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JON S. CORZINE
Governor

JAMES A. CAREY, JR.
Director, Authorities Unit

August 6, 2009

Michael J. Madonna
[REDACTED]
[REDACTED]

Dear Mr. Madonna:

This correspondence regards your service as a Commissioner on the Waterfront Commission of New York Harbor. On October 15, 2007, Governor Eliot Spitzer issued an executive order directing the New York Inspector General to investigate "allegations of misfeasance and nonfeasance by personnel of the Waterfront Commission, including allegations of misconduct, conflicts of interest, abuse, and waste."

The New York Inspector General's Office has concluded its investigation. I have met with New York Inspector General Joseph Fisch and reviewed his report. The report describes a number of serious problems at the Waterfront Commission, including specific factual descriptions of incompetence, waste and other abuses. You were appointed to represent the State of New Jersey and oversee the operations of this important agency. Inspector General Fisch's report essentially describes an agency that was failing to function properly while under your oversight.

The conclusions in the report constitute just cause for removing you from your office as Commissioner. Accordingly, pursuant to his Constitutional, statutory and common law authority, the Governor is removing you from your office as a Commissioner, effective immediately.

Very truly yours,

James A. Carey, Jr.
Director, Authorities Unit

- c: Honorable David A. Paterson, Governor, State of New York
Walter M. Arsenault, Executive Director, Waterfront Commission
George Schneider, Esq.

**State of New York
Office of the Inspector General**



**Investigation of
the Waterfront Commission
of New York Harbor**

August 2009

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State Inspector General**

**State of New York
Office of the Inspector General**

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I. EXECUTIVE SUMMARY

The Waterfront Commission of New York Harbor is a bi-state entity established in 1953 by the United States Congress to “investigate, deter, combat, and remedy criminal activity and influence in the Port of New York and New Jersey and to ensure fair hiring and employment practices, so that the Port region can grow and prosper.” Each of the governors of New York and New Jersey appoints a commissioner to jointly head the Waterfront Commission. The Commission, which employs a staff of approximately 100 and operates on an annual budget exceeding \$11 million, oversees companies and individual workers operating on the waterfront. The Commission employs its own police force empowered to investigate a range of crimes within its two-state jurisdiction, from assault to large-scale criminal enterprises.

On May 7, 2007, then-Governor Eliot Spitzer referred to the Inspector General the complaint of an employee of the Waterfront Commission alleging misconduct by Waterfront officials. Around the same time, the Inspector General received similar allegations from other sources. Augmenting the Inspector General’s jurisdiction, Governors Eliot Spitzer and David A. Patterson issued a series of executive orders directing the New York State Inspector General to examine the Waterfront Commission. Armed with this authority and with the cooperation of the New Jersey State Attorney General and Inspector General, the management of the Waterfront Commission was comprehensively scrutinized for the first time in the Commission’s existence.¹ The New York State Inspector General found that the unique constitution of the Waterfront Commission as a bi-state entity had produced a climate of abuse and lack of accountability fueled by perceived immunity from oversight by outside entities.

During the period of the Inspector General’s Investigation, the Waterfront Commission was headed by Commissioner Michael Axelrod of New York and Commissioner Michael Madonna of New Jersey. Executive Director Thomas De Maria oversaw the day-to-day operations of the Commission. The Inspector General found that these officials and others failed to adequately or responsibly supervise the operations of the Waterfront Commission, resulting in neglect and malfeasance ranging from lackluster oversight of shipping companies to conflicts of interest and an abrogation of legal responsibilities undermining the very purposes of the Commission. Specifically, the Inspector General identified problems which included improper hiring and licensing to fiscal lapses involving the misappropriation of forfeiture funds, unsound overtime pay and misuse of Homeland Security grants.

Initially, the Inspector General found fundamental problems with the system established by the Commission to license companies operating in the harbor -- one of its

¹ In fact, in the 55 year history of the Waterfront Commission, it was subject to only one review of its operations - by the Office of State Comptroller (OSC) in 2005. OSC’s review consisted of an audit of one component of the Commissions’ operation, its hiring practices. Notably, while cooperating in that review, the Waterfront Commission interposed its objections to the Comptroller’s authority to conduct an audit.

mandated core responsibilities.² The Inspector General's investigation revealed that the Commission failed in its responsibility to audit and license these companies, and did not issue a single permanent license for at least a decade. Commission officials testified that the licenses could not be issued because required audits of company compliance with applicable laws were not completed within the five-year licensing cycle. In fact, such reviews were as much as 14 years behind. The auditors, however, claimed to be unaware of any policy requiring that the review be completed within the five-year period. Indeed, no written policy existed so dictating. As a result, all companies conducting business in the harbor were operating, for at least 10 years, on short-term temporary licenses which were intended to be used only in special circumstances. The importance of completed audits cannot be overstated because the Commission's budget consists of an assessment of salaries paid to employees on the piers. Among other things, incomplete audits, which prevent the Commission from determining exact amounts owed, directly affect the Commission's budget.

Moreover, when violations by stevedoring companies were in fact identified, enforcement of these violations was inconsistent and uncoordinated. These enforcement problems were hardly unexpected because then-Director of Audit and Control Frank Nastasi devoted little effort in supervising his staff; instead, for portions of the workday, Nastasi conducted a private tax preparation business out of his Commission office and accessed pornography on his Commission computer.

Former General Counsel Jon Deutsch used his position at the Waterfront Commission to improperly assist others despite obvious conflicts of interest. While Deutsch was the Director of Licensing, the position he held prior to becoming General Counsel, he inappropriately issued a license to Brendan McDermott, the son of a close family friend, and then disguised McDermott's prior drug-related conviction. Both Axelrod and De Maria testified that Madonna was aware of Deutsch's misconduct but refused to address it. Furthermore, Deutsch failed to disclose his familiarity with a consultant, Dennis M. Kelly Associates, LLC, when he recommended the company.

Deutsch also engaged in a series of improprieties involving his relationship with Al Cernadas, Jr., the First Assistant Prosecutor of Union County, New Jersey, and Deutsch's former co-worker and friend. In the first instance, Deutsch did not recuse himself from the questioning of Cernadas, Jr.'s father, a subject of an official joint investigation with the United States Attorney's Office, Eastern District of New York. Cernadas, Jr. testified to the Inspector General that he was unaware that Deutsch conducted the questioning of his father. Deutsch also inappropriately intervened in a police investigation for a friend of the Cernadas family, Jimmy Zamuz. When asked why he, rather than members of the Commission's police division, obtained police records from New Jersey, Deutsch testified, "I was a prosecutor in Union County. I mean, New Jersey's a little different than New York. I mean, we know people. Who did I know? I knew a special assistant to the mayor of Newark. It happened in Newark, I believe."

² The Waterfront Commission does not have oversight of break-bulk cargo piers. Break-bulk cargo is a shipping term that refers to loose material that must be loaded and unloaded individually and not in containers.

According to Cernadas, Jr., he knew that Zamuz was arrested but he did not ask Deutsch to obtain records or otherwise assist Zamuz.

Following these two incidents involving the Cernadas family, Deutsch again abused his authority as Commission general counsel by providing non-public Commission information to assist Albert Cernadas, Jr., regarding Cernadas family members under investigation for an altercation in a bar. Deutsch then attempted to secure the suspension of one of the combatants, who was at the time estranged from the Cernadas family.

In one particularly egregious instance, former General Counsel Jon Deutsch fashioned a scheme to allow Frank Cardaci, a convicted felon, to place his warehouse in his wife's name and continue to operate uninterrupted in direct violation of the Waterfront Commission Act. Deutsch accomplished this cover up with the knowledge of several former senior officials, including Director of Law Joy Kelly, Director of Licensing Peter Goldfinger, Assistant Director of Licensing Jeffrey Schoen and Director of Audit and Control Frank Nastasi. Cardaci, owner of ASA Apple, had been convicted in federal court of participating in a scheme in which goods intended for international shipment were illegally sold domestically at lower prices. Cardaci allowed the goods to be warehoused in ASA Apple's waterfront warehouse. Indeed, Cardaci's scheme involved the same type of criminal activity the Commission was created to combat. The Inspector General found that Cardaci's wife was a mere figurehead, and that the involved officials were aware at the time that the arrangement was improper. By all accounts, this arrangement was never brought to the attention of the commissioners. With the exception of Joy Kelly and Jeffrey Schoen, Deutsch and the other division heads with knowledge of this concealment, are no longer employed at the Waterfront Commission.

Commissioner Madonna similarly used improper influence to secure benefits for acquaintances. Axelrod testified that in 2003, Madonna supported Deutsch's promotion to General Counsel, but Axelrod was reluctant to agree. In order to persuade Axelrod to approve Deutsch, Madonna obtained a letter from Michael DeCotiis, then-Chief Counsel to New Jersey Governor James McGreevey, recommending Deutsch for the position. In a letter addressed to Madonna, DeCotiis wrote that he personally interviewed Deutsch and found that he was "uniquely qualified to be General Counsel." DeCotiis neglected to reveal that he and Deutsch had a familiar relationship. After receiving the letter from DeCotiis, Axelrod agreed to appoint Deutsch General Counsel.

Madonna also used his position to influence the hiring of three unqualified candidates to the Police Division whose detectives are vested with police powers in both states. While both Commissioners recommended applicants to the Police Division, the former chiefs of the police division, as well as former Executive Director De Maria, all testified that Madonna's "recommendations" were considered requirements. One of the hired candidates, Bradford Waudby, had not been issued a college diploma as required. Another candidate, James De La Rosa, passed the qualifying examination but the required background check revealed a terrible work history that included poor work ethic, lackluster performance, and angry outbursts including a threat of physical assault against a supervisor. Despite these attributes, wholly inconsistent with employment as a law

enforcement officer, he was hired as a police candidate and enrolled at the Port Authority Police Academy. De La Rosa never graduated due to poor attendance despite heroic and unwarranted efforts by Police Division detectives to go to his home and wake him for class. After an incident where De La Rosa was falling asleep in class and was sent to the medical unit but refused treatment, the Port Authority Police Academy would not permit him to return. De La Rosa was permitted to resign from the Waterfront Commission in lieu of termination.

Yet another detective, James Sutera, failed the required examination on the first two of three occasions despite the fact that the identical examination was administered on each such occasion. On his third attempt at the examination, Sutera scored the highest score ever recorded by an applicant in the history of the Commission, a 97.8 percent, and boasted to other Commission staff that Madonna had provided him the answers. Sutera then supplied the test answers to another Commission employee who planned to take the police examination. Later, Sutera testified falsely while under oath to the Inspector General about the incident and encouraged another witness to lie as well. In yet another instance of exploitation, Madonna retaliated against a police officer who had filed an internal complaint, by relocating his work station from New York to New Jersey.

Madonna's improprieties in relation to the Waterfront Police Division were even more fundamental. During seven years of his term at the Commission, Madonna contemporaneously served as president of the New Jersey State Policemen's Benevolent Association, the union of police officers that included the chapter to which Waterfront Commission detectives were members. As a result, Madonna simultaneously represented and managed the Commission's detectives, a conflict of interest that extended to three contracts negotiated between the local union chapter and the Commission during this period.

The Inspector General identified other abuses at the agency including improper use of vehicles and staff, improper use of police parking placards, and failure to properly segregate and account for expenditure of federal grant funds. In direct contravention of their official duties but under the supervision of a police chief, Police Division detectives were diverted from their law enforcement duties to guard parking spaces designated by the New York City Department of Transportation for Waterfront Commission vehicles for use by executive staff. The detectives would first report to the Brooklyn field office, retrieve a Waterfront Commission vehicle, and drive to Manhattan to guard the spots. The detectives were assigned to arrive at the spots at approximately 7:00 a.m. and to remain until all supervisors arrived, usually at 9:00 a.m. The detectives then returned to the Brooklyn field office to resume their normal police-related duties.

With regard to parking placards, the Inspector General's investigation revealed that Commissioner Axelrod, over a period of years, provided placards to both his wife and a wealthy personal friend with no connection to the Commission. In addition, Axelrod retained his and his wife's placards after he was no longer commissioner. Axelrod has since returned his official placards, and the Inspector General retrieved the placard most-recently given to Axelrod's friend. As to the federal grant funds,

Commission Comptroller Irving Wolf did little or nothing to properly track receipts of funds and expenditures and could not ensure that funds were spent appropriately.

The Inspector General finds that, as agency heads, both Commissioners Madonna and Axelrod bear responsibility for the failings of the Waterfront Commission. In addition, De Maria lacked control over the agency and failed to use his authority to discipline errant staff and ensure efficient and effective operations of the Commission. De Maria claimed to be ignorant of many improprieties within the agency, and did not take action to remedy problems he did identify.

In response to the Inspector General's report, Madonna acknowledged that many problems existed in the agency, but refused to accept any responsibility. Instead, Madonna placed the blame on Commission staff, particularly De Maria. While De Maria and the rest of the Commission staff bear responsibility for their individual failings, the proper functioning of the agency is ultimately the responsibility of the agency head, in this case the two Commissioners. The abuses and mismanagement identified in this report are not simply a collection of individual bad acts, but rather constitute a breakdown of agency functioning. The Commissioners' lack of leadership and participation in abuses of influence and public resources allowed the poor work performance and improper activities to continue and flourish.

As the investigation progressed, the Commission was regularly informed as the Inspector General uncovered problems and abuses in order that remedial measures be initiated as soon as possible. Since the onset of the Inspector General's investigation, the following changes have taken place with regard to the Waterfront Commission's executives: in March 2008, Executive Director De Maria resigned; upon the expiration of Axelrod's term, Ronald Goldstock was appointed by New York Governor David A. Patterson as New York's Commissioner and, on July 2, 2008, was confirmed by the Senate and assumed his duties; in September 2008, Walter Arsenault was appointed Executive Director; and, in October 2008, General Counsel Deutsch was terminated after a lengthy suspension. In addition to the aforementioned executive changes, under Arsenault's leadership, a number of reforms have already been instituted and are discussed, where relevant, in this report.

Following the completion of the Inspector General's investigation, and prior to the publication of this report and its findings, the Inspector General met with and disclosed the findings to staff members of New Jersey Governor Jon S. Corzine. Following such meeting, on August 5, 2009, Governor Corzine informed the Inspector General that he was removing Commissioner Madonna for cause.³

³ See Appendix.

II. BACKGROUND

History

In the early 1950s, corruption plagued the piers of New York Harbor: members of organized crime controlled the docks and the unions; longshoremen were regularly required to pay kickbacks to obtain employment; payoffs on the piers were considered a part of doing business; and, theft of cargo was common and went uninvestigated.

To combat corruption on the piers, the New York State Crime Commission and the New Jersey Law Enforcement Council held a series of public hearings. As a result, New York and New Jersey enacted a compact, the Waterfront Commission Act (“the Compact”), to form the Waterfront Commission of New York Harbor, a bi-state entity mandated to “investigate, deter, combat, and remedy criminal activity and influence in the Port of New York and New Jersey and to ensure fair hiring and employment practices, so that the Port region can grow and prosper.” As required under federal law, the bi-state Compact was approved by the United States Congress on August 12, 1953.

Organizational Structure

The Waterfront Commission currently is headquartered in Manhattan at 39 Broadway, with field offices in Brooklyn, New York, and Port Newark, New Jersey. The Commission also operates a “hiring hall” for dock workers in Edison, New Jersey. The Commission currently licenses 53 companies to operate on the Waterfront, and maintains a registry of 6,452 longshoremen and other waterfront employees. The Commission employs approximately 100 in staff, and has an annual budget in excess of \$11 million.

Two part-time commissioners of the Waterfront Commission serve terms of three years. The Governors of New York and New Jersey each appoint a commissioner, with the advice and consent of the respective state senates. The commissioners receive a salary of \$43,500 per year for their service. The Commission holds regular meetings approximately every two weeks, and the commissioners may otherwise speak on an as-needed basis. Typically at their bi-weekly meetings the commissioners address hiring and terminating employees, discipline of employees, issuing licenses to stevedoring companies, issuing notices of hearings, and whether to accept or reject findings from hearings. Because there are only two commissioners, both must agree to a resolution for it to be adopted.⁴ During the period covered by this investigation, Commissioners Michael Madonna of New Jersey and Michael Axelrod of New York governed the Commission. Upon the expiration of Axelrod’s term, Ronald Goldstock was appointed by New York Governor David A. Patterson as New York’s Commissioner and, on July 2, 2008, was confirmed by the Senate and assumed his duties. After the presentation of the Inspector General’s findings to staff members of New Jersey Governor Jon S. Corzine,

⁴ Although the two commissioner structure has led to stalemates and inaction, any change to the composition of the Commission requires legislation in New York and New Jersey followed by ratification by the United States Congress.

on August 5, 2009, Governor Corzine informed the Inspector General that he was removing Commissioner Madonna for cause.

The Waterfront Commission is funded primarily through an assessment on the salaries paid to employees on the piers. Currently, stevedoring companies⁵ are assessed at a rate of 1.98 percent of the portion of the company's payroll devoted to waterfront work. The assessment rate is determined jointly by the governors of the two states based on the Commission's budgetary needs, but may not exceed two percent according to the Compact.

The executive director oversees the day-to-day operations of the Waterfront Commission. The Waterfront Commission's Employees' Manual enumerates the duties and responsibilities of the executive director, which include being in "administrative charge of all Commission activities and personnel"; making recommendations to the Commissioners "with respect to hiring, discharge and changes in compensation of personnel"; and "initiat[ing] investigations pursuant to the provisions of the Waterfront Commission Act." During the period covered by this investigation, Thomas De Maria was the executive director. On September 10, 2008, Walter Arsenault assumed the position of executive director.

The executive director supervises the directors of each of the divisions of the Waterfront Commission and the general counsel. At the onset of the Inspector General's investigation, the Waterfront Commission consisted of approximately ninety-seven employees who were assigned to seven basic divisions: Executive, Law, Police, Licensing, Audit and Control, Information Technology, and Administration. The Inspector General has made a number of findings against former General Counsel Jon Deutsch, who was dismissed on October 14, 2008 as a result of misconduct, and replaced by Michele Meyer-Shipp (effective May 6, 2009). The Inspector General also has made findings with regard to now-retired Audit and Control Director Frank Nastasi, and Comptroller Irving Wolf.

Authority and Powers of the Waterfront Commission

As part of its mission of combating corruption and ensuring fair hiring practices, the Waterfront Commission regulates and licenses stevedoring companies operating in the harbor and on the piers. Moreover, any individual who comes in contact with waterborne freight must be registered with and licensed by the Waterfront Commission. All workers on the waterfront must undergo a background check, and stevedoring companies must meet licensing requirements and submit to regular audits by the Commission.

Many individual workers are hired on a temporary basis by stevedoring companies as needed, typically to load or unload ships in harbor. The Waterfront

⁵ Article II of the Waterfront Commission Act defines a "stevedore" as "a contractor (not including an employee) engaged for compensation pursuant to a contract or arrangement with a carrier of freight by water, in moving waterborne freight carried or consigned for carriage by such a carrier on vessels of such a carrier berthed at piers, on piers at which such vessels are berthed or at other waterfront terminals."

Commission regulates the employment of registrants, who must be hired according to seniority. The Commission also limits the number of registrants,⁶ partly to ensure that full-time work is available for those registered, but also to limit competition for slots because an excess of workers may give rise to opportunities for hiring officers to extort registrants seeking work. Until a phone system was implemented on June 5, 1989, hiring for longshoremen was conducted in person at one of five Commission hiring halls, where available registrants would await a company in need of short-term labor.

According to the Waterfront Commission's Compact, companies operating on the piers must obtain a license from the Commission, and renew such license every five years. Current compliance and payroll audits must be conducted prior to the issuance of a permanent license, in addition to background checks of certain company officers. Payroll audits are performed to ensure that the company is assessed properly based on its waterfront operations. Compliance audits are performed as a means to combat corruption, focusing on the financial transactions of the registered companies to determine if there are violations of the Waterfront Commission's regulations or criminal activity. Until a recent restructuring, audits were conducted by the Commission's Audit and Control Division.

The Police Division is charged with investigating crimes that occur within the Commission's jurisdiction. The subjects of an investigation may range from relatively minor theft of cargo to complex organized crime rings. Members of the Police Division serve as police officers in both New York and New Jersey.

The Waterfront Commission has the power to subpoena records and individuals and conduct hearings. Hearings are generally conducted when individual registrants and stevedoring companies are charged with violations of Waterfront Commission regulations.

Policies and Procedures

The Waterfront Commission Act broadly lists the powers and mandate of the Waterfront Commission but does not provide guidance for the day-to-day functioning of the Waterfront Commission in carrying out its mission. For example, while the Compact empowers the Waterfront Commission to audit stevedoring companies, it does not provide guidelines regarding how the audits should be conducted or how often.

When the Inspector General commenced its investigation, the Waterfront Commission had in effect a 25-page Employee's Manual which does not contain a date or a version number. While the manual does address some items, such as employee benefits, it falls short of providing adequate policies and procedures with which to govern employees of the Waterfront Commission. For example, the manual fails to address the use of Waterfront Commission vehicles and other property. And, while the manual does address the basic function of each of the divisions of the Waterfront Commission, it

⁶ The Waterfront Commission Act uses the terminology register or license depending on classification of the individual, i.e. longshoremen, hiring agents, or security guards. While the standards for the different groups vary, they are all considered registrants of the Waterfront Commission.

provides no details or guidance as to how each division should perform its role. The manual also completely neglects to list or discuss the role of comptroller at the Waterfront Commission. As discussed below in this report, this omission led, in part, to the Waterfront Commission's comptroller disclaiming responsibility for any of the financial accountability problems at the Waterfront Commission.

The individual divisions also lacked the necessary guidance which current policies and procedures would have provided. For example, the Police Division did not have a comprehensive operations manual of policy and procedures. New detectives hired at the Waterfront Commission, many of whom had no prior law enforcement experience whatsoever, were supplied only with the standard Waterfront Commission's Employees' Manual. The lack of appropriate policies and procedures in the Police Division is problematic, as it would be in any police department, given the powers of a police officer, which include the ability to carry a firearm, make arrests, and conduct warrantless searches. Because Waterfront Commission detectives are police officers in both New York and New Jersey, states with different criminal laws and procedures, the problems resulting from the lack of appropriate policies and procedures are even more glaring.

While the Audit and Control Division did have some guidelines in place, they were outdated and failed to address contemporary issues. The audit guidelines provided to the Inspector General were not dated; although, later amendments indicate that they were created sometime prior to July 1992, and were last updated in April 1996. The outdated regulations specifically discuss the licensing of two companies which the Waterfront Commission no longer licensed. In addition, another section instructs auditors to scrutinize receipts from certain restaurants that no longer exist.

The audit guidelines were also never updated to adapt to the changes in the types of companies located on the piers. Historically, the companies operating on the piers were smaller, family-owned operations. Today, the majority of the companies are owned by larger corporations, in some cases international corporations. The audit guidelines were written to handle far less complicated corporate structures. As discussed later, adhering to these outdated audit guidelines contributed to the Waterfront Commission's audit backlog, some delinquent as much as 14 years.

The audit policy also failed to address the issuance of licenses by the Waterfront Commission. Audits play a central part in determining whether a stevedoring company receives a permanent license. Yet, not one auditor interviewed by the Inspector General was aware of this crucial role, in part, because of inadequate audit policies.

Policies regulating the Commission's finances were also lacking, and failed to address procurement, accountability of forfeiture funds, and tracking of overtime payments. As discussed in this report, the Commission's comptroller did not attempt to establish such policies, nor did he have adequate systems in place to manage the Commission's finances.

In its formal response to this report, the Commission agreed that it had suffered due to lack of policies:

There was virtually no communication between divisions, and in fact there were rules in place that discouraged inter-division cooperation. The Police Division operated without any written guide lines (sic), and the Commission lacked a written procurement policy leading to some questionable decisions as to vendors and costs. The Commission had an Employee Manual that had not been updated for at least a decade. Basic tools of accountability such as employee time sheets were unheard of. Time and leave abuse was rampant throughout the agency...The Commission's media policy was declared unconstitutional by the New Jersey Appellate Division.

The Commission further reported that, since the onset of the Inspector General's investigation, "Policies and procedures were put in place from the most basic (time sheets) to a Police Division Operations Manual. Job descriptions were drawn up for each category of employee and yearly evaluations are being prepared for implementation. The Commission's unconstitutional Media Policy has been replaced." Further, lacking procurement policies of its own, the Commission reported that, for the past 10 months, it has chosen to follow the stringent guidelines of the New York City Procurement Policy Board. A travel policy detailing allowable costs also has been implemented.

The Commission also reported that a revised employee manual, Equal Employment Opportunity Policy, ethics code, and procurement policy were currently under review by the Commission's newly-appointed general counsel.

Prior Review of the Waterfront Commission

The only outside audit or review conducted of the Waterfront Commission since its inception in 1953 was conducted by the Office of the State Comptroller of New York. On January 4, 2005, the State Comptroller issued a report regarding the Waterfront Commission's hiring practices.⁷ The audit, covering January 1, 2000 through March 31, 2004, found that the Waterfront Commission lacked a comprehensive set of procedures regarding the issuance of licenses to individuals and companies applying to work on the waterfront. The State Comptroller also recommended that the Waterfront Commission establish a set procedure to verify the personal identification information (including social security numbers) of potential workers.

In response to the State Comptroller's report, the Waterfront Commission claimed that the State Comptroller had no statutory authority to audit the Waterfront Commission, a bi-state agency, but asserted that the Commission had already corrected, or was in the process of correcting, many of the identified problems.

⁷ Waterfront Commission of New York Harbor's Division of Licensing and Employment Information Centers Registration of Dockworkers and Employers Report: 2003-S-48.

III. ALLEGATIONS AND METHODOLOGY

On May 7, 2007, then-Governor Eliot Spitzer referred to the Inspector General the complaint of an employee of the Waterfront Commission alleging misconduct of General Counsel Jon Deutsch and New Jersey Commissioner Michael Madonna, as well as hiring irregularities within the Police Division. Around the same time, the Inspector General received similar allegations from other sources.

Preliminary interviews and review of documents revealed an array of problems at the agency, including misuse of Waterfront Commission property, lack of written procedures in the Police Division, complaints about leadership, and lack of communication and cooperation between the divisions.

In addition to investigating the specific allegations detailed above, the Inspector General conducted a review of the Commission's licensing and registration processes, and the audit process.

The Inspector General interviewed more than 75 witnesses, including every member of the Police Division. Several witnesses were interviewed multiple times. Thousands of documents were reviewed, including personnel folders and files of stevedoring companies and registrants.

The Inspector General regularly informed the Commission of its findings during the investigation so that problems could be addressed immediately.

The Waterfront Commission's Initial Non-Compliance and Challenge to an Inspector General's Subpoena

In addition to the Inspector General's statutory authority under New York State Executive Law Article 4-A to investigate allegations of corruption, fraud, criminal activity, conflicts of interest and abuse in agencies within its jurisdiction, on October 15, 2007, Governor Eliot Spitzer issued an Executive Order (No. 18) directing the Inspector General "to study, examine, investigate, review and make recommendations with respect to the management and affairs of the Waterfront Commission of New York Harbor." This Executive Order authority was subsequently extended by Governor David A. Paterson.

Pursuant to state law and the Governor's Executive Order, the Inspector General served a subpoena on the Waterfront Commission on October 17, 2007, demanding various documents relevant to the allegations received. Initially, both Commissioners Axelrod and Madonna agreed to cooperate and produce the documents. However, shortly after the document production began, the Inspector General was notified that Madonna no longer wished to comply with the Inspector General's subpoena. While Commissioner Axelrod remained fully cooperative with the Inspector General's investigation, because of the legal requirement that both Commissioners agree on any official action taken by the Waterfront Commission, it was the position of the Waterfront Commission that the requested documents could not be disclosed to the Inspector General.

and, therefore, the Waterfront Commission would not comply with the Inspector General's subpoena.

On December 11, 2007, just prior to Madonna's decision not to comply with the subpoena for documents, Sergeant Ramon Martinez⁸ was served with a subpoena directing him to appear at the offices of the Inspector General on December 17, 2007 to give testimony. On December 13, 2007, Martinez filed a federal action in United States District Court, District of New Jersey, seeking a court order quashing the Inspector General's subpoena, claiming that the Inspector General lacked authority to conduct this investigation.

On January 30, 2008, the United States District Court rejected Martinez's action to quash the Inspector General's subpoena, dismissed his federal complaint, and found that the Inspector General possessed the jurisdiction to complete this investigation.⁹ Eventually, Madonna reconsidered his position against cooperating with the Inspector General, and the Waterfront Commission resumed document production.

Upon his appointment in July 2008, Commissioner Goldstock continued Commissioner Axelrod's pledge of cooperation with the Inspector General. Goldstock met personally with the Inspector General and again later accompanied by newly-appointed Executive Director Walter Arsenault.

After reviewing the Inspector General's report furnished to the Commission for its response, Madonna argued by letter that he never "withdrew his previous agreement to cooperate" but rather "questioned the Inspector General's jurisdiction" and awaited the Court's ruling on the subpoena served on Sergeant Martinez before agreeing to continue record production. Madonna's claim that, rather than cooperating with the mandates of a bi-state investigation of the Waterfront Commission, he thought it prudent to await the result of a private litigation wholly unrelated to his duties as one of two heads of the Commission is misguided. Indeed, given that Martinez was represented by the PBA's local attorney and, as discussed below, Madonna dually served as head of the police union, Madonna's response raises further questions about his objectivity and potential conflicts of interest.

IV. INVESTIGATION

The Inspector General found systemic failures at the Waterfront Commission, resulting in an inability to meet its obligations under the Compact. Audits required for companies to obtain permanent licenses were as much as 14 years behind and, astonishingly, not one auditor was aware that a current, completed audit was needed before a permanent license could be issued. The agency lacked policies addressing many important functions, and communication among divisions was extremely poor. The

⁸ Ramon Martinez retired from the Waterfront Commission on February 28, 2009.

⁹ *Martinez v. New York*, ___ F.Supp.2d ___, 20008 WL 343556 (D. NJ 2008).

Police Division was lacking policies specific to its duties, including procedures for investigations and arrests, and conduct of detectives. Moreover, then-Executive Director De Maria was unable or unwilling to address the Commission's many failures or to confront misconduct and abuse at the Commission, and Commissioners Axelrod and Madonna were often locked in a stalemate when issues of misconduct or discipline arose.

In addition to these failures, the Inspector General identified numerous instances of abuse by senior officials. Both former Commissioners Axelrod and Madonna abused their positions to their own benefit and the benefit of others. The most egregious instances of misconduct were committed by former General Counsel Jon Deutsch. Most significantly, Deutsch orchestrated a scheme to allow a company whose owner had been convicted of federal racketeering charges to continue to operate on the waterfront under a shell company nominally operated by the racketeer's wife. Deutsch also used his official position to obtain favors for friends and acquaintances. The Inspector General also found abuses by former Police Chief McGowan and former Audit and Control Director Nastasi, and that Comptroller Irving Wolf did not impose adequate fiscal controls at the Commission.

A. REGISTRATION OR LICENSING OF LONGSHOREMEN, PIER GUARDS, HIRING AGENTS, AND SECURITY OFFICERS

According to its Compact, the Waterfront Commission must license or register all individuals who come in contact with waterborne freight. To assess the Waterfront Commission's compliance with its written policies and its Compact, the Inspector General reviewed a random sample of 331 files – five percent of the 6,022 registered and licensed deep sea longshoremen, A-type longshoremen, hiring agents, security officers, and pier superintendents.¹⁰ Those who are registered, such as longshoremen, are held to the standard that their presence on the piers or waterfront terminals must not “constitute a danger to the public peace or safety.”¹¹ Those who are licensed, such as port watchmen, hiring agents, and pier superintendents, are held to the higher standard of possessing “good character and integrity.”¹²

The Licensing Division also monitors the number of days worked by each longshoreman. Waterfront Commission regulations require that longshoremen work, or make themselves available to work, at least 90 days out of every six months, and at least 15 days in five of the six months.¹³ Those individuals who do not meet this work requirement are subject to “decasualization,” the revocation of their registration for failure to work the required number of days.

The Inspector General found that Waterfront Commission's licensing and registration of waterfront employees generally was in compliance with its mandate, but

¹⁰ The 331 files were comprised of longshoremen, security officers, pier superintendents, hiring agents and telecommunications officers. A random sample was selected by choosing every twentieth or eighteenth name on the list, depending on the registry.

¹¹ Waterfront Commission Act, Article VIII, §3(c).

¹² Waterfront Commission Act, Article X, §1(d); Article V, §3(a).

¹³ Waterfront Commission Regulation 8.1.

did identify individual instances of misconduct by former General Counsel Jon Deutsch. The Inspector General determined that Deutsch provided unwarranted assistance to personal acquaintances who were registrants or seeking registrations.

Abuses by Jon Deutsch as Licensing Director

General Counsel Jon Deutsch, formerly Licensing Director, was plagued by conflicts of interest during his tenure at the Commission. As discussed in the sections below, Deutsch inappropriately used his position to the benefit of friends and acquaintances on multiple occasions. Although Deutsch engaged in this type of activity since 2000, he never received any reprimand or discipline until his suspension in March 2008.

Deutsch was eventually terminated in October 2008, and the Commission reported to the Inspector General that it has now implemented policies to prevent conflicts of interest, including requiring approval for outside employment, and requiring all employees to complete a form disclosing potential conflicts of interest.

Deutsch Personally Issued a Registration to a Family Friend

Jon Deutsch, who served as the Commission's general counsel from 2003 until his removal in 2008, was initially hired in 1999 to work in the Licensing Division. In 2000, Deutsch was appointed Director of the Licensing Division. As Director of Licensing, Deutsch was responsible for approving applications from prospective registrants. The Inspector General determined that in 2002, Deutsch failed to recuse himself from review of an application of a close family friend and the son of Frank McDermott, a former state senator who had recommended Deutsch for a County Prosecutor position in New Jersey State.¹⁴ Moreover, Deutsch made misleading notations in the applicant's file in order to conceal the applicant's prior drug-related arrest.

On December 19, 2002, Deutsch was present at Waterfront Commission offices in New Jersey to accept new applications from registrants who appeared in person to submit their applications. Among the new applicants was Brendan McDermott, who also had applied for a position as a "checker" with a specific stevedoring company. McDermott listed Deutsch as a reference on his application to the stevedoring company, stating that he had known Deutsch for 20 years. Deutsch testified to the Inspector General that he was unaware that McDermott intended to submit an application that day and that, at first, Deutsch did not recognize him. However, Deutsch admitted that he did eventually recognize McDermott, but nonetheless did not recuse himself from reviewing McDermott's application.

As noted above, registrants and licensees of the Waterfront Commission must meet certain standards of character as set forth in the Waterfront Commission Act. Accordingly, the Commission's six-page application includes questions regarding the

¹⁴ Unlike New York, prosecutors in New Jersey are appointed, not elected.

applicant's prior criminal history. Question 15(h) of the application asks if the applicant has ever been "arrested for, indicted for, or convicted of...Unlawfully possessing or distributing narcotic or hallucinogenic drugs." McDermott responded, "No" in response to this question. In response to question 16(a) asking the applicant to list all arrests and include specific information such as the date, place, charge, court, and final disposition, McDermott indicated that he had been convicted of a municipal ordinance, but did not list a separate arrest charge. In accordance with policy at the time, the Waterfront Commission obtained a criminal history based on McDermott's name, which, according to the Waterfront Commission, revealed only that McDermott had been convicted of a local ordinance and did not list the original arrest charges.

The Inspector General reviewed McDermott's application and found a notation on the margin stating, "Orig charg DWI - sub was parked D/G to Mun Ord." The notation indicates that McDermott was arrested for driving while intoxicated, but was convicted of a less serious municipal ordinance. The initials "JSD," for Jon S. Deutsch, were written below the statement. McDermott's file also contained a notation by Roy B. Kropp, the Assistant Director of Licensing at the time, stating, "12/19/02 Subject's criminal record reviewed by Div of Lic Jon Deutsch – OK to Issue Temporary Longshore Regis." Shortly thereafter, McDermott was issued a temporary registration.

Waterfront Commission records show that McDermott later submitted fingerprints for a full criminal background check. A full criminal history report was received by the Commission on June 12, 2003, which revealed that McDermott had been arrested on June 22, 1998, for possession of drugs and drug paraphernalia.¹⁵ Although the criminal history report exposed McDermott's false statement on his application that he had never been the subject of a drug-related arrest, this revelation did not prompt further review of McDermott's application at this time, nor was McDermott's temporary registration suspended or revoked.

After Deutsch assumed the role of General Counsel, McDermott's file was reviewed by then-Assistant Counsel Cecilia Bastos in 2004. The Commission was preparing to revoke McDermott's registration because he had not made himself available to work the required number of hours needed to maintain his registration. Bastos interviewed McDermott after discovering the drug-related arrest.

According to an internal Waterfront Commission report dated February 14, 2005, McDermott informed Bastos on September 2, 2004, that he became aware of an available position from his brother and Jon Deutsch. McDermott stated that he grew up with Deutsch and that his father had a friendly and business relationship with Deutsch's father. During the interview, McDermott twice informed Bastos that he had told Deutsch that his arrest involved drugs. However, at the conclusion of the interview, McDermott stated that he was unsure whether he had informed Deutsch of the drug charges. The internal report also states that Deutsch acknowledged to then-Executive Director Thomas De

¹⁵ "Possession of CDS [controlled dangerous substance] or analog in violation of N.J.S.A. 2C:35-10(a)(1)" and "Possession of Drug Paraphernalia in violation of N.J.S.A 2C:36-2."

Maria that he “should have been more careful in reviewing Mr. McDermott’s application because he knew that Mr. McDermott had been in trouble all of his life.”

According to De Maria and others at the Waterfront Commission, when arrests or other irregularities appear on applicants’ files, the files were to be assigned to an assistant counsel, who would review the file and interview the registrant. Contrary to this policy, Deutsch stated he believed as Director of Licensing he had authority to make licensing decisions without review by Counsel’s office. Deutsch acknowledged that if a registrant had a serious conviction or made a misrepresentation on the application, the file would be assigned to an assistant counsel. Deutsch, however, did not do so in McDermott’s case, even after he received McDermott’s criminal history.

The Commission’s internal report on this matter also reveals that Deutsch interceded on McDermott’s behalf by contacting James Melia, Executive Vice President of New York Shipping Association, to ask whether a planned family vacation would affect Brendan McDermott’s attendance status. In his defense, Deutsch stated that he only contacted Melia at the request of Frank McDermott because Melia was the most knowledgeable person in the industry. Deutsch claimed that the phone call was not to request special privileges for Brendan McDermott.

Deutsch was permitted to respond in writing to the internal Waterfront Commission report. According to Axelrod, while Commissioner Madonna was satisfied with Deutsch’s response, Commissioner Axelrod referred to it as “incompetent” and “unsatisfactory.” Deutsch’s written response to the Commission’s internal report on the incident included the following claim:

At the time of this alleged incident, there was no “Conflicts/Ethics Policy” other than twelve lines which appear on Page 18 of the Employee Manual. Even rendering a loose interpretation of this policy, I submit that no conflict of interest existed at the time that I preliminarily reviewed McDermott’s application. Since the incident, a complete Ethics/Conflict of Interest Policy has been developed and promulgated for all Commission employees.

As Deutsch testified, McDermott was permitted to withdraw his application, rather than face any consequences for misstatements on his application. Such consequences could have included termination and arguably criminal prosecution.

According to De Maria, both he and Axelrod wanted to discipline Deutsch for his actions related to McDermott’s application, but Madonna refused to take any disciplinary action. Finally, the commissioners agreed that Deutsch would not be disciplined, but Axelrod would “read Deutsch the riot act.” No record of this matter was noted in Deutsch’s personnel file. The matter was concluded when McDermott was requested to withdraw his application. Deutsch testified:

What occurred was, in a meeting between both Commissioners that were there and the executive director, Commissioner Madonna said, “Maybe it would be best for all involved if Mr. McDermott just

withdrew,” and that was a clue to me that I went and saw McDermott's father, with my father, and said, “Your son lied on his application,” and he -- he instructed his son -- and he said, “Well, you know...” -- apologized, and I said, “He needs to withdraw his application.” And he went to the Waterfront Commission and withdrew his application.

Axelrod stated that when he discovered the preferential treatment given to McDermott, he spoke to Madonna and wanted Deutsch “severely written (up) and admonished” for his involvement. According to Axelrod, Madonna would not agree to discipline Deutsch. However, because of the incident, the Commission adopted a conflict policy. The policy, ironically written by Deutsch, establishes the General Counsel as the final arbiter of alleged violations.

Deutsch Failed to Recuse Himself from an Investigation of Albert Cernadas, Sr.

The Inspector General found that Deutsch improperly took a primary role in the investigation of Albert Cernadas, Sr., a union official and the father of Deutsch’s close friend. Only after Cernadas, Sr. was indicted did Deutsch cease his role in the investigation.

Prior to his employment at the Waterfront Commission, Deutsch served as a prosecutor in Union County, New Jersey, where he became friends with Albert Cernadas, Jr., who later became the First Assistant Prosecutor of Union County. Deutsch and Cernadas, Jr. have known each other since approximately 1993 and have remained friends. Deutsch and Cernadas, Jr. meet regularly for lunch or dinner, and Deutsch invited Cernadas, Jr. to his daughter’s bat mitzvah. Both men sit on the board of Crime Stoppers of Union County.

Beginning in 2000, when Deutsch headed the Commission’s Licensing Division, the United States Attorney’s Office, Eastern District of New York, and the Waterfront Commission conducted a joint investigation into certain members of the International Longshoremen’s Association, a 65,000-member union headquartered in New York. At the time, Albert Cernadas, Sr. was the executive vice-president of the union and was one of the subjects of the investigation.

In March 2000 and October 2003, under the authority of its Compact, the Waterfront Commission interviewed Cernadas, Sr. Despite his close personal ties to Cernadas, Jr., Deutsch led both interviews. During the March 2000 interview, Deutsch stated on the record “For simplistic purposes of the record, I will ask the questions.” Kevin McGowan, who participated in the October 2003 interview, stated that he knew Deutsch had worked with Cernadas, Jr., but Deutsch did not disclose the extent of their relationship. It was not until after Cernadas, Sr. was arrested that Deutsch recused himself from the Cernadas, Sr. case.

When questioned by the Inspector General about his participation in the joint investigation, Deutsch argued that a conflict of interest only arose after Cernadas, Sr. was indicted.

Q.: Why did it change?

Deutsch: Because I felt that was a major event that now he is being accused of being a member of organized crime.

Q.: But a civil RICO investigation wasn't enough?

Deutsch: No, I think it was the – I think it was -- no, no. With the civil RICO, God, that went on for months. They were just trying to build a case. They didn't say, oh, we got a sure-shot thing here, this guy is a member of organized crime. They were trying to build their case.

Cernadas, Jr. testified to the Inspector General that he was unaware that Deutsch conducted the questioning of his father. He recalled a conversation that he had with Deutsch after his father was indicted, where Deutsch stated that he was not going to be involved in his father's investigation because of Deutsch's relationship with Cernadas, Jr.

Deutsch Failed to Disclose His Relationship With a Consultant

While Deutsch was Director of Licensing, the Waterfront Commission sought the assistance of a consulting company in order to update its pier guard training program. Deutsch recommended a company, which he claimed to have discovered on the Internet. After the consultant was hired, it became apparent that Deutsch actually knew the owner of the company and his family.

According to De Maria, Deutsch stated that he did some research online and discovered a potential contractor, Dennis M. Kelly Associates, LLC (Kelly Associates). According to Deutsch, Axelrod requested that he also get a bid from Beau Dietl and Associates (Dietl and Associates), a company with which Axelrod was familiar. Both companies submitted bids for the project; Kelly Associates was the lower bidder and was awarded the contract.

At some point after Kelly Associates began work on the contract, Deutsch took Dennis Kelly to meet De Maria. During that meeting, it became clear to De Maria that Deutsch and Dennis Kelly had a familiar relationship and commented to the two that they seemed close. De Maria testified that Dennis Kelly responded that he and Deutsch knew each other; De Maria stated that he was astonished to learn this. He further testified that Deutsch never disclosed their relationship during the bidding process. When Deutsch testified to the Inspector General, he claimed to have informed De Maria about his familiarity with Dennis Kelly.

Licensing-Related Abuses by Deutsch as General Counsel

Deutsch Improperly Assisted a Friend of the Cernadas Family

Deutsch abused his position at the Waterfront Commission to obtain police records and interceded on behalf of a friend of the Cernadas family. As noted above, Albert Cernadas, Sr., was a senior official of the longshoremen's union, and Albert Cernadas, Jr., is a close friend of Deutsch.

Jimmy Zamuz, a friend of the Cernadas family, was a registrant of the Waterfront Commission. On January 7, 2008, the Waterfront Commission learned that Zamuz was arrested during a homicide investigation. Unaware of Zamuz's role in the homicide, the Waterfront Commission initiated steps to suspend him, concerned that he may be a danger to other workers on the piers.

Although the Police Division was responsible for obtaining records, Deutsch used his influence to obtain police records of the homicide investigation, and personally retrieved those records in Newark, New Jersey. The records revealed that Zamuz, although arrested for weapons possession, was not suspected of the homicide. With these records, Deutsch interceded to prevent the suspension of Zamuz's Waterfront registration.

Deutsch testified that it was only after he was in the process of obtaining the records that he learned from De Maria about the relationship of Zamuz to Cernadas, Sr. Deutsch claimed that he was unaware that the Zamuz and Cernadas families were friendly or that Jimmy Zamuz and Deutsch's friend, Albert Cernadas, Jr., were close friends. Deutsch further testified that he did not obtain the records at the request of Cernadas or anyone else outside of the Waterfront Commission. Rather, Deutsch claimed that Executive Director De Maria and Acting Chief of Police McGowan asked him to obtain necessary documentation regarding Zamuz's role in the homicide investigation.

When asked why members of the police division would ask him to obtain these records Deutsch testified, "I was a prosecutor in Union County. I mean, New Jersey's a little different than New York. I mean, we know people. Who did I know? I knew a special assistant to the mayor of Newark. It happened in Newark, I believe."

Both then-Executive Director De Maria and then-Acting Chief of Police McGowan testified to the Inspector General that Deutsch's assistance was never requested in this matter. Rather, since Zamuz was facing suspension, Deutsch took it upon himself to obtain the records to protect Zamuz's employment. De Maria and McGowan both stated that they knew of the relationship between the Zamuz and Cernadas families, and of the relationship between Deutsch and Cernadas, Jr. McGowan testified to a conversation he had with De Maria after learning that Deutsch was in New Jersey in an effort to obtain the Zamuz records. According to McGowan, De Maria stated:

I just called [Deutsch] on the phone, and I told him, 'get your ass out of there now and get back here,' ...do you believe that this guy with

all the things that has gone on with Al Cernadas, that this guy would interject himself in this again? Does he ever learn?

De Maria agreed that he made the above statement to McGowan, in substance.

Cernadas, Jr. acknowledged that Zamuz is a friend of his and his family. According to Cernadas, Jr., he knew that Zamuz was arrested but he did not ask Deutsch to obtain records or otherwise assist Zamuz.

Deutsch Provided Non-Public Information to Albert Cernadas, Jr.

Following the two incidents involving the Cernadas family, Deutsch again abused his authority as Commission general counsel by providing non-public Commission information to assist Albert Cernadas, Jr., regarding Cernadas family members under investigation for an altercation in a bar. Deutsch then attempted to secure the suspension of one of the combatants, who was at the time estranged from the Cernadas family. Deutsch was suspended as a result of this improper intervention, as were two police detectives who lied during an internal Commission investigation of the matter.

The facts of the incident are as follows. On February 21, 2008, two members of the extended Cernadas family, Ray Costa and Robert Machado, were in an altercation at a bar. Another Cernadas family member, Henry Machado, was present. All three men are registrants of the Waterfront Commission and were attending a union meeting when the fight erupted. At the time, the Machados were estranged from the Cernadas family because Henry Machado was in the process of divorcing Cernadas, Jr.'s sister. Ray Costa is Cernadas, Jr.'s uncle. Lieutenant Scott Politano learned of the incident from an anonymous call. Politano assigned Detective David Bistacco and others to investigate the incident and interview Costa and Robert Machado.

Cernadas, Jr. contacted Deutsch on February 21, 2008, after learning that Commission detectives had attempted to contact Costa, and the two men met for dinner that evening. Although Cernadas, Jr. initially stated that he had only discussed general reporting requirements with Deutsch, once confronted with telephone records, Cernadas, Jr. admitted to Commission investigators that he told Deutsch at dinner that members of the Waterfront Commission were looking for his uncle. Deutsch testified to the Inspector General that Cernadas, Jr. explained to him that Costa was the victim of an assault, and that, after receiving a telephone call, Cernadas, Jr. requested that Deutsch find out why members of the Waterfront Commission were looking for his uncle. At the time, Cernadas, Jr. was First Assistant Prosecutor of Union County, but had no official involvement in the Machado-Costa altercation. During Deutsch's testimony to the Inspector General, he emphasized that the Union County Prosecutor's jurisdiction includes the New Jersey piers.

At approximately 9:00 p.m. that same evening, Deutsch called Lieutenant Politano to communicate Cernadas, Jr.'s question of why Commission detectives were looking to interview Ray Costa. Deutsch had previously been instructed to follow the chain of command within the Police Division; therefore, he should have contacted then-

Acting Chief of Police McGowan. Deutsch stated to members of the Waterfront Commission during an interview, "I called Lieutenant Politano, I explained that I had dinner with the First Assistant, that he indicated to me that Ray Costa was a victim of a crime, and that Ray Costa says somebody from the Waterfront Commission is looking for him but he doesn't know who." Deutsch admitted that he knew that Cernadas, Jr. was making a personal request to find out information about his uncle. Politano informed Deutsch of the cause of the Commission's investigation, and Deutsch immediately relayed the information to Cernadas, Jr. Politano told internal Commission investigators that it was unusual for Deutsch to call him at all, especially in the evening to request information about a case.

The next morning, February 22, 2008, Deutsch described the altercation, as imparted to him by Cernadas, Jr., to then-Director of the Law Division Joy Kelly, who was previously unaware of the incident. According to Kelly, Deutsch wanted Robert Machado's registration suspended as result of the incident. Deutsch denied requesting Machado's suspension, and testified to the Inspector General that he only told Kelly that Costa was willing to cooperate and make a statement. Deutsch testified that he wanted to help resolve the matter quickly. Kelly stated to the Inspector General that Deutsch was not typically involved in this type of investigation.

Deutsch testified to the Inspector General that he also contacted then-Acting Chief of Police McGowan to facilitate Costa's statement. McGowan testified that the information which Deutsch told Cernadas, Jr. would not have normally been made public, and that the information Cernadas, Jr. requested of Deutsch was for Cernadas, Jr.'s personal benefit. When McGowan learned of Deutsch's involvement in the matter, he initiated the internal investigation that led to Deutsch's suspension.

On February 2, 2005, the Waterfront Commission adopted the Code of Ethics remarkably authored by Deutsch. Section 4(F) of the code prohibits the release of confidential Commission information:

Confidential information (information not available to the general public) shall not be: willfully disclosed to unauthorized persons either during the Commission service or after separation from the Commission; used by the employee or member to further his or her private interests; or used by the employee or member, directly or indirectly, for pecuniary gain or to make any investments or other financial transactions.

In addition, section 4(B) of the code states the following:

No employee or member should use or attempt to use his or her official position to secure unwarranted privileges or advantages for himself, herself or others.

Deutsch also testified that he had circumvented the Police Division's chain of command because there is no official chart listing the chain of command within the

Police Division. That testimony notwithstanding, Deutsch later admitted to knowing the basic command structure of a police department.

In early 2008, the Waterfront Commission conducted an internal investigation of this incident and found that Deutsch conveyed non-public information to Cernadas, Jr., in violation of the Waterfront Commission's Ethics Policy. As a result of this violation, Deutsch was suspended on March 5, 2008 and terminated on October 14, 2008.

During the internal Waterfront Commission investigation regarding Deutsch's disclosure of non-public information to Cernadas, Jr., Lieutenant Politano and Detective Bistacco made false statements to Acting Chief McGowan.

When initially questioned, Politano falsely told McGowan that he had not spoken to Deutsch about the Costa/Machado investigation. After Deutsch informed Politano that he had already confessed to the conversation, Politano claimed to McGowan that he had forgotten the conversation. Politano later admitted to internal Commission investigators that he had lied to McGowan because he feared repercussions from Deutsch.

Detective Bistacco, who conducted some of the inquiries surrounding the altercation, contacted Deutsch to warn him of the internal investigation after being questioned by McGowan. Deutsch testified that Bistacco called him after speaking to McGowan and told him, in substance, to "watch out" and that "this is De Maria's doing." Phone records corroborate that Bistacco phoned Deutsch shortly after his conversation with McGowan about the incident. Bistacco lied under oath to Commission investigators, denying that he had contacted anyone regarding the internal investigation.

Politano and Bistacco were both suspended as a result of their false statements. Madonna refused to terminate Bistacco for the statements he made under oath. Instead, Bistacco's duties have been restricted.

B. LICENSING OF STEVEDORING COMPANIES

The Waterfront Commission's Compact mandates that the agency license stevedoring companies seeking to conduct business in the Port of New York. The Inspector General reviewed the files of all 53 stevedoring companies active in the port for completeness and to assess compliance with the Waterfront Commission's Compact and its written policies and procedures. The Inspector General interviewed former Licensing Division Assistant Director Jeffrey Schoen, former Law Division Director Joy Kelly, former Assistant Counsel Brian McCann, and the entire staff of the now-eliminated Division of Audit and Control.

Of the 53 stevedoring companies currently operating within the Waterfront Commission's jurisdiction, none holds a permanent license from the Commission. For the past 10 years, all of the companies have operated under temporary permits of varying durations. A temporary permit is supposed to be granted only under special circumstances: an ongoing investigation, or a request for additional supporting documentation. However, the Commission has been issuing only temporary permits for

the past ten years because the Audit and Control Division has completed few timely audits.

The companies licensed by the Waterfront Commission range from small cleaning companies operating within the Waterfront Commission's jurisdiction to large corporations, such as Maher Terminals, that move large container ships in and out of the port. A license by the Waterfront is issued for a five-year term. The current application cycle runs from December 1, 2005 through November 30, 2010.

License applications are received by the Commission's Licensing Division, which ensures applications are complete before forwarding them to the Law Division. The Law Division is responsible for recommending an issuance or denial of a license or temporary permit to the Commissioners. Corporate officers and significant shareholders must submit to a criminal history check, and a company is barred from obtaining a license if any of the officers or shareholders has been convicted of a felony within the past five years. The Waterfront Commission Act also requires that the applicant have "good character and integrity."¹⁶

Prior to its dissolution January 15, 2009, the Division of Audit and Control was responsible for assessing the financial health of all stevedoring companies within the Waterfront Commission's jurisdiction.¹⁷ A pre-licensing audit, a cursory examination of the company's general ledgers and vouchers, was conducted for every new stevedoring company before the Waterfront Commission issued the company's first temporary permit. Former Law Division Director Joy Kelly stated that payroll and compliance audits should be conducted every three years thereafter. The payroll audit determines whether the company has paid the required assessments to the Commission, and the compliance audit reviews the company's finances for evidence of criminal activity. According to the directors of the Law and Licensing Divisions, a license cannot be issued unless compliance and payroll audits have been completed within the current licensing cycle.

Unlike the Law and Licensing Division directors, Audit and Control employees gave conflicting accounts regarding the frequency with which audits should be completed to be considered current and allow a company to be eligible for a permanent license. Some auditors stated that each company should be audited every two to three years, while others believed that an audit simply needed to be completed within the current five-year stevedore licensing cycle to be considered current. Almost all of the employees of the Audit and Control Division, including former Director Frank Nastasi, stated that they were unaware that the absence of current audits was often the reason why the Law Division had not recommended that the Waterfront Commission issue any permanent stevedoring licenses.

The Inspector General's review determined that audits were typically several years behind and in fact, several had not been completed in fourteen years. Only a few

¹⁶ Waterfront Commission Act, Article VI §3(b).

¹⁷ The Division of Audit and Control was eliminated during the Inspector General's investigation. Changes already in effect at the Waterfront Commission are discussed in a subsequent section of this report.

had been completed within the current licensing cycle. Almost every file contained a copy of a May 2, 2007 memo from then-Law Division Director Joy Kelly to then-Audit and Control Director Frank Nastasi, asking that Audit and Control provide approximately 60 outstanding audits that the Division of Law had requested in March and April of 2006. The memorandum reads, in part:

No audits have been received from your Division since approximately 2000 with the exception of Global Terminal and Port Securing.... Due to the fact that the Law Division has received no audits, I [am] unable to enforce the Waterfront Commission Act and the Rules and Regulations of the Waterfront Commission with respect to Stevedores.

Neither this memorandum nor its contents were apparently ever shared with the commissioners.

Prior to the Inspector General's investigation, the Waterfront Commission did not maintain a central list tracking audits of stevedoring companies. There was no audit plan detailing which audits were outstanding and when the companies were last audited. A list was created only after the Inspector General requested information regarding the dates of completion of audits concerning current stevedores within the Waterfront Commission's jurisdiction. The list reveals that the unit had fallen far behind the required frequency of audits. As of mid-2007, payroll audits were anywhere from one to 14 years outstanding. Since most completed payroll audits result in additional funds owed to the Waterfront Commission, most members of the audit staff agreed that timelier payroll audits would result in an increased budget for the Waterfront Commission.

When the Inspector General's Office showed Audit and Control staff members the list of outstanding audits, few were surprised that the vast majority of audits were so many years behind schedule. Although then-Executive Director Thomas De Maria was copied on Joy Kelly's memorandum listing the 60 outstanding audits, he testified to the Inspector General that he was unaware that the lack of timely audits was the reason that every waterfront licensee was operating on temporary permits. De Maria attributed the problem of late audits to the small number of auditors on staff, but most auditors blamed their supervisor, former Audit and Control Director Frank Nastasi.

Nastasi stated to the Inspector General that it would be "impossible" for the audit staff to complete audits of each of the stevedoring companies within a five-year period given his limited staff. He claimed that he was unaware that the Waterfront Commission had not issued any permanent licenses, nor that the Commission's reliance on temporary permits was largely a result of the lack of completed, current audits. In fact, Nastasi stated that it "seems a little farfetched," and claimed permanent licenses were not issued because of the "practices of the agency."

Nastasi also challenged the contention of Joy Kelly's 2007 memo that there were 60 outstanding audits, claiming that his secretary mistakenly filed the reports without forwarding them to the other divisions. Although some of the audits on Kelly's list had

been completed, few of the audits were completed within the past three years or the current licensing cycle.

In Accommodating a Stevedoring Company Owner, the Commission Subverted the Waterfront Commission Act

The Inspector General found that former General Counsel Jon Deutsch arranged for Frank Cardaci, owner of ASA Apple, to continue to operate his waterfront warehouse by representing that the company's waterfront operations would be assumed by a company ostensibly owned by Cardaci's wife. Although other Commission employees were aware of the irregularity, the arrangement apparently was not presented to the commissioners for approval. Commission employees believed that Deutsch made the arrangements to accommodate Michael DeCotiis, former Chief Counsel to Governor James McGreevey. As Counsel to the Governor, DeCotiis wrote a letter of recommendation to the commissioners in favor of Deutsch's appointment as general counsel. Commission employees testified that, although they thought the arrangement irregular and improper, none spoke out or attempted to disrupt the plans.

The Waterfront Commission Act bars the licensing of a stevedoring company if "any member, officer or stockholder" is convicted of a felony.¹⁸ In 1995, Frank Cardaci participated in a diversion scheme in which goods intended for international distribution were sold domestically at higher prices. Cardaci, then an employee of ASA Apple, was aware of the scheme and allowed the goods to be warehoused in ASA Apple's waterfront warehouse. On February 1, 2002, Cardaci pled guilty in United States District Court in New Jersey to a felony. On September 13, 2002, Cardaci was sentenced to two years probation and ordered to pay a \$1,000 dollar fine. Cardaci did not notify the Waterfront Commission of his arrest or his conviction at the time.

The Waterfront Commission did not become aware of Cardaci's felony conviction until December 9, 2005, when Cardaci disclosed the conviction on his personal supplement to ASA Apple's application for renewal of its stevedore license. In addition to Cardaci's felony conviction and his failure to notify the Waterfront Commission earlier, the latest compliance audit of ASA Apple, covering the years 2000 to 2003, found 101 regulatory violations.¹⁹ The previous audit of ASA Apple uncovered 48 violations.

On October 24, 2006, over 10 months after the conviction was discovered, Cardaci met with officials of the Licensing and Legal Divisions to discuss the

¹⁸ Article VI, section 3(e) of the Waterfront Commission Act states in relevant part in the issuance of stevedoring licenses, "No such license shall be granted: (e) If the applicant or any member, officer or stockholder required by section 2 of this article to sign or be identified in the application for license has, without subsequent pardon, been convicted by a court of the United States or any state or territory thereof of the commission of, or the attempt or conspiracy to commit, treason, murder, manslaughter or any felony or high misdemeanor or any of the misdemeanors or offenses described in subdivision (b) of section 3 of article V." After five years from the end of the convicted individual's sentence, the applicant may submit evidence to the Waterfront Commission to be licensed.

¹⁹ The audit was of ASA Apple's records from January 2000 through December 2003. The Waterfront Commission Audit Report is dated October 20, 2006.

repercussions of his felony conviction. On November 16, 2006, nearly one year after the felony conviction was discovered, ASA Apple was ordered to cease its waterfront operations by November 30, 2006, pursuant to the Waterfront Commission Act.

On November 27, 2006, after receiving communication from Cardaci's attorney, Michael DeCotiis, members of the Waterfront Commission held an internal meeting at which then-General Counsel Jon Deutsch proposed restructuring ASA Apple to allow the company to continue to operate its warehouse at the port. At the time, the relationship between Deutsch and DeCotiis was not known to many of the Waterfront Commission employees.

Shortly after the internal meeting, on December 11, 2006, Waterfront Commission staff met with Cardaci and DeCotiis to negotiate an arrangement to allow ASA Apple's chief customer, a salt importer, to continue storing salt at ASA Apple's warehouse. General Counsel Jon Deutsch, Director of Law Joy Kelly, Director of Licensing Peter Goldfinger, Assistant Director of Licensing Jeffrey Schoen, Director of Audit and Control Frank Nastasi,²⁰ and other members of the Divisions of Law and Audit and Control attended the meeting. At the meeting, it was agreed that Anchor Logistics, a company owned by Cardaci's wife, would assume ownership and control of the waterfront warehouse. Former Assistant Counsel Brian McCann attended the meeting and summarized the agreement in a memorandum, stating, "It was agreed that... a *new company* named Anchor Logistics, Inc. would be created and would contract with Dead Sea Works Inc., to transport salt (emphasis added)."

The Waterfront Commission's own records reveal that Anchor Logistics was not a new company. Rather, Anchor Logistics managed some operations for ASA Apple's waterfront warehouse, and ASA Apple was its only client. Moreover, at the time the Waterfront Commission agreed to allow Anchor Logistics to assume control of ASA Apple's waterfront warehouse, Cardaci, not his wife, was the owner of Anchor Logistics. The Commission's pre-licensing audit of Anchor Logistics disclosed that Anchor Logistics was first created in 1995, and that Cardaci transferred ownership of the company to his wife, Lisa Campagna, on December 31, 2006, three weeks after Deutsch arranged the transfer of ASA Apple's waterfront operations to Anchor Logistics.²¹ ASA Apple continued to operate warehouses outside of the Waterfront Commission's jurisdiction, and Campagna stated that she would continue to be employed as ASA Apple's vice president after assuming control of Anchor Logistics. At a Waterfront Commission hearing, Campagna stated that she intended to share funds with ASA Apple and that the two companies would maintain a business relationship.²² DeCotiis represented Campagna and Anchor Logistics as well as ASA Apple during this process.

²⁰ All of the aforementioned people either no longer work at the Waterfront Commission or have been reassigned to different positions.

²¹ It should be noted that the Waterfront Commission Audit Report dated October 30, 2006, referenced above, lists Anchor Logistics as an affiliated company of ASA Apple.

²² A Waterfront Commission Audit Report indicates that, in 2005, ASA Apple paid \$85,000 in "management fees" to Anchor Logistics.

ASA Apple was permitted to withdraw its license application without any findings against the company. While ASA Apple negotiated the transfer of its lease and union contract to Anchor Logistics, the Waterfront Commission continued to issue temporary permits to ASA Apple. Anchor Logistics was issued a temporary permit on January 23, 2008, more than two years after the initial discovery of Cardaci's conviction.

Waterfront Commission employees involved in the arrangement testified to the Inspector General that they were aware that ASA Apple and Anchor Logistics were not separate companies. One official stated that ASA Apple and Anchor Logistics were only "separate on paper" and that the arrangement was intended to avoid the required consequence of Cardaci's felony conviction. Another Waterfront Commission employee involved in the transfer testified that the arrangement was a "sweetheart deal with Jon [Deutsch] and his people." The majority of the Waterfront Commission employees involved in the ASA Apple transaction testified to the Inspector General that they were troubled by the deal and were "uncomfortable." However, no employee objected to the plan at the time, nor voiced concern to the commissioners or to the executive director.

Former Commissioner Axelrod testified that, at the time the transfer of licenses occurred, he was never informed of the specifics concerning ASA Apple and Anchor Logistics. Axelrod explained that the commissioners are not informed about every licensing issue. However, Axelrod stated that he believed this decision should have been presented for the commissioners' approval. Axelrod further stated that he believed "[Deutsch] stretched the line and did something for a friend."

De Maria, who was executive director while the arrangement was negotiated and implemented, stated that he was unfamiliar with the specifics of the licensing of ASA Apple and Anchor Logistics. After reviewing the facts, De Maria acknowledged that licensing of Anchor Logistics should have been reviewed further and that there was at least the appearance of impropriety. De Maria stated that he relied on the employees involved in the process to inform him if there were any problems or if they were uncomfortable with the decisions being made with regard to predecessor companies and owners. However, De Maria stated that none of attorneys or auditors involved ever spoke to him about any problems or concerns. He also added that he was under the impression that Anchor Logistics was a "new" company, as it was stated in the memo described above, and that Cardaci had no involvement in Anchor Logistics.

Deutsch acknowledged to the Inspector General that the steps taken for ASA Apple and Anchor Logistics were improper. In fact, Deutsch described Anchor Logistics as a "straw company." Deutsch testified that the arrangement was proposed by DeCotiis. Deutsch also asserted that he had heard there was a precedent for such an arrangement, but could not name a specific precedent, nor could the Inspector General find any such precedent. Despite his assertion of precedent, Deutsch claimed that he did not approve the deal, and that it proceeded without his advice or consent. Deutsch disavowed his responsibilities as the Commission's general counsel, testifying that he did not share his opinion because, "they never asked for my approval or disapproval." Deutsch testified that De Maria was informed about all the transactions concerning ASA Apple and Anchor Logistics.

Michael DeCotiis testified to the Inspector General that transferring the ownership of Anchor Logistics to Cardaci's wife as a means of circumventing the Waterfront Commission Act was not his idea. DeCotiis stated that he planned to argue that the Waterfront Commission had discretion in licensing ASA Apple, rather than an absolute bar. According to DeCotiis, the Waterfront Commission presented the idea of transferring ownership. Since it achieved the same result that Cardaci wanted, DeCotiis stated that he and his client went along with the proposal.

By actively fashioning a scheme to allow a convicted felon to continue to conduct business on the waterfront, Deutsch undermined the Commission's very function and abrogated his official responsibility.

Recent Changes to Licensing and Registration

In its formal response to this report, the Commission reported a number of changes to licensing and registration. The Department of Licensing, which oversaw licensing of stevedoring companies and of individual workers, was combined with the Department of Law, under director Jeffrey Shoen, "in recognition of [the divisions'] overlapping missions and to provide a consistent approach throughout the office regarding licenses and registrants." The Commission further reported:

In addition to the merger of Law with Licensing and EIC [Employment Information Center] and the appointment of a new Director, there have been a number of significant changes in this Division. All background forms for potential registrants (including stevedores) have been re-written so as to require comprehensive disclosures. In a development that would have been unthinkable 10 months ago, the Licensing Division complied with its mandate to ensure fair hiring by requiring the industry to reorder and reorganize a regular list based upon inequities observed by the Commission in the order, manner and timing of the list by a particular company. The Commission's Licensing files have been reorganized and stored in a different manner. This has led to more accountability and improved file tracking. The Division will have two paralegals to perform tasks currently performed by Assistant Counsel. Administrative tasks that will be performed by the paralegals currently take up to twenty five (25%) percent of an Assistant Counsel's time. A new Assistant Counsel has been hired; he is a former Assistant District Attorney with significant trial and investigative experience. The Legal Division was approved for membership in the New York Prosecutors Training Institute (NYPTI) Program. As such, members of the Division receive Continuing Legal Education free of charge to the Commission. The entire legal staff will be attending either the NYPTI Basic Prosecutor's Course or Advanced Appellate Practice this summer at Syracuse University.

The Division of Law has begun to employ legal approaches that have either never been used or have not been used for years. The

Commission's first Association complaint (FN: The Waterfront Rules and Regulations allow the Commission to revoke the license or registration of any covered employee who associates with a member of organized crime.) was filed and served this week with many more to come. This regulation has never been used before by the Commission and prior attempts to do so were ended by the Commission's Executive staff. Additionally, the Commission's legal staff has just employed Section 8 (FN: Section Eight forbids anyone with a felony conviction from holding an ILA union position that substantially affects the Port of New York) to compel the ILA to dismiss their General Vice President for its Atlantic Coast Division because of prior felony convictions including a federal racketeering conviction. Several members of the Commission were aware of the situation for at least 9 years but took no action until the open matter turned up in a case review. The Legal Division, acting in coordination with the Police Division, has begun investigating instances of Workmen's Compensation fraud by dock workers. The previous administration had, for unclear reasons, discouraged (if not forbidden) investigations in this area. This initiative is already producing results. Two Howland Hook longshoremen have been arrested and indicted on federal mail and wire fraud charges in connection with half million dollar scam. The Division of Law has established a Stevedore Review Unit that has begun examining members of the industry (FN: Including ASA Apple). Rather than a cursory review of the company's executive staff as done in the past, the Unit closely looks at who the company voluntarily employs and does business with (i.e.: who picks up their trash, does their snow removal, cleaning, container repair etc.). Because organized criminal groups often extract payment from companies by compelling a company to hire uncovered employees or by over charging for basic services like trash removal, this is critically important. The unit is comprised of Assistant Counsels, Police Detectives, Auditors and Intelligence Analysts.

C. AUDIT AND CONTROL DIVISION

Failure to Address Violations

The Inspector General learned that, in addition to being woefully behind schedule, there was no coordinated response to audit violations actually identified.

Audit staff stated that, when a payroll audit identified additional monies owed to the Commission, the Director of Audit and Control was responsible for sending assessment letters to the company. In contrast, then-Law Division Director Joy Kelly stated that it was her division's responsibility to send letters of assessment to the

offending companies, although Kelly was aware that former Audit and Control Director Nastasi would send such letters without notifying the Law Division.

The Inspector General also learned that there existed little to no communication between the auditors assigned to audit a specific company and the assistant counsel who was responsible for making a licensing recommendation to the Commissioners regarding that company.

Finally, the Inspector General found that some violations identified in audit reports were apparently never addressed. When completed compliance audits revealed violations, they were included in the final report and sent to the Waterfront Commission's other divisions. Both the audit staff and then-Law Division Director Kelly informed the Inspector General that the Law Division then addresses violations as appropriate. However, former senior Assistant Counsel Brian McCann, who had supervisory responsibilities within the Law Division, stated that the division, in fact, does nothing with the violation findings it receives from Audit and Control.

Inadequate Supervision of Audit Staff

Frank Nastasi was an employee of the Waterfront Commission for 37 years, until his retirement in February 2008. Audit and Control employees described Nastasi as a director who failed to impose structure on his division and remained largely inaccessible to his staff. A great deal of autonomy was given to audit staff members, with little oversight on the part of Nastasi. Staff members were unsure if Nastasi ever read audit reports or forwarded them to the appropriate division heads throughout the Waterfront Commission. Staff members speculated that Nastasi had lost interest in managing the division. According to the majority of the auditors, Nastasi's door was always closed, and often locked during the workday. Many employees had never been inside his office; they testified that Nastasi usually met with them at his doorway.

Nastasi allowed auditors to conduct their work primarily from the field, and to complete reports either from home or at the Waterfront Commission's field offices. As a result, auditors were rarely present at the New York City headquarters to interact with other staff, and were unsupervised. Nastasi had no method, aside from periodic phone calls, to monitor auditors' progress and to prevent staff problems such as time abuse.

Nastasi not only permitted auditors to remain indefinitely at their assigned field locations, but also permitted auditors to choose those locations themselves. Furthermore, Nastasi permitted auditors to choose which audits they wished to conduct and typically an auditor would choose a company most convenient to his residence. As a result, the audit staff did not rotate among companies but rather, individual auditors reviewed the same companies repeatedly. An auditors' ongoing relationships with the same companies is poor audit practice, as it may encourage collusion, and negates the possibility of regular peer review.

Audit and Control Director Frank Nastasi Offered Private Tax Preparation Services during Commission Working Hours

Every member of Audit and Control reported that Nastasi conducted a private tax business. Some members testified to seeing tax clients enter and exit Nastasi's Waterfront Commission office during the workday. The Inspector General was informed that Nastasi submitted numerous boxes of his clients' tax documents to be shredded. An employee determined that the boxes did not contain Waterfront Commission material.

Nastasi admitted to operating a tax preparation business but denied conducting it during his regular working hours at the Waterfront Commission. Nastasi did acknowledge that some private clients came to his Commission office "after hours" before his division moved to the new offices located at 39 Broadway in early 2000.²³ After the Waterfront Commission moved, Nastasi stated that his clients would only come to the offices to deliver documents. In response to the auditors' assertions that he always kept his door closed, Nastasi stated that the office was very noisy.

De Maria stated that he knew that Nastasi had a private tax business and heard that a "couple of times" Nastasi's clients came to the Waterfront Commission. According to De Maria, he instructed Nastasi to stop preparing taxes for his clients during Waterfront Commission hours. After that, De Maria stated that he learned of no additional complaints alleging that Nastasi was operating a tax preparation business during Waterfront Commission hours. However, the testimony of the auditors suggests that Nastasi continued to prepare tax documents during business hours. De Maria testified that he did not know if Nastasi obtained permission to engage in outside employment as required by Commission policies because Nastasi pre-dated him and, therefore, he may have gotten permission prior to De Maria's tenure.²⁴

Nastasi Accessed Pornography on His Waterfront Commission Computer

Director of Information Technology Lee Seeman testified that Nastasi accessed pornography and other inappropriate Web sites on his Waterfront Commission computer over a two-year period. Seeman testified that he informed then-Executive Director De Maria of Nastasi's abuse of his Commission computer, but, when interviewed by the Inspector General, De Maria denied knowledge of it.

Seeman stated from approximately 2006 through about eight months prior to Nastasi's retirement, Nastasi accessed or attempted to access pornographic material. According to Seeman, many of Nastasi's attempts to access pornographic and lingerie

²³ The offices of Audit and Control were located at 42 Broadway until early 2000.

²⁴ The Waterfront Commission's Employee Manual, Section K, entitled "Outside Employment," reads, in part: "Employment with the Commission is full time and all personnel shall consider such employment as their sole occupation.... The Commission recognizes that an employee may find it necessary to engage in outside employment on his or her own time. Before engaging in such employment, Commission employees shall state in writing the nature of employment giving details and shall obtain the approval of the Executive Director.... No such additional work shall be permitted if, in the opinion of the Executive Director, it will impair the ability of an employee to perform his or her Commission duties capably and efficiently."

Web sites were blocked by software installed on the Waterfront Commission computer network. However, Nastasi became more creative and searched for Web sites which included items such as nude art.

Seeman stated that he had at least two conversations with De Maria about Nastasi accessing pornography. After the last conversation, Seeman noticed that Nastasi's attempts to access improper Web sites stopped. Seeman stated that since the conduct stopped, he assumed that De Maria had spoken to Nastasi. Seeman provided the Inspector General with internet usage logs which show some of Nastasi's attempts to access inappropriate Web sites. When De Maria testified to the Inspector General, he denied knowledge of Nastasi accessing or attempting to access pornography.

After Nastasi retired on January 31, 2008, two closets full of his personal items were discovered in the Waterfront Commission's New York office by current Executive Director Walter Arsenault. In total, there were more than 50 boxes. While the closets were filled with Nastasi's personal belongings, Waterfront Commission items remained stacked in the hallway because of a lack of storage space. Included in one of the boxes were pornographic magazines.

Recent Changes Regarding Commission Audits

In its formal response to this report, the Commission reported that it has disbanded the Division of Audit and Control, placing the Commission's auditor-employees under the supervision of the Director of Administration. The Commission has entered into four contracts with outside auditors to assist the Commission in bringing its audits up-to-date. The Commission further reported that "Commission auditors will no longer routinely work from home, will be required to call in from their field assignments on a daily basis, will be subject to spot checking, and be responsible for delivering weekly progress reports to [Commission headquarters]. Our revised Travel Rules...no longer credit travel time as work time for auditors thereby increasing their productive time by at least an hour a day. Auditors will be rotated from company to company to avoid developing relationships with those they audit and to provide peer review. Auditors will begin "sampling" in an effort to reduce audit times."

D. POLICE DIVISION

Within the Waterfront Commission Police Division, the Inspector General found poor management and improper interference in Police Division business by Commissioner Madonna.

The Police Division is charged with investigating criminal activity and criminal influence on the ports in New York Harbor. The Police Division is headquartered in the Manhattan office and maintains field offices in Newark and Brooklyn. The division works jointly with various law enforcement agencies, and some detectives are assigned to federal and state interagency task forces.

Although new hires are granted the title “detective” with police powers in two states, they need not possess prior law enforcement experience. In fact, many of the new hires are recent college graduates with no prior law enforcement experience. Commissioner Madonna testified that he was opposed to hiring retired members of law enforcement because he did not want “to have anybody with a bad attitude start and work with the younger people.” However, Madonna did hire a retired lieutenant from the Oakland Police Department who was his longtime friend.

At the time of the Inspector General’s review, applicants were subject to medical and psychiatric examinations and were required to pass a written examination and undergo a background investigation. Approved applicants were admitted to various police academies in New York and New Jersey for basic police training.

The Police Division Lacked Adequate Written Policies and Procedures

The Inspector General found that the Police Division lacked adequate official policies and procedures. The majority of detectives interviewed stated that, other than the 25-page employee manual for all Commission employees, they did not receive any type of guide book or police policies and procedures manual when they started. Some of the detectives had received an unofficial booklet drafted by a detective approximately ten years ago.

Former Chief of Police Smith acknowledged the importance of proper policies and procedures for police officers and admitted that the Waterfront Commission lacked sufficient regulations. Smith stated in substance that, although important, developing adequate policies and procedures was not a priority. When asked if any policies went into effect during his tenure, Smith stated that he did not have time to write policy and procedures.

New Detectives Received Inadequate Training

Consisting of only approximately 40 members, the Waterfront Commission’s Police Division does not host its own police academy. Newly hired detectives are assigned to a nearby police academy. The choice of academy depends largely on the timing of the hire: the new detective is sent to whichever academy is beginning a new course of training. Detectives were trained primarily at academies in New Jersey, and a few detectives were trained at the Port Authority Police Academy. The course of study at a particular academy is determined by the governing police agency.

Although a Waterfront Commission detective is a law enforcement officer in both New York and New Jersey, most Waterfront Commission detectives are trained only on the law of the state of the academy they attend. Only detectives attending the Port Authority academy receive instruction covering the laws of both states. Although the Waterfront Commission does offer field training, most detectives stated that they were never educated on the relevant laws of the state in which they did not train.

At all of the police academies, the new recruits receive basic police training, including instruction on criminal statutes, use of physical force, patrol, traffic stops, firearms training, and interviewing techniques. However, they do not receive training specific to the investigation of crimes on the piers. After graduating the academy, the Waterfront Commission detectives do not immediately attend training in investigative skills for their role as detectives.

Waterfront Commission Police Officers Were Not Accurately Listed on the New York State DCJS Registry

New York State Executive Law §845 requires agencies which employ police officers to register the police officers with New York State's Division of Criminal Justice Services (DCJS).²⁵ The statute requires that agencies provide specific information regarding each police officer, including date of birth, social security number, and rank. The law also requires that the employing agency notify DCJS of any changes in status, including change in rank and cessation of service.

DCJS confirmed that the Waterfront Commission is required to register the police officers it employs. In fact, many of the Waterfront Commission police officers were registered with DCJS. However, the Inspector General's review of the registry revealed that the listings for the Waterfront Commission were inaccurate.

The Inspector General found seven individuals listed on the DCJS registry, as of August 2008, who were no longer employed by the Waterfront Commission. Additionally, six other detectives employed by the Waterfront Commission did not appear on the DCJS registry. Of the six which were not registered, two started at least eight years prior, and the other four were hired in 2007.

DCJS stressed to the Inspector General the importance of an accurate registry. For example, according to DCJS, in situations where an individual carrying a weapon is stopped and that person claims to be a police officer, members of law enforcement routinely contact DCJS directly to verify the information.

The Police Division Had Inadequate Storage Facilities for Its Evidence

Because the Police Division had no official policies, there existed no policy regarding handling and destruction of evidence. In addition, in two of the three evidence storage locations, access to the evidence room was not properly restricted.

The Inspector General reviewed the evidence storage locations at the three Police Division offices in Manhattan, Brooklyn, and New Jersey in November and December

²⁵ The Web site for DCJS describes the agency as follows: "The Division of Criminal Justice Services is a multi-function criminal justice support agency with a variety of responsibilities, including collection and analysis of statewide crime data; operation of the DNA databank and criminal fingerprint files; administration of federal and state criminal justice funds; support of criminal justice-related agencies across the state; and administration of the state's Sex Offender Registry that allows anyone to research the status of an offender." <http://criminaljustice.state.ny.us>

2008. Overall, while each location follows the same process for securing and documenting evidence received, the Manhattan and Brooklyn offices lacked a separate evidence room. This commingling generated unnecessary traffic which compromised the evidence's security because employees would access these rooms to obtain other items.

In Brooklyn, the evidence room also maintained uniforms, ammunition, summonses, and other equipment, while the evidence room in Manhattan doubled as an office for a detective. The Manhattan evidence room also contained personnel files, case files, forms, and other administrative documents.

In addition, the Waterfront Commission lacked an evidence destruction policy. While some situations require the maintenance of evidence for extended periods of time, the Police Division had no guidelines as to when and how evidence should be destroyed or returned.

Madonna's Position as President of the New Jersey State Policemen's Benevolent Association Represented a Conflict with his Role as Commissioner

Madonna served as a commissioner of the Waterfront Commission since 2001. Until September 1, 2008, Madonna was simultaneously employed as a detective in the Borough of Oakland. Between 2001 and 2008, Madonna served both as commissioner of the Waterfront Commission and president of the New Jersey State Policemen's Benevolent Association (PBA), a union representing approximately 33,000 law enforcement workers in New Jersey, including the detectives of the Waterfront Commission. The Waterfront Commission detectives are members of Local 195, a chapter of the New Jersey State PBA.

As president of the PBA, Madonna headed the organization responsible for providing protection and support to union members facing disciplinary action. While some disciplinary matters were handled by the local chapters, others involved assistance from the state organization. In his role as commissioner, Madonna was required to vote on any disciplinary action against a detective of the Waterfront Commission. Accordingly, Madonna was responsible for disciplining Commission detectives, as well as protecting them from that same discipline, a clear conflict of interest.

Another function of the PBA is to negotiate labor contracts on behalf of its members, including those employed by the Waterfront Commission. The Waterfront commissioners, in turn, negotiate collective bargaining agreements with the detectives. Therefore, by virtue of his two titles, Madonna was negotiating with himself. The Commission detectives' local chapter negotiated three agreements with the Waterfront Commission during Madonna's dual service, although Madonna did not participate directly in the negotiations.

Madonna testified that he only once recused himself from a disciplinary proceeding while he was both Commissioner and President of the New Jersey State PBA. That incident involved the discipline of Ariel Gonzalez, the president of the local PBA

representing the Waterfront Commission detectives.²⁶ According to Madonna, the only reason he recused himself from that proceeding was because the union representatives for Gonzalez wrote on the sign-in sheet that they were from the New Jersey State PBA.

Members of the Waterfront Commission, including detectives in the Police Division, believed that Madonna's dual roles created a conflict but knew of no viable recourse. Deutsch testified that he requested that Madonna recuse himself for the charges against Gonzalez.

In response to the Inspector General's report, Madonna argued that no conflict was "ever created" by his simultaneous service as Commissioner and PBA president. In point of fact, as explained above, Madonna's dual roles did create a conflict when the Commission considered disciplinary charges against Gonzalez. Madonna also argued that he "does not participate in any manner with the discipline of any members of the various local PBA's in New Jersey," while simultaneously admitting that he voted to approve disciplinary action against PBA members employed at the Commission.

Recent Changes to the Police Division

The Commission reported the following to the Inspector General regarding changes to the Police Division since the onset of the Inspector General's investigation:

Numerous and important changes have also occurred in the Police Division under its new Chief. The entire division has been restructured with teams of detectives led by experienced sergeants and the civilianization of jobs that were occupied previously by sworn officers. Fourteen new detectives and sergeants have been added to the Division in the past few months. Their qualifications are numerous and outstanding. Included in this group are a retired New Jersey State Police Captain with a strong investigative background in Organized Crime; a retired NYPD Lieutenant who commanded an extremely busy Precinct Detective Unit before becoming a NY State Commission of Investigation Supervising Investigator; a former supervisor in the New York State Attorney General's Organized Crime Task Force who also served with the NYPD; two retired NYPD first grade detectives who served on the FBI's Genovese Family Task Force; Sergeants retired from the Jersey City Police and the NYPD; Organized Crime experts and undercover officers from the Manhattan and Kings County District Attorney's Offices as well experienced detectives from the NYPD and the NJ Transit Police. This cadre of experienced officers has meshed extremely well with the detectives already in the division. Together they have been instrumental in developing informants, identifying and prioritizing criminal targets, and beginning matters that have blossomed into major investigations with the New Jersey Attorney General's

²⁶ Ultimately, the findings against Gonzalez by the Waterfront Commission were reversed on appeal.

Organized Crime Unit, the US Department of Labor, and the Federal Bureau of Investigation, among others. The Police Division has begun the process of seeking national accreditation.

A Police Division's Operations Manual defining policies and procedures has been written and disseminated. Included in the issued policies and procedures are regulations against sick leave abuse, new provisions for drug and psychiatric testing of detectives, and limiting the use of departmental vehicles, gas cards and EZ passes to official business. Gas and EZ pass use are subject to monthly audits and a system has been put in place to identify individual use. The Division has reinstated mandatory firearms, baton, and pepper spray training, as well training in such areas as statements and confessions, court room testimony, identification procedures, electronic surveillance and handling informants. A system to track Terry frisks has been implemented. Training and purchasing have been centralized at the Commission's Broadway location. The Police Division's officers' listing with the New York State DCJS Registry is currently up to date and accurate.

All evidence held by the Police Division was inventoried and the Executive Director has identified evidence that can be destroyed or returned. The Commission's three evidence rooms are now secured and entrance can only be gained by use of an electronic swipe card that records each entry. The Police Division has been diligent and successful in a project to recover the shields and identification cards of former Port Security Guards and members of the Commission's Civilian Emergency Response Team which has been disbanded. Controls are in place assuring that only one parking plaque is issued to each member of the Commission (FN: Currently, no civilian Commission employees are assigned agency vehicles. The only non-police members issued parking plaques are the two Commissioners, the Executive Director and the General Counsel.) which is linked to a particular automobile...

The vestiges of the old Police Division have been ended. There are no more parking details, professional courtesies have been eliminated, the six machine guns purchased were sold, police offices no longer exhibit gratuities received from the shipping industry and officers are not permitted to, nor no longer accept, such gratuities.(FN: On my inspection of the police field offices in September 2008, I observed posters, pictures, baseball caps, pens, mouse pads, calendars etc received from regulated members of the industry or the shipping association on many police walls or desks.)

A long awaited project to bring computers into the police vehicles has been actualized. The Police Division completed its first Pier Surveys in years and a night shift will shortly go back into action. Surveillance equipment has been modernized and a state of the art

training facility has been created in the Brooklyn Field Office. Job descriptions for each rank and performance appraisals forms have been created and are under review by the General Counsel.

The Police Division has been active in re-establishing its presence on the piers especially doing gang checks. These have led to numerous no show investigations and the arrest of the son of a notorious Genovese associate for violating the Waterfront Commission's Rules.

The Commission also reported that it had formed an Intelligence Division "to collect, analyze and disseminate vital information throughout the agency."

E. ABUSES OF AUTHORITY

Commissioner Madonna Influenced Hiring for the Benefit of Friends and Acquaintances

The Inspector General found that Commissioner Madonna improperly influenced the hiring process for police detectives, using his position to compel unqualified or unsuitable applicants on the Police Division over the objections of the chief. While both Commissioners recommended applicants to the Police Division, former Chiefs Smith and McGowan, as well as former Executive Director De Maria, all testified that Madonna's "recommendations" were considered requirements. The Inspector General found that Madonna assisted one candidate with the required written examination, and personally arranged for two others to attend the Port Authority Police Academy over the objection of then-Chief Smith. While it was Madonna who "recommended" these unqualified candidates, none would have been hired had Axelrod not agreed.

The Inspector General reviewed the personnel files of every individual employed in the Commission's Police Division to ensure that other hiring irregularities had not occurred. Other than the instances cited below, the Inspector General found that the Commission performed adequate background investigations and that officers met the stated qualifications for their positions.

Madonna Forced Two Unqualified Candidates to be Hired by the Police Division

In early 2007, Commissioner Madonna recommended two candidates, James De La Rosa and Bradford Waudby, to then-Police Chief Smith. Smith received poor recommendations concerning De La Rosa, and learned that Waudby had falsely stated that he had graduated from the United States Military Academy at West Point. Nevertheless, the two commissioners voted to hire the candidates. Madonna testified that he knew the De La Rosa family and that De La Rosa's father is a retired police officer and his brother is a police officer. Madonna was friendly with Waudby's father, who owns a funeral home in Oakland, New Jersey, where Madonna was a detective.

According to Police Division practice at the time, once an otherwise qualified candidate passed the required examination and completed a satisfactory background

check, the chief of police would recommend the candidate via memorandum to the executive director. The executive director would then review the candidate and, upon approval, present the applicant to the commissioners for a vote. As noted above, decisions such as hiring required the agreement of both commissioners. Then-Chief of Police Smith did not send a memorandum of recommendation regarding either Waudby or De La Rosa, and De Maria testified that he did not approve the candidates.

James De La Rosa passed the qualifying examination but the required background check revealed that, while working as a salesman, De La Rosa “angrily walked out of the job a couple of times.” The previous employer stated that De La Rosa was given a second chance but “failed to show any improvement in his attitude.” Furthermore, his supervisor stated that De La Rosa was easily flustered and that he did not mix well with the public. The employer indicated that, on a day that he was scheduled to work, De La Rosa simply left a message that he was quitting. That employer indicated that he would not rehire him.

De La Rosa’s former supervisor at a security company told Waterfront Commission detectives that De La Rosa “demonstrated a poor and sloppy work ethic.” De La Rosa was hired as a supervisor at the company but was later demoted because of his poor performance. After his demotion, De La Rosa got into a heated argument with his supervisor and threatened to physically assault him. This supervisor also stated that he would not rehire De La Rosa. When questioned about this incident by Waterfront Commission detectives, De La Rosa initially denied the confrontation with his supervisor, but eventually conceded that there was a “possible incident.”

The commissioners were aware of the comments of De La Rosa’s former supervisors which were incorporated in a background investigation report. The commissioners also were aware Chief Smith had not written an approval memo regarding De La Rosa. At first, Axelrod would not agree to hire De La Rosa. However, Axelrod testified that he agreed to hire De La Rosa as a favor to Madonna after Madonna stated that he told De La Rosa and his family that this was his “last chance.” De La Rosa was hired and was sent to the Port Authority Academy. Deutsch, De Maria and Smith testified that Madonna contacted the Port Authority directly to enroll De La Rosa, although typically, the chief of police would make these arrangements. Madonna denied calling the academy on behalf of De La Rosa.

De La Rosa never graduated the Port Authority Academy, primarily due to poor attendance, despite efforts by Waterfront Commission detectives to go to his home to wake him, actions clearly beyond the scope of their official duties. On one occasion, an academy member reported to the Waterfront Commission that De La Rosa was disoriented and “falling asleep while he was standing up.” The Port Authority instructors sent De La Rosa to the medical unit but he refused to be examined by the doctors and would only agree to see his own doctor. After this incident, the Port Authority Academy would not permit De La Rosa to return. De La Rosa was permitted to resign from the Waterfront Commission in lieu of termination.

Madonna's other recommended candidate, Bradford Waudby, was involved in pending litigation with the United States Military Academy at West Point, over Waudby's failure to obtain a degree. Waudby was suing to obtain his degree, and West Point was attempting to recoup the cost of tuition from Waudby.²⁷ Waudby had completed the academic requirements, but was unable to complete a requirement that he run a certain distance within a specified time. In lieu of a degree, Waudby was issued a "certificate of academic achievement" from West Point. As Waudby did not have a college degree at the time of his application, he did not meet the requirements of the detective position. Nonetheless, Waudby's resume and application falsely stated that he did have a degree.

Smith, aware that Waudby had not earned a degree and that litigation was pending, did not believe Waudby was qualified for a position as a detective. As with De La Rosa, Smith did not write a memo approving Waudby as a candidate. De Maria also testified that he did not believe Waudby was qualified and should not have been hired. Axelrod stated that he knew that Waudby had problems but he thought they were resolved before he started at the Waterfront Commission, and agreed to hire Waudby.

As with De La Rosa, Madonna contacted the Port Authority directly to enroll Waudby in its police academy, but denied to the Inspector General that he had done so.

At the time that De La Rosa's and Waudby's applications were pending, Smith had recommended two other candidates. According to Smith, both candidates were well qualified and had completed the necessary steps to be hired and enrolled in an academy. Axelrod testified that he knew the other two qualified candidates but that Madonna would not agree to hire either because Smith had recommended them. Instead, De La Rosa and Waudby were hired, over the objection of the Chief of Police.

When Madonna testified to the Inspector General during the investigation, he denied under oath that he had any contact with the Port Authority Academy regarding Waudby or De La Rosa. However, in response to the Inspector General's report, Madonna admitted that he did call the academy, but only "to see if there was an available slot" for Waudby.

The Commission reported in its response to the Inspector General's report, that it had instituted changes to hiring to make the process fair and merit-based.

Evidence that Madonna Provided an Applicant with the Police Entrance Exam

James Sutera, a third candidate recommended to the Police Division by Commissioner Madonna failed twice to pass the examination required at the time for employment. After being hired as a detective in February 2007, Sutera boasted to his coworkers that Madonna had provided him with the test before he passed on his third try. Sutera later provided the test questions to another Commission employee who planned to

²⁷ Upon graduation, in exchange for not paying tuition, West Point graduates are required to serve in the military.

take the examination. During the Inspector General's investigation, Sutera lied under oath and encouraged others to testify falsely as well.

Former Chief of Police Smith testified that Madonna provided him with Sutera's resume. Madonna admitted that he provided the resume to Smith, after Paul Nunziato, First Vice President of the Port Authority's Police Benevolent Association, asked Madonna to help find Sutera a position at the Waterfront Commission. In contrast to these witnesses, Sutera testified that he learned of the open Waterfront Commission position from "njlawman.com" and mailed his resume to the Police Division of the Waterfront Commission. Sutera denied that he gave his resume to Nunziato or to anyone else to give to Nunziato.

Sutera met the educational requirements to become a detective, but failed the required examination on his first two attempts. The examination, which was created and administered by the Waterfront Commission, consisted of questions culled from a police examination study guide published by Arco Publishing Company. The study guide contained practice questions along with the answers.

Sutera initially took the examination on January 19, 2007, and failed with a score of 59%. At the direction of Madonna, Sutera took the examination again on February 8, 2007. The test questions were the same, but Sutera received another failing grade. Although there are records indicating that Sutera took the exam on this date and failed, the actual test is missing from his file. Sutera was fingerprinted by the Waterfront Commission the day of his second test, although fingerprints normally were not taken until the applicant passed the examination.

After Madonna learned that Sutera failed the examination for the second time, Madonna told Smith that he wanted to review the test and demanded a copy. Smith spoke with then-Sergeant Ramon Martinez, who at the time administered and maintained the exams, and explained that Madonna wanted to see the examination. Martinez provided a copy to Smith, who, in turn, gave it to Madonna. Madonna then instructed Smith to test Sutera for a third time.

Sutera took the examination once again on February 14, 2007, less than one week later. The test was again exactly the same as the previous two. Consistent with agency practice, Sutera's test was not monitored, and he was permitted to keep his belongings with him in the examination room. On this third examination, Sutera scored 97.8 percent, the highest recorded grade ever achieved at the Waterfront Commission.

Sutera's coworkers reported that, after being hired as a detective, Sutera repeatedly bragged that the "big guy," as he referred to Madonna, had given him the test. Sutera then gave the test questions to a colleague²⁸ who was interested in becoming a detective at the Waterfront Commission. This colleague copied the test questions and returned them to Sutera. A second co-worker corroborated this account and, shortly thereafter, a supervisor was informed about what had occurred.

²⁸ The names of witnesses are being withheld pending an ongoing investigation by the New York County District Attorney's Office.

Madonna denied providing the exam to Sutera or to anyone else. He testified that he requested the exam to see why Sutera kept failing. Madonna also denied instructing the Police Division to retest Sutera, and stated that they tested him three times in a month because, “maybe they liked him as a candidate. Maybe they wanted to try to please me...”

During the Inspector General’s investigation, Sutera testified falsely regarding nearly every aspect of this episode and then tried to secure supporting testimony from the aforementioned colleagues. As noted above, Sutera denied that Nunziato had referred him to the Commission, a fact attested to by others. He also denied that Madonna, or anyone else, had provided him with a copy of the exam or any assistance, and that he had shared the test answers. In fact, Sutera testified that he never showed a study guide to anyone interested in taking the Waterfront Commission Police Division examination. According to Sutera, other detectives at the Waterfront Commission talked about the examination but he always kept “his mouth shut.”

The Inspector General learned that Sutera spoke to both colleagues in an attempt to procure testimony that would conform to his false testimony. The matter of Sutera’s false testimony has been referred to the New York County District Attorney’s Office for their review.

The Commission reported to the Inspector General that it has since eliminated the use of a police exam and has improved its background investigations.

Madonna Improperly Interfered with an Internal Investigation and Retaliated Against a Whistleblower

On April 30, 2007, the Police Division was prepared to discipline Detective David Bistacco for making false statements during an internal investigation. The Inspector General learned that Commissioner Madonna ordered then-Chief of Police Smith to retract the findings against Bistacco, with whom Madonna was friendly. Moreover, Madonna then ordered a retaliatory transfer of Lieutenant Scott Politano, whose complaint had triggered the internal investigation.

In 2007, Lieutenant Politano, who was assigned to the Brooklyn field office, was dating Detective Shanti Novak of the New Jersey field office. When Politano learned from Bistacco that a fellow detective had observed Politano’s car at Novak’s residence, Politano complained to his supervisors that he had been the subject of surveillance, prompting an internal investigation. During this investigation, Bistacco initially denied that he had spoken to Politano about this incident, but later admitted to making the call. Bistacco stated that he initially denied making the phone call in order to protect Politano.

According to Smith, a report of the internal investigation included a finding against Bistacco. Smith stated that he proposed that Executive Director De Maria place a letter of discipline in Bistacco’s personnel file for one year. Through De Maria, Madonna ordered Smith to remove the finding against Bistacco from the report and would not allow a discipline letter to be placed in Bistacco’s file. Smith testified that he

asked De Maria if he would be terminated if he refused, and De Maria stated that he would. As a result, Smith removed findings against Bistacco from the report, and Bistacco was not disciplined. De Maria testified that he recalled Madonna ordering the findings in the report to be changed. However, he did not recall whether Madonna stated that he would terminate Smith if he did not change the report.

In May 2007, following the investigation, Madonna ordered that Politano's work location be transferred from Brooklyn to New Jersey, where he became the direct supervisor of Detective Novak, whom he was dating at the time. The transfer extended his commute significantly. De Maria confirmed that Politano was transferred as punishment for filing a complaint. Smith stated that he informed De Maria at the time of the relationship between Novak and Politano, but was told that "it was none of [Smith's] concern."

Abuse of Parking Placards

The Inspector General found that the Waterfront Commission failed to keep accurate or complete records of the assignment of official parking placards. A parking placard signals that the vehicle is in use for official business, and entitles the holder to park in certain spaces that are otherwise designated "no parking." The faulty records permitted abuse of parking placards. In particular, the Inspector General found that several Commission officials had been issued multiple parking placards, and that former Commissioner Axelrod retained his official placards after his term expired. In addition, restaurant entrepreneur Allen J. Bernstein, a long-time friend of Axelrod, was issued official Waterfront Commission parking placards from 2005 through 2007, even though he had no official business related to the agency. Bernstein was not issued a new placard in 2008, after the Inspector General began its investigation.

Through his attorney, former Commissioner Axelrod admitted that he had instructed Waterfront Commission personnel to issue Bernstein official parking placards. Bernstein also admitted that he received official parking placards from Axelrod. According to Bernstein, Axelrod first provided him with a placard after he became injured from a fall. Bernstein stated that he had the placards to use in case of an "emergency." Bernstein described an emergency as a situation in which his full-time driver was requested by a traffic agent to move his car while waiting for Bernstein. Bernstein stated that in such a situation, the driver would display the parking placard so he would not have to move the car. Bernstein surrendered his Commission parking placard to the Inspector General during the interview.

Officials of the Waterfront Commission in possession of multiple placards included Commissioner Madonna, Commissioner Axelrod, Assistant Chief McGowan and former Captain Eric Telesford. Placards were assigned to vehicles registered to family members of Madonna, McGowan, and Telesford. Axelrod admitted that he also provided official placards to his wife. Following the expiration of his term and during the course of the investigation, Axelrod returned all of the parking placards in his possession to the Waterfront Commission. When asked why they possessed multiple placards, Madonna and McGowan both stated that since they had multiple cars, and never knew

which car they would drive, they needed placards for each vehicle. Notably, McGowan was assigned a single Waterfront Commission vehicle which he used for commuting and Commission business. In his written response to the Inspector General's report, Madonna stated that he had three placards registered to his three personal vehicles, but never allowed any one else to use his placards.

The Commission has reported to the Inspector General that it now limits parking placards to one per employee.

General Counsel Deutsch Obtained the Position through Political Influence and Madonna Resisted Disciplining Him

Former Commissioner Axelrod testified that in 2003, Madonna supported Deutsch's promotion to General Counsel, but Axelrod was reluctant to agree. In order to persuade Axelrod to approve Deutsch, Madonna obtained a letter from Michael DeCotiis, then-Chief Counsel to New Jersey Governor James McGreevey, recommending Deutsch for the position. In a letter addressed to Madonna, DeCotiis wrote that he personally interviewed Deutsch and found that he was "uniquely qualified to be General Counsel." As noted earlier in this report, Deutsch and DeCotiis had a prior relationship, and DeCotiis would later represent the stevedoring company owner who received special consideration from the Commission after being convicted of a felony.

Madonna sent De Maria a letter dated May 8, 2003, with DeCotiis' letter as an attachment. Madonna's letter stated in part:

I called and spoke with Mr. DeCotiis with reference to the concerns Commissioner Axelrod and you have with the appointment of Mr. Deutsch. After speaking with him, they were firm on their decision. Therefore, I recommend that these people be appointed and put on the May 16 agenda.²⁹

After receiving the letter from DeCotiis, Axelrod agreed to appoint Deutsch General Counsel.

Axelrod testified that at the time of the letter, he did not know that Deutsch and DeCotiis had a familiar relationship. At some point thereafter, Axelrod testified that he learned that Deutsch's father and DeCotiis' father were longtime friends. Deutsch denied having any significant relationship with DeCotiis. He stated to the Inspector General that their fathers knew each other because "everybody knows everybody in New Jersey politics" and denied that his father had a significant personal relationship with DeCotiis' father.

As a result of the incident discussed in the section entitled "Deutsch Provided Non-Public Information to Albert Cernadas, Jr.," Deutsch was terminated on October 14, 2008, after being suspended on March 5, 2008. Initially, Deutsch was suspended with

²⁹ "These people" refers to Deutsch and Michael Canavari, another individual DeCotiis recommended in his letter. Canavari was hired as a manager in the Licensing Division.

pay; shortly thereafter, his suspension was modified to without pay. As described in this report, Deutsch was involved in numerous instances of misconduct, notable among which are the following:

- While Deutsch was the Director of Licensing, he inappropriately issued a license to someone he knew.
- Deutsch failed to disclose his familiarity with a consultant when he recommended the company.
- Deutsch had a series of violations which involved his relationship with Al Cernadas, Jr., Deutsch's former co-worker and friend. Deutsch conducted the questioning of Cernadas, Jr.'s father during an official investigation, leaked non-public information to him, and was inappropriately involved in a police investigation for a friend of the Cernadas family.
- Deutsch also reportedly brokered a deal to circumvent the Waterfront Commission Act where the attorney representing the stevedoring company was the same person who was responsible, in part, for Deutsch being promoted to the position of General Counsel.

The incidents described above were known to the commissioners of the Waterfront Commission and to Executive Director De Maria at the time of occurrence. Yet, until his suspension on March 6, 2008, Deutsch went virtually undisciplined for any of his actions. Deutsch's personnel file includes no documentation of these events.

Although De Maria did not have the authority to terminate Deutsch, he did have authority to suspend him. Despite multiple instances of misconduct, De Maria never took any steps to suspend Deutsch until after the Inspector General began its investigation.

Axelrod testified that on multiple occasions he wanted to discipline Deutsch, but Madonna refused to agree. After it was discovered that Deutsch released non-public information to Cernadas, Jr. during the initial stages of a Commission investigation, De Maria suspended Deutsch. In March 2008, Axelrod sought to terminate Deutsch, but Madonna again would not agree.

Madonna testified that he did not believe that any of Deutsch's actions described in this report mandated his termination. When asked if he also was against disciplining Deutsch, Madonna stated that he could not recall Axelrod or De Maria requesting to take any disciplinary actions. Madonna stated that the reason he finally agreed to terminate him was because the new executive director, Walter Arsenault, did not believe that Deutsch was competent to serve as general counsel.

In Madonna's written response to the Inspector General's report, he claimed that he had not been resistant to disciplining Deutsch, but rather did not want to "rush to judgment." However, he also criticized De Maria's eventual suspension of Deutsch, complaining that he was granted no input in the decision; furthermore, he cited a memorandum in which he wrote that Deutsch's history "does not illustrate a pattern [of] continued egregious misconduct."

F. ABUSE OF PUBLIC RESOURCES

Personal Use of Waterfront Commission Vehicles

The Waterfront Commission lacked an official written policy regarding vehicle usage, and Commission officials gave conflicting answers when asked about the vehicle use policy. The Inspector General found that senior employees were granted unrestricted use of Commission vehicles, and gasoline was purchased with Commission funds without regard to business or personal use of the vehicle. In fact, the Commission failed to account for personal use of Commission vehicles as required by federal tax laws.

Then-Assistant Chief of Police McGowan testified to a class system for the use of vehicles, which he stated was “a standing policy that was always in effect.” McGowan stated that while he was acting chief, the policy was written and distributed to the members of the Police Division. The Inspector General requested a copy of any such vehicle-use memorandum, but the Commission did not provide any written evidence of the existence of such a policy, formal or informal. In any event, neither the general counsel nor the executive director ever approved such a policy, which is standard procedure.

McGowan informed the Inspector General that, according to the unofficial policy, class “A” users were entitled to unrestricted use of the Waterfront Commission vehicle, including transport of family members. The Commission’s class “A” users were the executive director, general counsel, the chief of police, the assistant chief of police, captains, and lieutenants. McGowan stated that as long as the individual carried his Waterfront Commission mobile phone, that person was considered “on duty.” Therefore, that person could use the vehicle for “anything,” including personal business on days-off and weekends. In addition, gasoline and tolls were paid for by the Waterfront Commission, even when the vehicle was being driven for personal use.

Class “B” users were detectives assigned to task forces. In addition to business use, these individuals were permitted to use their Commission vehicles to commute to and from work. Class “C” vehicles were stored at Waterfront Commission locations and used only by detectives during the regular course of business. All classifications included credit cards with which to purchase gasoline.

Contrary to McGowan’s testimony, De Maria and Madonna both testified that the Commission vehicles were not to be used for personal business. While Madonna testified that this policy was always in effect, De Maria testified that he believed personal use was only prohibited after the enactment of the Commission’s ethics manual in 2005, which contained a general provision restricting use of Waterfront Commission property to official business. Prior to the adoption of the ethics manual, De Maria stated that it was permissible to use his Commission vehicle, as well as Commission-purchased gasoline, for personal use. That assertion notwithstanding, De Maria continued to commute in his vehicle after the adoption of the ethics manual.

The Inspector General learned that De Maria was involved in an automobile accident while using his Commission vehicle with his family members in the car on October 30, 2004, a Saturday. No one was injured. Former Commissioner Axelrod recalled that De Maria made some reimbursement to the Commission for costs related to the accident. Commissioner Madonna testified that it was his belief and understanding that Waterfront Commission vehicles should not have been used for personal use and that family members should not have been allowed in the vehicles. Madonna stated that De Maria was instructed after the accident that family members were not permitted to travel in Waterfront Commission vehicles.

While in limited circumstances, certain law enforcement officers may commute in public vehicles without tax repercussions, these narrow exemptions do not apply to the Commission's general counsel and executive director. Also the extensive personal use of Commission vehicles by then-Acting Chief of Police McGowan and possibly other police employees raises serious concerns of violations of state and federal tax laws. The Waterfront Commission had no system to account for personal and commuting use of Commission vehicles. De Maria and Deutsch both stated that they did not report any income related to their personal use of Commission vehicles on their federal tax returns.

Furthermore, the Inspector General found that the Waterfront Commission did not properly monitor the purchase of gasoline on Waterfront Commission credit cards. The Inspector General requested all credit card statements for the purchase of gasoline for a several-year period. The Inspector General's review showed that the Commission had little ability to ensure that Commission gasoline cards were not being abused, or to account for personal use of Commission-purchased gasoline. The records did not even indicate which purchases were made by which employees.

Federal tax guidelines require that unreimbursed personal and commuting use of employer-owned vehicles be considered taxable income to the employee. In the absence of records differentiating business and personal or commuting trips, all use of the vehicle is considered personal income to the employee. Commuting use of Commission vehicles by both Deutsch and De Maria should have been considered taxable income. Neither completed vehicle mileage logs to differentiate business from commuting use nor reported such fringe benefit to tax authorities.

Former Police chiefs McGowan and Smith both admitted to using their vehicles for at least some personal use in addition to commuting, and McGowan admitted to using the vehicle for errands such as a trip to the mall, and for transporting his family. This personal use does not arguably fall within any exception to the general rule that personal usage is subject to taxation. Like other Commission employees, neither Smith nor McGowan kept vehicle mileage records or reported any taxable benefit in relation to their Commission vehicles.

The Commission reported to the Inspector General that its newly-enacted Police Division Operations Manual limits use of departmental vehicles, gas cards and EZ Passes to official business only. The Inspector General is referring the matter of untaxed fringe benefits to the New York State Department of Taxation and Finance.

A Waterfront Commission Vehicle Was Used to Deliver Building Supplies to Madonna's House

The Inspector General found that, on October 27, 2006, Waterfront Commission then-Lieutenant William Brown transported construction materials in a Commission vehicle to Commissioner Madonna's residence for Madonna's personal use. Brown testified that he purchased the material from B&B Granite Block Sales, 148 Marsh Street, Port Newark, New Jersey, a company located on the port. Brown then loaded the material into the Waterfront Commission pickup truck and transported it to Madonna's residence. According to Brown, he alone unloaded the material in front of Madonna's house. Brown testified that Madonna reimbursed him for the purchase on a later date.

Brown stated that he requested permission from then-Captain Peter Massa to use the Waterfront Commission vehicle, who then obtained permission from Chief of Police Smith. Massa confirmed this chain of events.

Madonna testified that Brown, who is a friend, did deliver the building materials to Madonna's residence, but stated that he was unaware that Brown used a Waterfront Commission pick-up truck to transport the material. In fact, Madonna stated that he was unaware that the Waterfront Commission owned a pick-up truck. The Inspector General notes that the truck in question is primarily used to tow the Commission's boat, and that Brown, at Madonna's recommendation, was hired as the Commission's boat operator.

Detective Overtime and Two Commission Vehicles Misused to Expedite Police Chief McGowan's Return from an International Vacation

The Inspector General learned that, upon returning from an international vacation on October 10, 2007, then-Acting Chief of Police Kevin McGowan used Commission resources to expedite his and his wife's clearance through a Customs checkpoint and to bring his Commission vehicle to the airport. The Inspector General was informed that this incident was not an isolated occurrence; McGowan routinely had detectives meet him at the airport after returning from personal trips.

Through a friend employed by U.S. Customs and Border Patrol, McGowan arranged for a federal agent to accompany him through the Customs checkpoint at the airport. A Waterfront Commission detective, who was assigned to a taskforce with the federal agent, accompanied the federal agent to the airport to meet McGowan.³⁰ The agent and the detective escorted McGowan and his wife through the Customs checkpoint so they would not have to wait in line. The Waterfront Commission detective was at the airport beyond her regularly scheduled hours and requested overtime payment, which McGowan approved.

Two other Waterfront Commission detectives were instructed by McGowan to meet him at the airport with his Commission vehicle. The two detectives drove to the

³⁰ The Waterfront Commission detective who went to the airport testified that the FBI agent, her supervisor on the task force, asked her if she wanted to come to the airport to meet McGowan; she was not instructed to go to the airport.

airport, one in McGowan's assigned vehicle, and one in a separate Commission vehicle. After McGowan passed through Customs, the detectives met McGowan and his wife at the gate and escorted the couple to McGowan's Waterfront Commission vehicle. The detectives then left in the second vehicle. McGowan testified that this assignment was appropriate for Commission detectives because McGowan was "on call twenty-four hours a day."

Waterfront Commission Detectives Were Regularly Assigned to Guard Parking Spots for Executive Staff

The Inspector General learned that, under McGowan's direction, the Waterfront Commission assigned two detectives to guard designated parking spaces in lower Manhattan until executives and supervisors reported to work. This practice was in effect from approximately 2003 through 2005 until it was suspended by then-Chief of Police Smith. The practice was then reinstated by McGowan in January 2008 but again discontinued by Executive Director Walter Arsenault in September 2008 after the Inspector General advised him of the practice.

The New York City Department of Transportation has designated certain parking spaces in lower Manhattan for Waterfront Commission vehicles. Other vehicles may be ticketed for parking in those spaces. Nonetheless, unauthorized vehicles parked in those spaces presented an inconvenience to Commission executives and supervisors. Under McGowan's supervision, two detectives from the Brooklyn field office were diverted from laws enforcement duties and assigned to the detail. The detectives would first report to the Brooklyn field office, retrieve a Waterfront Commission vehicle, and drive to Manhattan to guard the spots. The detectives were assigned to arrive at the spots at approximately 7:00 a.m. and to remain until all supervisors arrived, usually at 9:00 a.m. The detectives then returned to the Brooklyn field office to resume their normal duties. This detail occupied detectives for approximately three hours a day, five days a week.

G. POOR FISCAL MANAGEMENT

The Inspector General's review determined that the Waterfront Commission's comptroller demonstrated a general lack of fiscal responsibility. The comptroller did not conduct proper oversight of the entity's overall financial operations and did not develop any policies, guidelines, or procedures to assist in the accountability of funds. Despite his title, the comptroller functioned primarily as a bookkeeper.

Comptroller Irving Wolf has been employed by the Waterfront Commission since June 2001. Wolf is a member of the Executive Division and is responsible for the financial operations and proper fiscal oversight of the Waterfront Commission. According to Wolf, his office operated without internal controls and had not developed a fiscal manual, or any written policy or guidelines regarding purchasing, payables, receivables, employee reimbursements and revenue collection except for assessments from stevedoring companies. Wolf admitted that the above conditions were problematic but blamed the lack of sufficient staff as the cause.

Wolf also attempted to disclaim responsibility for the lack of controls by indicating that the functions lie within other divisions of the Waterfront Commission. For example, Wolf claimed that purchasing oversight is not part of his responsibilities and, therefore, he is unaware of any guidelines or procedures that the Waterfront Commission follows in making purchases. Wolf stated that he did not know whether the divisions made purchases through a competitive bid process but he assumed that the soliciting of bids might be the responsibility of the division heads.

Wolf indicated that there exist no written guidelines regarding reimbursements to employees. In fact, Wolf stated that “the 48 cents per mile for gasoline” is the only reimbursement guideline of which he is aware and, as such, he relies on the approval of the division heads in paying reimbursements to employees. Wolf testified that it is not his responsibility to question anything that is approved by a division head and, when he receives requests for reimbursement, he checks the math and writes a check.

Wolf did not know whether there were any policies regarding the distribution and use of gasoline cards or any system to verify the proper usage of the cards. Wolf did not conduct any checks to determine whether the gasoline cards were being used properly. Wolf indicated that the accountability for the distribution and proper use of those cards was not his responsibility but rather that of the Police Division.

Wolf defined his primary responsibilities as preparing the budget and ensuring that there are no double billings and no extra employees on the payroll. According to Arsenault, preparing the budget was only an approximately two-month long process. In making payments, Wolf claimed that he does not question any bills that come across his desk but rather simply pays the bills once they are signed by someone in authority, usually a division head or the executive director.

Despite the aforementioned findings, Wolf stated that he believed that system was working well. As comptroller, Wolf did not initiate any action to streamline accounting or purchasing, or make any recommendations for change. When asked if he ever saw the need to propose changes to the system, Wolf stated, “No one has asked me for an opinion; I have no recommendations to make on purchasing.” According to Arsenault, the audit consultant hired by the Waterfront Commission consistently recommended the use of accounting software and each year Wolf fought the change.

The Waterfront Commission Lacked Proper Accountability of Federal Forfeiture Funds

Law enforcement agencies may seize proceeds of criminal activity, including real property, vehicles, cash, or other valuables. After a civil proceeding finds sufficient evidence, the property or funds are divided among federal, state, or local agencies as dictated by law, including the seizing agency. Through its participation in various federal task forces, the Waterfront Commission shared in the seized forfeitures pursuant to individual agreements with the respective task forces.

Federal laws restrict the manner in which law enforcement agencies utilize funds seized under federal forfeiture law. Certain types of property, such as vehicles, may be utilized by the agency. Other property may be auctioned. In general, funds are to be directed to enhancing the agency's law enforcement operations, but may not be used for recurring expenditures such as salaries or other general operating costs. Federal guidelines recommend that forfeiture funds be properly segregated and easily identified in order to ensure proper accountability. The Inspector General found that the Waterfront Commission failed to segregate its forfeiture funds, the result of which may have been the improper expenditures of such funds.

The Inspector General determined that the Waterfront Commission did not properly account for the forfeiture funds it received from the federal government. The Waterfront did not establish proper bookkeeping procedures to account for these funds and did not always account for the forfeiture funds it received. The Waterfront Commission did not establish a separate account or code to deposit the proceeds from asset forfeiture. Instead, it deposited all of the forfeiture funds to its general operating bank account and then later attempted to identify those funds in an ad hoc manner. The forfeiture funds were comingled in the general operating account with funds from all other sources which made their identification and tracking extremely difficult and sometimes impossible.

Comptroller Wolf disclaimed responsibility for the mismanagement of forfeiture funds and stated that accountability for forfeiture funds lies with the Police Division. Wolf further claimed that Carol Lorenz, the Police Division secretary, had a system to identify and track those funds. Contrary to Wolf's assertion, Lorenz stated that she lacked the capability of developing a system that could reliably track the forfeiture funds. According to Lorenz, she maintained a log for administrative and clerical purposes only. Lorenz indicated that the lack of a reliable accounting system made tracking forfeiture funds extremely difficult. Lorenz added that she had no training in accounting or bookkeeping and would have appreciated guidance and assistance in this matter from the comptroller.

According to Lorenz, she recorded projected forfeiture amounts to her log book. The forfeiture amounts were credited later to the Waterfront Commission's general business account, either partially or in full. Lorenz then received copies of the general account bank statements with highlighted deposits that the comptroller could not identify. Lorenz reviewed her forfeiture log to determine whether case information on pending amounts matched any of the unreconciled deposits on the bank statements. In the past, Lorenz had been able to track some of the forfeited funds by identifying a federal case number given to the detective by the collaborating agency. However, the bank changed the statement design and omitted some of the identifying information which made it difficult for Lorenz to reconcile the outstanding amounts.

As a result, the Waterfront Commission was unable to account for outstanding forfeiture funds. Lorenz indicated that she did not know the amount of outstanding funds and believed that no one else at the Waterfront Commission did either. The comptroller similarly professed ignorance. Lorenz claimed that the difficulty in

determining the outstanding forfeiture amount was compounded by the time, sometimes several years, it took to receive forfeiture reimbursements; on occasion, items marked for forfeiture were returned to the owner. However, had the Comptroller established an accounts receivable account and reconciled it periodically, those conditions would have had no impact in determining the outstanding balance.

Because of the lack of bookkeeping procedures, some forfeiture funds credited to the Waterfront Commission operating account were not identified and were improperly consumed as part of general operations. Indeed, Wolf claimed that any funds that could not be identified properly would stay in the general operating account and be used for general operations, contrary to federal regulations governing forfeiture funds. Lorenz indicated that she was unable to identify all of the unreconciled deposits because of limited information on the bank statements and assumed that she might not have accounted for all the forfeited funds. In addition, some detectives complained that they received e-mails inquiring about deposits of forfeiture funds which had not been reconciled sometimes for years after deposits were made.

Finally, the expenditure of forfeiture funds was handled in a manner that made tracking difficult. The practice at the Waterfront Commission was to transfer forfeiture funds from its operating account into an investment account. The funds were then returned to the operating account via wire transfers about one or two months after a qualifying expenditure was charged. There was no separate accounting for the police forfeiture expenses and the Waterfront Commission did not segregate the police forfeiture bills from those of its general operations.

The review of records associated with the Police Forfeiture Fund showed a beginning balance of \$433,907 in January 2004. From February 2004 to September 2007, wire transfers totaling \$1,339,370 were made into this account from the Waterfront Commission operating account. From June 2004 to February 2008, wire transfers totaling \$1,010,333 were returned from the Police Forfeiture account to the operating account leaving a balance of \$842,095 on April 30, 2008, including dividends. A review of the Waterfront Commission records revealed that \$1,010,333 was used to purchase many vehicles, computers, software, furniture, equipment, radios, satellite phones, uniforms and to pay for part of the cost of the mobile command center. The forfeiture funds were also used to pay for overtime in excess of the Waterfront Commission's budget and the creation and first-year salary for a new lieutenant and sergeant position.

The Inspector General found that the payment of the two first-year salaries may have been in violation of federal guidelines. The guidelines allow that salaries may be paid for the first year for new law enforcement officers that supplement the workforce. A new position may be occupied by an existing employee, as long as a new hire fills the promoted employee's former position. In Fiscal Year 2006, the Waterfront Commission used forfeiture funds to cover salaries totaling \$129,400 for two promoted detectives. Although the positions the two detectives occupied were "new," they did not supplement the Commission's workforce, as the former positions were never filled by new employees.

The Commission reported to the Inspector General that “separate bank accounts have been set up for forfeiture funds which will be audited and reconciled on a timely basis. The Comptroller has received training on the CFR sections pertaining to the handling of federal forfeiture funds.”

The Waterfront Commission Improperly Expended Federal Homeland Security Grant Money

The Inspector General found that the Waterfront Commission misused funds from two federal grants intended to improve port security. A boat purchased with federal funds was used sparingly and did little to enhance port security. A second grant devoted to technological improvements was poorly implemented, and the equipment purchased was not utilized as reported to the federal government. Moreover, the Commission did not separately account for grant expenditures, and did not meet requirements to contribute its own funds to the grant projects.

The Waterfront Commission received two federal grants from the Department of Homeland Security (Homeland Security) to enhance port security. The first grant, “DTS A20-03-G-01085,” entitled “Project Safe Port” was awarded in the amount of \$619,294 for the period between May 1, 2003, and April 30, 2004. The objective was to use computers and wireless communications to allow Commission detectives to access remotely its photo identification, licensing, and registration databases to help combat terrorism. The original budget listed personnel costs of over \$550,000, with the rest allocated for equipment, travel, contractual services and other costs. The Waterfront Commission was required to provide \$1,010,540 of its own funds (non-federal share) to meet the project objectives. Homeland Security later approved a time extension to July 15, 2004, and a modification which allowed the Commission to use most of the funds to purchase equipment and software instead of paying for personnel costs.

In response to the Inspector General’s request for financial records concerning the grants, the Waterfront Commission provided a number of schedules, copies of canceled checks and supporting documents. The schedules were created to show how the Commission accounted for the grant funds. However, there was no indication of separate, historical information such as ledgers or journals to show how it accounted for the grant funds at the time they were expended. The examination of those records suggested that the Commission did not maintain proper records for the grant funds at the time they were expended.

The review of the schedules showed that the Waterfront Commission expended all grant funds, \$619,294, to purchase equipment and software and also expended \$1,150,001 of its funds in personnel costs as the non-federal share of the project. That amount included \$814,601.62 in regular time, \$123,791.69 in overtime and \$211,607.69 in fringe benefits. According to Wolf, the non-federal share represented payments to employees that were involved only in port security. Wolf added that the schedules should not include personnel who were assigned to task forces or other investigations. However, the Inspector General determined that the schedules listed at least two detectives that were on federal assignments but whose compensation was included in the

non-federal share of expense, and that the information submitted to the federal government was inaccurate.

In addition, the review determined that the Waterfront Commission submitted end-of-grant reports to the federal government indicating that all the funds had been expended in accordance with the terms and conditions of the grant and that the program was fully operational including the communication system. However, interviews with police division supervisors and other Waterfront Commission employees revealed that, as of the end of 2008, the system was not operational. Laptops that were purchased with grant funds to give police access to databases were not installed in the police cars and were never used for their intended purpose. There was little or no use of other wireless communications proposed in the grant due to inaccessibility or lack of proper training.

The report to the federal government was submitted electronically and Wolf was listed as the contact person. Wolf claimed that he did not recall submitting the reports and might have only reviewed it with one of the Waterfront Commission's auditors.

The Inspector General has notified Homeland Security concerning the above-mentioned irregularities.

The second grant, "2005-GB-T5-0111," entitled "Port Security" was awarded in the amount of \$170,487 for the period between September 1, 2005 and February 28, 2008. This grant was awarded for the purchase of a patrol boat for use in New York Harbor. According to Waterfront Commission records, the boat was purchased from Boston Whaler on October 11, 2006 for \$170,487. In its proposal to Homeland Security, the Waterfront Commission indicated that the boat:

would be capable of early detection of a waterborne attack and would be specially equipped to react and coordinate a response to a threat with the faster, more heavily armed DHS US Coast Guard patrol vessel.

Waterfront Commission also represented in its proposal to Homeland Security that it:

would deploy officers on the vessel at high risk target locations such as the NYC Passenger Ship Terminal, Cape Liberty Cruise Port in Bayonne, and the various intermodal terminals throughout the port to detect and deter an attack by a small craft with an IED or underwater attack on a passenger or cargo vessel.

The Waterfront Commission further represented in the proposal that its contribution to this project would be the cost of salary and benefits for two additional officers as well as recurring operational and maintenance cost for the boat. The Waterfront Commission's records reveal that two budget lines indeed were assigned to the operation of the boat. However, the Inspector General was unable to obtain records of the operational and maintenance costs for the boat.

In response to the Inspector General's request for records related to the boat, the Waterfront Commission provided only 37 Police Division Marine Unit Daily Logs, dating from October 2, 2006 to May 25, 2008. A review of the boat logs indicated that the boat was used sparingly and irregularly. The logs reveal approximately 129 engine hours during the 19-month period, or approximately 6.7 hours of usage per month.³¹

Numerous members of the Waterfront Commission who had knowledge of the boat and its operations expressed their doubts about the value of the purchase. More importantly, many said that the boat, when it is run, is utilized to escort guests and VIPs during such events as Fleet Week. Allegations regarding the boat's infrequent use were published in the *Daily News* on May 18, 2009.³² The Inspector General's examination of daily usage logs showed that the boat was used almost every day during Fleet Week in May 2007 and May 2008, even though the boat was typically used only a few times per month during the rest of the year.

The daily boat logs do not reflect the purpose of the day's voyage, and the form itself does not include a field for entering this information. The form does include a space to list any "guests" aboard the boat, but this field was filled out on only one instance, indicating that two FBI officers, and an unnamed "+1" were aboard.

The Inspector General will forward its findings regarding the Commission's "Project Safe Port" grant to the Department of Homeland Security for action as it deems appropriate.

The Waterfront Commission Did Not Properly Account for Overtime Expenditures

According to the agreements with the various federal task forces in which the Commission participates, the Commission is to be reimbursed by the task forces for overtime expenditures incurred by participating Commission detectives. The Inspector General found that the Waterfront Commission failed to properly track such reimbursements, and therefore could not ensure that all outstanding debts to the agency were paid. In addition, the Commission overstated the amount of overtime expenditures devoted to non-task-force police assignments, and unnecessarily limited overtime available to employees who were not assigned to a task force.

Comptroller Wolf deposited overtime reimbursements into the general bank account and recorded them as revenue, specifically "other income." The funds were then mixed with other funds and devoted to general operating expenses.

All requests for the Police Division overtime were handled by Police Division Secretary Carol Lorenz, who maintained a log for the assigned officers. Lorenz was given bank statements to identify deposits of overtime reimbursement from outside agencies and to summarize them in a memorandum to the comptroller. When the

³¹ The engine hours are akin to an automobile's odometer reading, i.e., to determine usage and the need for preventative maintenance.

³² John Marzulli, "Homeland Security Monday to Waterfront Commission Spent on Boat That's Useless in Winter," *Daily News* (New York), May 18, 2009.

comptroller received this information, it was used to identify overtime reimbursements. However, Wolf did not subtract the reimbursements from his total accounting of overtime expenditures by the Commission.

Wolf excused this failure by claiming that such reimbursements were difficult to track. Wolf claimed that the reimbursements are not always made in the year in which they occur and sometimes may take up to two years before they are received by the Waterfront Commission. Wolf stated that he ignored the reimbursements because they were not “materially significant.” He estimated that reimbursable overtime was not more than 20 percent of the Waterfront Commission’s total overtime payments and felt that it was not necessary to track it.

The Waterfront Commission’s overtime records revealed that, contrary to Wolf’s statements, overtime reimbursements from the federal government were significant and material. Over the last two fiscal years, July 2006 to June 2008, the Waterfront Commission requested reimbursement from the federal government for almost two-thirds of its total overtime expenditures. During those two years, the Waterfront Commission expended \$250,695 for overtime and requested reimbursements of \$164,166 (65.48%) from three federal agencies to which its detectives were assigned.

Failure to Issue Statutorily-Required Annual Reports

The Waterfront Commission is required to submit annual reports to the governors of New York and New Jersey. When the Inspector General started its review, the Waterfront Commission was more than three to four years behind in issuing reports.

De Maria was asked about the lack of annual reports. He acknowledged that the reports are statutorily required and that the 2004-2005 report was the last report issued. De Maria stated that the Waterfront Commission fell behind and could not catch up. Throughout the years, different people were given the task of writing the reports. De Maria also blamed staff turnover and the time it takes to get the necessary data from the Licensing Division. According to Arsenault, however, the necessary data was readily available.

The commissioners stated that they would repeatedly ask De Maria for the reports; De Maria consistently responded that they were forthcoming. Deutsch was asked why the reports were so far behind; he responded that it was because of “laziness [and] lack of management.”

The Commission reported to the Inspector General that it planned to issue an annual report this year for the first time since 2005.

Recent Changes Regarding Fiscal Management

Since the onset of the Inspector General’s investigation, the Commission has taken a number of steps to improve control over the agency’s accounts and expenditures.

A consultant was retained to review the Commission's internal finances, controls, and policies, make recommendations regarding the Commission's finances and records, and prepare a written manual of operations for the Comptroller's office. The Commission further reported:

The Comptroller's Office has installed Quick Books to modernize the Commission's accounting system. The Office's petty cash system has been reformed to ensure accountability and reviewability. Separate bank accounts have been set up for forfeiture funds which will be audited and reconciled on a timely basis. The Comptroller has received training on the CFR sections pertaining to the handling of federal forfeiture funds. Separate bank and checking accounts will be set up for all future grant monies. A new system to track, record and reconcile overtime payments is being implemented.

V. FINDINGS AND RECOMMENDATIONS

The Inspector General found that abuse of authority, neglect of responsibilities, and poor management pervaded the Waterfront Commission under Commissioners Axelrod and Madonna, and Executive Director De Maria. Most significantly, the Commission's lack of policies led to its failure to meet its obligations to regulate stevedoring companies and fulfill its statutory obligations. The Commission's audit reports were years overdue, and staff indicated that violations during audits were not corrected even once they were found. These lapses were evident in the Commission's inability to issue any permanent stevedoring licenses for at least 10 years.

While Audit and Control Director Frank Nastasi complained that he was understaffed, the Inspector General found that his auditors were poorly supervised and lacked any coordination or direction consistent with the functions of the unit. Specifically, audits were unnecessarily comprehensive, reviewing all books and records rather than using representative sampling, resulting in the Commission's inability to complete any on time. In addition, Nastasi did not implement basic quality assurance measures, such as rotating auditors among companies.

The Inspector General found that in one instance, the Commission, in apparent contravention of the Waterfront Commission Act, actively assisted a convicted felon to avoid required revocation of his license and to continue to operate a waterfront warehouse. None of the Commission staff members aware of the scheme brought the matter to the commissioners, although all noted its impropriety.

The Inspector General also identified a number of instances of abuse of resources, as well as improper use of influence to assist friends and acquaintances. As Licensing Director and then General Counsel, Jon Deutsch disclosed internal information to a friend, concealed a prior drug arrest of a stevedoring applicant, improperly participated in the questioning of the father of a close friend, and improperly interceded on behalf of a family member of a close friend who was facing suspension of his waterfront registration.

Commissioner Madonna compelled the Police Division to hire three ineligible or unqualified officers, even assisting one with the required examination. Madonna also abused his authority by punishing a whistleblower with reassignment.

No official written policy governed use of vehicles, and Commission executives failed to report commuting or personal use of Commission vehicles for tax purposes. In addition, both Commissioners Madonna and Axelrod obtained multiple parking placards, and Axelrod retained his placards after his term ended. Axelrod also provided an official parking placard to a friend who had no affiliation with the Waterfront Commission.

The Police Division lacked any policies governing the conduct of its detectives, and detectives were not sufficiently trained in the laws of the two states in which they were police officers. Rather than attending to police duties, police officers were assigned to guard parking spaces for executives in Manhattan under the supervision of two separate police chiefs.

The Inspector General found the Commission's comptroller to be irresponsible. Rather than segregating federal grant and forfeiture funds to ensure proper use, he combined all funds in the Commission's general operating account and did not account separately for expenditure of these funds. The comptroller did not track forfeiture funds or overtime reimbursements owed to the Commission by federal tax forces in which Commission detectives participated, nor could he ensure that forfeiture funds were spent according to federal guidelines. The comptroller took no responsibility for monitoring purchasing, expense reports, or other spending.

The Commission applied for and received a federal grant of \$170,000 from the federal Department of Homeland Security for a boat that is rarely used, and has contributed little, if anything, to port security. The Commission also obtained over \$600,000 for another Homeland Security grant, "Project Safe Port," to update its wireless capabilities, ostensibly to combat terrorism. Although the Commission reported to Homeland Security that the system was operational at the end of the grant period, the Inspector General learned from Commission employees that it was not.

Since the Inspector General began this investigation, Executive Director De Maria, Audit and Control Director Nastasi and Assistant Chief of Police McGowan have resigned. In addition, Michael Axelrod was not reappointed upon the expiration of his term, and Jon Deutsch, the former general counsel, was terminated.

New York State Commissioner Ronald Goldstock was appointed by New York Governor David A. Patterson and was confirmed by the Senate and assumed his duties on July 2, 2008. On September 10, 2008 Commissioners Goldstock and Madonna appointed Walter Arsenault as executive director. The New Jersey Senate had confirmed Madonna's reappointment on June 21, 2007; however, on August 5, 2009, Governor Corzine informed the Inspector General that he was removing Commissioner Madonna for cause.

In light of the findings of this report, the Inspector General made the following recommendations to the Waterfront Commission:

Licensing of Stevedoring Companies

- Ensure that all eligible stevedoring companies obtain permanent licenses within a reasonable time from the issuance of this report. Companies that are ineligible for permanent licenses should cease operations at the port.
- Review the license and operations of Anchor Logistics, formerly ASA Apple, to ensure that convicted felon Frank Cardaci has no role in the management of that company.
- Improve supervision of auditors, and rotate auditors among assignments.
- Revise audit procedures to ensure that audits can be completed within a specified time before the onset of a new five-year licensing period. Coordinate audit plans with other division directors. Maintain a current list of pending and completed audits that is available to all relevant staff.
- Establish procedures to ensure responsibility for correcting and enforcing audit violations.

Police Division

- Enact policies and procedures, including guidelines for arrest processing, officer conduct, disciplinary procedures, chain of command, and securing and destruction of evidence.
- Provide training in relevant laws of both New York and New Jersey to all detectives.
- Regularly update information registered with the New York State Division of Criminal Justice Services regarding Commission police officers.

Protection of Commission Property

- Establish and enforce a vehicle use policy and advise all employees of their obligations to report personal and commuting use of Commission vehicles to tax authorities.
- Maintain an updated database of parking placards, ensure that parking placards are recovered from employees leaving the Commission, and review assignment of all parking placards to prevent inappropriate use. No commissioner or staff member should be assigned more than one placard.

Fiscal Management

- The Commission must employ a competent and proactive comptroller to help establish and enforce policies regarding purchasing, reimbursements, and expenditure of funds.
- The Commission should update its accounting system to ensure that grant or forfeiture funds are appropriately segregated.
- All accounts should be regularly reconciled. The Commission should ensure receipt of all funds owed, including forfeiture and overtime reimbursements from task forces. Reimbursements and expected reimbursements should be incorporated accurately into the Commission's budget for planning purposes.
- Annual reports should be completed as required by law.
- The Commission should ensure that the boat purchased through a grant from Homeland Security be used for the purposes specified in its grant, and revise daily logs to include the activities and purpose of the daily outing. Completed forms should be periodically reviewed for accuracy and completeness.

Remarkably, after reviewing the Inspector General's report, Commissioner Madonna responded in writing that, as a part-time commissioner, he should not be held accountable for the failings of the agency. Rather, Madonna argued, the failures in licensing, auditing, and financial controls, as well as the Commission's lack of policies, were solely the fault of former Executive Director De Maria and the respective division heads under De Maria's supervision.

While it is true that De Maria was responsible for the day-to-day operations of the Commission, the commissioners jointly head the agency, with sole responsibility for all hiring decisions. Attendant with the commissioners' hiring authority is the responsibility of ensuring that employees are performing their duties effectively and according to the Commission's mandate, and that their continued employment is warranted. Moreover, regardless of their part-time status, Commissioners Madonna and Axelrod cannot, or should not, have been unaware of the complete breakdown of the Commission's audit and enforcement functions, its failure to issue a permanent stevedoring license for ten years, and its lax fiscal controls.

During the pendency of the Inspector General's investigation, most of the culpable actors left their positions at the Commission. Commissioner Axelrod's term expired, Executive Director De Maria resigned, and General Counsel Jon Deutsch was terminated. In addition, on August 5, 2009, Governor Corzine informed the Inspector General that he was removing Commissioner Madonna for cause.