

XIII. THE CIA'S INTERNAL CONTROLS: THE INSPECTOR GENERAL AND THE OFFICE OF GENERAL COUNSEL

Both the General Counsel and the Inspector General have played, and will continue to play, vital roles in the internal management of the Central Intelligence Agency. Both report directly to, and provide guidance to, the Director of the Central Intelligence Agency. As the principal legal officer of the Agency, the General Counsel provides legal advice to the Director of Central Intelligence; he also provides counsel and guidance to employees at all levels within the Agency on legal issues connected with the conduct of the CIA's mission. The Inspector General serves as the investigative arm of the Director and, when necessary, of the General Counsel, as well as assisting the Director and Deputy Directors in improving the performance of CIA offices and personnel.

Under the mandate of Senate Resolution 21, the Senate Select Committee studied both offices with particular attention given to the role of each in assuring that CIA activities are consistent with the Constitution and laws of the United States.¹ A number of current and former officials of the Central Intelligence Agency were interviewed or deposed. A far greater number were asked to, and did, respond in writing to a detailed questionnaire on the work of these offices.² On the basis of this investigation, the Committee is convinced of the importance of these offices and the need to maintain and strengthen them.

¹ Several provisions in the Resolution seem particularly applicable to a review of the Offices of the General Counsel and the Inspector General. Among them are: 1) Section Four which mandates examination of the extent to which Federal law enforcement or intelligence agencies coordinate their activities and the extent to which a lack of coordination has contributed to illegal, improper, or inefficient actions; 2) Section Five which mandates examination of the extent to which the operation of any activities in the United States by the Central Intelligence Agency conforms to the legislative charter of that agency and to the intent of Congress; 3) Section Six which mandates an examination of the relationship between the Director of Central Intelligence's responsibility to protect "intelligence sources and methods" and the prohibition on the Agency's exercise of police, subpoena, law enforcement powers, or internal security functions; 4) Section Eight which mandates an examination of the nature and extent to which Federal agencies cooperate in exchanging intelligence information and the adequacy of any regulations or statutes which govern such cooperation; 5) Section Nine which mandates an examination of the extent to which the intelligence agencies are governed by executive orders, rules or regulations, and the extent to which these regulations contradict the intent of Congress; 6) Section Ten which mandates an examination of the violation or suspected violation of state or Federal statutes; 7) Section Eleven which mandates an examination of the need for improved, strengthened or consolidated oversight of the United States intelligence activities by the Congress; and 8) Section Twelve which mandates an examination of whether any of the existing laws of the United States are inadequate either in their provisions or in enforcement to safeguard the rights of American citizens.

² Some 24 questionnaires were sent out. There were 15 responses ranging from 3 pages to 14 pages.

A. THE GENERAL COUNSEL

The General Counsel's work and responsibilities have changed over time, reflecting changes in CIA activities and the needs and desires of different Directors. The General Counsel's Office had originally, a staff of ten to twelve attorneys which was concerned with enactment of the Agency charter and enabling legislation, and with creation of regulations and administrative and financial procedures under which the Agency would operate. In the 1950s and 1960s, the Office was largely directed toward assisting clandestine activities overseas. Currently the Office of the General Counsel, with a staff of roughly 30 attorneys, is primarily concerned with "proposals for legislation, executive orders and other directives governing Agency activities; legal input into planning and approval of operations, stricter management and financial controls; litigation, Freedom of Information Act and Privacy Act matters; and response to requirements of Select and standing committees of the Congress."^{2a}

1. The Organization of the Office of General Counsel

Between January 19, 1951, and April 1, 1962, the General Counsel was technically a part of the Directorate of Administration, but in fact the General Counsel reported directly to the Director of Central Intelligence on most matters. In 1962 the Office was moved to the Office of the Director.³

The organization of the Office of General Counsel remained basically unchanged from the inception of the Agency until October 1975. The Office was then reorganized internally into four specialized divisions in order to permit more effective handling of the legal problems of the Agency. The four divisions are: General Law division, Operations and Management Law division, Freedom of Information and Privacy Law division, and Procurement and Contracts Law division.

Two attorneys are presently assigned as Special Assistants to the General Counsel. One of these has been assigned to the Deputy Director for Operations to provide more timely and effective counsel in the earliest stages of sensitive operational matters. The other has been assigned to the Office of Logistics, which requires continuous legal assistance in its responsibility for managing most CIA contracts. The Agency is considering assigning attorneys to the other directorates and independent offices.

Until this year most of the lawyers in the Office of General Counsel had been recruited from within the Agency. Although some of these attorneys had had legal experience outside the CIA, the Rockefeller Commission recommended, and the CIA has spent considerable effort in recruiting lawyers from outside the Agency.⁵

Lawrence Houston, the General Counsel of the Central Intelli-

^{2a}"The Role and Functions of the General Counsel," CIA paper prepared for the Senate Select Committee, 12/75, p. 2.

³*Ibid.* 12/75, p. 2. With the exception of one year in the 1950s, the General Counsel was also responsible for supervision of the CIA's liaison with Congress. In 1966, a separate Office of Legislative Counsel was created. The Legislative Counsel is responsible for the CIA's liaison with Congress, and reports to the Director of Central Intelligence.

⁵According to the CIA, as of April 1976, over half of the attorneys employed in the Office of General Counsel will have come from outside the CIA.

gence Agency from 1947 until 1974, agreed with the Rockefeller Commission recommendation, noting that legal experience, particularly in private practice, would help Agency attorneys exercise independent judgment.

Mr. Houston also recommended that attorneys be rotated from the Office of General Counsel to other government agencies.⁶ Such rotation would lessen the possibility that these attorneys would become part of a culture which assumes that, for reasons of national security, the CIA is not governed by the normal processes of the law.

Just prior to his leaving the CIA, then Director Colby elevated the Inspector General to an executive rank equal to that of the Deputy Directors of the CIA. He agreed that the General Counsel should be similarly promoted but no action was taken, leaving the General Counsel below the Deputy Directors and the Inspector General in rank.

2. The Functions of the Office of General Counsel

The General Counsel has a wide range of responsibilities. As noted above, his primary responsibility is to advise the Director of the Central Intelligence Agency, although he also provides legal advice and guidance to employees at all levels. Under CIA regulations, he is also responsible for reviewing all new projects and activities unless they are clearly established as legal; insuring the legality of the expenditure of confidential funds;⁷ reported possible violations of the U.S. criminal code by CIA employees to the Department of Justice; passing upon all regulatory issuances; coordinating legal issues involved in CIA relations with non-Agency individuals and institutions; determining legal standards for all requests made to the CIA by, or made by the CIA to, other government agencies; and establishing proprietaries and cover mechanisms for operations. Under Executive Order 11905 he is also required to report to the Intelligence Oversight Board any activities which raise questions of legality or propriety.

3. The General Counsel's Role in Determining the Legality or Propriety of CIA Activities

As the Director's chief legal adviser, the General Counsel is responsible for determining the legality or propriety of CIA activities. CIA regulations recognize this and provide that "to ensure that CIA activities are in compliance with the law, Deputy Directors and Heads of

⁶The CIA has endorsed the idea but has told the Committee that organizationally it would be difficult to implement. (Letter from William Colby to the Select Committee, 1/27/76, p. 7.)

⁷Section 8(b) of the CIA Act of 1949, as amended, 50 U.S.C. 403j(b) provides: "The sums made available to the Agency may be expended without regard to the provisions of law and regulations relating to the expenditure of Government funds; and for objects of a confidential, extraordinary, or emergency nature, such expenditures to be accounted for solely on the certificate of the Director and every such certificate shall be deemed a sufficient voucher for the amount therein certified." Normally the General Counsel of the General Accounting Office would rule on the legality of the expenditure of government funds, but given 50 U.S.C. 403j(b) and the decision by the General Accounting Office to cease even the partial audits of CIA expenditures which he had conducted up until the early 1960s, the CIA's General Counsel has the responsibility for determining the legality of unvouchered expenditures. "The Role and Functions of the General Counsel," 12/75, pp. 3-4.

Independent Offices shall consult with the Office of General Counsel on all activities whose legality is not clearly established.”⁸

While responsible for making determinations about the legality or propriety of CIA activities, the General Counsel also has an obligation to assist in the accomplishment of the Agency’s missions. As the Rockefeller Commission Report put it, “he is subject to pressures to find legal techniques to facilitate proposed activities.”⁹ This dual responsibility with its potential for conflict is not in itself unique—almost any “inside” counsel is in a similar position—but the secret and often sensitive nature of CIA activities does make protection of the independence of his judgment particularly important.

As can be seen from the regulation, the role of the Office of the General Counsel is essentially passive.¹⁰ He does not initiate inquiries, but rather consults upon request.

In the past, the General Counsel has not been asked for his opinion on certain sensitive Agency programs. During the 20-year course of the CIA’s mail opening program, the General Counsel was never asked for an opinion on its legality or propriety. When the Director of Central Intelligence had doubts about whether Operation CHAOS violated the Agency charter, he did not turn to the General Counsel. As former DCI Helms stated, “Sometimes we did [consult the General Counsel]; sometimes we did not. I think the record on that is rather spotty, quite frankly.”¹¹

When the General Counsel was asked for an opinion about CIA activities which were “questionable” his advice was heeded. For example, when the CIA participated in an NSA program to monitor telephone calls to and from Latin America, the General Counsel was asked for an opinion. The opinion he issued described the telephone intercept program as illegal, with the result that the program was immediately terminated.^{12a}

The principle reason for the lack of consultation was that a review by the General Counsel was not required for the initiation of Agency activities. As James Angleton has testified, “. . . [I]t is my impression that one of our weaknesses is that we did not have the General Counsel work into the planning phases of operations. Usually we went to the General Counsel when something was going wrong, but not in the inception of operations.”¹²

⁸ CIA Headquarters Regulation, “Restrictions on CIA Activities Within the United States or Related to U.S. Citizens and Organizations,” 11/28/75, 7-1a (3). p. 1.

⁹ Report of the Commission on CIA Activities Within the United States, 6/6/75, p. 87.

¹⁰ As Lawrence Houston wrote, “[t]he role could be almost completely passive but as a matter of practice it is and should be active in the sense of keeping informed as far as possible and feeling free to raise possible problems at whatever level seems appropriate.” (Letter from Lawrence Houston to the Senate Select Committee, 1/76, p. 1.)

The present Deputy General Counsel has noted that given the General Counsel’s new responsibilities under Executive Order 11905 and changes in attitudes at the Agency the role will be anything but passive.

¹¹ Richard Helms testimony, 9/10/75, p. 59.

^{12a} See the Committee’s detailed report on NSA Monitoring for a detailed discussion of this activity and its termination.

¹² James Angleton testimony, 9/17/75, p. 48.

The CIA has explained that :

Because of the infinite variety of matters arising which would be susceptible to or might benefit from legal advice, there has been no established mechanism requiring or permitting the General Counsel to advise or rule in all cases. Some of his responsibilities are set forth in regulations or other procedures or are well known, whereas others depend on the initiative of the individual office seeking advice. Each Director of Central Intelligence has had his own preferences in methods of operating the Agency and seeking advice from the various components of the Agency. *Because of the extremely sensitive nature of some activities, there have been times when Directors have chosen to carry them out directly rather than through the normally responsible components of the Agency, in order to involve as few people as possible. In some cases a Director may not think to seek legal advice or may choose not to do so. In choosing to operate in this manner, the Director is carrying out to a degree he deems necessary his charter responsibility to protect intelligence sources and methods from unauthorized disclosure. On the other hand, he must then make his own determination as to whether this responsibility justifies some aspect of the operation which might otherwise be questionable under law.* [Emphasis added.]¹³

Under this view, the Director can still withhold from his counsel the very existence of a particular activity. The DCI could be in the position of deciding, without advice from his counsel, whether the DCI's legal responsibility to "protect intelligence sources" justified activities which would be "questionable under law."

Even under the present regulation requiring consultation with the General Counsel "on all activities whose legality is not clearly established" it is possible that the General Counsel would not be asked for an opinion about the legality or propriety of a major CIA activity. The Director could waive the regulation and instruct the appropriate official not to consult with the General Counsel. In addition, the standards in the regulation itself may cause certain difficulties.

The regulation leaves the determination of whether an activity has been clearly established as legal to the deputy directors and the heads of independent offices. Thus, these officers must interpret past decisions by the General Counsel and decide their applicability to new activities. They must interpret the regulation itself and in particular the phrase which reads "whose legality is not clearly established" in order to determine whether consultation is required. Because the regulations are prospective, activities which were legal in the past, but which have become illegal due to changes in the law, might not be the subject of consultation.

¹³ "The Role and Functions of the General Counsel, 12/75, p. 6.

It would certainly be possible to require consultation with the General Counsel on all "significant" activities.¹⁴ The General Counsel would be given a description of the activity. The referring office's reasons for believing the activity is legal might be included to enable the General Counsel to avoid a *de novo* review.

Certain acts undertaken by the CIA which may not appear significant because they do not require the expenditure of a great deal of money or the efforts of large numbers of personnel are nonetheless "significant" due to their potential for abuse. Consultation with the General Counsel should be required before the initiation of any such act.

For instance, under present regulations, the Director may approve investigations of allegations of unauthorized disclosure of classified information by individuals presently or formerly affiliated with the CIA, if he determines that intelligence sources and methods may be jeopardized by the disclosure.¹⁵

There have been a number of such investigations in the past which resulted in the extensive surveillance of newsmen, as well as a "breaking and entering" by CIA with the assistance of local police officials. Thus even though the CIA recognized that such investigations required special procedures there is no requirement that the chief legal officer of the Agency be consulted.¹⁶

The CIA has taken the position that the General Counsel's approval is not required for each such act. The General Counsel's approval of the regulations governing such acts is considered sufficient. This underestimates the difficulties deputy directors or heads of independent offices might have in interpreting regulations, and creates the possibility that actions not consonant with regulations could be approved and undertaken.

Requests for assistance made by the CIA to other governmental agencies and requests to the CIA from other agencies raise similar

¹⁴ While the Deputy Directors and heads of independent offices would have to interpret the meaning of "significant," they are in a better position to do this than to make judgments about the applicability of past opinions of the General Counsel. Some threshold is required in order that the General Counsel's Office not be swamped by a requirement to review every action by every employee.

¹⁵ The investigation must be coordinated with the FBI, when substantial evidence suggests espionage or other violation of a federal statute. CIA 7-1c(2) (b) (1).

¹⁶ As the CIA's former General Counsel has noted, the Office of General Counsel "should be consulted in connection with investigations of disclosure of classified information, or for any surveillance within the U.S." (Houston letter, 1/76, p. 1.)

Present regulations provide that the Office of General Counsel must be consulted when equipment for monitoring conversations is being tested in the United States. (CIA Headquarters Regulation, 11/28/75, H.R. 7-1d5.) As that testing raises many of the same issues as does an investigation of unauthorized disclosure of classified information, there seems to be no reason for excluding the Office of General Counsel from the approval process for an investigation.

issues.¹⁷ While the General Counsel must concur with the Deputy Director for Operations on the provision of technical equipment to the Drug Enforcement Administration (DEA) for overseas operations,¹⁸ and must approve CIA requests for federal income tax information,¹⁹ he is not involved in the approval process for seeking assistance from state and local police organizations.²⁰ It should be remembered that such assistance has been provided in circumstances which were highly questionable.²¹ The General Counsel is not involved in the approval process for providing technical guidance, training, equipment, and other assistance to the Department of Defense for intelligence activities within the United States.²² Such equipment might be used by the Defense Department for illegal surveillance of citizens. In each of these situations, the Central Intelligence Agency has established special procedures for approval and monitoring; where such procedures were imposed because of the sensitivity of the operations, the procedures should specifically include consultation with the General Counsel.

4. The General Counsel's Role with Regard to Reports of Activities that Raise Questions of Legality or Propriety

a. The General Counsel's Responsibilities.—Present regulations provide that “. . . any activities or proposed activities that may raise questions of compliance with the law or CIA regulations or that otherwise appear improper will be brought directly to the attention of the Director by any of the command or staff components or by the IG and will be subject to the Director's decision.”²³ In the past, questionable activities which came to the attention of the Director or the Inspector General were not always referred to the General Counsel. For example, during a survey of the Technical Services

¹⁷ Under present regulations, the Inspector General is required to obtain a written opinion from the General Counsel on requests for “continuation or initiation of activities in support of or in cooperation with state, local, or other federal agencies whose legality and propriety have not been previously established.” (CIA Headquarters Regulation, 11/28/75, 7-1b(1).) This language has the same shortcomings noted above: the deputy director or the head of the independent office must interpret the regulation and previous decisions of the Office of General Counsel; the regulation ignores the possibility of a change in legal standards.

Written opinions of the General Counsel are generally not required by regulation or statute. The absence of a written opinion does not mean that the General Counsel did not provide advice. In many situations oral opinions have been offered. Given proper security restrictions, however, an increase in the number of situations in which written opinions are required might be desirable, as it might tend to increase the level of scrutiny by the Office of General Counsel.

¹⁸ CIA Headquarters Regulation, 11/28/75, 7-1b(5) (c).

¹⁹ CIA Headquarters Regulation, 11/28/75, 7-1c(9).

²⁰ CIA Headquarters Regulation, 11/28/75, 7-1b(3) (b).

²¹ In one instance, local police assisted the CIA in a “breaking and entering.”

²² CIA Headquarters Regulation, 11/28/75, 7-1b(4).

²³ CIA Headquarters Regulation, 11/28/75, 7-1a(4).

Similar regulations require that any employee “who has knowledge of past, current or proposed CIA activities that might be construed to be illegal, improper, or outside CIA's legislative charter, or who believes that he or she has received instructions that in any way appear illegal, improper, or outside CIA's legislative charter, is instructed to inform the Director or Inspector General immediately.” (CIA Headquarters Regulation, 11/28/75, 7-1a(6).)

Division in 1957, the Inspector General discovered activities which he labeled "unethical and illicit," but he did not notify the General Counsel. Nor was the General Counsel informed about the surreptitious administration of LSD to unwitting human subjects, discovered by the Inspector General in 1963.²⁴

Under the recently issued Executive Order²⁵, the General Counsel is personally responsible for reporting to the Intelligence Oversight Board any activities that raise questions of legality or propriety.²⁶ However, CIA regulations do not explicitly require the Director or the Inspector General to notify the General Counsel of questionable activities reported to them. The Director may waive the regulation and may instruct the Inspector General not to inform the General Counsel.²⁷ While the Inspector General is required by regulation to refer to the General Counsel "all matters involving legal questions that come to the attention of the Inspector General"²⁸ an additional, more specific, regulation only requires that the Inspector General refer to the General Counsel "information, allegations, or complaints of violations of the criminal provisions of the United States Code by CIA officers and employees, or relating to CIA affairs...."

b. Investigations by the Office of the General Counsel.—If the General Counsel does learn of questionable activities, he must rely on the Office of the Inspector General to investigate. Unlike the Inspector General who, as the DCI's investigative arm, is authorized to review all CIA activities, the General Counsel does not have general investigatory authority.

The Office of General Counsel can initiate an investigation, with the specific authorization of the Director. This requirement might prevent the General Counsel investigation of an activity about which the Director sought to restrict knowledge.

If the Director refused to authorize an investigation by the General Counsel, the General Counsel could resign and notify the "appropriate authorities."²⁹ Alternately the Director could be required to provide an immediate explanation in writing to the appropriate commit-

²⁴ A former IG explained that his reason for withholding from the Agency's General Counsel information on CIA's mail opening, which he believed to be "illegal," was that the General Counsel has already been excluded by other senior officials.

"An operation of this sort in the CIA is run—if it is closely held, it is run by those people immediately concerned, and to the extent that it is really possible, according to the practices that we had in the fifties and sixties, those persons not immediately concerned were supposed to be ignorant of it." (Gordon Stewart deposition, 9/30/75, p. 29.)

²⁵ Executive Order 11905.

²⁶ The Inspector General has an identical responsibility to that of the General Counsel, under the terms of the Executive Order.

²⁷ The Inspector General would still have to report the questionable activity to the Intelligence Oversight Board. If the Director instructs him not to, he must inform the IOB of that instruction.

²⁸ CIA Headquarters Regulation, "Office of the Inspector General," 1-3a.

²⁹ These could include the IOB or its successor and the appropriate congressional committees.

tees of the Congress and the Executive branch of the reasons for denial of investigatory authority.³⁰

The General Counsel could be provided by regulation with general investigatory authority within the CIA, but this would have certain drawbacks. It could strain the General Counsel's relationship with the DCI. Lawrence Houston argued that "to give OGC investigative authority similar to that of the IG would . . . pervert its counseling role and thereby inhibit or destroy its prime usefulness."³¹ Houston noted that even if the General Counsel has the support of the DCI he will not be aware of everything going on at the Agency. "Investigative authority would not give him much more and would . . . inhibit his relations with his clients."³²

Provision of general investigative authority to the Office of General Counsel might also involve duplication of work now done by the Inspector General. Duplication of effort in detecting and preventing abuses might be helpful rather than harmful. In all likelihood, however, in the usual course of events the General Counsel would ask the Inspector General to investigate rather than relying on his own resources.

c. The General Counsel's Access to Information.—Even if the General Counsel is consulted about all significant activities and if he is notified of all reports of questionable activities, it remains to ensure that the General Counsel will have access to necessary information.

The former General Counsel does not recall ever being denied information. The record, however, is clear that a good deal of information bearing directly on the legality or propriety of Agency operations was never given him.

According to the Central Intelligence Agency, "If an Office should 'question' the request of the General Counsel for access to any particular information, any limitations would be imposed by the Director." Thus, even today, the Director remains able to deny information to the General Counsel bearing on the legality or propriety of CIA activities. Executive Order 11905, however, requires that the Director ensure that the General Counsel has "access to any information necessary" to perform his duties under the Order.

Lawrence Houston has suggested that the General Counsel could resign if denied access to information. The Director might be required to provide an immediate explanation, to the appropriate bodies of the reasons for such a denial.³³

d. Reporting Possible Violations of the U.S. Criminal Code to the Attorney General.—Finally, it should be noted that in the past the General Counsel did not always report possible violations of the U.S. Criminal Code to the Department of Justice. Under the terms of a 1954 agreement with the Department of Justice, the Central Intelli-

³⁰ A report to the Intelligence Oversight Board may already be required. Executive Order 11905 requires the General Counsel to report to the IOB any occasion on which he was directed by the DCI not to report any activity to the IOB.

³¹ Houston letter, 1/76, p. 1.

³² *Ibid.*, p. 1.

³³ *Ibid.*, p. 2. The General Counsel might be required under the terms of Executive Order 11905 to report the refusal of access to the IOB.

agency Agency was essentially delegated the Department of Justice's power to determine whether criminal prosecution should be initiated against individuals who violated federal law. This delegation was and is unacceptable. The agreement has now been terminated.

Under present regulations, the Inspector General must inform the General Counsel of "information, allegations, or complaints of violations of the criminal provisions of the United States Code by CIA officers and employees, or relating to CIA affairs . . ." ³⁴ The Inspector General must also report to the General Counsel results of the Inspector General's investigation which is aimed at developing "sufficient facts to determine if a crime has been committed, and whether prosecution may compromise international relations, national security, or foreign intelligence sources and methods." ³⁵ The General Counsel will refer those cases where sufficient information has been developed to determine that a crime has been committed, as well as the Inspector General's report on the effect of prosecution, to the Department of Justice. ³⁶

Under Executive Order 11905, the General Counsel is not required to report to the Attorney General, but rather must report to the Intelligence Oversight Board. ³⁷

Because of the suspicions aroused by the disclosure of the CIA-Department of Justice agreement and the need to renew public confidence, it may be necessary to require that the appropriate congressional committees be given notice of CIA referrals of possible criminal violations to the Department of Justice. If this were to be done, great care would have to be taken to avoid any possibility of prejudicing the investigation or prosecution.

5. Oversight of the Office of General Counsel

Because the General Counsel's principal duty is to provide legal advice and guidance to the Director of Central Intelligence, the Director must be primarily responsible for evaluating his work. Unlike other CIA offices, however, the Office of the General Counsel has never been the subject of inspection by the Office of the Inspector General.

The General Counsel's work has not gone totally unreviewed. In 1951 a New York law firm conducted a brief review of the Office of General Counsel. Within the last year the Department of Justice conducted a management survey of the Office at the request of the Director. Given the importance of the General Counsel's Office, the absence of regular formal reviews is to be regretted.

6. Executive Branch Oversight of the Office of General Counsel

At present the General Counsel is required to "transmit to the Oversight Board reports of any activities that come to [his] attention that raise questions of legality or propriety." ³⁸ He is also re-

³⁴ CIA Headquarters Regulation, 11/28/75, 7-1a (7), p. 1.

³⁵ CIA Headquarters Regulation, 11/28/75, 1-3a (2) (e).

³⁶ *Ibid.* The regulations further provide that "reporting of the fact of a crime will not be delayed for an evaluation of whether the prosecution will raise questions of national security."

³⁷ The General Counsel may already be required to report to the Attorney General under provisions of the U.S. Code.

³⁸ Executive Order 11905.

quired to report to the Department of Justice all incidents involving possible violations of the U.S. Criminal Code as well as the results of investigations by the Inspector General. There are no requirements, however, that he provide General Counsel opinions or regular reports on the work of the Office to anyone outside the CIA.

According to the Central Intelligence Agency, regular provision of General Counsel opinions outside the Agency might raise serious problems. "To place such requirement would be violative of command relationships and lawyer-client privilege . . . [T]he Director, at his option, could make such reports available as he deemed necessary."³⁹ It has also been argued that because many of the opinions are on technical matters, regularly supplying them to those outside the CIA would not be useful.

Walter Pforzheimer, formerly the Legislative Counsel of the CIA, suggested that "a general report, oral or in writing, on major legal problems facing the Agency, or the need for additional statutory support"⁴⁰ could be provided to such groups as the National Security Council. The IOB or other such groups could be supplied legal opinions in especially sensitive areas, such as those dealing with activities that might infringe on the right of Americans.

7. Congressional Oversight of the Office of General Counsel

The same chain of command and lawyer-client privilege problems might arise if General Counsel's opinions were regularly provided to congressional oversight committees. Yet similar solutions which would greatly aid congressional oversight—regular, more general reports,⁴¹ and the provision of particular opinions or all opinions in specific sensitive areas—could be devised.⁴²

The Senate has another means by which to oversee the General Counsel, the confirmation process. Congress could require that the General Counsel be nominated by the President subject to confirmation by the Senate. This might increase the independence and stature⁴³ of the General Counsel; it would parallel provisions for Presidential nomination and senatorial confirmation of the General Counsels of executive branch departments and independent regulatory bodies. But eliminating appointment by the DCI might reduce the confidence which the Director has in his chief legal advisor.

B. THE OFFICE OF THE INSPECTOR GENERAL

The Inspector General reports to the Director and assists him in his attempts to assure that CIA activities are consistent with the Agency's charter regulations and the Constitution and laws of

³⁹ Letter from William Colby to the Senate Select Committee, 1/27/76, p. 7.

⁴⁰ Letter from Walter Pforzheimer to the Senate Select Committee, 1/26/76, p. 9.

⁴¹ In order not to short-circuit the chain of command, such reports could be made to Congress by the DCI.

⁴² The properly charged congressional oversight committees must have access to the decisions of the General Counsel, but it may be that not all the General Counsel's opinions need be sent to them.

⁴³ At present the General Counsel ranks below the Inspector General and the Agency's Deputy Directors.

the United States. In addition, the Office of the Inspector General has a wide range of responsibilities designed to improve the performance of CIA offices and personnel. The Inspector General now holds rank equal to that of the Deputy Directors of the CIA.

1. Organizational History

The Office of the Inspector General had its origin in the establishment of an Executive for Inspections and Security (EIS) in the Central Intelligence Group (CIG) on July 1, 1947. EIS was charged to provide "overall inspection, audit, and security for CIG." By 1951, audit and inspection functions had been separated; an Audit Office was established under the Deputy Director for Administration.

In November 1951, a Special Assistant to the Director assumed the inspection function. He was appointed to the newly established position of Inspector General on January 1, 1952. In March 1953, the mission and functions of the Inspector General were formally defined.⁴⁴

In 1953, the DCI appointed Lyman B. Kirkpatrick as Inspector General.⁴⁵ Mr. Kirkpatrick obtained approval from the Director in April 1953 for an inspection program which included planned, periodic inspection of Agency components (component inspections). Several inspectors were added to the IG's staff to perform this function; however, the Inspection and Review Staff in the Directorate of Plans retained responsibility for reviewing DDP components. By mid-1954, the IG's staff had expanded to fifteen, and a program of component inspections was under way. In January 1955, the DCI authorized the IG to conduct independent inspections of DDP components, separate from the DDP's Inspection and Review Staff inspections. By December 1959, the Office of the Inspector General had completed the first cycle of component inspections.

On April 1, 1962, the Audit Staff was transferred from the Directorate of Support (DDS) to the Office of the Inspector General, and

"The issuance read:

"Mission:

"The Inspector General is charged with conducting investigations throughout the Agency on behalf of the Director and with inspecting throughout the Agency the performance of missions and exercise of functions of all CIA offices and personnel.

"Functions:

"The Inspector General shall:

"a. Make recommendations with respect to the missions prescribed for the several Offices of the Agency and with respect to such procedures and methods as may assist the Offices of the Agency more fully to perform their respective functions.

"b. Make recommendations with respect to the proper assignment of missions and functions in the overall interests of the Agency.

"c. Provide a forum where Agency personnel may, on a highly confidential basis, confide suggestions or complaints which have not received satisfactory considerations through regular channels of command or through the procedures provided for in CIA Regulation No. 20-8.

"d. Perform such other functions as may be determined by the Director."

⁴⁶ In December of 1961, upon Kirkpatrick's transfer, Deputy Inspector General David R. McLean was named Acting Inspector General; John Earman was appointed Inspector General in May 1962. In March 1968, John Earman retired and Gordon M. Stewart was appointed Inspector General. He, in turn, retired in January 1972, and was replaced by William V. Broe. In June 1973, on William Broe's retirement, Donald F. Chamberlain, the incumbent, was appointed Inspector General.

the Inspector General was given responsibility for coordinating and directing the activities of the Audit Staff. The Audit Staff then had about 40 positions—its present authorized strength.

In May of 1962, the positions of Chief of the Inspection Staff and Chief of the Audit Staff were established within the Office of the Inspector General. At the same time the DCI approved an increase in the Inspection Staff from 15 to 29 positions so that all Agency components could be inspected on a two to three year cycle, and all foreign field installations could be visited at least once a year. In December 1963, in response to a call for economy measures, the Inspector General reduced inspector positions from 18 to 14.

In 1964, the Inspector General became concerned that the office lacked continuity because inspector positions were always filled by rotational assignment. He obtained approval from the Executive Director to establish two Executive Career Service permanent positions in the Office.

In June 1973, the Director abolished the component inspection program⁴⁶ and reduced the Inspection Staff to five positions, including two positions to work on Equal Employment Opportunity matters. The Inspector General's role was limited to conducting special investigations and studies, investigating charges of misfeasance, malfeasance, and nonfeasance, and handling grievance cases. In November 1974, the Audit Staff's functions were expanded to include independent program audits⁴⁷ of Agency operations which included "some of the same things that the inspection staff had done previously . . ."⁴⁸

In July 1975, following the Rockefeller Commission recommendations, the component inspection program was reinstituted. The EEO function positions were transferred to a new staff in the Office of the Director. As of April 1976, the staff of the Inspector General was authorized to include approximately twenty inspectors and a new series of component inspections had been initiated.

2. The Functions of the Office of the Inspector General

The responsibilities of the Office of the Inspector General are quite broad. Under CIA regulations the Inspector General is charged with:

—[d]irecting and coordinating the activities of the Inspection Staff and the Audit Staff in conducting special investiga-

⁴⁶ According to the present Deputy Inspector General, the program was ended because Mr. Schlesinger and Mr. Colby believed "that a good deal of the kind of information that we had produced in the preceding years was not recurrent, that we had had most of the serious problems in the Agency and that Mr. Colby more specifically felt that he had new management approaches that he felt would match what the inspection staff had provided in the past." (Scott Breckinridge testimony, 3/1/76, pp. 4-5.)

⁴⁷ This function, as published in Agency regulations on May 30, 1975, is described as follows:

"Conduct supplementary, independent program audits of Agency operations pursuant to the audit standards established by the Comptroller General. Such audits will cover Agency-wide subject matter selected in coordination with the Comptroller or directorate programs selected in coordination with the Deputy Director concerned. For purposes of coordinating independent program audits, substantially qualified officers will be detailed to the Audit Staff." (CIA memorandum, "Organizational History of the Office of Inspector General, 12/75, p. 3.)

⁴⁸ Breckinridge, 3/1/76, p. 5.

tions, inspections of organizational components, and audits on behalf of the Director throughout the Agency, both at headquarters and in the field, and performing such other functions as may be prescribed by the Director.

Under the same regulations, the Chief of the Inspection Staff will:

—Conduct periodic inspections of all CIA offices for compliance with CIA authority and regulations, as well as for effectiveness of their programs in implementing policy objectives; conduct unannounced inspections of any organizational component of CIA when it appears necessary.

—Survey and evaluate any problem area or subject called to his attention . . . reporting his findings and conclusions as appropriate.

—Provide a forum wherein CIA personnel may, on a highly confidential basis, confide grievances or complaints that have not received satisfactory consideration through normal channels of command. . . .

—Investigate all reports from employees or other sources of possible violations of CIA's statutory authority.

—Investigate charges and reports of fraud, misuse of funds, conflicts of interest, and other matters involving misfeasance, malfeasance, nonfeasance, or violation of trust. In all cases involving possible violations of the U.S. criminal code, the investigation will be limited to developing sufficient facts to determine if a crime has been committed, and whether prosecution may compromise international relations, national security, or foreign intelligence sources and methods. The results of such investigations will be reported to the General Counsel for further reporting to the Department of Justice. . . .

—Refer to the General Counsel all matters involving legal questions that come to the attention of the Inspector General.

—Coordinate with the CIA Director of Equal Employment Opportunity concerning grievance cases. . . .

—Review with the General Counsel proposals for support of other government departments or agencies. . . .⁴⁹

Over the years, the principal activities of the Inspector General's Office have remained relatively constant. They have been component inspections, investigations into activities which might be construed as "illegal, improper, or outside CIA's legislative charter,"⁵⁰ and the review of employee grievances.

Component Inspections

Component inspections are studies conducted by the Inspector General's staff of offices within the Agency. They have ranged from specific surveys focusing, for example, on the Technical Services Division in the Deputy Directorate of Plans, to broader surveys such as those conducted on the Agency's major proprietaries. They include

⁴⁹ CIA Headquarters Regulation.

⁵⁰ CIA Headquarters Regulation, 11/28/75, 7-1a (6).

examinations of documents located at Headquarters, field visits overseas by members of the Inspector General's staff, and interviews of personnel within the component.⁵¹

As one former member of the Inspector General's staff noted, a component survey should include:

a review of existing policy, effectiveness and economy of operations, security, compliance with regulations and procedures, adequacy of personnel as to qualifications and numbers, morale, and any specific problem areas identified by the component itself, individuals within it, or . . . external sources.⁵²

According to the CIA, the present schedule of component inspections "will cover both field and headquarters activities . . . [T]hey should cover all Agency components every two to four years with more frequent attention given to sensitive activities."⁵³

The precise schedule for the component surveys is determined by the Inspector General in consultation with the Director.⁵⁴ According to Lawrence Houston, even the scheduling of the inspection is "salutary."⁵⁵ As one former Inspector noted:

what the component does in anticipation of the survey and during the course of the survey as problems are surfaced is often (if not usually) of more significance than are the actions taken in response to the report's recommendations. In fact,

⁵¹ In the past all, or almost all, of the personnel in the component were interviewed. According to the Deputy Inspector General, this was because "there were a lot of unresolved problems in the Agency that were hangovers from its early days of growth and development . . . and the feeling then was that a very detailed review of everything was required." (Breckinridge, 3/1/76, p. 6.) Although several former Inspectors remarked on the usefulness of this technique, particularly as it improved the morale of lower ranking employees (see e.g., Letter from John O. Lawrence to the Senate Select Committee, 2/18/76, p. 1) it has now been halted because of the "tremendous amount of repetitiveness," and because the interviews were no longer finding things that were "startling," but rather "the sort of problems that would probably turn up" anyway. (Breckenridge, 3/1/76, p. 6.)

During future component inspections, there will be selective interviews focusing on "management and policy issues"; larger numbers of personnel will be sampled in overseas stations because the Inspectors will be "looking not only for "management and policy questions", but also "for operational conduct." (*Ibid.*, p. 7.)

In the past the Inspector General also interviewed randomly selected returning field personnel. According to one former Inspector, this "was useful in alerting the Inspector General to routine problems." (Lawrence letter, 2/18/76, p. 2.) The Deputy Inspector General told the Committee that the Agency had dropped this program but was now reinstituting it. He noted that it had provided useful information but the information had to be used as "leads," as one person usually did not have the whole story, (Breckinridge, 3/1/76, p. 47.)

⁵² Letter from Christian Freer to the Senate Select Committee, 1/22/76, p. 2.

⁵³ If this schedule were maintained, it would compare favorably to the pre-1973 schedule under which the CIA attempted, unsuccessfully, to review each component every three to five years.

⁵⁴ One former Inspector has suggested that the schedule be fixed by the Inspector General, an Executive Branch oversight committee such as PFIAB, and the congressional oversight committees, after consultation with the Director of the CIA. (Letter from Thomas Holmes to the Select Committee, 1/19/76, p. 3.) Another former Inspector noted that the tendency was to follow a fixed schedule "slavishly" instead of keeping "generally informed" of developments in all components on a continuing basis." (Lawrence letter, 2/18/76, p. 1.)

⁵⁵ Letter from Lawrence Houston to the Senate Select Committee, 1/76, p. 1.

if the inspectors do their work properly, and if the component is cooperative, there should be little to put into the report of survey.⁵⁶

On the whole it appears that past component surveys increased the effectiveness of the Agency. A former Inspector described their results as follows:

Close scrutiny of any element of the Agency by the Office of the Inspector General, preceded by anticipatory review and self-examination within that element, stimulated useful reconsideration of goals, objectives, and procedures. By providing occasions for all employees in the component to talk freely and in confidence with one or more inspectors, and thus to voice securely any comments, criticism or complaints they might have, these surveys constituted a valuable morale factor, while accomplishing the primary task of bringing to the Director's attention the overall performance and possible deficiencies of a given component as well as chronic or developing problem areas within or related to it.⁵⁷

However, the Senate Select Committee's investigation of the Office of the Inspector General found several problems. They include:

a. Access to Information.—On certain occasions in the past, the Office of the Inspector General was denied access to material about particularly sensitive Agency activities. In the most striking example, the Inspector General was precluded from even reviewing Operation CHAOS files.⁵⁸

At present, CIA regulations provide that the Inspector General "shall have access to any information in CIA necessary to perform his assigned duties."⁵⁹ The CIA has informed the Senate Select Committee that only the Director can refuse the Inspector General access and such refusal must be in writing.⁶⁰

Thus, even under present regulations, particular Agency activities could be exempted from IG review by the Director.

If denied access to information, the Inspector General could, of

⁵⁶ Letter from Kenneth Greer to the Senate Select Committee, 1/20/76, p. 1.

One former Deputy DCI, however, has suggested that the office to be inspected should not be informed. (Letter from Vice Admiral Rufus C. Taylor to the Senate Select Committee, 1/13/76, p. 1.) This would however, eliminate any "anticipatory" changes due simply to the scheduling. A former Inspector has written suggesting consultation with the Deputy Director involved as he would know of factors "relevant to the timing of the inspection, not known to the Inspector General." (Lawrence letter, 2/18/76, p. 1.)

⁵⁷ Freer letter, 1/22/76, p. 1.

⁵⁸ The substance of the program, gleaned from overseas inspections by the Office, was the subject of a paper by the Inspector General: consequently Operation CHAOS was reviewed by the Agency's Executive Director—Comptroller.

A second exclusion noted by Scott Breckinridge involved access to materials on an Agency proprietary. (Letter from Scott Breckinridge to the Senate Select Committee, 1/12/76, p. 4.)

⁵⁹ HR 1-3. Executive Order 11905 requires the Director to ensure that the Inspector General will have access to material needed to perform his duties under the Order.

⁶⁰ CIA memorandum, "Comments on the Office of Inspector General in the CIA", 1/25/76, p. 2. One former Inspector suggested that if the Director did choose to deny access to the Inspector General, it should be communicated by the DCI to the Inspector General in person. (Freer Letter, 1/22/76, p. 4.)

course, resign. The Director should be required, however, to notify the appropriate congressional and Executive branch committees of the denial immediately and to provide a written explanation for it.⁶¹

b. Problems of Emphasis.—In the past, as the Rockefeller Commission noted, “the focus of the Inspector General component reviews was on operational effectiveness. Examination of the legality or propriety of CIA activities was not normally a primary concern.”⁶²

According to the current Inspector General, more attention is now being paid to possible improper or illegal activities as well as to the legal authority for any given activity. This change in emphasis should be reinforced by the provisions of Executive Order 11905 which place personal responsibility on the Inspector General for reporting to the Intelligence Oversight Board any activities that raise questions of legality or propriety.⁶³

c. Discovering Potential Problem Areas.—As the Rockefeller Commission noted, “even with complete access, not all aspects of an office’s activities could be examined.”⁶⁴ While this is clearly true given the scale and complexity of CIA’s activities, the Committee found that certain questionable practices which should have been uncovered did not come to the Inspector General’s attention during past inspections. For instance, the CIA’s project of surreptitious administration of LSD to non-voluntary unwitting human subjects continued from the early 1950s until 1963, but escaped the notice of the Inspector General in 1957, when a broad survey of the Division responsible was conducted. The project was discovered by the Inspector General in 1963; the discovery led to its termination.

d. Referring Improper or Illegal Activities to the OGC and the DCI.—Even when improper or illegal activities were discovered in the course of a component inspection, these activities were not always referred to the Office of General Counsel.

During a survey which included a review of the CIA’s research program to develop agents which could be used to control human behavior, the Inspector General discovered activities which he labeled “unethical and illicit.”⁶⁵ Although this language was in his report, he failed to notify the Office of General Counsel and failed to call for the elimination of the questionable practices. In surveys of the CIA’s New York mail opening program, the Inspector General reported on issues of management and security, but failed to raise any question about the program’s legality with either the General Counsel or the Director, even though the Inspector General “knew” the program was “illegal.”⁶⁶

⁶¹ Under Executive Order 11905 the Inspector General is required to report to the Intelligence Oversight Board on any occasion when the Director instructs him not to report to the IOB on an activity.

⁶² Report of the Commission on CIA Activities within the United States, 6/6/75, p. 89.

⁶³ Executive Order No. 11905. Under the Order a similar responsibility is laid upon the General Counsel.

⁶⁴ Report of the Commission on CIA Activities within the United States, 6/6/75, p. 89.

⁶⁵ CIA Inspector General’s Report on the Technical Services Division, 1957.

⁶⁶ The IG under whose auspices the survey was conducted believed it was “unnecessary” to raise the matter of illegality with the Director “since everybody knew that it was [illegal]. . . and it didn’t seem . . . that I would be telling Mr. Helms anything that he didn’t know.” (Gordon Stewart deposition, 9/30/75, p. 32.)

The present Inspector General told the Select Committee that "the Inspector General does have to be certain that he leans over backward to assure that all reports which might interest the General Counsel are brought to his attention . . . it is also important that . . . legal advice is sought before a report goes to the DCI or Deputy Director, so that any legal advice becomes part of the Report."⁶⁷ Under present CIA regulations, the Inspector General must refer to the General Counsel all matters involving legal questions that come to the attention of the Inspector General.⁶⁸

e. Follow-up and Implementation of Recommendations by the Office of Inspector General.—A former Inspector noted one phase of the inspection process which he believed needed improvement. This involved:

getting a decision when the component head noncon-
curred in a recommendation about which the Inspector
General felt strongly. If the recommendation was of
major importance, there was no problem, because the Di-
rector would decide. However, on recommendations of lesser
importance—those not worth bringing to the attention of
the Director—there was no really effective mechanism for
deciding which view was to prevail.⁶⁹

The present Deputy Director for Operations has suggested to the Committee that the DCI should be required to inform the Inspector General as to what action has been taken on his recommendations.⁷⁰

Problems apparently have existed not only in obtaining a decision but in obtaining one consistent with the Inspector General's recommendation. As a former Inspector General wrote:

. . . [i]t is necessary that the DCI fully back the Inspector
General in his recommendations unless there are overwhelm-
ing reasons to the contrary.⁷¹

⁶⁷ Letter from Donald Chamberlain to the Senate Select Committee, 1/13/76, p. 4. The CIA has written the Committee that "when there are legal issues involved in an IG investigation, the formal opinion of the General Counsel is sought and made part of the Inspector General's report to the Director. Comments on the Office of the Inspector General of the CIA, 1/25/76, p. 4.

It would be possible to require that all IG reports go to the Office of General Counsel. As many of these reports deal with poor management, reorganization, or grievances, this might prove more of a burden than a boon. (See *e.g.*, letters to the Senate Select Committee of Lyman Kirkpatrick, 1/13/76, p. 5 and Thomas Holmes, 1/19/76, p. 7.)

⁶⁸ CIA Headquarters Regulation 1-3. Under Executive Order 11905, the Inspector General has a personal responsibility to report to the Intelligence Oversight Board any activities that come to his attention that raise questions of legality or propriety.

⁶⁹ Greer letter, 1/20/76, p. 2. The IG's Office has now established new procedures "designed to reinforce the final effect of the inspection report." (CIA Memorandum, "CIA Inspector General Follow-Up Procedures," 1/29/76.)

⁷⁰ Letter from William Nelson to the Senate Select Committee, 1/13/76, p. 2.

⁷¹ Kirkpatrick letter, 1/13/76, p. 2.

Yet another former Inspector General wrote:

I did not feel that the recommendations made in I.G.'s surveys commanded the attention and support at the Director's level that they merited.⁷²

A former Inspector wrote:

Too often have IG recommendations been either brushed aside or emasculated as the result of negotiations or pleadings. More unfortunate has been the growing tendency of IG reports to adjust their recommendations to the IG's estimate of what might be acceptable under the circumstances.⁷³

The IG has now been promoted to the same rank as the Deputy Directors, which may help the Inspector General obtain support for his recommendations. The present Deputy Director for Operations has suggested that if the DCI does not accept a recommendation by the IG, the IG be empowered to inform the Attorney General of the United States on matters concerning U.S. law, and the Assistant to the President for National Security Affairs on all other matters.⁷⁴

Even where the recommendations of the Inspector General are accepted, compliance has on occasion been an issue. The present Deputy Inspector General told the Committee about "two inspection reports in which the recommendations appear to have been accepted, but the compliance was below expectation. In the first case the IG subsequently headed a general investigation in the area, which had substantial results. In the second, the results of the first inspection

⁷² Letter from Gordon Stewart to the Senate Select Committee, 1/20/76, p. 1. A former Inspector described the principal defect of the Inspector General's Office as "the absence of IG clout." (Holmes letter, 1/19/76, p. 13.) Another former Inspector wrote that if a survey were "controversial (i.e. if it encountered opposition from the Deputy Director[s] affected) as a rule nothing came of the survey report's recommendations." (Lawrence letter, 2/18/76, p. 2.) The present Deputy Inspector General noted that after recommendations are drawn up, the Directorates may come back with "new information or additional considerations that will modify our understanding of the problem . . . They may persuade us in their reply that they are right . . ." (Breckinridge, 3/1/76, pp. 30-31.) He also noted that the "IG raises the issue . . . and hopes he resolves it accurately and clearly, but there may be other considerations that we are not aware of that make it impractical at least at that time." (*Ibid.*, p. 38.)

⁷³ Letter from Peter Heimann to the Senate Select Committee, 3/18/76, p. 4. The Rockefeller Commission noted:

"The Inspector General frequently was aware of many of the CIA's activities discussed in this report, and brought them to the attention of the Director or other top management. The only program which was terminated as a result was one in 1963—involving experiments with behavior-modifying drugs on unknown persons." (Rockefeller Commission Report, p. 89.)

It should be recalled that the Rockefeller Commission dealt only with abuses: many IG recommendations have been accepted by the Director. Moreover, the termination of programs is not the only measure which can be taken. Programs can be changed, and controls tightened.

⁷⁴ Nelson letter, 1/13/76, p. 2. The Rockefeller Commission recommended that the IG have the authority "when he deems it appropriate, after notifying the Director of Central Intelligence, to consult with the executive oversight body on any CIA activity." (Rockefeller Commission Report, p. 94.) Under Executive Order 11905, the Inspector General has a personal responsibility to report to the Intelligence Oversight Board "any activities that come to [his] attention that raise [s] questions of legality or propriety."

were minimal and the staff which had been reviewed eventually was totally reorganized.⁷⁵

f. The Scope of the Component Inspection.—In the past component inspections have, in general, been directed at organizational units within the CIA, with much less time and attention being focused on programs or issues that cut across organizational boundaries. For example, the CIA's mail opening program was analyzed in part during the Inspector General's survey of the Office of Security, and in part during the Inspector General's survey of the Counterintelligence Staff, but it was never reviewed as a *program*. Consequently, the issues which the program raised were never fully explored and presented to the Agency's management.⁷⁶

There are other programs cutting across component lines as well as issues which affect the Agency as a whole. These deserve attention from the IG. Although surveys of these have been done in the past, the surveys have not been done on a "systematic basis as were component inspections."⁷⁷

g. Detailed Reporting Versus Issue Highlighting.—Past component inspections have been detailed and quite thorough. However, the very breadth of the surveys might have made them less useful than more selective reporting. The present Deputy Director for Intelligence, Edward Proctor, noted that :

In the past IG component surveys have been extremely detailed and involved every aspect of the component being surveyed and interviews with almost every person assigned to the component. As a result the reports resulting from these surveys contained a lot of detailed information which was of only marginal utility to the managers of the component or the Director. If IG component surveys of the future are to be focused on the important issues and activities of the more sensitive components, I would endorse them fully because they have surfaced some problems for management attention . . .⁷⁸

h. The Composition of the IG Survey Team.—The bulk of the Inspector General's staff has always been rotated to that Office from the various CIA Directorates for two or three year tours. In order to have the most qualified personnel, it was, and is, necessary to ensure that the stint with the Inspector General did not damage the individ-

⁷⁵ Breckinridge letters, 3/1/76, pp. 23-25. In order to measure compliance the IG now requires the component to report on its progress in implementing agreed-upon recommendations.

⁷⁶ Domestic Report on Mail Opening.

⁷⁷ Lawrence Letter, 2/18/76, p. 2.

⁷⁸ Letter from Edward Proctor to the Senate Select Committee, 1/15/76, p. 1. One former Inspector noted that "Some surveys, especially surveys of DDO components, have tended to deteriorate into recitations of unit-by-unit organizational and administrative detail instead of providing programmatic overviews and evaluations and giving incisive descriptions of problem areas with specific recommendations." (Heimann letter, 1/18/76, p. 6.)

ual's chance for promotion.⁷⁹ It is also important that the survey team be unprejudiced. As a response to these needs, according to one former Inspector, there was:

an unwritten rule that if you came from a particular Directorate, you would not be asked to work on a team that was doing a survey of any component in that Directorate . . . [a]nd that was a hell of a good rule . . . so that if you were a youngster—or not a youngster but somewhere in the middle of your career, with a clear intention that you were going back to your parent Directorate after your two-year tour of duty or your three-year tour of duty, what the hell do you care if you come from the DDI [Directorate for Intelligence] and you call them as you see them in CI [Counterintelligence] Staff.⁸⁰

This rule was apparently not always followed. The same Inspector said that he believed that an agreement had been worked out between the Inspector General and the Chief of the Counterintelligence Staff, under which every member of the team inspecting the CI Staff had a background in the then Directorate for Plans before coming to the Inspector General's office.⁸¹ One member of that team had actually served as Deputy Chief of the Counterintelligence Staff.

Another way to preserve the impartiality of the Inspector General's staff would be to, as one former Inspector suggested, make appointments to the Inspector General's staff "career culminations" with no officer assigned to the Inspector General's staff being permitted to return to another Agency post.⁸² While the need for "career culminating" appointments and more permanent positions in the Inspector General's office were repeatedly suggested,⁸³ eliminating the rotation system would bar talented younger officers from serving in the Office.⁸⁴

Another former Inspector has suggested that in some cases the composition of the teams did not reflect the expertise needed to analyze

⁷⁹ One former Inspector has written that the IG had "insufficient authority in staff selection and promotion" and suggested that he should "have the authority to coopt, subject to approval by the Deputy Director concerned, any officer" for assignment to the IG Staff. (Lawrence letter, 2/18/76, pp. 6-7.) The present Deputy Inspector General argued against this "shopping around the building" stating that "rather than using my subjective and personal preferences, which are subject to some errors, I would prefer to have people nominated that I can reject forcing the Deputy Director to put up new people." (Breckinridge letter, 3/1/76, p. 16.)

⁸⁰ Staff summary of Joseph Seltzer interview, 1/75, pp. 14-15, *See also* letter from Thomas Holmes at 10.

⁸¹ Seltzer (staff summary), 1/75, p. 14. Present Agency policy would not allow an individual to take part in an inspection of his parent office because his "objectivity" might be affected by his being "imbued with its practices," but would allow him to be used in inspections of other offices within his parent Directorate. (Breckinridge, 3/1/76, pp. 18-19.)

⁸² Heimann letter, 1/18/76, p. 2. Since Lyman Kirkpatrick, all the Inspectors General have taken that office as their last post with the CIA.

⁸³ See e.g., Letters from Gordon Stewart 1/20/76, p. 2, and John O. Lawrence 2/18/76, p. 6.

⁸⁴ A permanent staff might also mean, as the Deputy Inspector General noted, that the IG's staff would have "less and less firsthand experience with what is current in the Agency." (Breckinridge, 3/1/76, p. 12.)

potential problem areas. As an example, he noted that inspection teams in the Deputy Directorate for Science and Technology were composed of engineers and general scientists, and thus might not be qualified to deal with certain questions, such as those involving conflict of interest, which might arise.⁸⁵

3. Investigations into Activities That Raise Questions of Legality or Propriety

The Office of Inspector General has traditionally examined allegations of questionable activities. Under the terms of Executive Order 11905, the Inspector General shall:

(1) Transmit to the Oversight Board reports of any activities that come to their attention that raise questions of legality or propriety.

(2) Report periodically, at least quarterly, to the Oversight Board on its findings concerning questionable activities, if any.

(3) Provide to the Oversight Board all information requested about activities within [the CIA].

(4) Report to the Oversight Board any occasion on which [he was] directed not to report any activity to the Oversight Board by [the Director].

(5) Formulate practices and procedures designed to discover and report to the Oversight Board activities that raise questions of legality or propriety.

At present CIA regulations provide that:

any employee who has knowledge of past, current or proposed CIA activities that might be construed to be illegal, improper, or outside CIA's legislative charter, or who believes that he or she has received instructions that in any way appear illegal, improper, or outside CIA's legislative charter, is instructed to inform the Director or Inspector General immediately.⁸⁶

Thus, all CIA employees are now on notice that they are required to provide either to the Director or to the Inspector General any information which they possess about questionable activities.⁸⁷

⁸⁵ Holmes letter, 1/19/76, p. 2. However the inspection teams are presently constituted, the Inspector General can also request assistance from the Audit Staff, which reports through him to the Director. As the auditors check components, including overseas installations, much more frequently than does the inspection staff, they can be asked to assist the inspection staff in the course of their audits. (Letter from William Broe to the Senate Select Committee, 1/17/76, p. 4.)

⁸⁶ CIA Headquarter Regulation, 1/28/75, 1-7a (b). In the past, employees were only asked to provide information about activities in which they were directly involved which might be construed to be illegal, improper, or outside the CIA's legislative charter.

⁸⁷ Under Executive Order 11905 activities which raise questions of legality or propriety must be reported to the Intelligence Oversight Board. In March 1976, George Bush, Director of the CIA, called on CIA employees to report questionable activities directly to him or to the IG.

One former Inspector suggested that the reporting of such acts would be facilitated by having a particular Inspector designated as a contact point for each major element in the Agency. (Freer letter, 1/22/76, p. 12.) The Deputy Inspector General told the Committee that at one time Inspectors were assigned to "different components, and this didn't work. They got no business. . . ." (Breckinridge, 3/1/76, p. 56.)

As previously noted, the Inspector General's discovery of questionable activities has not always led to their referral to the Office of General Counsel. There can be little disagreement with the recommendation of Lawrence Houston that any question of violation of law or legal authority should be referred immediately by the Inspector General to the Office of General Counsel.⁸⁸ CIA regulations now provide that all matters involving legal questions that come to the attention of the Inspector General shall be referred to the General Counsel.⁸⁹

There is one aspect of the Inspector General's role in investigating questionable activities which may cause controversy. The present regulations provide that the Inspector General is authorized to:

Investigate charges and reports of fraud, misuse of funds, conflicts of interest, and other matters involving misfeasance, malfeasance, nonfeasance, or violation of trust. In all cases involving possible violations of the U.S. criminal code, the investigation will be limited to developing sufficient facts to determine if a crime has been committed, and whether prosecution may compromise international relations, national security, or foreign intelligence sources and methods. The results of such investigations will be reported to the General Counsel for further reporting to the Department of Justice. Reporting of the fact of a crime will not be delayed for an evaluation of whether prosecution will raise questions of national security, as outlined above. If both reports can be made at the same time without delay, they may be so reported.⁹⁰

There is an obvious need to insure that a prosecution does not jeopardize important United States interests. The IG appears to be well-suited to evaluate its effect. It should be remembered that confidence in the judicial system is important and it can be undermined if people believe that individuals are exempted from prosecution solely because of their connection with the intelligence community.

Conducting preliminary investigations to determine if a crime has been committed may however, raise difficult issues. Great care must be taken so that later and fuller investigations will not be hampered. The level of care must be such that there can be no suspicion that Agency officials have failed to impartially investigate allegations of wrong-

⁸⁸ Houston letter, 1/76, p. 2.

⁸⁹ CIA Headquarters Regulation, 1/28/75, 7-1a (7), p. 1. The Agency regulations dealing with the reporting of questionable activities only require the IG to refer such reports to the General Counsel when allegations of violations of Title 18 of the U.S. Code are received. While the regulations may reflect a desire not to have to refer disciplinary matters to the General Counsel (e.g., see Breckinridge, 3/1/76, p. 43), the importance of preventing future violations of the law by the CIA compels General Counsel participation in the process of reviewing reports of questionable activities.

⁹⁰ CIA Headquarters Regulation, 1-3. In certain instances in the past, the Office of Security has investigated individual allegations. (Breckinridge letter, 1/12/76, p. 3.)

Prior to the decision in *Miranda v. Arizona*, 384 U.S. 436 (1966) the Inspector General conducted complete investigations of alleged violations of law by Agency employees. After the decision in order to protect individual rights and to avoid compromising future prosecution the Inspector General limited his investigations to the determination of whether a crime had been committed.

doing by their colleagues.⁹¹ To prevent suspicion it might be desirable for the Inspector General to maintain a list of allegations and the results of the IG's preliminary investigations for periodic inspection by the Department of Justice and the appropriate congressional committees.

4. *Investigation of Grievances*

CIA regulations provide for the airing of grievances through the normal chain of command to the Director of Personnel and finally to the Director of Central Intelligence Agency through the Inspector General. In addition, the regulations direct the Inspector General to provide a forum for grievances which have not received satisfactory consideration through the normal channels and empower him to accept direct appeals when appropriate.⁹² In certain circumstances this grievance machinery may facilitate the detection of illegal or improper activities by Agency officials.⁹⁴

It is Agency policy that "relief first be sought in the chain of command,"⁹⁵ but direct recourse to the Inspector General is available "where an employee feels he cannot go through normal channels without jeopardy to his career, or other rare exceptional circumstances."⁹⁶

This direct channel for the airing of grievances should be maintained with the IG being provided the "authority to counter the possibility of reprisal against the employee."⁹⁷ The mechanism might be more heavily publicized.⁹⁸ Because of the importance of having a mechanism outside the CIA, employees should be aware that they can go to the appropriate congressional oversight committees.

⁹¹ It would be possible for any "information, allegations, or complaints of violations" to be referred to the Department of Justice immediately, without a preliminary investigation by the Office of the Inspector General. This might, however, result in a substantial number of unfounded complaints being referred to the Department of Justice. As the present Deputy Director for Operations wrote the Committee:

"[t]here are in any organization individuals who are quick to allege misconduct or improper activity on the part of their superiors or peers. The question as to whether these allegations have any substance can best be initially determined by the Inspector General. Immediate referral to another body will result in harassment-type investigations, will in certain cases broaden the security damage and even eventually result in poor follow-up on real charges when enough other cases have proven to be unsubstantiated." (Nelson letter, 1/13/76, p. 1.)

⁹² CIA Headquarters Regulation, 20-7.

⁹³ CIA Headquarters Regulation, 1-3.

⁹⁴ Holmes letter, 1/19/76, p. 11.

⁹⁵ Memorandum from Scott Breckinridge to Chief, Review Staff, 3/17/76, p. 2.

⁹⁶ Holmes letter, 1/19/76, p. 11.

⁹⁷ The present Deputy Director for Intelligence has recommended that the normal chain of command grievance procedures be publicized, and the Inspector General instructed to "resist the temptation to get involved prematurely in grievances." (Proctor letter, 1/15/76, p. 7.)

One former Inspector has noted that:

"[w]henver an employee challenges the Agency itself, as contrasted to a component or an Agency official, he is also challenging the Inspector General, since the latter is necessarily a representative of the Agency. Thus, the Inspector General can not be an impartial arbiter between the Agency and the employee. This was a source of frustration to employees who brought such cases to the Inspector General. Such employees should have an external administrative appeal available either in addition to or as a bypass of the Office of Inspector General." (Lawrence letter, 2/18/76, p. 7.)

C. INTERNAL AND EXTERNAL REVIEW OF THE OFFICE OF THE INSPECTOR GENERAL

The Inspector General reports to the Director of the Central Intelligence Agency, and the Director has the primary responsibility for evaluating this office. The Office has not, however, been regularly or formally reviewed. Some mechanism for internal inspection of the Office of the Inspector General should be devised.

The Inspector General was aware of questionable activities, some of which continued for many years with the approval of the Agency's top management. This underscores the importance of outside reviews of the Agency. To be effective, the reviewing bodies must have access to the Inspector General's work.

A number of individuals familiar with the work of the Office of the Inspector General have argued against the Inspector General's having a direct reporting responsibility outside of the CIA. Lawrence Houston noted that if the Inspector General reported directly to anyone other than the Director, two crucial elements would be lost: "first the absolute candor that should exist in his relations with the Director and second the ability to protect the integrity of his files and the confidentiality of his findings and recommendations."⁹⁹ The Committee has also been told that "any arrangement which would separate the Inspector General from his present relationship to Agency management would tend to result in a lack of candor and a resistance to revealing sensitive details in investigations and this would inevitably result in diluting the authority and effectiveness of the Inspector General."¹⁰⁰

A start in outside reporting has been made. Under Executive Order 11905 the Inspector General must report to the Intelligence Oversight Board any activities that raise questions of legality or propriety.¹⁰¹

But Executive Branch oversight of the CIA or the CIA's Inspector General is not sufficient. The Inspector General should be available to the appropriate congressional oversight committees.¹⁰² And some form of reporting on the work of the Office of the Inspector General should be made, with appropriate safeguards, to the appropriate congressional committees.

The present Inspector General believes that :

[t]he I.G. could and perhaps should provide our oversight committees with the following: (1) a summary of our findings on each component survey, one which would reveal prob-

⁹⁹ Houston letter, 1/76, p. 1.

¹⁰⁰ Comments on the Office of the Inspector General, 1/25/76, pp. 2-3. However, Scott Breckinridge wrote that "If so directed by the DCI, elements being inspected will continue to be as forthcoming as in the past. There is no reason to expect that this will not be the case." (Breckinridge letter, 1/12/76, p. 5.) Mr. Breckinridge noted, however, that if reports were to be made available to outside bodies, less detail might be provided "in support of conclusions and recommendations."

¹⁰¹ *Ibid.* Prior to the issuance of the Executive Order, CIA regulations, amended to conform to the recommendations of the Rockefeller Commission, required reports to be sent to the NSC and PFIAB.

¹⁰² Letter from John McCone to the Senate Select Committee, 1/30/76, p. 2. Former DCI McCone wrote that the IG should not report to anyone outside the Agency such as the PFIAB, the NSC or congressional oversight committees. The IG, should be however, "available to all of these groups." (*Ibid.*, p. 2.)

lems and recommended solutions but not give operational details; (2) a semi-annual summary of all other cases, emphasizing trends, general problems, etc., but not giving names of individuals or sensitive details which might identify individuals.¹⁰³

Such reports, coupled with access, where necessary, to the results of particular inspections or reviews by the Inspector General, would greatly aid congressional oversight of the CIA.¹⁰⁴ Congressional evaluation of the work of the Office of the Inspector General might be facilitated by requiring the Inspector General to provide the oversight committee with a plan of action setting out "priority surveys to be done and why, the schedule to be followed, the dates reports would be completed, [and] the actions taken on reports (or the non-actions) and why."¹⁰⁵

A second means for Congress to oversee the work of the Inspector General would be to make the Inspector General subject to presidential nomination and senatorial confirmation. Presidential appointment, however, might inadvertently give position of Inspector General a political coloration which would diminish the effectiveness of the Office.

¹⁰³ Chamberlain letter, 1/13/76, p. 4. In order to reinforce the chain of command such reporting could be done via DCI's reports to the oversight committees.

¹⁰⁴ One former Inspector argued against congressional access without the DCI's concurrence as leading to "congressional involvement in Agency minutiae," the erosion of security, and the reduction of the candor of Agency employees vis a vis the IG. (Heimann letter, 1/18/76, p. 2.) Another former Inspector wrote that if all IG's reports were to be sent to Congress they would "become less candid and more conservative." (Lawrence letter, 2/18/76, p. 5.) Another former Inspector suggested that "an active and strong congressional oversight committee would be my first choice" as an "outside authority" which would correct problems that the IG discovers. (Holmes letter, 1/19/76, p. 6.)

¹⁰⁵ Holmes letter, 1/19/76, p. 12. The submission of such a plan would allow the IG to be evaluated on the basis of his own plan, which would be approved by the IG and the committees. The committee "would be assured that the IG was planning to do what the committee expected them to do." *Ibid.*

The IG is required, under Executive Order 11905 to report to the Intelligence Oversight Board the "practices and procedures" formulated to discover questionable activities by the CIA.