

APPENDIX



Statement

W. Cary Edwards

Chair

***New Jersey State Commission of Investigation
Senate Community and Urban Affairs Committee
February 9, 2009***

Good afternoon, Mr. Chairman and members of the Committee.

I'm Cary Edwards, Chair of the New Jersey State Commission of Investigation. On behalf of the full Commission, I thank you for this unique opportunity.

For more than 40 years, the SCI has demonstrated its value to the taxpayers of New Jersey as the state's premier independent government watchdog. It has completed, and publicly reported on, well over 100 investigations. It has revealed widespread waste, fraud and abuse in housing construction and in many other areas critical to the citizens of this State. It has kept you and the public informed about the scourge of organized crime. It has produced systemic recommendations that have

saved tens of millions of taxpayer dollars and led to extensive statutory and regulatory reforms.

All of this, and more, accomplished by an agency with approximately 50 employees on a current budget of less than \$5 million – and, over the years, sometimes with far scarcer resources than that.

I'll talk in more detail about the SCI's unique strengths, its achievements and its place as a tested leader among the few sentinels of government, but there are three key points that need to be made right out of the gate:

First, the SCI is independent, and that has been the case since the day it was conceived. It was designed and structured to function as a nonpartisan, impartial and objective fact-finding agency. It is governed by four Commissioners, only two of whom may be associated with the same political party. They serve staggered, four-year terms and are appointed by three separate appointing authorities in two branches of government – the Governor, the President of the Senate and the Speaker of the General Assembly.

This strong and unique structure provides the SCI with the integrity and the independent stature necessary to perform its job in a credible

fashion. The very fact that the Commission's fact-finding process has withstood every legal challenge ever brought to bear against it is a testament to the soundness of that operating structure and to the internal judgments and decisions that have been made pursuant to the agency's mission.

Second, the SCI is the only independent investigative and fact-finding agency in the legislative branch of state government. That is critical, and here's why: Although the Executive participates in the Commissioner appointments process, we are a creature of the Legislature, funded through the Legislature's budget. In that regard, the SCI is a valuable resource for you in terms of investigative fact-finding and, importantly, with regard to substantive raw material for sensible statutory reforms.

Chairman Rice, you personally have availed yourself of those resources with your sponsorship of legislation pursuant to the SCI's findings of waste and abuse in new-home construction and inspections. What we found in that investigation was a veritable catalogue of shoddy and deficient construction practices, lax regulatory oversight and poor remediation options that routinely plunge unsuspecting buyers of new homes into the worst sort of buyer-beware nightmare. To this day, we are

still receiving complaints related to these issues from consumers looking for relief. In each instance, these complaints are evaluated by our staff and referred to the agency most appropriately positioned to provide an answer, primarily the New Jersey Department of Community Affairs.

You should also note that the new-home construction inquiry was a prime example of another unique tool in our investigative arsenal – the authority to expand the reach of our probes, as necessary, into the private sector as it bears upon the public’s business.

Third, although we spend a good deal of time investigating corruption and waste, fraud and abuse of taxpayer dollars, the SCI is the only independent fact-finding and investigative agency additionally tasked with the responsibility to investigate, evaluate and report upon organized crime. Not as a cop to make arrests. Not as a prosecutor to obtain convictions. But as a fact-finder, as an intelligence-gatherer and as a repository of investigative information and expertise. In other words, the SCI is not a “gotcha” agency; it is a fix-it agency. We refer our findings to the Legislature and to the Attorney General as appropriate.

Since its inception in 1968, the Commission has conducted cutting-edge investigations into every major aspect of organized crime in New

Jersey, highlighting its intrusion into the solid waste, garment and gambling industries and other legitimate elements of commercial private enterprise. Most recently, the SCI completed the first stage of a comprehensive investigation into the growth, proliferation and increasing sophistication of organized criminal street gangs. Our initial focus has been on the deleterious impact of these criminal entities on the state prison system, but rest assured we will have much more to report about the impact of gangs and their organized criminal activities in the communities of our State.

Mr. Chairman, members of the Committee, seven years ago, the Legislature and Governor invested their trust and confidence in the future of the SCI by enacting legislation to make it a permanent part of state government.

Since then, that trust has been fulfilled time and time again.

Besides ranging far and wide with the hard work of investigative fact-finding, we have become more results-oriented, committing more resources and staff expertise to the development of sensible, practical recommendations to address the sort of broad-based, systemic problems that we regularly identify through our investigations.

And you, the Legislature, and your counterpart in the Executive Branch, have responded repeatedly in salutary ways. To review just a portion of this record, in addition to the pending legislation to address the SCI's findings with respect to new-home construction and inspection abuses:

- In 2003, legislation recommended by SCI was enacted revising New Jersey's computer crime law for the first time in two decades.
- In 2004, the Commission's investigation of the flawed E-ZPass electronic toll system set the stage for enactment of legislation overhauling the State's contract procurement process.
- In 2005, the governor signed an Executive Order implementing key recommendations stemming from the SCI's probe of new-home construction and inspection abuses. As I indicated earlier, Chairman Rice has taken the initiative legislatively in this area.
- In 2006, the SCI's revelations that unregulated lethal handgun ammunition was readily and legally being purchased by known

criminals, including gang members, led to the enactment of legislation tightening ammo sales.

- In 2007, the Governor signed legislation implementing budget accountability measure for public schools, an outgrowth of the SCI's investigation into questionable and hidden compensation for public school administrators.
- The same year, the findings of the Commission's investigation into the abuse of New Jersey's Charity Care program resulted in the enactment of new fraud-detection laws.

I will also point out that as we speak here this afternoon, another committee of this body, the Senate Education Committee, is considering landmark legislation that incorporates key recommendations made by the SCI in 2007 to restore accountability, transparency and oversight to the governance of public higher education in New Jersey.

Mr. Chairman, in closing, on behalf of the Commission and its staff, I thank you again for the opportunity to describe our mission and the important work we do for the taxpayers. Every week, we are contacted by people from one end of this State to another who are looking for help in a

multitude of areas and who feel they have run out of options with no place else to turn. We respond to their inquiries.

As to an obvious question in this room this afternoon – Why do we need all of these government watchdogs? – I will say this: I've been in and around government all of my adult life, and if there's one thing I've learned, it's that you can never have enough expert eyes and ears to hold government accountable and to look out for the public's best interests.

All of us appearing before you today have important jobs to do in that regard. We talk to each other and we assist each other. Indeed, as the old kid on the block, it was the SCI that helped these new kids, the Inspector General and the Comptroller, get up and running. That's not a boast. I tell you that because it is emblematic of a cooperative spirit that gives us all the ability to maximize limited public resources to serve the public across a wide spectrum of responsibilities.

Believe me, there is more than enough work to go around.

At this time, we'd be happy to address any questions you might have.

Thank you.

**Senate Community and Urban Affairs Committee
February 9, 2009**

**Opening Statement of
Inspector General Mary Jane Cooper**

Good morning Chairman Rice, Vice Chair Redd and Senators/members of the committee.

Thank you for the opportunity to answer questions you have about the Office of the Inspector General's (OIG) efforts to seek out waste, mismanagement and fraud in government spending and ensure accountability and integrity of all levels of New Jersey government. Pursuant to Chairman Rice's invitation to speak to this committee today, I would like to say a few words about the Office of the Inspector General's operations, responsibilities, areas of oversight and accomplishments in the four years since its creation.

As the Governor's investigatory arm, OIG's charge is unique within the State: it was created to receive and investigate complaints concerning alleged fraud, waste, abuse or mismanagement of State funds, with the goal of providing increased accountability, integrity and oversight of all recipients of State funds including but not limited to State departments and agencies, independent authorities, county and municipal governments and boards of education. In creating this office the Legislature declared, to paraphrase, that it is critically important that public officers and employees discharge their duties and responsibilities in a lawful and ethical manner, while conserving the fiscal resources entrusted to the government's care by the taxpayers.

I believe it is worth saying at the outset that OIG is not a criminal investigatory authority and does not have police powers. Therefore, there often comes a time, when OIG's cases must be turned over to the chief prosecutor in the State, the Attorney General, as OIG does not have the

9x

power to use wiretaps or to offer immunity to witnesses. Also, with the creation of the Office of the Comptroller, our office no longer has auditing authority. OIG, however, is often the only executive branch entity with jurisdiction over many matters that involve allegations of civil and not criminal wrongdoing and that require investigation.

OIG's investigations are multi-dimensional: we not only investigate allegations of wrongdoing, we also investigate the root causes of these failures, whether mismanagement, insufficient internal controls, improper relationships, misrepresentation, or personal enrichment at the expense of the State. These investigations involve document review -- often thousands of pages of documents, witness interviews, and thorough analysis and structuring of the evidence. Further, we make recommendations for reform so that the cause of these problems can be eliminated. Findings are presented to the Governor, President of the Senate, Speaker of the Assembly and the entity or entities at issue.

OIG has identified varied causes that led to operational and programmatic failures at many levels of government. By way of example, we have identified inequities in business relationships between the State and a private party, where the private party did not enter into its agreements with the State in a forthright and fair manner, which put millions of State dollars at risk. We have also identified misrepresentations by a high level official within a State department that caused the department to waive millions of dollars in liquidated damages to which it was entitled; misuse of State funds by a government official in an effort to benefit a nonprofit entity with which she was associated; and failure by a State agency to meet its statutory mandate when disbursing financial compensation to eligible claimants.

These are just a few of our findings, as OIG has a very large caseload that includes requests by the Governor and State entities for specific investigations, including our year-long investigation of the Meadowlands/EnCap remediation and redevelopment project, requests from agencies for analysis and review of their internal controls, and almost 700 contacts filed by constituents. OIG has established a "Constituent Review Process" that is followed for every contact we receive from a constituent. Constituent's concerns are entered into our Constituent Tracking Database, acknowledged and then reviewed by an attorney in our office, who conducts all necessary research, compiles relevant data and materials and makes recommendations. I then review the entire file and the research to determine whether the complaint is appropriate for an investigation by OIG. All determinations are promptly communicated to the constituents in writing and we make ourselves available to them for further discussion and explanation.

OIG's decision to accept a constituent concern for investigation is based on several factors: whether the concern is within our statutory mandate (are state funds at risk?), whether another entity is already investigating the matter, and whether it appears that the outcome of the matter will have a significant impact on the State as a whole.

If we determine to investigate the matter, or if the constituent has provided information about a matter already under OIG investigation, we advise the constituent (if the constituent has made his identity known to OIG) of our decision and that someone from OIG will be in contact with him shortly. The constituent is advised that he will be kept apprised of the matter as necessary, feasible and appropriate so as not to interfere with the ongoing investigation. He is advised that

he can call OIG at any time for an update on the matter, and is notified, to the extent appropriate, when the investigation is concluded.

If OIG determines that it will not investigate a concern and the constituent's identity is known, OIG will, with the constituent's permission, refer the concern to the government agency most likely to be able to resolve the concern. Often, these entities are not investigative bodies but nonetheless possess the ability to respond to the constituent's concerns, such as State departments, Motor Vehicle Commission, United States Postal Service and United States Department of Housing and Urban Development. In that case, we forward the file to the entity along with the constituent's contact information. We ask the government entity to inform us and the constituent of the outcome, as appropriate. The matter remains open until we learn of the outcome.

If the constituent does not wish the matter to be referred to another entity, we advise him in writing of the reason that we are not investigating the concern, and provide him the name and address of a government entity more suited to resolve his concern should he wish to contact the entity on his own.

OIG maintains in regular communication and coordination with other investigatory bodies within the State and with the affected government entities. We ensure that there is no duplication of effort and if, in the course of these investigations, we identify matters that are outside our jurisdiction and within the jurisdiction of other government entities – for instance, the Division of Criminal Justice, the State Ethics Commission—we refer the matter to the appropriate entity,

identify all relevant issues and facts, and remain on call to assist in the subsequent investigation if necessary. We have referred ten completed investigations to the State Ethics Commission, including cases that involved a deputy commissioner, an assistant commissioner, executive director of an authority, and a regional director of the then-Schools Construction Corporation, all of whom no longer hold their government positions. We have referred many of our matters to the Division of Criminal Justice to determine whether criminal action is warranted and are currently working with federal and state entities that have taken up an investigation in response to a referral we made to the Division.

We also ensure that there is a continuous dialogue with the impacted government entities. Several of OIG's investigations have involved matters that continued to evolve even as our investigation was being conducted. As such, throughout our investigations we have regularly communicated, where appropriate, with the management of affected entities to provide them with vital information in order for them to take immediate corrective action. In fact, there have been instances in which we discovered information that government entities should have had but did not; we were able to share this information without compromising our investigation, thus facilitating government operations.

With its limited resources, OIG has also identified conduct and made recommendations to state entities, the Governor, the Senate and Assembly that have resulted in significant savings to the state. We have identified misused or improperly committed funds that far exceed our office's entire annual budget, which for Fiscal Year 2009 is \$1.8 million. Examples of some recent OIG investigations that have resulted in the savings, recoupment or rescue of State funds include:

- **Investigation Concerning the Department of Corrections (DOC) Inmate Dental Health Services Contract:** OIG's investigation revealed an improper agreement between a former Department of Corrections Deputy Commissioner and a Vice President of Correctional Medical Services, Inc. (CMS), the vendor, that resulted in the failure to assess approximately \$4.5 million in liquidated damages against CMS for failure to meet certain contract specifications. OIG further found that the Deputy Commissioner was not forthcoming with his supervisors and manipulated staff who reported to him. At the time of OIG's report, the Deputy Commissioner was poised for a promotion; he is now no longer employed by the Department. OIG's investigation also revealed approximately \$700,000 in overcharges to the State by CMS. The Attorney General's Office, which was unaware of the problems identified by OIG, has recovered some of these funds and is in the process of attempting to recover the rest. OIG is assisting the Attorney General's Office in their effort.

- **Investigation Concerning the Conduct of a Former Division of Addiction Services (DAS) Assistant Commissioner and the Misuse of State Grant Funds:** OIG conducted an unprecedented line-item review to determine almost to the penny how DAS awarded State grant funds and how the recipients spent those funds. OIG sought to determine whether the expenditures were in accord with State and Federal grant requirements. OIG's recommendation resulted in recovery by the Department of Human Services (DHS) of more than \$1.7 million and the rescue of \$2.3 million from misuse. OIG is still working with DHS and the Attorney General's Office to recover funds from the grantee's Directors and Officers Insurance.

- **Meadowlands Remediation and Redevelopment Project:** Governor Corzine requested that OIG conduct an investigation into the history of the Meadowlands project's financing, which was highly complex. OIG reconstructed ten years of the project's history and financing and, early in our investigation, we determined that there was an absence of a comprehensive understanding of the project in its totality among State and local government entities and that the private party with which the State had contracted had behaved in such a manner as to generate a fundamental failure of trust on the part of State entities. Contemporaneously with our investigation, OIG was able to facilitate communication and coordination among the government entities and identify the failures and underpinnings of the State loans, providing valuable lessons learned for public/private partnerships going forward. In fact, OIG was present the first time all of the government stakeholders and the private party met together. The State halted the project and OIG's investigation aided in the protection of approximately \$40 million in State loan funds from being spent. Moreover, in Governor Corzine's Executive Order No. 118, the Governor points to OIG's report, which discusses the integrity of government decisions regarding redevelopment projects and the timing of political contributions by individuals involved in public redevelopment projects. Legislation is currently being considered that would implement recommendations made by OIG in its report on this matter.

- Although OIG's review is ongoing and a final report has not been issued, OIG undertook a review of the Victims of Crime Compensation Agency (VCCA) and identified substantial items that it believed would be of concern to the Attorney General, whose department was about to take responsibility for and now has oversight of VCCA. OIG initiated its review at the request

of the Department of Treasury, which expressed concerns about whether or not VCCA was following sound fiscal policies and procedures. OIG wrote to the Attorney General to detail certain initial findings and concerns that, in sum, VCCA was inappropriately awarding payments to claimants. As a result, the Attorney General assigned an interim Executive Director of VCCA and assigned staff to review the agency's operations and processes to identify possible improper payments. This review has likely resulted in the rescue of thousands of dollars from potential misuse. A new Executive Director has just been appointed.

- New Jersey Schools Development Authority (SDA) (formerly the NJ Schools Construction Corporation): OIG's 2005 initial report detailed the weak internal management and financial controls and lax or nonexistent oversight and accountability in place at SDA, an organization charged with building schools and a budget of \$8.6 billion. In that report, the Inspector General recommended to the then-Governor that a halt on work and spending be put in place at SDA until a series of emergent recommendations for internal controls and appropriate spending were implemented. The then-SDA President acknowledged that millions of dollars in waste was prevented by this halt. Since that time OIG has continued to conduct reviews of SDA and certain vendors that have resulted in various reimbursements of overcharges or incorrect payments to SDA.

While these matters were in some cases referred to other state agencies for follow-up, much of the immediate recoupment of funds, cessation of wasteful conduct, cost savings and identification of lessons learned would not have occurred but for OIG's unique review of the expenditure of state funds with a focus on conserving the state's limited resources.

OIG has attained this success with a very small budget and a very small, yet professional and talented staff. OIG's adjusted budget for FY 09 was \$1.8 million dollars. OIG staff consists of 15 investigators (including the Inspector General and two attorneys dedicated exclusively to the SDA) and 2 administrative staff (the Chief of Staff and Public Information Officer who also functions as the Assistant to the Inspector General). If you take just one of our most recent investigations, DOC, which resulted in a potential cost savings to the state of over \$5 million, compared to the entire annual cost of our office, \$1.8 million, you can immediately see the benefits of our office. Considering that the DOC investigation was primarily conducted by only

two members of our Staff, accounting for approximately 10-15% of OIG's resources, it is also easy to see the impact that the office, as small as it might be, can have throughout state government.

Thank you for this opportunity to speak with you about OIG's work. I look forward to answering any questions you have and to responding to any matters that you believe require investigation.

New Jersey State Legislature
Office of Legislative Services
Office of the State Auditor
Summary of Testimony
Presented to the Senate Community and Urban Affairs Committee
February 9, 2009
Stephen M. Eells, Assistant State Auditor

The Office of the State Auditor, which is in the legislative branch of government, was originally established in 1934. The State Auditor is a constitutional officer appointed by the Legislature for a term of five years and until a successor shall be appointed and qualified. A number of statutory amendments dealing with the powers and duties of the State Auditor have been enacted in the ensuing years. The Office of the State Auditor is within the Office of Legislative Services under the provisions of the Legislative Services Act.

The organization of the office within the legislative branch permits the State Auditor to be independent of the executive and judicial branches of government. This independence is critical in terms of meeting professional standards and in providing fair and objective reviews and audits of governmental operations.

Under the provisions of Article VII, Section I, Paragraph 6 of the State Constitution and N.J.S.A. 52:24-1 et seq., the Office of the State Auditor is required to conduct post-audits of all transactions and accounts kept by or for all departments, offices, and agencies of state government. Reports are submitted to the Legislature, the Governor, and the Executive Director of the Office of Legislative Services.

Audits may be requested by the Legislative Services Commission, Legislative leadership or by the State Auditors own initiative. The office performs financial statement and performance audits. The objective of our financial statement audits is to provide reasonable assurance about whether the financial statements of an audited entity are fairly presented in conformity with generally accepted accounting principles. Our primary financial statement audit is the state's Comprehensive Annual Financial Report (CAFR) which is published by the Department of the Treasury. Performance audit objectives are to determine whether financial transactions are related to an agency's programs, are reasonable, and are recorded properly in the accounting systems. This type of audit may also focus on specific performance issues including economy and efficiency comments. These audits would also include information technology system reviews to ensure that data maintained by a particular computer system is reliable, valid, safeguarded, and recorded properly. The Office is also authorized to conduct forensic audits of the fiscal operations of any school district which has a year-end general fund deficit and meets one other criteria of the act. Legislation requires the State Auditor to conduct follow-up reviews to determine compliance with its recommendations.

The Office of the State Auditor is one of eight units within the Office of Legislative Services. The State Auditor's office is comprised of 91 professional and six support staff positions. All auditors must have a bachelor's degree in accounting or a related field and a minimum of 24 credit hours in accounting. Fifty-two staff members possess professional certifications or advanced degrees.