



Attached is a clean
draft of an essay
I wrote on
Command and Control,
as it Relates to Compliance
With Law and Propriety
— historical and current.

It may help to put
in proper perspective
this issue for the
new DCI's benefit.
He has heard - probably -
so much propaganda
to the contrary.

What do you
think?

JLW
INSPECTOR GENERAL

COMMAND AND CONTROL, AS IT RELATES TO COMPLIANCE WITH LAW AND PROPRIETY

HISTORICAL

Can past abuses by CIA be attributed to inadequate command and control? Is command and control today adequate to prevent future abuses? Convincing replies to these two questions should go a long way to satisfy Congressional critics that CIA is not out of control, but is responsive not only to external oversight from both the Executive and Legislative branches of the Government, but to stringent internal monitoring for compliance with law and propriety by line management, the Inspector General and the General Counsel. Since Congress logically should be convinced by its own past investigative results and current oversight endeavors, if not by our own assurances, I have extracted some relevant quotations from the Senate and House reports of last year. To set the "Rogue Elephant" myth to rest, the Senate's own findings on CIA's past are significant.

The Senate Select Committee, in pursuing its mandate, "focused on three broad questions, one of which bore on command and control; whether the processes through which the intelligence agencies have been directed and controlled have been adequate to assure conformity with policy and law". The processes referred to are of two kinds: (1) the process of external control, and (2) the process of internal control.

A general conclusion which appeared in the Senate Select Committee's final report is: "The Central Intelligence Agency in broad

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terms is not 'out of control'¹, although the Committee found that "there were significant limits to this control" from above² the CIA. Pursuing further the thesis that the problem lay in external, not internal, control are the following additional quotes from the "General Findings" of the SSC Report:

"The Committee concluded that U.S. foreign and military intelligence agencies have made important contributions to the nation's security, and generally have performed their missions with dedication and distinction".³ "The Committee also found that Congress failed to provide the necessary statutory guidelines to insure that intelligence agencies carry out their missions in accord with constitutional processes"⁴.

In addition to blaming Congress for inadequate external control, the Senate Select Committee, in its final report, blames the Office of the President:

"The degree of control and accountability regarding covert action and sensitive collection has been a function of each particular President's willingness to use these techniques".⁵ But "Presidents have not established specific instruments of oversight to prevent abuses -- in essence, Presidents have not exercised effective oversight"⁶.

1 - IBID, p. 427

2 - All italics here and hereafter are the drafter's

3 - IBID, p. 424

4 - IBID, p. 425

5 - IBID, p. 427

6 - IBID, p. 429

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In general terms the Senate Select Committee's History of the Central Intelligence Agency (Section IV) states at the outset a salient conclusion which refutes the rogue elephant thesis:

"The current political climate and the mystique of secrecy surrounding the intelligence profession have created misperceptions about the Central Intelligence Agency. The CIA has come to be viewed as an unfettered monolith, defining and determining its activities independent of other elements of government and of the direction of American foreign policy. This is a distortion."¹

The House Committee on Intelligence (Pike Committee), although failing to release its final report, arrived at the following even more categorical conclusions concerning the control of CIA (if we are to believe drafts of its report shown the CIA and the version of the report appearing in The Village Voice):

"All evidence in hand suggests that the CIA, far from being out of control, has been utterly responsive to the instructions of the President and the Assistant to the President for National Security Affairs".

Congressman Pike, in effect, accused CIA of being a supine elephant, not a rogue elephant. In his eyes, CIA was too responsive to higher authority -- its abuses were committed as a result of too demanding command and control, not too passive or permissive control.

1 - IBID, BOOK IV, SUPPLEMENTARY DETAILED STAFF REPORTS ON FOREIGN AND MILITARY INTELLIGENCE, p. 97

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What neither Congressional Committee stressed adequately was the significant fact that all abuses or illegal activities, except two specific cases in the drug experimentation field, were identified, decried and corrected by CIA, itself, long before any investigation ever began or before the press launched serious attacks. The role of the Committees essentially was not one of discovery but one of publicizing and dramatizing past abuses.

COVERT ACTION

Below are described some Congressional conclusions of a more specific nature. First, the subject of control over covert action is summarized. The Senate Select Committee found:

"The CIA has not been free . . . to carry out covert action as it sees fit. The Committee's investigation revealed that on the whole the Agency has been responsive to internal and external review and authorization requirements."

In the case of Chile, singled out for a separate, in-depth report, the Senate blamed the President for by-passing the 40 Committee machinery in the case of the "Track II" operation, but did not consider this aspect of the operation as an example of CIA being out of control. Other aspects of the Chile operation were carefully cleared by the 40 Committee. And the SSC's question: "Did the threat to vital U.S. national security interests posed by the Presidency of Salvador Allende justify the several major covert attempts to prevent his

1 - IBID, Book I, p. 447

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accession to power?" was answered in its report by the statement:
"Three American Presidents and their senior advisors evidently
thought so."¹ The SSC report on Covert Action (Volume 7) states
categorically: "Executive command and control of major covert
action was tight and well directed."² The SSC did criticize the
procedure in which CIA, itself, determined which covert action pro-
jects were submitted to the 40 Committee, and it felt that certain
intelligence operations, not submitted to the 40 Committee, had
political action implications requiring 40 Committee approval. But
except for a few possible cases of minor covert action (not docu-
mented) in the early 60's, the Senate did not suggest that covert
action operations had been carried out without the knowledge and
approval of at least the Director.³

The House Committee which, unlike the SSC, had access to all
covert action operations submitted to the 40 Committee for the past
ten years disagreed with some of the covert action performed but
concluded, as mentioned above, that the Agency was "utterly respon-
sive to the instructions of the President and the Assistant to the
President for National Security Affairs" and was not "out of control".

The Pike Committee report added the following comment which
makes clear that in those instances in which the 40 Committee did
not specifically pass on CIA's recruitment of covert action assets
(sometimes called "superstructure") or other minor action operations,
at least the Director -- not subordinate officials -- provided approval:

1 - IBID, Intelligence Activities, Senate Resolution 21, Volume 7,
Covert Action, p. 198

2 - Approved For Release 2004/05/05 : CIA-RDP80M00165A002500110003-3

3 - IBID, p. 199

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". . . the CIA Director determines which CIA-initiated covert action projects are sufficiently, 'politically sensitive to require Presidential attention'."

ASSASSINATION PLANNING

Assassination plans represented an especially reprehensible case of abuse in the covert action field. These cases were completely aired by the SSC. There were split opinions on whether or how much successive Presidents knew and approved such operations. While the SSC quite correctly believed that the doctrine of plausible denial, the use of euphemisms to describe "assassination", and the theory that authorities granted one Director could be assumed to cover subsequent Directors "created the risk of confusion where sober judgments were most necessary", it did not suggest that such actions ever took place without at least approval at the very top of the Agency.

ABUSE OF CIVIL RIGHTS

Intelligence activities affecting the rights of American citizens understandably loomed large in the abuse category of the Senate Select Committee. This included infiltrating and surveilling groups of American dissidents, dissemination of material collected on these groups, and covert action designed to disrupt or discredit such groups. The following general statement by the SSC seems to me to be a fair one and one which places the blame where it belongs:

1 - IBID, Alleged Assassination Plots Involving Foreign Leaders,
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1978, p. 227

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"We must acknowledge that the assignment which the Government has given to the intelligence community has, in many ways, been impossible to fulfill. It has been expected to predict or prevent every crisis, respond immediately with information on any questions, act to meet all threats, and anticipate the special needs of Presidents. And then it is chastised for its zeal. Certainly, a fair assessment must place a major part of the blame upon the failures of senior executive officials and Congress."¹

The SSC blames the excessive power of the Executive built up over the years and the failure of Congress to exercise the Congressional check and balance role which is essential. But, whatever the problem, the picture here is not one of a Central Intelligence Agency out of control.

The CIA did not restrict itself to servicing FBI requests for information on Americans, but "under White House pressure"² the CIA developed its own domestic counterintelligence program -- Operation CHAOS. According to the Senate Select Committee final report (Book II), "Director Richard Helms testified that he established the program in response to President Johnson's persistent interest in the extent of foreign influence on domestic dissidents"³. In 1969, President Nixon's White House required the CIA to study foreign

1 - IBID, Book II, p. 290

2 - IBID, Book II, Intelligence Activities and the Rights of Americans, p. 99

3 - IBID, p. 100

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communist support of American protest groups. "In 1972 the CIA Inspector General found 'general concern' among the overseas stations 'over what appeared to constitute a monitoring of the political views and activities of Americans . . .'"¹ This led to a reduction in the program but it was not terminated until March 1974.

However questionable this program may have been, even considering the context of the times, it is clear that it was undertaken and sustained by two successive Presidents, and the IG machinery did at least what it could to mitigate the program despite Presidential pressure. Inadequate command and control was not the problem; overbearing command and control was the fault.

The opening of mail in the U.S. postal service was understandably criticized by the Senate Select Committee. Not only was the FBI aware of this program, but relied heavily on the CIA for the product from it. The FBI, in fact, tasked the CIA.² This program was thus condoned by the FBI and Justice Department for many years.

The Attorney General's more recent findings on this program³ are interesting. They include the following statements. The report concluded that it was highly unlikely that prosecutions would end in criminal convictions and recommended that no indictments be sought:⁴

1 - IBID, p. 102

2 - IBID, p. 107

3 - Report of the Department of Justice Concerning Its Investigation and Prosecutorial Decisions With Respect to Central Intelligence Agency Mail Opening Activities in the U.S. -- 14 January 1977

4 - IBID, p. 2

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". . . prosecution of the potential defendants . . . would be unlikely to succeed . . . because of the state of the law that prevailed during the course of the mail openings. . . .¹ It would be mistaken to suppose that it was always clearly perceived that the particular mail opening programs of the CIA were obviously illegal."

The report continues:

". . . this case involves a general failure of the government, including the Department of Justice itself, over the period of the mail opening programs, ever clearly to address and to resolve for its own internal regulation the constitutional and legal restrictions on the relevant aspects of the exercise of Presidential power. The actions of Presidents, their advisors in such affairs, and the Department (of Justice) itself might have been thought to support the notion that the governmental power, in scope and manner of exercise, was not subject to restrictions that, through a very recent evolution of the law and the Department's own thinking, are now considered essential. In such circumstances, prosecution takes on an air of hypocrisy and may appear to be the sacrifice of a scapegoat."²

The report chronicles the authority implicit in successive high officials' actions. President Eisenhower's authorization was

1 - IBID, p. 3

2 - IBID, p. 5

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given in 1954.¹ In 1958 FBI Director J. Edgar Hoover approved the program. In 1961 Postmaster General Day was informed in some degree.² Both Director Helms, "a Cabinet officer" and individual then serving on PFIAB have stated that Presidents Kennedy and Johnson were aware of the East Coast mail opening program.³ In July 1969 the CIA Inspector General recommended that senior officials of the Nixon Administration should be informed and in June 1971 Director Helms briefed both Attorney General John Mitchell and Postmaster General Blount.⁴ Former President Nixon has stated he was aware of CIA's monitoring of mail between the U.S. and the USSR and PRC, but there is no direct evidence that he was specifically informed of mail openings. The product available at the White House,⁵ however, made it quite clear that such had to be the case.

In sum, CIA was acting with both implicit and explicit higher authority in the mail opening programs.

TESTING OF CHEMICAL AND BIOLOGICAL AGENTS

The program for testing chemical and biological agents was the only area where clearly inadequate command and control was found by the Senate Select Committee. It concluded that this program raised "serious questions about the adequacy of command and control procedures within the Central Intelligence Agency (and military intelligence) . . . The CIA's normal administrative controls were waived for programs

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- 1 - IBID, p. 10
 - 2 - IBID, p. 13
 - 3 - IBID, p. 15
 - 4 - IBID, p. 17
 - 5 - IBID, p. 18

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involving chemical and biological agents to protect their security. . . They prevented the CIA's internal review mechanism from adequately supervising the program." ¹ Excessive compartmentation of the program was also criticized by the Senate Select Committee. An observation made by the CIA Inspector General that "the knowledge that the Agency is engaging in unethical and illicit activities would have serious repercussions in political and diplomatic circles. . ." ² went unheeded.

Early programs such as Project Bluebird in 1950 and Project Artichoke in 1951 were approved by the Director and enjoyed good intra-Agency coordination and control. MKNAOMI, begun in 1967 and ended in 1970, had Director approval and was conducted in conjunction with the Army's Special Operations Division at Fort Detrick.

MKULTRA, the principal CIA program involving the research and development of chemical and biological agents capable of being used in clandestine operations to control human behavior, was approved by the Director on 13 April 1953. Various aspects of the program were carried out in cooperation with universities, pharmaceutical houses, hospitals, state and federal institutions and private research organizations. The National Institute of Mental Health and the Bureau of Narcotics also played important roles.

In 1963 the Inspector General learned that under the MKULTRA program surreptitious administration of LSD to unwitting, non-voluntary

1 - IBID, Book 1, p. 386

2 - IBID, p. 386

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human subjects was being carried out. This program was then known to and approved by the Director. As a result of the IG's protest the testing was halted and tighter administrative controls imposed. The program was completely terminated in the late 1960's.

The tragic case of Dr. Frank Olson in 1953 reveals an apparent problem of command and control. Despite explicit warnings by the Deputy Director for Plans (DDP) that his approval had to be given before LSD human experiments were conducted, the head of the Technical Services Division of DDP, Dr. Sidney Gottlieb, without such authorization, went ahead with an experiment in which Dr. Olson unwittingly ingested LSD without being told in advance. Olson had a severe emotional breakdown shortly afterward and either jumped or fell to his death from a hotel room in New York.

It can be argued that this was a case of personal irresponsibility on Dr. Gottlieb's part, not a breakdown of organizational command and control. He was censured for his act by the Agency. Yet CIA did assume responsibility, as evidenced by the fact it provided the family death benefits and ultimately paid Olson's heirs sizeable damages, accompanied by an apology. And the atmosphere of the times probably led Dr. Gottlieb to believe that he had implicit license to conduct such experiments. He has testified that he does not remember a DDP's memorandum requiring DDP authorization.¹ The General Counsel concluded that there seemed "to be a very casual attitude on the part of TSD representatives to the way this experiment was conducted."²

1 - IBID, p. 395, footnote 34

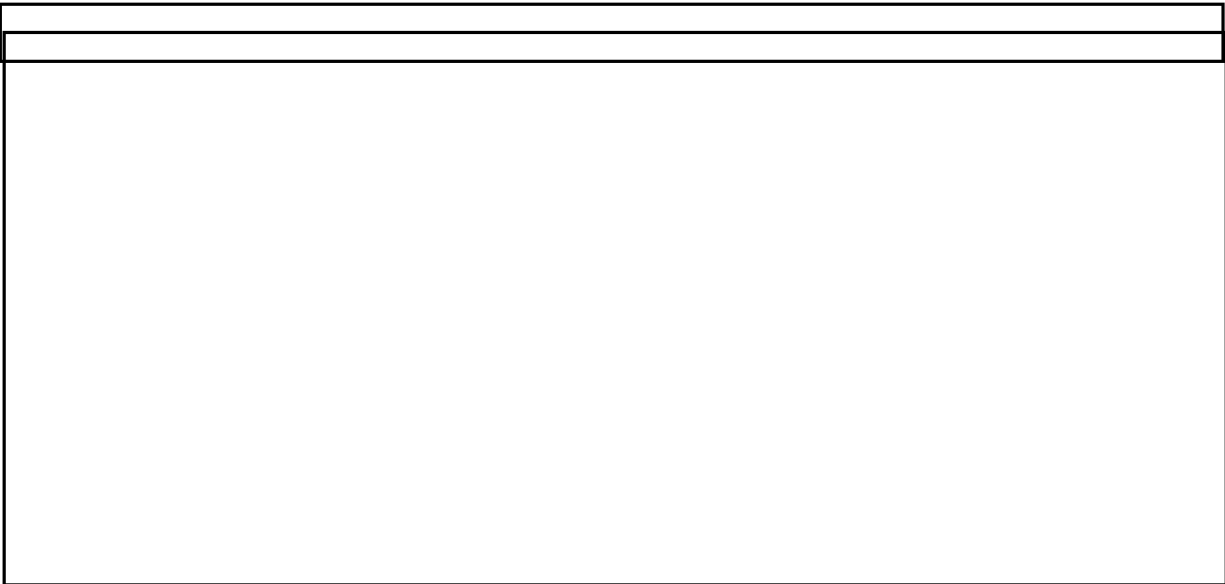
2 - IBID, 398 - Memo to the Inspector General from the General Counsel

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The shellfish toxin case was cited by the Senate Select Committee as the other specific failure of command and control in the drug experiment area. It was, however, not so egregious a lapse of control as the show hearings in the Senate on this subject signified. Even Senator Church stated in retrospect that the hearings reminded him of a "hippopotamus pushing a pea". If the CIA was a rogue elephant, the Senate Select Committee was a vain-glorious hippo. The image of such a zoo is startling to say the least and does neither organization justice.

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CURRENT SITUATION

Leaving the past and concerning ourselves with the present and future, it is obvious that there now exists considerable oversight machinery both in the Executive and Legislative branches of the Government and a formidable matrix of law and regulation.

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LEGISLATIVE OVERSIGHT

On the Legislative side, the most comprehensive oversight function is performed by the Senate Select Committee on Intelligence, although the Senate Armed Forces Committee, the Senate Appropriations Committee, the Senate Foreign Affairs Committee and the House of Representatives equivalents of these three Committees continue to have significant oversight responsibilities. All of these Committees, for example, must be notified of covert action programs, once approved by the President. The Appropriations Committees of both houses play an important role in approving the Agency's budget. The House Appropriations Committee has been particularly aggressive in investigating the rationale and value of CIA's budget and has employed a staff to carry out this function. The Senate Select Committee on Intelligence receives information on questions of illegality and impropriety on a quarterly basis, as does the Intelligence Oversight Board. Various other committees of Congress have specialized interests which permit them some degree of insight into CIA's functions. Provisions are also being made to enable the General Accounting Office to conduct external audits of CIA under the aegis of the Senate Select Committee on Intelligence.

While none of the Senate Select Committee's final recommendations have yet been converted into legislation or resolutions, except the recommendation to establish an oversight committee (RES 400), some probably will be in the near future. The Senate is also considering CIA charter revisions. In the meantime, various pieces of

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existing legislation have relevance to CIA and contribute to command and control imperatives: The Freedom of Information law, the Privacy Act, and Public Law 93-475, which includes a clause on the authority of Ambassadors vis-a-vis CIA Stations.

EXECUTIVE OVERSIGHT

On the Executive side, the most significant control can be found in Executive Order 11905 which includes a list of specific prohibitions. While not a perfect document and one which may be changed by the new administration, it has established useful operational ground rules. It has also established an Intelligence Oversight Board within the White House to which all illegalities and improprieties must be reported by the Inspector General and General Counsel. The Special Coordination Committee of the NSC (SCC) which inherits the OAG functions pertaining to covert action and sensitive collection activities, brings appropriate cabinet level officials as well as the DCI and the Assistant to the President for National Security Affairs together for consultation on covert action proposals. Its recommendations provide a basis for the President to find that their implementation is important to national security, and to approve them.

The Office of Management and Budget continues to play an important role in overseeing the Agency's budget, while the Justice Department has an expanded review and approval function in certain fields of law and counterintelligence.

CIA'S INTERNAL COMPLIANCE MACHINERY

The record of CIA's evolution from its creation in 1947 to the

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present is one of changing organizational posture to sharpen the focus of program direction. The steady growth of administrative procedures and controls represents growing sophistication of management techniques. Similarly, internal controls represented in the General Counsel, Inspector General, Audit Staff and budget reviews presided over by the Comptroller, serve to strengthen management's control over the Agency.

Throughout the Agency's history, regulations for management procedures and controls have progressed as the understanding of control requirements developed. The main problem confronting managers of an intelligence organization has been the handling of activities presenting special security considerations. These procedural provisions culminated in August 1973 with the comprehensive policy and program directives of the DCI, addressing not only procedures but the propriety of activities in which the Agency had engaged over the preceding years.

CIA's recently adopted internal measures and machinery for compliance with law and propriety are impressive. Since the conclusion of the Senate Select Committee proceedings and with the advent of Executive Order 11905, the CIA has taken a great many steps to preclude future acts of illegality or impropriety.

The Executive Order stimulated the issuance of a comprehensive Agency Regulation based on it 3 additional Regulations, and 4 Headquarters Notices. The DDO has issued, or is in the process of issuing, some 17 Instructions related to the new Executive Order guidelines. More are in the offing. It should also be noted that the DDO

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has instituted a system of counterintelligence inspections of its overseas stations which besides having a security function makes certain that overseas operations are in compliance with special provisions of the Executive Order pertaining to the rights of U.S. citizens.

CIA's Inspector General and General Counsel, in compliance with Section 6(b) of Executive Order 11905, submitted quarterly reports to the IOB in July, October and December of 1976, and most recently in February 1977, describing Agency activities that in their views raised questions of legality or propriety.

The Office of Training has included in the curricula of several of its training courses lectures on Executive Order 11905 and Headquarters Regulation which include the provisions of EO 11905.

CIA's Office of the Inspector General has conducted the following inspections designed to include the discovery of illegalities and improprieties:

- Special inspections of all Directorates (DDO, DDS&T, DDI and DDA) were begun in mid-summer 1976 and finished by the end of 1976. They were explicitly designed to make certain that all components of CIA were conversant with and in compliance with EO 11905 and other regulatory laws and regulations.
- Traditional, comprehensive inspections, which included but were not limited to checking for violations of EO 11905 and other applicable laws and regulations, were

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conducted for those sub-components of CIA Directorates considered to have potentially the most problems with issues of legality and propriety raised by Section 5 of EO 11905. Five such component inspections were completed: [redacted]

[redacted], DDS&T/Office of Technical Service, DDA/Office of Security and DDO/East Asia Division [redacted]

- A survey covering various aspects of CIA's relationships with U.S. private business has been conducted.
- Special, short surveys have been conducted on a variety of ad hoc subjects.

The Inspector General additionally recommended and set in motion several reviews by appropriate components on the following specific issues:

- CIA funding of activities conducted through or in behalf of other U.S. Government agencies.
- Operational activities which may produce information on United States persons.
- Operational activities which may raise issues of compliance with state and local law.

[redacted]

- Residual operational contacts which may violate Agency policy with regard to contacts with the media.

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The Inspector General's Office is currently inspecting DDO's European Division, CIA anti-narcotics activities, and CIA's compliance with the Freedom of Information and Privacy Acts.

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The Office of the General Counsel has been a principal contributor to the development of the regulations and other directives mentioned above. It has also played the lead role in the interpretation of the various provisions of EO 11905 in the myriad of factual situations in which those provisions must be applied. In this connection the Office has maintained a steady dialogue with the divisions of the Justice Department, principally the Office of Legal Counsel, that concern themselves with EO 11905 matters.

The Audit Staff of the Inspector General's Office has been indoctrinated in those provisions of EO 11905 which relate to law and propriety and were instructed to be alert to them in the conduct of over 100 audits which have taken place from 15 April 1976 to this date.

CONCLUSIONS

From the foregoing, it can be fairly concluded that there is more than adequate machinery for oversight, external and internal, Executive and Legislative. There is still an educative process taking place by which Agency officers at all levels are becoming familiar with the intricacies of the new laws and regulations. But what has been

made clear by the various inspections conducted by the Office of the Inspector General is that, whatever one may conclude about the past, there does not now exist a predisposition to evade law, regulation or propriety. To the contrary, there is some tendency to over-interpret regulations, to over-react to prohibitory issuances and to be hyper conservative in operational situations. The challenge of Agency leadership at all supervisory levels is to maintain the creativity, aggressiveness and imagination which has made the Agency extremely effective in the past, yet to do so within the bounds of law and propriety, and to arrive at an ethic consensus consistent with the values acceptable to the American society.