

STATEMENT OF
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BEFORE THE
SENATE COMMITTEE ON RULES AND ADMINISTRATION
APRIL 11, 2007

Good morning, Madame Chairman, and members of the Committee. I appreciate this opportunity to testify before you.

As Inspector General, it is my duty and responsibility to keep the Congress and the Smithsonian Board of Regents fully and currently informed about problems and deficiencies at the Smithsonian and to recommend corrective action.

Although our office has not formally examined governance at the Smithsonian, I would like to comment briefly on a few governance issues, and then discuss the role of our office at the Institution.

During our recent review of the former Secretary's expenses, we saw what we view as impediments to effective oversight. In particular, accountability and transparency, which are critical to the governance of a public institution like the Smithsonian, need to be improved.

For example, in conducting our review, we could not easily determine what Smithsonian rules and policies governed the Secretary's expenditures, which in itself was cause for concern. And, for some expenditures, such as those on office remodeling, there seemed to be no rules or limits. Without clear rules, accountability is more difficult. We also encountered an attitude that any rules that did exist did not necessarily apply to the Secretary, such as the Institution's policy prohibiting the use of trust funds to purchase gifts, or the Federal Travel Regulation limits on travel spending.

Our review, and in particular our examination of the Secretary's employment agreement, led me to question whether the Regents had adequate information for meaningful oversight. It became apparent that the current Regents were not fully aware of the provisions of the agreement, especially those regarding his housing allowance, until we

raised questions about them. Thus, they did not know of the original requirement in the agreement that housing expenses be documented. They were not aware that the documentation requirement was waived shortly after the Secretary began his tenure, because there is no written record of that modification to his agreement. Nor were they aware that this housing allowance was tied to his using his home for entertaining on behalf of the Institution. Without knowing these facts, the Regents had no basis for monitoring or questioning the housing allowance payments.

That was not the first time we had an indication that the information made available to the Regents was insufficient for meaningful oversight. Regrettably, in some instances that I am aware of, what they learned about key Smithsonian operations was limited and polished by the Secretary's office. For example, during the course of an audit of the Institution's implementation of its new financial system in 2003-2004, a multi-year, multi-million dollar modernization project, we informed Institution management that the project was substantially delayed and millions of dollars over budget for the tasks that had been completed. Yet, what the Board's Audit and Review Committee was told – until they ultimately read our final report – was that the Institution was “successfully completing the financial system deployment” and that “no money has been spent that shouldn't have been spent.” Similarly, reports from the Institution's Office of Policy and Analysis on broad topics of management concern were withheld from the Regents or were edited to downplay criticisms of senior leadership. And before our office reported directly to the Regents, our access to them, our ability to let them know about problems, was restricted. The Secretary discouraged my predecessors from giving our full reports directly to the Regents.

Where the Regents had relevant information, they did engage in substantive oversight. For example, the Audit and Review Committee required monthly reports and milestones for certain financial management reforms, and held management accountable for producing results. They also have the Institution's external auditors report to them regularly and meet with them in executive session to obtain their unmediated views.

There remains the question whether the Regents should have sought more information than they did. In hindsight, it certainly seems they should have. And as to whether the Regents appropriately responded to our office's report on the Secretary's expenses and the

recommendations we made, the Regents recently appointed an Independent Review Committee to look into that question, and I will await their conclusions.

Our review also revealed that the Institution's Office of General Counsel is an underused asset. We found, for example, that the General Counsel had not been told of the waiver of the documentation requirements for the Secretary's housing allowance or other details critical to the interpretation of the Secretary's employment agreement. Our understanding is that on a broader level, the Secretary generally did not permit the General Counsel to contact the Regents directly, even though the General Counsel serves as the lawyer for the whole Institution, which includes the Regents. And the General Counsel was rarely consulted, or only at the eleventh hour, about significant policies regarding expenditures, compensation, and administration. I would certainly like to believe that the General Counsel could have been a source of timely advice and feedback that could have improved governance.

I am pleased to report that, as our review progressed and we raised issues about policies and the apparent lack of compliance, Smithsonian management did act to amend or clarify these policies. For example, management has sent out two Institution-wide reminders that the Federal Travel Regulation applies to all travel on behalf of the Smithsonian. The Deputy Secretary/Chief Operating Officer just issued a clarification of the policy governing the expenditure of Smithsonian trust funds for meals, gifts, and entertainment. This clarification generally conforms to suggested best practices in the nonprofit sector. So, to that extent, the Institution has been responsive to issues raised in our report.

And these actions do represent an important step forward. But they do not go far enough to address what our office views as a pervasive problem, a problem also evident from our two recent audits on executive compensation at the Institution: The Institution did not always sufficiently consider how its nonprofit and trust status should affect how it uses its trust funds. It is a requirement of IRS rules and of trust law that such expenditures be for the benefit of the Institution (a legitimate business purpose) and not be lavish or extravagant. Yet the restatement of the travel policy and the clarification of the expenses policy both lack an acknowledgment that expenditures on behalf of the Smithsonian must be reasonable, that they must reflect those principles. Such an acknowledgment would be

an important reminder that in this era of severe budget constraints and increasing scrutiny of nonprofit executive compensation and expenses, all components of the Smithsonian need to ensure that the Institution's limited assets are used prudently and solely for the benefit of the Institution.

The Institution zealously maintains the distinction – and I believe it is an important one – between federally appropriated funds and the Institution's trust funds. However, it needs to understand that the principles of transparency and accountability that apply to spending federal dollars apply at least as much to spending its trust dollars. And it needs to emphasize that stewardship obligation.

To their credit, the Regents have recently taken significant steps to enhance their oversight and promote accountability and transparency. Indeed, they were the ones who requested the review of the Secretary's expenses, a review that had never been done before. And they have now created a permanent Committee on Governance, which has already begun to develop strong policy reforms, including having our office monitor compliance with those reforms, all of which will result in improved oversight. I believe they are on their way to establishing a stronger framework that supports these principles.

I would now like to turn to the role of our office at the Institution. The Inspector General Act created our office as an independent entity within the Smithsonian to detect and prevent fraud, waste, and abuse; to promote economy and efficiency; and to keep the Smithsonian Board of Regents and the Congress fully and currently informed of problems at the Smithsonian. Your former colleague, Senator Fred Thompson, characterized the role of Inspectors General as the “eyes and ears of the Congress” inside entities such as the Smithsonian. We operate independently from all other Smithsonian units, which gives us a unique vantage point and the tools to promote accountability and transparency.

In the past, our office has generally been treated as a mere internal audit unit. Only reluctantly has management asked us to comment, and only in a few instances, on significant internal policies. And only this past fiscal year, after much resistance, did our office begin overseeing the Institution's annual financial statement audit and thereby provide independent quality assurance. Both of those activities are routine IG responsibilities. Proof that we are viewed as a back-office financial function is that we

were recently moved from our downtown location to offices in Crystal City, Virginia, along with the Office of the Comptroller, the Office of Contracting, and other functions of the Chief Financial Officer's office.

This is not to say our reports and investigations are ignored. Far from it. Our audit recommendations are usually accepted, and I'm proud that our work has resulted in better programs and operations at the Institution. For example, an audit we concluded last summer found disturbing deficiencies in how the Institution conducts and tracks background investigations of employees and contractors. In response to our recommendations, management has substantially improved how it screens individuals working at the Institution and, as a result, greatly lowered the risk of having individuals with criminal or otherwise unsuitable backgrounds working with the national collections and the public. I offer for the record a one-page summary of that audit as well as of four of the more significant audits we issued during the past year.

I would also note that our audit recommendations are carefully monitored; the Deputy Secretary/Chief Operating Officer holds senior management accountable, on a quarterly basis, for closing open recommendations.

However, there is still some lack of awareness or misperception of our role, and I believe it stems in part from a mindset that fails to recognize the importance of public accountability. I say *public* accountability because I do not want to take away from what Smithsonian management has done over the last several years to increase accountability *within* the Institution's financial and administrative structures. Those accomplishments, along with improvements such as the ongoing modernization and centralization of the Institution's information technology systems, are helping make the Institution a more financially disciplined and better-run organization.

But in terms of public accountability, there is more to be done. I've had more than one Smithsonian executive tell me that our work is useful, but that it would be better if our findings were kept within the Institution. It seems transparency is regarded as an intrusion into the Institution's internal affairs, particularly when it comes to the expenditure of trust funds. Having our findings go to Congress and the public, however, is why we exist. It is what promotes accountability and transparency and, ultimately, will

inspire more trust and confidence in the Smithsonian on the part of Congress, donors, and the public.

Our ability to help in this important endeavor was greatly enhanced last summer when the Office of Management and Budget, at the prompting of Senator Grassley and with the crucial support of Senator Leahy, a Smithsonian Regent, changed our reporting relationship so that we now report directly to the Board rather than to the Secretary. That change has not only increased our independence by removing us from the supervision of the Secretary, it has also better positioned our office to serve the Regents as a source of unvarnished, objective information to help them in their oversight. It is a new reporting relationship, and we are still determining how best to structure it. I am hoping they will help us get the resources we so desperately need to fulfill our responsibilities. I'm pleased to say that the Regents have shown tremendous support for our office's work and for having us play a role in improving accountability and transparency at this great public institution.

Again, thank you for the opportunity to testify today. I look forward to answering any questions you may have.