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INTEGRITY AND THE DEPARTMENT OF INVESTIGATION

*Rose Gill Hearn**

I am so delighted to be here with Dean Feerick. I don't know that I can bring any wisdom to him but I certainly always learn from him whenever I am with him. I am here to speak about the Department of Investigation, which plays a significant role in the maintenance of integrity in New York City's government.

I. BACKGROUND OF THE DEPARTMENT OF INVESTIGATION

The Department of Investigation derives its power from the New York City Charter and various Executive Orders that have been promulgated over the years. DOI, as it is known by its friends and foes alike, has the responsibility for the investigation and elimination of corruption, criminal activities, conflicts of interest, unethical conduct, gross waste or abuse, other misconduct and incompetence by City employees or anyone doing business with the City.

We also conduct background investigations of employees to be appointed to or holding positions of high responsibility within the City government and of vendors or contractors who obtain large-dollar-amount contracts from the City. We are the investigative arm of the Conflicts of Interest Board. Present today are Professor Bruce Green, who is a member of the Board and Joan Salzman, who is Counsel to the Board. We collaborate often and successfully with the Board.

There are approximately seventy City agencies and roughly 400,000 City employees; these are rough numbers because they are hard to tabulate accurately. The New York City government is the second-largest government in the country, second only to the federal government.

DOI plays a unique and delicate role in City government, in that it is part of the City government but also monitors City government. DOI represents a law enforcement presence to those who work within the City's vast bureaucracy and to those who do business with the City. It is a challenging mission and a dynamic concept that we think

* This essay represents a lightly edited and footnoted version of my comments at the Integrity and the Law Symposium at Fordham University School of Law on February 7, 2003. I would like to thank the former and current members of my staff for their assistance in compiling some of this information, including Elizabeth Glazer and David Burke.

is central to an effective democratic society, namely the maintenance of integrity, trust, and fairness.

I know that having DOI as an independent watchdog within City government is unique because we regularly receive officials from foreign countries and other states who come and want to spend one, two, or three days with members of my office to learn exactly how we are set up and the powers and tools that we have to maintain integrity in the City government. These visitors from other nations and cities take back to their venues the concepts on which DOI is based.

II. THE HISTORY OF THE DEPARTMENT OF INVESTIGATION

The origin and history of DOI is very interesting and it explains its mission and purpose. The office is approximately 130 years old. It was created in 1873 by the State Legislature as a result of the enormous scandals that took place during the term of Abraham Oakley Hall, the seventy-ninth mayor of the City of New York.¹ These scandals involved millions of dollars pouring into corrupt hands from extortion and swindles involving every conceivable public and private project going on at that time.

In 1871, the *New York Times* estimated that in three years more than \$200 million had been stolen or extorted in the City government.² The most corrupt hands belonged to four people: (1) Mayor Hall; (2) the Comptroller, described in the paper as being "without an honest instinct in his nature"; (3) the Chamberlain, now known as the Commissioner of Finance; and (4) William "Boss" Tweed, the notorious political leader who was also the Commissioner of the Department of Public Works.³

Mayor Hall was tried, pleaded ignorance, and, after three hung juries, was not convicted. He happily completed his term in office.⁴ The Comptroller escaped to France with \$6 million, forfeiting an additional \$1 million in bail money.⁵ The Chamberlain fled to Canada, later returning and paying a settlement of \$400,000.⁶ Tweed, though charged in 1871, continued in office until he was convicted at his second trial on 204 counts, for which he received twelve years in jail.⁷ After serving one year, he was released following a successful appeal.⁸ Jailed again on civil fraud charges in 1875, Tweed was

1. Richard R. Winslow & David W. Burke, *Rascals, Rouges, & Heroes: A History of the New York City Department of Investigation; 1873 to 1993*, at 1 (1993) (unpublished manuscript, on file with the Fordham Law Review).

2. *Id.*

3. *Id.*

4. *Id.*

5. *Id.*

6. *Id.*

7. *Id.*

8. *Id.*

allowed to go home every day for lunch.⁹ Then, one day in December 1875, he skipped lunch and instead escaped to Cuba, then later to Spain!¹⁰ A year later, he was deported back to New York, where he died in prison owing an \$8 million civil judgment.¹¹

In 1884, after a heated debate, the State Legislature gave the Department of Investigation, then known as the Department of Accounts, the power to issue subpoenas and take testimony under oath.¹² The power to subpoena, previously granted only to legislative commissions, enormously increased the Department's ability to probe all phases of municipal government and its administration.

III. THE DEPARTMENT TODAY

The DOI Commissioner is appointed by the Mayor. The DOI Commissioner's relationship to the Mayor has always been the subject of varying opinions and some scrutiny. The debate has centered around the concept that an independent, progressive, conscientious fact finder at DOI may be dangerous to the health and survival of political leaders and their associates. And so the need for independence—from the Mayor, his administration, and its agencies—has always been present. That is why the DOI Commissioner is the only Commissioner whose appointment by the Mayor must be approved by the City Council.¹³

That said, DOI fairly and appropriately plays a supportive and helpful role to the Administration by making sure that people working for and dealing with City government act with integrity.

Moreover, realistically, DOI is a part of the Administration. We need resources from the Office of Management and Budget. We need cooperation from every Commissioner and every Deputy Mayor, as well as the backing of the Mayor as we carry out our mission throughout the City.

Returning to the agency's history for a moment, eventually, as time went on, Inspectors General were appointed in most, if not all, City agencies to ensure integrity compliance by serving as internal watchdogs for the agencies. Those "IG"s, as they are called, reported to the heads of their respective agencies.

Following a series of municipal scandals in the 1980s, the effectiveness of an internal IG was called into question. The internal IG—hired and fired by the agency, with the agency knowing his or her every move and docket, setting his or her staff and budget parameters—was found to be an insufficient tool for ferreting out

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.* at 5.

13. New York City Charter § 31.

corruption. In other words, the IGs lacked the necessary independence from their respective agencies to carry out their mission.

Thus, in 1986, Mayor Koch signed an executive order bringing the City's IG system under DOI.¹⁴ From that point on, all IGs became employees of DOI, reporting only to the DOI Commissioner, fully independent of the agencies they monitor.

From my observations this past year, while this system is clearly preferable to a system of internal IGs, its one disadvantage is that the IGs now must struggle to get in and stay plugged into what is happening inside the agencies, which is obviously key to monitoring agency activities.

The Department of Investigation is also the agency to whom whistleblowers throughout the City must come with knowledge or complaints about corruption. The Whistleblower Law, which is section 12-113 of the Administrative Code, obligates City employees to report corruption.¹⁵ It also protects City employees who make such reports against retaliation by the agency or by the employer.

We have a fairly steady stream of employees who come to us with information. We closely scrutinize these matters and are not permitted to let the agency know the identity of the whistleblower. If an agency takes action against an employee who has reported something to the DOI, we are obligated by law to take up the case against the agency and examine whether the retaliation was based on the whistleblower claim; if so, it is our obligation to direct the agency to reinstate the person or undo the retaliation.

I would like to mention one other important aspect of DOI, which is the Independent Private Sector Inspector General, or IPSIG, program. When a company or a project needs close scrutiny—meaning, for example, constant review of books and records or on-site inspections—because the company has been discovered to have an integrity problem, or because the project is so huge or susceptible to corruption hazards that DOI has determined that it needs the kind of constant monitoring for which we do not have resources, DOI in conjunction with the Corporation Counsel's office will appoint an IPSIG to monitor the project in lieu of DOI, although the IPSIG monitor will report exclusively to DOI on a regular basis.

Let me give you an example of a huge project that was monitored by IPSIGs for corruption prevention: Ground Zero. After September 11, 2001, literally hundreds of millions of dollars were poured into the deconstruction and cleanup at Ground Zero, beginning September 12, 2001. The vast amounts of money that were

14. Exec. Order No. 105 (Dec. 26, 1986) *amending* Exec. Order No. 16 (July 26, 1978), *available at* <http://www.nyc.gov/html/doi/html/whistblwr-eo16.nhtml#eo78>.

15. N.Y.C. Admin. Code § 12-113 (2002).

going to the contractors with such speed created a situation that we thought called for IPSIG monitors. The Ground Zero site was divided into four sections, and four of the largest construction managers were each given a quarter of the site to clean up. DOI put four IPSIGs in place to monitor the four construction areas, twenty-four hours a day, including weekends, to monitor the activity at the site and serve as deterrents against an infiltration of organized crime activity or corruption.

Who are these IPSIGs? They are specialists of all kinds, including former law enforcement officials, accountants, computer experts, environmental and construction experts.

They are basically “integrity monitors” selected by DOI and Corporation Counsel based on whether they are qualified and experienced to handle the particular project.

Turning back to the main investigative work of DOI, I would like to highlight some of the notable cases DOI has undertaken in the last year, just to bring some of these concepts to life:

- In February 2002, we arrested eighteen current and former tax assessors from the Department of Finance. They are the individuals responsible for calculating the assessments on all commercial and residential real property in Manhattan. They were taking bribes in exchange for lowering assessments. The scheme cost the City about \$40 million a year over the last four years alone. All have pled guilty at this point.

- In June 2002, we arrested nineteen out of approximately twenty-four plumbing inspectors in the Department of Buildings, who were also taking bribes in exchange for signing off on projects. The plumbing inspectors are responsible for all types of construction inspections, ranging from the big commercial projects, gas line inspections, all the way down to small projects in private homes and apartment buildings.

- We also investigated and participated in the prosecution of New York City Councilman Angel Rodriguez from Brooklyn, who was in the running for Speaker of the Council. He and a co-defendant pled guilty to bribery charges and was sentenced to fifty-two months imprisonment. He approached a constituent who wanted to do a real estate project in Brooklyn, and indicated that he would back the constituent’s plan in exchange for about \$2.5 million. He demanded it be paid to him in the form of several complex, convoluted—and therefore, I guess he thought, not particularly traceable—real estate transactions. But the constituent came forward and wore a wire for several months, and captured the whole thing on tape.

My office does as much as it can by way of corruption prevention, operational audits, constant meetings with the Commissioners, Deputy Commissioners, and others at the various agencies, to ensure that things are going smoothly. And, of course, we also operate like a

police precinct in some respects, responding to reports of corruption and situations as quickly as possible.

It really is an interesting job because DOI spans the entire jurisdiction of the City of New York, from buildings, to finance, parks, construction, and the schools. It's quite fascinating.

I am pleased to report that if you consider its size, there is actually relatively little corruption among the City workforce.