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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6178

January 27, 1988

Mr. Lando W. Zech, Jr.
 Chairman
 United States Nuclear
 Regulatory Commission
 Washington, D.C. 20555

Dear Lando:

As you know, the subcommittee has been carrying on an examination of the Commission's activities and its relationship with its utility licensees. The subcommittee has also conducted three hearings in connection with its investigation.

Enclosed please find a series of questions relating to these issues. Kindly provide your responses to these questions by close of business on February 2, 1988. If you have any questions concerning this request, please feel free to contact the Committee staff.

Sincerely,


 Alan K. Simpson


 John B. Breaux

POST HEARING QUESTIONS

I. Fire Protection

NRC
Rec'd
RI 1. As a result of the Brown's Ferry fire in 1975, the NRC issued fire protection guidelines [Branch Technical Position (BTP) 9.5-1] for nuclear power plants and asked licensees to compare fire protection features of their facilities to the new guidelines. Between 1975 and 1980, the NRC staff received reports from all licensees identifying areas in their plants that did not conform to BTP 9.5-1. Commission documents show that by 1980 most fire protection guidelines had been met by most licensees; but several items remained outstanding and some licensees would not implement the items voluntarily.

- a. Specifically, which items in the guidelines were the staff and utilities unable to agree on?
- b. Which utilities refused to implement the above items voluntarily?
- c. Generally, what was the utilities rationale for not implementing the disputed fire protection items?
- d. Did the staff agree with the utilities' reasons for not implementing BTP 9.5-1 in its entirety? Please explain fully.
- e. Did the fire protection engineers within NRC agree with the utilities' positions?

NRC 2. In 1980, the Commission issued a fire protection rule (Appendix R to 10 C.F.R. 50) to resolve the fire protection issues. Why did the Commission issue this rule when most utilities had implemented BTP 9.5-1?

CAC 3. In 1982, the Nuclear Utilities Fire Protection Group (NUFPG) challenged NRC's new fire protection rule in Connecticut Light and Power, et al. v. NRC, 673 F2d. 525 (D.C. Cir., 1982).

- a. Specifically, what utilities did the NUFPG represent in its court action?
- b. What were the bases for the NUFPG challenge?
- c. For what reasons were the NRC's fire protection rule upheld?

- NRR 4. In 1983, the staff issued Generic Letter 83-33 (GL 83-33) to all licensees and applicants of nuclear power reactors.
- In general, what is the purpose of NRC's generic letters?
 - Why did the NRC issue GL 83-33?
 - Specifically, what areas did GL 83-33 encompass?
 - Did GL 83-33 change the staff's interpretation of previous fire protection guidelines or rules in any way? Please explain fully.
- EDC 5. In 1984, despite existing guidance on fire protection (BTP 9.5-1, Appendix R, GL 83-33, and others), the NRC staff provided the Commission new proposed guidance after meetings with the Nuclear Utilities Fire Protection Group (NUFPG). Among other things, the proposed guidance explicitly reversed the staff's position requiring licensees to seek exemptions if they deviate from Appendix R requirements.
- On March 8, 1984, the NUFPG met separately with the Executive Director for Operations and the Deputy Executive Director for Regional Operations and Generic Requirements. Who requested the meetings and for what purpose?
 - Who attended the meetings for NUFPG and NRC?
 - Were NRC fire protection engineers attendees at either of the two meetings? If not, why not?
 - What decisions were made as a result of those meetings and what was the rationale (both technical and legal) for the decisions?
- NRR 6. Attached to the new guidance on fire protection given to the Commissioners was an "Interpretations" document.
- What was the purpose of the "Interpretations" document?
 - What role did the NUFPG have in drafting the "Interpretations"? Did it provide language or subject matter for the document?
 - Did the NRC's fire protection engineers have any role in drafting the "Interpretations" document sent to the Commissioners? If not, why not?

- NRR 7. Beginning in March 1984, the NRC held the first of five regional workshops to discuss Appendix R. Did NRC staff fire protection engineers support the Appendix R guidance being discussed at those workshops?
- NRR 8. On May 2, 1984, a majority of the NRC's fire protection staff filed a Differing Professional Opinion (DPO) concerning the "Interpretations" document of the new guidelines.
- a. Describe the specific issues discussed by the fire protection engineers in their DPO.
 - b. What recommendations were made in the DPO?
 - c. What was the rationale given by the fire protection engineers in making their recommendations?
- NRR 9. During the May 30, 1984 Commission meeting on fire protection a staff attorney from the Executive Legal Director's office stated that the intent of the "Interpretations" document was to arrive at interpretations which were acceptable from a legal standpoint and carried out the objectives of the Executive Director for Operations and the utilities. In developing the "Interpretations" document, were the views of the NRC's fire protection engineers taken into account? If not, why not?
- C&C 10. In May 1984, a member of NRC's Office of General Counsel staff wrote a memorandum to the Commissioners' technical assistants expressing his legal concerns regarding the new Appendix R interpretations.
- a. Specifically, what issues did the attorney raise in his memorandum?
 - b. How did the Commission resolve the issues raised in the memorandum?
- NRR 11. In August 1984, the Executive Director for Operations formed the Fire Protection Policy Steering Committee (FPPSC).
- a. Specifically, for what were the reasons for the formation of the FPPSC?
 - b. What was the make up of the FPPSC?
 - c. What were the findings of the FPPSC?

- d. Did the NRC's fire protection engineers take part in the FPPSC either as members or participants?
 - e. Do the staff fire protection engineers feel their views were taken into account during the FPPSC's life? Explain fully.
- NRR 12. In late 1985, the DPO filed by the staff fire protection engineers was "resolved."
- a. Specifically, what was the outcome of the DPO?
 - b. Which designated NRC official resolved the DPO?
 - c. If the DPO was not resolved in favor of the fire protection engineers, did they file an appeal to the decision? If not, why not?
- NRR 13. On April 24, 1986, the NRC issued Generic Letter 86-10 implementing the new Appendix R interpretations.
- a. How many exemptions have been requested by utilities since NRC issued GL 86-10?
 - b. Which utilities filed for exemptions?
 - c. What is the current status of those exemption requests?

OI II. Office of Investigations (OI)

- 14x. In testimony before the Subcommittee on October 8, 1987 Chairman Zech stated that there were a number of reasons, other than the lack of trained investigators for establishing OI. Please describe other reasons or specific incidents which led to establishing OI.
- 15x. Please provide to the Committee the following, since 1982, by year:
- a. the total number of alleged violations of NRC rules and regulations referred to OI.
 - b. the total number of the alleged violations which resulted in the opening of OI cases.
 - c. the total number of cases OI referred to the Department of Justice.

- d. the total number of cases referred to the Office of Inspector and Auditor (OIA) by OI.
- e. the total number of cases OI and OIA collaborated on.

16. Since OI's inception in 1982 there has been considerable discussion of OI authority to self-initiate investigations.

- a. Specifically describe the extent of authority to self-initiate investigations.
- b. What document identifies OI's self-initiation authority?
- c. Why was the Investigations Referral Board (IRB) established?
- d. Who established the IRB?

SECY
Provide
Input to OI

- e. Did the Commission vote on establishing the IRB? If not, why not? If the Commission voted on establishing the IRB, how did each Commissioner vote?
- f. Explain why the OI Director was not a voting member of the IRB.
- g. What were the findings and recommendations of the IRB?
- h. Why was the IRB "dis-established"?

17. Although the IRB has been "dis-established," the NRC initiated the Investigation Priority Review Group.

- a. What is the charter of this body?
- b. Is the OI Director a participating member of the new body? If so, what are his responsibilities?

18. In April 1987, the OI Director submitted SECY 87-93 to the Commission.

- a. For what specific reasons did the OI Director submit the SECY paper to the Commission?
- b. What events led to submitting the document to the Commission?
- c. What did the OI Director ask for in the SECY paper?
- d. What agreements were reached as a result of the management meeting held to discuss the SECY paper.

19. ¹. What NRC document(s) define the procedures for conducting investigations under OI's jurisdiction?
- a. Define the thresholds for conducting OI investigations.
 - b. Define the priorities for conducting OI investigations.
20. ⁸. Who has the ultimate authority, within NRC, to open a full-scale investigation under OI's jurisdiction? Who has the primary responsibility to determine whether or not an OI investigation is needed?
21. ⁵. Has the Commission ever denied an OI request to initiate an investigation under its jurisdiction? If so, describe the specific incidences and why the request(s) were denied.
22. ²⁰. Please explain the relationship between wrongdoing and safety issues in the context of OI's responsibilities to investigate wrongdoing. In the Commission's view, does wrongdoing always have safety significance? Does OI share the Commission's view of the relationship between wrongdoing and safety issues?

23. ¹. In his October 8, 1987 testimony before the Subcommittee, Mr. Stello gave examples of the staff and OI working together to take necessary regulatory action even before investigations were complete. Has the staff had to delay regulatory actions while OI continued its investigations. Please describe specific examples, if any, where this has occurred.

*DEED (Hayes)
CE, NRC, NRC &
Regulatory
to T. Martin CEO
by 5/26*

24. ¹. In his October 8, 1987, testimony before the Subcommittee, Mr. Hayes noted OI's mission of providing thorough, objective, and timely reports to the staff to assist them in making regulatory decisions. What criteria is used to suspend an investigation based upon a regulatory need? Who makes this decision? Please give specific examples of OI investigations that have been suspended.

25. ¹. Please provide to the Subcommittee the following data by fiscal year through 1987.

*OI could not
ARK*

- a. the number of positions requested by OI.
- b. the number of positions requested for OI by the Commission.
- c. the number of positions allocated to OI.

d. the number of positions allocated to OI by the Congress.

26.
14. The NRC and the Department of Justice (DOJ) are developing a memorandum of understanding to provide for coordination of investigations between the two agencies.

a. Describe what problems existed between the NRC and DOJ which led to the need for a memorandum of understanding.

b. Describe what priorities have been tentatively agreed to with respect to NRC referrals to DOJ.

27.
15. In testifying before the Subcommittee on October 8, 1987, Mr. Hayes said he would favor legislation codifying OI authorities and responsibilities as long as certain "guarantees" were included. Describe more fully the "guarantees" envisioned.

NRR III. Training and Qualification of Nuclear Power Plant Personnel

28. In his testimony before the Subcommittee on October 20, 1987, Chairman Zech said that the NRC expertise with respect to training "...is in the regulatory side of it...." Chairman Zech also noted that the industry must meet NRC standards for training nuclear power plant personnel. However, through a policy statement, the NRC has endorsed an INPO-managed training accreditation program for nuclear power plant personnel.

a. Describe what NRC training standards the Commission has imposed on the industry.

b. Describe what input the NRC had in developing INPO's accreditation program for nuclear power plant personnel. In your discussion, include a list of all meetings between NRC staff and NUMARC/INPO members.

c. What is the NRC's oversight role with respect to INPO's training program for power plant personnel?

/ccw/ce d. Has the NRC ever taken any other enforcement action against a utility because its training program was conducted in an unsatisfactory manner? Please describe.

// e. Describe all the potential enforcement actions the NRC can take to ensure that utilities are properly training their employees.

f. Since the NRC has endorsed INPO's training program, explain the extent of NRC's oversight over the implementation of this program.

29. ~~2~~. Describe the reasons why the Commission issued a policy statement for training nuclear power plant personnel. Also, describe the reasons a policy statement was chosen instead of a rule in this area.
30. ~~3~~. NRC's policy statement on training nuclear power plant personnel deferred rulemaking on training and qualification for two years. What are the findings of NRC evaluations of the industry training and accreditation program?
31. ~~4~~. Has the Commission deferred rulemaking beyond the original two years? If so, for how long? What are the reasons for extending the referral period?
32. ~~5~~. Do either of NRC's investigate organizations (OI and OIA) have any role in auditing or reviewing the INPO-managed training program? Has this option ever been formally considered by the Commission?
- (OI/OIA advise NRC if they have input)
33. ~~6~~. The Commission has indicated in testimony before the Subcommittee on October 20, 1987, that for a policy statement to be effective, it must be aggressively monitored and evaluated by the NRC. Please detail what efforts the NRC has made or plans to make to monitor and/or evaluate industry efforts in the area of training.
34. ~~7~~. If the Commission has conducted an evaluation of industry initiatives in the area mentioned above, what has been the results of such evaluation?
35. ~~8~~. The Commission has testified that the NRC monitors operator license exams and reviews those exams. What is the pass rate for utility-given requalification examinations for operator licensing?
36. ~~9~~. What is the pass rate for NRC-administered requalification examinations for operator licensing? If the pass rate for utility-given requalification examinations is higher different from that for NRC-given examinations, what has the NRC determined to be the reason for discrepancy in pass rates?
37. ~~10~~. The Commission has testified that it is the NRC's decision as to what licensee training programs should contain. What documents contain the NRC's requirements for training programs which are binding on licensees.

38.
OE 10/11/84
NRR 11. What enforcement actions, if any, are available to the NRC if a licensee fails to establish a program for ensuring that its employees are not coming to work under the influence of alcohol? Please explain the legal basis for your answer.

NRR IV. NRC Proposed Policy Statement on Maintenance

39. x. In 1985, the NRC staff developed a maintenance and surveillance plan to survey the status of maintenance in the nuclear power industry.

- a. Considering that nuclear power plants have been operating since the late 1950's, why did it take so long for the NRC to review the maintenance status of the industry?
- b. Specifically, what were the purposes of the maintenance survey?
- c. What were the findings and recommendations resulting from the survey?

40. x. During his testimony before the Subcommittee, Mr. Stello called the Subcommittee's attention the standard technical specifications applying to the so-called "safety systems" of a nuclear power plant. Mr. Stello said that when the NRC issues the specifications as part of a license condition which has the force of a regulation.

- a. Explain the distinction between those parts of a nuclear power plant which comprise the "safety systems" and those parts comprising the "balance of plant."
- b. Considering that the NRC has license condition documents for each operating reactor having the force of regulations, why cannot similar documents exist for "balance of plant" areas? Explain why the NRC is considering a policy statement for "balance of plant" areas, which have no force of regulation, instead of a document which is fully enforceable? Is having enforceable documents for "balance of plant" areas less important than having enforceable documents for "safety systems"?

41. x. During his testimony before the Subcommittee, Mr. Stello said he favored a policy statement on maintenance rather than a rule, in part, because he did not want to "lose the momentum" by the industry in the maintenance area. Please describe specific examples of industry initiatives contributing to this momentum.

42. ~~4~~. If the nuclear utility industry has, in NRC's view, made good faith efforts in properly maintaining its plants, is it the NRC's responsibility, as the regulator, to have fully enforceable regulations pertaining to all maintenance areas of nuclear power plants?
43. ~~8~~. Describe the industry role and participation in drafting the proposed policy statement on maintenance. In your discussion, include a list of all meetings between NRC staff and NUMARC/INPO members and the topic of discussion for each meeting.
44. ~~8~~. Summarize the status of NRC's maintenance policy statement. Also, give your best estimate of when the policy statement will come before the Commission for a vote.
45. ~~X~~. In his testimony before the Subcommittee, an INPO representative described the document "Guidelines for the Conduct of Maintenance at Nuclear Power Stations" as the foundation for industry self-assessment efforts.
- a. As the regulator of the nuclear power industry, did the NRC have any role in developing INPO's maintenance guidelines?
 - b. Does the NRC have any formal role in reviewing or updating INPO's maintenance guidelines?
 - c. Describe NRC-mandated requirements INPO must follow in reporting utility compliance with the maintenance guidelines.
 - d. Describe INPO's range of enforcement options to ensure utilities comply with its maintenance guidelines.
 - e. To the NRC's knowledge, has INPO ever taken enforcement action because of violations of its maintenance guidelines? If so, fully describe the circumstances.

OE VI. NRC Policy Statement on Enforcement

46. ~~X~~. During the course of the hearing on October 20, 1987, the Commission stated that it would look again at the wording of its policy statement on enforcement with regard to the Commission's reopening an enforcement action if it appears the penalty assessed against a licensee should be increased. The Chairman also agreed to let the Committee know what is going to be done as a result of the second look, what has been done, and what is going to be done regarding this issue?

OIA VII. NRC Office of the Inspector and Auditor

47. X. Page 2 of the NRC Chairman's statement dated October 8, 1987, before the Subcommittee indicated that the Commission occasionally directs OIA to give high priority to matters which affect the Commission's safety decisions. Can you give us some examples of such matters? How did OIA respond to the Commission's directions?
48. X. Please provide a listing of the 12 technical matters mentioned on page 2 of the NRC prepared statement dated October 8, 1987, which OIA has referred to the Executive Director for Operations in the past 2 years?
49. X. In testimony before the Subcommittee on October 8, 1987, the NRC stated that the Commission believes that OIA as currently structured affords the best mechanism for conducting independent and objective internal investigative tasks. Yet later in the Chairman's testimony he stated that if a matter involving a Commissioner or his staff surfaced, the Commission would not necessarily have OIA investigate it but that it might, "go to an outside investigator" "if the matter were significant enough." Please explain these two seemingly inconsistent statements? Also, please explain the role of the affected Commissioner.
50. X. How many allegations of wrongdoing by NRC employees or contractors have been presented to OIA since its inception in 1975?
- a. Please specify the proportion of those allegations received from internal sources and from external sources.
 - b. How many of those allegations resulted in OIA investigations? Please provide a breakdown by fiscal or calendar year.
 - c. Of those allegations investigated, how many resulted in findings of wrongdoing?
 - d. Of those which resulted in findings of wrongdoing, how many were referred to the Department of Justice? What were the findings of wrongdoing in those cases? Did any result in criminal prosecutions? How many?
51. X. The Director, OIA, in testimony before the Subcommittee on October 8, 1987, testified that she thought there existed potential for the Commission to restrict OIA's investigative activities but that from a practical standpoint she didn't think the Commission would require OIA to terminate an assignment.

Please explain what practicalities preclude the Commission from requiring OIA to terminate an investigation.

52. ~~6.~~ a) Since OIA's inception, by year, how many allegations of misconduct involving Commissioners and/or their staffs have been received by OIA for investigation?
- b) What have been the substance of those allegations?
- c) By year, allegations have resulted in investigations? Of those in how many was wrongdoing found?
- d) What was the nature of the wrongdoing found?
53. ~~7.~~ Of the OIA investigations which resulted in findings of wrongdoing by Commissioners, how many, if any were referred to the FBI or the Department of Justice? Of those, how many resulted in criminal action? How many resulted in administrative adverse actions?
54. ~~8.~~ The Director testified on October 8, 1987, that she believed that, "there are no organizational impairments to the effective and efficient operation of OIA." Do you believe that the fact that the Director of OIA reports to, and is hired, and may be fired by the Commission would be an organizational impairment to an effective investigation of wrongdoing by a Commissioner and/or his staff? If not, please explain why not.
55. ~~9.~~ The Director testified that the Commission periodically requests briefings on audits and investigations which relate to safety issues affecting near-term operating licenses and other matters requiring Commission decisions. Please provide examples of, and describe investigations which OIA office has briefed the Commission or which relate to near-term operating licenses. Please provide examples of, and describe investigations which OIA has briefed the Commission or which relate to other matters requiring Commission decisions, and indicate what those "other matters" were.
56. ~~10.~~ The Director testified that she, "found the Commission, as a whole, to be supportive of OIA's activities and responsive to our findings." Please give examples of, and discuss and explain instances, if any, in which OIA did not find the Commission to be supportive of OIA's activities and responsive to its findings.
57. ~~11.~~ The Director testified that, "there are never any limitations, restrictions or other impairments placed by the Commission the conduct of our assignments." However, it is a matter of record that in the case of the OIA investigation of alleged harassment and intimidation of Region IV inspectors at

the Comanche Peak Steam Electric Station, OIA was directed by then-Commissioner Asselstine to make transcripts of all investigation interviews and to have the investigation conducted by a particular OIA investigator, Mr. George Mulley. Apparently these directions from Commissioner Asselstine were followed by OIA. Please reconcile that fact with the statement quoted above.

58. ~~42~~. With regard to the so-called "Stello-White phone conversation" investigation,

(a) Why didn't OIA interview Steven White?

(b) Why weren't all occupants of the van interviewed, i.e. Joe Fouchard?

59. ~~43~~. Please provide examples of recent investigations or audits in which "important safety questions were at issue." Describe OIA's findings in these cases and what actions were taken regarding them by the NRC or its staff.

60. ~~44~~. Please specify reviews done by OIA of NRC staff conduct which were needed by the Commission to make licensing and regulatory decisions.

61. ~~45~~. Has the Commission ever halted an OIA investigation? If so, please specify the allegation which was to have been investigated and please explain the reasons why the Commission ordered the investigation halted.

62. ~~46~~. What are the criteria that OIA has for determining whether an allegation merits an investigation. Please supply all documents which set forth OIA investigation thresholds and criteria. Please provide to the Subcommittee a copy of the April 17, 1987, document signed by the NRC General Counsel, referred to by Chairman Zech, concerning policies and procedures for OIA investigations of Commissioners and their staffs.

63. ~~47~~. In the case involving the apparent unauthorized distribution of a NRC memorandum from Commissioner Robert's office to an industry representative which came to light in March of 1985, it was decided that under the more specific and direct Reorganization Plan of 1980, the investigation of the matter was properly the responsibility of the Commissioner involved, not OIA.

a. Do you agree that the Reorganization Plan of 1980 requires or allows the investigations of matters involving alleged wrong doing by Commissioner's staff be investigated by that Commissioner, personally?

- b. What happens when a Commissioner concludes his own investigation? Is the matter then referred to OIA or OI for further investigation?
64. ~~18~~. To your knowledge, has it been the practice that cases involving Commissioner's staff are investigated solely within the involved Commissioner's office, not OIA?
65. ~~19~~. What is the current policy regarding the referral of allegations of wrong doing by Commissioners or their office staffs to OIA?
66. ~~20~~. The Director testified that OIA gets suggestions from the Executive Director for matters to audit.
- a) Approximately how many such suggestions does OIA get each year from the Executive Director?
 - b) Approximately what percentage of OIA's annual audit work is done as the suggestion of the EDO?
 - c) About what percentage of these suggestions does OIA follow?
67. ~~21~~. The Director indicated that OIA periodically briefs the Commission at its request on investigations which relate to safety issues affecting near-term operating licensees--
- a) Approximately how much of OIA's inspection work relates to safety issues involving licensees?
 - b) Please give examples of briefings to the Commission involving safety issues which were particularly significant?
 - c) To what extent might such advice to the Commission be affected by the establishment of an independent Inspector General Office?
68. ~~22~~. Please characterize the relationship between OIA and the Department of Justice. Any problems? How and if so, do you suggest they might be corrected?
69. ~~23~~. What guidelines does OIA follow in deciding which investigated matters will be referred to the Department of Justice?
70. ~~24~~. Did OIA refer any matters to the Justice Department for possible criminal investigation as a result of testimony given by NRC employees at the hearing conducted before the Congress in

June, 1987? Please state your reasons for making those referrals.

71. 25. On page 2 of the Director's statement, dated October 8, 1987, she indicated that in the vast majority of cases, conclusions in OIA's investigation reports are accepted by management, please indicate some cases in which OIA's investigative conclusions were not accepted by management, and what happened in those cases?

72. 25. With regard to OIA's "Comanche Peak" investigation, OIA Investigation 86-10:

- a) How does OIA reconcile the finding in its report that Region IV Management/Westerman did not comply I.E. Manual chapter 0400 and 0610 and the conclusion of the Arlotto Report that Region IV management did comply with these I.E. Manual chapter?
- b) On what basis did OIA determine that it should investigate technical engineering issues?
- c) Was the OIA technical advisor present during all interviews of Inspector Phillips? If not, why not?
- d) Why didn't the OIA report address the issue of whether the Inspector/Allegor H. Shannon Phillips failed to develop his proposed violations along the lines of the 14 points of I.E. Manual Chapter 9499 as the CPRRG has suggested?
- e) How does OIA respond to the assertion of the CPRRG report that there was a difference in demeanor in interviewing Mr. Phillips as opposed to Mr. Westerman, particularly on the second day?
- f) On April 15, 1987, Mr. T.F. Westerman prepared a memorandum to the Director of OIA raising certain points concerning the technical findings and conclusions in Inspection Report 86-10. How do you respond to the technical points of disagreement between Mr. Westerman and OIA?
- g) Why didn't OIA interview J.E. Cummins, a Senior Resident Inspector at Comanche Peak around the time the alleged wrong doing occurred?
- h) Why didn't OIA interview Shannon Phillips' section chief and immediate supervisor at the time inspections

referred to in 85-07/05 were conducted, Mr. Doyal Hunnicutt?

- i) The investigation concerned Region IV's management, its Quality Assurance inspection program, and its Form 766 system. In view of this, why weren't the Regional Administrator and his Deputy interviewed by OIA?
- j) Why weren't all 34 technical issues about which there were allegations evaluated by OIA? Why were only 16 technical issues addressed?
- k) The investigator received testimony that a TUGCO consultant had been provided NRC inspection report drafts. Has this even been followed up by OIA? If not, why not?
- l) A major aspect of the Comanche Peak investigation and report was an evaluation of Region IV's Quality Assurance inspection program. Yet, when Mr. Thomas Westerman, a Region IV manager was interviewed during the course of the investigation, he was told by OIA's investigation office that, "OIA is certainly not going into an analysis of Region IV's inspection program at Comanche Peak. We're not in the business to do that." (statement of Mr. George Mulley, Pg. 92 of transcript interview of Thomas Westerman). Please reconcile this representation to Mr. Westerman with OIA's decision to include Region IV inspection program issues in its investigation.
- m) For Mr. George Mulley:
 - Regarding OIA investigation report 86-10 concerning allegations of misconduct by Region IV management with respect to the Comanche Peak Steam Electric station;
 - 1. Were changes made to your draft of the report? If so, what were those changes and who made them? Were the changes submitted to you first for your review and approval?
 - 2. If you did not agree with a proposed change, was the change not made? Please specify.
 - 3. Please provide to the Committee copies of all documents which support your answers.
- n) Please explain the Commission's reasons for delivering copies of the OIA Comanche Peak Report (OIA Report no.

86-10) including all transcripts of interviews with no names deleted to Thomas Westerman, Shannon Phillips, Darwin Hunter, Delmer Norman, Eric Johnson, and Ian Barnes? Do you feel such distribution would compromise the integrity of the OIA investigation process generally? If not, please explain.

73. ~~27~~ (a) Is this reading of subpart (b) correct? If not, please explain.

(b) Did the Department of Justice comment on this aspect of the proposed amendment? If so, what was its comment?

OGC VIII. NRC Material False Statement Rule

74. ~~X~~ What proportion of the information utilized by the Commission in its licensing and/or regulatory decisions comes from licensees? What percentage comes from Commission staff?

75. ~~X~~ With regard to the proposed amendment to the Commission's regulations concerning the obligations of licensees and applicants for licenses to provide the Commission with complete and accurate information--

Subpart (b) requires licensees and applicants to provide the Commission with "information identified by the applicant or licensee as having for the regulated activity a significant implication for public health and safety or common defense and security." Thus, under this proposal, the determination of what information is significant, and therefore reportable, is up to the licensee--not the Commission. An objective test is not used.

(c) Do you believe that the best policy is that the determination of what is "significant information" should be made by licensees and applicants rather by the NRC under an "objective test"? If so, why?

76. ~~X~~ During the hearing on October 20, 1987, certain alleged contacts by Commissioners with members of a law office in which the merits of a staff draft of a proposed rule on material false statements, SECY 85-149, were discussed. Copies of a letter describing those alleged contacts, dated July 16, 1985, and signed by a local attorney, have been provided to the Commission. With regard to the representations made in that letter and the handling of a Freedom of Information Act request pertaining to SECY 85-149, please answer the following questions:

Secy a. The law firm's letter states, "On May 7 and 8, we learned that Chairman Palladino voted for all three

components of the proposed rule, that Commissioner Zech voted for the first and third components of the proposed rule, that Commissioner Bernthal was believed to be the key vote, and that Commissioner votes were due by May 10." Had Chairman Palladino and Commissioner Zech cast such votes by May 7 and 8? Had Commissioner Bernthal voted by then?

Sec. b. Do any of the Commissioners have any knowledge regarding how this law firm was able to learn the individual Commissioner's intentions with such specificity?

Berthal c. The letter then states, "Accordingly, Don Knuth of KMC and Jessica [Lavery] met with Commissioner Bernthal on May

Did Don Knuth and Jessica Lavery meet with Commissioner Bernthal on or about May 9 to discuss his vote on the proposed material false statement rule. If they did meet with Commissioner Bernthal, did they urge the Commissioner to "vote to delay issuance of any proposed rule on material false statements until after the Commission has received the recommendations of its Advisory Group on Enforcement Policy."

" d. Did Commissioner Bernthal vote to delay issuance of the proposed rule pending receipt of the Advisory Group's recommendations? If he did so, did he do so as a result of his meeting with Attornies Knuth and Lavery?

" e. (1) Are there any documents which indicate Commissioner Bernthal's position on the proposed rule prior to his meeting with Lavery and Knuth? If so would you please provide them for the record. The attorney's letter further states, "prior to the May 1 due date for Commissioner votes, Jessica also spoke to the legal assistants to Commissioner Roberts and Commissioner Zech concerning the problems with the proposed rule on material false statements."

Eds/2-1 (2) Did Ms. Lavery speak to Commissioner Roberts and Chairman Zech's legal assistants as represented in the attorney's letter? If so, were the Commissioner's votes influenced as a result of those meetings?

De-11 f. Did Commissioner Bernthal meet with anyone else concerning how he should vote on the issuance of a proposed rule on material false statements? If so, who and when did he meet?

g. During the October 20, 1987, hearing the Commission's handling of a Freedom of Information Act (FOIA) Request for SECY 85-149 and related documents was discussed.

ARM-POM
submit response
NOC

h. Please indicate if any FOIA requests were made to the NRC regarding SECY 85-149. If so, please specify all requests and all dispositions of those requests.

i. Did the individual Commissioners vote to withhold SECY 85-149 on appeal? If so, why? Why would a Commissioner vote to withhold a document as predecisional if he or his staff had discussed the contents of the document with private parties and in an open meeting?

OCG IV. NRC Backfit Rule

77. x. Did the Backfit Rule increase the Commission's substantive authority under the Atomic Energy Act to order Backfits?

78. x. Did the Backfit Rule impose new limitations, substantive or procedural, upon the authority of the NRC under the Atomic Energy Act?

79. x. If so, why did the Commission impose such limitations upon its authority?

RED 80. x. Since promulgation of the latest version of the backfit rule in 1986, how many generic backfits has the Commission ordered? How many site-specific backfits has the Commission ordered?

RED 81. x. If cost were not a factor, how many additional backfits would have been ordered?

FROM		DATE OF DOCUMENT	DATE RECEIVED	NO
John B. Breaux Alan K. Simpson		88/01/27	88/01/29	88-033
		LTR <input checked="" type="checkbox"/>	MEMO <input type="checkbox"/>	REPORT <input type="checkbox"/>
		ORIG <input type="checkbox"/>	CC <input checked="" type="checkbox"/>	OTHER <input type="checkbox"/>
TO				
Chairman Zech				
		ACTION NECESSARY <input checked="" type="checkbox"/>	CONCURRENCE <input type="checkbox"/>	DATE ANSWERED 88/02/21
		NO ACTION NECESSARY <input type="checkbox"/>	COMMENT <input type="checkbox"/>	BY
CLASSIF	POST OFFICE	FILE CODE		
	REG NO			
DESCRIPTION (Must Be Unclassified)		REFERRED TO	DATE	RECEIVED BY
Q&As RE COMMISSION'S ACTIVITIES AND ITS RELATIONSHIP WITH ITS UTILITY LICENSEES		William Ward	1/29	
ENCLOSURES				
REMARKS				
/answer all questions relating to OI/BH EDO to coordinate...				

U. S. NUCLEAR REGULATORY COMMISSION

MAIL CONTROL FORM

FORM NRC 5288
10-791



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D. C. 20545

1988 FEB 21

ACTION

OFFICE OF THE
HEADQUARTERS

EDO PRINCIPAL CORRESPONDENCE CONTROL

FROM:

EDO CONTROL: 003450

DOC DT: 01/27/88

FINAL REPLY:

SEN. ALAN K. SIMPSON & SEN. JOHN D. DEANUX

TO:

CHAIRMAN ZECH

FOR SIGNATURE OF:

PRIORITY

SECY NO:

DESC:

ROUTING:

Q'S RE EXAMINATION OF NRC ACTIVITIES AND ITS
RELATIONSHIP WITH ITS UTILITY LICENSEES

SEHM
DCA

DATE: 01/29/88

ASSIGNED TO: NRR

CONTACT: MURLEY

ASSIGNED TO: OOC

CONTACT: PARLER/MURRAY

ASSIGNED TO: EDO

CONTACT: TIELLO

~~ASSIGNED TO: DT~~

~~CONTACT: HAYES~~

ASSIGNED TO: SECY

CONTACT: CHILK

ASSIGNED TO: EDO

CONTACT: TAYLOR/MARTIN

ASSIGNED TO: DE

CONTACT: LIEBERMAN

ASSIGNED TO: NMSS

CONTACT: SIMPSON

ASSIGNED TO: RI

CONTACT: RUSSELL

ASSIGNED TO: RII

CONTACT: RACE

ASSIGNED TO: RIII

CONTACT: VILS

ASSIGNED TO: RIV

CONTACT: MARTIN

ASSIGNED TO: EV

CONTACT: [illegible]

ASSIGNED TO: ARM

CONTACT: [illegible]

ASSIGNED TO: DIA

CONTACT: [illegible]

ASSIGNED TO: AEDD

CONTACT: [illegible]

SPECIAL INSTRUCTIONS OF

RESPONSE TO

ADVISE AT [illegible]

OFFICES INPUTTING

USE DIA FORMAT, [illegible]

*

2/11/88

Hand Carried to Sam Riden
and communicated via DA
to 6520 today's date.

[Signature]

* QUESTION 14. In testimony before the Subcommittee on October 8, 1987, Chairman Zech stated that there were a number of reasons, other than the lack of trained investigators for establishing OI. Please describe other reasons or specific incidents which led to establishing OI.

ANSWER.

In the face of mounting Congressional criticism of the NRC investigative program in late 1981 and early 1982, the Commission elected to establish an Office of Investigations that would report directly to the Commission. The Commission announced that it was taking this step to improve NRC's capability to perform credible, thorough, timely, and objective investigations. Although the staffing of the new office with trained investigators was an important step in achieving this goal, the Commission recognized that the past problems were a product also of the organizational placement of the investigative function, its degree of functional independence, adequacy of staffing levels, and the amount and quality of investigative authority and performance standards. Thus, the decision to establish OI was predicated on the Commission's desire to strengthen all of these areas rather than confine the remedy only to recruiting trained investigators.

BREAUX/SIMPSON/OI

02/09/88

QUESTION 15. Please provide to the Committee the following, since 1982,
by year:

(A) the total number of alleged violations of NRC rules and regulations referred to OI.

(B) the total number of the alleged violations which resulted in the opening of OI cases.

ANSWER.

OI has not kept records of the number of investigative requests that have been declined by OI. It is a rarity for OI to decline investigative requests, especially since the greater formalization of investigative request procedures over the past two years. Consequently, the below cited case initiation statistics also serve as a fairly accurate indication of all matters brought to OI's attention.

BREAUX-SIMPSON/OI

02/09/88

QUESTION 15 (A) (B). (CONTINUED)

<u>YEAR</u>	<u>NUMBER OF CASES OPENED</u>
1982	164
1983	186
1984	158
1985	150
1986	86
1987	<u>87</u>
TOTAL YEAR TO DATE:	831

BREAUX-SIMPSON/01

02/09/88

• QUESTION 15. Please provide to the Committee the following, since 1982,
by year:

(C) the total number of cases OI referred to the Department of
Justice.

ANSWER:

<u>YEAR</u>	<u>CASES REFERRED DOJ</u>
1982	0
1983	12
1984	14
1985	15
1986	15
1987	<u>25</u>
TOTAL TO DATE:	81

QUESTION 15. Please provide to the Committee the following, since 1982,
by year:

(d) the total number of cases referred to the office of
Inspector and Auditor (OIA) by OI.

ANSWER.

OI Referrals to OIA

1982 --- 0

1983 --- 0

1984 --- 0

1985 --- 5

1986 --- 3

1987 --- 11

1988 --- 1

• QUESTION 15. Please provide to the Committee the following, since 1982,
by year:

(E) the total number of cases OI and OIA collaborated on.

ANSWER.

We assume that "collaboration" means instances where both OIA and OI jointly work the same investigation or portions thereof, such as the conduct of joint interviews. We can find no record of any such OIA/OI collaboration.

BREAUX-SIMPSON/OI

02/09/88

QUESTION 16. Since OI's inception in 1982 there has been considerable discussion of OI authority to self-initiate investigations.

(a) Specifically describe the extent of authority to self-initiate investigations.

(b) What document identifies OI's self-initiation authority?

ANSWER.

The authority of OI to self-initiate investigations is set forth in OI Policy 4. This policy codifies the authority to self-initiate investigations that was granted OI at the time of its 1982 creation. The Commission re-affirmed this authority in response to an April 1987 OI Commission Paper (SECY 87-93). At this point, OI has the authority to initiate investigations in the absence of a staff request or even in the face of staff opposition. The Commission, of course, may direct OI not to continue any investigation. With the realignment of OI as an NRC Staff Office, this authority, as well as other OI operational and organizational aspects, will be considered by the OI Organization Review Group recently appointed by the Chairman.

BREAUX-SIMPSON/OI

02/09/88

QUESTION 16. Since OI's inception in 1982 there has been considerable discussion of OI authority to self-initiate investigations.

(c) Why was the Investigations Referral Board (IRB) established?

ANSWER

QUESTION 16. Since OI's inception in 1982 there has been considerable discussion of OI authority to self-initiate investigations.

(d) Who established the IRB?

ANSWER

QUESTION 16. Since OI's inception in 1982 there has been considerable discussion of OI authority to self-initiate investigations.

(e) Did the Commission vote on establishing the IRB? If not, why not? If the Commission voted on establishing the IRB, how did each Commissioner vote?

ANSWER

QUESTION 16. Since OI's inception in 1982 there has been considerable discussion of OI authority to self-initiate investigations.

(f) Explain why the OI Director was not a voting member of the IRB?

ANSWER

QUESTION 16. Since OI's inception in 1982 there has been considerable discussion of OI authority to self-initiate investigations.

(g) What were the findings and recommendations of the IRB-

ANSWER

· QUESTION 16. Since OI's inception in 1982 there has been considerable discussion of OI authority to self-initiate investigations.

(h) Why was the IRB "dis-established"?

ANSWER

• QUESTION 17. Although the IRB has been "dis-established," the NRC initiated the Investigation Priority Review Group.

(b) Is the OI Director a participating member of the new body?
If so, what are his responsibilities?

ANSWER

• QUESTION 18. In April 1987, the OI Director submitted SECY 87-93 to the Commission.

(a) For what specific reasons did the OI Director submit the SECY paper to the Commission?

(b) What events led to submitting the document to the Commission?

ANSWER

SECY-87-93 arose out of an OI concern that certain Staff and Commission actions taken from 1986 on had the effect of creating confusion regarding the scope of OI authority and responsibility. Two actions in particular - Commission approval of a Staff proposal (SECY-85-369) regarding the initiation, establishment of priorities, and the termination of investigations, and establishment of an Investigation Referral Board - appeared to conflict with long standing OI policies and procedures, particularly in such areas as the authority of the Director, OI, to initiate investigations sua sponte, or the obligation of NRC employees to report wrongdoing matters to OI. The need for clarification became acutely evident in February 1987 when controversy over OI self-initiation of an investigation over the objections of some Staff officials led to at least one Commissioner severely criticizing the OI actions and suggesting the need for disciplinary action for the Director, OI.

BREAUX/SIMPSON-OI

02/09/88

• QUESTION 18. In April 1987, the OI Director submitted SECY 87-93 to the Commission.

(c) What did the OI Director ask for in the SECY paper?

ANSWER

OI asked, (1) that the Commission reaffirm OI's authority and responsibilities, and (2) that the Commission direct OI and the Staff to develop joint guidance to ensure that all NRC employees are informed of the scope of OI authority and responsibility so that all matters of wrongdoing are brought to OI's attention. OI then provided a list of seven statements of OI authority and responsibility for Commission affirmation.

BREAUX/SIMPSON-OI

02/09/88

• QUESTION 18. In April 1987, the OI Director submitted SECY 87-93 to the Commission.

(d) What arrangements were reached as a result of the management meeting held to discuss the SECY paper?

ANSWER

The Director, OI, and his staff met with the Commission on July 29, 1987, to discuss SECY-87-93. During that meeting the Commission re-affirmed its support for the existing 27 OI Policy Statements. The Commission particularly re-emphasized the authority of OI to self-initiate investigations. Prior to that management meeting, but subsequent to the submission of SECY-87-93, the Investigation Referral Board was disestablished, and the Commission announced that neither Commission nor Office of General Counsel review of proposed OI referrals to the Department of Justice would be required. Based on the foregoing, as well as the advice of Commission staff, OI submitted SECY 87-93A which formally withdrew SECY-87-93. OI's withdrawal of SECY-87-93 was based on its understanding that the issues raised by that paper had been favorably resolved by the above-described actions.

BREAUX/SIMPSON-OI

02/09/88

* QUESTION 19. What NRC document(s) define the procedures for conducting investigations under OI's jurisdiction?

(a) Define the thresholds for conducting OI investigations.

ANSWER

OI investigations are conducted in accordance with the 27 Commission-approved OI Policy Statements. Implementing procedures are contained in the OI/Investigative Procedures Manual.

BREAUX/SIMPSON/OI

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QUESTION 19. What NRC document(s) define the procedures for conducting investigations under OI's jurisdiction?

(b) Define the priorities for conducting OI investigations.

ANSWER

The thresholds for conducting OI investigations are found generally in Part III, B.1. of the Appendix to NRC Manual Chapter 0517. The threshold for a Staff investigative request is a reasonable basis for belief of wrongdoing and a Staff determination that an investigation is necessary for enforcement or other regulatory action. The Director, OI, may self-initiate an investigation based on reasonable belief of wrongdoing in accordance with OI Policy 4.

BREAUX/SIMPSON/OI

02/09/88

• QUESTION 20. What has the ultimate authority, within NRC, to open a full-scale investigation under OI's jurisdiction? Who has the primary responsibility to determine whether or not an OI investigation is needed?

ANSWER

Ultimate authority of course rests with the Commission. Although the EDO and Regional Administrators may request investigations, only the Commission may direct OI to open an investigation. Thus, on a practical basis, the Director, OI, determines whether or not to initiate an investigation. Similarly, authorized requestors have a responsibility to request OI investigations when the threshold criteria of NRC Manual Chapter 0517 are met. The Director, OI, must also remain aware of matters that may require investigation and be prepared to initiate investigations in the absence of a request. The foregoing procedures have been followed in the past. The recent transfer of OI to the Staff of the EDO may alter these arrangements depending, inter alia, on the recommendations of the recently chartered OI Organization Review Group.

BREAUX-SIMPSON/OI

02/09/88

QUESTION 21. Has the Commission ever denied an OI request to initiate an investigation under its jurisdiction? If so, describe the specific incidences and why the request(s) were denied.

ANSWER

The Commission has never denied an OI request to initiate an investigation under its jurisdiction, but did decline to support the initiation of an investigation involving two senior managers at the Wolf Creek Generating Station, Burlington, Kansas, in early 1985. In accordance with Commission policy regarding the investigation of persons for reasons of character and integrity, OI brought to the Commission's attention certain actions on the part of these two senior officials - alleged sexual harassment, alleged blackballing of a former employee, and the alleged illegal search and seizure of documents from that employee's vehicle (without that employee's knowledge). OI did not specifically recommend a course of action in the Commission paper setting forth the above allegations, but Commission Asselstine proposed an investigation be conducted. The Commission voted not to support this action.

BREAUX-SIMPSON/OI

02/09/88

• QUESTION 22. Please explain the relationship between wrongdoing and safety issues in the context of OI's responsibilities to investigate wrongdoing. In the Commission's view, does wrongdoing always have safety significance? Does OI share the Commission's view of the relationship between wrongdoing and safety issues?

ANSWER

OI offers the following observations regarding the interrelationship of wrongdoing and safety. The NRC does not prescribe requirements for non-safety reasons. As wrongdoing in the NRC context always involves the deliberate violation of NRC requirements, it must always have safety significance. Wrongdoing is not a random chance event. A component does not just happen to fail, nor an individual just happen to make a mistake. To the contrary, an individual, or more ominously, a group of individuals, sets out not only to violate a safety requirement, but in virtually all instances, to conceal or cover up this violation. The underlying violation may vary in significance from falsification of QA records relating to components that are, in fact, of sufficient quality to falsification of QA records that conceal actual defects. But the safety significance of the wrongdoing does not turn only on the apparent magnitude of the violation per se. The real safety significance lies with the person or persons who committed the violation. In other words, the issue is character and integrity.

BREAUX/SIMPSON-01

02/09/88

QUESTION 22. (CONTINUED)

The nuclear industry is largely self-regulating. For the most part, our regulatory assumption is that most licensees will comply voluntarily with NRC requirements, and that their commitment to the protection of the public health and safety is as vigorous as that of the NRC. We do not disagree with this assumption. But, this is what makes character and integrity so important. The NRC must be able to rely on persons in the industry to comply with, not circumvent NRC requirements. Industry employees who engage in deliberate violations of NRC requirements represent a safety threat in terms of their unreliability.

It is difficult enough for NRC inspectors to detect non-compliance when it is not deliberate given NRC resource constraints. When such violations are done on purpose, and covered up, such non-compliance is highly unlikely to be discovered during routine inspections. Thus, the licensee employee who engages in wrongdoing is like a Trojan horse within the regulatory system. Whatever character traits that may lead them to commit such violations render such employees safety hazards of the first order.

Thus, it is OI's view that wrongdoing, as defined by the NRC, always has a degree of safety significance.

BREAUX/SIMPSON-01

02/09/88

QUESTION 23. In his October 8, 1987 testimony before the Subcommittee, Mr. Stello gave examples of the staff and OI working together to take necessary regulatory action even before investigations were complete. Has the staff had to delay regulatory actions while OI continued its investigations. Please describe specific examples, if any, where this has occurred.

ANSWER

QUESTION 24. In his October 8, 1987, testimony before the Subcommittee, Mr. Hayes noted OI's mission of providing thorough, objective, and timely reports to the staff to assist them in making regulatory decisions. What criteria is used to suspend an investigation based upon a regulatory need? Who makes this decision? Please give specific examples of OI investigations that have been suspended.

ANSWER

The Director, OI, may elect to suspend an investigation based on a lack of regulatory need, but this would be a rare action for the following reason. Virtually all current OI investigations have been carefully reviewed by the Staff and OI prior to initiation. Each open case represents a joint Staff/OI decision that the facts available to the NRC at the outset represent a reasonable belief that wrongdoing has occurred. As by definition, regulatory need attaches to all wrongdoing within OI jurisdiction, the only factor that could lead to a decision that a regulatory need no longer exists would be compelling evidence supporting a reasonable belief that wrongdoing did not, in fact, exist. This normally would be a result of the investigative process. Under those circumstances, the assigned investigator would, with the concurrence of his supervisor, discontinue the investigation and write a final report of investigation that would be issued in accordance with standard procedures.

BREAUX/SIMPSON/OI

09/09/88

Although the original requestor of an investigation may assert that he or she no longer requires an investigation, the investigation would be discontinued by the Director, OI, only if there was a reasonable belief that there was no wrongdoing.

On the other hand, the Director, OI, may want to close a case due to a requestor's assignment of a lower priority to the investigation. For example, the requestor of an investigation initially assigned a high priority may, based on the belief that the investigative results no longer are necessary, request it be treated as a low priority case. Under those circumstances, the case could become a candidate for OI administrative closure for lack of resources. Thus, although OI would not close a case solely on the basis that the Staff asserts that there no longer is a regulatory need, the practical results of such a Staff action would be to cause the matter to be closed administratively for lack of resources.

As of December 31, 1987, OI has closed 39 cases administratively for lack of resources.

BREAUX/SIMPSON/OI

02/09/88

• QUESTION 25. Please provide to the Subcommittee the following data by fiscal year through 1987.

- (a) the number of positions requested by OI.
- (b) the number of positions requested for OI by the Commission.
- (c) the number of positions allocated to OI.
- (d) the number of positions allocated to OI by the Congress.

ANSWER

The following information is responsive to this question:

<u>Fiscal Year</u>	<u>Commission Rqst to OMB</u>	<u>President's Budget Rqst</u>
	<u>FTE</u>	<u>FTE</u>
1982	38	38 ^a
1983	38	38 ^a
1984	42	38 ^a
1985	49	49 ^b
1986	38	44 ^b
1987	44	44 ^b
1988	44	44 ^b
1989	44	44 ^b

^a The Office of Investigations personnel ceiling was held to 38 FTE's until FY 1986. (See attached 1/24/85 memo from C. Kammerer to J. Asselstine.)

^b Congressional Authorization Act and Appropriations Act did not reduce the President's Budget request for the Office of Investigations.

BREAUX/SIMPSON/OI

02/09/88