

*Office of Inspector General*

---

**SEMIANNUAL**

---

**REPORT**

---

**TO THE**

---

**CONGRESS**

---



**Covering October 1, 1993 - March 31, 1994**

*Ninth Semiannual Report*



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE INSPECTOR GENERAL

Washington, DC 20570-0001

April 29, 1994

Honorable William B. Gould IV, Chairman  
National Labor Relations Board  
1099 14th Street, NW  
Room 11100  
Washington, DC 20570

Honorable Frederick L. Feinstein, General Counsel  
National Labor Relations Board  
1099 14th Street, NW  
Room 10100  
Washington, DC 20570

Dear Chairman Gould and General Counsel Feinstein:

I am pleased to provide each of you with two copies of the Semiannual Report (SAR) covering the activities of the Office of Inspector General (OIG) for the period October 1, 1993 through March 31, 1994. This is the ninth SAR to issue since the creation of the OIG in November, 1939. Given the fact that neither of you was in your current position during almost all of the reporting period, I have made an effort, where necessary, to distinguish between the two of you and your predecessors.

During this reporting period, we issued one Audit Report, "A Review of the Agency's Budget Formulation Process." The audits currently underway are: (1) "A Review of the Agency's Program for Responding to Allegations it Receives Which Could Result in Criminal or Administrative Action Against Agency Employees," and (2) "A Review of the Agency's Performance Measurements."

In addition, we have continued to investigate those matters which are brought to our attention, as well as those which are self-initiated and, during the reporting period, issued seven Final Investigative Reports. Unfortunately, the lack of adequate staffing, a growing awareness of the function of the OIG, and case filings over which we have little, if any, control, has caused the backlog of investigations to increase by almost a factor of six between Fiscal Year 1990 (the first year of OIG operations) and the first half of Fiscal Year 1994. This has had the result of some investigations not being started; and, others being commenced, only to be stopped when a matter which we deem to have a higher priority arises. Your attention is invited to the chart at the end of the SAR section dealing with the IG Summary for a graphic depiction of the growing backlog of case investigations.

Chairman Gould/General Counsel Feinstein

April 29, 1994

Page 2

I have remained active in the Executive Council on Integrity and Efficiency (ECIE), created by Presidential Executive Order. In addition, I have continued to chair the monthly meetings of the Law Enforcement Committee of the ECIE which explores issues law enforcement agencies, such as ours, have in common.

As this SAR will, in all likelihood, be my last, I intend to comment about some Inspector General matters which the prospect of a departure has caused me to ponder at some length.

This will also serve as a reminder that, pursuant to Section 5 (b) of the Inspector General Act of 1978, as amended, this report "shall be transmitted by (the head of the establishment) to the appropriate committees or subcommittees of the Congress within thirty days after receipt of the report, together with a report by the head of the establishment " (Emphasis added.)

With your continuing cooperation, my staff and I look forward to contributing, in whatever way we can, to the integrity, efficiency and effectiveness of the Agency's operations and programs.

Sincerely,

A handwritten signature in cursive script that reads "Bernard Levine".

Bernard Levine  
Inspector General

**SEMIANNUAL REPORT**  
**OF THE**  
**OFFICE OF INSPECTOR GENERAL**  
**NATIONAL LABOR RELATIONS BOARD**  
**FOR THE PERIOD**  
**October 1, 1993 - March 31, 1994**



TABLE OF CONTENTS

	<u>Page</u>
<b>FOREWORD</b> ...	.i
<b>INSPECTOR GENERAL SUMMARY</b> ..... ..	.iii
<b>OFFICE OF INSPECTOR GENERAL INVESTIGATIVE BACKLOG</b> ...	.xiii
<b>SECTION 1: DESCRIPTION OF SIGNIFICANT PROBLEMS, ABUSES AND DEFICIENCIES RELATING TO ADMINISTRATION OF PROGRAMS AND OPERATIONS AND DESCRIPTION OF OIG RECOMMENDATIONS FOR CORRECTIVE ACTION (MANDATED BY SECTION 5(a)(1) AND (2) OF THE ACT)</b>	.1
<b>SECTION 2: IDENTIFICATION OF EACH SIGNIFICANT RECOMMENDATION DESCRIBED IN PREVIOUS SEMIANNUAL REPORTS ON WHICH CORRECTIVE ACTION NOT COMPLETED (MANDATED BY SECTION 5(a)(3) OF THE ACT)</b>	.5
<b>SECTION 3: SUMMARY OF MATTERS REFERRED TO PROSECUTIVE AUTHORITIES AND RESULTANT PROSECUTIONS AND CONVICTIONS (MANDATED BY SECTION 5(a)(4) OF THE ACT)</b>	.6
<b>SECTION 4: SUMMARY OF RESTITUTION MADE AS A RESULT OF CIVIL AND CRIMINAL INVESTIGATIONS AND/OR AUDITS (NOT MANDATED BY THE ACT)</b>	7
<b>SECTION 5: SUMMARY OF EACH REPORT TO ESTABLISHMENT HEAD CONCERNING INFORMATION OR ASSISTANCE UNREASONABLY REFUSED OR NOT PROVIDED (MANDATED BY SECTION 5(a)(5) OF THE ACT)</b>	.8
<b>SECTION 6: LIST OF EACH AUDIT REPORT ISSUED (MANDATED BY SECTION 5(a)(6) OF THE ACT)</b>	.17

## TABLE OF CONTENTS

	<u>Page</u>
<b>SECTION 7: SUMMARY OF EACH SIGNIFICANT AUDIT REPORT IN SECTION 6 (MANDATED BY SECTION 5(a)(7) OF THE ACT)</b>	... .18
<b>SECTION 8: STATISTICAL TABLES SHOWING TOTAL NUMBER OF AUDIT REPORTS AND TOTAL DOLLAR VALUE OF QUESTIONED AND UNSUPPORTED COSTS (MANDATED BY SECTION 5(a)(8) OF THE ACT)</b>	.21
<b>SECTION 9: STATISTICAL TABLES SHOWING TOTAL NUMBER OF AUDIT REPORTS AND DOLLAR VALUE OF RECOMMENDATIONS THAT FUNDS BE PUT TO BETTER USE (MANDATED BY SECTION 5(a)(9) OF THE ACT)</b>	.22
<b>SECTION 10: SUMMARY OF EACH AUDIT REPORT ISSUED BEFORE REPORTING PERIOD FOR WHICH NO MANAGEMENT DECISION MADE BY END OF REPORTING PERIOD (MANDATED BY SECTION 5(a)(10) OF THE ACT)</b>	.23
<b>SECTION 11: DESCRIPTION AND EXPLANATION OF REASONS FOR ANY SIGNIFICANT REVISED MANAGEMENT DECISION MADE DURING THE REPORTING PERIOD (MANDATED BY SECTION 5(a)(11) OF THE ACT)</b>	.23
<b>SECTION 12: INFORMATION CONCERNING ANY SIGNIFICANT MANAGEMENT DECISIONS WITH WHICH INSPECTOR GENERAL IS IN DISAGREEMENT (MANDATED BY SECTION 5(a)(12) OF THE ACT)</b>	.23
<b>SECTION 13: REVIEW OF EXISTING AND PROPOSED LEGISLATION AND REGULATIONS RELATING TO PROGRAMS AND OPERATIONS AND RECOMMENDATIONS CONCERNING THEIR IMPACT ON ECONOMY AND EFFICIENCY IN THE ADMINISTRATION OF PROGRAMS AND OPERATIONS ADMINISTERED OR FINANCED BY DESIGNATED ENTITY OR THE PREVENTION AND DETECTION OF FRAUD AND ABUSE (MANDATED BY SECTION 4(a)(2) OF THE ACT)</b>	.24
<b>APPENDIX A: DEFINITIONS USED IN SECTIONS 8 AND 9.</b>	.30

## FOREWORD

This Semiannual Report (SAR) is the ninth issued by the Office of Inspector General (OIG) since the appointment of the Inspector General (IG).<sup>1</sup> Given the fact that the current Chairman and General Counsel had not been confirmed until near the end of the reporting period, I have made an effort, where necessary, to distinguish between them and their predecessors. In addition, the reference to Acting General Counsel is to the person who served in that capacity between the time the former General Counsel's term ended and the current General Counsel took office.

The National Labor Relations Board (Agency or NLRB), which employs about 2,100 employees and, for Fiscal Year 1994, has an annual budget of approximately \$171,000,000, is an independent agency which was established in 1935 to administer the principal labor relations law of the United States - - the National Labor Relations Act (NLRA). Upon the filing of a petition in a representation matter or an unfair labor practice charge, the provisions of the NLRA are generally applied to all enterprises engaged in, or to activities affecting, interstate commerce, including health care institutions and the United States Postal Service, but excluding other Governmental entities, railroads and airlines.

The Agency implements national labor policy to protect the public interest by helping to maintain peaceful relations among employers, labor organizations and employees; encouraging collective bargaining; and, by providing a forum for all parties to peacefully resolve representation and unfair labor practice issues. These functions are primarily carried out in two ways: (1) by conducting secret ballot elections to determine if a group of employees wishes to be represented for collective bargaining purposes by a labor organization, and (2) by preventing and/or remedying unfair labor practices committed by employers and unions.

The Chairman, four Board Members and a General Counsel are appointed by the President with the advice and consent of the Senate. The Chairman and Board Members have staggered terms of 5 years each and the General Counsel has a 4-year term.

The Agency, headquartered in Washington, DC, has 33 Regional Offices, some of which have Subregional and/or Resident Offices. This far-flung organization has handled unfair labor practice cases affecting hundreds of thousands of persons and has conducted representation elections in which millions of employees have decided whether they wished to be represented by a labor organization for collective bargaining purposes.

Prior to the creation of the OIG under the Inspector General Act of 1978, as amended (the Act), the Agency had a Security and Audit Branch under the Division of Administration. The audit function of that Branch is now contained within the OIG. The OIG Table of Organization provides for an IG; a Supervisory Auditor; three Auditors; a Staff Assistant; and, a Counsel to the IG who also assists the IG in conducting investigations.

---

<sup>1</sup> The initial Semiannual Report issued prior to the appointment of the IG.

During this reporting period, the OIG continued to conduct priority audits contained in its audit universe, and has continued to investigate those complaints which have been brought to its attention, as well as those matters which have been self-initiated.





## *INSPECTOR GENERAL SUMMARY*

As this will, in all likelihood, be the last SAR issued by me, I want to take the opportunity to set forth six problem areas I have encountered over the approximate four and a half years that I have been Inspector General and which might merit Congressional action.

The problem areas are:

### *A. Inadequate Protection for Complainants and Witnesses*

- ◆ Although Section 7 (b) and (c) of the Act provide some protection for complainants and witnesses by providing that: (1) the IG shall not disclose the identity of an employee without the employee's consent, unless disclosure is unavoidable; and, (2) no personnel action can be taken or threatened against an employee as a reprisal for making a complaint or disclosing information, unless the complaint was made or the information disclosed knowing that it was false or constituted a willful disregard for its truth or falsity, I believe those safeguards are inadequate for the following reasons.
- ◆ While there is implicit in such statutory language a "right of access" to Offices of Inspector General, I feel the language should go further and provide an explicit "bill of employee rights" similar to that contained in Section 7 of the National Labor Relations Act, and which would provide that:
  - Employees shall have the right to bring to the attention of an Inspector General or management official information which the employee reasonably believes demonstrates waste, fraud, abuse or mismanagement. It shall be a prohibited personnel practice to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this section of the Inspector General Act.
- ◆ The suggested language would make it improper, for example, to interrogate an employee with respect to whether the employee complained to, or acted as a witness for, an OIG, something which the current language does not reach. <sup>2</sup>
- ◆ To protect former employees (not currently protected by the language of Section 7 of the IG Act), the Congress might want to consider the following:
  - No former employee shall be discriminated against with respect to prospective employment or threatened as a result of having made a

---

<sup>2</sup> The National Labor Relations Act has two sections addressing these matters. One, Section 8 (a) (4) is roughly the equivalent of Section 7 (c) of the Inspector General Act. The other, Section 8 (a) (1), has no counterpart in the Inspector General Act.

complaint, or disclosing information, to an Inspector General or management official, unless the complaint was made or the information disclosed knowing that it was false or constituted a willful disregard for its truth or falsity.

- ◆ The Congress, if it adopts either one or both of the above, or similar language, may want to consider some appropriate penalty for having violated an employee or former employee's right of access.
- ◆ Finally, it should be made clear that a person who, as a witness, provides information to an IG at the request of the IG enjoys the same protections against reprisal as does the person who is considered to be the traditional "whistleblower" and who, at the instance of the employee, brings matters to the attention of the IG. See *Williams v. National Labor Relations Board*, 59 M.S.P.R. at 646.

### ***B. Dearth of Prosecutions***

- ◆ During the approximate four and a half years that I have been Inspector General, I have made nine referrals for prosecutorial consideration, only one of which (11 %) has resulted in a willingness to proceed to prosecution. I am not unmindful of the fact that United States Attorneys have more matters referred to them than they and their staffs can possibly handle, but I am concerned about the message being sent to alleged violators of criminal statutes when, assuming my experience is not uncharacteristic, only eleven percent have to be concerned about any prosecutorial action being taken.
- ◆ In addition, the size of the caseload with which some United States Attorneys are faced, at times causes them to advance reasons for declination of prosecution which lack credibility in the IG community and only serve to dishearten the staffs of OIGs. For example, in a matter involving an alleged violation of the antideficiency statute, two of the reasons advanced for declining prosecution were the Agency denied the allegation and the case did not have "jury appeal." In a case of alleged perjury, which met all of the statutory elements, we were told that perjury is never proceeded against unless the perjured testimony was used to conceal a crime. That is not the statutory test, but it sufficed to result in another declination.

### ***C. Length of Time Taken to Decline Prosecution***

- ◆ In the two most serious matters referred for prosecutorial consideration, one languished under consideration for a period of about 10 months before we were informed of a declination. In the second matter, it took more than a year to resolve by way of a guilty plea and, in the meantime, the Agency had been asked to take no administrative action other than to place the individual on administrative leave.
- ◆ In both cases, the nature of the conduct was such that the individuals had to be removed from their positions and placed on administrative leave pending a final determination as to what

action, if any, should be taken. That action is often necessary when the presence of the individuals in the workplace may result in additional conduct of the kind being investigated; they may, because of their position, be able to interfere with the conduct of the investigation; or, it is necessary to remove the individual in order to restore the confidence of the public in the process and mission of the governmental entity.

- ◆ In one of the cases referred to, the individual was on administrative leave for such a long period that unused annual leave increased in value about 25 % in early 1991 as a result of a substantial pay increase and that increase in value was more than enough to offset the amount for which the individual was liable in restitution.
- ◆ I believe the Congress should consider, among others, the following solutions to this vexing problem:
  - Inspectors General should be freed from the mandate of Section 4 (d) of the Inspector General Act of 1978, as amended, to "report expeditiously to the Attorney General whenever the Inspector General has reasonable cause to believe there has been a violation of Federal criminal law." Given some guidelines by the Attorney General, as supplemented by their own experience, most Inspectors General know whether a matter will be given serious consideration for prosecution. If it is clear that no prosecution will result, an agency should be free to proceed directly to administrative action against the employee without, in effect, placing the employee on an extended paid vacation.
  - If that solution is unpalatable, Congress might want to consider one of the following, among others:
    - Mandating that referrals for prosecution must be responded to within a certain time frame - possibly two to three months, thus freeing governmental entities to take administrative action if no response is received in that time. Certainly within that time frame it should be possible to decide whether the matter submitted is worthy of consideration for prosecutorial action.
    - Establishing a special section of the Department of Justice which will be solely responsible for addressing referrals made by Inspectors General. Such a section might even proceed on a higher percentage of matters referred than my experience dictates.

#### *D. Inadequate Staffing*

- ◆ Offices of Inspector General should be adequately staffed so that no serious backlog of investigations or audits develop. For example, prior to the creation of the OIG, the NLRB did not have an independent audit entity and that fact, among others, led to a number of ills. It is my estimate that it will take about 10 to 15 years to complete the first cycle of the audit universe the OIG established and, given the nature of our audit findings, a decision must be made as to the desirability of waiting that long to determine the totality of the problems facing the NLRB. If that is too long to wait, the size of the audit staff (which now numbers four)

will have to be increased to whatever multiple of the current staff is needed to cut the 10 to 15 years to an acceptable level.

- ◆ Similarly, the investigative backlog of the OIG, as of the time of this SAR is 50 and readers of these SARs are aware that the backlog continues to grow. The failure to take prompt action on complaints which are filed, in my view, acts as a deterrent to employees who might wish to report matters to an OIG to remedy problems which they know are real. Prompt action taken can only serve to enhance the filing of complaints, not to mention the more timely cost savings which will undoubtedly result to the Government.

***E. Failure to Provide Incoming Presidential Appointees with Orientation as to Office of Inspector General Mission***

- ◆ One of the most difficult problems I faced as Inspector General was the relationship with a Presidential appointee of an earlier administration who was never provided any orientation, by an authority higher than me, as to the mission of the OIG or as to why it might be in his best interest to cooperate with the OIG rather than not. I do not know if an orientation by someone in the administration or by the Congress would have resulted in a different relationship, but it could only have helped. A document, sometimes referred to as the "Best Practices Guide," was prepared by OMB prior to the advent of the current administration and the designated entity Inspectors General were assured that incoming Presidential appointees would receive orientation as to the mission of the OIGs, something which, to my knowledge, has never taken place. It is one thing for an IG appointed by the head of an agency to provide that orientation to that agency head - it is quite another for the orientation to be provided under the auspices of the Congress or the White House.

***F. Unwillingness of Agency to Allow OIG Access to Agency Computer Data on Read-Only Basis***

- ◆ Section 6 (a) (1) of the IG Act authorizes IGs to have access to "all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act " There should be no question but that language is broad enough to encompass computerized data, such as financial records and personnel records.
- ◆ When the OIG sought access to those records (see the Semiannual Report for the period October 1, 1992 through March 31, 1993 for a complete recitation of the facts surrounding the request for access and the denial of that request), the Agency principally sought refuge behind the Right of Privacy Act even though 15 of the Agency's 20 systems of records provide access on a "routine use" basis to "Agency officials and employees who have a need for the records or information" to accomplish certain tasks. Two of the remaining 5 systems of records provide a "routine use" for "the appropriate agency, whether Federal, state, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or

enforcing or implementing the statute, rule, regulation, or order " One of the remaining 5 systems of records provide a "routine use" for "Federal, state, or local governmental authority maintaining civil, criminal, or other relevant enforcement information " Another of the remaining 5 systems of records provides a "routine use" for "Qualified personnel for the purpose of conducting management audits, financial audits, or program evaluation " The last of the remaining 5 systems of records provides a "routine use" for "Other agencies, offices, establishments, and authorities, whether Federal, state, or local, authorized or charged with the responsibility to investigate enforce, or implement a statute, rule, regulation, or order, where the record or information indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature "

- ◆ Nineteen of the 20 systems of records shows the security classification as "none" and the twentieth does not even refer to a security classification.
- ◆ Under those circumstances and given the fact that the IG has a statutory "need to know," it would appear that the OIG is entitled to "read-only" access to an agency's computerized records and, if the agency will not make them available, the Congress, through its oversight responsibility, should be interested in rectifying the matter.
- ◆ Moreover, given the budgetary and personnel cutbacks which can reasonably be expected over the next several years, it seems only reasonable to permit OIGs to perform their work in the most efficient and cost-saving manner possible, that is, through electronic search of data rather than the much more cumbersome review of voluminous "hard copy."
- ◆ Finally, although access was offered through the means of the OIG identifying the information sought to the custodians of the records so the custodian could conduct an electronic search and then share the data with the OIG, it would appear that such defeats, rather than enhances, the Right of Privacy Act which the Agency is so interested in championing. If the OIG is permitted "read-only" access from a computer terminal within the OIG, then only the OIG staff knows who the potential subject of an investigation is. Sharing that information with the computer operator of the custodian of the records only serves to broaden the base of persons who know the identity of the subject of the investigation.
- ◆ One final word is in order. Given the history of the Agency having shared with the subject of an investigation the identity of the records which the OIG was reviewing, "read-only" access would enhance the OIG's ability to investigate without any undue interference.

*During the current reporting period, the OIG issued one audit report:*

- ◆ "A Review of the Agency's Budget Formulation Process."

*Included among the audit findings were:*

- ◆ Despite some errors made in the budget request process, the formulation process produced budgets that were fairly effective in obtaining the funding levels needed by the Agency.
- ◆ More accuracy is needed in the formulation of budget estimates for payroll costs. For example, the NLRB, in its budget request to the Congress for Fiscal Year 1993, asked for 19 fewer FTE than in Fiscal Year 1992 and coupled that request with a decrease of \$875,000 for compensation. However, the request for employee benefits, which should have paralleled the request for FTE and compensation and therefore decreased, as did the other two, in actuality increased by \$5,627,000.
- ◆ Moreover, as a result of increases which were "built in" to the Fiscal Year 1993 budget, the Agency should have requested at least \$4 million more for compensation than it had in Fiscal Year 1992. Instead it asked for \$875,000 less for compensation and \$5,627,000 more for employee benefits. While this does not reflect sound budget formulation, if the error of asking for too much for employee benefits had not been made, there would have been insufficient funds earmarked for compensation to pay the 2,088 FTE actually funded in Fiscal Year 1993, let alone the 2,202 FTE authorized by OMB. Stated in other terms, the shortfall in the compensation request was made up for in the exaggerated request for benefits.
- ◆ Historically, the Agency-wide percentage of benefits has been less than 18 cents for each \$1 of compensation. An unusual relationship between compensation and benefits was noted in the budgets submitted to the OMB. In aggregate, the Agency requested an increase of \$13,159,000 for compensation costs and \$9,889,000 for benefits. Therefore each \$1 increase in compensation was accompanied by a 75 cent increase in benefits.
- ◆ Some procedures utilized in formulating cost estimates for compensation, benefits, and miscellaneous expenses were not set forth in a manual or instructional guide. The Agency did not retain the reports from which cost data was extracted to compile budget estimates for compensation and benefits, and some workpapers and financial schedules omitted key information in support of the budgeting process.

*We continued to work on two other audits during this reporting period, concerning: (1) the Agency's program for responding to allegations it receives which could result in criminal or administrative action against Agency employees and (2) the Agency's performance measurements.*

*In addition, during the current reporting period, the OIG:*

- ◆ completed 1 investigation which was referred to a United States Attorney for prosecutive consideration;
- ◆ initiated 21 investigations (16 involving non-programmatic matters and 5 concerning programmatic matters - the latter 5 being referred to the General Counsel); 15 of the former

remain pending in the OIG in the investigative stage (the OIG has a total investigative backlog, as of the end of the reporting period, of 50 cases);

- ◆ closed 15 investigative matters following the completion of administrative action;
- ◆ completed 7 investigations which were referred to the Chairman and/or General Counsel for administrative action, none of which are still pending before them;
- ◆ as noted earlier, referred 5 matters to the General Counsel which were purely programmatic in nature;
- ◆ maintained in a pending status the 1 matter referred to the General Counsel's Office of Equal Employment Opportunity during the October 1, 1989 through March 31, 1990 reporting period;
- ◆ maintained in a pending status 26 of the recommendations and/or suggestions made during the reporting period April 1, 1992 through September 30, 1992;
- ◆ maintained in a pending status 16 of the recommendations and/or suggestions made during the reporting period October 1, 1992 through March 31, 1993;
- ◆ maintained in a pending status 13 of the recommendations and/or suggestions made during the reporting period April 1, 1993 through September 30, 1993; and,
- ◆ maintained in a pending status 3 of the recommendations and/or suggestions made during the reporting period October 1, 1993 through March 31, 1994.

*A summary of the matters pending in the OIG at the end of the reporting period is as follows:*

- ◆ 31 investigations in progress;<sup>3</sup>
- ◆ 2 audits in progress;
- ◆ 16 investigations were opened;
- ◆ 15 investigative matters were closed;
- ◆ 1 matter pending before a United States Attorney from earlier reporting periods;
- ◆ 2 matters referred to United States Attorneys and declined;

---

<sup>3</sup> The chart on page xiii depicts the backlog of investigations in the OIG.



- ◆ 1 matter was referred to the FBI for investigation;
- ◆ 1 matter was referred to the Department of Labor Office of Inspector General for investigation;
- ◆ 2 matters were referred to the Federal Protective Service for investigation;
- ◆ 1 matter pending before the Office of Special Counsel for action;
- ◆ 1 matter pending before the United States Postal Service, Chief Postal Inspector/Inspector General for investigation;
- ◆ 1 matter pending before the General Counsel's Office of Equal Employment Opportunity;
- ◆ 7 matters referred for administrative action during the reporting period, 1 of which remains pending before the General Counsel;
- ◆ 3 other matters were referred to the former General Counsel during the reporting period ending September 30, 1993 and they still remain open;
- ◆ 1 other was referred to the former General Counsel during the reporting period ending March 31, 1993 and it still remains open;
- ◆ 2 other matters were referred to the former General Counsel during the reporting period ending September 30, 1992 and they still remain open;
- ◆ 7 matters were referred to the former General Counsel involving purely programmatic matters; and,
- ◆ 3 purely programmatic matters which had been referred to the former General Counsel were closed.

**AMONG THE MATTERS PENDING BEFORE THE GENERAL COUNSEL  
FOR ADMINISTRATIVE ACTION ARE THE FOLLOWING: <sup>4</sup>**

DATE OF INVESTIGATIVE REPORT	SUBJECT MATTER
8/21/92	ALLEGED IMPROPER PERSONNEL ACTION
9/21/92	ALLEGATION OF FRAUD
1/28/93	ALLEGED MISUSE OF DINERS CLUB CARDS
9/23/93	ALLEGED BRIBERY AND OTHER MISCONDUCT
9/30/93	ALLEGED IMPROPER PERSONNEL ACTION

*Also pending in the OIG at the end of the reporting period were:*

- ◆ 21 non-audit recommendations and/or suggestions pending action by the Chairman and/or General Counsel, 3 of which were made during the reporting period and 19 of which were made during prior reporting periods.

---

<sup>4</sup> Note should be made of the fact that all of the matters in the chart which follows were referred to the former General Counsel or Acting General Counsel.

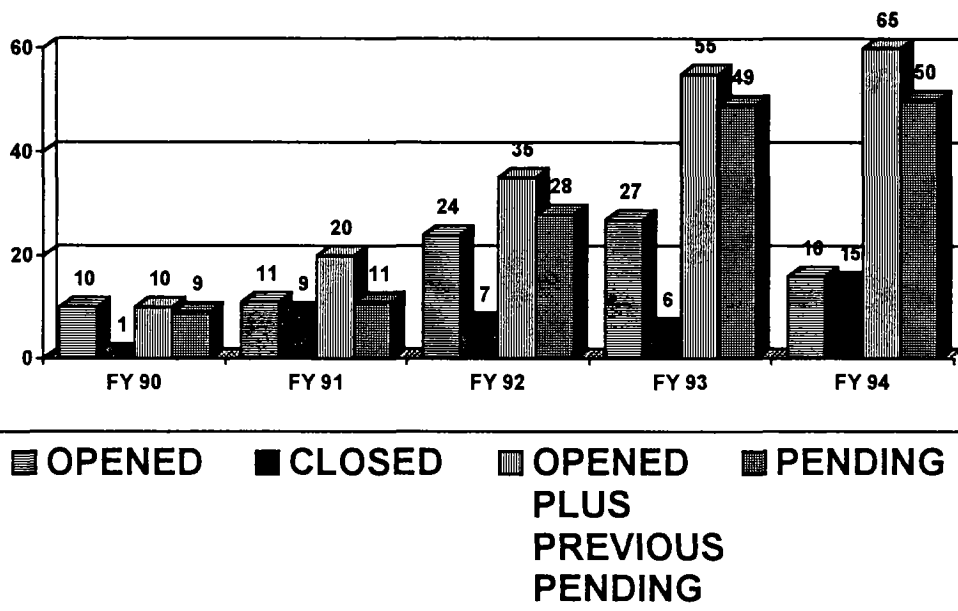
**AMONG THE 21 NON-AUDIT RECOMMENDATIONS  
AND/OR SUGGESTIONS ARE THE FOLLOWING: <sup>5</sup>**

<b>DATE OF RECOMMENDATION OR SUGGESTION</b>	<b>MADE TO WHOM: CHAIRMAN (C) GENERAL COUNSEL (G) OR BOTH (B)</b>	<b>SUBJECT MATTER OF RECOMMENDATION OR SUGGESTION</b>
12/15/92	B	AGENCY RULES BE AMENDED TO MAKE COUNSEL TO IG FOIA OFFICER FOR OIG
2/5/93	B	SOLICITATION OF OIG VIEWS
6/16/93	B	OBLIGATION TO REPORT MATTERS OF INTEREST TO OIG
8/4/93	B	SECURITY OF HOTLINE
8/25/93	G	CONSULTATION WITH OIG PRIOR TO COMMENCING INVESTIGATIONS
9/30/93	G	APPOINTMENT OF DEPUTY GC DURING LAST 3 MONTHS POTENTIALLY CONSTITUTING WASTE

<sup>5</sup> Note should be made of the fact that all of the matters in the chart which follows were referred to the former Chairman and/or General Counsel.

## INSPECTOR GENERAL INVESTIGATIVE BACKLOG <sup>6</sup>

**OFFICE OF INSPECTOR GENERAL INVESTIGATIVE BACKLOG  
EXCLUSIVE OF PURELY PROGRAMMATIC REFERRALS TO THE GENERAL COUNSEL  
By Fiscal Year  
From November 7, 1989 through March 31, 1994**



<sup>6</sup> Among the cases in the backlog, 1 is pending before a United States Attorney, 1 before the Agency's Office of Equal Employment Opportunity, 5 before the General Counsel based upon recommendations made to the former General Counsel for administrative action, 1 has been referred to the Department of Labor/OIG for investigation, 2 have been referred to the General Services Administration/Federal protective Service for investigation, 1 has been referred to the United States Postal Service/OIG for investigation, and 1 has been referred to the Federal Bureau of Investigation. Twenty-eight are pending investigation by the OIG.

## SECTION 1

### DESCRIPTION OF SIGNIFICANT PROBLEMS, ABUSES AND DEFICIENCIES RELATING TO ADMINISTRATION OF PROGRAMS AND OPERATIONS AND DESCRIPTION OF OIG RECOMMENDATIONS FOR CORRECTIVE ACTION (MANDATED BY SECTION 5 (a) (1) AND (2) OF THE ACT)

#### AUDITS

##### "A Review of the Agency's Budget Formulation Process" Case No. OIG-F-6

For a summary statement regarding the results of this Audit Report, see Section 7, "Summary of Each Significant Audit Report in Section 6, (Mandated by Section 5 (a) (7) of the Act)" at page 18 of this SAR.

#### INVESTIGATIONS

Included among the investigations completed during this reporting period were the following:

##### A. Contents of Regional Office Investigative File Allegedly Disclosed to the Charged Party

An OIG Investigation Disclosed That . A Regional Office employee allegedly, for pay, disclosed the contents of an investigative file to a relative who was employed by the Charged Party.

Action Taken . On September 9, 1993, consistent with the IG's statutory responsibility under Section 4(d) of the IG Act to "expeditiously report to the Attorney General whenever [there are] reasonable grounds to believe there has been a violation of Federal criminal law," the investigative results were referred to a United States Attorney. After the United States Attorney declined prosecution and the matter was referred to the former General Counsel for any administrative action deemed appropriate, the former General Counsel informed the OIG that the employee had been advised that: (1) in order to avoid even the appearance of any impropriety, the employee must avoid contact with any cases in which the employee knows a party or has any personal connection with any employee of a party; (2) any future situations which raised the possibility of a conflict of interest should be brought to the Regional Director's attention; and, (3) it was not the responsibility of the employee to provide copies of any public documents to members of the public. The OIG was further advised that the Regional Director had met with the managerial and supervisory staff to: (1) reemphasize the need to be mindful of potential conflict of interest situations which might arise both for professional and clerical employees, and (2) inform them of the need to report any such situation to the Regional Director. Finally, the Regional Director was to conduct a meeting of the entire staff to remind them of their ethical responsibilities and the

need to report any potential conflicts of interest. This matter remains open awaiting a response to a November 23, 1993 OIG memorandum to the former General Counsel.

#### **B. Alleged Unauthorized Use of Agency Telephones to Make International Calls**

**An OIG Investigation Disclosed That** . An unknown person or persons were utilizing Agency telephone equipment to make telephone calls from a Regional Office to a telephone number in Sweden.

**Action Taken** . After investigation disclosed the identity of the owner of the called number, but failed to disclose with sufficient particularity the identity of the person making the unauthorized calls, a report was submitted to the former General Counsel on November 2, 1993 and, on November 26, 1993, the former General Counsel advised that one of the two telephones used had been removed, the second was placed in a joint-use area which lent itself to better monitoring of its use and the Regional Director issued a staff memorandum reiterating the prohibition on unauthorized use of telephones.

#### **C. Alleged Misuse of Government Time**

**An OIG Investigation Disclosed That** . Regional Office managerial and supervisory employees allegedly abused time and attendance regulations and that one of the managerial employees utilized the services of another employee to perform non-Government work during the work day.

**Action Taken** . After referral to the former General Counsel for appropriate administrative action, the former General Counsel advised that the practice of permitting managers and supervisors to take 16 hours of compensatory time without documenting it had been terminated, one employee was reminded that outside activities must be performed on nonwork time, and all employees were told that any non-Government work they perform for employees must be on a strictly voluntary basis.

#### **D. Misuse of Government Property and Personnel**

**An OIG Investigation Disclosed That** . An employee allegedly operated a watch repair business out of an NLRB Regional Office and, in the process, allegedly: (1) caused fellow employees, while on Government time, to assist by: (a) greeting watch repair customers who came to the office to pick up or drop off watches for repair , (b) answering telephone calls from watch repair customers; (c) accepting delivery of watches for repair from package delivery services; and, (d) on occasion, accepting payment from customers; and, (2) during working hours, utilized Government property to meet with watch repair customers.

**Action Taken** . A referral was made to a United States Attorney on January 21, 1994. After declination of prosecution by the United States Attorney, the matter was referred to the Acting General Counsel for whatever administrative action was deemed appropriate. The current General Counsel subsequently advised the OIG that the employee was informed that the conduct in question was not allowed and, if there was a reoccurrence, disciplinary action might result.

## **E. Conflict of Interest and Perjury**

**An OIG Investigation Disclosed That** . A managerial employee allegedly engaged in conduct which gave rise to a conflict of interest when he continued to take part, sometimes significantly, in casehandling matters involving a local union even though he and his spouse jointly owned property together with the president of that local union and the latter's spouse. Assertedly, the managerial employee committed perjury by giving testimony under oath during the investigation which substantially conflicted with the documentary facts gleaned in the investigation.

**Action Taken** After a declination of prosecution by a United States Attorney on January 26, 1994 the matter was referred to the Acting General Counsel on the same date for whatever administrative action was deemed appropriate. On March 31, 1994, the Agency and the subject of the investigation entered into a Settlement Agreement whereby the subject: (1) resigned his managerial position; (2) agreed to a suspension without pay for 45 days; (3) was reassigned to a litigation specialist position, GS-14, Step 10; (4) consented to the issuance of a letter by the Regional Director to interested and/or appropriate persons; (5) consented to accept assignments in other Regions for a period of at least one year after serving the 45-day suspension; (6) acknowledged and reaffirmed that he will not engage in any conduct which might result in an apparent or actual conflict of interest during Agency employment; (7) affirmed that he will fully and truthfully cooperate in any Agency investigation, including those conducted by the Inspector General; (8) acknowledged that he is aware of the ethical requirements of the Agency and Government-wide statutes and regulations and, at the Agency's option, may be asked to review ethics materials provided by the Agency; and, (9) agreed to certain provisions with respect to what might transpire if there is non-compliance with the terms of the Settlement Agreement.

## **GENERAL**

The Federal Managers' Financial Integrity Act (FMFIA) requires the head of each executive agency to annually report to the President and the Congress as to whether his/her Agency's system of internal controls provides reasonable assurance that resources are protected from waste, loss, unauthorized use or misappropriation. During this reporting period, the OIG reviewed the NLRB's FMFIA report for Fiscal Year 1993. We advised management that the Agency's report: (1) conformed with Office of Management and Budget guidelines, (2) was consistent with the prior year's FMFIA statements, and (3) presented known significant events of Fiscal Year 1993. We noted two items in particular for management's consideration.

The Agency's 33 Regional Offices are grouped into five Districts. Each District is headed by an Assistant General Counsel who is assigned to the Division of Operations-Management (DOM) in Headquarters. Each District was identified as an assessable unit under the FMFIA. In addition to monitoring the timeliness of casehandling, the DOM exercises direct supervisory control over the field offices, appraises the performance of Regional Directors, and oversees the quality of case work. One of the event cycles for each District was, "Unfair Labor Practice Case Processing," which would include backpay issues.

Backpay consists of reimbursements to employees illegally discharged or otherwise discriminated against. The moneys are obtained by the NLRB from employers and unions. The event cycle relating to unfair labor practice cases only addressed the subject of backpay in a general manner by requiring that cases should be processed in a manner consistent with the General Counsel's quality standards. The Agency distributed over \$76 million in backpay during Fiscal Year 1992. Field office personnel identify the recipient, compute the amounts, and usually direct the distribution of funds. The objectives of, and the control techniques relating to, backpay should be identified and periodically tested.

The second item related to the Office of Executive Secretary (OES) which had been identified as an assessable unit under the FMFIA. The five Board Members and staffs were included within an event cycle which concerned case processing. Case filings are received and docketed by the OES which assigns the cases to Board Member staffs. The OES maintains a data base for monitoring the timeliness of case processing. Board Members are sent case-monitoring reports which provide information on the status of cases. Therefore, administrative management of the Board's caseload is largely accomplished through the OES. However, the Board Members and staffs are responsible for processing cases in accordance with their procedures and in conformance with specified guidelines. The OES does not have an oversight relationship with the Board staffs similar to that which exists between the DOM and the field offices. Presently, the FMFIA process does not address significant functions being conducted by the Board Members and staffs.

The OIG was informed that the Agency's Management Controls Planning Committee will address these two matters.



**SECTION 2**

**IDENTIFICATION OF EACH SIGNIFICANT RECOMMENDATION  
DESCRIBED IN PREVIOUS SEMIANNUAL REPORTS  
ON WHICH CORRECTIVE ACTION NOT COMPLETED  
(MANDATED BY SECTION 5 (a) (3) OF THE ACT)**

Prior SARs described several recommendations and/or suggestions for corrective action, most of which have been acted upon to completion. Those on which action remains to be taken or completed are treated separately below.

In the spreadsheet denoted Follow3, which is delivered on a monthly basis to the followup managers and which contains non-audit recommendations and suggestions made from as early as May 29, 1992 through January 26, 1994, 21 such recommendations and suggestions remain pending. They are denoted 23, 25, 26.2, 29, 30, 31, 32, 33, 37, 38, 39, 40.1, 40.2, 40.3, 42, 43, 44, 45, 46, 47, and 48.

### SECTION 3

#### SUMMARY OF MATTERS REFERRED TO PROSECUTIVE AUTHORITIES AND RESULTANT PROSECUTIONS AND CONVICTIONS (MANDATED BY SECTION 5 (a) (4) OF THE ACT)

The following matters were: (1) referred for prosecution during earlier reporting periods and remain pending, (2) referred for prosecution during this reporting period, (3) acted upon by prosecutive authorities during the reporting period with the noted results, and/or (4) had administrative action taken after a declination of prosecution:

(1) In OIG-I-57, on July 10, 1992, we referred an alleged act of perjury to the United States Attorney in Ft. Worth, Texas. This case remains pending before the United States Attorney.

(2) On March 5, 1993, with respect to OIG-I-79, we referred a matter to a United States Attorney alleging potential violations of 18 United States Code Sections 208 and 1001. Since then, other referrals were made based on other developments. The case concerns a Regional Office official who allegedly continued to act upon matters involving a Local Union, even though the President of that Local Union, the Regional Office official, and their respective spouses jointly owned real estate. Also involved is an allegation that the Regional Office official allegedly received gratuities from the Union or the President of that Union and allegedly committed perjury in providing an affidavit during the OIG investigation. The United States Attorney declined prosecution on January 26, 1994 and, on the same date, the matter was referred to the Acting General Counsel for whatever administrative action was deemed appropriate. The matter has been resolved by the execution of a Settlement Agreement between the Agency and the subject of the investigation, the details of which are set forth in Section 1.

(3) A referral was made to a United States Attorney in OIG-I-64 on January 21, 1994 concerning an employee who allegedly operated a watch repair business out of an NLRB office and, in the process, allegedly: (1) caused fellow employees, while on Government time, to assist him by: (a) greeting watch repair customers who came to the office to pick up or drop off watches for repair; (b) answering telephone calls from watch repair customers; (c) accepting delivery of watches for repair from package delivery services; and (d) on occasion, accepting payment from customers; and, (2) during working hours, utilized Government property to meet with watch repair customers. After declination of prosecution by the United States Attorney, the matter was referred to the Acting General Counsel for whatever administrative action was deemed appropriate and the employee, as noted in Section 1, was cautioned about the conduct in question.

**SECTION 4**

**SUMMARY OF RESTITUTION MADE OR FINES PAID  
AS A RESULT OF CIVIL OR CRIMINAL INVESTIGATIONS  
AND/OR AUDITS  
(NOT MANDATED BY THE ACT)**

Although not mandated by any provision of the Act, this section serves as a statistical summary of all amounts restituted or fines paid to the government as a result of investigations, both criminal and civil, or audits.

**AMOUNTS RESTITUTED DURING REPORTING PERIOD**

**Audit Based Restitutions:**

FY 1994: none

**Investigation Based Restitutions and/or fines - Civil:**

FY 1994: none

**Investigation Based Restitutions and/or fines - Criminal:**

FY 1994: none

**SECTION 5**

**SUMMARY OF EACH REPORT TO ESTABLISHMENT HEAD**  
**CONCERNING INFORMATION OR ASSISTANCE**  
**UNREASONABLY REFUSED OR NOT PROVIDED**  
**(MANDATED BY SECTION 5 (a) (5) OF THE ACT)**

Section 5 (a) (5) of the Act requires the IG to include in a SAR a summary of each report made to the head of the establishment under Section 6 (b) (2) during the reporting period. Section 6 (b) (2), in turn, authorizes an IG to report to the head of the establishment whenever information or assistance requested under subsection (a) (1) or (3) is, in the judgment of an IG, unreasonably refused or not provided. The subsections referred to authorize an IG to have access to, in effect, all documentation or other materials available to the establishment which relate to programs and operations with respect to which the IG has responsibilities under the Act, and authorize an IG to request such information or assistance as may be necessary for carrying out the duties and responsibilities provided by the Act from any Federal, State, or local governmental agency or unit. Finally, Section 5 (d) of the Act provides that an IG shall report immediately to the head of the establishment involved whenever the IG becomes aware of particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of programs and operations of the establishment. The IG's report is then to be transmitted by the head of the establishment to the appropriate committees or subcommittees of Congress within 7 calendar days, together with a report by the head of the establishment containing any appropriate comments.

Given the fact that reports of non-compliance under subsection (a) (1) or (3) are to be addressed to the head of the establishment, and both the head of the establishment, that is, the former Chairman and the former General Counsel, are the persons of whom the requests were made, there is no recourse but to include this material in this Report.

The following was reported in the immediately preceding SAR and is only repeated here by way of background.

The material from the previous SAR follows:

On August 16, 1993, a request for information was made of the Chairman and General Counsel concerning the research that had been relied upon to refund \$16,671.39 to an individual, funds which were the subject of an OIG investigation. When no response was forthcoming, acknowledging that the first request may not have been interpreted as such, the OIG, on October 6, 1993, made another request for information.

In my second request, I noted that "the refund of \$16,671.39, a not insignificant amount, may have warranted a written justification. If so, I would like a copy of that document. If not written, I would like all citations of authority upon

which the refund was made. I would also like to know if the refund was made spontaneously by [the Finance Branch Chief] or if it was in response to a request. If the latter, I would like a copy of any such request(s) as well as the response(s)."

The only responses received by the OIG up to the date of issuance of (the immediately preceding) SAR were: (1) a call by the Finance Branch Chief to the OIG Supervisory Auditor in which the former asked what documentation the OIG had so he could determine what he should give us, and (2) a meeting among the Finance Branch Chief, the Supervisory Auditor and the IG, in which the same request was made by the Finance Branch Chief. He was informed that the OIG request was very specific and his compliance with the OIG request was not dependent upon learning what information the OIG already had. He was also informed that we wanted an answer as soon as possible.

Why it was necessary for the Finance Branch Chief to find out what the OIG already had is a mystery as he indicated that he had very little by way of documentation and that the money was refunded in the belief that he had no basis for not refunding it. Perhaps an inquiry of the OIG as to whether it was still conducting a criminal investigation might have supplied a basis.

As of the date of publication of the immediately preceding SAR, the OIG had not received any further response. Since then, the only response received by the OIG was one from the Acting General Counsel who, in effect, suggested that if the OIG divulged what it was investigating in each case, it would be kept informed of all relevant information in the possession of management. That suggestion was responded to, but no answer received as of the time of this SAR.

Pertinent portions of that OIG response to the former Chairman and Acting General Counsel follow: <sup>7</sup>

### **BACKGROUND**

I suppose the most notorious case which raised the issue of the propriety of the OIG telling either the Chairman and/or General Counsel about investigations that are underway is the Resident Office (RO) matter. In a nutshell, I had

---

<sup>7</sup> All footnotes contained within the quoted material are from the original memorandum even though they are numbered consecutively with the other footnotes in this SAR.

called the Regional Director to ask if he would ascertain whether the staff of the RO would be in the office during a given week, as I did not want to travel that distance only to find that most professionals would not be available to me. When he asked what I was coming to the office for, I responded that I did not believe it was a good idea to disclose that information. When he asked why, I said that if the investigation turned sour for some reason and I did not tell him why I was coming, then the fault would be mine and mine alone. If, however, I told him the nature of what I was doing and the same occurred, he would then potentially be subject to inquiries as to: (a) whether he knew I was going to the RO to investigate a case, (b) did he know the subject matter of my investigation, and (c) what did he do with that information. I suggested that it was in his own best interest not to know why I was going to the RO. Not being satisfied with that information, he reported the conversation to the Division of Operations-Management (D of O-M) and I then got a call from former Associate General Counsel. We had the same kind of conversation with the same end result. That is, he was unhappy with the answers he was given and reported the matter to the (former) General Counsel. I was then invited to discuss the matter with the (former) General Counsel. I gave the (former) General Counsel the same responses I had given earlier to the RD and Associate General Counsel, but reminded him that when, in my discretion, I felt it was necessary to apprise him of what was transpiring that I would make a full disclosure as I had done already in the past. I reminded him that when I was conducting the investigation concerning (a former employee):

2. As the investigation proceeded, I either gave the (former) General Counsel copies of all key affidavits or summarized the information for him;

I informed the (former) General Counsel that, in my view, such action on my part was necessary, because:

1. The identity of the person and the key position he held made it imperative that the (former) General Counsel know such an investigation was underway;

2. The nature of the allegations was such that the (former) General Counsel had to have under active consideration what he would do if the investigation began to support those allegations; i.e.,

a. Was the individual doing anything to foil the investigation and, if so, what should be done about it; <sup>8</sup>

---

<sup>8</sup> More than one such attempt was made.

- b. Was the continued presence of the individual making it possible for him to engage in other unlawful acts;
- c. Was the continued presence of the individual making it possible to destroy evidence before I could get to it;
- d. Who might replace the individual should that become necessary; and,
- e. Who were the individuals, if any, working in concert with the subject of the investigation, and:
  - i. What should be done about them, if anything; and,
  - ii. Did their conduct suggest that they might not be suitable, temporary replacements for the subject of the investigation.

3. As the investigation progressed, the (former) General Counsel would have to decide, based on some quantum of evidence which only he could determine, whether he was going to permit the subject of the investigation to remain in place or put him on administrative leave. <sup>9</sup>

I concluded by telling the former General Counsel that (the Resident Office in question) was not that kind of case in my view and, therefore, did not warrant the kind of disclosure they were requesting. For whatever reason, and we can all speculate about what motivated the Office of General Counsel, (an) Assistant General Counsel was dispatched to investigate the case before I could get there and the day before I was to leave to commence my investigation, I was notified by (the) then Deputy Associate General Counsel that they had already investigated the case. <sup>10</sup>

---

<sup>9</sup> At a later time, I suggested to the former Chairman and former General Counsel that they apprise me of their consideration of persons for Presidential SES awards so I might apprise them of whether any OIG investigative material might indicate a contrary action on their part. That recommendation was adopted.

<sup>10</sup> In the process of the D of O investigation, one of the General Counsel's Special Counsels asked the U. S. Attorney if his office had any objection to the D of O investigating the matter. When a negative reply was received, the D of O, improperly, took the answer to mean the U. S. Attorney was declining prosecution.

The rest is history, including: (a) the improper grant of immunity to everyone in the RO, (b) through poor legal draftsmanship or a lack of understanding of criminal procedures, a grant of immunity against prosecution for perjury to the subject of the investigation, (c) my subsequent SAR, in which I detailed the events, and (d) an invitation to the (former) Chairman and former General Counsel to visit with the staff of the Senate Committee on Governmental Affairs.

### **THE CASE AT ISSUE**

First, if I have not already done so in other memorandums, I want to set the record straight about the reasons for my recommendation. It was not solely prompted, as is suggested in paragraph 2 of (the) Acting General Counsel's memorandum of February 10, "by the Finance Branch's act of refunding funds to (the subject of the investigation) in reimbursement for his detail to Washington without informing" the OIG.

It was also prompted by:

1. The OIG learning, in the process of taking an affidavit, that (the subject of the investigation) had reimbursed the Agency for the amounts he had claimed on his vouchers; <sup>11</sup>
2. The Director of Administration, while knowing full well that a criminal investigation was pending, submitted a request for an opinion to the Comptroller General without informing the OIG of the submission; <sup>12</sup>
3. The OIG only finding out about the submission to the Comptroller General by accident and, when it asked to see the draft of the submission,

---

<sup>11</sup> Had the OIG been informed of that fact, it would have been an important piece of information in prioritizing the investigative workload, a matter of concern to all of us.

<sup>12</sup> Had the OIG been apprised of the proposed submission, the OIG might have, upon the conclusion of the investigation, joined in the submission to the Comptroller General or concluded that the proper course of action was that mandated by the statute - a submission to the Attorney General.

It has been asserted that there was nothing wrong with the submission to the Comptroller General. The Comptroller General disagreed with that assertion when it learned the OIG was conducting a criminal investigation. Further, if there were nothing wrong with the submission, why was it kept from the OIG?



learning for the first time, that it had been drafted by (the subject of the investigation) and submitted to the Comptroller General virtually unchanged; <sup>13</sup>

4. After the OIG learned of the submission and suggested that the Comptroller General be informed of the pendency of the criminal investigation, the OIG was informed that the Comptroller General, pursuant to the OIG suggestion, had been so informed, but the Comptroller General informed the OIG that it had only been told that we were "conducting some kind of audit."

All of the above suggests that the OIG, at least in the case of (the subject of the investigation), is treated as an entity which must be kept in the dark about what is transpiring and not, for example as the investigative arm of not only the Agency, but also the Congress. One might conclude from what has transpired that the OIG is not only the messenger who must be killed, but every effort will be made to keep it from getting the message in the first place.

As noted earlier, it is against this background that I must consider any proposal that is being made. Will it result in a better relationship between the OIG and the Office of General Counsel and, at the same time, enhance the OIG's ability to eliminate waste, fraud and abuse? The elimination of waste, fraud and abuse is a goal, I am certain, that we all share.

### **MY PRESENT CONCERNS AND MOTIVATIONS**

They consist of:

1. All those things that I laid out for the former General Counsel when we were discussing (the Resident Office);
2. The desire to protect "whistleblowers," whether they be a Presidential appointee, Division Head, Regional Director or GS-2 employee. If I cannot do that, my effectiveness as an IG is substantially diminished. A substantial number of the complaints we receive come from persons who wish to remain anonymous. <sup>14</sup> The fact that they choose to remain anonymous speaks volumes about their concerns as to what might happen if their identities become

---

<sup>13</sup> Among other things, one might conclude from the fact that the subject of the investigation was informed of what the OIG was inquiring into (see *infra*) and the fact that he was permitted to draft the submission to the Comptroller General, that the subject was being given preferential treatment.

<sup>14</sup> If it had not been for anonymous complainer(s), it is likely  would still be employed by the Agency. Even after the result achieved, I find it noteworthy that no one has ever come forward to say, "That was me," under circumstances where one might speculate that substantial numbers would come forward to say so.

known. If disclosing the fact of an investigation as suggested by (the) Acting General Counsel to the General Counsel or Division Head may make it easier to determine the identity of the complaining party, I would want to avoid that at all cost. In addition, there has been altogether too much adverse publicity in the media about some Federal governmental entities, including OIGs, conducting investigations into the conduct of complaining parties. Whatever else you can say about the problems of the NLRB, we do not have to add that to our plate.

3. The independence of the OIG is another issue to be considered. Is that independence lessened by our making disclosures of the type suggested? The former General Counsel did not hesitate to tell me on one occasion when I was conducting a high profile investigation that: (1) I did not have authority to do so (I did); (2) that the allegations lacked merit (the investigation later proved otherwise); and (3) when I sought evidence from the D of O-M personnel, I should do so through "friendly chats" and not take affidavits (contrary to OIG and General Counsel policy).

I know neither one of you would ever do any such thing, but I have to be concerned about not only the independence issue, but the appearance of independence and will some future Chairman or General Counsel avail him/herself of the opportunity to make such requests just because I divulge the fact of an investigation.

### MY PREFERENCE

Given all of the above, I believe it best that I retain the discretion to inform the Chairman and/or General Counsel about the commencement of an investigation and the details of the developing evidence based upon the factors indicated earlier. If that is the ultimate conclusion, I would like to know what other factors you would use in my exercise of that discretion.

Despite my preference, I am, of course, willing to explore other alternatives. It is not an easy issue to resolve. I am, however, willing to open a dialogue.

Please remember that the Division of Administration did not withhold the information in question, because: (1) they did not know I was conducting an investigation or, (2) as suggested by (the) Acting General Counsel . . . , the "lapse . . . was understandable . . . in view of (sic) time that had passed since inception of the investigation." They knew all, told all, and did it shortly after the commencement of the investigation as witnessed by the following:

The complaint was filed on February 19, 1992. On March 9, 1992, Supervisory Auditor informed of the fact that the OIG would be investigating allegations against (the subject of the investigation); that we wanted access to

certain records to which only Finance Branch personnel had access; and, in the interest of keeping to a minimum the number of people who knew about the investigation, that we would make our requests for records directly to him and not his staff. asked if he could tell what we were doing and he was told that we would never interfere with him communicating with his chain of command and that he was free to tell (his superior) what he knew. The next is a quote from 's affidavit of June 15, 1992.

As noted above, I had 1 or 2 conversations with (the subject of the investigation) about this matter. He called me the first time. He wanted to know if I knew what the IG thought he had done wrong. I said I did not have a clue, but the OIG was taking every voucher he had submitted, but I did not know what the OIG was looking at. I do not recall any other conversation this first call. At some point, I supplied (the Supervisory Auditor) with (the subject of the investigation)'s vouchers and told about having done so the same day, right after (the Supervisory Auditor) left my office. I believe it was about a week or two later that I got the first call from (the subject of the investigation). (Emphasis added.)

About two weeks after the first call, (the subject of the investigation) called me again and said he had been looking at his voucher containing the receipts for groceries and other things and he said he noticed amounts, for example, for fire logs and paper products. He asked if I thought he should reimburse the government for those amounts. I said I did not think that those items were what prompted the investigation, but it might be a good idea to pay us back for those items as they are probably not the kinds of things which should be claimed. I am sure he asked again what the OIG was investigating and I said I still had no idea, but I said the OIG was still collecting vouchers.

(In original.)

Today, came to my office She asked me if I had gotten copies of my affidavits. I said I did. She asked if she could see them. I asked if that was okay. She said I could show my affidavits to anyone I wanted and I gave them to her. She still has them.

On April 8, 1992, (the subject of the investigation) reimbursed the Agency in the amount of \$80.04; on April 17, he reimbursed an additional \$497.71; and, on May 26, 1992, he sent the Agency a check for \$17,532.68.<sup>15</sup>

---

<sup>15</sup> I can only assume that (the subject of the investigation), having been told what documents the OIG was looking at, even if professes not to have told (the subject of the investigation) the issues we were looking into, began looking at the vouchers he had already submitted and concluded that perhaps he was in error in his original submissions.

On May 22, 1992, [redacted] submitted (the subject of the investigation)-drafted request for an opinion to the Comptroller General.

On August 21, 1992, [redacted] returned \$16,671.39 of the \$18,110.43 to (the subject of the investigation), retaining \$1,439.04 of the amount originally claimed.

In sum, from March 9, 1992 (when the OIG first divulged to [redacted] that an investigation was underway) until August 21, 1992, a period of less than five and a half months, (the subject of the investigation) was told that the OIG was investigating and what documents we were looking at; presumably he looked at his submissions again and decided to refund three different sums based on what the (sic) found and what advice he got from [redacted], a request for an opinion of the Comptroller General was made; and, all but \$1,439.04 was refunded to him.

The final point of all this is, whether the OIG discloses what we are investigating to the Chairman and General Counsel or not, there is an obligation to inform the OIG of what it needs to know.<sup>16</sup> There is an internal Agency regulation requiring cooperation with, among others, the OIG in its conduct of investigations and audits. I suppose an argument could be made that under all the circumstances outlined above there was a violation of that internal regulation.

B.L.

After sending the above memorandum to the former Chairman and Acting General Counsel, the OIG received no response.

---

<sup>16</sup> It does not take too long after we make our first inquiry or take our first affidavit for most involved people to know we are conducting an investigation or audit. That is the nature of the beast. It is almost impossible for us to conduct a totally secret investigation, but we hope to conduct them in a way so that the top ranking managers of this Agency can say, "We did not know the investigation was going to be conducted until it was underway and we did nothing to impede it, rather we fully cooperated with the OIG at all times and made full disclosures of relevant material even when not asked."

**SECTION 6**

**LIST OF EACH AUDIT REPORT ISSUED**  
**(MANDATED BY SECTION 5(a)(6) OF THE ACT)**

**Dollar Value (in thousands of \$)**

<b><u>AUDIT</u></b> <b><u>BY</u></b> <b><u>TYPE</u></b>	<b><u>REPORT</u></b> <b><u>NUMBER</u></b>	<b><u>QUESTIONED</u></b> <b><u>COSTS</u></b>	<b><u>UNSUPPORTED</u></b> <b><u>COSTS</u></b>	<b><u>RECOMMENDATIONS</u></b> <b><u>THAT FUNDS BE PUT</u></b> <b><u>TO BETTER USE</u></b>
Financial	OIG-I-6	- 0 -	- 0 -	- 0 -

## SECTION 7

### SUMMARY OF EACH SIGNIFICANT AUDIT REPORT IN SECTION 6 (MANDATED BY SECTION 5 (a) (7) OF THE ACT)

#### "A REVIEW OF THE AGENCY'S BUDGET FORMULATION PROCESS" CASE NO. OIG-F-6

This audit was performed to assess the policies and procedures governing budget formulation at the National Labor Relations Board during Fiscal Years 1992 and 1993. We reported one finding and made two recommendations for corrective action.

Despite some errors made in the budget request process, the formulation process produced budgets that were fairly effective in obtaining the funding levels needed by the Agency. Budget formulation was conducted in accordance with the applicable policies and procedures prescribed by the Office of Management and Budget (OMB). Workload data regarding unfair labor practice and representation cases was strongly linked to the Agency's budgets. The accomplishments of the Agency along with performance indicators were also presented. Initiatives for improving Agency operations were set forth in the budgets.

However, more accuracy is needed in the formulation of budget estimates for payroll costs. For example, the NLRB, in its budget requests to the Congress for Fiscal Years 1992 and 1993, asked for 19 fewer FTE in Fiscal Year 1993 and coupled that request with a decrease of \$875,000 for compensation. However, the request for employee benefits, which should have paralleled the request for FTE and compensation and therefore decreased as did the other two, in actuality increased by \$5,627,000. FTE is the total hours to be worked divided by the number of compensable hours applicable to a fiscal year.

As a result of increases which were "built in" to the Fiscal Year 1993 budget, the Agency should have requested at least \$4 million more for compensation than it had in Fiscal Year 1992. Instead it asked for \$875,000 less for compensation and \$5,627,000 more for employee benefits. While this does not reflect sound budget formulation, if the error of asking for too much for employee benefits had not been made, there would have been insufficient funds earmarked for compensation to pay the 2,088 FTE actually funded in Fiscal Year 1993, let alone the 2,202 FTE authorized by OMB. Stated in other terms, the shortfall in the compensation request was made up for in the exaggerated request for benefits.

An analysis of the Fiscal Year 1992 and 1993 budgets submitted to the OMB disclosed the following:

	FY 1991 <u>Request</u>	FY 1992 <u>Request</u>	FY 1993 <u>Request</u>	Increase From 1991 to 1993
Benefits	\$ 17,019,000	\$ 23,640,000	\$26,908,000	\$9,889,000
Compensation	\$103,838,000	\$110,612,000	\$116,997,000	\$13,159,000

We recognize that each budget request submitted to the OMB is for that specific fiscal year and includes estimated obligations for prior years. Nevertheless, since compensation and benefits are directly linked, it is appropriate to examine their relationship and aggregate increases for Fiscal Years 1992 and 1993.

Historically, the Agency-wide percentage of benefits has been less than 18 cents for each \$1 of compensation. An unusual relationship between compensation and benefits was noted in the budgets submitted to the OMB. In aggregate, the Agency requested an increase of \$13,159,000 for compensation costs and \$9,889,000 for benefits. Therefore each \$1 increase in compensation was accompanied by a 75 cent increase in benefits.

Budget personnel did not retain the reports from which cost data was extracted to compile budget estimates for compensation and benefits. Workpapers and budget schedules which could source the origin of data and provide a trail of the procedures used to formulate the budget estimates were not always maintained. Some workpapers and schedules could not be analyzed because key data and supplemental information had been omitted, and therefore, budget estimates could not be corroborated.

The OIG's review of the NLRB's compliance with Section 2 of the Federal Managers' Financial Integrity Act (OIG-AMR-14 dated February 23, 1993) noted that the Budget Formulation and Budget Execution assessable units did not have a current desk manual. In response to recommendation 6 of that audit report, the Agency stated: "The Budget Branch plans to issue a consolidated desk manual that incorporates the clerical and professional tasks covering the Budget Formulation and Budget Execution Assessable Units." In connection with this audit concerning budget formulation we were provided a draft copy of a desk manual dated June 24, 1991. Our review of the manual and discussions with responsible officials disclosed significant procedures which were not documented.

- Procedures for estimating compensation expenses were different for field versus non-field personnel. The distinction was not made in the draft desk manual. The formulation of non-field employee compensation included the use of schedules showing each employee, their grade, and step within that grade. The statutory salary for the grade and step was then entered onto the schedule. Compilation of estimated costs for field employees was based on a daily rate multiplied by workdays in the year and adjusted for within grades, promotions, appointments and separations.
- Procedures for estimating benefits were not documented in the draft desk manual.

- Procedures for estimating miscellaneous expenses such as equipment rental were not documented in the draft desk manual. Miscellaneous expenses are referenced in the manual on page 18.

This audit takes note of changes which occurred in the financial systems utilized by the Agency. The accounting system was replaced twice during the period October 1990 to August 1991, and the payroll system was converted in May 1991. These changes complicated the budgeting process at the Agency. Miscalculation of budget estimates can cause a funding surplus, or a deficit which could: (1) preclude the Agency from staffing vacancies, (2) necessitate the furloughing of employees, and/or (3) require a reprogramming of funds from another account (such as travel or court reporting services) to meet payroll costs. We recommended that procedures for formulating estimates be documented for instructional purposes and that the Budget Branch maintain documentary evidence which supports the formulation process.

Management agreed with the two recommendations in this report, but did take issue with certain auditing procedures utilized during this review. These auditing procedures pertained to our analysis of financial data to ascertain the relationship between individual items within the budget and to determine the consistency of estimates between fiscal years. We are confident that the OIG utilized sound auditing procedures during the conduct of this audit. As management accepted the recommendations, the deficiencies will be corrected.



**SECTION 8**

**STATISTICAL TABLES SHOWING TOTAL NUMBER OF AUDIT REPORTS  
AND TOTAL DOLLAR VALUE OF QUESTIONED AND UNSUPPORTED COSTS  
(MANDATED BY SECTION 5 (a) (8) OF THE ACT) <sup>17</sup>**

	<b><u>Dollar Value (thousands of \$)</u></b>		
	<b><u>NUMBER</u></b>	<b><u>QUESTIONED COSTS</u></b>	<b><u>UNSUPPORTED COSTS</u></b>
A. Reports for which no management decision had been made by the beginning of the reporting period	- 0 -	- 0 -	- 0 -
B. Reports issued during the reporting period	- 1 -	- 0 -	- 0 -
<b>Subtotal (A + B)</b>	- 0 -	- 0 -	- 0 -
C. For which a management decision was made during the reporting period:			
(i) Disallowed costs	- 0 -	- 0 -	- 0 -
(ii) Costs not disallowed	- 0 -	- 0 -	- 0 -
D. For which no management decision has been made by the end of the reporting period	- 0 -	- 0 -	- 0 -

---

17 The several definitions applicable to Sections 8 and 9 of this Semiannual Report may be found in Appendix A.

**SECTION 9**

**STATISTICAL TABLES SHOWING TOTAL NUMBER OF AUDIT REPORTS  
AND DOLLAR VALUE OF RECOMMENDATIONS  
THAT FUNDS BE PUT TO BETTER USE  
(MANDATED BY SECTION 5 (a) (9) OF THE ACT)**

	<b><u>NUMBER</u></b>	<b><u>Dollar Value (thousands of \$)</u></b> <b><u>RECOMMENDATIONS THAT</u></b> <b><u>FUNDS BE PUT TO BETTER USE</u></b>
A. Reports for which no management decision had been made by the beginning of the reporting period	- 1 -	\$162.3 <sup>18</sup>
B. Reports issued during the reporting period	- 0 -	- 0 -
<b>Subtotal (A + B)</b>	- 1 -	- 162.3 -
C. For which a management decision was made during the reporting period:		
(i) Recommendations agreed to by management	- 1 -	- 162.3 -
(ii) Recommendations not agreed to by management	- 0 -	- 0 -
D. For which no management decision has been made by the end of the reporting period	- 0 -	- 0 -

---

<sup>18</sup> This amount is attributable to the audit concerning Controls over Capitalized Property.

**SECTION 10**

**SUMMARY OF EACH AUDIT REPORT ISSUED  
BEFORE REPORTING PERIOD  
FOR WHICH NO MANAGEMENT DECISION MADE  
BY END OF REPORTING PERIOD  
(MANDATED BY SECTION 5 (a) (10) OF THE ACT)**

None.

**SECTION 11**

**DESCRIPTION AND EXPLANATION OF REASONS FOR ANY  
SIGNIFICANT REVISED MANAGEMENT DECISION  
MADE DURING THE REPORTING PERIOD  
(MANDATED BY SECTION 5 (a) (11) OF THE ACT)**

During the reporting period, no significant revised management decisions were made.

**SECTION 12**

**INFORMATION CONCERNING ANY SIGNIFICANT MANAGEMENT DECISIONS  
WITH WHICH INSPECTOR GENERAL IS IN DISAGREEMENT  
(MANDATED BY SECTION 5 (a) (12) OF THE ACT)**

None.

## SECTION 13

### REVIEW OF EXISTING AND PROPOSED LEGISLATION AND REGULATIONS RELATING TO PROGRAMS AND OPERATIONS AND RECOMMENDATIONS CONCERNING THEIR IMPACT ON ECONOMY AND EFFICIENCY IN THE ADMINISTRATION OF PROGRAMS AND OPERATIONS ADMINISTERED OR FINANCED BY DESIGNATED ENTITY OR THE PREVENTION AND DETECTION OF FRAUD AND ABUSE (MANDATED BY SECTION 4 (a) (2) OF THE ACT)

Section 4 (a) of the Act requires the IG to review existing or proposed legislation and regulations and to make recommendations in the semiannual report concerning their impact on the economy and efficiency of the administration of the Agency's programs and operations and on the prevention and detection of fraud and abuse. Among those items reviewed during this reporting period were the following which fall within the mandate of the above-cited section of the Act.

#### LEGISLATION SUGGESTED BY THE OIG:

The material below was also set forth in the IG Summary section and is only repeated here should an interested party only look to this section for legislation suggested by the OIG.

#### *A. Inadequate Protection for Complainants and Witnesses*

- ◆ Although Section 7 (b) and (c) of the Act provide some protection for complainants and witnesses by providing that: (1) the IG shall not disclose the identity of an employee without the employee's consent, unless disclosure is unavoidable; and, (2) no personnel action can be taken or threatened against an employee as a reprisal for making a complaint or disclosing information, unless the complaint was made or the information disclosed knowing that it was false or constituted a willful disregard for its truth or falsity, I believe those safeguards are inadequate for the following reasons.
- ◆ While there is implicit in such statutory language a "right of access" to Offices of Inspector General, I feel the language should go further and provide an explicit "bill of employee rights" similar to that contained in Section 7 of the National Labor Relations Act, and which would provide that:
  - Employees shall have the right to bring to the attention of an Inspector General or management official information which the employee reasonably believes demonstrates waste, fraud, abuse or mismanagement. It shall be a prohibited personnel practice to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed by this section of the Inspector General Act.

- ◆ The suggested language would make it improper, for example, to interrogate an employee with respect to whether the employee complained to, or acted as a witness for, an OIG, something which the current language does not reach.<sup>19</sup>
- ◆ To protect former employees (not currently protected by the language of Section 7 of the IG Act), the Congress might want to consider the following:
  - No former employee shall be discriminated against with respect to prospective employment or threatened as a result of having made a complaint, or disclosing information, to an Inspector General or management official, unless the complaint was made or the information disclosed knowing that it was false or constituted a willful disregard for its truth or falsity.
- ◆ The Congress, if it adopts either one or both of the above, or similar language, may want to consider some appropriate penalty for having violated an employee or former employee's right of access.
- ◆ Finally, it should be made clear that a person who, as a witness, provides information to an IG at the request of the IG enjoys the same protections against reprisal as does the person who is considered to be the traditional "whistleblower" and who, at the instance of the employee, brings matters to the attention of the IG. See *Williams v. National Labor Relations Board*, 59 M.S.P.R. at 646.

### ***B. Dearth of Prosecutions***

- ◆ During the approximate four and a half years that I have been Inspector General, I have made nine referrals for prosecutorial consideration, only one of which (11 %) has resulted in a willingness to proceed to prosecution. I am not unmindful of the fact that United States Attorneys have more matters referred to them than they and their staffs can possibly handle, but I am concerned about the message being sent to alleged violators of criminal statutes when, assuming my experience is not uncharacteristic, only eleven percent have to be concerned about any prosecutorial action being taken.
- ◆ In addition, the size of the caseload with which some United States Attorneys are faced, at times causes them to advance reasons for declination of prosecution which lack credibility in the IG community and only serve to dishearten the staffs of OIGs. For example, in a matter involving an alleged violation of the antideficiency statute, two of the reasons advanced for declining prosecution were the Agency denied the allegation and the case did not have "jury

---

<sup>19</sup> The National Labor Relations Act has two sections addressing these matters. One, Section 8 (a) (4) is roughly the equivalent of Section 7 (c) of the Inspector General Act. The other, Section 8 (a) (1), has no counterpart in the Inspector General Act.

appeal." In a case of alleged perjury, which met all of the statutory elements, we were told that perjury is never proceeded against unless the perjured testimony was used to conceal a crime. That is not the statutory test, but it sufficed to result in another declination.

### *C. Length of Time Taken to Decline Prosecution*

- ◆ In the two most serious matters referred for prosecutorial consideration, one languished under consideration for a period of about 10 months before we were informed of a declination. In the second matter, it took more than a year to resolve by way of a guilty plea and, in the meantime, the Agency had been asked to take no administrative action other than to place the individual on administrative leave.
- ◆ In both cases, the nature of the conduct was such that the individuals had to be removed from their positions and placed on administrative leave pending a final determination as to what action, if any, should be taken. That action is often necessary when the presence of the individuals in the workplace may result in additional conduct of the kind being investigated; they may, because of their position, be able to interfere with the conduct of the investigation; or, it is necessary to remove the individual in order to restore the confidence of the public in the process and mission of the governmental entity.
- ◆ In one of the cases referred to, the individual was on administrative leave for such a long period that unused annual leave increased in value about 25 % in early 1991 as a result of a substantial pay increase and that increase in value was more than enough to offset the amount for which the individual was liable in restitution.
- ◆ I believe the Congress should consider, among others, the following solutions to this vexing problem:
  - Inspectors General should be freed from the mandate of Section 4 (d) of the Inspector General Act of 1978, as amended, to "report expeditiously to the Attorney General whenever the Inspector General has reasonable cause to believe there has been a violation of Federal criminal law." Given some guidelines by the Attorney General, as supplemented by their own experience, most Inspectors General know whether a matter will be given serious consideration for prosecution. If it is clear that no prosecution will result, an agency should be free to proceed directly to administrative action against the employee without, in effect, placing the employee on an extended paid vacation.
  - If that solution is unpalatable, Congress might want to consider one of the following, among others:
    - Mandating that referrals for prosecution must be responded to within a certain time frame - possibly two to three months, thus freeing governmental entities to take administrative action if no response is received in that time. Certainly within that time frame it should be possible to decide whether the matter submitted is worthy of consideration for prosecutorial action.

- Establishing a special section of the Department of Justice which will be solely responsible for addressing referrals made by Inspectors General. Such a section might even proceed on a higher percentage of matters referred than my experience dictates.

#### ***D. Inadequate Staffing***

- ◆ Offices of Inspector General should be adequately staffed so that no serious backlog of investigations or audits develop. For example, prior to the creation of the OIG, the NLRB did not have an independent audit entity and that fact, among others, led to a number of ills. It is my estimate that it will take about 10 to 15 years to complete the first cycle of the audit universe the OIG established and, given the nature of our audit findings, a decision must be made as to the desirability of waiting that long to determine the totality of the problems facing the NLRB. If that is too long to wait, the size of the audit staff (which now numbers four) will have to be increased to whatever multiple of the current staff is needed to cut the 10 to 15 years to an acceptable level.
- ◆ Similarly, the investigative backlog of the OIG, as of the time of this SAR is 50 and readers of these SARs are aware that the backlog continues to grow. The failure to take prompt action on complaints which are filed, in my view, acts as a deterrent to employees who might wish to report matters to an OIG to remedy problems which they know are real. Prompt action taken can only serve to enhance the filing of complaints, not to mention the more timely cost savings which will undoubtedly result to the Government.

#### ***E. Failure to Provide Incoming Presidential Appointees with Orientation as to Office of Inspector General Mission***

- ◆ One of the most difficult problems I faced as Inspector General was the relationship with a Presidential appointee of an earlier administration who was never provided any orientation, by an authority higher than me, as to the mission of the OIG or as to why it might be in his best interest to cooperate with the OIG rather than not. I do not know if an orientation by someone in the administration or by the Congress would have resulted in a different relationship, but it could only have helped. A document, sometimes referred to as the "Best Practices Guide," was prepared by OMB prior to the advent of the current administration and the designated entity Inspectors General were assured that incoming Presidential appointees would receive orientation as to the mission of the OIGs, something which, to my knowledge, has never taken place. It is one thing for an IG appointed by the head of an agency to provide that orientation to that agency head - it is quite another for the orientation to be provided under the auspices of the Congress or the White House.

#### ***F. Unwillingness of Agency to Allow OIG Access to Agency Computer Data on Read-Only Basis***

- ◆ Section 6 (a) (1) of the IG Act authorizes IGs to have access to "all records, reports, audits, reviews, documents, papers, recommendations, or other material available to the applicable

establishment which relate to programs and operations with respect to which that Inspector General has responsibilities under this Act " There should be no question but that language is broad enough to encompass computerized data, such as financial records and personnel records.

- ◆ When the OIG sought access to those records (see the Semiannual Report for the period October 1, 1992 through March 31, 1993 for a complete recitation of the facts surrounding the request for access and the denial of that request), the Agency principally sought refuge behind the Right of Privacy Act even though 15 of the Agency's 20 systems of records provide access on a "routine use" basis to "Agency officials and employees who have a need for the records or information" to accomplish certain tasks. Two of the remaining 5 systems of records provide a "routine use" for "the appropriate agency, whether Federal, state, or local, where there is an indication of a violation or potential violation of law, whether civil, criminal, or regulatory in nature, charged with the responsibility of investigating or prosecuting such violation or enforcing or implementing the statute, rule, regulation, or order " One of the remaining 5 systems of records provide a "routine use" for "Federal, state, or local governmental authority maintaining civil, criminal, or other relevant enforcement information " Another of the remaining 5 systems of records provides a "routine use" for "Qualified personnel for the purpose of conducting management audits, financial audits, or program evaluation " The last of the remaining 5 systems of records provides a "routine use" for "Other agencies, offices, establishments, and authorities, whether Federal, state, or local, authorized or charged with the responsibility to investigate enforce, or implement a statute, rule, regulation, or order, where the record or information indicates a violation or potential violation of law, whether criminal, civil, administrative, or regulatory in nature "
- ◆ Nineteen of the 20 systems of records shows the security classification as "none" and the twentieth does not even refer to a security classification.
- ◆ Under those circumstances and given the fact that the IG has a statutory "need to know," it would appear that the OIG is entitled to "read-only" access to an agency's computerized records and, if the agency will not make them available, the Congress, through its oversight responsibility, should be interested in rectifying the matter.
- ◆ Moreover, given the budgetary and personnel cutbacks which can reasonably be expected over the next several years, it seems only reasonable to permit OIGs to perform their work in the most efficient and cost-saving manner possible, that is, through electronic search of data rather than the much more cumbersome review of voluminous "hard copy."
- ◆ Finally, although access was offered through the means of the OIG identifying the information sought to the custodians of the records so the custodian could conduct an electronic search and then share the data with the OIG, it would appear that such defeats, rather than enhances, the Right of Privacy Act which the Agency is so interested in championing. If the OIG is permitted "read-only" access from a computer terminal within the OIG, then only the OIG staff knows who the potential subject of an investigation is. Sharing that information with the



computer operator of the custodian of the records only serves to broaden the base of persons who know the identity of the subject of the investigation.

- ◆ One final word is in order. Given the history of the Agency having shared with the subject of an investigation the identity of the records which the OIG was reviewing, "read-only" access would enhance the OIG's ability to investigate without any undue interference.

## APPENDIX A

### DEFINITIONS USED IN SECTIONS 8 AND 9

As used in this SAR, the following phrases have the indicated definitions:

"Questioned cost" is synonymous with the definition of that phrase at Section 5(f)(1) of the Inspector General Act where it is defined to mean a cost that is questioned by the OIG because of: (a) an alleged violation of a provision of a law, regulation, contract, grant, cooperative agreement, or other agreement or document governing the expenditure of funds; (b) a finding that, at the time of the audit, such cost is not supported by adequate documentation; or (c) a finding that the expenditure of funds for the intended purpose is unnecessary or unreasonable.

"Unsupported cost" is synonymous with the definition of that phrase at Section 5(f)(2) of the Inspector General Act where it is defined to mean a cost that is questioned by the OIG because the OIG found, at the time of the audit, such cost is not supported by adequate documentation.

"Management decision" is synonymous with the definition of that phrase at Section 5(f)(5) of the Inspector General Act where it is defined to mean the evaluation by the management of an establishment of the findings and recommendations included in an audit report and the issuance of a final decision by management concerning its response to such findings and recommendations, including actions concluded to be necessary.

"Final action" is synonymous with the definition of that phrase at Section 5(f)(6) of the Inspector General Act where it is defined to mean; (a) the completion of all actions that the management of an establishment has concluded, in its management decision, are necessary with respect to the findings and recommendations included in an audit report; and (b) in the event that the management of an establishment concluded no action is necessary, final action occurs when a management decision has been made.

"Disallowed cost" is synonymous with the definition of that phrase at Section 5(f)(3) of the Inspector General Act where it is defined to mean a questioned cost that management, in a management decision, has sustained or agreed should not be charged to the Government.

"Recommendation that funds be put to better use" is synonymous with the definition of that phrase at Section 5(f)(4) of the Inspector General Act where it is defined to mean a recommendation by the OIG that funds could be used more efficiently if management of an establishment took actions to implement and complete the recommendation, including: (a) reductions in outlays; (b) deobligation of funds from programs or operations; (c) withdrawal of interest subsidy costs on loans or loan guarantees, insurance, or bonds; (d) costs not incurred by implementing recommended improvements related to the operations of the establishment, a contractor or grantee; (e) avoidance of unnecessary expenditures noted in preaward reviews of contract or grant agreements; or (f) any other savings which are specifically identified.

***HELP ELIMINATE***

***WASTE***

***FRAUD***

***ABUSE***

***AT THE NATIONAL LABOR RELATIONS BOARD***



**PLEASE NOTIFY THE OFFICE OF INSPECTOR GENERAL (OIG) IF YOU ARE AWARE OF OR SUSPECT ANY SUCH ACTIVITY. YOU MAY CONTACT THE OIG IN ONE OF SEVERAL WAYS: (1) IN WRITING OR IN PERSON - OFFICE OF INSPECTOR GENERAL, 1099 14th Street, NW, ROOM 9820, WASHINGTON, DC 20570; (2) BY TELEPHONE - DURING NORMAL BUSINESS HOURS, CALL (202) 273 1960; 24 HOURS A DAY, USE THE NATIONAL TOLL FREE HOTLINE AT 1 800 736 2983 (SEE IG MEMORANDUM DATED MAY 15, 1992). THE HOTLINE IS A SECURE LINE AND CAN ONLY BE ACCESSED BY THE OIG STAFF FROM INSIDE THE OIG OFFICE. THE DEVICE WHICH WOULD PERMIT ANYONE, INCLUDING THE OIG STAFF, TO ACCESS THE HOTLINE FROM OUTSIDE THE OIG HAS BEEN DEACTIVATED SO IT CAN ONLY BE ACCESSED BY MEMBERS OF THE OIG STAFF FROM INSIDE THE OFFICE.**

**REMEMBER - THE OIG HOTLINE IS OPEN 24 HOURS A DAY, 7 DAYS A WEEK.**

***YOUR CALL OR LETTER MAY BE MADE ANONYMOUSLY***

***IF YOU WISH***