

# One Lantern in the Darkest Night: The CIA's Inspector General

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## INTRODUCTION

Tensions between secrecy and democracy can be reduced, but never completely resolved. That is reality for the Central Intelligence Agency and for other intelligence services that seek to function within the rule of law. Gathering intelligence and conducting covert action, by their nature, depend on secrecy. Foreign agents and foreign intelligence services rarely cooperate with our country unless we promise to protect them from public scrutiny. Our word matters. No spy wants his government to discover that he is a traitor, and few governments want their people to know how much they help the American empire. Secrecy, however, erodes accountability. The CIA, operating in the shadows, is quite different from the Department of Labor.

For the Agency, the methods for reducing tension between secrecy and democracy can generally be divided between the external and the internal. Those who track the media, Congress, and the courts analyze the external checks. In this article, we analyze the internal checks. This article builds on a prior one discussing the CIA's Office of General Counsel,<sup>1</sup> and it will be followed by a third article examining the boards and panels within the CIA's National Clandestine Service. Here, we focus on the CIA's Office of Inspector General (OIG).<sup>2</sup>

Does OIG really keep CIA officers honest and competent? Can the new Director of the CIA (DCIA) depend on OIG in any way to make sure CIA officers do not torture suspected terrorists? These questions, renewed from the Church Committee and the Iran-Contra investigations into prior abuses, serve as our core.

Many scenarios of internal accountability at the CIA are mundane. Despite advances in financial transfer technology, espionage continues to

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1. See A. John Radsan, *Sed Quis Custodiet Ipsos Custodes: The CIA's Office of General Counsel*, 2 J. NAT'L SECURITY L. & POL'Y 201 (2008); see also Daniel B. Silver, *The Uses and Misuses of Intelligence Oversight*, 11 HOUS. J. INT'L L. 7, 13-14 (1988).

2. See Neal Kumar Katyal, *Internal Separation of Powers: Checking Today's Most Dangerous Branch from Within*, 115 YALE L. J. 2314 (2006) (offering another perspective on internal checks on executive power).

be a cash business. As much as OIG insists on receipts and proper documentation during operations, people from headquarters are rarely in the field when a case officer pays a spy for services. Little more than a personal code prevents the case officer from siphoning funds for himself.

Other problems are more dramatic. American policy makers may have decided, on their own, that a foreign country's development of nuclear weapons poses a grave threat. CIA analysts, faced with the President's fixed view of the world, may discount and ignore data that contradict the policy makers. Other analysts – who disagree with the President's view – may discount or ignore data that contradict their own view of the world. As an internal guard, OIG may not be able to do anything until it is too late, until the money is gone, or until a war has been started on false assumptions. So whether it relates to interrogators, case officers, or analysts, from the mundane to the dramatic, OIG has a difficult task in attempting to keep people at the CIA on the right side of the line.

After a joint inquiry into 9/11, Congress asked OIG to determine whether the CIA officers in charge before and on 9/11 should be “held accountable for failure to perform their responsibilities in a satisfactory manner.”<sup>3</sup> OIG, not swayed by George Tenet's justifications, said that the long-serving Director of Central Intelligence had failed to put in place an effective counterterrorism plan before 9/11. Tenet, it seemed, deserved less than the medal that President Bush put around his neck upon retirement.

For additional oversight, OIG recommended an Accountability Board to dig deeper into examining the competence of certain officers and units within the CIA. But it is not clear whether such a Board will be created, whether any current or retired CIA officers will be taken to task, or whether OIG serves as a significant check on spymasters and analysts who conduct the bulk of their work on the dark side of American foreign policy.

We strive here to offer more data than theories. For those who would prefer a more theoretical approach, several themes do emerge. First, data show a complicated interplay among external and internal checks on the CIA, oscillating and vibrating, one affecting the other in a wide and intricate web. Second, OIG reinforces external checks, particularly those from Congress. OIG, for example, may cause the intelligence committees to hold hearings. Third, by keeping in touch with lawyers and intelligence officers in other parts of the CIA, OIG reinforces other internal checks. These checks are quite important when the same political party controls the executive and legislative branches. The internal guardians in the bureaucracy, whatever the weather, tend to sway in the political winds less than elected officials do. Fourth, contrary to other themes, senior officials

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3. OFFICE OF INSPECTOR GENERAL, OIG REPORT ON CIA ACCOUNTABILITY WITH RESPECT TO THE 9/11 ATTACKS v (2005) [hereinafter OIG 9/11 Report], *available at* [https://www.cia.gov/library/reports/Executive%20Summary\\_OIG%20Report.pdf](https://www.cia.gov/library/reports/Executive%20Summary_OIG%20Report.pdf). Although OIG completed its report in the summer of 2005, the report was not released until the summer of 2007 – and then, only its executive summary.

at the CIA sometimes use an OIG investigation to fend off other checks, offering one safeguard to substitute for others.

To explore these themes, we organize our inquiry into five sections. In the first section, we review the role of inspectors general (IGs) across the government. In the second, we set forth the history of the statutory IG. Third, we analyze rules affecting the CIA's OIG – given that the statutory IG,<sup>4</sup> appointed by the President with the advice and consent of the Senate, has greater potential for oversight than the non-statutory IG as a result of a dual reporting line to the Director of the CIA and the oversight committees in Congress. In the fourth section, we present biographies of various IGs at the CIA, examining the educational backgrounds and professional experiences of the people who served in OIG, spanning the office's statutory and pre-statutory periods. In the fifth section, we assess various investigations OIG has conducted both before the statute and after. Finally, by way of synthesis and conclusion, we suggest how OIG can provide better oversight.

We believe OIG can provide a better internal check than the lawyers and the review boards at the CIA. OIG is the mother of all guardians. If OIG fails to provide a true check, the taxpayers and our democracy pay the price.

## I. THE ROLE OF THE INSPECTOR GENERAL

### A. *Go Forth and Multiply*

The role of an IG as an internal investigator and an overseer within the executive branch dates as far back as General George Washington's Continental Army.<sup>5</sup> But the IG's current incarnation traces to the Billy Sol Estes scandal at the U.S. Department of Agriculture (USDA).<sup>6</sup> A 1962 USDA investigation found that Estes had created a "financial empire" by providing false statements and misinformation to various USDA

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4. The general phrase "statutory IG," when used in this article, refers to the CIA's statutory IG. Additionally, when the terms "IG" or "OIG" are used to refer to the CIA's IG or the CIA's Office of the Inspector General, they refer to the CIA's statutory IG (or OIG), unless otherwise noted.

5. Baron Frederick von Steuben served as General George Washington's Inspector General for the Continental Army. William S. Fields & Thomas E. Robinson, *Legal and Functional Influences on the Objectivity of the Inspector General Audit Process*, 2 GEO. MASON INDEP. L. REV. 97, 99 (1993). The Continental Congress created the position in response to scandals in the army, finding that a chief inspector/investigator was essential to promote discipline and to address the numerous abuses that had occurred within the army. PAUL C. LIGHT, *MONITORING GOVERNMENT: INSPECTORS GENERAL AND THE SEARCH FOR ACCOUNTABILITY* 25 (1993).

6. Fields & Robinson, *supra* note 5, at 101. An investigator on the Estes scandal stated that if Estes had not given birth to the IG concept, he should at least be considered its "midwife." *Id.* at 101-102.

departments to defraud the USDA's cotton allotment system.<sup>7</sup> The Estes investigation revealed that the USDA's audit and investigative capabilities were inadequate, and that better-coordinated investigations would have uncovered the fraudulent activities much sooner.<sup>8</sup> As a result of the outcry, Secretary of Agriculture Orville Freeman created the first modern IG to unify USDA's efforts against internal waste and fraud.<sup>9</sup>

Following Secretary Freeman's creation of an IG at the USDA, changes in the political landscape brought the IG into wider use throughout the federal government. During the 1960s and 1970s, congressional committees and staffs grew significantly, and members of Congress spent more time on oversight of executive agencies.<sup>10</sup> This trend, as well as congressional struggles with the executive branch after Watergate, whetted Congress's appetite for information about executive agencies.<sup>11</sup> Congress focused on newly created programs in the 1960s, and in the 1970s and 1980s turned to making existing programs less wasteful.<sup>12</sup> The confluence of Congress's hunger for information and the public's interest in paring governmental waste led to the congressionally created IGs of the 1970s and 1980s.<sup>13</sup> These IGs became the only executive employees who reported to Congress without going through the Office of Management and Budget.<sup>14</sup>

### B. *Straddling the Barbed Wire Fence*

The Inspector General Act of 1978 created thirteen statutory IGs for executive departments, and after various other statutes of the 1980s, there were a total of twenty-seven statutory IGs and thirty-four non-statutory IGs that possessed a unique combination of duties and responsibilities.<sup>15</sup> The statutory scheme consolidated in the IGs the audit and investigative powers previously scattered across the federal government.<sup>16</sup> When these functions were separate, neither audits nor investigations functioned well.<sup>17</sup> To

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7. *Id.* at 101.

8. *Id.* The information necessary to a proper investigation was not even available, in part, because, as the size of the government rapidly expanded after the New Deal, the audit capacity of the Governmental Accounting Office and similar organizations had not kept pace. *Id.* at 100.

9. LIGHT, *supra* note 5, at 31.

10. *See id.* at 51-57.

11. *See id.* at 48-51.

12. *Id.* at 45.

13. *Id.* at 24-25.

14. *Id.*

15. *Id.* at 25-26.

16. *Id.* at 2. The IG focuses on investigating non-criminal conduct, as criminal investigations usually need to be forwarded to the Department of Justice. Dan W. Reicher, *Conflicts of Interest in Inspector General, Justice Department, and Special Prosecutor Investigations of Agency Heads*, 35 STAN. L. REV. 975, 984 (1983).

17. Fields & Robinson, *supra* note 5, at 104. This combination has been described as providing a "police patrol" (auditing) and a "fire alarm" (investigations). LIGHT, *supra* note

protect the IGs from politics, Congress installed several safeguards: (1) IG appointments must be made without regard to political affiliation; (2) the IG must be given free access to all necessary internal records and information; and (3) the IG must issue both regular and special reports.<sup>18</sup> Moreover, OIG – the organization that implements the IG's auditing and investigatory policies – can only monitor its agency's activities and has no power to act directly on its findings.<sup>19</sup> Since the IG is not permitted to have any operational controls, he or she is left to persuade management to adopt OIG findings or recommendations.<sup>20</sup>

Even so, the IG is often placed in difficult and conflicted positions. Not long after the passage of the IG Act of 1978, IGs serving under President Reagan learned that the best way to attract support and attention was to uncover significant waste or abuse. Those IGs who did not succeed in making headlines were often ignored or fired.<sup>21</sup> But when the IG discovers problems within an agency – especially when those problems lead back to the agency's senior management – the discoveries strain the relationship with the head of the agency, a relationship that is vital to the IG's effectiveness.<sup>22</sup> The challenge of providing a check that suits Congress, while not offending the agency, led former State Department IG Sherman Funk to describe the balancing act as “straddling the barbed wire fence.”<sup>23</sup>

### C. A Special Case for Internal Checks

The CIA describes its mission as being the “the nation's first line of defense” – a mission accomplished not only by collecting and analyzing intelligence, but by “conducting covert action at the direction of the President to preempt threats or achieve US policy objectives.”<sup>24</sup> Other agencies have different missions. For example, when the USDA operates ineffective programs or violates the law, the scandals are likely to be

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5, at 42.

18. LIGHT, *supra* note 5, at 23-24.

19. *Id.* at 16. The IG has been compared to a baseball umpire, “who call[s] balls and strikes, without concern for the final score of a game.” Craig A. Meredith, *The Inspector General System*, ARMY LAW, July-Aug. 2003, at 20, 21.

20. LIGHT, *supra* note 5, at 17, 75.

21. *Id.* at 104-105.

22. *See* Reicher, *supra* note 16, at 985-986. An IG who develops a close relationship with the agency head may not be in the position to conduct an impartial investigation of that person, further reducing effectiveness. *Id.*

23. LIGHT, *supra* note 5, at 69.

24. Cia.gov, CIA Vision, Mission & Values, <https://www.cia.gov/about-cia/cia-vision-mission-values/index.html>. The CIA derives its power, in part, from the National Security Act of 1947, which permits the Agency to perform “such other functions and duties related to intelligence affecting the national security as the President or the National Security Council may direct.” National Security Act of 1947, 50 U.S.C. §403-3(d)(5) (2006). *See generally* 50 U.S.C. §§403 to 403-5.

contained within the borders of our country and the losses confined to the national treasury.<sup>25</sup> By contrast, when the CIA faces problems, they are likely to implicate our national security, to affect our relations with other countries, and to put lives at risk.

Publicized incidents of failures and abuses at the CIA demonstrate their profound consequences. The Agency's inability to police itself cost the lives of several Americans and crippled American intelligence in the Soviet bloc after Aldrich Ames sold CIA secrets to the KGB.<sup>26</sup> CIA officers, in off-the-books operations, not only allowed a Guatemalan source to be linked to the killing of an American citizen,<sup>27</sup> but connected the CIA to Nicaraguan guerrillas who appeared deeply involved in drug trafficking.<sup>28</sup> The CIA failed to detect the terrorists who conducted the 9/11 attacks,<sup>29</sup> which in turn resulted in the disappearances of detainees and suffocations by sleeping bag,<sup>30</sup> excesses now associated with the CIA under George W. Bush.

CIA officers and agents are trained to run secret operations in hostile territory, to evade detection by highly skilled counterespionage forces, and to protect secrets at all costs. In many cases of abuse, the facts took years to surface. How then can our government ensure that the operatives who conduct missions in the shadows are doing so under the rule of law? And when operators conceal their errors and abuses, how can others without operational training discover them?

The question of how best to control shadow warriors has nagged Congress. Incidents such as the CHAOS program<sup>31</sup> demonstrated the limits of oversight that came from outside the CIA. Without access to the inner workings of the Agency, Congress is oblivious to problems within the Agency, and may be stonewalled when it does uncover errors or abuses. Despite these incidents, Congress did not place substantial checks on the CIA before the Iran-Contra scandal.

Congress's Iran-Contra investigation revealed the CIA's involvement, contrary to a congressional ban, in the financing, training, and supplying of opponents of the Sandinista regime in Nicaragua.<sup>32</sup> In response to the

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25. See, e.g., *supra* Part I.A.

26. See *infra* Part V.C.1.

27. See *infra* Part V.C.2.

28. See *infra* Part V.C.3.

29. See *infra* Part V.C.4.

30. See *infra* Part V.C.5.

31. See *generally* REPORT TO THE PRESIDENT BY THE COMMISSION ON CIA ACTIVITIES WITHIN THE UNITED STATES 130-150 (1975) [hereinafter Rockefeller Report], available at <http://history-matters.com/archive/church/rockcomm/contents.htm>. The Rockefeller Report documented how in the late 1960s, under a program called "Operation CHAOS," the CIA conducted surveillance on American citizens and organizations involved in Vietnam War protests. The government's rationale for involving the CIA in this operation was its fear that the protests were connected to foreign powers or governments. *Id.*

32. See LAWRENCE E. WALSH, FINAL REPORT OF THE INDEPENDENT COUNSEL FOR

scandal, Congress required greater oversight of the CIA and the intelligence community, particularly independent internal oversight. Following months of congressional investigations, thousands of pages of congressional reports, and nearly two years of conflict between the White House and Congress, the most notable change, for our purposes, was a statute that created an independent CIA inspector general.

The problem with a non-statutory IG is perhaps best illustrated through an anecdote. Floyd Paseman, who had a long career in the CIA's clandestine service, recounts an experience with the original version of the IG. Paseman suspected that his boss, the chief of station, had misappropriated government furniture and other property from prior tours. Seeking to do the right thing, Paseman met in private with the IG, who happened to be conducting an inspection in the field. Paseman, of course, expected his conversation with the IG to remain confidential. But Paseman soon learned, after immediate recriminations from his boss, that the IG and his boss were close friends from prior assignments. Paseman was thus a victim of the old boys' network at the CIA. "I never again trusted an IG investigation," Paseman states, "until the inspector general position became presidentially appointed and congressionally approved."<sup>33</sup>

## II. HISTORY OF THE STATUTORY IG

The path to a statutory IG at the CIA was far more circuitous than at any other agency.<sup>34</sup> President Ford's Commission on CIA Activities within the United States (the Rockefeller Commission) recommended strengthening the Agency's IG to guard against CIA abuses and excesses, including the CHAOS program.<sup>35</sup> While the recommendation came in the 1970s, when momentum was gathering for greater congressional oversight,<sup>36</sup> it was never instituted.<sup>37</sup> In fact, it was not until the executive-legislative sparring over Iran-Contra – a decade later – that the statutory IG gained sufficient support to become a reality at the CIA.<sup>38</sup>

The majority report for the Iran-Contra committee proposed a bill requiring that the CIA IG be a statutory position, subject to Senate

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IRAN/CONTRA MATTERS (1993) (providing an overview of the Iran-Contra scandal), available at <http://www.fas.org/irp/offdocs/walsh/>.

33. FLOYD PASEMAN, *A SPY'S JOURNEY: A CIA MEMOIR* 80 (2004).

34. While Congress faced dissension from the executive branch when creating the initial group of statutory IGs who reported to Congress independently, the passage of the Inspector General Act of 1978 was far less eventful. LIGHT, *supra* note 5, at 39.

35. Rockefeller Report, *supra* note 31, at 88-89. See *supra* note 31 for further discussion on the CHAOS program.

36. See *supra* Part I.A.

37. LIGHT, *supra* note 5, at 35.

38. See WALSH, *supra* note 32.

confirmation.<sup>39</sup> While the CIA's internal investigation, led by a non-statutory OIG, contributed to Congress's Tower Board investigation of Iran-Contra,<sup>40</sup> the committee believed OIG lacked the "manpower, resources or tenacity" to discover key facts uncovered by other investigations.<sup>41</sup> Almost immediately, the Reagan administration opposed the Iran-Contra recommendation through the congressional testimony of then-Director of Central Intelligence (DCI) William H. Webster.<sup>42</sup> DCI Webster asked Congress for an opportunity to show that proper oversight could be accomplished with a non-statutory IG.<sup>43</sup> Rather than force a statutory IG on the CIA, Senator Arlen Specter, one of the bill's leading proponents and a Republican at the time, compromised with DCI Webster: Senator Specter withheld his statutory IG bill in exchange for DCI Webster's promise to provide semiannual reports to Congress on the IG's activities.<sup>44</sup>

After the Specter-Webster compromise, tensions between the CIA and Congress subsided. But DCI Webster soon fell short in fulfilling his end of the bargain. Members of Congress said that his first report was inadequate.<sup>45</sup> They continued to complain that his second report did not disclose all IG reports during the previous six months.<sup>46</sup> Adding to the tensions, the House Intelligence Committee made multiple requests to the CIA for a list of all IG reports and for full IG reports of selected investigations.<sup>47</sup> DCI Webster initially refused the requests, saying that Congress could not have direct access to the IG reports. Later, he softened to allow partial access.<sup>48</sup> By that time, the CIA's overall lack of cooperation prompted Representative David McCurdy, chairman of the House intelligence subcommittee and a Democrat, to amend the 1990 intelligence authorization bill to require the DCI to provide the intelligence committees with a complete list of all IG reports, and to turn over any reports the

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39. *Iran-Contra Report; Arms, Hostages and Contras: How a Secret Foreign Policy Unraveled*, N.Y. TIMES, Nov. 19, 1987, at A12.

40. *Id.*

41. *Id.*

42. Richard L. Berke, *Curbs on C.I.A. Said Opposed*, N.Y. TIMES, Nov. 21, 1987, at A4. Although Webster's testimony was given at a closed hearing of the Senate Select Committee on Intelligence, the committee's staff director confirmed that Webster had testified for the Reagan administration against the proposed statutory IG.

43. See Stephen Engelberg, *Iran-Contra Aside, Webster Asks for Trust*, N.Y. TIMES, Jan. 3, 1988, at A4.

44. Walter Pincus, *CIA Chief Criticized over Reports*, WASH. POST, July 15, 1989, at A7.

45. Walter Pincus, *CIA Chief Fights Congress on Access to Documents*, WASH. POST, July 14, 1989, at A4.

46. Pincus, *supra* note 44.

47. Pincus, *supra* note 45.

48. *Id.* First, DCI Webster only allowed the subcommittee chairman and part of his staff to view the reports without taking notes; later the DCI allowed them to take notes.

committees requested.<sup>49</sup> Step by step, tensions increased between Congress and the executive branch, the former pointing to its power of the purse, the latter referring to its prerogative to keep the secrets necessary to run diplomatic, military, and intelligence activities.

In response to the McCurdy amendment, DCI Webster, in a July 10, 1989 letter to each committee member, argued that being required to submit reports to the committee could cause CIA employees to be less forthcoming in IG investigations and could undermine the integrity of the inspection process.<sup>50</sup> DCI Webster spoke of maintaining the “principles of comity and mutual respect” that had governed the relationship between the CIA and Congress since Iran-Contra.<sup>51</sup> But in describing the McCurdy amendment as “unnecessary, unwise, and not well thought out,” DCI Webster’s letter caused further tension.<sup>52</sup> Representative Elmer “Bud” Shuster, the ranking Republican on the subcommittee, characterized DCI Webster’s refusal to heed the subcommittee’s requests for IG reports as a “serious mistake,” and cautioned that DCI Webster was “inviting much more stringent scrutiny by his knee-jerk opposition.”<sup>53</sup>

Representative Shuster’s words proved prescient. Senator Specter reacted to DCI Webster’s letter by announcing on July 14, 1989 that he was resurrecting his proposal to establish the CIA’s IG as a statutory position.<sup>54</sup> An intelligence conference committee adopted both the Specter and McCurdy amendments to the 1990 intelligence authorization bill on November 16, 1989.<sup>55</sup> On November 30, 1989, over loud protests from DCI Webster, President Bush signed the measure into law.<sup>56</sup>

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49. *Id.* The amendment, co-sponsored by the ranking Republican member of the committee, Rep. Bud Shuster of Pennsylvania, was approved unanimously by the committee.

50. *Id.* Upon receiving Webster’s letter, Rep. McCurdy retorted that “it is up to Congress, which authorizes and appropriates the CIA’s funds, to determine what is or is not relevant to congressional oversight of the intelligence community – not the CIA.”

51. *Id.*

52. *Id.* Besides the terseness of DCI Webster’s opposition to the amendment, committee members were frustrated that Webster’s means of delivering his message – an unclassified letter, hand-delivered to each committee member – “all but guaranteed [the letter] would become public.” *Id.* According to *The Washington Post*, another committee member (identity withheld) opined that Webster’s stance was consistent with that of “CIA officials who ‘want to treat [congressmen] like mushrooms,’ which thrive when kept in the dark and buried in manure.” Pincus, *supra* note 44.

53. Pincus, *supra* note 44.

54. *Id.*

55. David B. Ottaway & Walter Pincus, *Panel Drops Reforms on Covert Operations*, WASH. POST, Nov. 17, 1989, at A58.

56. *Id.*

### III. THE IG'S STATUTORY AUTHORITY

#### A. Introduction

Before 1990, the DCI<sup>57</sup> held the power to appoint and remove the CIA's inspector general.<sup>58</sup> But after the failings of the CIA's OIG during Iran-Contra, Congress reacted to what it perceived as OIG's structural shortcomings.<sup>59</sup> Creation of a statutory IG under 50 U.S.C. Section 403q (hereinafter referred to as "the IG statute") was intended to achieve two main objectives: (1) to ensure independence and effectiveness of OIG in the exercise of its audit and investigatory powers; and (2) to keep the DCIA and the intelligence committees informed about CIA problems and the progress of remedial actions.<sup>60</sup> To do these things, Congress chose a peculiar blend of independence, cooperation, and, at times, confrontation.

Today, the IG has a staff of professionals, including a legal adviser who is separate from the Office of General Counsel (OGC). Not as large as OGC, OIG tends to draw on insiders from the intelligence community. Unlike OGC, OIG does not have a core of honors attorneys and lateral hires to bring fresh perspectives from law school, clerkships, and other jobs. As necessary, the OIG staff includes experts in accounting and computers. Some staff members are analysts and case officers who left their divisions to help keep former colleagues in line. More distinct as an internal guard, OIG seems even less popular at headquarters than OGC, its staff less likely than OGC lawyers to mingle with people in the cafeteria and in other parts of the Agency. In popular culture, the closest parallel to the CIA's OIG may be the internal affairs divisions of local police departments.

#### B. Appointment and Removal

Under the IG statute, the CIA's IG is nominated by the President and confirmed by the Senate.<sup>61</sup> To provide a competent IG, both the nomination and confirmation decisions are to be based on the appointee's "integrity,

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57. Before the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA) was enacted, the Director of the CIA (DCIA) coordinated all American intelligence services and held the title Director of Central Intelligence (DCI). *See* Intelligence Reform and Terrorism Prevention Act, Pub. L. No. 108-458, 118 Stat. 3638 (2004). As a result of the IRTPA, the DCIA is subordinated to the Director of National Intelligence (DNI), who now leads all American intelligence agencies. This article uses the abbreviation "DCI" to refer to the CIA Director before IRTPA's passage, and the "DCIA" to refer to the Director after IRTPA's passage. Further, the abbreviation DCIA will be used in general discussions of the statute.

58. David L. Boren, *The Winds of Change at the CIA*, 101 YALE L.J. 853, 856 (1992). Senator David Boren (D-OK), was a driving force for better oversight of the CIA after Iran-Contra, and one of the leading proponents of a statutory IG. *See infra* Part III.

59. *See supra* Part II.

60. 50 U.S.C. §403q(a) (2006).

61. §403q(b)(1).

compliance with the security standards of the Agency, and prior experience in the field of foreign intelligence.”<sup>62</sup> Moreover, the President and Senate may consider the appointee’s “demonstrated ability in accounting, financial analysis, law, management analysis, public administration, or auditing.”<sup>63</sup> Congress’s emphasis on OIG’s independence from the Agency and the DCIA makes these attributes critical.

A statutory IG, however, did not completely divest the DCIA from the oversight process. While only the President has the power to appoint and remove the IG,<sup>64</sup> the IG still reports directly to the DCIA and serves under the DCIA’s supervision.<sup>65</sup> The DCIA may also block IG activities or investigations when necessary to “protect vital national security interests of the United States.”<sup>66</sup> And perhaps most important for the DCIA, he may add his own input to the IG’s required reports to Congress.<sup>67</sup>

### *C. Duties and Responsibilities*

#### *1. Section 403q*

The IG’s duties and responsibilities under Section 403q provide the potential for the IG to be both an ally and adversary of the DCIA. Before enactment of Section 403q, the IG only reported “up” to the DCIA, not “out” to other persons or entities.<sup>68</sup> The non-statutory IG served on the DCIA’s management team and was used for updating the DCIA on problems, conducting regular audits of programs, and inspecting offices for operational efficiency.<sup>69</sup> Investigating allegations of wrongdoing also fell within OIG’s purview, but the office seldom challenged management’s view of those allegations.<sup>70</sup>

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62. *Id.*

63. *Id.* The qualifications for the CIA IG closely mirror those for IGs in other federal agencies. *See, e.g.*, Inspector General Act of 1978, Pub. L. 95-452, 92 Stat. 1101 (1978).

64. §§403q(b)(1),(6). If the IG is removed, the President must immediately inform the intelligence committees in writing of the reasons for removal. §403q(b)(6).

65. §403q(b)(2).

66. §403q(b)(3). When the DCIA blocks IG actions for national security purposes, the DCIA must submit a report within seven days to the intelligence committees and to the IG that explains why. §403q(b)(4). In these cases, the IG may submit comments on the DCIA’s report. *Id.*

67. *See infra* Part III.C.

68. Interview with Frederick P. Hitz, Former CIA IG (1990-1998), in Stillwater, Minn. (May 15, 2006).

69. *Id.*

70. *Id.*

While Section 403q retained many of the IG's former duties,<sup>71</sup> it also added many new duties. The IG now issues regular reports to Congress,<sup>72</sup> has the independent power to investigate senior CIA officials (including the DCIA),<sup>73</sup> and must report certain types of wrongdoing to the Department of Justice.<sup>74</sup> As a result, an effective IG may often find himself at odds with the CIA's senior management.

## 2. *The DCIA's Ally*

Although some aspects of the IG's job have changed, the statutory IG still retains responsibility for helping the DCIA run a more efficient Agency. Working with the Executive Director and other parts of the DCIA's management team, the IG works to ensure that CIA programs and operations are conducted "efficiently and in accordance with applicable law and regulations."<sup>75</sup> Beyond providing advice on the broad contours of CIA policy, the IG is also responsible to "plan, conduct, supervise, and coordinate independently" the audits, inspections, and investigations necessary to carry out that policy.<sup>76</sup> To be specific, the IG is supposed to ensure that the DCIA is kept "fully and currently informed" regarding violations of law or protocol – and any other problems within the Agency – that OIG uncovers.<sup>77</sup> When the IG reports to the DCIA on these issues, he must also notify the DCIA of OIG's corrective measures.<sup>78</sup> In all these cases, the IG's statutory duties enhance the DCIA's ability to manage the Agency.

Congress, to ensure its own access to information about CIA activities, provided for many areas of collaboration between the IG and DCIA. A touchstone of Section 403q is that it requires the IG to prepare a semiannual classified report on OIG's activities during the preceding six-month period.<sup>79</sup> This report must include: (1) a description of significant problems, abuses, and deficiencies related to CIA programs and operations that OIG identified; (2) a description of the corrective action that OIG recommended; (3) a statement of whether corrective action has been completed pursuant to

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71. See 50 U.S.C. §403q(c) (2006).

72. §403q(d)(1).

73. §403q(d)(3).

74. §403q(b)(5).

75. §403q(c)(1).

76. *Id.* Regarding both the investigative and reporting duties of the office, the IG is to comply with "generally accepted government auditing standards." §403q(c)(4).

77. §403q(c)(2). The scope of subsection (c)(2) is very broad, and encompasses "violations of law and regulations, fraud and other serious problems, abuses and deficiencies that may occur in [CIA] programs and operations." §403q(c)(1).

78. §403q(c)(2).

79. §403q(d)(1). The reports are to cover the six-month periods ending June 30 and December 30, and must be submitted to the DCIA no later than July 31 and the following January 31, respectively; see also *id.* §403q(c)(4).

previous reports; (4) a certification that the IG has had full and direct access to all necessary information; (5) a description of how the IG has exercised his statutory subpoena power during the period; and (6) any OIG recommendations regarding legislation to promote efficiency and eliminate fraud and abuse within the Agency.<sup>80</sup> Before the semiannual report is submitted to the congressional intelligence committees,<sup>81</sup> the IG must provide it to the DCIA, who may add comments before submission.<sup>82</sup> Similarly, when the IG prepares a report at the request of the chairman or ranking minority member of either intelligence committee, the DCIA must transmit the report to the intelligence committees.<sup>83</sup>

Beyond collaboration on semiannual reports, the IG and DCIA handle major problems when the IG becomes aware of “particularly serious or flagrant problems, abuses, or deficiencies relating to the administration of [CIA] programs and operations.”<sup>84</sup> In these cases, the IG must immediately report OIG’s findings to the DCIA.<sup>85</sup> Upon receiving the IG’s report, the DCIA must transmit the report – again, with any comments added – to the intelligence committees within seven days.<sup>86</sup> If the problems rise to potential violations of federal criminal law, the IG is also bound to report to the Attorney General.<sup>87</sup> The DCIA is entitled to receive a copy of these reports to the Attorney General, but is not entitled to add any comments.<sup>88</sup>

Finally, the DCIA and IG handle whistleblowers. They are supposed to cooperate when employees or contractors<sup>89</sup> intend to report to Congress “a complaint or information with respect to an urgent concern.”<sup>90</sup> CIA personnel, rather than take such complaints or information directly to Congress, may submit their concerns to the IG, who must evaluate their

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80. §403q(d)(1).

81. §403q(d)(5)(G)(ii). Under Section 403q, the term “intelligence committees” indicates the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate. Hereinafter, “intelligence committees” should be understood to refer to both committees.

82. §403q(d)(1).

83. §403q(d)(4). In cases of committee-requested IG reports, Section 403q does not, however, provide the DCIA with a right to add comments to the IG report, though the DCIA does receive the report before the intelligence committees. *Id.*

84. §403q(d)(2).

85. *Id.*

86. *Id.*

87. §403q(b)(5). Under Title 28 of the U.S. Code, the IG must report to the Attorney General “any information, allegation, or complaint” that OIG receives, and which constitutes a violation of federal criminal law involving CIA programs and operations. *Id.* See also 28 U.S.C. §535(b) (2006) (outlining a requirement for all executive branches to report violations of federal law to the Attorney General).

88. §403q(b)(5).

89. Hereinafter, use of the terms “employees” and “personnel” should be taken to also include CIA contractors and their employees.

90. §403q(d)(5)(A).

credibility within fourteen days.<sup>91</sup> Next, the IG submits an evaluation to the DCIA, who reports to the intelligence committee within seven days.<sup>92</sup> Even when the employee chooses to contact Congress directly,<sup>93</sup> the employee still must furnish both the IG and the DCIA with a statement of the complaint and notice of his or her intent to contact the intelligence committees.<sup>94</sup> This helps ensure that Congress will be brought into the matter by secure means.

### 3. *The DCIA's Adversary*

In some situations, the IG and DCIA work in harmony for the Agency. Yet a major goal of Section 403q was to create an independent check on the CIA.<sup>95</sup> For this purpose, Section 403q provides the IG, in several situations, with the power to “notify or submit a report” directly to congressional intelligence committees; these independent reports can put the IG at odds with the DCIA and other senior officials at the CIA.<sup>96</sup>

The IG may directly contact the intelligence committees if he or she is not being permitted to operate freely within the Agency. For instance, when the IG and the DCIA cannot resolve differences about the IG's duties or responsibilities, the IG may reach out to the intelligence committees.<sup>97</sup> The IG may also inform the committees directly when, “after exhausting all possible alternatives, [the IG] is unable to obtain significant documentary information” during the course of an audit, inspection, or investigation.<sup>98</sup> Although Section 403q does not give Congress any specific powers to settle these conflicts, the IG's direct access advances two congressional goals: (1) keep the committees informed<sup>99</sup> and (2) ensure the independence and effectiveness of OIG.<sup>100</sup>

In other cases, the IG may bypass the DCIA when a current or former high-ranking CIA official is subject to an IG investigation, inspection, or audit.<sup>101</sup> Further, the IG may report directly to the committees when the IG

91. *Id.*; see also §403q(d)(5)(E) (stating that the IG must notify the reporting employee within three days of all actions taken with respect to the issues reported to the IG).

92. §403q(d)(5)(A)-(C).

93. §403q(d)(5)(D). An employee may only contact Congress upon a finding by the IG that the report was not credible, or if the IG does not accurately transmit the employee's concerns to the DCIA.

94. §403q(d)(5)(D)(ii)(I). Before contacting the intelligence committees, the employee also must obtain direction from the IG regarding the proper means by which to contact the committees “in accordance with appropriate security practices.” §403q(d)(5)(D)(ii)(II).

95. §403q(a)(1).

96. §403q(d)(3).

97. §403q(d)(3)(A).

98. §403q(d)(3)(E).

99. §403q(a)(4).

100. §403q(a)(1).

101. §403q(d)(3). See also §403q(d)(3)(B) (stating that CIA officials who fall under

has contacted the Justice Department about possible criminal conduct by a current or former high-ranking CIA official,<sup>102</sup> or when the IG receives notice from the Justice Department approving or declining prosecution.<sup>103</sup>

With the statutory provisions of Section 403q, Congress granted the IG much more power than was previously available. The section reflects Congress's desire that OIG function "independently" and be "appropriately accountable to Congress"<sup>104</sup> and its assumption that in some cases the DCIA's close connection to senior officers will create conflicts with the IG or the appearance of conflicts.

#### D. The Toolbox

Section 403q provides the IG with many tools to monitor CIA operations. One of the strongest tools is the capacity to "receive and investigate complaints or information from *any person*" regarding any activities that constitute wrongdoing or gross inefficiency within the Agency.<sup>105</sup> To support the IG's use of this tool, the statute established whistleblower protection for employees who report in good faith.<sup>106</sup> OIG's capacity to receive this information – and to protect persons providing it – is especially important as an internal check because it provides a means of learning about problems in the most secret of operations, typically the most difficult to monitor.<sup>107</sup>

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Section 403q(d)(3) include any person who holds or has held the position of: Executive Director; Deputy Director for Operations; Deputy Director for Intelligence; Deputy Director for Administration; Deputy Director for Science and Technology; as well as any official who holds or has held a position in the CIA that is subject to presidential appointment (with Senate confirmation)).

102. §403q(d)(3)(C).

103. §403q(d)(3)(D).

104. §403q(a)(1). Even with the significant emphasis in Section 403q on disclosure and the provision of information, the statute's authors realized that IG investigations could implicate operations vital to national security. The statute provides that, in all cases, the IG must protect intelligence sources and methods, and must take appropriate measures to minimize the disclosure of sources and methods in the reports. §403q(c)(3).

105. §403q(e)(3) (emphasis added). Included are any "activity constituting a violation of laws, rules, or regulations, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health and safety." *Id.* OIG must protect the whistleblower's identity unless disclosure is unavoidable. §403q(e)(3)(A). A limited exception also exists by which OIG may disclose the whistleblower's identity to a Justice Department official who determines whether prosecution is necessary. *Id.*

106. §403q(e)(3)(B). But Subsection (e)(3)(B) also provides that employees who complain or disclose information "with the knowledge that it was false or with willful disregard for its truth or falsity" receive no protection from reprisals. *Id.*

107. Frederick Hitz, the first person to occupy the statutory IG position (1990-98), alluded to the importance of this power: "If an operation is watertight, it's very tough to find out about it. But the corrosive effect [of wrongdoing in] those operations will eventually get its way into the public. . . . If the press can find sources, the [OIG] will have sources." Interview with Frederick P. Hitz, *supra* note 68.

To succeed, the IG must have access to all CIA employees and all CIA contractors whose testimony the IG deems necessary.<sup>108</sup> Along with unfettered access to CIA personnel, the IG must also have access to all records<sup>109</sup> that relate to the programs and operations for which the IG is responsible.<sup>110</sup>

To facilitate OIG in these matters, Section 403q allows the DCIA to discipline CIA personnel who do not cooperate with OIG. Indeed, a CIA employee who fails to cooperate is subject to administrative reprimand, including potential discharge or termination of contract.<sup>111</sup> But, in a break from the statute's overall theme of a self-sufficient OIG, the power to issue reprimands, as well as the discretion to determine their severity, rest solely with the DCIA.<sup>112</sup> The DCIA, usually a political appointee, might be more reluctant than the IG to cross the rank and file in the clandestine service. Conflict, after all, is more a part of the IG's job description than the DCIA's.

The IG's direct access to Congress is complemented by direct access to the DCIA. Although the IG depends on the DCIA to discipline Agency personnel, Section 403q does require the IG to be afforded "direct and prompt access" to the DCIA.<sup>113</sup> Thus, the IG can seek out the DCIA as soon as problems arise, and can demand a personal hearing when other disciplinary measures seem inadequate. Combined with the IG's right to notify the intelligence committees about disputes with the DCIA,<sup>114</sup> the IG's access to the DCIA's suite allows the IG to express his opinion about how insubordinate personnel should be handled. In this indirect way, the IG's ties to Congress and the DCIA help persuade CIA personnel to cooperate with investigations.

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108. §403q(e)(2). In executing OIG's investigatory duties, the IG may administer and take oaths and affidavits with the same effect as those taken before "an officer with a seal." §403q(e)(4).

109. Included under Section 403q are "all records, reports, audits, reviews, documents, papers, recommendations, or other material" necessary to the IG's duties. §403q(e)(2).

110. *Id.* The IG, through a federal subpoena, may also compel employees to produce documents necessary to an investigation. §403q(e)(5)(A), (D). The IG may not, however, issue a subpoena on behalf of any CIA component but OIG. §403q(e)(5)(C). In cases involving other federal agencies, the IG may not use the subpoena power to compel records, documents, or other evidence. §403q(e)(5)(B).

111. §403q(e)(2).

112. *Id.* Subsection §403q(e)(7), which provides for the selection of the IG's staff, also gives the DCIA control over OIG. Two restrictions are placed on the IG here: (1) the staff members must have "the requisite training and experience to enable [them] to carry out [their] duties effectively"; and (2) selections are "[s]ubject to applicable law and *the policies of the Director.*" §403q(e)(7) (emphasis added). Since Section 403q does not clarify the phrase "policies of the Director," it is conceivable that the DCIA has veto power over the IG's selection of staff.

113. §403q(e)(1).

114. §403q(d)(3)(A).

Whether or not the IG is backed up by statute, internal checks depend very much on the personal qualities of the IG and the staff. People, in our account, bring the regulations and other papers to life.

#### IV. BIOGRAPHIES OF INSPECTORS GENERAL

##### A. *Lyman Kirkpatrick*

Long before Iran-Contra, Lyman Kirkpatrick stands out from the CIA's early days. Part of the American elite, Kirkpatrick graduated from Princeton University and gained some experience as a journalist. During World War II, he was recruited into the Office of Strategic Services, the CIA's predecessor, and was an intelligence briefing officer to General Omar Bradley. Having worked at the Office of Strategic Services, Kirkpatrick became a founding father of the CIA at its creation in 1947. He served as a case officer and as executive assistant to the DCI. In the early 1950s, Kirkpatrick was instrumental in the fusion of the CIA's foreign intelligence group and the covert actions arm into the Directorate of Plans.

It may have been on a trip to Thailand that Kirkpatrick contracted polio. Hospitalized in 1952, Kirkpatrick was then confined to a wheelchair, unable to continue his fieldwork with the vigor of his younger days. When he returned to CIA headquarters, Richard Helms, another career officer, had taken over the position as the head of operations. For Kirkpatrick, someone who aspired to the top position himself, paralysis was more than a physical disability. Treated as a different person at CIA, he lost confidence in himself – no longer one of the golden boys.

Removed from the field, Kirkpatrick was assigned to a position that kept him safe at headquarters. He became the CIA's IG in 1953. The IG position, which was not something he sought, was forced on him by unfortunate circumstances. As DCI Richard Helms described, "As IG, Kirk felt that he had been removed from the command line."<sup>115</sup> Yet even confined to a wheelchair, Kirkpatrick was able to make some trips to inspect overseas offices.<sup>116</sup>

Kirkpatrick, IG at the CIA for eight years, was not the first person to hold the position. As Kirkpatrick notes in his memoirs, DCI General Walter Bedell Smith created the position, appointing Stuart Hedden, a "lawyer-businessman."<sup>117</sup>

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115. RICHARD HELMS, *A LOOK OVER MY SHOULDER: A LIFE IN THE CENTRAL INTELLIGENCE AGENCY* 194 (2003).

116. LYMAN B. KIRKPATRICK, JR., *THE REAL CIA: AN INSIDER'S VIEW OF THE STRENGTHS AND WEAKNESSES OF OUR GOVERNMENT'S MOST IMPORTANT AGENCY* 154 (1968).

117. *Id.* at 129.

Not all of the CIA was receptive to having an IG, no matter the person in the position. According to Kirkpatrick, the operations division had established “its own inspection and review staff in an obvious attempt to forestall any centralized or outside inspections.”<sup>118</sup> Case officers, in the perennial ploy of self-regulation, said they could police themselves. Kirkpatrick, however, was able to overcome some of their resistance. Even so, his view of the IG’s role was more limited than the views of statutory IGs. He believed the IG should “make suggestions for improvement that the management would either accept or reject.”<sup>119</sup> “If management did not accept the recommendation,” he continued, “then it was management’s responsibility from that point on.”<sup>120</sup> Thus, the IG was a warning device, not an outside source of discipline.

Perhaps Kirkpatrick’s way of evening the score with colleagues who could still serve as case officers was to be overly critical of their performance. As Kirkpatrick stated, “If the inspector general is to be effective, he must be tough and completely objective, even if it means losing friends.”<sup>121</sup> During his tenure, he probably did lose some friends. The verdict on his performance as IG was mixed.

Kirkpatrick’s delivery of the Bay of Pigs report, not to mention its content,<sup>122</sup> showed Kirkpatrick at his meanest. Rather than deliver the report to Allen Dulles, a lame duck DCI at the time, Kirkpatrick delivered it to the DCI-designate, John McCone, who was about to travel to California to put personal matters in order before he assumed duties at the Agency. Displeased, McCone recalled all copies of the report.

Kirkpatrick also lambasted the clandestine service for general incompetence and for using unknowing subjects for experiments on the effects of LSD. As Tim Weiner wrote, Kirkpatrick “became a constant bearer of bad tidings about the caliber of the CIA’s personnel, training, and performance.”<sup>123</sup> All in all, the CIA’s management did not take much action in response to these reports; they swatted Kirkpatrick away like a mosquito at a summer picnic. As for LSD, it was not until the Church Committee’s hearings that the wrongdoing of the MKULTRA program<sup>124</sup> was revealed.

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118. *Id.* at 130.

119. *Id.* at 131.

120. *Id.*

121. *Id.* at 154.

122. *See infra* Part V.B.1.

123. TIM WEINER, *LEGACY OF ASHES: THE HISTORY OF THE CIA* 88 (2008).

124. MKULTRA was a secret CIA research project into the use of LSD and other mind-altering drugs. NORMAN POLMAR & THOMAS B. ALLEN, *SPY BOOK: THE ENCYCLOPEDIA OF ESPIONAGE* 426-427 (2d ed. 2004). Authorized by DCI Helms and led by Dr. Sidney Gottlieb, director of the CIA chemical division, MKULTRA was characterized as “unethical and illicit activities.” *Id.* at 426. In one experiment, Dr. Gottlieb spiked a fellow scientist’s drinks with LSD, resulting in the severe deterioration of the other scientist’s psyche so that he hurled himself out of a tenth-floor window. *Id.* MKULTRA also involved testing drugs on prostitutes lured into safe houses by CIA officers. *Id.* When details of the

His ambition neutralized, Kirkpatrick did not rise much higher than IG. In 1962, he was named the CIA's executive director, a newly created position.<sup>125</sup> Later, he served on the Covert Operations Study Group, a committee of "wise men" DCI Richard Helms assembled to advise incoming President Nixon on the clandestine service.<sup>126</sup> For examples of more assertive IGs, one needs to look to the future.

*B. Frederick P. Hitz*

Frederick Hitz was an IG for a new era. A graduate of Princeton University and of Harvard Law School, Hitz had extensive experience both inside and outside the CIA before he became its first statutory IG. On many occasions, this experience allowed Hitz to participate in executive-legislative interactions and to become a Washington hand. With a classic pedigree for intelligence work, Hitz first joined CIA in 1967. As an operations officer, Hitz served overseas, and many of his assignments are still classified. After his first stint at CIA, Hitz took posts at the Departments of State, Defense, and Energy, including turns as Deputy Assistant Secretary of Defense for Legislative Affairs and Director of Congressional Affairs for the Department of Energy. Hitz returned to the CIA in 1978, and served as Legislative Counsel to the DCI, and then Deputy Director for Europe in the Directorate of Operations until 1981, when he left the government for private practice. He returned to the CIA again as IG in 1990.

During his tenure as IG from 1990 to 1998, Hitz presided over many high-profile investigations. Between 1994 and 1996, OIG investigated the case of CIA mole Aldrich Ames and the alleged CIA connections to murders in Guatemala and to cocaine trafficking from Nicaragua.<sup>127</sup> Hitz, although he might have clashed with particular officers during the course of an investigation, is still respected within the ranks of the clandestine service. He was one of them, after all, and had not developed Kirkpatrick's animus toward his former peers. Today, at the IG's office, there are still staff members who remember their time with Hitz fondly. Hitz, an able manager who cultivated loyalty, deserves credit for building the status of the IG's office within the Agency.

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project were revealed, the Church Committee said they "demonstrate[d] a failure of the CIA's leadership to pay adequate attention to the rights of individuals and to provide effective guidance to CIA employees." *Id.* at 427.

125. JOHN RANELAGH, *THE AGENCY: THE RISE AND DECLINE OF THE CIA* 412-413 (1986).

126. WEINER, *supra* note 123, at 293.

127. *See infra* Part V.C.1-3.

Hitz, a frequent commentator in the media, continues to be active in academia, writing books about spy literature and the purpose of spying.<sup>128</sup> His willingness to write and to speak about covert operations, however, puts him at odds with the hard-core CIA members of his generation. The code for these former officers is still silence.

### C. Britt Snider

Hitz's successor, Britt Snider, graduated from Davidson College, Virginia Law School, and, later, an executive program in national and international security at Harvard University's John F. Kennedy School of Government. Immediately after law school, he served as a captain in the Army Signal Corps from 1969 to 1971.

Although Snider was not an intelligence operator by trade, his career before OIG touched on many aspects of the intelligence community. Before he was appointed the CIA's IG, Snider held several positions related to audits and investigations. From 1975 to 1976, he investigated Defense Department intelligence activities as counsel to the Church Committee. The Church Committee, of course, conducted the most significant external inquiry into American intelligence activities. Soon thereafter, Snider served a ten-year term as Assistant Deputy Undersecretary of Defense, where his staff monitored compliance with DoD policy regarding counterintelligence and classification. Next, he served as minority counsel to the Senate Select Committee on Intelligence from 1987 to 1989, and chief counsel from 1989 to 1995. For the Senate, Snider was deeply involved in monitoring the CIA's activities from positions of external oversight. And during his tenure on Capitol Hill, Snider actually drafted the bill that became the law for a statutory IG at CIA.<sup>129</sup> After his time on Capitol Hill, Snider served first as staff director of the Presidential Commission on the Roles and Capabilities of the U.S. Intelligence Community, then as Special Counsel to DCI George Tenet, someone Snider had gotten to know during their work together as staffers on Capitol Hill.

When Snider was appointed the CIA's IG, he was a newcomer to the CIA's headquarters, but not to the field of audits and inspections. Based on years of experience on Capitol Hill, Snider quickly transformed himself from an external guard into an internal guard. The evidence is thin, however, that his prior experience made him an exceptional IG. Perhaps what it takes for effective oversight from Congress is quite different from

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128. See, e.g., FREDERICK P. HITZ, *THE GREAT GAME: THE MYTHS AND REALITIES OF ESPIONAGE* (2004); FREDERICK P. HITZ, *WHY SPY?: ESPIONAGE IN AN AGE OF UNCERTAINTY* (2008).

129. See L. Britt Snider, *A Unique Vantage Point: Creating a Statutory Inspector General at the CIA*, <https://www.cia.gov/library/center-for-the-study-of-intelligence/kent-csi/vol44no5/html/v44i5a02p.htm>.

what it takes for oversight from within the Agency. Overall, Snider was a good IG, no better (and no worse) than the insider Fred Hitz.

Snider's tenure as IG was not as eventful as the terms that preceded and succeeded him. This may say as much about the CIA during this period as it does about Snider. Internal CIA investigations garnered far fewer headlines from 1998 to January 2001 than they did during the preceding eight years. Notable cases under Snider involved former DCI John Deutch's misuse of classified information on his home computer – a case CIA management declined to refer for criminal prosecution – and the mistaken bombing of the Chinese embassy in Belgrade during the U.S. offensive against Slobodan Milosevic – a case that embarrassed both President Clinton and the CIA.<sup>130</sup> Compared to Hitz, Snider was a quiet manager. Snider, more introverted than Hitz, did not work his staff the way an operations officer spots, develops, pitches, and handles a human source. Snider, a Virginian squire, was more genteel than that.

Since his retirement from the federal government in 2001, Snider has remained active in the world of intelligence. He published a retrospective of the CIA's relationship with Congress,<sup>131</sup> lectured on intelligence policy and oversight, and chaired President Bush's Public Interest Declassification Board from 2004 to 2008. Even so, Snider did experience one setback. He was forced to resign as staff director for the joint congressional inquiry into 9/11 (which preceded the more-famous 9/11 Commission), reportedly because of the way he handled a personnel matter. Politics may have also played a role since Senator Richard Shelby, a harsh critic of George Tenet, may have used this personnel matter against someone he viewed as Tenet's ally. More recently, on behalf of the new Obama Administration, Snider prepared nominees for Senate confirmation to senior intelligence positions, including Director of National Intelligence Dennis Blair and Director of the CIA Leon Panetta.

#### *D. John Helgerson*

The Inspector General when President Obama took office was not a field man like Lyman Kirkpatrick and Fred Hitz. John Helgerson, the CIA's IG from 2002 to 2009, rose through the CIA's ranks as an analyst within the Directorate of Intelligence (DI). His academic specialty was

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130. L. Britt Snider, *A Message from the Inspector General Central Intelligence Agency*, available at <http://fas.org/irp/cia/product/snider.html>. See also David E. Sanger, *Apologizing to China for Bombing Is a Delicate Undertaking*, N.Y. TIMES, June 9, 1999, at A11.

131. See L. BRITT SNIDER, *THE AGENCY AND THE HILL: A STUDY OF CIA'S RELATIONS WITH CONGRESS FROM 1946 TO 2004* (Central Intelligence Agency 2007), available at <https://www.cia.gov/library/center-for-the-study-of-intelligence/csi-publications/books-and-monographs/agency-and-the-hill/index.html>.

African politics. Compared to Snider, though, Helgerson was more of an insider from the start.

After Helgerson obtained a degree from Saint Olaf College in Minnesota, he completed master's and doctorate degrees in political science at Duke University. Before he joined the CIA, his academic postings were at the University of Zambia and the University of Cincinnati.

Within the DI, Helgerson rose to the top, serving as Deputy Director for Intelligence from 1989 to 1993. Helgerson noted at his confirmation hearing to become IG that both as an analyst and as a supervisor of analysts, he insisted on "integrity" and "independence." In the best tradition of CIA analysts, Helgerson viewed his job as speaking truth to power.

In addition, Helgerson had also served as Director of the Office of Congressional Affairs, a position that put him in regular contact with the congressional oversight committees where he became savvy about Washington politics. The oversight committees, of course, would be one of his two reporting lines when he became IG. From 1998 until 2000, Helgerson worked in the IG's Office as deputy to Britt Snider. In 2001, before President Bush nominated him as IG, he was named Chairman of the National Intelligence Council, a position that returned him to his roots in analysis.

As the third Senate-confirmed IG, Helgerson was not immune to political pressures from outside and inside the CIA. Jane Mayer, a journalist for *The New Yorker*, reports that Vice President Cheney reacted to Helgerson's 2004 report about the CIA's detention and interrogation program by issuing a summons of sorts for the IG to come to the White House.<sup>132</sup> Cheney, a strong CIA supporter, made clear that he did not want the IG looking too deeply into the CIA's closet. Cheney, as a stand-in for George W. Bush, represented Helgerson's other reporting line from the DCIA to the President. Meetings like this between top policy makers and the IG are not common. Helgerson, perhaps, had spoken too much truth to power.

Later, in response to complaints from the operations division that the IG was out to get them, DCIA Hayden appointed a top aide, Robert Dietz, to investigate. Dietz's investigation, over cries of foul from Capitol Hill, led to Helgerson agreeing to the appointment of an ombudsman within the IG's office and to the adoption of internal guidelines to make the IG's investigations fairer and more transparent. The operations people, buffeted between accusations that they were not aggressive enough before 9/11 and recriminations that they were too aggressive after 9/11, struck back at the IG in the hopes of attaining a balance. But those who see the IG's office as the most effective check on CIA abuses viewed the Hayden/Dietz gambit as

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132. JANE MAYER, *THE DARK SIDE: THE INSIDE STORY OF HOW THE WAR ON TERROR TURNED INTO A WAR ON AMERICAN IDEALS* 288 (2008).

an improper attempt to limit the IG's role. Fred Hitz, for that matter, was one of the Administration's loudest critics.<sup>133</sup>

## V. MAJOR IG INVESTIGATIONS

Now that our IG story has been told through its main characters – Kirkpatrick, Hitz, Snider, and Helgerson – the frame shifts to individual investigations to provide another look into the IG's office. Personal threads, separating then combining, form an intricate institutional fabric. Most of what the IG does remains classified, off limits to any public assessment. That includes regular inspections and audits.

Another fertile area of scholarship screened off by secrecy is the extent of coordination between the CIA's IG and the other IGs in the intelligence community. If the various agencies in the intelligence community are expected to do more to coordinate in the post-9/11 era, it seems logical that the CIA's IG should share experiences with IGs from the Office of the Director of National Intelligence, the National Security Agency, the FBI, and others. Coordination is a new buzzword. The public record does, in fact, indicate periodic meetings of IGs; but, for now, a classifier's stamp prevents us and other scholars from knowing what actually occurs at those meetings.

For these reasons, our focus on major investigations is not necessarily a comprehensive sample of the IG's activities. Nonetheless, we believe that it is better to draw conclusions from what we see on the surface than to ignore the fabric altogether.

### A. Overview

Since Fred Hitz was named the CIA's first statutory IG in 1990, OIG has assumed a visible role in investigations of the CIA. These investigations offer clues as to whether the purported benefits of a statutory IG actually materialize in practice. On cases ranging from the isolated malfeasance of CIA officers in Central America to massive, Agency-wide breakdowns, OIG has shown that the more serious the incident, the less OIG has functioned as the check Congress intended.<sup>134</sup> Our sense is that statutory powers have not resulted in a commensurate increase in the depth and breadth of IG investigations. Before or after the statutory position was

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133. See Mark Mazzetti & Scott Shane, *Watchdog of C.I.A. Is Subject of C.I.A. Inquiry*, N.Y. TIMES, Oct. 11, 2007, at A1 (quoting Hitz that "any move by the agency's director to examine the work of the inspector general would 'not be proper.'").

134. Because few, if any, of the details surrounding formal IG investigations are released to the public, the following accounts of IG investigations are based almost entirely on press accounts, themselves based largely on information leaked by CIA officials and congressional staffers.

created, oversight seems to have been ad hoc, as dependent on quirks, personalities, and circumstances as on formal powers that come from Congress. Over the years, despite all the legislative action, there has been continuity in the IG's performance – a continuous record of mixed results.

## *B. Investigations Prior to Iran-Contra*

### *1. Bay of Pigs Invasion*

Few IG reports have been harsher than Lyman Kirkpatrick's assessment of the Bay of Pigs invasion. To overthrow Fidel Castro's dictatorship in Cuba, the CIA trained and equipped a small group of Cuban exiles for an amphibious invasion of the country.<sup>135</sup> The invasion, which began on April 17, 1961, was defeated in less than seventy-two hours.<sup>136</sup> Due to a combination of poor planning and poor execution, as well as the possibility that Castro's intelligence services had penetrated the operation, approximately 1,200 of the 1,300 invasion troops were captured by Cuban forces, and another 100 were killed in action.<sup>137</sup> The invasion also prompted Castro to round up about 100,000 suspected dissidents within Cuba, crushing any prospects for internal revolt.<sup>138</sup>

To conclude America's sad saga in Cuba, Castro released most of the 1,200 prisoners in exchange for \$53 million worth of food and medicine that Attorney General Robert Kennedy raised from private sources.<sup>139</sup> The events played themselves out in the news, and the fiasco was described as "the first time that a CIA operation was exposed to the klieg lights of a national scandal."<sup>140</sup> The fallout included resignations of CIA Director Allen Dulles and Director of Plans Richard Bissell.<sup>141</sup>

Lyman Kirkpatrick, perhaps with encouragement from the White House, completed his report within six months of the invasion. The internal guard took the lead. Kirkpatrick, the former operations officer, identified many mistakes that doomed the operation from the start. Operational

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135. See generally CENTRAL INTELLIGENCE AGENCY, INSPECTOR GENERAL'S SURVEY OF THE CUBAN OPERATION 3-33 (1961) [hereinafter IG REPORT].

136. JAMES G. BLIGHT & PETER KORNBLOH, POLITICS OF ILLUSION: THE BAY OF PIGS INVASION REEXAMINED I (1998).

137. TRUMBULL HIGGINS, THE PERFECT FAILURE: KENNEDY, EISENHOWER, AND THE CIA AT THE BAY OF PIGS 149 (1989).

138. *Id.* at 139.

139. BAY OF PIGS DECLASSIFIED: THE SECRET CIA REPORT ON THE INVASION OF CUBA 329-330 (Peter Kornbluh ed., 1998).

140. Peter Kornbluh, Editorial, *The CIA Secret Kept for 37 Years*, WASH. POST, Mar. 15, 1998, at C1. For a narrative of the Bay of Pigs invasion, see ALEKSANDR FURSENKO & TIMOTHY NAFTALI, ONE HELL OF A GAMBLE: KHRUSHCHEV, CASTRO, AND KENNEDY 1958-1964 77-100 (1997); GRAYSTON L. LYNCH, DECISION FOR DISASTER: BETRAYAL AT THE BAY OF PIGS (2000).

141. David Binder, *Richard M. Bissell, 84, Is Dead; Helped Plan Bay of Pigs Invasion*, N.Y. TIMES, Feb. 8, 1994, at D23.

command was fragmented such that “the project lacked a single, high-level full time commander” to carry out the vast mission.<sup>142</sup> Kirkpatrick noted that, rather than staff the mission with the Agency’s best and brightest, the CIA relied on people in the bottom third of their respective government grades.<sup>143</sup> The Bay of Pigs planners had not recruited top officers, and the CIA section chiefs had not given up their key performers. Richard Helms, for one, a believer in foreign-intelligence gathering rather than covert action, kept a safe distance from what he considered a foolish operation. Lesser officers, in turn, supervised between seventy-five and one hundred people, rather than five, as originally intended.<sup>144</sup>

Kirkpatrick’s report, relentless in its criticism, also found “extremely serious mistakes in planning.”<sup>145</sup> First, the planners did not obtain objective appraisal of the operation from those experienced in covert action. Second, despite setbacks on the beach in Cuba, they did not advise President Kennedy to cancel the operation when success had “become dubious.”<sup>146</sup> Third, the planners failed to recognize that the project had become too large and overt for the Agency to handle alone. Fourth, in their impatience, they had neither put the plans in writing nor requested specific approval from the White House.<sup>147</sup> Kirkpatrick, all in all, saw the lack of independent scrutiny as the explanation why the planners blithely sent a small group of men against far greater numbers and far better arms. Anyone who closely followed Cuba, he believed, would have realized that the expectation of local support was a fantasy.<sup>148</sup> Going further, his report criticized a lack of adequate intelligence support,<sup>149</sup> a corps of intelligence officers that spoke little Spanish and often treated the Cubans “like dirt,”<sup>150</sup> and deficiencies in the CIA’s paramilitary forces on air and sea.<sup>151</sup>

The report’s recommendations flowed from its criticisms. First, a dedicated and unified command should handle major covert operations. Second, these operations should be transferred to the Department of Defense when they became overt. Third, these operations should receive an independent appraisal before implementation. Fourth, the CIA needed to improve the foreign language proficiency of its officers, as well as their clandestine air and sea capabilities. In effect, Kirkpatrick challenged the

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142. IG REPORT, *supra* note 136, at 36-40.

143. *Id.* at 42.

144. *Id.* at 37.

145. *Id.* at 56.

146. *Id.* at 57.

147. *Id.* at 57.

148. *Id.* at 57-58.

149. *See generally id.* at 75-80.

150. *Id.* at 95-97.

151. *See generally id.* at 98-124.

cult of intelligence that had grown around the CIA's purported successes on prior covert actions in Iran and Guatemala.

Kirkpatrick's report, no surprise, faced immediate resistance at CIA. Within the small group who actually saw the report, many rejected it as a "'malicious' attack on individual officers and a threat to the very future of the agency."<sup>152</sup> To protect the Agency, DCI John McCone – successor to DCI Dulles – had most copies of the report collected and destroyed.<sup>153</sup> (There is no evidence that the report was distributed outside the executive branch.) The few copies that survived were locked in the DCI's personal safe, not to be disclosed to the public until 1998, when the National Security Archive succeeded with a Freedom of Information Act request.<sup>154</sup>

## 2. *Nicaraguan Guerilla Manual*

In late 1984, press reports revealed that the CIA had provided Nicaraguan Contras with an instruction manual for use in their fight against the Sandinista government.<sup>155</sup> The tactics included hiring criminals to kill other contras; blackmailing Nicaraguan citizens to join the rebel cause; and the "selective use of violence" to "neutralize" judges, police, and government officials.<sup>156</sup> The manual, assembled by an unnamed CIA contractor,<sup>157</sup> was based almost word for word on a 1968 manual that U.S. Special Forces had used for fighting in Southeast Asia; the prior manual included instructions for the "removal" of civilian leaders, based on tactics the Communists had used during the 1940s in taking over China.<sup>158</sup>

152. Kornbluh, *supra* note 140; *see also* Grayston A. Lynch, Letter to the Editor, *Bay of Pigs Contains No Dark Secret*, N.Y. TIMES, Apr. 29, 1996, at A26 (offering a former CIA officer's description of IG Kirkpatrick's report as "a personal attack on Mr. Dulles and Bissell"); Robert Pear, *The Pointing of Fingers and the Bay of Pigs*, N.Y. TIMES, Dec. 30, 1987, at B6 (providing a claim by a former CIA historian that IG Kirkpatrick destroyed evidence and distorted the report in an effort to have Bissell replaced); Tim Weiner, *C.I.A. Bares Its Bungling in Report on Bay of Pigs Invasion*, N.Y. TIMES, Feb. 22, 1998, at A6 (including the critical comments of then-Deputy Director of Central Intelligence Gen. Charles P. Cabell). *But see* RICHARD BISSELL ET AL., REFLECTIONS OF A COLD WARRIOR: FROM YALTA TO THE BAY OF PIGS 193 (1996) (stating Mr. Bissell's opinion that IG Kirkpatrick's "critical comments [in the IG report] were, or may have been, valid").

153. Kornbluh, *supra* note 140, at 15; *see also* Weiner, *supra* note 152 ("In unfriendly hands, [the IG report] can become a weapon unjustifiably to attack the entire mission, organization, and functions of the agency," warned General Cabell, the Deputy Director at the time.").

154. Weiner, *supra* note 152.

155. John M. Goshko & Margaret Shapiro, *CIA Manual for Guerrillas Denounced by Rep. Boland*, WASH. POST, Oct. 18, 1984, at A1.

156. Joel Brinkley, *C.I.A. Aide Is Said To Urge Punishing Manual's Authors*, N.Y. TIMES, Nov. 10, 1984, at A1.

157. Associated Press, *Aides Disciplined by C.I.A. Areirate*, N.Y. TIMES, Nov. 15, 1984, at A1.

158. Joanne Omang, *CIA Manual Based on Vietnam*, WASH. POST, Oct. 30, 1984, at A24.

The CIA manual for Nicaragua caused loud protests from Congress.<sup>159</sup> The manual also became a topic in the 1984 presidential debates between Ronald Reagan and Walter Mondale.<sup>160</sup> In response to the outcry, external and internal checks on the CIA were triggered. Congress investigated the manual through the House Permanent Select Committee on Intelligence (HPSCI), and the executive branch investigated through the CIA's IG and the President's Intelligence Oversight Board.<sup>161</sup>

The IG investigation was the first of the three to be completed, presenting a report to Congress on November 9, 1984.<sup>162</sup> Although the report was not made public, the press reported its conclusions that "no one had intended to bypass the executive order prohibiting United States officials from taking part in or encouraging assassination [activities banned under Executive Order 12,333]," and that the manual's contractor-author was oblivious of Executive Order 12,333.<sup>163</sup> OIG implicitly agreed, however, that the manual was poorly conceived and stated. The OIG report – and the Intelligence Oversight Board report that followed – also found that "there had been no violation by C.I.A. personnel or contract employees of the Constitution or the laws of the United States, executive orders or Presidential directives," and that no senior officials had helped produce the manual.<sup>164</sup>

The IG report limited its recommendation for disciplinary action to a small group within CIA, as well as suggesting corrections to "strengthen management and oversight within the C.I.A."<sup>165</sup> As a result, President Reagan agreed to discipline six mid-level CIA officials: three received letters of reprimand, two were suspended without pay, and the manual's author resigned from his contract with the Agency.<sup>166</sup> Therefore, even if the

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159. See Goshko & Shapiro, *supra* note 155 (recounting comments of Rep. Edward Boland (D-MA) and Senator Edward Kennedy (D-MA)); Joanne Omang & Lou Cannon, *Reagan Orders Investigation of Controversial CIA Manual*, WASH. POST, Oct. 19, 1984, at A1 (recounting comments of then-House Speaker Thomas "Tip" O'Neill (D-MA)).

160. See THE AMERICAN PRESIDENCY PROJECT, SECOND REAGAN-MONDALE DEBATE (Oct. 21, 1984), <http://www.presidency.ucsb.edu/ws/index.php?pid=39296>.

161. Joel Brinkley, *President Orders 2 Investigations on C.I.A. Manual*, N.Y. TIMES, Oct. 19, 1984, at A1.

162. Brinkley, *supra* note 156. The Intelligence Oversight Board's report, which mostly mirrored the OIG report, was released two days later. Francis X. Clines, *U.S. Says Study Found Manual [sic] Broke No Law*, N.Y. TIMES, Nov. 11, 1984, at A1.

163. Brinkley, *supra* note 156.

164. Clines, *supra* note 162.

165. Brinkley, *supra* note 156. The IG's conclusion that senior CIA officials were not involved in reviewing and approving the manual was consistent with the Reagan administration's earlier claims that the covert operations division at CIA headquarters had approved the manual without input from senior management. Bob Woodward, *Middle-Level CIA Officials Cleared Manual*, WASH. POST, Oct. 24, 1984, at A1.

166. *Aides Disciplined by C.I.A. Areirate*, *supra* note 157. Claiming they had no role in approving the manual, several officials refused to accept the discipline and declined to

IG could not change the overall structure of the CIA, it could create severe consequences for the CIA's employees. In that sense, the IG showed itself as more thorn than trifle.

The HPSCI, in its own report for Congress, went so far as to conclude that the manual violated the law because it advised overthrow of the Sandinista government, contrary to congressional limitations on covert actions against Nicaragua.<sup>167</sup> Despite this conclusion and the discontent of a vocal group of Senators and Representatives,<sup>168</sup> the HPSCI, dominated by Democrats, did not push for any remedial or disciplinary actions.<sup>169</sup> The most significant action thus came from OIG, an internal check on the CIA.

### C. Investigations Conducted by the Statutory IG

#### 1. Aldrich Ames Case

The revelation in February 1994 that a thirty-year CIA officer had been selling secrets for a decade rocked the American intelligence community. Just as James Angleton, the legendary head of CIA counterintelligence, had always feared, at least one mole had been buried deep at the CIA.

At the end of a two-year FBI investigation, CIA officer Aldrich H. Ames and his wife Rosario were arrested for selling American secrets to the Soviet and Russian intelligence agencies.<sup>170</sup> The CIA's "damage assessment" found more than one hundred blown operations; thousands of pages of secret documents transferred to the KGB; and at least ten American agents in the Soviet Union and Eastern Europe executed.<sup>171</sup> In effect, Ames destroyed the CIA's spy network within the Soviet Union and, for many years to come, crippled the CIA's efforts to gather intelligence on the Soviet Union.<sup>172</sup>

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sign the letters placed in their personnel files. *Id.*

167. *Id.*

168. *See, e.g., id.* Senator Patrick Leahy (D-VT) was concerned that those punished were "scapegoats," and Representative Norman Y. Mineta (D-CA) called the report a "whitewash." *Id.* Senator Daniel Patrick Moynihan (D-NY) called OIG disciplinary recommendations "appalling" for their failure to prescribe stronger remedies. Clines, *supra* note 162.

169. Joel Brinkley, *House Panel Calls C.I.A. Manual Illegal*, N.Y. TIMES, Dec. 6, 1984, at A3.

170. Bill Miller & Michael Isikoff, *CIA Officer Charged with Selling Secrets*, WASH. POST, Feb. 23, 1994, at A1. Aldrich and Rosario Ames spent approximately \$1.4 million of KGB money between 1985 and 1994, including almost \$500,000 in credit card charges alone. *Id.*

171. Tim Weiner, *Senate Report Faults C.I.A. for Ineptitude in Spy Case*, N.Y. TIMES, Nov. 2, 1994, at A1.

172. David Johnston, *Justice Dept. Calls F.B.I. Derelict in Its Pursuit of Most Damaging Spy in C.I.A. History*, N.Y. TIMES, Apr. 18, 1997, at A16. As early as January 1987, an internal memo by a CIA manager stated, "I am not aware of any Soviet case we have left that is producing anything worthwhile." Weiner, *supra* note 171.

The Ames case, however it was spun, revealed a gaping hole in the CIA's security and counterintelligence practices. Someone needed to get to the bottom of things. If the CIA's clandestine service, whether in operations or counterintelligence, could not ferret out spies on its own, then another check was needed.

The IG was one of many entities, inside and outside the Agency, that took an interest in the Ames case. The IG investigation, after the fact, listed multiple failures by the CIA to prevent and to reveal Ames's treachery. Some failures bordered on the bizarre. Even when the CIA suspected that a traitor – rather than a technical problem – blew those operations, it kept its suspicions from the FBI. So for no apparent reason, the agency with primary responsibility to investigate and prosecute espionage was kept in the dark for years.

The IG's final report concluded that it was widely known within the CIA that Ames had a "bad reputation in terms of integrity, dependability and discretion."<sup>173</sup> Nonetheless, much like teachers who pass students on rather than flunk them, Ames's managers continued to promote him until he was "perfectly placed to betray almost all of CIA's most sensitive Soviet assets."<sup>174</sup> The CIA had failed to follow up on a 1985 report from FBI agents who saw Ames visit the Soviet embassy in Washington, then failed to act promptly on reports that Ames, complete with new teeth and new clothes, was living well beyond his means.<sup>175</sup> Despite the CIA's failures, the IG refrained from recommending any specific measures against CIA personnel. Discipline was left to the discretion of R. James Woolsey, President Clinton's first DCI, who hesitated to take action against "the troops."<sup>176</sup>

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173. Tim Weiner, *C.I.A. Official Tells of Botching of Ames Case*, N.Y. TIMES, Sept. 30, 1994, at A24. Ames was also described as having a long record of "no enthusiasm, little regard for rules or requirements, little self-discipline, little security consciousness, little respect for management or the mission, few good work habits, [and] few friends." *Id.* It was also known that "[Ames's] recent record included years of lazy and drunken ineptitude, and four extramarital affairs." Weiner, *supra* note 171.

174. Weiner, *supra* note 173.

175. *Id.* After a CIA officer reported in 1989 that Ames, upon returning from a tour as station chief in Rome, had paid cash for a \$540,000 house and was driving a new Jaguar, the Directorate of Operations took more than a year to forward those concerns to its security office, where the case languished until 1993. Tim Weiner, *Report on C.I.A. Is Said to Show Agency's Blunders*, N.Y. TIMES, Sept. 25, 1994, at A28.

176. Weiner, *supra* note 175. A later article appears to contradict the report of no disciplinary recommendations, stating that the IG called for discipline or reprimand for twelve people for their roles, and finding that the three previous DCIs (James Woolsey, Robert Gates, and William Webster) should be accountable for the CIA's failure to disclose the Eastern European intelligence setbacks. Johnston, *supra* note 172. But the later article is also contradicted by a 1994 article referencing the Senate Select Committee on Intelligence, which decried DCI Woolsey's failure to take any significant disciplinary measures. Weiner, *supra* note 171.

The IG report, serving as the chief reference for the intelligence committees, provided fuel for congressional critique of the CIA.<sup>177</sup> This was part of a pattern in which an internal critique was woven into an external critique. The Senate report criticized DCI Woolsey for not discharging, demoting, or suspending anyone for the CIA's failures, and scolded the CIA bureaucracy for its tolerance of "serious personal and professional misconduct among its employees."<sup>178</sup> In addition, the Senate and House reports faulted both the CIA and the FBI for not communicating or cooperating.<sup>179</sup>

Until FBI special agent Robert Hanssen was outed as a Soviet/Russian spy, the FBI lorded it over the CIA for allowing a mole to burrow inside the house. No matter all the prior calls for cooperation between law enforcement and the intelligence community, it took September 11 to remind the American public of the horrors that result when their security services do not work hand in hand. There seems to be a cycle of abuse, reform, and repeated abuse.

## 2. *Clandestine Service in Guatemala*

In March 1995, the CIA was again connected to murders. This time, allegations were made about CIA activities in Guatemala. Representative Robert Torricelli, a Democrat from New Jersey, breached an oath of secrecy and publicized allegations that a Guatemalan military officer on the CIA's payroll, Col. Julio Roberto Alpirez, had ordered the killings of an American innkeeper, Michael DeVine, and of a Guatemalan guerilla, Efraim Bamaca Velasquez, who was married to an American attorney.<sup>180</sup> Representative Torricelli said he had received a tip from the National Security Agency that both the CIA and the United States Army knew that Alpirez was involved in the killings.<sup>181</sup>

Once the allegations went public, President Clinton called on the CIA's IG to investigate.<sup>182</sup> This investigation revealed that the Agency had

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177. Weiner, *supra* note 171.

178. *Id.*

179. Tim Weiner, *House Committee's Report Is Critical of F.B.I. in Ames Spy Case*, N.Y. TIMES, Nov. 24, 1994, at A15.

180. Tim Weiner, *In Furor over Killings, President Warns of Shake-Up in the C.I.A.*, N.Y. TIMES, Mar. 25, 1995, at A1.

181. Tim Weiner, *Congressman Seeks Intelligence Data on Slayings in Guatemala*, N.Y. TIMES, Mar. 29, 1995, at A11 [hereinafter Weiner, *Intelligence Data*]. DeVine was killed just six months after Alpirez had completed a course for senior officers at the U.S. Army's School of the Americas. Weiner, *supra* note 180. Following the IG's report, an internal CIA review board stated that there was no basis to allegations of an NSA-Army cover-up of the Alpirez incident, tracing the allegations to an apparently forged letter to Rep. Torricelli. Tim Weiner, *C.I.A. Agent's Tie to Deaths in Guatemala Is Still Hazy*, N.Y. TIMES, July 27, 1995, at A10 [hereinafter Weiner, *Hazy Tie*].

182. See David Johnston, *Clinton Orders Wide Review of U.S. Activity in Guatemala*, N.Y. TIMES, Mar. 31, 1995, at A8 (Along with the CIA investigation, President Clinton

removed its Guatemalan station chief in February 1995 after OIG accused him of suppressing reports of human rights violations by the Guatemalan military.<sup>183</sup> Making matters worse, the station chief had failed to disclose the CIA's ties to Alpirez. This chief was a habitual offender who, nine months earlier, had been disciplined for a separate failure to disclose.<sup>184</sup> As with other incidents, the omissions and misstatements created as many problems as the underlying acts in Guatemala.

In its comprehensive report, the IG was most critical of omissions in the reporting line from the field to headquarters. The internal checks within the clandestine service, it turned out, were not up to the task. Thus, the omissions in the Guatemalan reporting caused several CIA careers to unravel. Lying to foreigners was one thing, something necessary to espionage. Lying to colleagues with security clearances and a need to know threatened the integrity and the effectiveness of an intelligence service.

The discipline that resulted from the IG investigation into Alpirez was described as forceful.<sup>185</sup> The IG's final report harshly criticized CIA officers in Guatemala for hiding their activities from two American ambassadors, Congress, and the CIA.<sup>186</sup> While OIG did not uncover any violations of law, its report led an internal CIA review board to recommend the dismissals of a former division chief and a station chief, as well as the demotion or discipline of ten other officers.<sup>187</sup> In sum, the IG report prompted DCI John M. Deutch to pledge a broad implementation of the

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ordered the inspectors general of the Departments of Justice, State, and Defense to look into the matter).

183. Tim Weiner, *More Is Told About C.I.A. in Guatemala*, N.Y. TIMES, Apr. 25, 1995, at A6.

184. *Id.* In May 1994, within a month of receiving a tip from the station's deputy chief of staff, the IG completed an investigation and released a report that rebuked the station chief for multiple instances of poorly handling sensitive information, including failure to alert the U.S. ambassador of a plot by Guatemalan military officers to spread lies about her personal life.

185. Tim Weiner, *C.I.A. May Dismiss Chief Officer Involved in Guatemala*, N.Y. TIMES, Sept. 28, 1995, at A3. One source said that the discipline was the most severe imposed "in recent years." *Id.*

186. Tim Weiner, *C.I.A. Says Agents Deceived Superiors on Guatemala Role*, N.Y. TIMES, July 26, 1995, at A1 [hereinafter Weiner, *Deceived Superiors*]. Though no laws were violated, unnamed senior CIA officials said that the incidents in Guatemala violated the CIA's standards of professionalism and judgment. Weiner, *Hazy Tie*, *supra* note 181. The IG report also criticized CIA officers for continuing to pay Alpirez as an informant, even after allegations surrounding the killings. Weiner, *Deceived Superiors*, *supra* note 186.

187. Weiner, *supra* note 185. The two recommended for dismissal were Terry Ward, chief of covert operations in Latin America from 1990-1993, and Frederick Brugger, Guatemalan station chief from 1991-1993. *Id.* The IG report faulted Ward for not managing difficult personal issues in the Guatemala station, while Brugger was singled out for failing to notify the CIA, State Department, or Congress that Alpirez, a "prime suspect" in the killings, was being paid as a CIA agent. *Id.*

report's recommendations, including: (1) full reporting of human-rights abuses by CIA assets; (2) tougher standards for selecting and maintaining station chiefs and assets;<sup>188</sup> and (3) full reporting by a station chief to the ambassador.<sup>189</sup>

After 9/11, some critics focused on the supposed "asset scrubs" as evidence that the CIA had become too squeamish in conducting the dirty business of espionage. Operational guidelines were changed or interpreted to adjust to the catastrophic threat of international terrorism. In any event, on the Guatemalan investigation, the IG followed a pattern of reacting to abuses and the perceptions of abuses.

With more time and resources, the IG might do better in preventing abuses; a proactive mode could be added to a reactive mode. So as the Obama administration reacts to abuses and perceptions of abuses, it seems only a matter of time before more recommendations are made about checks and balances at CIA.

### 3. CIA-Contra Drug Links

The IG is just as likely to react to allegations from the press as to formal referrals from Congress or the President. Many allegations in the media related to the CIA's role in Central America during the Reagan administration. In August 1996, Gary Webb of the *San Jose Mercury News* wrote three articles known as the "Dark Alliance" series, in which he linked the CIA to cocaine distribution in Los Angeles during the 1980s.<sup>190</sup> Webb claimed that a South-Central Los Angeles drug dealer introduced crack to several American cities with assistance from the CIA-backed Nicaraguan Contra army, who, in turn, were using a Colombian pipeline and drug profits to finance their war against the Sandinista government in Nicaragua.<sup>191</sup> Accusing the Contras of triggering a "crack explosion in urban America," Webb claimed that the CIA hampered the investigations of

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188. Of the paid informants who tipped off the CIA about the Alpirez incidents, only one in ten had been tested and found reliable; half were never checked in any way. Weiner, *Hazy Tie*, *supra* note 181.

189. *Id.*

190. See Gary Webb, 'Crack' Plague's Roots Are in Nicaragua War, *SAN JOSE MERCURY NEWS* (Cal.), Aug. 18, 1996, at A1 [hereinafter Webb, *Plague Roots*]; Gary Webb, *Odd Trio Created Mass Market for 'Crack,'* *SAN JOSE MERCURY NEWS* (Cal.), Aug. 19, 1996, at A1; Gary Webb, *War on Drugs' Unequal Impact on U.S. Blacks,* *SAN JOSE MERCURY NEWS* (Cal.), Aug. 20, 1996, at A1. The three articles above comprise the "Dark Alliance" series; all three are available at <http://www.narconews.com/darkalliance/drugs/start.htm>. See also CENTRAL INTELLIGENCE AGENCY OFFICE OF INSPECTOR GENERAL, OVERVIEW: REPORT OF INVESTIGATION CONCERNING ALLEGATIONS OF CONNECTIONS BETWEEN CIA AND THE CONTRAS IN COCAINE TRAFFICKING TO THE UNITED STATES, 96-0143-IG (1998), available at <https://www.cia.gov/library/reports/general-reports-1/cocaine/overview-of-report-of-investigation-2.html> (further detailing the allegations made in Webb's articles).

191. Webb, *Plague Roots*, *supra* note 190.

two principal players in the crack network and approved of the Contras' drug dealing to accomplish their goals.<sup>192</sup>

Webb's articles caused civil rights groups and black members of Congress to complain. DCI Deutch, looking for political cover, informed the Senate Select Intelligence Committee in September 1996 that OIG would investigate Webb's claims in "a forthright and complete manner."<sup>193</sup> Webb's claims, though captivating, were short on facts. To exonerate the CIA, OIG had the unenviable task of proving a negative. In November 1996, an initial investigation by IG Frederick Hitz found "no credible information" that the Contras were engaged in drug trafficking with the federal government's knowledge.<sup>194</sup> And in January 1998, after further investigation, Hitz released a report that dismissed Webb's charges altogether.<sup>195</sup> These reports, however, did not put an end to the urban legends.

For additional cover, DCI Deutch asked IG Hitz to pursue a broader investigation of the connections between the Contras and drug trafficking.<sup>196</sup> This broader investigation resulted in a 500-page volume on the working relationship between the CIA and the Contras.<sup>197</sup> OIG criticized CIA supervisors for a fitful and sloppy investigation into allegations that approximately two dozen CIA-affiliated Contras were involved in drug trafficking.<sup>198</sup> These criticisms support the notion that the operations division needs external checks and other internal checks. The OIG report also faulted the CIA for failures to inform; in particular, the Agency failed to inform Congress and the Justice Department of numerous allegations that

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192. *Id.*

193. Steven Lee Myers, *Inquiries into Report That Contra Rebels Sold Cocaine in U.S.*, N.Y. TIMES, Sept. 21, 1996, at A3. DCI Deutch's insistence on a "forthright and complete" investigation rings hollow to the man tasked for the job, Frederick P. Hitz. According to recent statements from Hitz, DCI Deutch did not really want OIG to investigate the allegations in the "Dark Alliance" series. Interview with Frederick P. Hitz, *supra* note 68. Despite the DCI's reluctance, Hitz says he believed the claims were serious enough to warrant OIG review. *Id.*

194. *C.I.A. Official Sees No Evidence of Crack Role*, N.Y. TIMES, Oct. 24, 1996, at A17.

195. CENTRAL INTELLIGENCE AGENCY OFFICE OF INSPECTOR GENERAL, *supra* note 190.

196. James Risen, *C.I.A. Says It Used Nicaraguan Rebels Accused of Drug Tie*, N.Y. TIMES, July 17, 1998, at A2.

197. *Id.* See also CENTRAL INTELLIGENCE AGENCY OFFICE OF INSPECTOR GENERAL, *supra* note 190.

198. Risen, *supra* note 196. In April 1987, then-DCI Robert M. Gates apparently wrote a memo stressing that the CIA needed to avoid any hint of drug-related impropriety in its Central American operations, but this memo only reached the Deputy Director for Operations. James Risen, *C.I.A. Reportedly Ignored Charges of Contra Drug Dealing in '80's*, N.Y. TIMES, Oct. 10, 1998, at A7. Central America was not the first place the CIA was linked to drug trafficking. During the Vietnam War, the CIA and its proprietary Air America were accused of tolerating or assisting drug trafficking so that its proxies, in Laos and elsewhere, could finance their activities against Communists in the region.

the Contras were linked to drug trafficking – allegations that emerged shortly after the Contra forces were created.<sup>199</sup>

#### 4. September 11 Terrorist Attacks

The terrorist attacks on September 11, 2001 show the price Americans pay when their intelligence agencies fail them. American intelligence agencies received information in June 2001 that Khalid Sheikh Mohammed – a Kuwaiti terrorist already under indictment for a 1996 plot to blow up American passenger jets over the Pacific – was involved in sending terrorists to America.<sup>200</sup> They later linked Khalid Sheikh Mohammed to plans to use aircraft as instruments of destruction.<sup>201</sup> Just before the September attacks, the CIA and FBI failed to coordinate on counterterrorist operations, first, regarding two plotters who were based in San Diego after attending a “terrorism summit” in Malaysia,<sup>202</sup> and again when Zacarias Moussaoui, a would-be plotter, was captured in Minneapolis.<sup>203</sup> Even though the CIA had ample warnings at a time it purported to be “at war” with al Qaeda,<sup>204</sup> it was caught flat-footed on that sunny Tuesday morning when al Qaeda converted four jetliners into guided missiles against American targets.

Following this intelligence failure on the scale of Pearl Harbor, OIG was not so critical about 9/11.<sup>205</sup> Two other investigations received more attention – a joint congressional inquiry and the independent 9/11 commission. The joint inquiry, building on internal checks, sought OIG reports from the CIA and FBI to determine “whether and to what extent personnel at all levels should be held accountable” for the failures that led to the attacks.<sup>206</sup> One investigation built on another.

More personal than other investigations, the CIA’s IG focused on a small group of officials, including former DCI George Tenet,<sup>207</sup> former

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199. Risen, *supra* note 196. Withholding the allegations from Congress was especially important in light of the 1986 cut-off of funding for any groups involved in drug trafficking. *Id.*

200. James Risen, *Threats and Responses: The Investigation*, N.Y. TIMES, Dec. 12, 2002, at A1.

201. *Id.*

202. Eric Lichtblau, *Report Details F.B.I.’s Failure on 2 Hijackers*, N.Y. TIMES, June 10, 2005, at A1.

203. See James Risen, *Traces of Terror: Intelligence Gathering*, N.Y. TIMES, Aug. 1, 2002, at A20.

204. See Risen, *supra* note 200.

205. Due to classification, access to the actual OIG report has been limited. The public release of the report came in August 2007 when the CIA issued a redacted Executive Summary at Congress’s prodding. See generally OIG 9/11 REPORT, *supra* note 3.

206. Douglas Jehl & Eric Lichtblau, *Review at C.I.A. and Justice Brings No 9/11 Punishment*, N.Y. TIMES, Sept. 14, 2004, at A18.

207. The Executive Summary specifically rebuked Tenet for his failure to harness the CIA’s available resources on counterterrorism or to follow up on his “We are at war” memo.

deputy director of operations James Pavitt, and former director of the CIA's Counterterrorist Center, J. Cofer Black.<sup>208</sup> Tenet, for one, struck back both in his memoirs and in public appearances.<sup>209</sup> Tenet, more than Pavitt or Black, was fighting for his legacy. While Congress had specifically asked the IG to determine "to what extent personnel . . . should be held accountable," the report did not propose any specific actions. Instead, the recipient of the report, DCIA Porter Goss, was called to assemble "accountability boards" within the CIA's clandestine service.<sup>210</sup> Although many lives had been lost on 9/11, no careers at CIA were ruined. Rather, an agency that drifted after the fall of the Soviet Union gained a sense of self – and fists full of dollars in new funding.

It was a miracle that the IG report saw the light of day. When OIG finally released its report about 9/11, nearly three years had passed since Congress requested it.<sup>211</sup> In September 2004, IG John Helgerson submitted a draft to acting DCI John McLaughlin, who returned the draft to Helgerson with a request for more information.<sup>212</sup> Then, in October 2004, a month after Goss took office, the DCIA blocked distribution of a draft.<sup>213</sup> In addition, Goss asked OIG to avoid any conclusions about individual accountability.<sup>214</sup> In August 2005, DCIA Goss finally presented the OIG report to Congress.<sup>215</sup> Though several senior CIA officials were specifically named, the report was kept classified, and the only names publicized came through leaks.<sup>216</sup> All in all, given OIG's limited powers, current officials

OIG 9/11 REPORT, *supra* note 3, at viii-x. Although Tenet recognized the need for a plan, he never implemented one. *Id.* at ix.

208. Scott Shane & James Risen, *Internal Report Said To Fault C.I.A. for Pre-9/11 Actions*, N.Y. TIMES, Aug. 26, 2005, at A11. Over a dozen current and former officials were implicated in the report, but the number of those singled out, and their names, were kept classified. *Id.* An earlier draft also criticized the CIA for not recruiting even low-level operatives in Al Qaeda; it is unclear whether this criticism survived into the final draft. *Id.*

209. See GEORGE TENET, *AT THE CENTER OF THE STORM: MY YEARS AT THE CIA* 173 (2007) ("The one thing that so many people have missed about the CIA and 9/11, including the 9/11 Commission so far as I can tell, is that it was personal to us. Fighting terrorism is what we do; it's in our blood. In the months and years leading up to 9/11 we had worked this ground every day.").

210. Shane & Risen, *supra* note 208; see also OIG 9/11 REPORT, *supra* note 3, at vi. Unnamed officials suggested that the only means of reprisal against former officials would be to "send them a letter of reprimand." Shane & Risen, *supra* note 208.

211. Scott Shane, *Reputations Are Mostly at Stake as Talk on C.I.A. Report Turns to How Much to Reveal*, N.Y. TIMES, Aug. 27, 2005, at A9.

212. Jehl & Lichtblau, *supra* note 206.

213. Douglas Jehl, *C.I.A. Is Accused of Delaying Internal Report*, N.Y. TIMES, Oct. 27, 2004, at A18.

214. Douglas Jehl, *C.I.A. Chief Seeks Change in Inspector's 9/11 Report*, N.Y. TIMES, Nov. 2, 2004, at A16.

215. Scott Shane, *supra* note 211.

216. See *id.* Besides the DCI – identified by position, but not by name – no officials were specifically named in the Executive Summary released to the public. See also OIG

had more to fear than former officials – and current ones did not have much to fear.

### 5. *Mistreatment of Detainees*

After September 11, not many agencies stepped forward to do the dirty work. That left the CIA to work the alleys and the caves in the global struggle against terror. Since then, there have been reports that CIA personnel mistreated detainees by going farther than approved interrogation and detention procedures. In two separate incidents in November 2003, CIA personnel were linked to the death of an Iraqi citizen under interrogation at Abu Ghraib prison in Iraq<sup>217</sup> and the death of an Iraqi general suffocated in a sleeping bag.<sup>218</sup> When the abuses by military police at Abu Ghraib were displayed worldwide, it was also revealed that the CIA had persuaded military personnel to hold some detainees as “ghost prisoners” outside the prison’s standard intake.<sup>219</sup>

Although government classification obscures a complete picture, several clues exist into OIG’s investigations of detainee treatment. One investigation, started with the CIA’s involvement at Abu Ghraib, expanded into the CIA’s interrogations at other Iraqi facilities.<sup>220</sup> In 2005, additional

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9/11 REPORT, *supra* note 3.

217. Jane Mayer, *A Deadly Interrogation*, THE NEW YORKER, Nov. 14, 2005, at 44. Abu Ghraib staff stated that, upon Manadel al-Jamadi’s arrival at the prison, his speech and motor skills appeared to be normal. *Id.* But forty-five minutes later, following a sequence in which CIA interrogators hooded Jamadi with a plastic sandbag and suspended him in a “Palestinian hanging” – a position in which a prisoner is suspended by his arms, which are shackled behind his back, five feet off the ground – Jamadi’s body went limp, and blood flowed from his nose and mouth when he was brought to the floor. *Id.* Medical experts who reviewed the incident concluded that it was likely that the combination of broken ribs (likely suffered during his capture) and his hanging position caused Jamadi to die of asphyxiation, similar to how one would die in a crucifixion. *Id.* While government authorities classified Jamadi’s death as a homicide, the lead CIA interrogator was not charged criminally and continued to work for the Agency. *Id.*

218. Douglas Jehl & David Johnston, *Within C.I.A., Growing Fears of Prosecution*, N.Y. TIMES, Feb. 27, 2005, at A1. The deaths led CIA management to remove its Baghdad station chief in December 2003; the station chief left the CIA altogether by February 2005. *Id.*

219. Douglas Jehl & David Johnston, *C.I.A. Expands Its Inquiry into Interrogation Tactics*, N.Y. TIMES, Aug. 29, 2004, at A10. An initial Army report found eight undocumented “ghost” detainees, but a later report indicated that perhaps as many as 100 detainees were kept off the books from Red Cross inspectors. Eric Schmitt & Douglas Jehl, *Army Says C.I.A. Hid More Iraqis Than It Claimed*, N.Y. TIMES, Sept. 10, 2004, at A1. One “ghost” detainee died in custody at Abu Ghraib after being struck in the head during his arrest. Jehl & Johnston, *supra* note 219. Three other Saudi ghost-detainees were released only after inquiries from Secretary of State Colin Powell and the Saudi government. Douglas Jehl, *Some Abu Ghraib Abuses Are Traced to Afghanistan*, N.Y. TIMES, Aug. 26, 2004, at A11.

220. Jehl & Johnston, *supra* note 219.

inquiries were initiated as to abuse of detainees in Afghanistan,<sup>221</sup> the extraordinary rendition of suspected terrorists,<sup>222</sup> and the CIA's use of secret detention sites throughout the world.<sup>223</sup>

A 2004 IG report – a redacted draft of the report was released in 2008, and further details were released in August 2009 – expressed deep concerns about the CIA's interrogation techniques.<sup>224</sup> John Helgerson, noting the intermediate standard of cruel, inhuman, and degrading treatment, challenged CIA and Justice Department lawyers who concluded that the interrogation techniques were acceptable as long as they did not cross the line into torture. He also reminded them of the effects of combining certain techniques. This legal challenge actually came from a non-lawyer. The IG made ten recommendations, several of which the Agency applied in later interrogations.<sup>225</sup>

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221. Douglas Jehl, *Senate May Open Inquiry into C.I.A.'s Handling of Suspects*, N.Y. TIMES, Feb. 13, 2005, at A15 [hereinafter Jehl, *Senate Inquiry*]. According to testimony from DCIA Goss, between 100 and 150 suspected terrorists were transferred into foreign custody after September 11, 2001. Douglas Jehl, *Questions Left by C.I.A. Chief on Torture Use*, N.Y. TIMES, Mar. 18, 2005, at A1 [hereinafter Jehl, *Questions Left*].

222. Jehl, *Senate Inquiry*, *supra* note 221.

223. *Id.*

224. The IG report stated that while the interrogation techniques likely did not rise to the level of torture, they appeared to represent cruel, inhuman, and degrading treatment, as defined under the Convention Against Torture. OFFICE OF INSPECTOR GENERAL, COUNTERTERRORISM DETENTION AND INTERROGATION ACTIVITIES, SEPTEMBER 2001 – OCTOBER 2003, at 92-105 (2004) (redacted) [hereinafter, "OIG 2004 Detainee Report"] available at <http://graphics8.nytimes.com/packages/pdf/politics/20090825-DETAIN/2004 IAIG.pdf>; see also Douglas Jehl, *Report Warned C.I.A. on Tactics in Interrogation*, N.Y. TIMES, Nov. 9, 2005, at A1 (describing the report almost three years before the initial draft was publicly disclosed); Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. TREATY DOC. NO. 100-20, 1465 U.N.T.S. 85, 113. The text of the Torture Convention, with links to the reservations, declarations, and understandings upon ratification of the United States and other states, can be found at Office of the High Commissioner for Human Rights, *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (n.d.), [http://www.unhchr.ch/html/menu3/b/h\\_cat39.htm](http://www.unhchr.ch/html/menu3/b/h_cat39.htm).

According to press accounts, the report, ultimately released in redacted format, also criticized the CIA's use of waterboarding on September 11 mastermind Khalid Sheikh Mohammed. Douglas Jehl & Eric Lichtblau, *Shift on Suspect Linked to Role of Al Qaeda Figures*, N.Y. TIMES, Nov. 24, 2005, at A1. Press accounts also noted that, while the report addressed the IG's disapproval of the excessive use of waterboarding, the report did not specifically denounce the technique. See *id.* The seemingly inconsequential distinction takes on greater meaning when viewed in light of DCIA Goss's defense of waterboarding, almost a year after the IG's report, implying that the technique was within "an area of what I will call professional interrogation techniques." Jehl, *Questions Left*, *supra* note 221.

225. Jehl, *supra* note 224. Although DCIA Goss testified in February 2005 that eight of the IG's ten recommendations had been implemented, the Senate Select Committee on Intelligence, in summer 2005, contended that only five of the ten recommendations had been executed. *Id.*

Years later, after *The New York Times* broke the story in December 2007, OIG assisted the FBI and the Justice Department in their initial investigation of the destruction of videotapes of aggressive interrogations conducted on two high-level suspects. This investigation, converted into a full criminal inquiry, is now the exclusive domain of John Durham, a career prosecutor.

At the CIA, the rank and file have waited to see whether the Justice Department will dig deeper into these cases under President Obama and whether congressional committees will hold hearings about renditions, aggressive interrogations, and black sites. OIG could prompt the Justice Department and Congress. Or, inquiries from the Justice Department and Congress could cause OIG not only to expand its investigations, but to open new ones. Between external and internal guards over the intelligence community, the effects are often mutual.

## VI. SYNTHESIS

### A. *Is Internal Oversight Effective?*

By now, we have presented a host of questions about the CIA's OIG. Has OIG lived up to its intended purposes and Congress's expectations?<sup>226</sup> Has OIG conducted its investigations and inspections of CIA programs effectively? Has OIG provided leadership in promoting efficiency and ferreting out fraud? Has OIG kept the DCIA and the congressional intelligence committees sufficiently informed about the CIA's inner dealings? From the major investigations, our tentative conclusion is that OIG's effectiveness depends, in large part, on the size and severity of the problem being investigated.

OIG has generally produced better results when addressing discrete, isolated problems. For example, the investigation of the Guatemalan station was very successful for OIG. The IG report on the CIA's activities in Guatemala was harshly critical of the way that several CIA officers conducted operations. The harsh language helped convince an internal CIA review board to dismiss several officers from the CIA, and led to pledges of major changes in operations from then-DCI Deutch.<sup>227</sup> In providing recommendations to improve effectiveness and efficiency, and by informing both the DCI and the congressional intelligence committees of significant deficiencies in the Guatemalan station, the investigation proved

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226. See 50 U.S.C. §403q(a) (2006). As we have noted, while the IG has responsibility for monitoring all manners or levels of effectiveness, the only opportunity for the public to evaluate the IG's performance is to judge the office by its successes or failures when it operates in the spotlight.

227. See *supra* Part V.A.2. DCI Deutch promised to change the process by which station chiefs and informants are selected, the reporting of alleged human rights abuses involving CIA informants, and the means by which station chiefs keep ambassadors informed. *Id.*

a veritable slam dunk for OIG.<sup>228</sup> The Guatemalan case stands as an OIG success story because the remedies took the form of something more than just words in a report.

But OIG's success in the Guatemalan case stands in contrast to the minor impact from the investigations of Aldrich Ames, the Contra-cocaine connection, and 9/11.<sup>229</sup> In those cases, OIG identified either major lapses in protocol, serious failures of execution, or both. Yet the IG offered few suggestions for meaningful discipline. In many instances, the CIA's failures were errors of commission, rather than mere omissions.<sup>230</sup> In each case, the DCIA did not go beyond the recommendations from either the IG or the review boards. In the end, the DCIA dispensed little in the way of discipline. While it is impossible to know how the DCIA would have reacted to more punitive proposals from the IG, it stands to reason that a more aggressive IG would have provided the DCIA with cover. We do not intend to measure the IG's effectiveness by the severity of its actions – that is, the more dismissals the better. Instead, we merely believe that the IG should be the one place willing to recommend tough measures when they are appropriate.

Both the IG and congressional investigations into Ames found that the lack of cooperation between the CIA and the FBI was part of the reason Ames evaded capture for so long.<sup>231</sup> But afterward, things did not appear to improve. During the post-9/11 investigations, it was apparent once more that a contributing factor in the failure to detect or prevent the attacks was the CIA's lack of effective communication with the FBI. Those who contributed to the Ames disaster, after all, were not held accountable when they allowed a catastrophe on September 11.

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228. Tongue in cheek, we intend “slam dunk” to indicate the successful – and forceful – execution of a goal, even though our use of that term is at odds with the common parlance for some CIA officials. See William Hamilton, *Bush Began To Plan War Three Months After 9/11*, WASH. POST, Apr. 17, 2004, at A1 (describing former DCI Tenet's use of the phrase “slam dunk” to twice reassure President Bush of the certainty of finding weapons of mass destruction in Iraq).

229. Since the majority of OIG work regarding detainee treatment is either still in progress or has not yet been made public, it is difficult to evaluate the impact of OIG on these situations, and thus difficult to compare against success in the Guatemalan case. Therefore, discussion of the detainee investigations will largely be confined to *supra* Part V.A.2.e.

230. For example, while the IG found that a number of the CIA officers were aware of allegations of connections between the contras and drug trafficking, they chose to ignore the significance of those allegations. See *supra* Part V.A.2.c. Similarly, while many or most of Ames's supervisors were aware of his abject failings as an employee, they chose to promote him nonetheless. See *supra* Part V.A.2.a.

231. See also David M. Crane, *Divided We Stand: Counterintelligence Coordination Within the Intelligence Community of the United States*, ARMY LAW., Dec. 1995, at 26 (providing additional perspective, in advance of 9/11, on the structural problems that plagued the FBI and CIA in their counterespionage activities).

Echoes of the Ames case emanated from the 2008 wire fraud conviction of former CIA Executive Director, Kyle “Dusty” Foggo. Despite a personnel record that noted his “very liberal and self-serving position regarding the interpretation of Agency rules and regulations,” a former supervisor who considered him “morally suspect,” and suspicions from multiple parties about contractor dealings that eventually proved his undoing, Foggo rose to the number three position in the CIA.<sup>232</sup> While the CIA supported the prosecution once in motion, the investigation of Foggo was an offshoot of a U.S. Attorney’s public corruption investigation of bribery involving Congressman Randy “Duke” Cunningham.<sup>233</sup> Again, internal observers turned a blind eye as a questionable character moved up the Agency ladder. An external check cleaned up matters on its own.

OIG’s reaction to the Guatemalan incident, by contrast, was precisely what one would expect from a body tasked with enhancing effectiveness and with ferreting out fraud. The Guatemalan incident, however, was easy for OIG; it involved low-profile officers who had clearly violated operational guidelines. Although potentially emblematic of other problems at the CIA, it was addressed largely in isolation.<sup>234</sup> Moreover, the IG’s actions on the Guatemalan incident were quite similar to those of the non-statutory IGs in the cases of the Bay of Pigs and the Nicaraguan guerrilla manual. As such, it is difficult to argue that the IG’s statutory powers enhanced its effectiveness.

The CIA’s failures on Ames and on the 9/11 attacks differed from those on Guatemala. Ames and 9/11 were systemic failures with catastrophic consequences. They could not be dismissed by tossing out a bad officer or two; these were moments that left the CIA exposed like an emperor without any clothes. And yet, when presented with an opportunity to identify the sources of these problems, to offer remedies for mistakes, and to present solutions for the future, the IG reports were far less aggressive than in the

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232. R. Jeffrey Smith, *Files Unsealed Before Sentencing Detail Rule-Breaker’s Rise at CIA*, WASH. POST, Feb. 26, 2009, at A3.

233. *Id.*; Joby Warrick, *Ex-CIA Official Indicted Over Agency Job for Mistress*, WASH. POST, May 22, 2008, at A9.

234. OIG’s 2008 report of a botched drug interdiction in 2001 illustrates OIG’s limited powers even in “isolated” incidents. The Peruvian military, operating with the aid of CIA spotters and advisors in a reconnaissance plane, had mistakenly shot down a family of American missionaries in a float plane, killing two people. Despite an OIG report that described “sustained and significant violations of required intercept procedures” and obstruction of investigations by Congress and the Justice Department, sixteen current and former CIA employees received only minimal discipline from an internal CIA Accountability Board. The CIA’s public statement concerning the Peru shootdown directly contradicted assertions from the OIG report. See Mark Mazzetti, *C.I.A. Withheld Data in Peru Plane Crash Inquiry*, N.Y. TIMES, Nov. 21, 2008, at A6; Matthew Cole & Brian Ross, *Justice Denied’ in CIA Shootdown of Missionaries*, ABC NEWS, Feb. 3, 2010, available at <http://abcnews.go.com/Blotter/justice-denied-cia-shootdown-missionaries/story?id=9737718&page=3>; *Statement from CIA on the 2001 Peru Shootdown*, ABC NEWS, Feb. 3, 2010, available at <http://abcnews.go.com/Blotter/cia-statement-2001-peru-shootdown/story?id=9738624>.

aftermath of the investigations into Guatemala, the Nicaraguan manual, or the Bay of Pigs. When the largest problems surfaced, the statutory OIG did not add significant remedial value.

*B. Would Things Be Different Under a Non-Statutory IG?*

Our sense is that things would not have been much different after 1990 if CIA still had a non-statutory IG. The “independent watchdog” of a statutory IG did not expose major shortcomings that otherwise would have gone unnoticed. Nor did the watchdog play a major role in deterring institutional sloth and excess. In certain cases, however, the IG asserted independence that might not have been possible without Section 403q. Again, the results for the statutory IG may charitably be described as “mixed.”

*1. Protection of Whistleblowers*

The statutory IG is supposed to draw on information from within the CIA and to protect whistleblowers from retaliation. But of the five major IG investigations we have discussed, it does not appear that OIG was first to uncover any of the underlying incidents. Representative Torricelli's statements about the Guatemalan incidents were so public they required OIG's participation; the attacks on 9/11 happened before the nation's eyes; and the Ames arrest made instant headlines. Most troubling for the promise of an internal check was that the press broke the stories about the Contra-cocaine connection and the allegations of detainee mistreatment. In these cases, the reporters were ahead of OIG either because their own research was better or because their sources were superior to OIG's. Perhaps whistleblowers trusted the media as a better way of exposing abuses. Or perhaps whistleblowers supplemented OIG contacts with calls to reporters.

Former IG Frederick Hitz, in describing OIG's sources, said, “If the press can find sources, the [OIG] will have sources.”<sup>235</sup> Hitz aside, when it was Dana Priest who broke *The Washington Post* story about secret CIA prisons – prisons that OIG had not investigated before the story – it leads to the conclusion that intelligence insiders deem Ms. Priest (or Mr. Risen, or Mr. Lichtblau, or Mr. Pincus, or any other investigative reporter) a more effective agent of change than OIG.<sup>236</sup> And not only did the whistleblower

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235. Interview with Frederick P. Hitz, *supra* note 68.

236. See Dana Priest, *CIA Holds Terror Suspects in Secret Prisons*, WASH. POST, Nov. 2, 2005, at A1. Besides Ms. Priest's article about secret prisons in Eastern Europe, several other controversial intelligence programs – both inside and outside the CIA – were revealed first by investigative reporters; these programs included the National Security Agency's warrantless monitoring and the Justice Department's “torture memo,” which instructed CIA interrogators of the allowable limits of physical or mental coercion. See James Risen & Eric

choose Ms. Priest either instead of, or in addition to, OIG, he or she did so despite the risk of being disciplined, discharged, or even arrested for disclosing secrets to a reporter. There could be many reasons why CIA whistleblowers place greater trust in the media than OIG. John le Carré, a master spy novelist and a former British intelligence officer, indirectly suggests one:

I think that people who take refuge in secrecy are terrified of having it violated. It may be pretty bad if the Russians find out about it, but it's terrible if the press finds out about it. I don't think many spies expect not to have their names in the files of the opposition. But the idea of having their faces in the newspaper – that's something they wake up and sweat about in the middle of the night because there, somehow their identity and their security are being taken away from them.<sup>237</sup>

CIA whistleblowers may feel that taking their issues to the press is not only faster, but serves as greater punishment of the alleged violators. Alas, if OIG's reputation within the Agency is so low that people risk prosecution rather than merely report their concerns to the authorized internal guard, it becomes questionable whether the statutory IG functions any better, or differently, from the non-statutory IG.

## 2. OIG's Independence from the DCIA

OIG's record for independence, however, appears to be better than its record for ferreting out major problems on its own. The Contra-cocaine investigation began when IG Hitz asserted his independence from DCI Deutch.<sup>238</sup> The ensuing IG investigation into the "Dark Alliance" at first disproved the story's allegations, but later uncovered several instances of CIA officers not paying sufficient attention to links between the Contras and drug traffickers. Yet even in these cases where OIG has asserted its independence, there is little evidence of any formal discipline or institutional change.

The IG's reports about detainee mistreatment also demonstrated OIG's independence. At first, DCIA Goss's unwillingness to adopt all the IG's

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Lichtblau, *Bush Lets U.S. Spy on Callers Without Courts*, N.Y. TIMES, Dec. 16, 2005, at A1; Dana Priest & R. Jeffrey Smith, *Memo Offered Justification for Use of Torture*, WASH. POST, June 8, 2004, at A1. And though not all leaked stories have a huge impact, "everyday" allegations of wrongdoing found their way into the press long before the very public Contra incident.

237. DVD: JOHN LE CARRÉ'S TINKER TAILOR SOLDIER SPY (Acorn Media 2002) (see "Interview with John le Carré" in "Special Features," Disc 1).

238. See *supra* text accompanying note 193 (discussing the inconsistency between published accounts of the investigation's genesis and the later statements of Frederick Hitz, CIA IG at the time of the investigation).

recommendations on interrogations appeared to undercut the IG. But once CIA management broke with the IG, the IG communicated his recommendations to the congressional intelligence committees. That report to the Hill increased the scrutiny of Goss for not making changes. Thus, without the IG's independence from the DCIA, or an ability to report out to Congress, a policy debate between the executive and legislative branches may never have occurred.

These two examples of IG independence are counterbalanced by the IG's hesitation in releasing its 9/11 report. The IG's initial report on the Contra-cocaine allegations was completed in less than two months;<sup>239</sup> the entire OIG investigation into the Ames case was completed in eight months;<sup>240</sup> but, for political reasons, it took OIG nearly three years to release its 9/11 report. Pressure from DCIA Goss regarding the structure and the findings of the 9/11 report contributed almost a year of delay. That delay, despite constant congressional pressure to release the report, tarnished the IG's reputation for independence. The IG also bowed to pressure from the DCIA in omitting any advice about discipline, even though Congress had specifically tasked the IG to determine the extent to which personnel should be held accountable for the Agency's failures. In all, the response from senior CIA officers to the IG's 9/11 report is reminiscent of the Bay of Pigs IG report being placed under lock and key for thirty-seven years. CIA management disagreed with, and then ignored, what OIG had to say.

As noted, DCIA Hayden was more assertive than Goss toward OIG. Hayden asked Robert Dietz to review its activities.<sup>241</sup> In effect, a guard was placed on the guardian. Dietz, part of Hayden's staff at CIA, had served General Hayden as General Counsel at the National Security Agency.<sup>242</sup> CIA officers were upset because they believed that OIG had ceased acting as an impartial judge, and had instead begun a "crusade" against participants in controversial CIA programs.<sup>243</sup> They viewed Hayden's actions as restoring balance to the CIA. Former IG Hitz was not as sanguine.<sup>244</sup>

After Hayden's review, the IG agreed to make some changes. Officers would be given more details about interviews with OIG and more of an opportunity to comment on reports before they became final. The result, a contrite IG, was a victory for the operators and a loss for the IG. It remains

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239. See *C.I.A. Finds No Evidence of a Relationship with Drug Dealers*, N.Y. TIMES, Nov. 7, 1996, at A22. The IG cocaine-Contra report was initiated in late September 1996; by early November 1996, the initial report was completed and was used as the basis for the CIA's filing of a statement with federal district court. *Id.*

240. Shane, *supra* note 211.

241. See Mazzetti & Shane, *supra* note 133.

242. *Id.*

243. *Id.*

244. *Id.*

to be seen whether DCIA Panetta, under President Obama, will keep these changes in place.

While OIG has shown glimpses of its true potential, incidents such as the struggle over the 9/11 IG report and the Hayden investigation diminish its successes. Unless OIG creates and fosters a reputation for independence across time and circumstances, no one will take it seriously. In a downward cycle, OIG is less likely to attain the independence Congress intended for it.

### *3. Is OIG Effective at Deterring Future Violations?*

Aside from actively uncovering and investigating Agency misconduct, another role for OIG is as a deterrent. Section 403q was supposed to create a new sheriff at the Agency – a Marshal Will Kane who would take down the Frank Millers of the CIA before eventually riding into the sunset with Grace Kelly.<sup>245</sup> The mere presence of a sheriff should make people within the CIA think twice about violating the law. Congress created the statutory IG just after Iran-Contra to check against other large-scale violations and failures.<sup>246</sup> The CIA's IG differs from other federal IGs in patrolling an agency that operates in the shadows, in trying to prevent mistakes that can easily lead to deaths and conflicts with other countries. The CIA's IG differs from the Department of Education's in that the missions at the two agencies are so different. Even so, the same things that undercut effectiveness and independence in most agencies tend to lessen the IG's deterrent force at the CIA. Many CIA operators believe, in basic terms, that they can get past the sheriff.

In criticizing the IG's performance, we continue to be mindful of our limited data. Our sampling, taken from fewer than ten public incidents, does not really explain the IG's role in ferreting out fraud and waste. Instead, our conclusions come from major investigations. The limited number of these investigations may actually be used to argue that the IG functions well, that these are the only glitches in the smooth operations of the CIA. Our sense, however, is that many other failures exist that do not make the headlines. For us and for other critics, it is very difficult to know what occurs out of the public eye. Only through reasoned speculation can we see through the veil of secrecy.

The media's lead in uncovering the CIA's link to drug-running Contras or the existence of black sites also diminishes OIG's reputation. Even before a statutory IG was created, CIA officers factored into their equation that illegal operations could be exposed on the front page of the newspaper, exposure that could take them to jail. To have a true guard over the guardians, CIA officers need to believe that the statutory IG increases the

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245. See HIGH NOON (Stanley Kramer Productions 1952). Presumably, the intent was also that the IG's tenure should end on a more positive note than that of Marshal Kane. See *id.*

246. See *supra* Part V.

risk of exposure. The record is mixed, however. The Guatemalan incident resulted in more severe discipline than might have occurred before the statutory IG.<sup>247</sup> The statutory IG has yet to strike with similar force against counterterrorism excesses from the Bush era.<sup>248</sup>

The CIA's treatment of detainees also provides insights. A statutory IG, by itself, did not deter the CIA from interrogating through Palestinian hangings.<sup>249</sup> In fact, CIA management apparently felt that any concerns about oversight, involving OIG or otherwise, could be addressed by permissive Justice Department memos, including the infamous "torture" memo of August 2002.<sup>250</sup> Since the CIA sidestepped OIG and did not change course until long after OIG expressed concerns about aggressive interrogations,<sup>251</sup> it can be argued that OIG did not deter Agency abuses. The IG investigations, however, may be part of the explanation why waterboarding did not continue after 2003.

The IG's cumulative effect, on interrogations or otherwise, is difficult to measure. The IG's challenge to the Justice Department's legal analysis, for sure, must have flustered the CIA's management. That challenge chipped away at a potential defense, for officers and management alike, of a reasonable reliance on the advice of counsel.

All along, we have been candid about the difficulties in assessing the IG's effect on the broader institution at the CIA. We have recognized that audits and inspections do not make it to the public record. Our analysis of the statutory IG requires conjecture about how many violations were *not* being committed as a result of the IG's presence. In sum, the major investigations only tell part of the story. Yet it appears that OIG has been undercut by an inability to obtain information and to act with total independence. So the rank and file, going forward, need to become more willing to bring their concerns to the IG instead of investigative reporters. Otherwise, OIG will be nothing more than expensive and elaborate window dressing.

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247. See *supra* Part V.A.2.b. But see Part VI.A.1.b *supra* (reciting punishment from the IG investigation of Nicaraguan manuals that is similar to punishment from the Guatemalan incident).

248. See *supra* Introduction and Part V.A.2.e.

249. See Mayer, *supra* note 217.

250. Memorandum from U.S. Dept. of Justice Office of Legal Counsel to Alberto R. Gonzales, Counsel to the President (Aug. 1, 2002), available at <http://www.washingtonpost.com/wp-srv/nation/documents/dojinterrogationmemo20020801.pdf>. The memo stated that physical coercion only rose to the level of torture when it was intended to cause the subject to experience pain similar to that of organ failure or death. *Id.*

251. See *supra* notes 220-225 and accompanying text.

## CONCLUSION

Today, the need for internal oversight on the CIA – and the rest of the American intelligence community – is just as great as it was after Iran-Contra, and probably greater. The CIA must be tethered to American foreign policy, secret or open, and must comply with guidelines that come from executive orders, statutes, and the Constitution. The threats our country faces loom as large as the Soviet menace during the Iran-Contra years. These new threats increase the need for an effective CIA, and the likelihood that CIA officers or their managers will try to meet those threats at any cost. Oliver North, we are sure, will not be the last person to justify wrongdoing by love of country. Frightened by the potential of catastrophic attacks by al Qaeda, North Korea, or other enemies, CIA officers may go to greater lengths than trading arms for hostages. And so repeated through history is the question about OIG's role in keeping CIA officers honest and competent.

OIG is a major strand in a network that keeps the CIA from falling into the void. On paper, the IG seems to have all that is necessary to serve as an effective check against CIA shortcomings. When OIG sees trouble within the CIA, the IG may initiate an investigation, even over the DCIA's protests. Nearly all IG reports find their way to the intelligence committees in Congress, and the IG may approach Congress any time a dispute arises between the IG and the DCIA. Since only the President may appoint or remove the IG, the DCIA no longer has full control over the person charged with CIA oversight. The IG, straddled between two branches, has enough independence to do the job.

Because we have not seen great improvements in the IG's performance on major investigations after the IG was placed on a statutory foundation, we are not very inclined to offer recommendations for changes to institutional structures. But, depending on the identified deficiency, institutional changes can be made. Though IGs across the federal government are supposed to be insulated from political pressure and influence, President Obama's controversial discharge of the IG of the Corporation for Community and National Service in June 2009 illustrated the peril that may await IGs who run afoul of the executive branch.<sup>252</sup> To enhance the IG's independence, for example, the IG statute could be changed to state a term of service that goes beyond the election cycle. The Director of the FBI, as a model, is appointed for a ten-year term, part of the

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252. IG Gerald Walpin was fired by President Obama during an investigation into the alleged misuse of federal grants by Sacramento mayor and Obama supporter, Kevin Johnson. See Associated Press, *Obama Axes AmeriCorps' Inspector General*, CBSNEWS.COM, June 12, 2009, [http://www.cbsnews.com/stories/2009/06/12/politics/main5082820.shtml?source=RSSattr=HOME\\_5082820](http://www.cbsnews.com/stories/2009/06/12/politics/main5082820.shtml?source=RSSattr=HOME_5082820); Byron York, *Gerald Walpin Speaks: The Inside Story of the AmeriCorps Firing*, WASHINGTON EXAMINER, June 14, 2009.

explanation why Robert Mueller has served both Presidents Bush and Obama.

Another example of institutional reform would be to require that a stated percentage of the IG's staff not have prior service of any kind in the CIA. By including more outsiders in the IG's office, we could decrease the chances that the internal guard becomes consciously or unconsciously beholden to the CIA's operators. This statutory change might parallel the tradition that the CIA's General Counsel not have prior service in the Office of General Counsel.

A further option to consider is an inspector general for the entire intelligence community. This new community-IG could coordinate with the CIA's existing IG to make sure that individual intelligence activities are consistent with the law and its overall goals. This extra layer of bureaucracy should be added only, however, if the gains in efficacy and legality outweigh the costs of the new position. The intelligence community, alas, has a tendency to pile coordinators on coordinators and layers upon layers.

The IG, however, is only as good as the people who swear to uphold the duties of the office. Oversight is not automatic, and the personal qualities of the IG, call him Hitz, Snider, or Helgerson, have an effect. In the past, despite all the tools at their disposal, IGs have not always lived up to Congress's expectations. Reforms were needed less to statutes than to culture. Though Section 403q sought to enhance the flow of information to the IG, the media have beaten OIG to the biggest cases. The media's part in the external guard, it seems to us, has often been stronger than OIG's part in the internal guard.

While the statutory position was supposed to foster OIG's independence, the repeated delays of the IG's 9/11 report and DCIA Hayden's use of an OIG overseer reveal the DCIA's significant sway. Plus, the IG's apparent lack of boldness in handling the most significant cases has undermined the office's role. In our view, the IG seems diminished in preventing and detecting misconduct at the CIA.

Perhaps a new DCIA and a new IG, joined together, will make a difference for the Obama Administration. For spymasters, inspectors general, and presidents, perceptions can be as important as reality. Indeed, one of our central themes is that perceptions change reality. Just so, OIG needs to create the impression – outside and inside the CIA – that it operates free from improper interference and inappropriate influence.

One success by the IG in refusing to submit to CIA managers or to the White House increases the chances for the next success. A spiral, so to speak, can just as easily ascend as descend. If the IG acts forcefully against CIA officers who break the law, violate regulations, and perform below professional standards, honest and competent officers will be encouraged to report more things to OIG. That, in an ascending cycle, will deter other officers from straying outside the lines in the first place.

The IG's role becomes easier in a culture of excellence and compliance with the law. The IG affects the culture in the CIA and at the same time it is affected by the culture. So if OIG lives up to its potential, the media will have less to report, and the public might experience the pleasant sound of silence. If not, external guards in the media, courts, or Congress will soon find themselves investigating a massive failure or an egregious abuse, something the internal guard failed to catch at the CIA. One thing leads to another. Even if OIG is only one lantern in the vast spaces of the CIA, when something is pointed in the right direction, it brings light to darkest night.