).

Background

Providing government welfare services in New York State is entrusted to a large decentralized system with 58 counties each having its own social service agency. For purposes of state welfare, New York City is considered as one county (or social service district as they are called). Most of the funding for these local services is provided by the state and federal governments. A social service district appoints its own director of social services and each of these social services departments is responsible for administering their own welfare programs under state oversight. The individual social service districts also have the general responsibility to investigate welfare fraud. These county social services departments develop relationships with their local law enforcement agencies and county prosecutors in order to deal with criminal violations of the welfare laws. Up until 1997, the state agency that dealt with overseeing the 58 county welfare agencies was the

NYS Department of Social Services (DSS). With the passing of the State Welfare Reform Act of 1997, the functions of DSS were split up and a new NYS Office of Temporary and Disability Assistance (OTDA) was established to coordinate the work of various human services agencies. OTDA and the Office of Children and Families (formerly the Division for Youth) represent two autonomous offices that make up the Department of Family Assistance (New York State Office of Welfare Inspector General [NYS OWIG], 1998). Medicaid, the other major program previously administered by DSS, was transferred to the Health Department (White interview, 2002 and New York State Office of Temporary and Disability Assistance [NYS OTDA], 2001).

OTDA's mission is to: provide assistance to New Yorkers with the goal of increasing their self-sufficiency, to increase the integrity of welfare programs by reducing fraud and improving monitoring, improve the administration of programs, and improve the management of OTDA's human resources (OTDA, 2001). Within the OTDA (and previously within DSS) is an oversight department known as the Office of Audit and Quality Control. In 2002, this office consisted of approximately 200 employees. This office is under the direction of James P. White, who has over 28 years of experience with OTDA and its predecessor department. The role of this office is to provide audit and quality control services. White described the mission of his office:

We are involved in traditional type audit activities. We are also involved in the quality control part which comes from federally mandated quality control review programs for recipient payment accuracy and payment eligibility in food stamps, Medicaid, and other programs. One of the other big areas that we are involved in is fraud. We do the fraud [control] activities for the department. We lump that under the heading program integrity here. We have a unit that oversees program integrity for the state. (White interview, 2002)

Within the Office of Audit and Quality Control is the Program Integrity Unit. This unit is under the direction of Richard W. Nawrot, another long time state social service employee. This unit has “state-wide responsibility for the prevention/detection of fraud in the welfare programs as well as establishing fraud control programs on a state-wide basis” (Nawrot interview, 2002). At the time the new OWIG was created in 1992, and prior to the split-up of DSS, White’s audit office had about 800 people, including auditors and investigators (White interview, 2002).

In addition to state and local oversight organizations, since federal funding is involved, several federal OIGs are involved in oversight in this area. For instance, the U.S. Department of Agriculture OIG investigates food stamp fraud and fraud under the more recent food program involving electronic access cards.

A New Office Of Welfare Inspector General Is Created

Legislation creates OWIG

Legislation passed in 1992 created a new NYS Office of Welfare Inspector General (NYS Executive Law §74). This was the second of the current NYS OIGs to be established by statute (the other being the MTA OIG). The new OWIG came about based on pressure from the Republican dominated State Senate. The State Senate made several attempts to bring back the Welfare IG. In addition, Edward Kuriansky, who was then in charge of the Medicaid fraud unit of the State Attorney General’s office, also pushed for jurisdiction over welfare fraud. The Medicaid fraud unit at the AG’s office was a successful unit, funded mostly with federal dollars. There was also a sense from the public and some politicians that welfare fraud was rampant and that nothing was being

done about it. There was a belief that the David Dinkin's mayoral administration in New York City was not aggressively pursuing welfare fraud and that the welfare rolls were growing out of control (interviews with Balukas, 2001, Toro, 2002, and White, 2002).

Even though Governor Cuomo had been proactive in the formation of such IGs as the MTA OIG and the Office of State Inspector General, his administration did not initiate this proposal and was not perceived as being in favor of this new welfare IG proposal. The administration never publicly opposed it, but it would not have gone forward without outside support. Republican State Senator Joseph L. Holland of Rockland County, the Chair of the Social Services Committee, authored the legislation (NYS OWIG, 2000). Some believed that the new OWIG was being created just to embarrass the NYC Democratic administration, which might be partly true. But there was also a belief that welfare fraud was not being sufficiently addressed. After negotiations between the governor's office and the Senate leadership, legislation was agreed upon that would establish an independent Welfare Inspector General. As part of a compromise with Governor Cuomo's office, it was agreed that the governor and not the attorney general would appoint the Welfare IG. This position also requires the ratification of the State Senate (interviews with Balukas, 2001, Toro, 2002, and White, 2002).

This new OWIG is situated as part of the Medicaid fraud unit of the State Attorney General's office. What is unusual is that this new statutorily created IG was placed in a Medicaid fraud unit that was not statutorily created and therefore the Medicaid unit could be eliminated. Funding comes directly from the state and the attorney general does not have any direct supervisory control over the Welfare IG. In

addition, the Welfare IG is the only IG in NYS government appointed to a fixed five-year term with no recall except for cause (NYS Executive Law §74). As noted earlier, the MTA IG also serves a five-year term, but serves that term at the pleasure of the governor.

In addition to the governor's office, others were not convinced of the necessity of setting up this OIG. White's view on the establishment of the Welfare OIG was:

Well my sense was it was probably the politically correct thing to do. I don't think for those of us in the trenches so to speak, I don't think we saw any gaping holes here or any great need that wasn't being met that had to be met. I think that what we saw there was some interest in the general public, interest in the media, in this IG area and it was like well it is sort of a no lose situation. You can set up this other organization that is independent of the oversight agency and let them do their thing. (White interview, 2002)

Statutory mission

The Welfare IG was given broad powers to investigate welfare related matters. The statute defined investigation for OWIG to mean "investigations of fraud, abuse, or illegal acts perpetrated within the department of social services or local social services districts, or by contractees or recipients of public assistance services as provided by the department of social services" (NYS Executive Law §74). This gives OWIG the authority to go into local government social service agencies and investigate them, their outside contractors, or the recipients of their services. In addition to this investigative authority, OWIG was also given the authority to prosecute such cases that occur "within the department of social services or local service districts, or by contractees or recipients of public assistance services" (NYS Executive Law §74). This is the only NYS OIG with the authority to prosecute its own cases. This is an important provision since other state IGs have to rely on local prosecutors and/or the state attorney general to prosecute their cases. This power means that when OWIG finds illegal acts in local social services

agencies; it does not have to rely on local district attorney's offices to prosecute these cases.

In addition, OWIG was given subpoena power to compel testimony and the production of records. It is authorized to monitor the implementation of its own "recommendations and those of other investigative agencies." The statute provided that it is "to receive complaints of alleged failures of state and local officials to prevent, detect and prosecute fraud and abuse." The statute also provided that state and local agencies should provide OWIG with any information or other cooperation necessary to carry out its responsibilities (NYS Executive Law §74).

The first Welfare IG

Elmer Toro was selected by Governor Mario Cuomo to be the first Welfare IG. Toro's background was in police investigation. He was a 22-year veteran of the NYPD and had been a commanding officer of the special operations unit of the Joint Terrorist Task Force. Toro had a bachelor's degree in criminal justice and a master's degree in labor and industrial relations. Upon his retirement from the police department, Toro went to work as a supervising investigator for the NYS Banking Commission. Toro worked on money laundering cases, including cases involving drug cartels that were using the New York banking system to launder money. In April 1992, at the age of 48, Cuomo appointed Toro to be the Welfare IG. At the time of his appointment, Toro was a Democrat (Toro interview, 2002).

Toro said that he took the position because he thought he could make an impact on corruption in the welfare system, which he believed was rampant. The five-year statutory term was inviting to him, as he believed it would give him the independence and

time to make a difference in the welfare system. The initial office setup was difficult for Toro. His office is legally part of the Medicaid fraud unit although he did not report to anyone in that office. Toro thought he would get their support. Toro said that help was not forthcoming from the then head of the unit, the Deputy Attorney General for Medicaid Fraud Control, Edward Kuriansky. Toro said that Kuriansky could have “opened doors” for him but that he never received his support. Toro was assigned to a small office. Toro said that initially it was a struggle for him to just get a government car for his use (Toro interview, 2002).

Toro’s budget was limited. He was allocated \$500,000 for the first year to set up his office and hire staff. The governor’s office and DSS reviewed Toro’s budgets and obtaining funding was a difficult task. James White was frank in his belief in the quality of his own office within DSS and later OTDA and on why the funding for OWIG was so small:

The old DSS and our current agency have established a good track record with the governor’s office, past and present and probably just as importantly in this state with the state division of the budget. So you know people are viewing this activity as being successful and...this organization is relatively large, so what historically nobody has been interested in doing is setting up a comparable size organization, calling it the Inspector General to do things that we already do and that we have had success doing. So that’s what it has all been about. And I think if you go back to when the legislation was created, the idea was okay, you know let’s set this up but we are not going to give them 250 people to go out and do this stuff. I mean let’s set it up and give them a half dozen people and see what happens. (White interview, 2002)

The initial staff consisted of Toro, a secretary, his legal counsel and four investigators. Toro and three of the investigators were former police officers, another investigator previously worked for the NYC Department of Investigation, and his legal counsel was a former prosecutor. Initially the 800 number set up to take complaints had

to be answered by an answering machine due to insufficient staff (NYS OWIG, 1993). Toro believed that the “obvious problems” and the large dollar expenditures were in New York City and set up his primary investigative office there. At first he was only able to obtain 900 square feet of office space for his staff of seven. Later he also opened a one-person office in Syracuse and also kept a small office in Albany (Toro interview, 2002).

In Toro’s first year of work, he visited many of the county social service departments. He believed that the social service commissioners were “highly political and they got appointed because of political favoritism, so they didn’t see me as an individual who was going to be their friend and I was not there to be their friend.” Toro described his reception: “I would drive into the heart of New York [State] and here is this guy, this Puerto Rican from New York City with an accent, and it was not the red carpet, open door type of situation” (Toro interview, 2002). In Toro’s first annual report, he requested that he be given enough staff in order to be able to hire an OWIG investigator for each of the social service districts (NYS OWIG, 1993). This recommendation was never acted on and his budgets averaged about \$800,000 per year. Toro said that he eventually began to work successfully with the individual fraud units of the county social services offices. He had no choice because he did not have the necessary investigators on his own staff to investigate very many cases. Toro asked the local investigators to assist him and provided them with rented cars as they did not get the needed resources from their own agencies to do field work. He said some of these investigators were very talented and had not been given the encouragement from their own organizations to conduct major investigations (Toro interview, 2002).

Toro's first annual report described his view on the conditions under which local social service investigators operated:

Working conditions at the local district level are of great concern to this office. Investigators have reported that they are required to use their own funds for public transportation, as agency vehicles have become an unaffordable luxury. Fraud investigators and case workers are required to venture into the most treacherous neighborhoods to confront potentially volatile situations without the benefit of a badge, gun, walkie-talkie or even a partner. Based on these limitations, investigations are frequently conducted by telephone, thereby reducing the likelihood that these cases will be properly evaluated. Consequently, over-payments of public assistance remain undetected as the front-end detection system becomes a myth. (NYS OWIG, 1993)

The annual report also described that in the past five years, assaults of social service workers had increased and that five social service workers in New York State had been murdered. Toro used this as a reason to support his proposal of placing an OWIG investigator in each social service district (NYS OWIG, 1993). Toro said that he allowed his investigators who were former police officers to carry handguns and that he also helped arrange for pistol permits for some of his staff members who did not have law enforcement backgrounds (Toro interview, 2002).

Also while traveling around the state, Toro believed he was not well received by the local district attorney's offices. He said his cases would get a low priority and he attributed this to the political nature of these offices and their reluctance to prosecute those associated with the welfare system. Toro indicated that some prosecutorial favoritism to organizations involved in welfare programs might have been due to the political stature of the board members of these organizations (Toro interview, 2002). In contrast, White attributed this problem to Toro's disruption of an existing system where prosecutors had long-term relationships with the local fraud investigators and now they were being asked to work with an unknown outsider (White interview, 2002). Most of

the IGs interviewed for this research reported that they each had to develop relationships with individual district attorney's offices and that it took time before their cases received any priority with these prosecutors.

Toro's investigations

One of the first areas that Toro investigated was educational programs in New York City. Toro described this area as one of his successes, although it cost him politically. Toro reported making onsite visits to educational programs to observe what activities were being conducted and to review the student rosters. He found record keeping to be non-existent in some cases and no documentation to support the number of students the state was paying for. He found deplorable conditions at some locations and had them shut down as fire hazards. At one location, he found an office with two desks and one blackboard for a training program with a roster of 1,000 students. At one little "cubbyhole" in Washington Heights, Toro said he found a director who was illiterate and a set of financial and administrative records that were a mess. When he confronted the director, the director started crying and Toro's investigation resulted in the program being shut down. One investigation in particular caused resentment of Toro by some in the Hispanic community. This case involved Hostos Community College in the Bronx. The DSS provided funding to Hostos Community College for the education of students who were welfare recipients. When Toro went to check the school's books, he found that there was no documentation for the program and they could not even identify the students for which they claimed social service funds. These educational programs indicated gaps in the audit approach then used by the DSS (Toro, interview, 2002).

Toro also believed that there was significant recipient fraud. Some of this fraud took the form of multiple claims for welfare in different counties by the same recipient. Toro believed that one solution to this problem would be the institution of a fingerprint imaging system databank. Others who also claimed to support this proposal included White and Nawrot at the quality assurance office of DSS. It would later be Nawrot's unit that would implement this system statewide (White interview, 2002). Under the proposed system, the fingerprint image of all welfare recipients would be in a central database for comparison when a potential client signed up for welfare. Toro said that previously this had been passed in the State Senate for several years but failed to pass the State Assembly (Toro interview, 2002).

The same legislation that established OWIG also authorized a pilot fingerprint-imaging program for Rockland and Onondaga Counties (Chapter 41 of the NYS 1992 Laws). Toro believed that this test was designed to fail as he believed it was unlikely that recipients would travel the 200 miles from one office to the other in order to make a duplicate claim for welfare benefits. Toro was frustrated at this situation and to prove his point, he went into welfare offices in two different locations covered under the pilot program to sign up for welfare benefits under different names. When he attempted to sign up at the second office, the fingerprint imaging system caught him. He used this example to prove his point and he continued to press for statewide adoption of this program (NYS OWIG, 1993). Eventually State Senator Joseph Holland, the original author of the OWIG legislation, sponsored a bill to expand the program to New York City and the counties around it. Within one year, the system was connected to other states and the system found a significant number of matches for duplicate claims in

different jurisdictions. The fingerprint imaging system was then implemented statewide (Toro interview, 2002).

Toro worked on another controversial area that involved welfare recipients who were wanted for crimes. During the course of his investigations, he came across welfare recipients who were wanted for serious crimes including murder, rape and robbery. He believed that the welfare system should not support these wanted individuals. Initially, when he discovered a person wanted for a serious violent crime on the welfare roles, he would turn this information over to police authorities. It was questionable whether Toro's office had the legal authority to turn over address information on welfare recipients to local police agencies even if these recipients were wanted for serious crimes. Toro argued to the State Senate that the average citizen would not understand paying welfare to wanted persons and welfare agencies refusing to supply their addresses to the police (Toro interview, 2002).

Legislation was passed authorizing criminal records checks of welfare recipients and the release of information about wanted welfare recipients to the police. Then Toro took this process one step further. Toro developed a twist on the popular police sting in which wanted persons are enticed into coming in for prizes etc. and are instead arrested. He received a list of several thousand wanted persons from police departments and matched them against the welfare rolls in several large cities, including Albany, Syracuse and New York City. With over a thousand matches, he went about setting up a sting where he would send the welfare recipients a letter stating that there was a error in their welfare check and that they should come to a particular office and pick up another check. Upon arrival, the welfare recipients were compared to the wanted person information to

insure they had the correct person, and if there was a match, they were arrested. Toro said that the numbers in New York City were so high that he arranged with an old friend from his days at the NYPD, Bernard B. Kerik (then with the New York City Department of Correction), to have several Department of Correction buses parked in the basement of the state building used in the sting waiting to transport the arrestees to Rikers Island, a NYC jail (Toro, interview, 2002).

The Welfare IG Begins To Prosecute Cases

Vacco elected attorney general

Toro was a former police detective and used an investigative approach to his work. His first staff hire was Robert L. Waters, who became the chief investigator for OWIG and is still with the office as of this writing. Waters was a former homicide detective with the NYPD in the Bronx. Although authorized to conduct prosecutions by statute, Toro's office initially only handled the investigative portion of their mission. His first encounter with Dennis C. Vacco, the new State Attorney General did not go well. Under the statute, Toro's office is located in the Medicaid fraud unit of the state attorney general's office but as previously noted the Welfare IG is appointed by the governor and not the attorney general. When Vacco came into office in 1994, he promptly asked Toro for his resignation. This is a common practice in politically elected offices such as Vacco's to ask for the resignation of all department heads (and others) and then for the newly elected official to decide whether to reappoint or replace the staff. In Vacco's case, he asked for the resignation of his entire 450 attorney staff and within 11 months of his taking office, 128 attorneys were fired and 91 resigned. Vacco was accused of

replacing these attorneys with inexperienced lawyers with connections to the Republican Party (Sorensen, 1995). Toro explained to Vacco that the attorney general did not have the authority to remove him as the governor had appointed Toro for a fixed term. Toro said that Vacco was initially upset about this but that eventually they were able to work together (Toro interview, 2002).

Toro never reported directly to anyone in the attorney general's office and reported instead to the governor's chief of staff. In addition, most of Toro's dealings were with the Commissioner of DSS. Toro's only formal reporting was to issue an annual report and where appropriate a more detailed report on particular investigations (Toro interview, 2002).

Paul Balukas joins OWIG

In 1995, Toro needed a replacement for his general counsel, who was on maternity leave. Governor Pataki had been elected in 1994 and most agencies had turned over power to the new Republican administration. Since Toro was appointed to a fixed term, he did not have to turn his office back to the new administration. He did need a new counsel and the governor's appointments office sent him some candidates, including Paul Balukas. Toro selected Balukas to join OWIG's legal staff as counsel. Balukas was a 38-year old attorney who received his education in New York City, obtaining a bachelor's degree in urban law from City College and his law degree from Brooklyn Law School. Balukas had previously spent five years as an Assistant DA in the Brooklyn District Attorney's Office. While at the Brooklyn DA's office, he had prosecuted a variety of cases including police corruption and homicides. After taking some time off to travel, Balukas thought that with the election of Pataki, it might be a good time to enter

state government. Balukas originally sought a position in the Attorney General's Office but the governor suggested that he take the counsel position at OWIG (Balukas interview, 2001).

As discussed above, local district attorneys did not give OWIG cases a high priority. OWIG conducted a survey of prosecutions by these district attorneys and found great disparity between the number of recipients and the number of welfare fraud prosecutions. For instance in New York City there were 227 prosecutions out of a total of one million recipients yet Erie County had 236 prosecutions and less than 62,661 recipients. Similar disparities were found in other counties such as Suffolk County, which had 174 prosecutions and a total of 35,885 recipients. With these disparities, OWIG concluded that the counties needed assistance in prosecuting these cases. The statute provided that OWIG could prosecute cases, but the wording was poorly written. Balukas approached NYS Attorney General, Dennis Vacco, to discuss the issue. With Vacco's cooperation, Balukas arranged for OWIG to establish a prosecutions bureau. Memorandums of understanding were prepared and the attorney general cross-designated several OWIG investigators who were former police officers as attorney general's office investigators (police detectives), and cross-designated several of OWIG's attorneys as prosecutors. These OWIG employees could now work on preparing and prosecuting welfare fraud cases under the attorney general's office's authority (NYS OWIG, 1998 and Balukas interview, 2001).

After Republican Governor George Pataki's election in 1994, Toro saw that he probably would not be reappointed and started looking for a new position. In 1997, with less than one year remaining on his term, Toro left his position as Welfare IG to join the

NYC mayoral administration of Rudolph Giuliani. Toro accepted a position as a deputy commissioner in the NYC Department of Correction, in charge of their investigations division, which is similar to an internal affairs bureau. Toro stayed in that position through the remainder of the Giuliani era and continued into the Bloomberg administration. Balukas was appointed as Toro's successor as Welfare IG. When Balukas took over, there was no purge of existing OWIG employees as had occurred at the Office of State Inspector General after Governor Cuomo was defeated by Pataki and at the MTA OIG during the Prichard and Malan IG administrations. Balukas said that he runs an apolitical office. Most employees stayed on including Robert Waters, the chief investigator from Toro's era. Since then, several staff changes have been made through the normal course of events, including the addition of Sean Courtney (a Democrat) as Executive Deputy IG. Courtney also formerly worked at the Brooklyn DA's office with Balukas and worked at the OSIG for Roslyn Mauskopf (Balukas interview, 2001).

Focus of investigations and prosecutions

With the advent of OWIG's internal ability to prosecute cases, the mix of staff at the office evolved. When Elmer Toro first became the Welfare IG, he hired one attorney to work with him and his other four investigators and one administrative assistant. Toro's first year budget was \$500,000 and Toro said that his budget never grew to more than approximately \$800,000 (Toro interview, 2002). By 2002, Balukas' annual budget for the upcoming year was approximately \$1.1 million for a staff of eleven people. About one-third of this budget is reimbursed by the federal government for investigations involving violations of federal programs. As of November 2002, the staff consisted of four attorneys (including Balukas), six investigators, and an administrative assistant

(NYS OWIG, 2002). As reported in the 2001-2002 annual report, OWIG had fully evolved into a prosecutor's office:

OWIG has evolved from a purely investigative agency, which referred the results of its investigations to prosecutors' offices, into a fully functioning prosecutor's office. OWIG attorneys draft complaints; represent the State at arraignments; conduct hearings, Grand Jury presentations and trials; negotiate guilty pleas; and insist on restitution by defendants, their disqualification from future benefits, and jail when appropriate. (NYS OWIG, 2002, p. 1)

Due to the small size of OWIG's staff, the amount of work it can accomplish is limited. It receives most of its complaints through its toll-free hotline. For instance, in 2000, it received 1,969 calls that generated 363 complaints. The remaining calls included 187 requests from other law enforcement agencies trying to locate fugitives and the rest were calls seeking information about welfare. Of the 363 complaints taken in 2000, 216 were investigated, 79 were referred to other agencies, and 68 were deemed to be unsubstantiated. The number of complaints received varies from approximately 300 to 500 per year. In order to deal successfully with the volume of complaints that this small staff receives, OWIG partners with other local, state and federal agencies (OWIG, 2002, p. 1). Early in Balukas' first term as IG, OWIG focused on a number of areas. These included recipient fraud, state and county employee fraud and corruption, contractor fraud, and food stamp fraud (NYS OWIG, 1999). In the last few years, attention has also been devoted to a number of complex, longer-term investigations into such areas as employee fraud and corruption and contractor fraud and abuse (NYS OWIG, 2002).

Recipient fraud cases

The development of the fingerprint imaging system has reduced the number of recipients who attempt to collect welfare benefits in more than one social service district in the state. This problem of "double-dipping" has also crossed state and national

borders. In March 1995, a number of NYC subway fare beaters (also called turnstile jumpers) were arrested and found to be carrying welfare assistance identity cards from several states. This led to interstate recipient file matching. By 1997 OTDA had expanded this interstate matching of welfare recipient files to include 17 other states (Nawrot interview, 2002). In an international case, a couple living in Brooklyn allegedly collected welfare benefits in Montreal, Canada and New York City. The amount of benefits received in New York was in excess of \$100,000. The case originally developed from complaints received by the NYC Human Resources Administration (Shelby, 2001). This and three other similar cases were investigated and prosecuted by OWIG (NYS OWIG, 2002). The international cases do not lend themselves to the type of systematic computer matching done by OTDA and are more appropriately investigated by OWIG (Nawrot interview, 2002).

Another major area of welfare recipient fraud investigated by OWIG concerns the hiding of income by recipients. In some instances, the fraud involves the creation of false identities. In addition to the fingerprint imaging program, the state also compares names and social security numbers of welfare recipients with those who have earned income as reported to the state tax department. This process has resulted in the elimination of thousands of welfare recipients but is not successful in dealing with identity fraud. Welfare recipients have filed for additional social security numbers using fictitious names. Other recipients have hidden assets or claimed a false status to increase their benefits (such as claiming they are single when they were in fact married). OWIG has successfully investigated and prosecuted a number of these cases in recent years (NYS OWIG, 2000 & 2002). Balukas' goal in prosecuting these recipient fraud cases is to

obtain restitution and either a fine or community service. He said that judges in New York City “are just not willing to put people into jail for welfare fraud.” A rationale used is that the jail environment only makes these welfare recipients into worse criminals and that while in jail, their families may cost the state more in social service benefits. The exception to this philosophy is social service employee fraud cases where jail time is sometimes imposed (Balukas interview, 2001).

Program fraud by a NYC official

In addition to recipient fraud, Balukas has focused his office on the area of program fraud by contractors. OWIG received a request to investigate a rental subsidy program for NYC welfare recipients, known as the “Jiggetts” program. The Jiggetts program provides emergency funds to cover rents not paid to landlords by welfare clients who are in danger of being evicted. Once a tenant is accepted into the Jiggetts program, the landlord is assured steady rental payments. In order to qualify for Jiggetts funding, a tenant has to prove that he or she is being sued in Housing Court by the landlord. The initial investigation was procedural in nature, more along the lines of an audit. The investigation revealed problems with Jiggetts applicants understating their income, resulting in the state overpaying subsidies. In many cases, tenants were allowed to move into apartments that required higher rents than what the tenants could afford based on their welfare payments, if the shortfall in rent was guaranteed by third parties. The third parties frequently defaulted on their promises, resulting in the need for Jiggetts payments. The initial investigation also found that the state’s procedures were in need of strengthening (NYS OWIG, 2000).

The investigation subsequently found more serious violations. Using confidential informants (including paid informants), the investigation led to Deborah Pollock and her not-for-profit organization. Pollock, a former NYC Legal Aid Society attorney, set up a not-for-profit organization purportedly to represent tenants in their efforts to pursue Jiggetts grants. According to a 141-count indictment brought against Pollock, her organization, and a group of landlords, she also was representing the interests of the landlords and was a part owner in some of the properties involved in the case. The investigation was conducted by OWIG, in cooperation with the NYC DOI and the NYS Attorney General's Office. This investigation found that Pollock or her office had filed a total of 69 falsified Jiggetts applications. In addition to the falsified applications, Pollock also had an undisclosed conflict of interest by working for both tenants and landlords, and allegedly collected kickbacks from landlords for the Jiggetts payments (NYS OWIG, 2002). At the time of the investigation, Pollock was working as a consultant to the Commissioner of NYC's Human Resource Administration and had been nominated to be executive deputy commissioner of HRA (Department of Investigation, 2001). In May 2002, Pollock "pleaded guilty in satisfaction of a 141-count indictment charging her and five co-defendants with crimes including conspiracy, defrauding the government and grand larceny." Her co-defendants previously pled guilty (NYS OWIG, 2002, p. 3).

This was an extensive long-term criminal investigation and prosecution conducted by this small OIG with the cooperation of several other agencies. OWIG shares jurisdiction with other agencies and Balukas cooperates where possible with many of them. For instance, corruption involving officials and employees in most state agencies would fall under the jurisdiction of OSIG. Corruption by NYC officials and employees is

also the jurisdiction of the NYC DOI. The DOI was brought into the Jiggetts case by Balukas when the investigation led to Pollock at the HRA. At the time of this investigation, Edward Kuriansky was the Commissioner of DOI. Although there was some friction between Toro and Kuriansky when Kuriansky was head of the state's Medicaid fraud unit, this did not affect Balukas' investigations. Balukas was able to develop a good working relationship with DOI. Balukas has also been able to continue the good working relationship with the NYS Attorney General's Office that he developed with Vacco. At the time of this investigation, Eliot Spitzer, a Democrat, was the NYS Attorney General. The case was prosecuted by an Assistant AG from Spitzer's office and OWIG's Executive Deputy IG, Sean Courtney (also designated as a Special Assistant AG) (Balukas interview, 2001 and NYC DOI, 2001).

Other program investigations

OWIG has investigated other welfare programs including operators of homes for the disabled and the state's Homeless Housing and Assistance Program. Under the homeless housing program, the state provides private operators with funding for the construction of housing for the homeless. In exchange for the state funding (\$525 million from 1983 to 2002), operators agree to provide housing to the homeless. OWIG's investigation of two residences found that overall less than half of the residents were properly verified as being homeless, that the operators did not provide the services they were supposed to, and that communications between the operators and OTDA were less frequent than mandated. In connection with this investigation, no charges were brought, but several recommendations were made to OTDA (NYS OWIG, 2002).

In the case of an operator of an unlicensed home that provided housing for the mentally and physically disabled, OWIG's investigation led to the arrest of an operator based on a criminal complaint for "knowingly operating" an adult care facility not licensed by the state. OWIG reported that "one of the residents, who had a long history of mental illness, bludgeoned and stabbed to death a seventy-seven year-old blind woman who also lived in the home" (NYS OWIG, 2002, p. 9).

Inspection done of a local anti-fraud unit

In addition to performing investigations, OWIG has also taken on the additional IG function of conducting inspections. OIGs generally use audits and/or investigations as their primary tools to reduce fraud, waste, and abuse. But OIGs sometimes perform procedures that are related to but go beyond traditional audits or investigations. With regard to these additional procedures, the Association of Inspectors General said:

OIGs may have responsibilities that go beyond audits and investigations. This additional work includes inspecting, evaluating, reviewing, studying, and/or analyzing government operations and programs for the purposes of providing information for decision-making, and of making recommendations to improve programs, policies, or procedures. The objectives of these processes include providing a source of factual and analytical information, monitoring compliance, measuring performance, and assessing the efficiency and effectiveness of operations (AIG, 2002).

The statute establishing OWIG did not include any provisions for audits and generally uses only the terms "investigation" and "prosecution" in describing its mandate. The inspection described below was considered by Balukas as falling under OWIG's investigative role.

OWIG conducted its first inspection review of a social services district anti-fraud unit by selecting Nassau County's unit. Nassau County's Department of Social Services budget for 2000 was \$56 million and employed in excess of 800 people. As part of this

inspection, OWIG reviewed a total of 168 “front-end detection system” and “eligibility verification review” investigations and found that 158 files did not have the necessary information “to support their stated results.” OWIG found that “the quality of those investigations could not be determined due to the lack of documentation” (NYS OWIG, 2002, p. 15). In reviewing an additional 32 traditional fraud investigations, OWIG “found that the files did not contain essential documentation” (p. 15). In reviewing the Nassau County office’s procedures, OWIG found that the separation between office procedures (done by the quality assurance unit) and the fieldwork (done by the special investigation unit) was too rigid and quality assurance unit cases suffered as a result. OWIG recommended the merging of these two units. OWIG also recommended increased training for the Nassau County investigators and the development of new standards and procedures (p. 17).

Measuring success and bureaucopathologies

Although OWIG has had successes in investigating and prosecuting recipient fraud, due to the small size of its staff, Balukas recognizes that it will have a limited impact on this area. Balukas’ office has six investigators and New York City’s welfare fraud investigation unit has 400 investigators. Balukas believes that in recent years, with the shift of resources by NYC to front-end detection systems and eligibility verification reviews, recipient fraud is less of a problem. Balukas has changed OWIG’s focus from recipient fraud to reviewing programs and investigating contractors. In measuring his success, Balukas said:

I think our role...is to improve the programs and the quality of the departments that we oversee. So if we do a report...and we find particular vulnerabilities, weaknesses in the program, I get most of my satisfaction when I see the agency correct those mistakes and they come to me and say, “You know, thank you for

finding that out. Thank you for finding that weakness. We have corrected them. We have reformed the contract process. We have reformed the RFP [request for proposal] process.” So I kind of emphasize that when we issue a report. I want to make sure that our recommendations are considered and they are implemented if the agency believes that they are good recommendations. So I would say that probably the primary way I measure success is what type of relationship we have with the agency. (Balukas interview, 2001)

As has been the case with other OIGs, OWIG sometimes experiences a lack of cooperation from some of the agencies that it has oversight for. Balukas described the problem:

Sometimes due to circumstances beyond an IG’s control, the agency will just not do that. The agency will be very hostile to an IG’s office because the agency’s head just has a hard time accepting anyone looking over his shoulder and resents an IG. I’ve had experiences and I continue to have experiences with particular people who resent an IG and if I go in to look at any of the programs of the agency, I get reluctance, I get a wall put in front of me and I think that is very unfortunate when that happens. (Balukas interview, 2001)

In dealing with these situations, which are not common, Balukas said that if necessary he goes over their heads to their counsel’s office or to the agency’s commissioner and explains his statutory authority to them. If necessary, he can coax them into cooperating by informing them of his subpoena power. Because OWIG operates as a prosecutor’s office, Balukas has the power to obtain a grand jury subpoena. This type of subpoena is more threatening than an administrative subpoena, which most other OIGs are empowered to use. According to Balukas, an OIG having prosecutorial power sometimes creates its own problems. When OWIG approaches a person or agency to begin an investigation, they may ask the question “Are you coming to me as an IG or are you coming to me as a prosecutor? Am I being looked at criminally or are you just here to see if things are okay?” Balukas reported that this is one drawback to having both the traditional IG role and prosecutorial power (Balukas interview, 2001).

As noted, some agency officials will act defensively when approached by OWIG. Some of this is a function of the unjustifiable dislike of some managers for any oversight of their operations. Some resistance is a function of the panoptic type of oversight exercised by OWIG (police type investigations coupled with prosecutorial power). With regard to another criticism raised by Anechiarico and Jacobs (1996) that OIGs contribute to bureaupathologies by recommending additional internal controls that add layers of management and increase decision-making delays, Balukas response was:

I try to limit myself to addressing specific problems. If there is a legitimate problem, if I find a legitimate problem, I try to approach it with very concrete proposals. I don't try to add layers. I don't try to create, if anything I just try to redo what they already have and just make it more efficient. So I guess maybe I am a little sensitive to that. I don't try to create more committees and more commissions. I think normally [that] what they are presently doing, with a little tweaking and little changes would be sufficient. So probably I am sensitive to that already and I don't think IGs do that. I haven't seen it. (Balukas interview, 2001)

White of OTDA also confirmed that OWIG's investigations and recommendations did not have any negative impacts on the programs they reviewed or otherwise contributed to government bureaupathologies (White interview, 2002).

Improving professionalism for welfare investigators and OIG staffs

Balukas seems to be a tireless activist for several outside professional organizations that share interests with the mission of OWIG. Some of his activities have included being the keynote speaker at several conferences of the New York Welfare Fraud Investigators Association. Two other OWIG employees have served as first-vice presidents for this professional organization. In 1999, OTDA and OWIG conducted a statewide teleconference on prosecuting welfare fraud. Also in 1999, OWIG co-hosted a conference for the Association of Inspectors General, a national IG organization.

Balukas is a member of AIG and was on the committee to establish national standards for

OIGs (NYS OWIG, 2000 and 2002). Several other members of OWIG are also active members of AIG. In October 2002, Balukas was elected president of AIG and embarked on an aggressive program of new professional initiatives and activities for AIG members.

Table 10

OFFICE OF WELFARE INSPECTOR GENERAL

Elmer Toro, IG (1992-1997) & Paul Balukas, IG (1997-present)

Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste, & abuse?	Confirms
2. Used police-patrol oversight?	Strongly confirms
3. Adopted panoptic vision of oversight?	Strongly confirms
4. More attention to compliance accountability?	Strongly confirms
5. Statutorily appointed IGs exercise more independence?	Confirms
6. OIG contributed to an increase in bureaupathologies?	Contradicts

Analysis Using Research Questions

Table 10 summarizes an analysis of the Office of Welfare Inspector General using the six research questions. This data analysis was performed in accordance with the methodology described in Chapter 5. Briefly stated, the factors related to each question (see Chapter 1) were examined using the data collected and an assessment was made as to whether the position in the question was confirmed or contradicted. The sources of

data included the interviews, government documents, press releases and print media reports, and information obtained at three national AIG conferences.

Although small in size, OWIG has attempted to be an aggressive OIG. It has embraced its roles as both investigator and prosecutor of welfare fraud. OWIG is uniquely positioned as a state oversight agency with the authority to investigate welfare fraud at both the state and local social service district level. It can go into counties and investigate welfare fraud at that level and has the option of prosecuting its own cases instead of relying on local district attorneys. Its jurisdiction and powers gives OWIG the potential to significantly increase NYS's capacity to reduce fraud, waste, and abuse in the area of welfare fraud. These strengths are not recognized by the elected state officials in the sense that OWIG has never been given significant levels of funding. OWIG survives on just enough funding to maintain an 11 person staff and has never seen any substantial growth in its funding despite its investigative and prosecutorial successes. And even this is an overstatement of the state funding given to OWIG since about one-third of its funding comes from the federal government as reimbursement for investigations into federal program frauds.

Although OWIG was born out of allegedly scandalous conditions, this OIG has had little publicity and operates in a quiet manner. Generally, the only contact with the media comes from the issuance of press releases issued by either OWIG or by the other investigative or prosecutorial agencies that OWIG partners with. Other than these press releases, issued only after arrests are made, the only public release of information comes from the statutorily required annual report. As with other OIGs, the reason OWIG operates in a routine "police-patrol" manner (as defined by McCribbins and Schwartz,

1984) is probably due to the professionalism of the two experienced civil servants who have served as OWIG's first two IGs.

OWIG operates using the panoptic vision of oversight as defined by Anechiarico and Jacobs (1996). The tools of police investigators and prosecutors are used in OWIG's work. These include investigation, use of paid informants, grand jury subpoena, etc. This method of operation is a function of OWIG's statutory mission to conduct investigations and prosecutions. OWIG does not have the mandate or the resources to go beyond compliance accountability work and into other forward thinking compliance models (Light, 1993). In addition, there are several other state oversight organizations (most notably OTDA and the State Comptroller's Office) that would be more suited to that role. In addition, Balukas has reported frustration that the governor's office, the legislature, and others do not seek his advice on matters of policy improvements (that might be more suited to forward thinking models) (Balukas interview, 2001). White of OTDA also commented about this lack of interest by policymakers in the new ideas of oversight agencies:

It's an organizational thing; it's not a personal thing. You know we're the auditors for this agency, we're rarely part of policymaking ourselves. Policies are made and then a year later we are out there saying well there's this hole here and there's this hole there and you need to fix this. It's been a long struggle for me in all the years I've been here to try to get us moved to the front end of things and become part of that. You know I am sure Paul [Balukas] knows and understands just like I do that we in fact aren't the policy people but I will say confidently that it's not because Commissioner Wing [of OTDA] or any of his deputy commissioners are purposely excluding him from the process, they just go about doing their own thing. (White interview, 2002)

The statute creating OWIG provides its IG with the most independence of any NYS IG. NYS Executive Law §74 provides the Welfare IG with a fixed five-year term like the MTA IG. But unlike the MTA IG, the Welfare IG does not then serve at the

pleasure of the governor. Both Toro and Balukas reported that they have operated without interference and the statutory term gave them the confidence to conduct their work in this politically sensitive area of government. Even with the statutory term, however, their actions are still subject to political considerations. The defunding of the Welfare IG of the 1970s is a reminder that an IG who does not have the support of his or her governor or legislature is still subject to removal.

Does OWIG contribute to government bureaupathologies? The evidence appears to be to the contrary. OWIG focuses on specific investigations into wrongdoing and failures of government organizations and contractors to meet their obligations under the welfare laws. Where procedural problems are found, suggestions for their improvement are conveyed to the appropriate agency. Even OWIG's critics at OTDA do not see their work as contributing to bureaupathologies. As discussed above, the only area noted where problems occasionally arise is where an agency approached by OWIG may initially display a defensive management approach to OWIG. This may occur either because the agency does not want any outside state organization to oversee their actions or they are unaware of OWIG's statutory authority to investigate them.

CHAPTER 12

DEPARTMENT OF LABOR: OFFICE OF INSPECTOR GENERAL

History

In July 1992, NYS Department of Labor Commissioner John F. Hudacs established the Office of the Inspector General and appointed John B. Sullivan as the Department of Labor's first Inspector General. Sullivan worked for Commissioner Hudacs at the NYS Office of General Services and served as the IG there. When Commissioner Hudacs moved to the Department of Labor to assume the commissionership, he asked Sullivan to come over with him and set up an OIG. When the OIG was first constituted, its original functions were:

- 1) Investigating complaints of fraud, misconduct, waste, and abuse involving all Department of Labor employees and resources; and
- 2) Auditing of the Department's operations with specific emphasis on its internal controls, its safeguarding of assets, and its operating efficiency and effectiveness. (New York State Department of Labor [NYS DOL], 1994, p. 1)

Oversight prior to the OIG

Prior to setting up this OIG in 1992, the Department of Labor did have internal oversight and investigative functions. The Unemployment Insurance Fraud Investigation Section (UI Investigation Section) was in existence for several decades prior to the start of the OIG. The UI Investigation Section's primary function was to investigate unemployment insurance fraud. If at the end of an investigation it was determined that an unemployment insurance claimant violated the law, the money could be recouped through an administrative action or the case could be referred to the NYS Attorney General's Office for prosecution. The Attorney General's Office treated these crimes as

misdemeanors and few cases were successfully brought against violators. The section handled other matters, including conducting fact-finding investigations in connection with strikes because strikers were not entitled to unemployment insurance benefits for the first seven weeks of a walkout (Diaz interview, 2002).

This unit also handled what were referred to as personnel cases, or investigations involving allegations of misconduct by Department of Labor employees. Since many of the employees of the Investigation Section were union employees, the management personnel in this section conducted much of this work. Unionized investigators could refuse to investigate other union Department of Labor employees. These investigators might be involved in some facets of the employee investigation such as interviewing a witness or gathering information in the field, but generally speaking, management level staff investigated employees suspected of wrongdoing. Employees under investigation could be compelled to submit to an interview under oath with union representation present under threat of termination for non-compliance. In such circumstances, the employees are given immunity, which prevented this information from being used against them in a criminal proceeding. In many of these cases involving allegations of misconduct by employees, the employees were in fact exonerated. Where misconduct was found, cases were usually dealt with in an administrative employee discipline arbitration-hearing forum (Diaz interview, 2002).

One estimate obtained was that the Investigation Section goes back to the 1930s. For several decades prior to the establishment of the OIG, the Director of Investigations reported to the Counsel's Office (the Deputy Commissioner for Legal Affairs). It is unclear why the UI Investigation Section was put in the Counsel's Office, but it may have

been for a lack of another appropriate place to locate this function. It did not make sense to place the function under the Director of Unemployment Insurance as the UI Investigation Section was tasked with investigating errors or alleged misconduct in the unemployment insurance office (Diaz interview, 2002).

In past decades the UI Investigation Section was substantially larger than it is today, as was the entire Department of Labor. The NYS Department of Labor receives a substantial amount of its funding from the federal government and changes in funding affect the size of this department. Also as a result of special federal job creation programs, additional employees were added to the Department of Labor. Many of these employees were dropped when the federal funding stopped. Staff reductions also occurred as overall funding for unemployment decreased due to an improving economy and the automation of various functions. In the past, with the UI Investigation Section under the Counsel's Office, when cutbacks came, unfilled investigator positions were sometimes eliminated to protect attorneys in the Counsel's Office from being terminated (Diaz interview, 2002).

A larger OIG is created

In October 1994, about two years after the OIG was formed, the UI Investigation Section was moved from the Counsel's Office to the OIG. The UI Investigation Section became the largest component of the OIG (presently employs about 70 employees). After the merger, the OIG consisted of three units: the Internal Investigation Unit, the Internal Audit Unit and the Unemployment Insurance Fraud Investigation Unit. The Internal Investigation Unit would investigate alleged employee misconduct and the

Unemployment Insurance Fraud Investigation Unit would investigate cases of unemployment insurance fraud (NYS DOL, 1994).

In November 1994, George Pataki was elected governor and in April 1995, John Sullivan was dismissed by the new administration and replaced by John Canfield, who then became the second Labor IG. Canfield was appointed as IG in 1995 and left about 1-1/2 years later after suffering a stroke (Sanvidge interview, 2002).

The Department of Labor's most recent Inspector General is Brian Sanvidge. Sanvidge was a political science graduate from SUNY Albany. He first worked in county government in upstate New York. While working for Rensselaer County government, he served as Director of Safety, Director of Security and finally as a Deputy Commissioner. Sanvidge decided to work for state government for the additional responsibilities and opportunities for advancement and to work for a larger agency. In 1995, Sanvidge went to work for the Department of Labor as a supervisor in the Investigations Unit in the Office of Inspector General. He was quickly promoted to Director of Investigations. In early 1996, IG John Canfield became ill and Sanvidge was appointed acting IG. After serving in that role for the rest of the year, Sanvidge was appointed IG at the end of 1996 (Sanvidge interview, 2002).

Sanvidge received this appointment at the age of 33 (Sanvidge interview, 2002). Sanvidge is one of the youngest IGs appointed to a large NYS OIG. This may be due in part because his career path was different than many others who serve as IGs. Sanvidge went directly into government public administration service in civilian positions rather than first having a career as a law enforcement officer or prosecutor. Malan at MTA OIG, Dominelli at the Dormitory Authority and Sanvidge are the only three IGs studied

who took this direct civilian public service career path to the IG position. The other IGs encountered during this study came from federal and local law enforcement or from prosecutors' offices.

Executive Order No. 39 causes complications

As previously discussed in Chapter 8, Governor Pataki issued Executive Order No. 39 in June 1996. This order required that deputy IGs working for state agencies covered by the executive order who previously had reporting responsibility to both the agency head and the Office of State IG would now report "exclusively" to the State IG. Sanvidge had the title of IG, but for purposes of the previous executive orders, the Department of Labor IG served as the deputy IG with dual reporting to the Department of Labor commissioner and the State IG. This new executive order in 1996 created a situation where theoretically Sanvidge would have to move to OSIG's payroll and report to State IG Roslyn Mauskopf. By this time, the Labor Department had a large established OIG with many functions and this office needed an experienced supervisor. If Sanvidge went to the OSIG, the Department of Labor would have to replace him with someone else who could manage the internal oversight function.

According to Sanvidge (interview, 2002), the Department of Labor initially used a legal requirement to avoid having the IG report solely to the OSIG. Tax secrecy laws limit who can have access to wage, tax and unemployment insurance records. Only employees of agencies such as the Departments of Labor and Tax and Finance may have access to this information for investigative purposes. The UI Investigations Unit of the Department of Labor needs access to tax records for their investigations. In order for the Department of Labor IG to be able to effectively supervise these investigations and have

access to the records, Sanvidge believed that he needed to remain as a Department of Labor employee. This issue was initially used to solve the question of whether Sanvidge should move to the OSIG payroll.

For the first three years after the new executive order, it was agreed with the OSIG that Sanvidge would have the dual role of remaining as a Department of Labor employee supervising their oversight function and that he would also report to OSIG as a deputy IG. This effectively kept Sanvidge's position as it was before the new executive order was issued in 1996. This approach was followed for three years and then a new arrangement was reached with Mauskopf's office. Rather than move to the OSIG, Sanvidge decided to remain at the Department of Labor (and continues to use the title of IG) and the OSIG assigned two OSIG employed deputy IGs to the Department of Labor. OSIG deputy IGs are each assigned several agencies to oversee and OSIG splits the state into upstate and downstate territories. As a result, Sanvidge now has two OSIG deputy IGs that his office interacts with and frequently cooperates with on investigations (Sanvidge interview, 2002).

Size of the OIG

As mentioned, the Department of Labor OIG employs approximately 170 employees in a number of different functions. The Department of Labor is a state department of approximately 4,500 employees with about 80 percent of its funding supplied by the federal government. Previously in the 1980s, the total Department of Labor employment was approximately 14-15 thousand people. At that time, the UI Investigation Section (which was the predecessor oversight office) was substantially larger than it is today. When the size of the Department of Labor contracted, so did the

UI Investigation Section. Since Sanvidge took over the OIG, he has added about 10-15 positions. The OIG hires staff for a variety of specialties. These include law enforcement, investigations, accounting, legal and computer specialists. A recent area that the OIG has been developing expertise in is computer forensics. Two staff members have been trained in this area. Personnel functions for the OIG are handled by the Department of Labor personnel office (Sanvidge interview, 2002).

Independence

As with a number of other state department and state authority OIGs, the Department of Labor OIG was created by a budgetary approval process and not by statute or even by board of commissioners' resolution. The IG serves at the pleasure of the commissioner (chief executive officer). His position is known as a management confidential exempt employee that has few legal protections under NYS labor law. Sanvidge reported serving for three different commissioners and one acting commissioner with no changes made to his position or his staff. When asked if he was comfortable with working this way without a fixed term in office or other protections, he responded:

Very much. It works. I have now worked under multiple commissioners. You know there have been differences of management style but having worked for multiple commissioners our mission statement hasn't changed and I think the system the way it works now works fine. As a matter of fact, the office has transcended governors, gubernatorial administrations and a lot of the staff has stayed on through. I am only the third one for the agency in about...twelve years. (Sanvidge interview, 2002)

There was a change in IGs in 1995 just after the Pataki administration came to Albany but Sanvidge reported that there were few changes in the staff at the Department of Labor OIG. This OIG does differ from many of the other state OIGs in its hiring and

retention policies. Unlike many other OIGs that hire experienced retired law enforcement officers as employees, the Department of Labor OIG hires much of its staff as entry-level investigator trainees directly out of college. These employees receive training from internal training programs and Sanvidge also utilizes the National White Collar Crime Center for training courses. The National White Collar Crime Center is a federally funded organization that provides training and research to government agencies involved in these types of investigations. Employees can move up from trainees after two years to become investigators, and then senior investigators and supervisors. A major difference between this OIG and the others studied is that most of the Department of Labor OIG employees are hired through the state civil service competitive testing and hiring process and gain civil service protection. These employees cannot be terminated as easily as management exempt employees (Sanvidge interview, 2002). The result is a core of employees who are not hired based on any political patronage considerations and cannot be fired for the same considerations. This provides a stability and continuity for the staff of this OIG that is not present in the other OIGs looked at for this study.

The IG reports to the commissioner and on a day-to-day basis to the executive deputy commissioner. Formal written reporting is done through an annual report to the commissioner, a monthly report, and as needed, daily briefing if it involves a sensitive or potentially “explosive” case. The only external reporting done is to the U.S. Department of Labor where the NYS Department of Labor reports about fraud in the unemployment insurance program (Sanvidge interview, 2002).

For budget allocations, the IG works with the Department of Labor’s chief financial officer to come to a mutual agreement on the OIG’s budget. Sanvidge indicated

that if there was a disagreement with the finance office that he could not work out, he could take it to the commissioner's office. This is something that he said he has not had to do. Sanvidge said that during retrenchment periods, he has never had to lay off any staff but has been able to accommodate these temporary down periods with attrition (Sanvidge interview, 2002).

The Many Roles of the Department of Labor OIG

The Department of Labor IG presently employs approximately 170 people in a number of divisions that perform a variety of functions. These eight divisions are: the Investigation Section (also referred to as the internal affairs office), Unemployment Insurance Fraud Investigation Section, the Director of Prosecutions Office, The Internal Security Unit, the Internal Audit Unit, the Contract Audit Unit, the Security Division and the Emergency Management Division. Each division has a director who reports to the IG (Sanvidge interview, 2002).

Investigations Section

The Department of Labor OIG 2002 Annual Report stated "the Investigations Section conducts both internal affairs investigations and criminal investigations where the agency is the victim" (NYS DOL OIG, 2002, p. 2). This section investigates approximately 100 cases per year of alleged employee misconduct. Sanvidge reported that the number of cases has been relatively constant and that about one-half of these complaints are found to be unsubstantiated (Sanvidge interview, 2002). In 2001, this section investigated a total of 112 cases, of which 95 were closed. Fifty-two cases (55%) were substantiated resulting in discipline in some of these cases, termination of four

employees, one resignation, and the arrest of several employees and others. The OIG reported that 41 of the cases in 2001 involved allegations of threats made to or by Labor employees or threats against the Department of Labor. Forty-eight other cases were investigated that involved joint investigations with other NYS investigative agencies where “the Department’s interest was at stake” (NYS DOL OIG, 2002, p. 3). The Investigation Section also operates a high-tech surveillance unit to provide covert camera surveillance for use on OIG cases and during joint investigations.

The types of employee cases can include misappropriation of unemployment compensation insurance funds, fraud and abuse in travel vouchers, improper computer and Internet use and improper use of department time (Sanvidge interview, 2002). An example of the last type of misconduct involved a recent case of a Department of Labor field auditor who was charged in August 2002 with a felony in connection with allegedly operating a tax practice on the side and soliciting business for his private business from a business that he was auditing for the Department of Labor while on Department of Labor time (Cohen, 2002). Sanvidge said that these employee cases are only a small component of the OIG’s total workload. Cases of alleged criminal conduct by Department of Labor employees must be reported to the Office of State Inspector General under the governors’ executive orders and serious cases are investigated by that OIG (see Chapter 8).

Unemployment Insurance Fraud Investigation Section

The UI Investigation Section’s investigators look into cases of unemployment insurance fraud. This is the largest part of the OIG with about 70 employees. The OIG’s Annual Report described the activities of this unit:

The UI Investigation Section conducts investigations based on leads provided by employers, the public and other Labor Department operating units. In 2001, the section completed over 19,300 investigations. More than 50% resulted in overpayment determinations. Total fraud overpayments established for 2001 amounted to \$16.4 million based on 10,601 overpayments. (NYS DOL OIG, 2002, p. 5)

These investigators do not have arrest powers and after an investigation is completed, the investigator swears out a felony complaint that details the facts of the case and this complaint is referred to local district attorneys for prosecution. The arrest of the accused is made usually by detectives working out of district attorneys' offices or by state police officers (Sanvidge interview, 2002).

Prosecutions office and criminal cases

The oversight of prosecutions of OIG cases is a function added by Sanvidge through the hiring of a director of prosecutions in 1996. This director is a former FBI agent and county prosecutor. He and Sanvidge went around the state and introduced themselves to the staffs of district attorneys' offices and the state attorney general's office. This was a shift for the office from treating cases of unemployment insurance fraud and employee misconduct cases as administrative actions to treating them as criminal larcenies (Sanvidge interview, 2002). Prosecutions are generally undertaken for frauds in excess of \$3,000 (a Class D Felony). The likely outcome of a case is a plea to a misdemeanor larceny and restitution for the amount of the fraud. Jail sentences are usually not obtained except in cases where the offender is a previously convicted felon. (NYS DOL OIG, 2002).

Sanvidge reported that in the first five years of this new prosecution focus (1996 to early 2002), Labor OIG investigations resulted in over 5,000 felony arrests. Presently, the office of prosecutions averages referrals for criminal prosecutions for about 1,000

cases per year. In 2001, approximately 900 prosecutions were conducted and 2001 investigations involved pursuing cases involving \$3.9 million in fraud from the state unemployment insurance system (NYS DOL OIG, 2002). Sanvidge said that this shift to prosecutions has also been beneficial in improving the restitution of funds to the state unemployment insurance fund. The criminal cases usually result in court ordered restitution and their success rate for receiving restitution has ranged from 70 to 90 percent. Sanvidge reported that this compares to a national rate of about 50 percent when an administrative approach is used instead (Sanvidge interview, 2002).

The Assistant Director of the Investigation Section for the downstate area, Ramon Diaz, said that since Sanvidge's change to working with local district attorneys to prosecute the cases, more criminal cases have been successfully brought. In prior administrations, the NYS Attorney General's Office was used to prosecute cases and the Attorney General's Office would generally only file them as misdemeanor cases. In addition, a thousand cases per year would have been a significant number of cases to add to any prosecutor's office workload and by spreading the workload over all of the state's local district attorneys' offices the OIG was able to get more prosecutions done. Diaz also believes that the change to having cases prosecuted by local district attorneys resulted in more media attention to these cases, which had several positive effects. The effects include showing the employers who pay the unemployment insurance premiums that the state is addressing fraud in this area and also providing a form of general deterrence for those who may contemplate this type of fraud. By criminally prosecuting these cases, Diaz also believes that from a professional viewpoint, it validates the work of

his division when this type of fraud is taken seriously by both the current state gubernatorial administration and by the criminal justice system (Diaz interview, 2002).

Some criminal cases involve individuals who fraudulently file claims for unemployment insurance and can result in a felony charge of grand larceny. In a recent case, the Department of Labor OIG accused a Niagara County legislator of grand larceny and filing a false instrument in connection with \$5,945 in unemployment insurance payments made to this legislator. As a result of a plea bargain, the legislator pled guilty to the charge of disorderly conduct, a non-criminal violation, and agreed to repay the \$5,945 (Westmoore, 2002). Cases can also involve corporations and other organizations. For instance, all contractors on public works projects must provide the Department of Labor with certified payrolls. If contractors know the certified payrolls are inaccurate, they can be charged with filing a false instrument, which is a felony (Sanvidge interview, 2002).

Some of the Department of Labor OIG's most significant cases are those that Sanvidge refers to as "mass fraud cases". One such case involved an employee of the Department of Labor "who manipulated approximately 45 unemployment insurance claims for \$350,000 to his benefit" (Sanvidge interview, 2002). Another case involved an individual (not an employee of the Department of Labor) who through identity theft was able to use 27 identities to file false claims for unemployment insurance for a total of approximately \$250,000 over five years. This individual received a prison sentence of 2-1/2 to three years. Other mass fraud cases involved amounts of \$30,000 to \$630,000 (NYS DOL OIG, 2002).

Relations with district attorneys' and U.S. attorneys' offices has been an issue that each newly established NYS OIG has had to deal with. In talking about the cases that the Department of Labor OIG presents to prosecutors' offices, Sanvidge said:

Ultimately we're asking the prosecutors to do a lot of work for us although they are easy cases we bring them because they are complete when they get them. They have the individual, the accused at that point, Department of Motor Vehicle photo, their image is there, we have all their tax information, their employment information, the elements of the crime, would all be there so they're paper cases and we only refer for criminal prosecutions the best of all those cases. But a lot of that is by knowing the DA's, knowing who the prosecutors are, the bureau chiefs, working with them, having an ongoing relationship, [knowing] what they want to see in a file, how they want the file broken out. They're particular, some of the DA's offices like things a little bit different, just making sure we give them the [case the] way they want it because we appreciate the fact that they do that work for us. (Sanvidge interview, 2002)

In discussing the response Sanvidge has received to his cases in the larger metropolitan areas, he said:

I was pleasantly surprised...I thought that the criminal justice system in the courts in the New York City metropolitan area would not want to see the volume of cases we had because they were dealing with the street crime issues, quality of life issues and more serious crime. That has not been the case at all. Some of the most aggressive prosecutions come out of the five boroughs. Couldn't say enough things about Morgenthal's Office [and] Westchester County. (Sanvidge interview, 2002)

With regard to how the prosecutors handle the cases once they are turned over to them by the OIG, Sanvidge echoed what a number of other NYS OIGs have indicated:

Everybody wants to give them a real good case. We always take the view that once we give them the case it's the DA's case and they can do with it whatever they want. We don't try to aggressively get involved in what the outcome should be as long as we get our restitution back, that's the first thing we want. If we can get some sort of criminal plea, that's the second piece we want to it and we are also cognizant of the fact that we are not going to fill up the jails with white-collar criminals with the way society views white-collar crime. Restitution and a criminal conviction is the norm. Usually charged with grand larceny, you plead to a petty larceny and you pay your money back. If you are an employee, you also then lose your job [and] depending upon how you cooperate throughout the

process you may even lose your vacation time you had coming at the point of suspension or termination. (Sanvidge interview, 2002)

Investigations by the Department of Labor OIG are aided by subpoena power for documents and testimony. The Commissioner or his or her designate are granted this power through NYS labor law. These subpoenas are used for testimony and on a “daily basis” for written records such as bank records and employment records of businesses. Sanvidge (interview, 2002) reported that there is not much resistance to these subpoenas once the labor law section is pointed out to the recipient of the subpoena. When there is resistance from out-of-state banks or businesses, the OIG solicits the cooperation of the U.S. Department of Labor, which will issue a federal subpoena for the documents requested by the NYS Department of Labor OIG. At times the Department of Labor OIG will conduct joint investigations with the U.S Department of Labor OIG and others. This has been the case on some joint investigations involving the NYS Department of Labor OIG, the Jacob Javits Convention Center OIG and the U.S. Department of Labor OIG (Sanvidge and McQueen interviews, 2002).

The director of prosecutions also serves as counsel to the OIG. In addition, the OIG has use of the services of the counsel to the Department of Labor.

Audit units

The internal audit and contract audit units are under the OIG. The internal auditors work in a number of areas including efficiency studies and reviews to reduce waste. An explanation of the internal audit unit is described in the 2001 annual report:

The Internal Audit Unit is an independent appraisal function established within the Department of Labor to assist staff in the effective discharge of their responsibilities. To achieve its purpose, the Internal Audit Unit examines and evaluates Department activities and provides analyses, appraisals, recommendations and information concerning the activities reviewed. When

conducting its reviews and analyses, the Internal Audit Unit focuses on management objectives relating to the reliability and integrity of information; compliance with policies, plans, procedures, laws and regulations; safeguarding assets; economical and efficient use of resources; and accomplishment of established objectives and goals for the operation of programs. (NYS DOL OIG, 2002, p. 7).

The internal audits ask a number of questions including: “are the divisions meeting the objectives of the commissioner? Are the divisions actually meeting their stated goals and are they doing it efficiently, could they do it better?” (Sanvidge interview, 2002). Some of their work involves requests by division directors for short reviews of particular areas to large-scale audits. The contract audit division audits contracts and grants that the Department of Labor has with outside corporations and not-for-profit organizations. Some of these contract audits result in finding improper charges to the Department of Labor or misuse of the funds granted. These cases can result in recouping the funds involved and more serious cases can involve a criminal investigation by the OIG.

With regard to whether recommendations made by the OIG create additional policies and procedures that can inhibit the organization, Sanvidge said that there is a give and take in the discussions of these suggestions. Recommendations are never forced on operating personnel; rather there is a process of recommendation and response. If recommendations are determined to be unfeasible, they are withdrawn. The operating personnel generally accept recommendations regarding theft or fraud risks without disagreement. Sanvidge does not accept the Anechiarico and Jacobs (1996) criticism that oversight as presently practiced by IGs contributes to government bureaupathologies. Sanvidge echoed the conclusions of several authors (i.e. Doig, 1997 and Wilson, 1989) and other IGs in his comment:

We always have to remember that we are public servants and we are paid our salary with tax dollars and therefore one of our most important things has to be to earn the public's trust and make sure that the money is appropriately spent and allocated and those resources are not wasted. (Sanvidge interview, 2002)

Other Labor OIG operations

Cases come to the OIG in a number of ways. Like other OIGs, the Labor OIG operates a hotline. Complaints also come through the Department of Labor's website which contains an online complaint form. Most online complaints involve allegations of unemployment insurance fraud. Complaints also come directly to the reception area at the OIG. In addition, an Internal Security Division does cross matching to try to locate errors or fraud. About 200,000 individuals receive benefit checks from the Department of Labor and crosschecks are done to uncover problems or potential frauds. The crosschecks are done to uncover such activity as multiple checks going to the same address or post office box, checks going to the addresses of Department of Labor employees, or other employee involvement in unemployment claims. This division provides many of the cases handled by the Investigation Section (Sanvidge interview, 2002). For instance, in 2001, cross matches found 237 NYS employees who were collecting unemployment benefits at the same time they were employed by the state (NYS DOL OIG, 2002, p. 10).

The NYS Department of Labor has about 70 locations throughout the state. Physical security at some of these offices is handled by the OIG's Security and Disaster Preparedness Division. Department of Labor security officers have peace officer status and have the legal authority to make arrests, although this is done infrequently. This division also performs physical security assessments of department facilities, which Sanvidge said has become more of a priority since the terrorist attacks of September 11,

2001. In addition, the Department of Labor is responsible for the processing of claims under the Individual and Family Grant Program, which provides grants to those in need as a result of a major disaster. Following the terrorist attacks of September 11, 2001, the applications to this unit were unprecedented in its history. In 2001, 1,350 applications were received and approximately \$2.5 million was paid out. Total grants from this disaster are expected to reach \$4 million. The Federal Emergency Management Agency's OIG has worked with the NYS Department of Labor OIG to insure that only valid claims are paid. The Labor OIG is also working with FEMA and the NYS Emergency Management Office to develop guidelines for the handling of future disaster relief for New York State (NYS DOL OIG, 2002, p. 13-14).

Part of the OIG role is also educational. OIG staff hold sessions on acceptable employee behavior. A recent effort was made to educate employees on the acceptable use of Department of Labor computers and Internet access (Sanvidge interview, 2002).

Analysis Using Research Questions

Table 11 summarizes an analysis of the Department of Labor OIG using the six research questions. This data analysis was performed in accordance with the methodology described in Chapter 5. Briefly stated, the factors related to each question (see Chapter 1) were examined using the data collected and an assessment was made as to whether the position in the question was confirmed or contradicted. The sources of data included the interviews, government documents, press releases and print media reports, and information obtained at three national AIG conferences.

Table 11

NYS DEPARTMENT OF LABOR, OFFICE OF INSPECTOR GENERAL
John B. Sullivan, IG (1992-1995), John Canfield, IG (1995-1996) &
Brian Sanvidge, IG (1996-present)
Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste, & abuse?	Confirms
2. Used police-patrol oversight?	Strongly confirms
3. Adopted panoptic vision of oversight?	Strongly confirms
4. More attention to compliance accountability?	Strongly confirms
5. Statutorily appointed IGs exercise more independence?	Neutral
6. OIG contributed to an increase in bureaupathologies?	Strongly contradicts

The OIG was established by the Department of Labor Commissioner John Hudacs and IG John Sullivan. The OIG was not the first oversight office at the Department of Labor; instead it built on the existing Unemployment Insurance Fraud Investigations Section. No major scandals preceded the establishment of the OIG, but rather the OIG was established because Commissioner Hudacs believed it was the appropriate form of oversight office for this large state government department. Since the OIG was established, it has investigated a number of significant mass fraud cases. In addition, the OIG has changed the handling of benefit fraud cases. Frauds that previously were treated administratively are now prosecuted in criminal court. The OIG averages about one thousand arrests per year. The purposes of these prosecutions are to obtain restitution

and to provide visible deterrence. These results indicate that the Department of Labor OIG has increased New York State's capacity to reduce fraud, waste, and abuse.

The Department of Labor OIG uses what has been previously defined as routine police-patrol oversight. The OIG was created by internal order of the department's commissioner with no legislative involvement. The Labor OIG does not seek media attention and OIG cases attract little media attention unless they involve large dollar amounts or the occasional public official. After local district attorneys issue their press releases, a few of the benefit fraud cases attract local newspaper attention. This doesn't appear to attract publicity directly to the Labor OIG but assists their deterrence efforts.

The Department of Labor OIG has many roles including conducting investigations and audits, and even providing physical security for some Department of Labor locations. In its investigative role, the OIG has adopted the panoptic vision of oversight. Their investigators are not law enforcement officers but they do perform similar investigative steps and seek criminal prosecutions. The OIG conducts internal affairs type investigations of alleged employee misconduct. As part of their education role, the OIG informs employees what is ethical behavior and delivers the message that the OIG is watching. One might also say that they have literally adopted panoptic vision oversight methods because an area they excel in is the use of undercover video surveillance. This surveillance is used to obtain evidence to confirm their unemployment insurance benefit fraud cases.

The OIG also provides assistance and training to other agencies in the use of this investigative technique. The OIG devotes most of its efforts to compliance accountability. The focus of the office is on investigations and compliance audits. The

only exception to this may be an occasional internal audit unit efficiency study, which develops new ways for the organization to improve its performance.

There is conflicting evidence regarding the independence of this OIG. The OIG was established by a commissioner and can be modified or eliminated at any time. The IG serves at the pleasure of the commissioner. At the beginning of the Pataki administration, the IG was terminated and a new one was appointed. On the positive side, since that termination, no subsequent IG has been asked to leave office even though there have been several changes at the commissioner level. Brian Sanvidge, the current IG reported that he has successfully worked with several commissioners. Sanvidge is also an experienced government executive with no prior ties to the Department of Labor. In addition, if there is a sensitive investigation that could cause the IG to come into conflict with the commissioner, this conflict could be avoided by referring the case to the State IG. In addition, all serious cases of misconduct by high-level Department of Labor officials would be investigated by the OSIG.

No indication has been found that the Department of Labor OIG contributes to an increase in government bureaupathologies. The OIG units have increased and decreased in size over the years with the growth or contraction of the Department of Labor itself. Sanvidge reported no problems competing with others in the department for funding for his office. Most of the work of the office involves investigations of benefit recipients. Within the organization, the internal audit recommendations are subject to an internal review process to insure that these suggestions are reasonable. With regard to Anechiarico and Jacob's (1996) criticism that rules, policies and procedures proposed by IGs may contribute to bureaupathologies, Sanvidge said:

We always have to remember that we are public servants and our salaries are paid with tax dollars and therefore one of our most important things has to be [keeping] the public's trust and making sure that the money is appropriately spent and allocated and those resources are not wasted. (Sanvidge interview, 2002)

CHAPTER 13

DORMITORY AUTHORITY OF THE STATE OF NEW YORK:
OFFICE OF INTERNAL AFFAIRS

Introduction

As discussed in Chapter 8, Governor Mario Cuomo signed two IG related executive orders providing that the State IG (then Joseph Spinelli) could appoint deputy IGs for agencies falling under the jurisdiction of the Office of State Inspector General. Some of these deputy IGs were existing agency IGs or held other oversight related titles and were originally hired by the agencies. As a result of the Cuomo era executive orders, these deputy IGs had a dual reporting responsibility to both their agency and to the OSIG (NYS Executive Order No. 79, 1986, and NYS Executive Order No. 103, 1987). Subsequently, Governor Pataki issued an executive order (during Roslyn Mauskopf's period as State IG) that brought these deputy IGs directly under the control of the OSIG and made them Mauskopf's employees (NYS Executive Order No. 39, 1996).

The case of the Dormitory Authority, Office of Internal Affairs (OIA) presents another interesting example of a situation where a deputy IG who had dual reporting responsibility to his agency and to the OSIG under these prior executive orders decided to remain with his agency and not join the OSIG.

Dormitory Authority Background

The Dormitory Authority was originally formed in 1944 for the purpose of financing and building dormitories for the state colleges. The Dormitory Authority went

on to finance and build other state university projects. By the 1970s, the authority was working on health care projects and in 1987, legislation was enacted authorizing the Dormitory Authority to become involved in courthouse construction. The first court facility that the authority built was a court complex in Suffolk County. In 1995, under Governor Pataki's administration, the Medical Care Facilities Finance Agency and the Facilities Development Corporation merged with the Dormitory Authority. According to the Dormitory Authority (2002), "after the merger, the Dormitory Authority is the largest government building construction agency and the largest public-authority issuer of tax-exempt bonds in the country." The Dormitory Authority has approximately 675 employees and provides construction services and financing for the building of facilities for higher education, health care, government and nonprofit agencies. For the 2001 fiscal year, the Dormitory Authority issued approximately \$2.4 billion in bonds and had a total of \$28.7 billion in bonds outstanding (Dormitory Authority, 2001).

Up until 1995, this major government construction and financing agency had no internal oversight office of its own. That is not to say there was no oversight at all at the Dormitory Authority. The authority is subject to annual financial audits by an international accounting firm (currently KPMG). Its bond offerings are subject to review and due diligence by investment bankers and outside bond counsel. The Dormitory Authority also has been subject to a couple of audits of select functions in recent years by the State Comptroller's Office. Also in 1995, OSIG provided a part-time deputy IG for the Dormitory Authority. This deputy IG only had a limited amount of time to spend at the Dormitory Authority understanding and reviewing this large complex organization. Other than these external part-time oversight functions and one internal auditor, there was

no internal inspector general or other oversight officers assisting management in monitoring for fraud, waste and abuse and working on improving internal controls (Dominelli interview, 2002).

In 1995, the Dormitory Authority appointed John Buono as the new executive director. Buono, a career public administrator, saw that with the size of the Dormitory Authority and the amount of funds being spent and contracts being let that the opportunity existed for corruption. Not being sure how strong the control systems were, Buono decided that an employee was needed to provide an internal oversight function at the Dormitory Authority. The position was authorized through a budgetary approval process and in October 1995, Buono hired Edward T. Dominelli as the authority's deputy IG. As previously discussed, Dominelli developed an oversight function at the Division for Youth and served as deputy IG at that division during Joseph Spinelli's term as State IG (Chapter 6). Dominelli then worked directly for Spinelli and later George Moresco at OSIG, heading up an investigative audit group (Chapter 8). Dominelli then returned to the Division for Youth in another role when the Pataki administration fired Moresco and most all of his staff. Dominelli stayed at the Division For Youth for about six months before he was appointed to the Dormitory Authority position at the age of 45 (Dominelli interview, 2002).

Dominelli assumed his new position as deputy IG at the Dormitory Authority before anyone realized that by naming him as an IG, his appointment should have been approved by the State IG, Roslyn Mauskopf. If Dominelli had been hired as a director of internal affairs or under some other title, there probably would not have been a problem. Also it was management's intention that Dominelli report directly to them and not also to

OSIG. Mauskopf agreed to accept Dominelli as a deputy IG for the Dormitory Authority and he assumed the dual role. As a result, Dominelli began attending meetings at the OSIG and developed a good working relationship with Mauskopf. This new sharing of Dominelli did cause some concern at the Dormitory Authority as to whether he worked for the Dormitory Authority or OSIG. After some discussions, Dominelli and Mauskopf mutually agreed that it would be best for Dominelli to work in an internal position at the Dormitory Authority and not have a reporting responsibility to the OSIG. Dominelli was appointed as the Director of the Office of Internal Affairs at the Dormitory Authority and he relinquished his title as deputy IG. Since that time, the OSIG has organized various deputy IGs into groups, with the Dormitory Authority falling into their construction group. The Dormitory Authority now deals with the OSIG through a construction group deputy IG in Albany and also another deputy IG from the OSIG's New York City office (Dominelli interview, 2002).

The First Three Years

For most of Dominelli's first three years at the Dormitory Authority he was a one-person internal affairs department. One of the first things that Dominelli did was develop an ethics-training program for all employees. These ethics presentations began in early 1996 and Dominelli was able to meet all of the Dormitory Authority employees within the next few months. As Dominelli put it, these presentations also had the added benefit that it gave everyone notice there was "a new sheriff in town." The training sessions gave Dominelli a broad exposure to those in the organization. Dominelli believed that establishing a strong ethics program was important for the Dormitory Authority because

the reputation of the authority is key to its success. Unlike other government service organizations where the user has no choice but to accept the provider's service, the situation is different for the Dormitory Authority. The bondholders do not have to buy the Dormitory Authority bonds but instead can choose from other tax-exempt bond issuers. The construction customers can also choose other organizations to manage their construction projects (Dominelli interview, 2002). Dominelli also developed a handbook to go with the ethics training entitled: *Serving responsibly: A corporate guide to business ethics and employee conduct* (Dormitory Authority, Office of Internal Affairs, 1998).

During the first three years, Dominelli conducted some internal investigations and cooperated with the OSIG in some of their investigations. In July 1998, Dominelli was able to hire his first staff person. In 2000, he was able to hire two additional employees, both retired NYPD officers, one a lieutenant and the other a deputy inspector. He put these individuals to work providing oversight coverage for the construction projects (Dominelli interview, 2002). With the added staff, Dominelli participated in the Office of Internal Affairs first major case involving a senior Dormitory Authority employee. Based on separate complaints to the Manhattan DA's office and to the Dormitory Authority, separate investigations were initiated by the Manhattan DA's office and by the Dormitory Authority's Office of Internal Affairs in cooperation with OSIG. The investigation involved two employees of the Dormitory Authority, including the senior official in charge of awarding \$210 million in contracts for renovations at several New York City courthouses. The official, John Wilson, subsequently pled guilty in a bid-rigging and kickback prosecution and admitted accepting in excess of \$500,000 in illegal payments. Wilson was sentenced in April 2000 to three to nine years in prison (Wise,

2000 and Rohde, 2000). Dominelli's office was able to obtain in excess of \$500,000 in restitution from the contractors and consultants (Dominelli interview, 2002).

Staff Building

In the two years after that first major case, Dominelli was able to hire three additional investigators and an intelligence analyst. Several IGs interviewed for this study have expressed the importance of good intelligence gathering, especially when dealing with construction projects. Dominelli explained one of the roles of intelligence gathering as it relates to the Dormitory Authority:

We're pretty much a contracting agency and that's where we do most of our work. We have only about 500–600 people here. That's not really a big organization for what we crank out. So we're contracting with everybody, consultants, architects, engineers, testing firms, contractors, financial managers, bond underwriters... which is a whole other set of vulnerabilities for an agency to have because you can control what your staff does but now you have to worry about the integrity of the people that you're doing business with. So that's a whole other host of problems. So, one of the things that we do is perform background checks on contractors. We've got a contracting group that we work with and if there is any hint of criminality, we do a criminal history, that's our job to follow-up on that... I hired an intelligence analyst and I adopted that concept from the SCA [School Construction Authority]... I like to have somebody who does nothing but, full-time, keeps a data base, just scouring court papers, scouring newspaper articles, any adverse information, adverse information from the field, debarment lists, all that. (Dominelli interview, 2002)

Dominelli was not the only IG interviewed who made favorable comments about the School Construction Authority OIG. The School Construction Authority OIG provides oversight for school construction in the City of New York. Several IGs interviewed reported working on joint investigations with the School Construction Authority OIG and spoke of the high quality of the investigative and intelligence work of that OIG.

By 2002, this staff building resulted in an office of about eight people and an annual budget of approximately \$650,000. The staff has a mixture of different talents. As discussed earlier in this study, Dominelli comes from a background of investigative auditing and investigations. One of the senior OIA investigators from NYPD has an MBA and an accounting background. Another investigator is also skilled in financial investigations. Dominelli's other investigators are experienced police detectives who are "good at asking questions" and have "good instincts" (Dominelli interview, 2002).

The employees of the Office of Internal Affairs are not peace officers nor do they carry firearms. They do not have subpoena power. Dominelli does though consider himself as "the agency's cop." Dormitory Authority OIA staff will conduct interviews, review documents, and conduct surveillances. For major employee cases, they will partner with the OSIG as the OSIG also has jurisdiction over such cases. Contractor cases are usually investigated by the OIA after notification of the OSIG. Dominelli's office refers most of their criminal cases to the Manhattan District Attorney's Office as the Dormitory Authority main offices are located in Manhattan and contractor documents go through those offices (Dominelli interview, 2002).

Also over the last few years, the Dormitory Authority has developed an internal audit staff and a field audit staff. Part of the impetus for the creation of the field audit staff came out of a recommendation made by Dominelli after the Wilson criminal investigation. These two audit staffs bring to the attention of the OIA possible corruption problems they have noted while conducting their audits or areas of potential fraud exposure that they think Dominelli's staff should look at. The audit staff resources are

also available to the OIA when this type of expertise is needed during an investigation (Dominelli interview, 2002).

Outreach Leads To More Investigations

Dominelli believes in working in a proactive mode and not waiting for complaint calls to come in. When new projects are starting, an internal affairs investigator will participate with Dormitory Authority employees at the startup meeting with the contractor. At this meeting, the investigator will explain to the contractor the ethical and legal rules that the Dormitory Authority follows and gives them a copy of their ethics handbook. These ethical provisions are also incorporated into the contracts. Dominelli's investigators also go out to each jobsite usually unannounced and see for themselves how the projects are progressing. They will talk to Dormitory Authority and contractor employees to see if there are any problems that the OIA should be involved with. In addition, since the new Bronx courthouse project was such a large one, an investigator had that assigned to him as his primary office location (Dominelli interview, 2002 and Bianchi interview, 2002).

The OIA also operates a hotline number that is posted at each jobsite. The hotline was started in February 2001 and the first call received on the hotline complained of corruption by a Dormitory Authority project manager. Dominelli opened the case and brought in the OSIG to conduct a joint investigation. After the investigation was completed, it was referred to the Manhattan DA's office for prosecution. On March 2, 2002, the Manhattan DA's office announced a 53-count indictment against a Dormitory Authority project manager and a consulting architect. The indictment involved a number

of instances where the project manager allegedly took a total of more than \$465,000 in kickbacks on a number of construction projects involving City University of New York college campuses. The project manager, Michael O'Connor, allegedly manipulated change orders for the benefit of contractors and promised additional work to contractors in exchange for cash. In one case involving a construction project at Queens College, O'Connor allegedly told the contractor not to perform approximately \$400,000 of work and did not issue the appropriate credit change order. In exchange for not requiring the \$400,000 of work from the contractor that the contractor would then still be paid for, the indictment alleged that O'Connor received \$30,000 in cash, \$26,000 in building materials, and the services of a carpenter to work at his home for six months (District Attorney, County of New York, 2002). Subsequently, O'Connor pled guilty to grand larceny charges and was sentenced to three to nine years in state prison and ordered to pay \$300,000 of restitution (District Attorney, County of New York, 2003).

Although the case just discussed involved a call to the Office of Internal Affairs hotline, most investigations come from information supplied by Dormitory Authority employees reporting problems either to Dominelli or to one of his investigators in the field. The Dormitory Authority also has employee rules that mandate reporting of certain activities to the Office of Internal Affairs. A number of false filing cases have developed from employee referrals. Dormitory Authority employees have been made aware by the OIA of how to spot improper paperwork from contractors and have been successful in spotting improper paperwork and referring these cases to Dominelli's office. Table 12 provides a breakdown of the number and type of cases investigated by the Office of Internal Affairs in recent years:

Table 12**DORMITORY AUTHORITY: OFFICE OF INTERNAL AFFAIRS****Summary of number and types of cases investigated**

Year	Total Cases	Internal-Employee	External-Contractor, etc.
1999	34	11	23
2000	57	23	34
2001	69	14	55

(Dominelli interview, 2002)

Dominelli believes that the increase in the number of cases is more a function of his office's outreach efforts than an indicator of increasing corruption at the Dormitory Authority. As with the false claims cases, employees are becoming more aware of corruption and are reporting more instances of it than in the past. In addition, Dominelli indicated that his office also gets complaints directly from the contracting community either by telephone calls or by in-person complaints (Dominelli interview, 2002).

Corruption cases seem to absorb most of the time the office spends on investigations. Each of these cases can be sensitive, labor intensive, take up to a year to complete, and can absorb a significant amount of Dominelli's time. He gets involved directly with all significant employee corruption cases. Dominelli also finds these are the most satisfying cases to work on "because there is nothing worse than a dirty employee." These cases dilute the amount of time available to Dominelli to manage his growing internal affairs office. As part of his effort to overcome this situation, Dominelli reported

that he is focusing more attention on office procedural issues such as developing a procedures manual for the OIA (Dominelli interview, 2002).

Dominelli said that it was important to him that his office uncovered the corruption by the two Dormitory officials discussed above. Also having these cases come to his attention while the schemes were in progress rather than finding about them after the fact from another investigative agency was a sign that his office is making a difference. Dominelli considers corrupt employees, especially high ranking ones, to be a priority for his internal affairs office and he and his staff are watchful for any other occurrences. Dominelli also considers finding these individuals as a sign that his control systems are working. His office has only been in existence for about eight years. To the critics that might ask why these cases have only recently been found, Dominelli frankly responded:

I say to these people, where have you been? You know this is a major construction agency that has been doing construction for 50 years. Before all the controls were in place, before all the investigators were around, you mean to tell me these people weren't doing this stuff? Give me a break... This stuff has been going on, it's only now that we have the systems in place to catch it... You know, the more of this work we do, the more problems we might find to make [the] organization look worse. It's sort of a double-edged sword. A lot of organizations just ignore it and say it's not happening... But in tribute to our board and our management here, they're willing to take the heat because they want to run a clean operation or as clean as you can be in this business. We'll take the bad press, but they would rather be criticized for catching the bad guy with all the systems in place, then just saying hey it's not happening here. (Dominelli interview, 2002)

Enrico Bianchi, Senior Director for Project Management for the Dormitory Authority, also said that it is important for the Dormitory Authority itself to find and investigate corruption and report it to the district attorney's office rather than have outside investigators find it. He believes this is crucial to the Dormitory Authority's credibility and reputation. In addition, Bianchi believes that the OIA has three

significant roles. The first is to provide a presence or watchdog role. They accomplish this by “exposure at the job sites, kick off meetings, at every place, so my managers, field reps, contractors and consultants can see we have an internal affairs office and they’re there.” Bianchi also noted that it is important to have a place where his employees can go to confidentially report any wrongdoing they encounter. Bianchi stated that it was necessary to have someone at the Dormitory Authority to investigate these complaints. Bianchi said that he relies on the OIA for all three of these functions. Bianchi also reported that he believes that Dominelli’s staff of eight is sufficient in size to accomplish their mission and that they have been “very successful” with their investigations (Bianchi interview, 2002).

Independence

The Office of Internal Affairs exists at the Dormitory Authority because of budgetary authorization. It was not formed based on any governor’s order, state legislation, or other external influences. Nor was it established through pressure from the board of directors or by board resolution. The executive director at the time, John Buono, established one position in 1995 and since that time the office has grown into a small group of experienced investigators. The office has continued through three executive directors, including the most recent one appointed in April 2002, Maryanne Gridley, formerly Governor Pataki’s First Deputy Secretary. Dominelli reports directly to and serves at the pleasure of the executive director. He also reports to the chair of the board of directors and provides the board with a written annual report. Dominelli also provides a case status report every few weeks to the executive director and to the chair of the

board of directors to keep them informed of the progress of investigations. Dominelli believes that he maintains adequate independence because of the benefit of this dual reporting to the executive director and the chair of the board of directors. Dominelli stated that he has never had a problem with the executive director that he had to bring to the attention of the board of commissioners (Dominelli interview, 2002).

As discussed above, the OSIG also has investigative jurisdiction over the Dormitory Authority. Although this may seem as a duplication of effort with the OIA, this situation has an advantage in that should an investigation need to be conducted involving a Dormitory Authority executive director or member of the board of directors, the OSIG could conduct this investigation without compromising the relationship of the OIA with the executive director or the board of commissioner. This could also avoid a claim of a lack of independence in the investigation that might arise if the OIA were put in a position of having to investigate a high-ranking Dormitory Authority official.

Analysis Using Research Questions

Table 13 summarizes an analysis of the Dormitory Authority's Office of Internal Affairs using the six research questions. This data analysis was performed in accordance with the methodology described in Chapter 5. Briefly stated, the factors related to each question (see Chapter 1) were examined using the data collected and an assessment was made as to whether the position in the question was confirmed or contradicted. The sources of data included the interviews, government documents, press releases and print media reports, and information obtained at three national AIG conferences.

Table 13

DORMITORY AUTHORITY, OFFICE OF INTERNAL AFFAIRS
Edward T. Dominelli, Director of the Office of Internal Affairs (1995-present)
Questions and findings

Question number	Findings
1. Increased NYS's capacity to reduce fraud, waste, & abuse?	Strongly confirms
2. Used police-patrol oversight?	Strongly confirms
3. Adopted panoptic vision of oversight?	Confirms
4. More attention to compliance accountability?	Strongly confirms
5. Statutorily appointed IGs exercise more independence?	Contradicts
6. OIG contributed to an increase in bureaupathologies?	Strongly contradicts

No major scandals preceded the establishment of the OIA. It was started because of a belief by the Dormitory Authority's chief executive that internal oversight was needed for this large public construction management and financing authority. This authority had the potential for corruption and the prudent step was to establish internal oversight rather than have others find problems at the Dormitory Authority. The OIA started with one person, Edward Dominelli, an experienced oversight executive, and grew to a staff of approximately eight. The OIA began with an outreach function to educate employees and others on the ethical standards appropriate for doing business with the Dormitory Authority. The OIA expanded its oversight role by providing a proactive presence at Dormitory Authority construction sites. This office also conducts investigations of alleged misconduct by employees and those who do business with the

Dormitory Authority and has participated in several investigations of high-ranking employees of the authority that have resulted in prosecutions. Over time, the number of cases investigated has increased. All of these factors would indicate that the Dormitory Authority OIA has increased NYS's capacity to reduce fraud, waste, and abuse.

OIA accomplishes its mission through routine "police-patrol" oversight. Again as discussed, this office was created through internal budgetary approval and was not a legislative creation established due to scandalous conditions. The office works in relative anonymity and does not draw attention to itself. Dominelli refers all press matters to the Dormitory Authority's press office and he does not issue press releases. In fact, Dominelli said: "I don't speak to the press. I am not authorized to speak to the press nor do I want to speak to the press. Nothing good ever comes of that" (Dominelli interview, 2002). Information about criminal cases generally only comes from the district attorneys' offices prosecuting those cases.

Dominelli's office has adopted the panoptic vision philosophy (Anechiarico and Jacobs, 1996) although it does not use as many of the panoptic tools as several of the other NYS OIGs studied here do. The OIA employees are not peace officers nor does the OIA have subpoena power. But they do exert a strong presence and terms like "watchdog" and "the dog on the porch" came up several times in the interviews. The OIA makes a concerted effort to insure that employees and outsiders who deal with the Dormitory Authority believe that they are being watched. Dominelli reported that in a way he is looked at as "the agency's cop" and said that in the course of their investigations, "we interact with law enforcement... We interact with prosecutors... So yes, I think we perform a law enforcement function" (Dominelli interview, 2002).

The focus of the OIA is on compliance accountability (as defined by Light, 1993). The procedural recommendations are directed at reducing the risks of fraud, waste, and abuse. The Dormitory Authority also has internal audit and field audit groups that can implement other accountability models.

The issue of independence has already been discussed. This office does not have any statutory protections but it has had strong internal support from several executive directors. There is an understanding within the organization that oversight and internal controls are important and the risks to the success of the Dormitory Authority are high if vigilant oversight is not maintained. But should management philosophy or attitude toward oversight change; there are no legal protections that would stop the Dormitory Authority management from eliminating the OIA or its current director. On the positive side, the director of the OIA reports to both the executive director and the chair of the board of directors. The State IG's office also has oversight jurisdiction for the Dormitory Authority. This provides an advantage to the OIA in that the OSIG can handle cases that might cause the OIA director to be in conflict with members of senior management.

The indications are that this oversight office does not contribute to bureaupathologies. As with other NYS oversight offices, the focus of this Office of Internal Affairs is on the investigation of wrongdoing. The government construction environment provides significant opportunities for corruption. The OIA has a number of roles, including providing a visible symbol that corruption will not be tolerated and will be discovered. It provides an avenue for employees and contractors to report suspected fraud, waste, and abuse. It provides a small group of trained individuals to investigate these allegations. The internal control recommendations made by the OIA are directed at

reducing these corruption risks. Enrico Bianchi, Senior Director for Project Management confirmed that OIA's recommendations do not contribute to bureaupathologies. In fact, Bianchi believes that Dominelli's office has provided useful recommendations that have improved operations and reduced the Dormitory Authority's exposure to corruption. Bianchi said that the Dormitory Authority has gone through a process of reengineering and has reevaluated all of its policies and procedures. The result has been to simplify its procedures and reduce any bureaupathologies that may have developed from past internal controls (Bianchi interview, 2002).

CHAPTER 14

DISCUSSION OF FINDINGS

The Federal government became subject to statutorily mandated oversight by inspectors general with the passing of the Inspector General Act of 1978. This act resulted in the rapid development of inspector general oversight for all federal government agencies. The passing of this act along with the revelations surrounding the Parking Violations Bureau and related scandals in New York City gave Governor Mario Cuomo the encouragement to establish IG oversight for New York State. The growth of NYS OIG oversight was slower than at the federal level and developed for the most part without the support of state legislation. The first OIG came soon after Cuomo's election as governor in 1982. Legislation was passed in 1983 establishing the MTA OIG. Subsequently in January 1986, Cuomo established the Office of State Inspector General through an executive order.

During the 1980s, other agencies also experimented with their own oversight offices (i.e. Department of Correctional Services and Division for Youth). In a subsequent executive order issued in late 1986, Cuomo required that all state agencies under his control establish deputy IGs that would report to their agency head and to the State IG. This formally established an oversight office in each of these agencies. In 1991, an IG was hired for the Jacob Javits Convention Center by its then president, Fabian Palomino, a former top aide to Cuomo. This came after bad press about organized crime's influence at the Javits Center. Effective August 1, 1992, a separate OIG was established within the Port Authority of NY and NJ. This was done at the

encouragement of Governor Cuomo and Port Authority Executive Director Stanley Brezenoff, who previously served under the Koch Administration during the Parking Violations Bureau corruption scandal. In 1992, legislation was passed that established the NYS Office of Welfare Inspector. The establishment of this OIG was not encouraged by Governor Cuomo, but rather by the Republican dominated State Senate based on a perception that welfare fraud was rampant.

In other agencies, the establishment of IG oversight was the result of decisions made internally by the management of these organizations. Examples of this approach included the OIG at the Department of Labor established in 1992 by then Commissioner John Hudacs and the hiring of an IG (later changed to director of internal affairs) in 1995 at the Dormitory Authority by then executive director, John Buono.

This development of OIG oversight for NYS government has been a slow process and one generally not supported by legislation (except for the MTA OIG and OWIG). These NYS IGs have become the modern tools of government bureaucracy. They do this by monitoring government operations for compliance with organizational goals. In NYS, IGs are especially concerned with preventing corruption and reducing fraud, waste and abuse. Wilson (1989) said that government workers should serve the public's interests and not their own personal interests. NYS IGs work to try and insure that this happens.

Some critical aspects of the development of OIG oversight for NYS government will be reviewed below as the findings for each of the six research questions considered during the course of this study are discussed.

Table 13

SUMMARY OF FINDINGS FOR OVERSIGHT OFFICES STUDIED

QUESTION NO.	MTA OIG 1987-1992	MTA OIG 1995-2000	MTA OIG 2001-present	OSIG 1986-1995	OSIG 1995-2002	JAVITS OIG 1995-present	PANYNJ OIG 1996-present	OWIG 1992-present	LABOR OIG 1992-present	DORM. AUTH. OIA 1995-present
1. Increased NYS's capacity to reduce fraud, waste & abuse?	Strongly confirms	Confirms	Confirms	Strongly confirms	Confirms	Strongly confirms	Strongly confirms	Confirms	Confirms	Strongly confirms
2. Used police-patrol oversight?	Contradicts	Confirms	Strongly confirms	Confirms	Strongly confirms	Neutral	Strongly confirms	Strongly confirms	Strongly confirms	Strongly confirms
3. Panoptic vision of oversight?	Strongly confirms	Contradicts	Neutral	Strongly confirms	Confirms	Strongly confirms	Strongly confirms	Strongly confirms	Strongly confirms	Confirms

Table 13 (Continued)

SUMMARY OF FINDINGS FOR OVERSIGHT OFFICES STUDIED

QUESTION NO.	MTA OIG 1987- 1992	MTA OIG 1995-2000	MTA OIG 2001- present	OSIG 1986-1995	OSIG 1995-2002	JAVITS OIG 1995- present	PANYNJ OIG 1996- present	OWIG 1992- present	LABOR OIG 1992- present	DORM. AUTH. OIA 1995- present
4. More attention to compliance accountability?	Strongly confirms	Contradicts	Contradicts	Strongly confirms	Confirms	Strongly confirms	Strongly confirms	Strongly confirms	Strongly confirms	Strongly confirms
5. Statutorily appointed IGs exercise more independence?	Strongly confirms	Confirms	Confirms	Strongly contradicts	Strongly confirms	Strongly contradicts	Strongly contradicts	Confirms	Neutral	Contradicts
6. OIG contributed to bureau-pathologies?	Strongly confirms	Neutral	Contradicts	Contradicts	Contradicts	Strongly contradicts	Strongly contradicts	Contradicts	Strongly contradicts	Strongly contradicts

Summary Findings For The Six Research Questions

Table 13 displays the summary analysis for each of the oversight organizations covered by this study. The information in this table was copied from the individual tables in each of the preceding seven chapters. Three separate tables were prepared for the MTA OIG and two for the OSIG due to their longer histories and because different IGs at these organizations used different approaches to the administration of their OIGs. As discussed in Chapter 5, these analyses were performed for each of the seven oversight organizations by considering the six questions and the factors related to each (detailed in Chapter 1). The sources of the data used in each analysis included the interviews, government documents, press releases from prosecutors' offices, print media reports, and information obtained from participation in three national conferences of the Association of Inspectors General.

Each of the six questions and the dissertation findings related to them will now be considered. This summary is based on the findings presented in the individual chapters.

Question No. 1 (Government accountability): Have NYS IGs increased NYS's capacity to reduce fraud, waste, and abuse?

Answer: YES, these oversight organizations have increased NYS's capacity to reduce fraud, waste and abuse.

As discussed in Chapter 1, fraud, waste and abuse detract from the effectiveness of government and are therefore detrimental to the work of these bureaucracies. OIGs were introduced in NYS in order to reduce these problems. In the examples of the MTA, the Javits Center, and OWIG, perceived scandalous conditions led to the establishment of

these OIGs. In the case of the OSIG and the Port Authority OIG, the past New York City scandals encouraged their establishment in order to avoid similar scandals at the state level. For the Department of Labor OIG and the Dormitory Authority OIA, no apparent external factors led to their formation and instead it was internal management's recognition of its responsibility to establish internal oversight. This recognition of oversight responsibility by internal management was also present in the formation of the Port Authority OIG.

The individual chapters of this dissertation report only a sampling of the many cases successfully investigated by these oversight offices. It is questionable if many of these cases would have been discovered or pursued without the presence of these offices. Indications are that prior to the establishment of these oversight offices, there was little effort to pursue these kinds of investigations. These offices provide a central location for receiving complaints and provide staff and resources to investigate these complaints. In addition, these offices provide a deterrent effect by their existence. The term "watchdog" was used in the interviews and the importance of outreach to employees and contractors was emphasized in the accomplishments reported by these oversight officials. It is difficult or impossible to assess the levels of corruption or whether corruption is increasing or decreasing. But what is evident is that these offices take their responsibility to investigate all forms of corruption, fraud, waste and abuse seriously and devote their resources to this effort. The result is that many cases are investigated, arrests made, prosecutions and convictions obtained, employees disciplined or terminated, and contractors disbarred. A number of the cases examined during this research were complex white-collar crimes that involved significant efforts to investigate. Based on the

analyses of the seven oversight organizations studied, the conclusion reached here is that these oversight organizations have increased NYS's capacity to reduce fraud, waste and abuse.

Question No. 2 (Proactive or reactive response in a political environment): With regard to the type of oversight they exercise, do NYS IGs fit the model of routine "police-patrol" oversight through routine investigations and audits rather than the model of "fire-alarm" oversight more common to scandal-oriented investigations?

Answer: With the exception of the MTA OIG under John S. Pritchard III (1987-1992) and the Javits Center OIG, the other NYS IGs in this study have consistently operated using routine "police-patrol" oversight. The findings for the MTA OIG under Pritchard indicate the use of "fire-alarm" oversight. The findings for the Javits Center reflect the use of "fire-alarm" oversight followed by a change to routine "police-patrol" oversight.

Downs (1967) said that all governmental leaders are motivated by self-interest and by an interest in preserving their organizations. How to best accomplish this depends upon the organizational and political environment. McCubbins and Schwartz (1984) reported that oversight is conducted in a political environment. They discussed how oversight is conducted through either "police-patrol" oversight using routine audits and investigations or by "fire-alarm" oversight by focusing on scandal-oriented investigations. Fire-alarm oversight sometimes is used to focus attention on an OIG office and its successes whereas routine "police-patrol" oversight does not. How have NYS IGs behaved?

The analyses indicated that the clear choice of the IGs studied has been to operate their OIGs in a routine “police-patrol” manner. This conclusion is based on information on how these offices were established and more importantly based on how the respective IGs operated their OIGs and their approach to handling media issues. Except for the MTA OIG and OWIG, the other five oversight offices were established by executive order rather than through the involvement of the state legislature in creating statutory OIGs. Because of the scandalous conditions at the Javits Center, there was also involvement by the state legislature there that resulted in public hearings and later the passage of legislation changing the hiring structure.

The IGs studied generally avoided media coverage and limited their contact with the press. They prepared their reports and submitted them to management. These IGs sought improvement in state government operations, but didn’t seek credit for this change. Most did not issue press releases regarding their cases and relied instead on outside prosecutors to issue press releases (which are only done for criminal cases where prosecutions are conducted). Only the MTA OIG and OWIG are mandated to release annual reports. Both make their annual reports available to the public (MTA OIG on its website) and make their other reports available to the public upon request. The OSIG also voluntarily issued biannual reports under the Spinelli and Moresco periods but the OSIG has since ceased this practice. The OSIG is required to issue summaries of each investigation and these are made available at their Albany office for inspection by the media and the public. The other oversight offices (for the Javits Center, Port Authority, Labor, and Dormitory Authority) avoid issuing public annual reports or other reports.

Internal reports are prepared at these oversight offices but are considered confidential as they may contain information about ongoing investigations.

The findings for the MTA OIG under Pritchard indicated the use of “fire-alarm” oversight. There was a tendency during this IG administration to use scandal-oriented investigations that drew the attention of the media. The “golfing” investigation and the “gotcha approach” to finding corruption were indications of this “fire-alarm” approach to oversight.

The situation was different at the Javits Center. There was a “fire-alarm” approach to oversight at the Javits Center long before the arrival of its most successful IG, Gerald McQueen. There were scandalous conditions at the Javits Center that attracted the attention of the media, two governors and state legislators. Drastic solutions were needed to save the Javits Center from financial ruin because of expensive work rules and organized crime infiltration. Management at the Javits Center used this state of urgency to significantly change the work rules through the passage of state legislation. The Javits Center also obtained the cooperation of other local, state and federal law enforcement and prosecutorial agencies to assist the IG in his efforts to root out corruption and organized crime. Once the media and legislative attention assisted the management of the Javits Center obtain some of the tools needed to make improvements, McQueen operated his IG on more of a routine “police-patrol” manner with less attention being drawn to his enforcement efforts. Announcements of criminal cases came from prosecutor offices and not from the OIG. Once the efforts to reduce corruption at the Javits Center began showing success, the focus of the OIG was devoted to improving

internal controls and maintaining high ethical standards at the Javits Center. Media attention thereafter focused on the success of the Javits Center as a business.

What accounted for the focus on “police-patrol” oversight by most all of the oversight officers studied? There are probably several factors that may contribute to this outcome. First, most all of these officials came from professional careers as senior law enforcement officers, prosecutors, or auditors. All of these professions have ethical standards that discourage the release of information to the media for personal advancement. The former law enforcement officers interviewed were especially sensitive to this issue and several reported that it was not part of their role as IGs to talk to the media and that the release of information about cases was the responsibility of the prosecutors’ offices. Others said that it was not “professional” to speak to the media about investigations.

A second reason for the low media profile maintained by many NYS IGs was the belief by IGs that announcing the findings of an investigation or audit publicly would imply that the OIG is doing this in order to enhance the status of the IG or the OIG at the expense of the agency or the particular individuals in the agency being investigated or audited. The IGs interviewed consistently reported that they did not want to be perceived as trying to improve their standing at the expense of those they oversee. They believe that their job is to improve government. They let the quality of the findings in their reports to management and the criminal cases that they present to prosecutors provide an indication of their success, rather than how often they are in the headlines.

A third possible reason involves state politics and the politics of government organizations. IGs may not want to embarrass the politicians who appointed them (most

notably the governor). They may also not want to embarrass the heads of the agencies that they are reporting on for several reasons. One reason might be that embarrassing an agency head also embarrasses the governor. Another reason might be that the IG owes an allegiance to the agency head as he or she may have appointed the IG. Also the IGs may have a sense of allegiance to their agency or authority and would not want to see this organization embarrassed in the media. What is being considered here is the desire to avoid publicity of the OIG's findings. What is not considered here is whether or not IGs exercise independence and perform their tasks regardless of whom they may have to investigate. The issue of independence is discussed below. This research did not find any direct evidence that the desire not to embarrass politicians was behind the general preference of IGs to avoid media attention, but it must be considered as a possible explanation. Support was found for the first two explanations that this lack of interest in the media was attributable to the career backgrounds of the IGs and their desire not to be accused of self-aggrandizement.

This desire by IGs not to be accused of self-aggrandizement is in the long-term interests of the OIGs, which generally is also in the best interests of the IGs themselves. Fire-alarm oversight may bring short-term favorable publicity to an IG but in the long-term damages the relationship of the OIG and the agency/authority. Downs (1967, discussed in Chapter 2) said that organizational managers are motivated by self-interest. The findings of this research are largely consistent with Downs' proposition. The management of an agency or authority would look unfavorably on an OIG that seeks recognition through embarrassing the agency or authority. Agencies/authorities may respond to such behavior by using defensive management techniques (i.e. not cooperating

with requests for information, objecting to budget requests of the OIG, and being slow to respond to recommendations proposed by the OIG). These defensive management techniques would slow the progress of the OIG's work and would negatively impact the perceived efficiency of the OIG. An unsuccessful OIG would reflect negatively on an IG. As discussed in Chapter 7, IGs like Matthew Sansverie are aware of the value of such cooperation received from an agency/authority and that to successfully achieve such cooperation, the OIG should avoid the perception that it is using fire-alarm oversight at the expense of that agency/authority.

Self-interest by managers may at times be in conflict with organizational interests. Publicity obtained through fire-alarm oversight (which may be detrimental to the oversight organization) might be used by an IG seeking to capitalize on his or her perceived corruption fighting success in order to seek a different position outside the OIG. In this situation, the interests of the IG are opposed to the OIG's. The only IG who left his or her position to move to another high-level law enforcement position after practicing fire-alarm oversight was John Pritchard of the MTA OIG. This research did not collect sufficient data to evaluate the motivations (for self-interest versus organizational interest) of the IGs in making their decisions and therefore Downs' self-interest theory could not be evaluated as it relates to John Pritchard or the other IGs.

Question No. 3 (the panoptic vision): Have NYS IGs adopted the panoptic vision of oversight in carrying out their work?

Answer: Yes, most all NYS IGs have adopted the panoptic vision of oversight. The only exception found was the MTA OIG, where beginning in 1995, there was some decrease in the reliance on panoptic vision tools.

Table 14

BACKGROUND OF OVERSIGHT PROFESSIONALS AND TYPE OF OIG

Agency/Individual	Background	Type of OIG	Police powers of OIG staff
<i>MTA OIG</i>			
Roland Malan	Govt. auditor	Audit/investigative	None
Matthew Sansverie	Assistant DA	Audit/investigative	None
<i>OSIG</i>			
Joseph Spinelli	FBI special agent	Investigative	None
George Moresco	FBI special agent	Investigative	None
Roslyn Mauskopf	Assistant DA	Investigative	Peace officers
<i>Javits Center OIG</i>			
Gerald McQueen	NYPD detective supervisor	Investigative/audit	None
<i>Port Authority OIG</i>			
Robert Van Etten	US Customs special agent in charge	Investigative	Federal agents
<i>OWIG</i>			
Elmer Toro	NYPD detective supervisor	Investigative	None
Paul Balukas	Assistant DA	Investigative/prosecutorial	Police officers prosecutors
<i>Labor OIG</i>			
Brian Sanvidge	Govt. administration & oversight	Investigative/audit/security	Peace officer status for security staff only
<i>Dormitory Authority OIA</i>			
Edward Dominelli	Govt. administration & oversight	Investigative	None

Table 14 summarizes information about the background of the oversight professionals interviewed and the primary type of work done by each OIG. This table also indicates whether the staffs of these OIGs have police-type enforcement powers. With regard to the type of work done by the OIG, the most prominent function is indicated first, followed by other substantial functions performed. This table was based on information supplied in the interviews and verified by referral to other documentary evidence. As the table indicates, the IGs of NYS have developed offices that are based primarily on a law enforcement/investigative model. Many of the IGs came from either a law enforcement or prosecutorial background. Table 14 also indicates that three OIGs have developed into full law enforcement agencies with police-type powers. The OSIG has obtained peace officer status for their investigators. Under New York State law, peace officers may make arrests in some circumstances and may carry firearms. OWIG has begun a program of sending their investigators to the NYS Attorney General's Office sponsored police officer training program. Graduates of this training become certified NYS police officers (Balukas interview, 2001). The most unique organization from this perspective is the Port Authority OIG. IG Robert Van Etten has arranged for his investigators with former police experience to be sworn in as Special Deputy US Marshals, with federal law enforcement officer authority.

Another indicator of this trend towards a law enforcement/investigative model for these OIGs has been the use of subpoenas to obtain documents and sworn testimony. MTA OIG, OSIG, OWIG, and the Department of Labor OIG have this authority under various statutes or executive orders. The Port Authority OIG uses grand jury investigations to obtain similar results. The Dormitory Authority OIA has partnered with

the OSIG in this regard. All of these oversight offices have worked in cooperation with district attorneys and U.S. Attorney's offices or the NYS Attorney General's Office to utilize the investigative powers of these prosecutor offices, with their access to grand juries. These OIGs also have hired staffs with backgrounds in law enforcement and use many of the techniques of this profession. Most IGs commented on the importance of interview and interrogation skills. The IGs have described the use of personal surveillance, the use of sophisticated audio and video surveillance equipment and confidential informants, including the use of paid informants. The IGs interviewed also reported participating in wiretaps, but only when partnering with other agencies as this technique is labor intensive and has many legal restrictions. Other techniques found, that are also similar to NYC DOI's panoptic approach, include the use of threat assessments and performance audits. In addition, as discussed in Chapter 8, the OSIG established a deputy IG system that was similar to DOI's and subsequently consolidated its deputy IGs into the OSIG following DOI's consolidation.

Besides adopting the individual tools of the panoptic vision of oversight, the NYS IGs have adopted the basic philosophy of this vision. Most all of the IGs interviewed made specific reference to the importance of their outreach to state employees and those who do business with the state to make sure they are aware of the OIG and the OIG's role in watching for corruption, fraud, waste and abuse. This effort is done through many techniques including: presentations to groups of employees and at professional society conferences, posters in the workplace and at jobsites, flyers in payroll envelopes, statements on corruption that employees sign, similar provisions in outside vendors' and contractors' contracts, pamphlets presented to employees, vendors, contractors, etc. This

outreach is done to convince employees and outsiders that the OIG is watching and to provide them with a place to report suspicions of inappropriate behavior. As previously discussed, some of these IGs used the terms of “watchdog” and “designated worrier” in describing their roles.

Although the background of many of the NYS IGs studied was either law enforcement or criminal prosecution, other factors influenced the type of OIGs established. One factor was the mission of the OIG as determined through either statute or executive order. The statutes for the MTA OIG provided for investigations and reviews (audits). The statute establishing OWIG focused on investigations, as did the governor’s executive orders for OSIG and the board of commissioners’ resolution for the Port Authority OIG. In addition, other oversight offices already existed to conduct audits. With regard to the OSIG, the constitutionally provided Office of State Comptroller exists to conduct audits of state agencies. To have the OSIG also conduct audits would duplicate the effort of a large existing state office. Separate internal audit departments existed at the Port Authority and the Dormitory Authority. The Department of Labor initially had a separate internal audit department and this was subsequently merged into the OIG. One reason why the state OIGs did not also establish an audit function and instead concentrated on the investigative function was because of these existing audit organizations. Another more important reason was that Governor Cuomo’s original interest in setting up these OIGs was for the purpose of fighting corruption in government and an investigative agency was seen as being a more appropriate model for this effort.

The MTA OIG differs from the others considered here in that its statutory mandate called for more than investigations. Concerns about the quality of service being provided by MTA operating units contributed to the establishment of this OIG. The appreciation of the audit function by a number of MTA IGs (most recently Malan and Sansverie) and the initial lack of a substantial internal audit function at the MTA led the MTA IGs to include audits (especially performance audits) in their toolboxes to assist them in satisfying their mission.

Question No. 4 (Forward thinking models): Do NYS IGs devote more attention to compliance accountability activities than performance and capacity building accountability activities?

Yes. With the exception of the MTA OIG, NYS OIGs have devoted most all of their attention on compliance accountability activities. The MTA OIG has made some significant attempts at performance and capacity building accountability activities.

According to Light (1993), IGs have the potential to improve government efficiency if they focus on forward thinking work such as performance accountability (positive incentives as opposed to negative sanctions) and capacity building accountability (pre-activity initiatives that include organizational efficiency enhancements), instead of focusing only on the compliance model (post-activity audits and investigations that focus on rule violation and negative sanctions). The compliance model has been in existence the longest. It also shows the quickest results for the least cost. It would seem reasonable for bureaucrats to adopt a model that gives them apparent short-term success, even if it is at the expense of the long-term improvement of their

organizations. Light's (1993) study of the federal IGs and Anechiarico and Jacobs' (1996) study of the NYC Department of Investigation (DOI) found that these oversight organizations focused substantially all of their attention on compliance accountability activities.

The findings of this research indicate overwhelmingly that except for the MTA OIG, the emphasis of the NYS OIGs has been on compliance accountability activities. Even at the MTA OIG, most of the attention is devoted to compliance accountability but efforts have been made to use performance based accountability and capacity building accountability.

All NYS oversight personnel interviewed have as one of their primary goals, the improvement of government. Their approach to better government is to conduct compliance accountability investigations, reviews, and audits of past activities. After these procedures are completed and any negative sanctions enforced (i.e. arrests, employee disciplinary actions and/or contractor disbarment), the OIGs also make recommendations for changes in procedures to reduce the risk that the incidents uncovered will occur again. Management most often accepts these recommendations and vulnerabilities are reduced and improvements in the efficiency of government are made.

Some might argue that this model is outdated and that IGs should take a capacity building accountability approach that involves pre-activity steps to improve efficiency through positive initiatives and not negative sanctions. Dormitory Authority OIA director Edward Dominelli does involve his staff in pre-activity efforts through attendance at construction kickoff meetings with contractors, but these efforts are designed to reinforce their role under the panoptic vision by informing the contractors of

the ethical and legal rules under which the Dormitory Authority operates and to show the contractors that someone is watching. MTA IG Roland Malan took a first step by developing performance and capacity building accountability improvements for his own OIG. His successor, MTA IG Matthew Sansverie, went one step further by working on pre-activity initiatives for the new Second Avenue Subway construction project. This was the only example of capacity building accountability found in this research. The NYS OIGs have been given the mission to deal with corruption, fraud, waste and abuse and they do this by using an investigative model either through mandate or through their own designs. But these OIGs should consider further experiments with other accountability models that go beyond basic compliance accountability.

Question No. 5 (Independence): Do statutorily appointed IGs have a higher level of independence than those appointed by executive order?

Answer: The statutorily appointed NYS IGs (MTA OIG and OWIG) were found to have a high level of independence, but a number of IGs appointed because of executive orders or by agency heads were also found to exercise a significant level of independence.

Findings about independence were not consistent. Being statutorily appointed provides some legal protections. These protections were important to the two statutorily created OIGs, the MTA OIG and the OWIG. Both OIGs were formed based on political pressure during periods of perceived scandalous conditions. In each case, oversight was the result of outside influence and was not supported by the agencies subject to oversight. In both cases, these IGs had to assert their authority, including their subpoena power. In the case of the MTA, the OIG's legal authority was resisted and several IGs reported

having difficulty obtaining the cooperation they deemed necessary to perform their oversight function. These findings indicate that where there is resistance to oversight from the agency or authority, a statutorily authorized OIG is important.

As discussed in more detail in Chapter 7, the statute establishing the MTA OIG provides some provisions to insure the independence of the IG but other provisions are more problematic. The statute provides that the IG's term of office is for a fixed term, but the IG also serves at the pleasure of the governor. The IG is appointed by the governor and not the MTA, but the governor also appoints the executive director of the MTA. As previously discussed in Chapter 8, there may be a tendency for an IG appointed by the governor not to want to embarrass another appointee of the governor because by doing so, the IG might cause embarrassment for the governor. In addition, another drawback of the MTA OIG statute is that the funding for this OIG comes from the MTA, although there is an appeal process if funding is deemed to be insufficient. Whereas, the statute has provided the MTA OIG with a level of independence that would not be present without the statute, improvements could be made to make the OIG more independent.

The Welfare IG (see Chapter 11) is also appointed for a fixed five-year term and is also appointed by the governor. This IG though does not serve at the pleasure of the governor and cannot be recalled except for cause. This gives the IG greater independence from the governor's office once appointed. In the case of OWIG, funding comes separately from the agencies monitored. The governor's office reviews OWIG's budget proposals and determines the funding for this OIG. This results in an OIG with some of the elements that could establish it as a strong independent OIG. But as a

practical matter this OIG has been limited in its effectiveness because of its small budget and staff of 11 employees in relation to the billions spent on welfare in this state.

In the case of the other IGs studied, including the OSIG and the four other agencies and authorities, there are no statutory protections for these IGs. The State IG serves at the pleasure of the governor and the OSIG was created by a governor's executive order. The governor has the right to rescind or otherwise amend this order at will. The agency and authority IGs reported on in this dissertation serve at the pleasure of either their executive directors or boards of directors. Of these four other oversight offices, only the Port Authority IG is established by a formal resolution by the authority's board of commissioners (Chapter 10). The other OIGs exist only because of budgetary approvals.

With a lack of statutory protection for these IGs, why did this research find indications that these OIGs were exercising significant levels of independence from their agencies or authorities? Two types of factors were found that contribute to the level of the independence exercised by the IGs studied. These factors can be called structural factors and personal factors. Structural factors such as statutory establishment, fixed terms in office, etc. are the easiest to measure but did not exist for the OSIG and four of the agency or authority oversight offices. One structural factor that was favorable to the IG's independence existed when the IG reported to more than one senior official. But during the course of this research, personal factors were found to be more important in judging the level of independence of these oversight offices. The major personal factors noted were: (1) the personal support that came from senior government officials (i.e. governors or executive directors of agencies or authorities) in supporting the mission and

work of the OIG; and (2) the character of the IG and his or her senior staff and their willingness to exert their independence regardless of the potential risk it might have to their jobs. In studying IGs without statutory protections, these personal factors became important in evaluating the independence of the IG and will be discussed first.

The OSIG under the tenure of Joseph Spinelli and George Moresco exemplifies this position (Chapter 8). Governor Mario Cuomo established this OIG and gave it his support because of his desire to route out any corruption in his administration so that when Cuomo eventually left office there would not be any taint to his reputation. He did not want a repeat in his administration of the scandals that occurred under Edward Koch's NYC mayoral administration. In addition, Spinelli and Moresco came from careers at the FBI and their reputations were more important than keeping their present jobs as IGs (which they understood would not be long-term careers anyway). As a result of their backgrounds and attitudes, keeping their independence and professionalism was more important to them than their jobs as IGs.

Gerald McQueen at the Javits Center and Robert Van Etten at the Port Authority are also examples where the personal factors were important in maintaining the independence and success of these offices. McQueen had 30 years experience with NYPD and was a senior investigator first at the NYPD and later at the Manhattan DA's office. McQueen was hired as IG to help eliminate corruption and organized crime's influence at the Javits Center and he did not expect to stay there more than four years. He had a no-nonsense, get the job done attitude. McQueen also had the support of his boss, Robert Boyle, the executive director, and from Governor Pataki. Similarly, Robert Van Etten, came to the Port Authority after a 30-year federal law enforcement career,

including four years as special agent in charge of the New York region for the U.S. Customs Service. Like McQueen and others, Van Etten is an individual who cherishes his integrity and reputation and would not accept compromises when it comes to his independence. Van Etten asserted his independence when dealing with senior officials at the Port Authority and has been supported in his efforts by the executive directors that he has worked for and by the board of commissioners that established this OIG by a formal resolution.

For the Department of Labor OIG and the Dormitory Authority OIA, the evidence supporting the contention that these offices exercise a high level of independence was not found to be as strong. Both of these offices were created by budgetary approval and their future relies on the continued support from their senior management. That management support appears to be evident at both of these offices. One way that these offices maintain political cover when dealing with investigations involving alleged corruption by senior department or authority officials is to partner with or to turn these investigations over to the OSIG. By doing this, these oversight professionals avoid having to investigate authority officials that could influence the future of their oversight offices.

A structural factor that assists agency and authority IGs in maintaining their independence is for these IGs to arrange to report to more than one senior official. At the Port Authority, IG Robert Van Etten reports to the executive director and to the audit committee of the board of commissioners. At the Dormitory Authority, Edward Dominelli reports to both the executive director and to the chair of the board of directors. Van Etten, Dominelli, and Brian Sanvidge (Department of Labor IG), each prepare written and verbal reports to their respective boards so that the boards are kept apprised

of their activities. This additional contact with these boards can act as an additional check on the actions of executive directors whom these IGs report to on a day-to-day basis.

Question No. 6 (Bureaupathologies): Have NYS IGs contributed to an increase in bureaupathologies in government organizations?

Answer: With only one exception, the OIGs studied have avoided contributing to an increase in bureaupathologies in state government. The one exception involved the MTA. During the Pritchard period and during part of the Malan period, MTA's management exercised defensive management in dealing with the MTA OIG.

Anechiarico and Jacobs (1996) in their study of the New York City Department of Investigation concluded that aggressive oversight contributes to an increase in bureaupathologies in government. They call this aggressive oversight the "anticorruption project." The latest phase of the anticorruption project and one that they believe contributes to bureaupathologies is what they refer to as the "panoptic vision" oversight. As indicated above in the answer to question number three, most of the NYS OIG type organizations studied use the tools of and could be characterized as using the panoptic vision oversight model. In another potential criticism of OIGs, Downs (1967) said that "the quantity and detail of reporting required by monitoring bureaus tends to rise steadily over time, regardless of the amount or nature of the activity being monitored" (p. 262).

This research did not find any indications (other than at MTA which will be discussed below) that the panoptic vision oversight model as being utilized by these organizations contributed to an increase in government bureaupathologies. These

oversight offices are small in size and in proportion to the size of the organizations they have oversight for. The policies and procedures they recommend to management are based on the findings of investigations that generally have found either criminal acts or other serious misconduct and where the existing procedures had significant deficiencies creating opportunities for criminal acts or misconduct to occur. These recommendations are reviewed with management and the respective oversight office works with management in order to implement the improvements in internal controls in a way that will minimize the impact of the new procedures on the organization.

The results of the MTA OIG were found to be inconsistent with the other oversight offices studied. As discussed in Chapter 7, the Pritchard OIG period included the use of a “gotcha” approach, which resulted in MTA’s management exercising defensive management when dealing with the OIG. During the Malan OIG period, he investigated serious allegations of political corruption and again management exercised a defensive approach and did not cooperate with his office. This defensive management exercised by the MTA during the Malan IG period is consistent with MTA’s history of inadequate cooperation with the OIG. As recent problems described in Chapter 7 indicate, MTA management needs to accept its obligation to be subject to oversight and cooperate with the MTA OIG in order to begin to regain the confidence of New York’s citizens.

This research does not support Downs’ (1967) contention that reporting requirements by oversight agencies will steadily increase over time. The oversight organizations studied have issued some recommendations for improved reporting by agencies and authorities. But considering that there was little or no oversight for many of

these government operations before the creation of these OIGs, some increase in reporting was inevitable. In the case of the Javits Center, oversight increased and then subsequently decreased. For other OIGs included in this dissertation, the OIGs worked with the government bureaucracy to develop procedures and reporting that generally did not increase requirements but instead replaced existing ineffective procedures with more effective ones (i.e. OSIG and Port Authority OIG). The Dormitory Authority OIA also worked with management on its reengineering effort to simplify all of the organization's internal controls and reporting procedures.

One contribution of Anechiarico and Jacobs' (1996) work on this subject has been to alert oversight officials of the potential problems that can be created by overzealous panoptic vision oversight. It appears that based on this study, the NYS IGs have heard this message. The IGs interviewed were well aware of this criticism and worked to avoid these types of problems. But these IGs also understand that their mission goes beyond just improving government bureaucratic efficiency to insuring that government has "a reputation for integrity" and "the confidence of the people" (Wilson, 1989, p. 317).

CHAPTER 15

IMPLICATIONS

This research has provided a history of the development of OIGs in New York State and has answered a number of research questions related to these oversight organizations. There are a number of implications resulting from this research and these implications will be discussed below. The limitations of this study will be discussed first. This section will be followed by a discussion of methodological implications. Then some suggestions for future research will be given. Next, a discussion of the literature advances made by this research and their theoretical implications will be provided. Finally, the policy implications of this research will be discussed.

Limitations

This study involved the use of historical research methods and included conducting interviews (oral histories), reviewing government documents and reports, reading press releases issued by local, state and federal prosecutors, reading news and business print media accounts, and attending three national conferences of the Association of Inspectors General. The interviews were conducted of oversight personnel and other government officials. Some of these individuals were still in their government positions and others had retired or moved on to other jobs. Each of these individuals would be expected to report on their experiences in a light favorable to themselves. Most of those interviewed were in senior positions and as a result the comments they made represent their perspectives as managers of their organizations.

Where possible, the accuracy of the interviewees' statements were crosschecked against other interviews, government documents, and the print media accounts. In addition, informal discussions were held with many IG staff members while attending three national AIG conferences.

The methodology used was the appropriate methodology for this study. Through answering the research questions posed at the beginning of this dissertation, the intent of this research was to examine the history of these organizations from a government bureaucratic perspective and focus on the development of these oversight offices based on the decisions made by these professionals. Many of these executives had the necessary autonomy and independence to develop their offices in ways they saw fit. Interviewing these oversight officials and documenting their efforts to build their offices were important steps in beginning to understand the oversight offices of New York State.

Methodological Implications

Conducting this research confirmed the value of defining the questions carefully before commencing the interviews and other data gathering procedures and before conducting the data analysis. A list of factors useful for answering each research question was developed prior to commencing the field research (see Chapters 1 and 5). These lists of factors then helped to guide the construction of the interview script. During the course of the research, several additional factors were added to the research questions based on new information obtained. This was appropriate in order to improve the quality of the subsequent analysis. Using these lists of factors made for a more consistent data gathering procedure for each OIG examined. Having the lists of factors prior to

commencing the data analysis made for a more precise examination of the data collected and for a more consistent data analysis that should be reproducible by other researchers.

Future Research Implications

While the discussions and analyses of these offices tried to be detailed and comprehensive, there is a limit to how much can be covered in any one study. For future research, it is suggested that detailed case studies be conducted of these organizations. Such studies would require more access to records and individuals than was allowed in this study. These future studies could explore further the research questions examined in this study as well as attempt to develop new measures of corruption and measures of success for oversight organizations. In particular, a study of the history of the management and the oversight of the welfare system in New York State by federal, state and local governments would be of interest to scholars and policymakers alike.

During the course of this dissertation research, it was learned that the NYS OIGs are not the only organizations involved in government oversight in New York State. The NYS OIGs at times worked in cooperation with other oversight agencies and at other times conducted independent parallel investigations. As noted in Chapter 13, officials employed by agencies and authorities believed that it was important for their internal investigators to discover any misconduct rather than have an outside oversight agency find it. It was also noted in this research that each IG had to develop working relationships with district attorneys, attorneys general and U.S. attorneys in order to successfully pursue criminal prosecutions. Interviewees also reported various levels of cooperation with the Office of State Comptroller. A future research project should

examine the functions, jurisdictions and interactions of all of the organizations in New York State that have some oversight responsibilities related to state government, including these state OIGs, the Attorney General's Office, the Office of State Comptroller, the DA offices, the Federal Bureau of Investigation, the U.S. Attorneys' offices, the federal OIGs, etc. Such a study is crucial to understanding the efficiency of the administration of oversight throughout the state. Such research could yield suggestions for improving this multifaceted and fragmented system and develop ideas for the development of a new comprehensive and consolidated model of oversight for New York State.

Literature Advances And Theoretical Implications

This dissertation and in particular the answering of the six research questions in Chapter 14 has resulted in advancements in the literature in a number of areas. As discussed in Chapter 1, prior to this research, there was no comprehensive study of state level OIGs. This research fulfilled its first goal of providing a history of the development of the offices of inspector general for a large state. This dissertation tried to be detailed and comprehensive in accomplishing this goal. It described the formation of these offices, their missions, their office structures, the tools they use, the major cases they have investigated, etc. This research has provided advances in the literature that should have applicability to IGs in other states. As indicated in Chapter 5, this research is representative of the OIGs in this large state. Just as general theories exist about government bureaucracies, broad theories should be able to be established for OIGs as parts of those bureaucracies. This research and the works of others cited previously in

this dissertation represent the beginnings of that body of research. It is hoped that future research will compare the efforts to develop oversight in New York State with efforts in other states and to develop a nationwide report on the development and condition of state OIGs and on theories that can be applied to all of these oversight organizations.

With regard to the types of oversight that OIGs use, the NYS IGs were found to operate for the most part using routine “police-patrol” oversight as opposed to “fire-alarm” oversight (Question No. 2). This research found that when used in a purposeful and deliberate manner, fire-alarm oversight has been successfully used to channel resources to particular problems that needed attention. The Jacob Javits Convention Center was an example of this successful channeling of resources during scandalous conditions in order to achieve a positive outcome. The MTA OIG and the OWIG are examples of situations where scandalous times facilitated the formation of these oversight organizations. All three of these OIGs subsequently backed away from the fire-alarm approach and adopted a police-patrol oversight.

The development of the OIGs for NYS was in general the outcome of a desire not to repeat at the state level, the scandalous times and fire-alarm oversight that the Ed Koch administration in New York City experienced during the mid-1980s. This research found that fire-alarm oversight has a place in government when it is managed for a positive outcome. Past examples of fire-alarm oversight have been found to be catalysts for the creation of new oversight organizations in order to avoid having history repeat itself. Fire-alarm oversight, which may seem to be an unstable activity for a bureaucracy to engage in, can in fact be used by a government organization to reach a stable and more secure outcome.

The conventional thinking on IGs indicated that statutory protection improves the independence of the IG (Question No. 5). This research found that this is not always the case and that in certain situations, IGs have been able to exert their independence without these protections. This was especially true in the cases of the OSIG under Joseph Spinelli, the Javits Center OIG under Gerald McQueen and the Port Authority OIG under Robert Van Etten. This research indicated that for the exercise of independence, personal factors were at times more significant than structural factors. The subject of independence will be discussed further in the next section.

Another major goal for this research was to study the impact of OIGs on government bureaucracy and to advance the literature in this area. NYS OIGs were found to increase the capacity of NYS to reduce fraud, waste and abuse (Question No. 1). This research found many examples of these oversight offices assisting the state government bureaucracy in: stopping the loss of state resources, improving operations to avoid the future waste of resources, obtaining compliance with government goals, and improving the efficiency and quality of government services. In describing the major elements of modern government bureaucracies, a discussion that does not include these oversight organizations would be incomplete.

Prior to this research, there was a debate in the literature between Anechiarico and Jacobs (1996) and Doig (1997) regarding the role that OIGs play in bureaupathologies (Question Nos. 3 & 6). Anechiarico and Jacobs' research of the NYC DOI concluded that the "anticorruption project" (especially using its latest form, the panoptic vision of corruption oversight) resulted in an increase in bureaupathologies in New York City government. As noted above, this dissertation research did not find evidence of a similar

result caused by the New York State OIGs. In the most notable example, the study of the Jacob Javits Convention Center found that once corruption problems were brought under control, the intensity of the anticorruption efforts declined substantially. The IGs studied here reported that they understood the need to avoid contributing to bureaupathologies while at the same time providing oversight for state government in order to increase citizens' confidence in government. Government oversight does not necessarily breed bureaupathologies but vigilance is needed to insure that this is not a byproduct of such oversight.

Through the discussions of the work of these offices and the descriptions of the white-collar crimes investigated by these government oversight officials, this research was also intended to add to the white-collar crime literature and bring these agents of social control to the attention of criminologists.

Policy Implications

With regard to the policy implications of this research on the current OIG oversight model used by New York State, several comments are noted below. These offices are staffed with individuals dedicated to improving government. Most go about this task using an investigative approach to their work. Few have statutory protections for their offices. Even without these protections, they attempt to exercise independence from political influence as much as possible. To date, these offices have accomplished much but there is a limit to how well they can do their jobs based on the current structure. Below are several areas that should be addressed in order to improve the operations of these IG offices and the contribution they make to state government.

Independence

The level of independence provided to these offices should be improved. Except for the Welfare IG, these IGs generally serve at the pleasure of either the governor or their agency/authority chief executive officer. As noted in Chapter 14, the findings regarding independence were mixed. The statutory protections were important for the MTA OIG and the OWIG. Where independence was strong in other OIGs, it was primarily because of the existence of personal factors. Personal factors such as having an IG with decades of law enforcement experience and an already secure pension contribute to IGs being able to exercise high levels of independence. So does having a governor or an agency/authority executive director who supports a strong independent OIG. While these personal factors have been important to maintaining independent OIGs in NYS, they have not universally existed nor can they be relied upon to be consistently present in the future. This research has found that at the MTA there has not been support for the OIG's work from the authority. Also during IG Roland Malan's investigation of a contractor who was a contributor to the governor's political party, there was a noticeable lack of support for this investigation from the governor's office.

OIGs should not be just a place for retired law enforcement investigators and executives with pensions who can afford to lose their jobs if support for their independence is not forthcoming from the governor or their agency/authority executive directors. The mass firings of the staff of the OSIG at the beginning of the Pataki administration that resulted in ongoing investigations being discontinued is an indicator of the tenuous employment situation that exists for the staffs of OIGs. Even though both of the first two State IGs (Joseph Spinelli and George Moresco) reported that they

received the support of Governor Cuomo for maintaining their independence, these IGs supported the concept of a statutorily established OSIG. Spinelli proposed legislation to establish an independent OSIG, which at the time never received the necessary legislative support for passage. This research also reported that the OSIG under Roslyn Mauskopf was criticized as not being sufficiently independent of the governor (Chapter 8).

A statutorily established State OIG should replace the current OSIG. The IG would be given a fixed term in office and would be appointed by someone other than the governor (i.e. the state attorney general). This would eliminate many of the criticisms raised against the State IG that have been reported in this research. This new OIG could keep the present deputy IG system whereby these deputy IGs are responsible for overseeing various state agencies and authorities and would continue to be employed by and report to the State IG. With the appointment of an independent State IG, not beholden to any governor, the independence of this office and the deputy IGs would be improved.

The mandate of this new state OIG should include the investigation criteria established during the Mauskopf period OSIG. This office would conduct investigations of: (1) allegations of criminal conduct by state employees, (2) allegations regarding senior agency officials' involvement in misconduct that does not rise to a criminal level (i.e. sexual harassment) or, (3) other major administrative matters of such public importance that require an independent review in order for the public to accept the results. This will focus this OIG on serious matters and reserve other misconduct for investigation by agency/authority internal oversight offices. With this type of

investigative criteria as its mandate, it might make sense to place the State IG's office within the state attorney general's office.

Individual agencies and authorities should be encouraged to maintain their current oversight offices. These offices are closest to the operation of government and they have an understanding of the inner workings of the agencies/authorities they are part of. This research has found that these offices provide an important internal oversight function and provide assurances to management that efforts are being taken to insure that problems of fraud, waste and abuse are being addressed. In addition, they are an important adjunct to the State IG's office. This research found that some of these agency/authority oversight offices have maintained a significant level of independence because of the personal factors previously discussed. Much of this has been due to the quality of the individuals selected for these oversight offices. In order to insure the future selection of similarly qualified individuals, the state should consider adopting legislation similar to the federal Inspector General Act of 1978. This federal legislation provides that IGs should be selected "without regard to political affiliation and solely on the basis of integrity and demonstrated ability" (IG Act, § 3(a)). Light (1993) reported in his study of the federal IGs that they have been for the most part competent and nonpartisan (p. 226).

The federal legislation also provides that all federal agencies and departments must have OIGs. Such legal mandate only exists in New York for the MTA OIG and the OWIG. As previously discussed, the OSIG exists only because of executive orders and the agency/authority oversight offices generally exist only because of the support of their executive directors. A government oversight system should not depend just on the good will and support of a few individuals as that support could diminish in a future

administration. Just as the federal IGs were established through legislation, state legislation could be considered as a vehicle to enhance the independence of these oversight offices.

But a statutorily created agency/authority OIG does not guarantee success. The difficulties encountered by the MTA OIG are a case in point. The establishment of this OIG as a separate entity from the authority it was created to oversee resulted in an environment of distrust by MTA management and barriers were built up between these organizations. Several changes should be considered. The cooperative professional approach being used by the present MTA IG, Matthew Sansverie is an important first step. A structure whereby agency/authority IGs are positioned more as the “strong right arm” for the agency/authority rather than as the local “junkyard dog” would improve the cooperation between IG and management and may increase the success of the OIG (see Moore & Gates, 1986 and Light, 1993). Again, further research into the federal agency IG system may provide insights into improving the state agency/authority OIGs.

A matter that needs to be resolved through legislation or litigation if necessary is the use of the attorney/client privilege by the MTA as a shield to avoid turning over documents to the OIG. The research found that this had become a significant impediment for IG Roland Malan during his investigations of alleged high-level corruption at the MTA. Another step that could be taken is to mandate that agencies and authorities periodically report publicly on their cooperation with their OIGs and the OIGs should issue a written response to these reports. Additionally, agency and authority OIGs should be mandated to immediately report to the State IG (formed under the new proposal above) any situations involving failure of the agency or authority to cooperate or

reprisals taken against the IG or his or her staff by the agency or authority's management. The State IG would then immediately investigate any such complaints and make a report to the governor, legislature and the state attorney general.

Investigations and audits

The federal Inspectors General Act of 1978 resulted in the combination of the functions of investigation and audit into the IG offices that oversee federal executive departments. But when this was done, the U.S. Congress chose to retain its own auditing arm (the Government Accounting Office). New York State also has a constitutionally authorized accounting organization, the Office of State Comptroller. The OSC performs audits of state agencies amongst other functions. The State Comptroller is an elected position and the holder of this office has at times not been of the same party as the governor.

As this research has reported in Chapter 8, OSIG IGs have in the past decided that it would not be productive for them to use their resources to duplicate these audit services. This seems to have been a prudent decision on their part. Former State IGs Joseph Spinelli and George Moresco reported success in coordinating efforts with the OSC during their tenures at OSIG (a period when there was a Republican comptroller and a Democratic governor). This cooperation did not appear to exist when H. Carl McCall (a Democrat) was state comptroller and his political rival, George Pataki (a Republican) was governor. Several IGs reported that OSC's audits under McCall's administration were politically motivated. Cooperation between the OSIG and the OSC is important in avoiding any duplication of work and for providing each other with leads for productive investigations or audits. What this research indicates is that political motivations taint the

cooperation and coordination of efforts between the OSC and the OIGs in NYS. Until such time as a study of the effectiveness of the audit function of the OSC is conducted, it is not possible to conclude whether or not its audit functions should be moved to a state OIG, left the way it is, or whether some new form of oversight organization should be considered.

At the agency/authority level, the decision to combine the roles of investigators and auditors into one office has been inconsistently answered in NYS government. The experience at the Port Authority would seem to argue against combining these roles. In the 1980's an IG function was added to the Port Authority's audit department. But this office had to compete for resources with the other audit units. The problem with the first Port Authority OIG was that it was in ways a late arriving neglected stepchild of the larger established audit department. The result was that it did not receive the resources it needed or the access to top management. In order to alleviate this problem, the OIG was established as a separate office in 1992, with the IG reporting directly to the executive director (Chapter 10).

The investigation functions and audit functions have been merged at the Department of Labor OIG with its IG having authority over both functions (Chapter 12). This arrangement seems to have been a more successful marriage of the investigation and audit function in this state department. This is because both of these roles were established before the oversight office was formed and the IG as head of this combined department has access to top management. Auditing is also an important part of the work of the MTA OIG. Combining these two functions into one oversight office can be successful when the person in charge of the oversight office appreciates the usefulness of

both tools. The lack of appreciation of the audit role was evident during John Pritchard's tenure as IG at the MTA OIG. The audit role regained prominent usage (along with the continued use of investigations) at the MTA OIG under the administrations of Roland Malan and Matthew Sansverie (Chapter 7).

The Dormitory Authority, Office of Internal Affairs has a staff of eight and the authority's audit staff consists of only a few individuals. For cost efficiency reasons (avoids having multiple supervisors) and to insure continued close cooperation and communications between auditors and investigators, management should consider merging the audit function into the OIA. At a minimum, the OIG and the auditors should cooperate to insure the most effective use of their resources.

The successful merging of the investigation and audit functions at the agency/authority level seems to depend on a number of factors including the historical development and size of the two functions within the organization and the willingness of the individuals in charge of the oversight offices to understand, appreciate and use both functions in carrying out their mission. The evidence in this study indicates that both functions are important to oversight but no single solution was found to work in all cases. This is probably due to the fact that the mission of most of the OIGs studied focused on the investigative role and did not address the issue of combining the auditing and investigative functions into one office. A study of the results of integrating these two functions at the federal level is recommended before any conclusions are reached.

Public disclosure

Wilson (1989) discussed the importance of government having "a reputation for integrity" and the support of the public. In order to develop this positive reputation, the

public needs to be convinced that government oversight organizations are effective in their efforts to eliminate corruption and that their work is not being hindered by political influence. What this study found was a group of OIGs that are aggressive in dealing with corruption, fraud, waste and abuse but for the most part do not provide the public with sufficient information to evaluate their contributions to improving government. For instance, the OSIG under Rosalyn Mauskopf discontinued the use of biannual reports started by Joseph Spinelli. The OSIG uses the investigation summaries available at their office to comply with their public disclosure mandate, along with preparing detailed investigative reports of some of their investigations. Only some of these detailed reports are easily available to the public from the NYS Library's website. The OSIG has not utilized the website that has been reserved for it for several year now. Chapter 8 indicated that this limited disclosure of the work of the OSIG might have fueled the criticism that this OIG was not effective or aggressive in its activities.

As noted in Chapter 7, the MTA OIG does the most extensive reporting with an annual report, and detailed audit and investigative reports and a website. The website contains information about the OIG, information on filing complaints, and copies of its annual reports. Investigative and audit reports were included on the website under Malan's administration and were dropped under Sansverie's administration. The Port Authority OIG has a website for making complaints. Other than the MTA OIG, none of the other agency/authority OIGs engage in any public reporting of their activities.

In order to aid the public in accessing OIGs, these government organizations should publicly report on their activities. This should be done through periodic reports widely disseminated to the public. Annual reports could be prepared and placed on

websites. Individual investigative and audit reports could also be similarly released, after taking any necessary steps to protect informants, ongoing investigations, etc. as provided by law. Just as OIGs subject other government agencies to oversight, OIGs should also accept public scrutiny. This public disclosure should be legally mandated for all state oversight offices.

Conclusion

This dissertation and the suggestions noted above should serve as the beginning of a dialogue on the future of oversight for New York State. At present, the state has an active oversight program staffed by dedicated professionals. The next step is to use this research, the work of others and new research to develop plans for a future model of state government oversight. In some ways the oversight of NYS government is a fragmented system with many parts. A comprehensive overhaul of this system should be considered. Significant additional research and debate are needed in order to develop such a new system. The proposals above are designed to be incremental steps to improve the current oversight system in anticipation of developing new models of oversight. Government oversight is a rich subject for future study and it is hoped that this dissertation will encourage additional research in this area.

APPENDIX I
LIST OF ABBREVIATIONS

ADA	Assistant District Attorney
AIG	Association of Inspectors General
AG	Attorney General
Customs	U.S. Customs Service
DA	District Attorney
DEA	U.S. Drug Enforcement Administration
DFY	NYS Division for Youth
DOCS	NYS Department of Correctional Services
DOI	Department of Investigation (New York City)
Dormitory Authority	Dormitory Authority of the State of New York
DSS	NYS Department of Social Services
EAU	Escape/Absconder Unit (of DOCS)
FBI	U.S. Federal Bureau of Investigation
GORR	Governor's Office of Regulatory Reform
HRA	Human Resources Administration (New York City)
IG	Inspector General
IG Act	The federal Inspector General Act of 1978, as amended
IGNY	Inspector General of the State of New York (for the state militia)
IRS	U.S. Internal Revenue Service

Javits Center	Jacob Javits Convention Center of NY
DOL or Department of Labor	NYS Department of Labor
MPA	Masters degree in public administration
NJ	New Jersey
NY	New York
NYC	New York City
NYS	New York State
NYPD	New York City Police Department
NYS	New York State
OCA	NYC Office of the Commissioner of Accounts
OIA	Office of Internal Affairs (Dormitory Authority)
OIG	Office of Inspector General
OSC	Office of the State Comptroller, State of New York
OSIG	Office of the State Inspector General
OTDA	NYS Office of Temporary and Disability Assistance
OWIG	NYS Office of Welfare Inspector General
PANYNJ or Port Authority	Port Authority of New York and New Jersey
PAPD	Port Authority of New York and New Jersey Police Department
SP	State Police
SUNY	State University of New York
UI Investigation Section	Unemployment Insurance Investigation Section (NYS Department of Labor)
U.S. or US	United States

APPENDIX II
LIST OF INTERVIEWEES

Metropolitan Transportation Authority Office of Inspector General

Roland M. Malan, former Inspector General

Matthew D. Sansverie, Inspector General

James Bono, Deputy Inspector General

New York State Office of State Inspector General

Joseph Spinelli, former Inspector General

George Moresco, former Inspector General

Thomas F.X. Brennan, First Deputy Inspector General (& Acting IG)

Stephen Delgiacco, Deputy Inspector General

Jacob Javits Convention Center of New York

Gerald McQueen, former Inspector General and current Chief Executive Officer

Port Authority of New York and New Jersey

Robert E. Van Etten, Inspector General, Office of Inspector General

John D. Brill, Director of Audit Department

New York State Office of Welfare Inspector General

Elmer Toro, former Inspector General

Paul Balukas, Inspector General

New York State Office of Temporary and Disability Services

James P. White, Director of Fraud and Abuse Activities

Richard M. Nawrot, Director of Program Integrity

New York State Department of Labor

Brian P. Sanvidge, Inspector General, Office of Inspector General

Ramon Diaz, Assistant Director of Investigation Section (of OIG)

Dormitory Authority of the State of New York

Edward T. Dominelli, Director, Office of Internal Affairs

Richard C. Caccese, Senior Investigative Auditor

Enrico J. Bianchi, Senior Director, Project Management

Note: Several other current or former IGs declined to be interviewed or otherwise failed to respond to letters written or telephone calls made to them including: Michael Boxer (former MTA OIG general counsel and NYS Power Authority IG), Henry Flinter (former Javits Center IG and former MTA IG), Roslyn Mauskopf (former OSIG IG), and John Prichard (former MTA IG). In addition, several agency and authority executives declined to be interviewed.

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