Independent Inspectors General Under Siege

A Tale of Two State Inspectors General
“You have enemies? Good. That means that you stood up for something, sometime in your life.”
(Winston Churchill)

Advocates for transparent and corruption-free government agree that independent Inspectors General are a critical asset in ensuring that public funds are not wasted or endangered by corrupt officials. More and more states and cities in the U.S. now have Inspectors General as part of their oversight structures, and the numbers keep going up.¹

But setting up an Inspector General’s office and providing it with some form of independent powers and a budget does not always guarantee a happy ending for seekers of honest and efficient government, even when an OIG is demonstrably successful at its mission of saving taxpayer money by revealing fraud and waste. Both Louisiana State Inspector General Stephen Street and former New Jersey State Inspector General Mary Jane Cooper have faced numerous challenges to their offices over the last few years. These challenges came in different forms and from different places, but all threatened the very existence of these critical oversight entities.

Below are their stories, told by the IGs themselves. Spoiler alert: the Louisiana Legislature’s attempts to shutter Stephen Street’s office have so far been unsuccessful due to extensive media coverage, the support of good government groups and elected officials who believe in meaningful oversight, and the efforts of the IG himself, while despite former IG Mary Jane Cooper’s best efforts to draw positive attention to the great work of the New Jersey OIG, Governor Chris Christie imposed upon the legislature to close down the OIG and shift its powers and budget to the Comptroller.

If Inspectors General are to fulfill their promise of being effective oversight bodies, they must be independent. This independence means, of course, that no one should interfere with an IG’s ability to investigate freely within the scope of his or her authority. But independence also must include budgetary independence. After all, eliminating an office’s entire budget (as the Louisiana legislature has been attempting to do, in direct conflict with the OIG enabling statute), is the same as eliminating the office. And even significant cuts to an office’s budget (as happened to the New Jersey OIG before it was entirely closed), impact the ability of an OIG to effectively fight fraud and corruption.

Following the first-hand accounts of IG Street and former IG Cooper, we provide some lessons learned from these experiences, to help IGs ensure their independence so that they can keep fighting the good fight for clean, honest, and efficient government.
Baton Rouge, Louisiana

By Louisiana Inspector General Stephen Street

Shortly after I was appointed as Louisiana’s State Inspector General in 2008, former Massachusetts and New Orleans Inspector General Robert Cerasoli told me: “Stephen, if you do this job right, they will eventually try to shut you down.” At the time, I didn’t know exactly what he meant by that. The incoming Governor had been elected by landslide on an anti-corruption platform and I, a white-collar crimes prosecutor, had been appointed to the job with a mandate to “find and root out the bad actors.” The Inspector General enabling statute had passed with overwhelming legislative and public support, granting independence and law enforcement powers to the office. In terms of budgetary independence, the enabling legislation stated:

The legislature shall make adequate appropriations to the office to enable it to implement this Part efficiently and effectively.

I had a shiny new set of law enforcement tools and was determined to “do the job right,” as Bob Cerasoli had put it. As time went by, though, I gained a much clearer understanding of the consequences of “doing the job right.” As I continued to work on tough cases against the politically connected, I learned that, at a minimum, doing the job right meant having no regard for who had friends in high places. It meant being as aggressive as necessary to get to the truth, regardless of status or partisan politics. Simply put, it meant choosing what is right over what is easy.

Doing this job right meant choosing what is right over what is easy.

Being an effective Inspector General means having a thick hide and a steely resolve. It requires you to take on politically toxic investigations that most elected oversight officials shy away from -- the cases guaranteed to infuriate the very politicians that get to decide how much money you get in your annual budget. Inspectors General who do the job aggressively, as I have, will inevitably find themselves at odds with the political establishment. I did, and in the process learned about a vulnerability that I and other seemingly independent IGs can still face.

2012:

On May 1, 2012, a Louisiana State Representative introduced an amendment in the House Appropriations Committee to completely remove all funding for the Office of State Inspector General from the state budget. I was not notified about the amendment, nor was I given any opportunity to comment on it before the vote. This defunding amendment passed with a narrow quorum in the room, with complete disregard for the statutory language that requires the Inspector General to be adequately funded.

The amendment’s sponsor argued publicly that my office was redundant with the state police, attorney general and legislative auditor. But a closer look at comments that this Representative made to Louisiana media outlets tells a different story:

Days after scuttling funding for the state Inspector General’s Office, [a State Representative] said Thursday that he disagreed with the office’s probe of allegations that [another public official] misused his authority.
“(They) used a lot of misinformation and destroyed a man’s reputation.” [The State Representative also] said Street’s office has morphed from following paper trails into conducting poorly managed police investigations . . . “No good investigator would ever bring this to the point it got to without verifying any information.”

(Baton Rouge Advocate, May 4, 2012)

“311 investigations and no one ever got indicted . . . no one.”

(WWLTV, May 4, 2012)

The alleged basis for closing down the Inspector General’s office -- its redundancy with other oversight entities -- was plainly a smokescreen for the true motive, which was to retaliate against OIG for its perceived mistreatment of a particular public official.

On the merits, this complaint was groundless. OIG had not made any public statements about the investigation at issue, which at that time was in its infancy. The Representative’s public comments about the investigation revealed a complete lack of knowledge about that investigation and OIG’s role in it, and his claims that the Inspector General had worked no successful criminal cases were quickly and easily refuted by readily available information on arrests, indictments and convictions.

The political nature of the whole defunding effort became clear when the money taken from the Inspector General was reallocated to a fund for disabled children. This meant that in order to restore the funding, the money would have to be taken away from disabled children. I had to reluctantly tip my cap to the Representative for this shrewd political move. But I was now in the fight of my life.

Over the next several weeks, the following headlines, among many, appeared in Louisiana media outlets:

- *Louisiana Legislator Calls OIG Waste* (May 5, 2012)⁴
- *Inspector General Hopes Senate Will Keep Office from Closing* (May 17, 2012)⁵
- *Inspector General’s Office Too Valuable to Eliminate* (May 15, 2012)⁶
- *Battle over Funding for State IG Rife With Coincidence* (May 9, 2012)⁷
- *Inspector General says State Not Serious about Fighting Corruption* (May 16, 2012)⁸
- *Plan to Defund Louisiana Inspector Office Incurs Watchdog Groups’ Howls* (May 8, 2012)⁹
- *Senators Support Inspector’s Office* (May 19, 2012)¹⁰
- *Enabling the Next “Dollar Bill”* (May 8, 2012)¹²

It became clear after a few days that I had been handed an extraordinary media platform that allowed me to bring maximum negative attention to those who were trying to close down the office. Even national publications could not resist the irony of Louisiana politicians trying to close down a public corruption investigation agency. By the time the budget bill made it to the Senate Finance Committee, there was overwhelming public pressure to restore the Inspector General’s budget, and I found myself on much friendlier ground.
On May 30, 2012 the Louisiana Senate unanimously restored the Inspector General’s funding, at a higher level than before the efforts to shut it down. Shortly thereafter, the Governor signed the budget bill. We had won the first big battle over OIG funding decisively.

**2016:**

“Plus ca change, Plus c’est la meme chose” (“The more things change, the more they stay the same”)  
(Jean-Baptiste Alphonse Karr)

In the three-year period leading up to the 2016 budget process, the Louisiana Inspector General worked many successful criminal cases, had a 96% conviction rate on federal criminal cases and averaged more than five times the amount of its State General Fund Appropriation in fraud and corruption identified. But, in compiling that record, the Louisiana OIG also continued to regularly handle investigations that angered those in political circles. Given the demonstrated effectiveness of the Louisiana OIG compared to its relatively small appropriation, and the media and public outrage that occurred when the office was nearly eliminated in 2012, one might ask why Louisiana politicians would ever consider trying it again. The answer can be summed up in two words: political cover.

By the time the 2016 budget cycle rolled around, Louisiana was facing a severe decline in revenue due to falling oil prices and other factors. This created an environment in which every budget item was under scrutiny for possible elimination. On May 9, 2016, it was “déjà vu all over again.”

This time, the attempt to defund OIG came as part of a lengthy package of amendments to the state budget bill, making it impossible for the Appropriations Committee to restore OIG funding without rejecting the entire package of amendments. Again, this was a shrewd political move. The budget amendments package was passed by the committee.

When asked for comment following the vote, the House Appropriations Chairman said the following:

“Myself and several members of the House felt that the work done by the Inspector General’s office could be duplicated by the attorney general, legislative auditor’s office and state police.”  
(WDSU New Orleans May 10, 2016)

Other members of the Appropriations Committee were quoted as saying the office was a duplication of the Attorney General. These arguments were almost identical to the surface claims raised in 2012, but this time against the backdrop of a huge and very real budget deficit, which, in the eyes of some, made the arguments more compelling. There was one significant difference from 2012, however; I had several days of advance warning that OIG would be targeted when the Appropriations Committee took up the budget bill. This allowed me to let media and good government groups know about it before the hearing.

It also allowed me to be in the room when the vote took place. When I arrived, I immediately saw that two individuals who had been the subjects of previous high profile OIG investigations were in attendance. The fact that those individuals were present to witness a vote on an amendment to defund OIG – an amendment that several sitting members of the Appropriations Committee did not yet know about – spoke volumes about the true motives behind these actions.
Typically, there is no testimony taken during the budget amendment process, but my presence in the room led some of the committee members to call me to the table. When I sat down, I pulled no punches about the latest effort to defund the Inspector General.

“Louisiana politicians trying to shut down a public corruption agency? That’s the classic ‘man bites dog’ story.”

“… if you think that this is going to read any way other than a bunch of Louisiana politicians trying to shut down what has been demonstrated to be a highly effective public corruption agency … the optics of that are horrible for our state.”

(Louisiana Inspector General Stephen Street)

Here is a sampling of the headlines that appeared in Louisiana media outlets over the next week:

- Louisiana House Committee Votes to Close Down State Inspector General (May 10, 2016)
- Lawmakers Propose Eliminating OIG (May 9, 2016)
- Louisiana Inspector General Questions Lawmakers Motives (May 16, 2016)
- Inspector General Fights to Keep Office Open (May 10, 2016)
- Push to Eliminate Inspector General Draws Criticism (May 14, 2016)
- Protect the Inspector General's Office (May 18, 2016)
- Kill Effort to End Inspector General's Office (May 16, 2016)
- North Shore Watchdog Group Lashes Out over Threat to State IG (May 10, 2016)

I did 16 media appearances the week that OIG funding was eliminated by the Appropriations Committee, including radio, television and print interviews. Just as in 2012, a number of statewide editorials calling for the immediate restoration of OIG funding also appeared.

As public outrage grew, a tremendous amount of pressure was brought to bear on the Louisiana Legislature. Luckily, this pressure led to a positive result. The Louisiana OIG went from being eliminated from the budget on a Monday to being put back in by acclimation just three days later. This means that out of the 104 representatives in the Louisiana House, not a single one objected to the restoration of OIG funding, including those who led the charge to eliminate the office in the first place. Before the vote, the Governor and several members of the House made strong statements in support of OIG – both a reminder and an encouragement that there is a lot of support for Inspectors General, and that support usually (but not always, as seen in New Jersey) outnumbers the opposition.

Though we had decisively won another battle over OIG funding, I was forced to accept the fact that as long as I continue to do this job aggressively and without regard to politics, I am going to draw the ire of those in political circles, and the attacks that go along with it.

Death by a Thousand Cuts?
Although the Louisiana OIG has now successfully fought off two attempts to close down the office through complete defunding, we have not been immune from budget cuts. In the last two budget cycles, OIG’s staff has been reduced from 17 to 13, making it increasingly difficult to handle the large and complex criminal investigations for which we are known, and to do so in a timely fashion. As Louisiana’s Inspector General, I have informed the Governor and lawmakers that any further cuts at all to OIG’s budget will cripple the office and prevent us from fulfilling our statutory mission to root out fraud and corruption on behalf of the taxpayers. Due to the lack of protected funding, I now spend the majority of my time as IG fighting to keep the lights on, an unfortunate distraction from our primary mission.
Trenton, New Jersey

By former New Jersey Inspector General Mary Jane Cooper

2004: Scandal Results in Creation of Strong OIG

New Jersey Governor James McGreevey announced his resignation in 2004 after presiding for almost three years over a scandal-ridden administration. Shortly thereafter, State Senate President Richard J. Codey was sworn in as Acting Governor, serving out the remaining 16 months of McGreevey’s term.

In his dual role, Codey took steps intended to renew public confidence in State government, including promoting legislation creating a powerful statewide Office of Inspector General (OIG). According to the legislation, OIG would be led by an independent Inspector General (IG) appointed by the Governor with the approval of the Senate. The IG must be an attorney, would serve a five-year term with the opportunity to be reappointed once, had subpoena power, could only be removed from office for cause, and could choose to investigate anywhere state funds were spent. Unlike Louisiana’s Office, the NJ OIG’s budget was controlled by the Governor through the Treasurer, also appointed by the Governor. The OIG statute required that OIG’s reports be public and that it publish an annual report.

2005: Executive Order and SCA Investigation

The New Jersey Legislature held the OIG legislation hostage for several months. As a result, in January 2005, Codey signed an Executive Order creating OIG and appointed me to be the IG. That same day, Codey asked me to investigate the $8.6 billion School Construction Authority (SCA), created a few years earlier to build schools in the State’s neediest districts. SCA had been the subject of negative press alleging waste of large amounts of public funds.

Within one month, OIG published a scathing report exposing a tremendously wasteful, conflict-ridden SCA working without internal controls or external oversight that had already wasted hundreds of millions of dollars in public funds. Upon receipt of OIG’s report, Codey halted SCA work until massive changes were brought about, including a new Board and new management, establishment of an internal Inspector General reporting to OIG, the creation of new policies and procedures for spending approvals and elimination of conflicts of interests, more frequent audits, appropriate school site selections, and oversight of construction companies.

The report resulted in front page headlines, and OIG received a great deal of praise for exposing the waste and problems at SCA. That said, not everyone was happy with the OIG reports, including the local officials whose districts were benefitting from extravagant schools, and the builders and SCA officers and staff who could see the pot of gold going dry. OIG's SCA reports created powerful enemies for the office, as did later reports in other investigations.

June 2005: Legislation Creates OIG and IG Appointed for 5 Year term

In late June 2005, Acting Governor Codey succeeded in getting the OIG legislation passed, and I was appointed as the Inspector General for a five-year term. In the early days of my tenure, I tried to create productive relationships with members of government, meeting one-on-one with legislators and other officials such as then-United States Attorney for the District of New Jersey Chris Christie. My early relationship with Christie was cordial, and I worked very well with his staff of professional prosecutors; looking back, this is somewhat ironic given Christie's later role as the person largely responsible for eliminating my office.

While as IG, I tried to foster positive relationships with public officials, my investigations were bound to create enemies. For example, OIG reviewed New Jersey's 50-plus State Authorities; the report ultimately revealed significant discrepancies in employee benefits between the Authorities’ employees and other State employees, extremely wasteful
spending, and serious conflicts of interest in hiring politically-connected individuals, particularly with respect to the hiring of outside counsel.

**January 2006: Corzine Declares War on OIG**

In January 2006, Jon Corzine became New Jersey’s Governor. OIG still had a powerful ally in the President of the Senate, Richard Codey, but Governor Corzine immediately started various attacks on the OIG, including by stating his preference for a comptroller instead of an IG at our first meeting. I responded that New Jersey needed both offices, as they performed different functions.

Governor Corzine succeeded in having legislation passed that created a Comptroller. The Comptroller was appointed for a term of 6 years, but did not have investigative or subpoena powers; as defined by the legislation, the Comptroller was essentially an auditor who would do financial and performance audits of New Jersey agencies.

Shortly after the Comptroller was appointed, a Legislative Committee conducted a hearing on the benefits to the State of having several oversight bodies; the Committee examined OIG, the Comptroller, the State Auditor, and the State Commission of Investigation. Carey Edwards, the Republican Chairman of the State Commission of Investigation and former State Attorney General, opened the hearing by stating in effect that anyone taking the position that there is too much oversight in the State of New Jersey is a person you want to watch. (These turned out to be prophetic words, given that the reasons given by Governor Christie for eliminating OIG in 2010 were essentially that there was too much oversight via duplication of efforts.) At the hearings, Edwards also pointed out that the existing oversight offices communicate with each other, and do not investigate the same problems. At the end of the hearing, the Committee decided that the agencies should all continue in existence doing their work.

Governor Corzine attempted to convince me to voluntarily merge OIG into the Comptroller’s Office, losing my office’s independence but gaining the ability to ask the Comptroller to perform audits. I did not view the merger and loss of independence as a benefit to OIG or the State of New Jersey, and declined the merger.

Governor Corzine continued his attacks on OIG by going after our budget, which was controlled by the Governor’s office. Every year, OIG’s meager budget was cut: originally $3.5 million, in the end it was $1.8 million for a staff of 15 investigators, including the IG, and 3 administrators.

In the meantime, OIG continued to make powerful enemies, including political party leaders, and lawyers for both parties who were abusing the New Jersey Public Employees Retirement System (PERS) to improperly collect pensions.

**2010: Christie Ends OIG**

Chris Christie was sworn in as Governor of New Jersey in January 2010. Both before and after he was elected, Christie made it clear that it was his intent to eliminate what he called “duplicate oversight offices.”

OIG’s Annual Report for 2009, actually published in the spring of 2010, was a “five-year-lookback” laying out much that OIG had accomplished even with its small staff and budget. Unfortunately the report did not get a lot of press attention; the newspapers were overwhelmed with fighting for their own survival and hardly took note of it. 24

Despite OIG’s record of success in its brief 5 ½ year history -- returning $7 to the State Treasury for every $1 OIG cost the State; finding well over one-half billion dollars in waste of public funds; identifying over $50 million for return to the State Treasury; providing evidence holding several government officials accountable for their misdeeds; and in the absence of any challenge whatsoever to the substantive validity of OIG’s work, a record that could not be matched by the other oversight entities -- OIG was the only oversight agency eliminated.
Governor Christie had made it clear that he did not want a successful, independent, Office of Inspector General. On June 28, 2010, legislation became effective abolishing OIG and transferring its funding, powers, and staff to the Comptroller. Notwithstanding Governor Christie’s claims about duplicating efforts, it was clear that OIG and the Comptroller were not performing the same functions; the Comptroller was tasked with audits and OIG was charged with rooting out corruption, fraud and waste in New Jersey public spending. The ultimate result bears this out, because the entire budget and staff of OIG were shifted over to the Comptroller to become a new investigations division, demonstrating that the OIG function was not duplicative and that merging OIG with the Comptroller would not save money.

The loss of New Jersey’s OIG is significant and damaging to the State in many ways. First of all, as long as their mandates are different, it is unquestionably true that two independent oversight agencies are better than one. Particularly where the Governor appoints both positions, having two such independent offices – especially if the terms are long enough that the officials span multiple Governors -- makes it much more likely that at least one of the Comptroller or IG will be truly independent of whoever is in power at any given time. To be truly independent, the leader of such an office must be willing to investigate wherever the facts may lead, regardless of the Governor’s wishes. Second, a Comptroller is just not an Inspector General. A Comptroller will most likely have an accounting background, because the primary function of a Comptroller is to conduct financial audits. An IG, by contrast, will tend to have a law and/or law enforcement background, and his or her primary function is to investigate wrongful conduct. Third, putting aside the qualifications of the head of any particular office, an OIG and a Comptroller’s Office have different missions. As a structural matter, these missions are distinct and are too important to be blurred together into one catch-all office. Finally, placing all of the power to oversee government in an independent and meaningful way into one office is inherently dangerous because it relies too heavily on one person. If the only independent oversight authority uses his or her power improperly, incompetently, or doesn’t use it at all, the whole oversight system fails.

Every single state has a Comptroller or State Auditor. Those states that are serious about meaningful oversight also have an Inspector General, recognizing that an OIG adds immense value. Indeed, the same is true of the federal government, which has a Comptroller General as well as dedicated Inspectors General in each federal agency. For a while, New Jersey seemed to recognize this too, and still claims that the investigative functions that were transferred from OIG to the Comptroller are effectively rooting out fraud, waste and abuse in New Jersey State spending. The problem is that New Jersey took away the independence that is so important to an IG’s investigative effectiveness.

As a broader matter, eliminating an OIG, especially one with a record of delivering critical blows to corrupt officials, unquestionably has a chilling effect on all State workers. It also sends a dangerous message to those who would misuse their office or take advantage of State funds: the watchdog is gone.
Lessons Learned

- All Inspectors General who do their jobs aggressively will come under attack. These attacks may include lawsuits, efforts to restrict or dial back authority and access, and attacks on funding.

- These attacks come with the territory, and in some ways are a true indication of an Inspector General’s effectiveness.

- The public, media, and IG community are, with rare exceptions, overwhelmingly supportive of Inspectors General. There are also many elected and appointed public officials who are very supportive of IGs. All can be a powerful resource when these attacks come.

- Attacks on an OIG are often led by a relatively small number of legislators who sit on influential budget committees, but do not represent the majority view. Conversely, if the Governor (and some subset of legislators who will automatically support the Governor) oppose an OIG, as occurred in New Jersey, such battles are difficult, if not impossible, to win if the IG does not have budgetary independence (as well as constitutional or statutory protections for the office, of course).

- Protected funding for Inspectors General is absolutely essential and should be non-negotiable. Some municipal IGs are guaranteed a fixed percentage of the budget. Others may get portions of recovered funds to offset shortfalls. Regardless, funding that cannot be arbitrarily eliminated is crucial to an IG’s ability to be effective.

- The “redundancy” argument as it relates to IGs is typically meritless, and is most often used to provide politicians with cover when – as demonstrated by these examples -- the true motive is almost always anger or concern about the Inspector General’s investigative activities.

- IGs are unique in their independence, authority and non-political nature. This separates them from every other elected official or any at-will appointed official who reports to an elected official.

- When an Inspector General is eliminated, a void is left that results in more government corruption and more cost to the taxpayers.

- New Jersey, in particular, has been beset by scandals related to the Christie administration in connection with the “Bridgegate” matter and the “Chairman’s Flight.” It is not possible to speculate as to whether the elimination of the New Jersey OIG could have prevented these events, wherein four people were convicted of federal felony corruption offenses. One thing is certain, though: had the New Jersey OIG not have been closed it would have been in the best position out of all relevant entities to investigate these and other related matters. Instead, the Christie administration spent millions of dollars in public funds to hire a private law firm to investigate and write a report on the Bridgegate matter – a report that was roundly criticized as biased and as reaching conclusions not based on the evidence. The state legislature also hired outside counsel to do a separate report on its behalf. The OIG would have conducted a fair and independent investigation and would have written a comprehensive report in the normal course of its work, for a tiny fraction of what was spent.
Endnotes


3 The fact that this language is not embedded in the Louisiana Constitution meant that some in the Legislature felt they were free to ignore it. Defunding the IG would, in their view, constitute the latest expression of legislative will and therefore supersede the statutory IG funding mandate. Though it is unclear whether this legal argument would succeed, the issue would be rendered moot if the mandate were constitutional. In order to amend the Louisiana Constitution, a 2/3 vote of both houses plus a statewide referendum is required.


7 New Orleans Times Picayune, May 9, 2012.

8 WWL TV, May 16, 2012.


14 Quote attributed to Yogi Berra: http://yogiberramuseum.org/just-for-fun/yogisms/


16 WBRZ News, May 9, 2016.


23 About Mary Jane Cooper, http://maryjanecooper.com

24 Christie was battling with the newspapers too by attempting to discontinue the required print publication of Sunshine Law Notices in favor of allowing the internet to be the sole source of these notices. These required Sunshine Law publications were a significant source of revenue for the print media.


26 See id.

This publication is part of an ongoing series of contributions from practitioners, policymakers, and civil society leaders in the public integrity community. If you have expertise you would like to share, please contact us at CAPI@law.columbia.edu.

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