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The Enigma of Bureaucratic Accountability

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BOOK REVIEWS

THE ENIGMA OF BUREAUCRATIC ACCOUNTABILITY


Reviewed by William S. Fields**

I. INTRODUCTION

Although the Inspector General concept long has been a fixture of military establishments, its utilization for the systematic oversight of civilian federal governmental agencies is a phenomenon of relatively recent origin. Indeed, the first significant step toward a uniform government-wide application of this concept in a civilian context came only with the enactment of the Inspector General Act of 1978.¹ The Inspector General Act created Offices of Inspector General in twelve major federal agencies. The principal purpose of those offices, as set forth in the second section of the Act, was “to conduct and supervise audits and investigations relating to the programs and operations of the[ir] establishments.”² The con-

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cept proved so successful that the original Act was repeatedly amended, extending the concept to virtually every federal agency, so that by 1989 the number of establishments with Offices of Inspector General totaled sixty-one. As a result, in less than two decades, the Offices of Inspector General became the leading organizations responsible for audit and investigative oversight of executive branch programs and operations.

In his recent work Monitoring Government, Professor Paul C. Light examines the history, development, and future of the Inspector General concept. Light analyzes the influence Inspectors General exert upon governmental management and the effectiveness of their approach in assuring governmental accountability. Prepared under the auspices of the Brookings Institution and the Governance Institute, the book draws heavily upon original research conducted at the behest of the Administrative Conference. It is an original, comprehensive, and scholarly look at an arcane but important subject, and is the most significant and substantial work to date on the role of the Inspectors General in the American political system.


5. Light, supra note 4.

6. See Bruce K. MacLaury, Foreword to Light, supra note 4, at vii-viii.

In conducting research for his book, Light utilized a tripartite methodology: 1) structured written questionnaires mailed to present and former Inspectors General; 2) semi-structured interviews; and 3) analysis of primary documents. His documentary sources included not only readily available materials, such as Inspector General semiannual reports, organizational charts, and congressional hearings, records and reports, private memos, personal diaries, meeting logs, uncorrected transcripts, and similar items not ordinarily available to the public. In his discussion of the views of President Carter and other key administration officials toward the Inspector General Act, for instance, he draws heavily upon the previously unpublished personal notes of Stuart Eizenstat, Carter's domestic policy adviser. Light's work contains extensive footnotes and lists interview contacts in the appendix.

Structurally, the book is organized into five parts, each containing several chapters. The first part contains an overview of the basic types of accountability and a brief history of the origins of the Inspector General concept. Parts two, three, and four then proceed in more or less chronological order, analyzing the legislative history of the Inspector General Act, the subsequent developmental history of the Inspector General concept, and the organization and structure of the Inspector General system. The final part of the book examines the effectiveness of the Inspector General concept and speculates as to its future prospects. Based upon his findings, Light makes recommendations for changes at various junctures in the book, particularly in the final chapter.

II. Compliance Monitoring and Accountability

Light's primary theme in Monitoring Government is that the Inspector General concept places too much emphasis upon compliance monitoring as an approach to governmental accountability. He contends that performance accountability and capacity-based accountability are more effective approaches, although they have a lower visibility and require greater up-front financial outlays for investments in administrative infra-

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8. Light, supra note 4, at 4-5.
9. Id. at 62.
10. Id. at 236, 241.
11. Id. at 5-8.
12. See id. at 8.
structure, such as rewards, incentives, staffing increases, training, and the introduction of more efficient technologies. Light blames this situation not on the Inspectors General themselves, but on the president and Congress. "Compliance monitoring not only generates a much greater volume of findings of failure . . . and thus more opportunities for credit claiming by the Congress and the administration," writes Light, "but also produces recommendations for actions that are less expensive, more politically palatable, cleaner jurisdictionally, and faster to implement."

Light notes at the outset of his work that the Inspector General Act, like all legislation, was the product of political compromise, and reflected an amalgam of two distinct and often conflicting concepts of the role of the Inspectors General: Congressman Benjamin Rosenthal's view of the Inspector General as a "lone wolf investigator," who would "operate within a narrow compliance mandate," and Congressman L.H. Fountain's view of the Inspector General as "a more cooperative member of the president's management team," with somewhat broader responsibilities. Although concerns about accountability, public confidence in governmental institutions, and "the politics of fraud busting" were motivating factors, "Congress's growing thirst for information" served as the principal driving force behind the passage of the Inspector General Act. Its enactment coincided with the arrival in Congress of "a new kind of member, one motivated primarily by ambition and publicity," an increase in congressional staff and oversight activity, and a proliferation of standing committees and subcommittees. As Light's statistical analysis demonstrates, the pattern of deployment of the new congressional staff had a profound influence on the way the Inspector General concept evolved. The first Inspectors General, appointed during the latter half of the Carter administration, encountered serious resistance within their respective agencies at a time when the administration was politically weak, and their survival became dependent on the formation of alliances with the Congress. These alliances in turn were dependent on the Inspectors General's ability to produce the types of useful findings and statistics that

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13. See id. at 5-8.
14. See id.
15. Id. at 4.
16. Id. at 58-77.
17. Id. at 39-50.
18. Id. at 51.
19. Id.
20. Id. at 51-53.
21. Id. at 53-57.
22. Id. at 81.
were generated by compliance monitoring. Congressional staff allocations favored the Senate and full committees of the House therefore, House subcommittees became more dependent than other congressional institutions upon outside information, and the Inspectors General, in essence, became creatures of the House subcommittees.

The arrival of the Reagan administration produced a brief period of instability for the Inspectors General, precipitated by the new administration's initial firing of the Carter-appointed Inspectors General. This was soon followed, however, by a reassertion of executive control over the Inspector General community by the Office of Management and Budget, utilizing the newly created vehicle of the President's Council on Integrity and Efficiency. The Inspector General concept fit neatly into the Reagan "anti-Washington" political motif, with Inspector General audits and investigations providing the new administration with statistical and anecdotal evidence to support its allegations that the bureaucracy was rampant with fraud, waste and abuse. It is, therefore, not surprising that Light characterizes the Reagan years as the "glory days" of the Inspector General concept. During the Reagan administration the size of Inspector General staffs increased substantially, and the Inspectors General became more independent of their home agencies. They also gained a say in the Inspector General selection process, resulting in a trend toward the appointment of candidates from within the career service of the Inspector General community.

Although the Inspectors General's ties to Congress weakened somewhat during the Reagan years, the utilization of compliance monitoring as the principal means of assuring governmental accountability became even more pronounced—albeit now for the new masters at the Office of Management and Budget. A hallmark of the period was what Light describes as "a drift towards investigations"—an increased emphasis upon high visibility investigations led by Inspectors General who were the product of an "investigator culture," which in turn placed a heavy

23. Id. at 81-82.
24. Id. at 51-57.
25. Id. at 102-03.
26. Id. at 104.
27. Id. at 116.
28. Id. at 103.
29. Id. at 110-11.
30. Id. at 111-18.
31. Id. at 107.
32. Id. at 117-18.
33. Id. at 57, 102-03.
emphasis upon political acumen and external relations.\textsuperscript{34} Less obvious but equally important was the fact that the ascent of the Inspectors General was paralleled by a decline in the importance of the assistant secretaries for administration and management, who lost their audit and investigative capacity with the enactment of the Inspector General Act, and thus "the capacity to learn about departmental problems first."\textsuperscript{35} In the early 1980s the assistant secretaries, once important career-reserved positions, were in the process of being converted to political positions and, in Light's words, "became little more than a holding pattern for political appointees looking for a better job."\textsuperscript{36}

One significant occurrence of the Reagan years that Light discusses only briefly is the extension of the Inspector General concept to the remaining major departments and, in particular, to thirty-three smaller agencies as part of the 1988 amendments to the Inspector General Act.\textsuperscript{37} As Light correctly notes, the smaller agency Inspectors General "share[ ] the same name, but not the same resources or statutory authority"\textsuperscript{38} as their departmental counterparts. They are appointed by their agency heads, not by the president, and lack separate appropriations accounts and minimum staffing requirements.\textsuperscript{39} It is therefore likely that their developmental history will be considerably different from that of the Inspector General concept in the major departments. Light does not elaborate on this point, perhaps because it is still too early to draw any meaningful conclusions on the impact of the smaller agency Inspectors General. It is, however, an important topic which warrants further scrutiny.

The arrival of the Bush administration brought an end to the "golden days" of the Inspector General concept and signaled the beginning of what Light characterizes as a period of "backlash."\textsuperscript{40} Unlike its predecessor, the incoming administration did not fire the holdover Inspectors General, but neither did it tell them that they would be kept on.\textsuperscript{41} Instead, the Inspector General community hung in limbo, awaiting a clear signal from the White House as to the new administration's direction.\textsuperscript{42} It did not have to wait long, however, as it became increasingly obvious that the Inspectors General had been downgraded on the president's

\textsuperscript{34} Id. at 149-74.
\textsuperscript{35} Id. at 91.
\textsuperscript{36} Id. at 112.
\textsuperscript{37} Id. at 131.
\textsuperscript{38} Id. at 132.
\textsuperscript{39} Id.
\textsuperscript{40} Id. at 134.
\textsuperscript{41} Id.
\textsuperscript{42} Id.
The Inspectors General's influence at the Office of Management and Budget declined, and the White House was slow to fill vacant Inspector General posts. Furthermore, when appointments were made, they went to relatively inexperienced political appointees instead of individuals from the Inspector General career service, a clear break with the tradition of the Reagan years. Relations between the Inspectors General and the Bush administration became decidedly hostile following the issuance of a March 9, 1989 legal opinion entitled "Authority of the Inspector General to Conduct Regulatory Investigations," by the Justice Department's Office of Legal Counsel.

The controversy over the Office of Legal Counsel opinion was a seminal event in the developmental history of the Inspector General concept. The opinion culminated a two-year dispute between the Labor Department's Inspector General and the Solicitor over the Inspector General's authority to conduct criminal investigations of violations of departmental regulatory statutes.

Although enforcement of the statutes in question was the responsibility of other agency components, such as the Pension Welfare Benefits Administration, the Occupational Safety and Health Administration, and the Employment Standards Administration, those components lacked both the resources and expertise to pursue the cases. Moreover, the Labor Inspector General had by means of memoranda of understanding sought to consolidate responsibility for their enforcement in his own office. He based this effort upon section 4 of the Inspector General Act, which authorized him to "conduct, supervise, and coordinate . . . investigations relating to the programs and operations of [his department]," and section 6 of the Act, which authorized him "to make such investigations . . . relating to the administration of the programs and operations of . . . [his] establishment as [were], in [his] judgment, . . . necessary or desirable."

The Office of Legal Counsel first sought to avoid entanglement in the dispute, but eventually issued an opinion in which it concluded that the Labor Inspector General lacked the authority to conduct such investiga-

43. *Id.*
44. *Id.* at 134-35.
45. *Id.*
47. *LIRC*, *supra* note 4, at 135-45.
49. *Id.* § 6(a)(2).
It based its decision on section 9 of the Inspector General Act, which prohibited agency heads from transferring "program operating responsibilities" to the Inspector General, and a portion of the legislative history of the Act, which stated:

While Inspectors General would have direct responsibility for conducting audits and investigations relating to the efficiency and economy of program operations and the prevention and detection of fraud and abuse in such programs, they would not have such responsibility for audits and investigations constituting an integral part of the programs involved.

The opinion ostensibly applied only to the Labor Department and, as Light notes, had it stuck narrowly to the issue at hand, a dispute with the Inspector General community at large might never have ensued.

In the second part of the opinion, however, the Office of Legal Counsel, of its own volition, went on to state affirmatively that Inspectors General could only investigate the actions of their departments and its employees, and the recipients of federal funds, such as contractors and grantees. This narrow reading of the statute struck at the jurisdictional heart of a number of highly visible investigations being conducted by Inspector General offices other than Labor's, and in some cases forced the suspension of investigative activity with respect to broad categories of cases. "Flawed or not," writes Light, "the OLC memo wreaked havoc in the [Inspector General] community."

The Inspectors General's response to the situation was to complain loudly that the opinion would bring their investigative operations to a standstill and to seek a modification or reversal of the opinion from the Office of Legal Counsel's new head, Assistant Attorney General William Barr. When that effort did not produce the desired results, they took the matter to Senator John Glenn, Chairman of the Senate Government Affairs Committee. Senator Glenn held hearings on the issue and introduced legislation to reverse the opinion's holding. Light sees Glenn's legislation, however, as nothing more than a "bargaining chip" in the dispute, since it was opposed by the committee's ranking Republican mem-

50. LIGHT, supra note 4, at 136-38.
51. 5 U.S.C. app. 3, § 9(a)(2); see also OLC Opinion, supra note 46, at 73-74.
52. H.R. REP. No. 584, 95th Cong., 1st Sess. 12-13 (1977); see also OLC Opinion, supra note 46, at 70.
53. LIGHT, supra note 4, at 139.
54. OLC Opinion supra note 46, at 79-81.
55. LIGHT, supra note 4, at 141-42.
56. Id. at 140.
57. Id. at 143.
58. Id. at 141.
ber, Senator William Roth. At the height of the controversy, President Bush nominated Assistant Attorney General Barr for the position of Deputy Attorney General, a nomination that Senator Glenn intended to place on hold until the Office of Legal Counsel issue was resolved. According to Light, this action forced a compromise of the issue.

Although Light adequately characterizes the legal dimensions of the Office of Legal Counsel dispute, his analysis of its political aspects and their repercussions for the Inspector General concept is somewhat limited. As related by Light, the dispute takes on the appearance of an esoteric "tempest in a teapot," too removed from its larger political context. Unfortunately, Light's characterization leaves the reader wondering why the dispute ever occurred in the first place, especially given the fact that it was precipitated by Inspectors General who were a product of Light's "investigator culture"—Inspectors General who placed a heavy emphasis upon political acumen and external relations. Lacking is an analysis of why the normally cautious Inspectors General misjudged the influence of Barr and his associates and overestimated their own strength, and how they came to embark upon such a high risk, all-or-nothing strategy that would so profoundly affect the Inspector General system.

In this regard, Light's discourse would have benefitted from a more extensive examination of the Inspectors General's relation to the Department of Justice. The Office of Legal Counsel opinion was not issued in a vacuum, but came after the Inspectors General had, for over a decade, successfully been conducting the types of investigations which it sought to prohibit. Many of those investigations had been conducted at the request of other Justice Department components, particularly the Criminal Division and the Offices of the United States Attorneys. In short, those line components of the department had encouraged the Inspectors General to expand their investigative work and had never questioned their statutory authority. With the issuance of the opinion, however, the Inspectors General thought that Justice was now sending them mixed signals.

The situation was further aggravated by the Office of Legal Counsel's unwillingness to allow the Inspectors General to give the opinion itself a liberal interpretation. The opinion's own language seemed to invite such an approach, stating at one point that it did not "purport[ ] to provide a complete description of the nature and scope of [the Inspectors Gen-

59. Id. at 142-43.
60. Id. at 137-45.
61. Id. at 135-45.
62. Id. at 163.
63. Id. at 156-60.
eral's] authorities." But Inspector General efforts to continue the questioned investigative activities by relying on alternative bases of authority that had not been addressed in the opinion, such as theories of "concurrent jurisdiction" or the expansive grants of authority found in section 7 of the Inspector General Act, uniformly were rebuffed.

Light also does not fully appreciate the significance the opinion's source had in framing the controversy. The Inspectors General were line managers concerned with the practical issues that confront career law enforcement officials; they did not want their efficient, smooth working investigative arrangements upset by silly requirements imposed upon them by a small group of political appointees who knew nothing about the realities of Inspector General work. As presidential appointees with an enabling statute that gave them "independence," the Inspectors General considered themselves immune from such interference. In essence, the dispute became a conflict of cultures. To the Inspectors General, the "real lawyers" of the Justice Department were the prosecutors and trial attorneys that handled their cases—not the young conservative lairds and their Federalist Society retainers who pontificated from the ivory tower of the Office of Legal Counsel.

Light sees the genesis of the Office of Legal Counsel's position in the traditional Justice Department enmity toward the Inspector General concept and in their irritation at having the system extended to their own department, points made by Senator Glenn at the Senate hearings on the opinion. Although these certainly were factors, they were not the only things in play. To be sure, the Republican administrations were firmly on record as being against government waste, fraud and abuse, but they also had made other vague promises, such as "getting government off the backs of the people," which the conservative theoreticians at the Office of Legal Counsel also had to consider. While it might be all right to let the Inspectors General beat up upon hapless bureaucrats for the amusement of the electorate, it was a different matter when they started harassing private citizens—especially key Republican constituencies, like doctors and businessmen.

Light also makes only a cryptic reference to the Bush administration's desire to carve out an identity separate from that established by the Rea-
gan administration. Such a statement seems to understate the profound philosophical differences between the two presidents that undoubtedly influenced their views toward the Inspector General concept. Before becoming president, Bush served for years in a variety of elected and appointed positions, developing a respect for the work of the senior career civil servants. He did not share Reagan's "anti-Washington" attitude and, in all likelihood, viewed with disdain the Inspectors General's heavy handed bashing of their agencies' management. Bush's management style emphasized teamwork and cooperation, not confrontation, something almost anathema to the Inspector General concept.

Moreover, the way in which the Office of Legal Counsel dispute played out was somewhat more intricate than Light's rendition suggests. Although the Inspectors General were united in their opposition to the Office of Legal Counsel opinion, they could not agree on an appropriate response to the opinion. Some Inspectors General thought it best to let "sleeping dogs lie," while others would settle for nothing less than complete withdrawal of the opinion. In the middle of these two positions were Inspectors General who were amenable to various modifications that would benefit only themselves. Barr was willing to issue some sort of modification, but only if it resulted in a complete settlement of the issue and brought an end to Inspector General sniping at the administration. Such a compromise was not possible, however, with each Inspector General jealously guarding his own statutory "independence." Further, as the matter dragged on, the Inspectors General's position deteriorated. The Inspectors General had claimed originally that the opinion would cripple their investigative operations. However, as Light correctly notes: "Most investigative cases continued unabated, no investigators were laid off." Thus, having cast themselves in the role of "Chicken Little," their cause floundered when they failed to produce a "falling sky." As a result, Barr simply waited out the Inspectors General, offering no substantive modification of the opinion.

While Light notes the significance of Senator Roth's opposition to the Glenn legislation, he misses a key factor that influenced the outcome of the controversy. During the pendency of the dispute, Senator Glenn was fighting for his own political survival, having been implicated in the savings and loan scandal as one of the "Keating Five." As Deputy Attorney General, Barr would serve as the administration's point man in the effort

68. Id. at 145.
69. Id. at 141.
70. Id. at 143.
71. Id.
to clean up the savings and loan mess. Therefore, Glenn could not delay Barr's confirmation for too long, for obvious political reasons. Having concluded his hearings, Glenn had milked the Office of Legal Counsel issue for all of its political value. After placing Barr's nomination on hold, he discreetly withdrew his support for the Inspectors General.

Deprived of their powerful political sponsor, the Inspectors General were forced to accept a settlement on Barr's terms—one that left the opinion completely intact. In exchange for going quietly, Barr graciously allowed the Inspectors General to claim victory and save face. For the Inspectors General who were involved, however, it was not a compromise, as Light suggests, but a bitter defeat, and a humiliating lesson in "civics" taught by two masters of the political craft—the veteran Senate committee chairman and the brilliant young mandarin of the Bush Justice Department. Even today, the full implications of the controversy have yet to be realized. Just this past year, for instance, in the case of *Burlington Northern Railroad v. Office of Inspector General, Railroad Retirement Board*, the United States Court of Appeals for the Fifth Circuit utilized the rationale of the Office of Legal Counsel opinion to limit, for the first time, the scope of Inspector General audit authority.

For the Bush administration, the conclusion of the Office of Legal Counsel controversy had a more immediate impact, which Light alludes to in passing, but does not develop. With their investigative authority curtailed, the Inspectors General began turning their attention to the area of program audits. These audits have proven to be almost as fruitful a source of headlines as the high visibility investigations had been. Unfortunately for President Bush, they provided the President's Democratic opponents with a valuable source of ammunition with which to harass his weakened administration. Moreover, on a more philosophical level, the shift in emphasis toward audits, in a sense, also marked the end of what Light characterized in chapter eight as the "drift toward investigation."

### III. THE LIMITS OF EFFECTIVE OVERSIGHT

In the final part of his book, Light evaluates the overall impact of the Inspector General concept as it relates to the issue of governmental accountability and concludes, in essence, that the Inspectors General have been more or less effective at what they do, but what they do has not

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72. 983 F.2d 631 (5th Cir. 1993).
73. *Id.* at 641.
74. Unfortunately, Light's book went to press before the 1992 election and the completion of the Bush administration.
75. *Light, supra* note 4, at 149.
been effective. That is, they do a relatively good job of compliance monitoring, but compliance monitoring alone has not been that effective at increasing governmental accountability. Audits and investigations focus too much on small problems at the expense of larger systemic issues. "It is simply not enough to catch bad guys," writes Light, "[t]he long-run success of the [Inspector General] concept can be measured only by the quality of life produced by government."

Based upon his findings, Light recommends a number of solutions to the problems he perceives exist with Inspectors General. His recommendations are often quite specific in nature, but there are two basic premises underlying them: first, more emphasis should be placed upon performance accountability and capacity building accountability; second, the Inspectors General can and should provide the leadership necessary to take that direction, particularly in the area of performance accountability. Both of these premises are highly debatable.

With respect to the first premise, Light exhibits a distinct preference for the more contemporary private sector methods of accountability and would encourage their application to the government in modified form. At the outset of his book, he cites with approval Michael Barzelay and Babak Armajani's post-bureaucratic paradigm that reflects "the notion that government organizations should be customer-driven and service-oriented," and Mary Walton's explanation of W. Edward Deming's management philosophy that "[q]uality comes not from inspection but from improvement of the process." These rubrics may have a warm and fuzzy feel about them, but it is not clear that such approaches would be viable in a government context.

In the private sector, where "money talks," the customer is the one who pays for the good or service, and the quality of the good or service he receives is related directly to the amount he is willing to pay. Thus, the customer's primary concern is the quality of what he receives. With respect to government goods and services, the situation is somewhat different. The person paying for the good or service is often not the one who receives it, and the person receiving the good or service is not only concerned about the quality of what he receives, but also the quality of what his neighbor is receiving. Variances in quality can result in allegations of "discrimination" or "favoritism." Thus, in the public sector, there is a

76. Id. at 224.
77. Id. at 220.
78. Id. at 203-35.
79. Id. at 21 (quoting Michael Barzelay & Babak Armajani, Breaking Through Bureaucracy: A New Vision for Managing in Government 6 (1992)).
80. Id. at 17 (quoting Mary Walton, The Deming Management Method (1986)).
political incentive to provide goods and services that are uniform and of the lowest acceptable quality. That incentive, in turn, helps to promote the public demand for compliance monitoring.

Further, the private sector concept of “value” and thus “quality” is much more definite than its governmental counterpart. In the private sector, goods and services are, for the most part, fungible and their value is determined in a strictly economic sense. With respect to government goods and services, there is a considerable variance in their perceived value, which is not determined in strictly economic terms, but is dependent in large measure upon the political persuasion of the individual making the assessment and the extent to which personal benefits exceed personal costs.

The above differences suggest some of the difficulties that would arise when an attempt is made to adapt private sector methods of performance accountability to the public sector, and why compliance monitoring continues to be the principal means of governmental oversight. The private sector/public sector dichotomy also serves to underscore the reasons why it would be difficult for the Inspectors General to play a role in any movement away from accountability based upon compliance monitoring.

Light’s premise that the Inspectors General should play a leadership role in shifting the government’s orientation more towards performance accountability is based upon what are, for him, practical considerations. The first is his conclusion that the language of the Inspector General Act is already broad enough to accommodate such a role. The second consideration is his conclusion that the Inspectors General are presidential appointees with sufficient “independence” to insulate them from the political fall-out that would come from instituting such reforms. The third is that the Inspectors General already have a lock on the resources that the government devotes to accountability. There are, however, countervailing aspects to each of these considerations.

Light is correct in his conclusion that the language of the Inspector General Act is broad enough to allow the Inspectors General to exercise leadership in the areas of performance accountability and capacity building accountability should they choose to do so. But there is no way to get around the fact that the principal job assigned to the Inspectors General by the Act is “to conduct and supervise audits and investigations

81. Id. at 224.
82. Id. at 226.
83. Id. at 195-96, 225-26.
Bureaucratic Accountability relating to the programs and operations of the[ir] establishments. As Light concedes, the emphasis on auditing and investigating is reinforced repeatedly in both the legislative history of the Inspector General Act and the developmental history of its implementation. It is, therefore, unlikely that Inspectors General would, of their own volition, depart from that clear statutory mandate.

Further, Light does not fully appreciate the extent to which the Inspectors General's compliance monitoring agenda now is driven by statutes other than the Inspector General Act. The past ten years have seen the enactment of a host of congressional directives requiring Inspectors General to oversee specific programs. Some of these laws, such as the Single Audit Act, the Chief Financial Officers Act, and the Program Fraud Civil Remedies Act, are applicable to Inspectors General government-wide, while others are agency specific, such as annual appropriations acts that require an agency Inspector General to conduct a yearly audit of a particular program. Taken together, these congressional mandates have reduced substantially the amount of time and resources that the Inspectors General can devote to their discretionary activities.

While it is true that the Inspectors General of the major departments are presidential appointees vested with a degree of "independence," it is not at all clear that they would have the political strength or acumen to bring about such fundamental changes to the current approach toward accountability. Inspectors General ordinarily rise through the career service and lack the independent political bases and personal wealth that are characteristic of most major political appointees. As a general rule, they are not known by, nor do they have strong ties to, the presidents under whom they serve. Their job is one of staff support, not program opera-

85. Id. at §§ 2, 3, 4(a)(1), 6(a)(2), 7(a).
tion or policy making. Further, because of the kind of work they do, Inspectors General are disliked and distrusted by the managers of their agencies, a circumstance which would make it difficult for them to form the cooperative and collegial working relationships necessary to effectively implement proactive changes. Although at times they have worked congenially with the White House or the Office of Management and Budget, the Inspectors General really have never been “a strong right arm” of their own agencies’ management.

Finally, Light is correct in noting that Inspectors General have, at least for the moment, a lock on the available accountability resources. However, the nature of those resources would again make it difficult for Inspectors General to focus effectively on methods of accountability other than compliance monitoring. The Offices of Inspector General were created by the combination of existing groupings of auditors and investigators. The vast majority of their staff, even today, are compliance monitoring professionals. As a result, the offices have an institutional compliance monitoring mind-set and orientation that would be difficult to overcome. They also lack the expertise necessary to design and implement the kinds of accountability systems that Light advocates.

In short, it is up to Congress and the president, not the Inspectors General, to provide leadership in any movement toward a system of performance accountability or capacity building accountability. It was Congress’ decision to create the compliance monitoring oriented Inspector General system; it is Congress’ and the president’s demand for information that drives it. Further, Congress has shown no interest in making the financial investments necessary to implement viable performance accountability or capacity-based accountability systems. Faced with these political realities, the Inspectors General are not in a position to take a different course. If they depart from their clear mandate and venture into other areas, they do so at considerable risk. As the Office of Legal Counsel controversy so aptly demonstrated, the Inspectors General are only character actors in the Washington drama, not its stars.

IV. Conclusion

Having presented his case for reform, the specific changes that Light suggests seem at times almost too mild and, indeed, it is often difficult to understand how they would effectuate his larger purposes. For example, after lamenting about the drift toward investigations and questioning the effectiveness of the Inspectors’ General compliance monitoring emphasis,
Light advocates amending the Inspector General Act to give the Inspectors General fixed terms. A fixed term was, of course, a hallmark of the Rosenthal "lone wolf investigator" Inspector General model, the quintessential compliance monitor. Similarly, Light recommends that Inspectors General utilize more of their resources to conduct performance evaluations of the type done by the Department of Health and Human Services Office of Inspector General. He sees these evaluations as being much more useful to management than traditional compliance monitoring. Yet, such studies may in fact be misleading. Unlike audits, they are not based upon a universally accepted methodology and thus, repeatedly have been criticized for being unscientific compilations of anecdotal incidents compiled for political purposes.

Perhaps because his academic fields are political science and public administration, Light may place too much emphasis upon specific recommendations which he sees as having a realistic chance of being adopted—particularly ones that do not require a significant reconfiguration of the current Inspector General system. Although such an approach is taken at the expense of his larger objectives, it does not detract from the overall thoroughness of his study and the usefulness of his work. Light's conclusions and recommendations invite further discussion, not necessarily agreement.

On the whole, Monitoring Government is a well-researched and thoughtful book. It gives a detailed history of the origins and development of the Inspector General concept at a technical level, but at the same time analyzes the implications of the concept for government management as a whole. It explores some of the crucial issues in accounting theory and public administration, and the difficult trade-offs which they entail. Perhaps most importantly, it is a scholarly work that airs opposing points of view and, when opinions are expressed or positions taken, provides readers with sufficient information to make their own judgments.

91. Id. at 169-71.
92. Id. at 59.
93. Id. at 194-99, 230-31.
94. Id.
HARRIMAN REVISITED


Reviewed by Jeffrey O'Connell**
and Thomas E. O'Connell***

In this Essay, Jeffrey O'Connell and Thomas O'Connell review Rudy Abramson's recent biography of the late Averell Harriman. Focusing on and reviewing Abramson's account of Harriman's years in Albany, when author Thomas E. O'Connell served as Harriman's Deputy Budget Director, the authors expand on these descriptions with further narratives, highlighting the impact of those years on the fascinating life and public career of Averell Harriman.

In Spanning the Century: The Life of W. Averell Harriman 1891-1986,¹ former New York Governor Harriman (now perhaps most commonly known as the late husband of Pamela Harriman, currently the grande dame of the Democratic Party and the United States Ambassador to France)² has been blessed with a full, fair, and vividly written biography by veteran newspaperman Rudy Abramson. Much of the book features

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2. Nineteen ninety-four sees publication of two biographies of Pamela Harriman, the first, Christopher Ogden, Life of the Party: The Biography of Pamela Digby Churchill Hayward Harriman (1994) (by the former Time magazine correspondent), and the second by Sally Bedell Smith (biographer of William Paley) (forthcoming 1994). Ogden's grows out of an authorized biography from which Harriman withdrew; Smith never had a contract with Harriman.
Harriman’s glamorous years as a student at Groton and Yale, and his early careers as a championship polo player and builder of ships during World War I. Abramson also gives detailed attention to such matters as Harriman’s famous diplomatic career as Franklin Roosevelt’s World War II liaison with Winston Churchill, his role as emissary to Stalin’s Russia, and his career as a foreign affairs advisor to Presidents Kennedy and Johnson. However, this review, for reasons that will become apparent, focuses largely on Abramson’s account of Harriman’s years in Albany.

Abramson’s clear and balanced presentation highlights an important aspect of Harriman’s single term as New York’s Democratic governor from 1954 to 1958: Harriman’s term came between the long Republican reigns of Thomas E. Dewey (1942 to 1954) and Nelson Rockefeller (1958 to 1974). Competition with the powerful Republican governors preceding and following Harriman has diminished his reputation as governor, as both Dewey and Rockefeller had much more time to influence the affairs of the State of New York. Both also possessed more power and typically had friendly legislatures dominated by their own party. Harriman, on the other hand, had to contend with Republican majorities in both houses. As a result, during Harriman’s term a hostile Republican legislature usurped most law-initiating functions and confined the governor largely to vetoing the legislature’s initiatives.

In addition to these political frustrations, Harriman faced another problem—while Dewey left office boasting that there was a budget surplus of $142 million, this claim was misleading. As Abramson comments:

3. ABRAMSON, supra note 1, at 71-90.
4. Id. at 91-111.
5. Id. at 164-85.
6. Id. at 112-38.
7. Id. at 277-97.
9. ABRAMSON, supra note 1, at 570-674.
10. Id. at 516-69.
11. Id. at 516-17, 568.
12. Id. at 516-17.
13. Id.
14. Id. at 519.
15. Id. at 518.
The trouble was that the surplus was in a special fund created long ago to balance the budget in emergencies. Dewey had deftly avoided either tapping the emergency fund or increasing taxes by dipping heavily into yet another kitty—a special account that had been set up to pay for postwar construction projects. It was a sleight of hand made possible because the state had adopted budget habits resembling a housewife's stashing spare cash in mattresses and sugar bowls.\textsuperscript{16}

Consequently, from a practical standpoint, the state was deeply in debt. Harriman was thus in a position not unlike that of President Clinton on his recent inauguration as President; he had many ideas for important new programs, but no funds with which to implement them. It is small wonder then that Harriman's visible successes were limited and that his reputation as governor has never matched his fame as a presidential advisor and international negotiator.

Abramson's chapters on the Albany years of "The Guv," as Harriman liked to refer to himself,\textsuperscript{17} are both accurate and perceptive. On one point, however, there may be some disagreement: Did Harriman like being governor? Abramson says:

\begin{quote}
He hadn't been so satisfied with life since he was in the prime of his polo career. He had "tasted the pure unalloyed joy of self discovery," said his friend Teddy White, and he had become "a warmer, more gregarious person." He was an incessant booster of his state, serving New York wine at dinner, touting Long Island ducks and potatoes, and glorifying New York maple syrup and Genesee beer.\textsuperscript{18}
\end{quote}

But some of those who worked for Harriman in Albany felt that state matters bored him, particularly when he contrasted them with the larger arenas where he had become accustomed to performing. Clearly he was a much more effective performer in the area of international relations, where he served four democratic presidents so well. As to his being a

\begin{itemize}
\item \textsuperscript{16} Id.
\item \textsuperscript{17} Id. at 520.
\item \textsuperscript{18} Id. at 521 (quoting Theodore H. White, The Democrats, Colliers Magazine, Oct. 28, 1955, at 25, 27) (footnote omitted). In one instance not reported in Abramson's book, however, Harriman's New York State chauvinism ran him up against an equally tough old Tarter. Dean Acheson, whom Harriman had coached on the Yale freshman crew, id. at 102, came to dinner at the governor's mansion. On being served New York state wine with the meal, Acheson was heard to consign the entire Empire State to nether regions for its presumption in thus attempting to appeal to his (relatively) refined taste. Personal recollection of Thomas O'Connell. On this score, his son recently remarked: "His taste in red and white table wine was discriminating, but far from sophisticated. His wine dealer, he said, had forgotten more than Dad would ever know—why not rely on him?" David C. Acheson, Acheson County: A Memoir § 153 (1993).
\end{itemize}
“‘warmer, more gregarious person’”19 as governor, his aides saw little of that side of his personality. Indeed, he was famous in Albany as an overly demanding and ungracious boss. One cold winter’s evening, for example, his budget director, Clark Ahlberg, and several other budget aides had stayed very late at his behest (they all worked very long hours, though not as long as Harriman did). They were getting some figures together for Harriman who was to leave shortly on a vacation in the tropics. Ahlberg took the numbers in to the Governor. The others waited anxiously; if Harriman was not pleased with their work, he would insist that they do it all over again, regardless of the hour. When Ahlberg came out he was ashen. “What happened?” someone asked, “Did we screw up?” “Oh, no,” he replied, “the numbers were fine. After he checked them and was putting them in his briefcase without a word, I ventured to say, ‘Have a nice trip, Governor.’ He snapped at me, ‘I have no time for pleasantries!’”20

Because of his constant wars with the Republican legislature, Harriman used his budget to build support outside the legislative halls for his few basic programs. Abramson writes:

[H]e spent weeks explaining his management of [the budget] to businessmen, newspaper publishers, labor union officers, and local government officials who were invited to the mansion to be briefed. Before each session of the assembly, he held “budget school” and more or less compelled Albany correspondents of New York newspapers to wade line by line through the document, with [his first Budget Director, Paul] Appleby and himself as their guides.

House rules for the evening sessions at the governor’s mansion required reporters to address questions to the chief executive, who rephrased them to suit himself and put them to Appleby.21

Thomas O’Connell recalls one of the “budget school sessions” with chagrin:

As Deputy Budget Director, I was there with the Budget Director, the Governor, and several other aides facing a battery of media people. One reporter asked for a very specific figure in the huge budget document. The Governor usually knew the facts, but he didn’t know that number. He bristled; he didn’t like not knowing. I could see what was coming, because I did know the number. Harriman was notoriously hard of hearing.

19. ABRAMSON, supra note 1, at 521 (quoting White, supra note 18, at 27).
20. Personal recollection of Thomas O’Connell.
21. ABRAMSON, supra note 1, at 520.
(John Kennedy subsequently made it a condition of Harriman’s coming into the Kennedy administration that Harriman get a hearing aid).

Knowing this limitation on the Governor’s part, I spoke up as loudly as I could without yelling, “Governor, the figure is $1,500,000.” He turned on me as though I had called him a foul name and snarled loudly, “What?” Completely deflated, I repeated the number for the reporter. That was my one contribution to that budget school.

Although nearly everyone who worked for Harriman went through those ignominious episodes, they all admired him nonetheless. They knew he was absolutely devoted to the public service and that his integrity was unshakable. Besides, he had more energy and staying power than any of his aides, most of them half his age.

In researching Harriman’s files for his book, Abramson retraced some of the steps taken in 1958 during Harriman’s gubernatorial reelection bid against Nelson Rockefeller, searching widely for information about his subject.22

Thomas O’Connell reminisces:

My own most interesting assignment as his aide was to write his official campaign brochure. It was called “Greatness in a Governor.” I went to his Wall Street investment house, Brown Brothers, Harriman, where many of the Harriman family files were. I spent days there culling the incredibly rich mine of material, including choosing the best from thousands of pictures of him. I was proud of what I finally came up with (helped by other aides), but as I expected Harriman never mentioned it to me. On the other hand, if “the Guv” paid little or no heed to my efforts, that wasn’t true of everyone. In doing the cover of “Greatness in a Governor,” in order to use a striking semi-profile photo of Harriman looking in the same direction as other splendid pictures I found of former New York State democratic governors Al Smith, Franklin Roosevelt and Herbert Lehman, I reversed the Harriman photo. Only one colleague noticed, but he roared at me, “That’s not a true picture of Averell Harriman!” In any case, neither the brochure nor anything else could have helped Harriman get reelected, in that Rockefeller was an incomparably more fiery and attractive candidate, going on to win four gubernatorial elections.

In his research for Spanning the Century, Abramson found rich mines of information about Averell Harriman and the entire Harriman family,

22. Id. at 8 (describing the author’s research of Harriman’s files, documents, and memorabilia in preparation for writing the biography).
including old "E.H.,” Averell’s railroad-pioneer and “robber-baron” father; his mother Mary, referred to in newspapers as “[t]he world’s richest woman” after E.H.’s death23 (which occurred just before Averell started at Yale);24 and Averell’s siblings, who were also successful, though less so than their famous brother.

In a sense, Abramson was fortunate that he approached Averell about writing his biography very late in Averell’s life.25 He met less resistance than previous chroniclers. For example, after the 1958 loss to Rockefeller, those familiar with the Albany years watched with interest as Daniel Patrick Moynihan, who served as Assistant Secretary and Acting Secretary to the Governor, toiled to produce a history of “The Guv’s” administration that the hyper-critical Harriman would accept. As they expected, Moynihan proved too careful and honest a scholar to produce the requisite hagiography, and his manuscript was never published.26 A second effort on that front by Moynihan’s fellow Syracuse University scholar, Professor Frank Munger, also failed to pass muster; Harriman found it “had missed the drama and vitality.”27

Though not discussed by Abramson, Harriman’s leaving the Governorship was a disappointment not only to him, but to many of his aides as well—and not simply because of the stinging electoral defeat. They had to find new jobs on extremely short notice. On the very election day when Harriman was defeated in the biggest state on the East Coast, another Democratic gubernatorial candidate, Edmund “Pat” Brown, was elected in the biggest state on the West Coast—defeating U.S. Senate Majority Leader William Knowland in the California election.28 In turn, Brown let it be known that he was anxious to have some of the soon-to-be-out-of-work Harriman aides for his ambitious new administration. But so uncooperative was Harriman in aiding in this transfer that California job opportunities for his aides withered. His aides—few of whom were cushioned from financial worries as was Harriman—did not forget.

Reflecting this attitude, but not mentioned in Abramson’s book, is an incident in the early 1960s when Harriman was being mentioned as a New York Senatorial candidate. At a Washington cocktail party, a gushing reporter approached Moynihan, who, like Harriman, was in the Kennedy

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23. Id. at 105.
24. Id. at 91.
25. Id. at 8 ("[Spanning the Century] was undertaken after Harriman was in his nineties . . . .").
26. Id. (stating that Moynihan’s work was “deemed too negative”).
27. Id.
administration. "Why, Pat," she said, "What are you doing here? I thought all you Harriman folks would be in New York helping to organize his Senate bid." "Well no, not all," replied Moynihan. "Some of us starved, you know."29

Mention of Moynihan calls to mind that one of the most important legacies of the Harriman years turned out to be the emergence of Moynihan in public service for New York State and the nation. In some ways, though, Moynihan's early years as a Harriman aide did not portend his later eminence. As Moynihan's biographer Douglas Schoen describes, some of Moynihan's colleagues in the Harriman administration dismissed him as a rather erratic, superficial, and self-important young man, more renowned for his conviviality, wit, and volubility than for his drive and reliability.30 More impressive to many was Moynihan's future wife, the young, tireless, and able Elizabeth Brennan, secretary to Moynihan's boss, Jonathan Bingham. Bingham, later a congressman from New York, was then Harriman's executive secretary, with Moynihan serving as his assistant. At the time, some of Liz Brennan's friends had a "lingering sense that she was too good for [Moynihan]" and "cautioned her about rushing into a marriage with him."31 But, undaunted, marry him she did.

Indeed it was during those Albany years that Moynihan began showing what writer Timothy Crouse has described as his

rare and valuable . . . . gift of short-term prophecy. When he has had a few drinks, he sometimes brags . . . . that he has a terrific ability to identify a going issue. This may be one of his few understatements. He has spotted many a hot issue—from auto safety to welfare reform—while it was still on the horizon of public consciousness. He has an uncanny sense of precisely what is going to worry people next.32

As Crouse indicates, it was as a Harriman aide that Moynihan began to focus on the hitherto mundane topic of traffic safety. Moynihan brilliantly highlighted the fatuous emphasis of the traffic safety establishment in New York and elsewhere on driver behavior when a much more exciting and profitable view would focus on the epidemiology of the problem—on traffic safety as a public health problem.33 As the Harriman official charged with administering the Governor's Traffic Safety Policy

29. Personal recollection of Thomas O'Connell.
31. Id. at 54.
32. Timothy Crouse, Ruling Classing Hero: How Pat Moynihan Became a Credit to his Race, ROLLING STONE, Aug. 12, 1976, at 42-43.
33. Id.
Coordinating Committee, Moynihan—working with Dr. William Had- 
don, Jr., then director of the Driver Research Center of the New York State Department of Health—pursued the issue of whether New York State’s “points system” (under which a driver lost his license after amassing a specified number of points awarded for traffic violations) had any appreciable effect on lowering the accident rate. Finding none, Moyni- 
han began to exploit the establishment’s lack of a productive approach to 
the whole traffic safety problem, despite the vigorous protests of those 
charged with traffic safety in Albany. In a follow-up article in the Re- 
porter magazine, Moynihan, according to his biographer, 
argued that accidents resulted from the concentration of a large 
number of vehicles in a small area rather than from a nation of 
careless drivers. The article pointed out that lowering the speed 
limit in Connecticut had not significantly reduced the number of 
accidents or the number of injuries caused by accidents. (And 
even if it could be shown that human factors were responsible 
for many accidents, what could the government do to influence 
the personal traits of individual drivers?) However, the article 
said, research showed that injuries received in accidents were 
caused in large part by faulty automobile design, the improve- 
ment of which could eliminate seventy-five percent of the na- 
tion’s auto fatalities each year. There was evidence that 
automobile design had a direct impact on the [injury] ... rate, 
that certain model cars were more prone to causing [injury] ... 
than others. The article concluded that since the auto industry 
has traditionally been resistant to the introduction of such safety 
features as padded dashboards and seat belts (on the assump- 
tion that they would be costly and hurt sales), it was important 
that an independent federal body regulate the auto industry and 
develop safety standards for cars.34 

Thus it was that the Harriman administration antedated the efforts of 
Ralph Nader and others in sparking the development of the National 
Highway Traffic Safety Administration, the congressionally created 
agency for dealing with automobile safety standards.35

34. Schoen, supra note 30, at 61 (citing Daniel P. Moynihan, Epidemic on the High- 
ways, The Reporter, Apr. 30, 1959, at 16); see also Daniel P. Moynihan, Coping: On 
the Practice of Government 79 (1973); Ralph Nader, Unsafe at Any Speed 
(1965); Jeffrey O’Connell & Arthur Myers, Safety Last: An Indictment of the 
Auto Industry (1966); Jeffrey O’Connell, Taming the Automobile, 58 NW. U. L. 

35. For Moynihan’s current favorable view of those efforts to mandate car safety, see 
ent perspective on the early successes but subsequent frustrations of such efforts, see 
As to Harriman's complaint, mentioned earlier, about a chronicle missing "the drama and vitality," of his administration, there was certainly no lack of drama and vitality in Averell Harriman's life, whether in Albany, Moscow, London, or Washington, D.C. While this review has concentrated on the Albany years, there are countless other venues for drama in this readable biography. We only cite several:

In 1964, travelling from London to Washington, D.C., Harriman, then a Democratic State Department official, and Dwight Eisenhower, then the Republican ex-President, were returning from serving in the official delegation at the funeral of their mutual old friend, Winston Churchill. Abramson tells the story in a kind of flashback that he uses uncommonly well throughout this necessarily long and complex biography to help his reader keep the narrative straight:

The flight had . . . provided Harriman a compelling opportunity to end his feud with General Eisenhower. The former President had headed the American delegation to the funeral; and . . . he had come back and said hello. After a few minutes, Averell had gone forward for a long private conversation with him in the President's compartment.

It was the first time they had spoken to each other in more than a decade. When Harriman had gone through a White House receiving line at a reception for the nation's governors soon after his election in 1954, Eisenhower, remembering Averell's venomous attacks on him in the 1952 [Presidential] campaign, had shown him no sign of recognition, coldly addressing him as "Governor" and extending the perfunctory "welcome to the White House." They had not met since. Each had taken derogatory potshots at the other over the years, and in private Eisenhower had referred to Averell as a "nincompoop" and a "Park Avenue Truman." In return, Averell ridiculed him for fawning over rich men. The nostalgic atmosphere on the plane made the whole affair seem childish.


36. Abramson, supra note 1, at 8.

In early 1941, while he was serving in London as FDR’s emissary to Winston Churchill, Averell carried on a reckless love affair with Randolph Churchill’s young wife, Pamela. Think of it: he is on a diplomatic wartime mission of the highest importance, the chance of a lifetime for this ferociously ambitious public servant, yet he quite openly carries on an affair with the wife of his host’s son who was absent on military duty. This wild indiscretion reveals a fascinating anomaly in Harriman, caught by Abramson’s biography—a boring, mechanical, even stiff cardboard figure on the surface masking a passionate, headstrong, risk-taking nether side. Just thirty years after the affair with Pamela and shortly after the death of Marie, Averell’s second wife, Harriman met Pamela again in Washington, D.C. At that point Averell was eighty, heartbroken by Marie’s death, and appearing and acting like a very old man. But he and the fifty-year-old Pamela recommenced their affair and soon became engaged. Abramson writes:

Before the engagement was announced, [Pamela] had sent her son [Winston] to deliver personally the news of her plans to eighty-six-year-old Lady Churchill. She had no idea whether or when her father-in-law and mother-in-law had ever learned the extent of her wartime friendship with the American envoy, and she was relieved by Lady Churchill’s reaction relayed by young Winston: “My, my, an old flame rekindled.”

Averell and Pamela were married shortly thereafter. In effect, she brought him back from senility and death. Rejuvenated, he lived fifteen happy years with her until his death at ninety-four.

Going back nearly a century, in Alaska in 1899 seven-year-old Averell accompanied his family on an important journey of scientific exploration run by his father. E.H. hired a boat for the expedition, engaging a number of well-known figures to accompany the family on a vacation trip. Included were John Burroughs, the naturalist, and John Muir, the early conservationist. Seventy years later, Averell, who had always been reticent about his father, obviously troubled by his forbearer’s infamous “robber baron” image, came across a tribute John Muir had written about E.H. after that Alaska trip. Touched and delighted, Averell reproduced the forgotten tribute in a small booklet. Abramson writes:

For the rest of his life, he mailed them out, presented them to visitors and took a supply with him whenever he traveled. He no longer had to explain his father. Whenever the subject of

38. Id. at 685 (quoting Rudy Abramson, Interview with Pamela Harriman (undated)).
39. Id. at 67.
E.H.'s railroad career came up thereafter, John Muir was handy.40

These two events, the Alaska trip by a seven-year-old boy with his father and the resultant encomium passed around by the newly-proud eighty-year-old son, form a lovely pair of bookends for this splendid biography which, like its subject, is strikingly successful in "spanning the century."

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40. Id. at 679 (noting that Muir's manuscript "said everything [Averell] had wanted to believe about his father").