

**TESTIMONY OF D.C. INSPECTOR GENERAL**

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**Before the District of Columbia City Council**

**Committee on Government Operations**

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**GOOD AFTERNOON, CHAIRMAN ORANGE AND OTHER MEMBERS OF THE COUNCIL. JOINING ME TODAY IS THE ASSISTANT INSPECTOR GENERAL FOR INSPECTIONS, ALVIN WRIGHT, AND ASSISTANT INSPECTOR GENERAL FOR AUDITS, WILLIAM DIVELLO. I APPRECIATE THE OPPORTUNITY TO DESCRIBE THE LEGISLATIVE PROPOSALS I HAVE SUBMITTED TO YOU AND TO THE MAYOR THAT WOULD ENHANCE AND CLARIFY OUR AUTHORITY AND INDEPENDENCE. I ALSO AM PLEASED TO DISCUSS PROGRESS ON OUR AUDIT AND INSPECTIONS PLANNING PROCESS FOR FY 2002.**

**AS YOU KNOW, I DESCRIBED MY LEGISLATIVE PROPOSALS IN MY TESTIMONY BEFORE THE COMMITTEE OF THE WHOLE ON JUNE 19<sup>TH</sup>, AS PART OF THE COUNCIL'S BROADER REVIEW OF THE ROLE OF THE CFO AND THE OIG IN THE POST CONTROL BOARD ERA. TODAY, I WELCOME THE OPPORTUNITY TO REITERATE MY REQUESTS AND TO PROVIDE DETAILED INFORMATION TO YOU ABOUT THE NECESSITY AND POTENTIAL IMPACT OF THE CHANGES SET FORTH IN THE RECOMMENDATIONS.**

**I AM PLEASED TO SAY THAT THE COUNCIL HAS PLAYED A CONSTRUCTIVE ROLE BY AMENDING THE IG STATUTE SEVERAL TIMES. FOR EXAMPLE, THE COUNCIL PASSED LEGISLATION TO ALLOW OUR CRIMINAL INVESTIGATORS TO CARRY FIREARMS, MAKE ARRESTS, AND EXECUTE SEARCH WARRANTS ISSUED UPON PROBABLE CAUSE. THE COUNCIL ALSO MADE THE OIG POWERS AND PROCEDURES MORE CLOSELY RESEMBLE THOSE OF FEDERAL IG OFFICES AND HAS GIVEN OUR MEDICAID FRAUD CONTROL UNIT ADDITIONAL PROSECUTIVE AND INVESTIGATIVE OPTIONS.**

**ON EACH OCCASION, THESE AMENDMENTS HAVE STRENGTHENED OUR AUTHORITIES AND CLARIFIED OUR MISSION. NEVERTHELESS, I AM RECOMMENDING A NUMBER OF ADDITIONAL LEGISLATIVE CHANGES BECAUSE I BELIEVE THEY WOULD BE PARTICULARLY BENEFICIAL AT A TIME WHEN WE ARE FOCUSING ON DOING ALL WE CAN TO BETTER ADDRESS RISKS TO THE DISTRICT IN THE POST-CONTROL BOARD YEARS. FORTUNATELY, WITH THE EXCEPTION OF MY PROPOSAL CONCERNING THE FEDERAL FALSE STATEMENTS STATUTE, ALL OF MY LEGISLATIVE PROPOSALS CAN BE ADDRESSED BY MAKING CHANGES TO THE D.C. CODE. I WILL BRIEFLY SUMMARIZE THE PROPOSALS, AND WILL BE PLEASED TO RESPOND TO ANY SPECIFIC QUESTIONS YOU MAY HAVE TODAY.**

## **SUMMARY OF LEGISLATIVE PROPOSALS**

### **FULL LAW ENFORCEMENT AUTHORITY (PROPOSAL #1)**

**CURRENTLY, OIG INVESTIGATORS ARE AUTHORIZED TO EXECUTE SEARCH WARRANTS, CARRY FIREARMS WHILE ON DUTY WITHIN THE DISTRICT OF COLUMBIA, AND ARREST FOR FELONIES OCCURRING WITHIN THEIR PRESENCE. HOWEVER, OIG INVESTIGATORS MAY NOT OBTAIN ARREST WARRANTS FOR THE SUBJECTS OF OUR OWN INVESTIGATIONS, NOR MAKE WARRANTLESS ARRESTS WHEN THERE IS PROBABLE CAUSE TO BELIEVE A FELONY HAS BEEN COMMITTED. BECAUSE OF OUR LACK OF FULL LAW ENFORCEMENT AUTHORITY, NEIGHBORING JURISDICTIONS HAVE DECLINED TO GRANT RECIPROCITY TO OUR INVESTIGATORS TO CARRY FIREARMS. THIS LIMITATION ON OUR GRANT OF LAW ENFORCEMENT AUTHORITY, THEREFORE, UNDERMINES OUR STATUTORY MISSION TO INDEPENDENTLY INVESTIGATE ALLEGATIONS OF CRIMINAL MISCONDUCT. IT DENIES OUR INVESTIGATORS ACCESS TO NECESSARY INVESTIGATIVE TOOLS, ESPECIALLY WHEN IT IS NECESSARY TO PURSUE INVESTIGATIVE LEADS IN VIRGINIA AND MARYLAND. FURTHERMORE, IT THREATENS THE SAFETY OF OUR INVESTIGATORS AS WELL AS THAT OF THE PUBLIC.**

**RESOLUTION OF DISAGREEMENTS IN AUDIT AND INSPECTION**

**FINDINGS AND RECOMMENDATIONS (PROPOSAL #2)**

**THE DISTRICT'S INSPECTOR GENERAL STATUTE DOES NOT PROVIDE FOR TIMELY RESOLUTION OF DISAGREEMENTS BETWEEN THE OIG AND ANOTHER DISTRICT AGENCY. WE RECOMMEND THAT THE STATUTE BE AMENDED TO REQUIRE THE INSPECTOR GENERAL TO FORWARD TO THE MAYOR FOR RESOLUTION ANY SIGNIFICANT FINDINGS AND RECOMMENDATIONS THAT HAVE NOT BEEN RESOLVED WITHIN SIX MONTHS OF THE FINAL REPORT. ALSO, WE RECOMMEND THAT THE STATUTE MANDATE PUBLICATION OF THE STATUS OF THESE UNRESOLVED ISSUES IN THE INSPECTOR GENERAL'S ANNUAL REPORT.**

**INCREASING THE INDEPENDENCE OF THE OFFICE OF THE INSPECTOR**

**GENERAL AS A SUBORDINATE AGENCY (PROPOSAL #3)**

**WE RECOMMEND SUPPLEMENTING THE DISTRICT'S IG STATUTE TO INCLUDE A SAFEGUARD THAT EXPRESSLY PROHIBITS THE MAYOR FROM INTERFERING WITH AN OIG AUDIT, INSPECTION, OR INVESTIGATION. THIS PROPOSAL IS NOT BEING OFFERED IN LIGHT OF ANY EXISTING PROBLEMS WITH THE CURRENT MAYOR, BUT IS INTENDED TO ACHIEVE THE SAME SAFEGUARDS THAT ALREADY EXISTS FOR FEDERAL INSPECTORS GENERAL, WHO ALSO REPORT DIRECTLY TO THE EXECUTIVE HEAD.**

**COORDINATION WITH THE DISTRICT OF COLUMBIA AUDITOR**

**(PROPOSAL #4)**

**THE INSPECTOR GENERAL STATUTE REQUIRES THE OIG TO “GIVE DUE REGARD” TO THE D.C. AUDITOR’S ACTIVITIES. WE RECOMMEND CHANGES TO THE STATUTE, WHICH WOULD MANDATE RECIPROCITY FROM THE DISTRICT’S AUDITOR. COORDINATION BETWEEN BOTH AGENCIES IS ESSENTIAL TO PREVENT THE AUDITOR FROM INADVERTENTLY COMPROMISING OUR INVESTIGATIONS. IT ALSO HELPS TO PREVENT DUPLICATION OF OUR AGENCIES’ EFFORTS AND RESOURCES.**

**PENALTIES FOR OBSTRUCTING OIG INSPECTIONS AND AUDITS**

**(PROPOSAL#5)**

**AT PRESENT, THE D.C. CODE PRESCRIBES CRIMINAL PENALTIES FOR OBSTRUCTION OF INVESTIGATIONS. UNLIKE FEDERAL LAW, HOWEVER, THERE IS NO DISTRICT PROVISION CRIMINALIZING OBSTRUCTION OF AN AUDIT OR INSPECTION. WE RECOMMEND ENACTMENT OF SUCH A PROVISION.**

**INDEPENDENT INVESTIGATIONS OF THE DISTRICT OF COLUMBIA**  
**HOUSING AUTHORITY (PROPOSAL #6)**

**AT PRESENT, THE IG'S AUTHORITY TO CONDUCT INVESTIGATIONS REGARDING EMPLOYEES AND CONTRACTORS OF THE DISTRICT HOUSING AUTHORITY, WHICH IS AN INDEPENDENT AGENCY OF THE DISTRICT GOVERNMENT, IS LIMITED TO ONLY THOSE ALLEGATIONS REFERRED BY THE COUNCIL. WE RECOMMEND CHANGES TO THE D.C. CODE TO AUTHORIZE THE IG TO ACT UPON ALLEGATIONS RECEIVED FROM OTHER RELIABLE SOURCES.**

**APPLICATION OF THE FEDERAL ETHICS IN GOVERNMENT ACT TO THE DISTRICT OF COLUMBIA (PROPOSAL #7)**

**IT HAS BEEN OUR EXPERIENCE THAT THE DISTRICT HAS NEGLECTED TO FOCUS UPON CREATION OF A SYSTEM OF CLEAR ETHICAL STANDARDS FOR GOVERNMENT EMPLOYEES. CONSEQUENTLY, THE DISTRICT HAS NOT ASSIGNED THIS CRITICAL AREA THE PRIORITY IT DESERVES. WE STRONGLY SUGGEST THAT SYSTEMATIC CHANGES TO THE REGULATIONS AND ENFORCEMENT PROCESS BE EXPLORED AND IMPLEMENTED TO ENSURE UNIFORM COMPLIANCE BY ALL DISTRICT GOVERNMENT EMPLOYEES AND OFFICIALS. WE HAVE ALREADY TAKEN PRELIMINARY STEPS TO IDENTIFY OTHER JURISDICTIONS WHICH HAVE ESTABLISHED THEIR OWN BODY OF ETHICS REGULATIONS. WE FOUND THAT FLORIDA, VIRGINIA, ILLINOIS,**

**CALIFORNIA, AND NEW YORK HAVE DONE SO. THE DISTRICT OF COLUMBIA COULD WELL CHOOSE TO TAKE SIMILAR STEPS.**

**HOWEVER, I STRONGLY SUGGEST THAT OUR STANDARDS MIRROR THOSE SET FORTH IN FEDERAL LAW. THE STANDARDS ARE CLEAR, COMPREHENSIVE, AND WOULD BE ENFORCEABLE AT THE DISTRICT LEVEL.**

**INSPECTOR GENERAL REMOVAL AND SALARY CAP (PROPOSAL #8)**

**THE INSPECTOR GENERAL STATUTE PROVIDES THAT DURING A NON-CONTROL YEAR, THE MAYOR MAY REMOVE THE INSPECTOR GENERAL WITH CAUSE. WE RECOMMEND PLACING A “CHECK” ON THE MAYOR’S ABILITY TO REMOVE THE IG BY REQUIRING THAT THE COUNCIL APPROVE ANY SUCH ACTION BY A TWO-THIRDS MAJORITY. THE INSPECTOR GENERAL STATUTE FURTHER PROVIDES THAT THE INSPECTOR GENERAL’S SALARY MAY NOT EXCEED LEVEL IV OF THE EXECUTIVE SCHEDULE. THIS SALARY CAP SHOULD BE ELIMINATED IN ORDER TO ATTRACT THE MOST HIGHLY QUALIFIED APPLICANTS FOR THE IG POSITION IN FUTURE YEARS. THIS CHANGE ALSO WOULD HAVE THE EFFECT OF PROVIDING THE MAYOR -- NOT THE FEDERAL GOVERNMENT -- WITH THE ABILITY TO SET THE IG’S SALARY IN THE SAME WAY THAT HE NOW DOES WITH REGARD TO OTHER CABINET OFFICIALS.**

**ADDITIONAL PERSONNEL AUTHORITY (PROPOSAL #9)**

**THE CURRENT STATUTORY SCHEME ALLOWS THE MAYOR TO HIRE AND FIRE OIG EMPLOYEES, WHO – FOR THE MOST PART – MAY BE FIRED WITHOUT CAUSE. ADDITIONALLY, THE STATUTE PERMITS THE MAYOR TO DESIGNATE 60 EXCEPTED SERVICE POSITIONS TO THE OIG, WHICH CURRENTLY HAS A COMPLEMENT OF 105 EMPLOYEES. WE RECOMMEND TRANSFERRING THIS AUTHORITY TO THE IG, TO ENHANCE THE OIG’S INDEPENDENCE AND TO ELIMINATE THE CONFUSION CREATED BY THE STATUTE.**

**APPLICABILITY OF THE FEDERAL FALSE STATEMENTS STATUTES**

**(PROPOSAL #10)**

**UNDER FEDERAL LAW, IT IS A FELONY OFFENSE FOR A PERSON TO MAKE AN ORAL OR WRITTEN STATEMENT THAT IS MATERIALLY FALSE TO ANY BRANCH OF THE FEDERAL GOVERNMENT. THE DISTRICT’S FALSE STATEMENTS LAW, HOWEVER, APPLIES ONLY TO WRITTEN STATEMENTS AND IS PUNISHABLE AS A MISDEMEANOR OFFENSE. WE RECOMMEND INCLUDING THE DISTRICT OF COLUMBIA GOVERNMENT WITHIN THE SCOPE OF THE FEDERAL STATUTE TO ALLOW PROSECUTORS GREATER FLEXIBILITY IN CHARGING MORE EGREGIOUS FALSE STATEMENT VIOLATIONS.**

**IN CONTRAST TO MY PROPOSAL REGARDING THE ETHICS IN GOVERNMENT ACT, MIRRORING THE LANGUAGE OF THE FEDERAL FALSE STATEMENTS ACT, AND PLACING IT IN THE DC CODE WOULD HAVE SIGNIFICANT DRAWBACKS.**

**FIRST, UPGRADING THE CURRENT PROVISION TO FELONY STATUS WOULD ELIMINATE THE MISDEMEANOR VIOLATION THAT NOW EXISTS. THIS “ONE SIZE FITS ALL” APPROACH WOULD FAIL TO RECOGNIZE DIFFERING LEVELS OF CULPABILITY. SOME FALSE STATEMENTS ARE BETTER TREATED AS MISDEMEANORS, AND SOME SHOULD BE HANDLED AS FELONIES. AMENDING THE US CODE WOULD PRESERVE THIS OPTION, WHILE AMENDING THE D.C. CODE WOULD RESTRICT FLEXIBILITY.**

**FURTHERMORE, MAINTAINING BOTH A FELONY AND MISDEMEANOR OPTION WOULD AID IN EFFECTIVE INVESTIGATIONS AND PROSECUTIONS OF FALSE STATEMENTS BY ENCOURAGING COOPERATION WITH INVESTIGATORS AS POTENTIAL DEFENDANTS SEEK TO MINIMIZE THEIR CRIMINAL EXPOSURE BY PROVIDING INFORMATION.**

**FINALLY, ALL FELONIES IN THE DISTRICT MUST BE PROSECUTED BY THE U.S. ATTORNEY’S OFFICE. IF THE MISDEMEANOR OPTION IN THE**

**D.C. CODE IS LEFT IN PLACE, THE DISTRICT CAN AT LEAST MAINTAIN THE OPTION OF HAVING FALSE STATEMENTS PROVIDED TO ITS AGENCIES PROSECUTED BY THE CORPORATION COUNSEL. IRONICALLY. CREATING A FELONY FALSE STATEMENT IN THE D.C. CODE WILL INCREASE THE DEPENDENCE OF THE DISTRICT ON THE FEDERAL GOVERNMENT TO CLEAN OUR OWN HOUSE. IN CONTRAST, MAINTAINING A SEPARATE FELONY STATUTE IN THE U.S. CODE AND MISDEMEANOR STATUTE IN THE D.C. CODE ENHANCES OUR ABILITY TO INDEPENDENTLY FIGHT FRAUD AND CORRUPTION IN OUR DISTRICT AGENCIES.**

**AUDITS AND INSPECTIONS PLANNING PROCESS**

**WITH REGARD TO OUR AUDIT AND INSPECTIONS PLANS FOR FY 2002, I AM PLEASED TO INFORM YOU THAT OUR PLANNING PROCESS IS WELL UNDERWAY. AS YOU KNOW, D.C. CODE REQUIRES THE IG TO ESTABLISH AN ANNUAL PLAN FOR AUDITS IN CONSULTATION WITH THE MAYOR, THE COUNCIL, AND THE AUTHORITY. ALTHOUGH NOT REQUIRED BY LAW, WE ALSO ARE PREPARING TO PRESENT A PLAN OF OUR INSPECTIONS FOR THE COMING FISCAL YEAR. TOGETHER, THESE PLANS WILL DESCRIBE THE OBJECTIVES AND THE PROJECTED TIMEFRAMES FOR COMPLETION OF OUR WORK.**

**AS IN PREVIOUS YEARS, ALL STAKEHOLDERS ARE OFFERING SUGGESTIONS FOR FUTURE WORK IN A VARIETY OF AGENCIES ON A**

**VARIETY OF TOPICS. WE ALSO ARE COORDINATING WITH FEDERAL AGENCIES SUCH AS THE GENERAL ACCOUNTING OFFICE, AND WITH OUR OWN INVESTIGATIONS DIVISION TO ESTABLISH PRIORITIES TO MAXIMIZE USE OF OUR LIMITED RESOURCES. WE ARE PARTICULARLY COMMITTED TO IDENTIFYING AGENCIES WHICH DELIVER KEY SERVICES TO THE CITY AND WHICH HAVE THE GREATEST FISCAL IMPACT ON THE BUDGET.**

**JUST THIS WEEK, IN FACT, OUR STAFF IS PARTICIPATING IN A THREE-DAY PLANNING CONFERENCE WHICH FOCUSES SPECIFICALLY ON WAYS THAT WE CAN WORK MOST PRODUCTIVELY TO DEVISE AND IMPLEMENT THE AUDIT AND INSPECTIONS PLANS. TO PROVIDE SOME PERSPECTIVE DURING THE PLANNING PROCESS, SEVERAL GOVERNMENT OFFICIALS WILL PARTICIPATE IN THE CONFERENCE. INVITED TO ATTEND ARE CHAIRMAN ORANGE, REPRESENTATIVES FROM THE MAYOR'S OFFICE, AND CABINET OFFICIALS. IT IS OUR EXPECTATION THAT ALL PARTICIPANTS WILL BENEFIT FROM INFORMATION SHARING ABOUT ISSUES OF MUTUAL CONCERN.**

**IN ADDITION, SPECIAL ATTENTION WILL BE DIRECTED TOWARD CONDUCTING RISK ASSESSMENTS IN KEY AREAS. FOR INSTANCE, WE WILL TRY TO IDENTIFY AGENCIES WHICH ARE EXPERIENCING PROBLEMS ASSOCIATED WITH MATERIAL INTERNAL CONTROL**

**WEAKNESSES, WASTE AND MISMANAGEMENT OF LARGE DOLLAR AMOUNTS, OPERATIONAL INEFFICIENCIES THAT PROHIBIT GOOD SERVICE DELIVERY, AND POTENTIAL FRAUD, OR OTHER CRIMINAL ACTS. BASED ON CRITERIA SUCH AS THESE, WE WILL IDENTIFY DISCRETIONARY AUDITS AND INSPECTIONS AS WELL AS AUDITS WHICH ARE REQUIRED BY STATUTE. THE AUDIT AND INSPECTIONS PLANS WILL BE SUBMITTED TO THE MAYOR, COUNCIL, AUTHORITY, CONGRESS, AND TO THE PUBLIC BY SEPTEMBER 1st OF THIS YEAR.**

**I BELIEVE STRONGLY THAT ENACTMENT OF THE PROPOSED LEGISLATION AND IMPLEMENTATION OF OUR AUDIT AND INSPECTIONS PLANS WILL GREATLY ENHANCE THE CONTRIBUTIONS OF THIS OFFICE TO THE CONTINUING REVITALIZATION OF DISTRICT GOVERNMENT SERVICES. I AM PARTICULARLY OPTIMISTIC THAT A FULLY EQUIPPED AND INDEPENDENT IG OFFICE WILL ENHANCE THE DISTRICT'S ABILITY TO DEMONSTRATE FISCAL RESPONSIBILITY AND ACCOUNTABILITY IN AN ENVIRONMENT OF INCREASED HOME RULE. IN ADDITION, A MORE INDEPENDENT AND STRONGER OIG WILL DECREASE OUR DEPENDENCE ON THE FEDERAL BUREAU OF INVESTIGATIONS AND OTHER FEDERAL ENTITIES. WE FUNCTION INDEPENDENTLY, BUT WE ARE AN INTEGRAL PART OF DISTRICT GOVERNANCE. WITH THE CONTINUED SUPPORT AND INVOLVEMENT OF THIS COUNCIL, I AM CONFIDENT THAT WE WILL DO OUR PART TO**

**HELP THE DISTRICT GOVERNMENT BECOME MORE EFFICIENT, COST EFFECTIVE, AND RESPONSIVE.**

**AGAIN, THANK YOU FOR THE OPPORTUNITY TO SHARE MY VIEWS. I WILL BE PLEASED TO RESPOND TO YOUR QUESTIONS AT THIS TIME.**