

Criminal

Investigative

Policy &

Oversight



**Evaluation of Defense Criminal Investigative Organization
Policies and Procedures for Investigating
Allegations of Agent Misconduct**

Report Number: CIPO2001S002

October 20, 2000

**Office of the Inspector General
Department of Defense**

Additional Information and Copies

This report was prepared by the Oversight Directorate, Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, Office of the Inspector General, Department of Defense. If you have questions on this evaluation or want additional copies of the Final report, contact Dr. Charles McDowell, Program Director, at (703) 604-8769 (DSN 664-8769) or Ms. Phyllis Brown, Project Manager, at (703) 604-8810 (DSN 664-8810).

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Acronyms Used in This Report

AFOSI	Air Force Office of Special Investigations
AFOSII	Air Force Office of Special Investigations Instruction
AFOSI/IGQ	AFOSI, IG (Inquiries and Complaints Division)
AR	Army Regulation
ARB	Accreditation Review Board
ATF	Bureau of Alcohol, Tobacco, and Firearms
CIDR	Criminal Investigation Division Regulation
CALEA	Commission on Accreditation for Law Enforcement Agencies
DEA	Drug Enforcement Administration
DCIO	Defense Criminal Investigative Organization
DCIS	Defense Criminal Investigative Service
FBI	Federal Bureau of Investigation
GAO	U.S. General Accounting Office
IPI	Internal Personnel Inquiry
MCIO	Military Criminal Investigation Organization
NAPA	National Academy of Public Administration
NCIS	Naval Criminal Investigative Service
OPR	Office of Professional Responsibility
PCIE	President's Council on Integrity and Efficiency
PRD	Program Review Directorate
SAARB	Special Agent Administrative Review Board
UCMJ	Uniform Code of Military Justice
USACIDC	U.S. Army Criminal Investigation Command

October 20, 2000

MEMORANDUM FOR ASSISTANT SECRETARY OF THE AIR FORCE
(FINANCIAL MANAGEMENT AND COMPTROLLER)
NAVAL INSPECTOR GENERAL
AUDITOR GENERAL, DEPARTMENT OF THE ARMY
DIRECTOR, DEFENSE CRIMINAL INVESTIGATIVE
SERVICE

SUBJECT: Report on the Evaluation of Defense Criminal Investigative Organization Policies and Procedures for Investigating Allegations of Agent Misconduct (Report No. CIPO2001S002)

We are providing this final report for review and for any additional comment as appropriate or as requested. We considered management comments on a draft of this report when preparing the final report.

DoD Directive 7650.3 requires that all recommendations be resolved promptly. The Air Force was responsive to all recommendations. DCIS partially concurred with Recommendations A.1 and B.2 and nonconcurred with B.1. Our review of DCIS management comments determined they were responsive to our recommendations. The Army's comment regarding Recommendation B.1 was not fully responsive. The Navy nonconcurred with Recommendations A.2 and B.1 and was partially responsive to Recommendation B.2. We request the Army provide additional comments on Recommendation B.1. We request the Navy provide comments to Recommendations A.2, B.1, and B.2. Comments are to be submitted by December 20, 2000.

We appreciate the courtesies extended to our staff. For additional information on this report, please contact Dr. Charles P. McDowell, Director, Oversight Directorate, at (703) 604-8769 (DSN 664-8769) (cmcdowell@dodig.osd.mil) or Ms. Terry Hammer at (703) 604-8704 (DSN 664-8704) (thammer@dodig.osd.mil). See Appendix H for the report distribution.

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Office of the Inspector General, DoD

Report No. CIPO2001S002
(Project No. 9950002B)

October 20, 2000

**Evaluation of Defense Criminal Investigative
Organization Policies and Procedures for Investigating
Allegations of Agent Misconduct**

Executive Summary

Introduction. We have completed evaluating how the Defense Criminal Investigative Organizations (DCIOs)¹ act on allegations that a special agent is or has engaged in misconduct. We announced this evaluation on February 22, 1999, and conducted our fieldwork during March 1999 through December 1999.

Objectives. Our overall objective was to assess whether the DCIOs have adequate policies and procedures to govern the internal investigations they conduct when one of their special agents is accused or suspected of misconduct. This overall objective included determining:

- whether the DCIOs have adequate requirements and mechanisms for reporting misconduct allegations and for conducting appropriate, responsive investigations;
- whether agent misconduct investigations are conducted in a fair, timely, and impartial manner;
- whether DCIO disciplinary standards are applied consistently; and
- whether the DCIOs employ feedback from internal affairs investigations in efforts to prevent future incidents of agent misconduct.

Results. Overall, our evaluation showed that DCIO policies and procedures for agent misconduct investigations, and the manner in which they execute those investigations, are effective and consistent with our benchmark criteria. All DCIOs have written policy and procedures that specifically pertain to investigations into allegations of agent misconduct. We found that the DCIOs strive to maintain confidence and integrity regarding their organizations by conducting factual, objective, and thorough investigations. As a whole, actions based upon these investigations were equitable, and subjects of investigations were provided due process commensurate with the remedial action proposed. Furthermore, other positive aspects of agent misconduct oversight and management were noted. For example, each DCIO agency head is fully engaged in the internal misconduct case process. Along with their senior managers, the agency heads emphasize the

¹ The DCIOs are the Defense Criminal Investigative Service (DCIS); U.S. Army Criminal Investigation Command (USACIDC); the Naval Criminal Investigative Service (NCIS), which serves the Navy and the Marine Corps; and the Air Force Office of Special Investigations (AFOSI).

importance of maintaining integrity in their respective organizations and the need to foster trust through responsive internal investigations. In each DCIO, the headquarters support staff, field commanders, and supervisors understand their roles in processing allegations and in preventing agent misconduct. However, we identified some areas where improvements would be beneficial. The DCIOs need:

- to develop clear policy, as has been recognized by other Federal criminal investigative agencies, requiring their employees to report in a timely manner known or suspected misconduct by special agents (Finding A);
- to have clear, reasonable, and measurable timeliness standards for each phase of their agent misconduct investigations from initiation to final action and case closing (Finding A);
- to enhance internal management controls to better monitor, analyze, and disseminate information on agent misconduct cases so as to assist in reducing incidences of agent misconduct (Finding B).

In addition, while our case reviews validated DCIO adherence to sound policies and internal guidance overall, we noted some case anomalies and have highlighted them for DCIO review as appropriate (Appendix F).

Summary of Recommendations. We recommend that the DCIOs develop (or revise) a Code of Ethics or other regulatory instrument to include a clear, affirmative requirement that all DCIO personnel who know of or suspect incidents of agent misconduct report them promptly through proper channels. We also recommend that the DCIOs review their agent misconduct investigation policies and procedures and establish standards of timeliness for each phase of these investigations. Further, the DCIOs should develop a system to record and monitor compliance with these standards. Finally, we recommend that the DCIOs aggregate and analyze agent misconduct cases and that they periodically report results of this activity throughout their respective organizations, specifically highlighting patterns and trends and offering guidance for their detection and prevention.

Management Comments.

The Army, Navy, and Air Force concurred with the recommendation to develop (or revise) a Code of Ethics or other regulatory instrument requiring DCIO personnel to report known or suspected incidents of agent misconduct. DCIS partially concurred stating it did not have a special Code of Ethics for agents, but agreeing that specific regulatory guidance is necessary to mandate reporting agent misconduct and that a revision will be made to its Special Agents Manual.

The Army, Air Force, and DCIS concurred with the recommendation to establish standards of timeliness for each phase of an investigation through the final action and to develop a system to record and monitor compliance and performance with those standards. The Navy nonconcurred stating that the report indicates the NCIS investigative process is already timely and that additional standards would not effectively address the efficiency of their process. They further added that NCIS could better use its time and resources with an ongoing review of its current process to determine whether it is efficient or in need of improvement.

The Army and Air Force concurred with the recommendation to establish a program at their headquarters for aggregating and analyzing agent misconduct cases. The Navy and DCIS nonconcurred. The Navy stated there are too small a number of agent misconduct cases within the DCIOs to justify semi-annual reporting or for “aggregating and analyzing.” DCIS stated that they provide patterns of misconduct to employees and managers during conferences and in-service training sessions and that an additional “official” program would provide no additional benefit to the agency.

The Army, Navy, and Air Force concurred with the recommendation to publish periodic reports highlighting patterns and trends on agent misconduct, offering guidance for detection and prevention, and disseminating those reports within their respective organizations. DCIS partially concurred stating they provide general misconduct information in their newsletters; at all senior manager, group manager, and RAC meetings; and at in-service training sessions. Additional reporting requirements would provide no additional benefit to the agency.

Although not required to comment, the Office of the Under Secretary of Defense (Personnel and Readiness) responded stating that they reviewed the draft report and had no comments.

Evaluation Response. The Air Force and DCIS were responsive to all recommendations. The Army concurred with the recommendation to establish a program at their headquarters for aggregating and analyzing all agent misconduct cases but did not provide comments on how they plan to comply with the recommendation. The Navy disagreed with the recommendation to establish standards of timeliness and to develop a system to record and monitor compliance and performance with those standards. The Navy also disagreed with the recommendation to establish a program at their headquarters for aggregating and analyzing agent misconduct cases. We request that the Navy reconsider their position and provide comments on the final report. The Navy concurred with the recommendation to publish periodic reports on agent misconduct but provided no comment on how they plan to comply with the recommendation. We request the Army and the Navy provide comments to the final report by December 20, 2000.

A discussion of management comments can be found in Part II of this report following the recommendations. The complete text of management comments is found in Part III.

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Evaluation of Defense Criminal Investigative Organization Policies and Procedures for Investigating Allegations of Agent Misconduct

Part I - Introduction

The reputation of a law enforcement organization rests to a large extent on the conduct of its individual officers or special agents. To maintain high professional standards, all allegations of agent misconduct must be scrupulously, fairly, and promptly investigated. Further, management review and actions based on these investigations must be appropriate and responsive. For purposes of this evaluation, “agent misconduct” refers to conduct by special agents of the DCIOs that may have violated the following: Federal and non-Federal criminal statutes, including the Uniform Code of Military Justice (UCMJ); DoD Directive 5500.7, “Standards of Conduct,” as amended on November 2, 1994, and the references cited therein; and Military Department and DoD Component-specific regulations and rules on conduct, including the specific policies and standards established by the DCIOs to govern the comportment of their employees.

Within the statutes, regulations, and other guidance that govern agent behavior two broad categories emerge which may result in an internal investigation. The first involves *non-criminal misconduct*. These matters are generally, but not always, investigated and addressed in accordance with personnel regulations. The second category involves *criminal misconduct*. These matters are generally investigated and may be prosecuted under Federal, state, or local law if they involve a civilian agent, or under the UCMJ if they involve a military agent. In addition to prosecution, these cases may also involve disciplinary actions taken in accordance with personnel regulations. For example, if a special agent charged with upholding Federal law commits a crime, the agent may be prosecuted under the governing Federal, state, or local law. Depending on the nature and extent of the crime and other considerations, including any mitigating circumstances, the agent could also be disciplined in accordance with personnel standards, possibly up to removal from Federal employment.

Background

As is typical of most medium-sized to large law enforcement organizations, the DCIOs have an “internal affairs” organizational element that is responsible for either investigating allegations of agent misconduct or for managing those investigations. They also have policies, procedures, and processes to control and guide their investigations and disciplinary decisions.

Defense Criminal Investigative Service (DCIS): Headquartered in Arlington, Virginia, DCIS is the IG, DoD, criminal investigative arm. DCIS investigates allegations of criminal, civil, and administrative violations involving DoD contract and procurement fraud, antitrust violations, bribery, corruption, large-

scale thefts of Government property, and health care fraud. DCIS employs approximately 350 civilian special agents who are assigned to 6 major field offices, 23 resident agencies, 18 post of duty offices, and 1 day office, throughout the continental United States and offices in Hawaii and Wiesbaden, Germany. The DoD Hotline, which is one source for receiving allegations regarding agent misconduct, is a component of DCIS Headquarters.

U.S. Army Criminal Investigation Command (USACIDC): Headquartered at Ft. Belvoir, Virginia, USACIDC is responsible for investigating felony-level crimes in which the Army has an interest. USACIDC's principal mission is to provide worldwide criminal investigative support to the Army. It also conducts protective service operations, provides forensic laboratory support for its own investigations (and for other Federal agencies), and maintains the repository for the Army's crime records. USACIDC is organized into six major subordinate organizations: the four Military Police Groups; the U.S. Army Criminal Investigation Laboratory; and the U.S. Army Crime Records Center. For Fiscal Year 1998, USACIDC was authorized 1,534 military and civilian members. In FY 98, this manning included 795 special agents, 343 warrant officers, 350 non-commissioned officers, and 102 civilians.

Naval Criminal Investigative Service (NCIS): Headquartered at the Washington Navy Yard, Washington, D.C., NCIS is responsible for conducting felony-level criminal and counterintelligence investigations for the Department of the Navy. NCIS special agents are stationed at approximately 150 locations around the world, as well as on aircraft carriers and some other major combatant vessels. NCIS has 1637 authorized billets. As of January 1999, NCIS had 854 civilian special agents, 40 Marine Corps Criminal Investigation Division special agents, and 6 Marine Corps counterintelligence special agents, for a total agent force of 900.

Air Force Office of Special Investigations (AFOSI): Headquartered at Andrews Air Force Base, Maryland, AFOSI is an Air Force field-operating agency with responsibilities that include investigating criminal, fraud, and counterintelligence matters that may threaten Air Force resources. The agency is comprised of 8 regional offices, 6 overseas squadrons, 1 CONUS (Washington Field Office), and more than 160 installation-level detachments. AFOSI has approximately 2,000 personnel, about 1,300 of whom are special agents. Of the number of agents, 1,050 are active duty military personnel and 250 are civilians in the GS-1811 job series.

Objectives

Our overall objective for this evaluation was to ascertain whether the DCIOs have adequate policies and procedures for investigating allegations of agent misconduct and whether those investigations are conducted and resolved in an appropriate and timely manner. Our specific objectives included:

- identifying the mechanisms and requirements for reporting allegations of agent misconduct;
- identifying the mechanisms and requirements for initiating and conducting appropriate, responsive investigations;

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- determining if internal investigations are conducted in a fair, timely, and impartial manner;
 - determining if disciplinary standards are applied consistently; and,
 - assessing DCIO programs for preventing agent misconduct.

Evaluation Results

All DCIOs consider the integrity of their organizations paramount and view allegations of agent misconduct and the investigation of those allegations as serious, high priority matters. We found the leadership of the DCIOs actively involved in supervising and monitoring the efficacy and probity of this investigative area.

All DCIOs have written policy and procedures that specifically pertain to investigations into allegations of agent misconduct. Policy is written to apply to both military and civilian special agents. Each DCIO has a designated organizational entity responsible for managing and/or conducting these investigations.

Overall, our evaluation showed that DCIO policies and procedures for misconduct investigations, and the manner in which they execute those investigations, are effective and consistent with our benchmark criteria. We found that actions based upon the investigations were equitable, and subjects of investigations were provided due process commensurate with the remedial action proposed.

We did, however, identify some areas where improvements would be beneficial:

- Not all DCIOs have formal policy, as found in other Federal criminal investigative agencies, specifically requiring DCIO personnel to report suspected violations of law, regulation, or standards of conduct by agents. We believe such a policy is essential. However, we did not discover any instances where DCIO personnel failed to report misconduct by other DCIO personnel.
- The DCIOs all have formal requirements and policies for initiating, conducting, and finalizing investigations into allegations of agent misconduct. However, we found the need (varying among the DCIOs) for better defined and managed timeliness standards for all phases of the agent misconduct investigative process.
- We also found that the development of metrics for agent misconduct processes; the improved monitoring of cases through data collection and analysis; and the dissemination of information on such aspects as patterns and trends could lead to enhanced management controls and awareness.

Evaluation of Defense Criminal Investigative Organization Policies and Procedures for Investigating Allegations of Agent Misconduct

Part II - Results of Evaluation and Recommendations

A. Policies for Reporting, Initiating, Conducting, and Resolving Agent Misconduct Investigations

Acts of misconduct by law enforcement agents which are not uncovered or investigated efficiently and effectively are likely to negatively affect the public standing of an investigative organization as well as the morale, productivity, and well-being of its members. Although the DCIOs have policies and procedures that outline the requirements for initiating, conducting, and resolving investigations of alleged agent misconduct, some do not *require* their personnel to *report* known or suspected acts of this type of misconduct or do not clearly articulate that requirement. Also, clear time standards are not always established for completing each phase of these investigations. Moreover, systems are not in place to capture and analyze the time expended in each phase so as to permit assessment of the performance of these important inquiries.

Background

We examined the DCIOs' respective policies to identify guidance and management controls for ensuring that allegations of agent misconduct would be reported, and that when appropriate, an investigation would be promptly initiated, conducted, and resolved, including remedial action if appropriate. We also reviewed a sample of closed reports of investigation to ascertain compliance with those standards and how that compliance was monitored and measured.

Reporting Agent Misconduct

The need to develop a clear policy on reporting possible misconduct by special agents has been recognized by other Federal investigative agencies, and those we benchmarked have adopted policies that require reporting by their employees. For example, the Bureau of Alcohol, Tobacco and Firearms (ATF) of the Department of the Treasury has a policy that requires its employees to report "any allegation or information indicating a violation of the standards of conduct set forth in the Government-wide standards of conduct or any additional Department of Treasury or Bureau rules, or criminal conduct. . . ."² The Drug Enforcement

² ATF Order 8610.1, "Integrity and Other Investigations," Chapter C, "Reporting Allegations of Misconduct, Attempted Bribery, and Discharge of Firearms," paragraph 21.a, page 7,

Administration (DEA), in its “Inspectors’ Handbook,” states that, “[i]t is the duty of each DEA employee to report all allegations, complaints, or information which indicate the possible involvement of a DEA employee in any activity or situation that may be illegal, improper, or a violation of DEA’s Standards of Conduct.”³ The Federal Bureau of Investigation (FBI) has explicit policy regarding its employees’ duty to report misconduct.

It is imperative that any information pertaining to allegations of misconduct or improper performance of duty coming to the attention of any Bureau employee be promptly and fully reported to FBIHQ, and it is the continuing responsibility of Bureau officials to see to it that the employees under their supervision are properly indoctrinated regarding this requirement so that they not only will fully understand it but will comply with it.⁴

DCIS: DCIS uses a centralized process for reporting allegations of agent misconduct. Allegations of misconduct involving DCIS agents are to be reported to the Office of the Assistant Inspector General for Investigations. All DCIS “internal inquiries” are controlled at DCIS Headquarters by the Program Review Directorate (PRD) and are normally conducted by PRD.

DCIS does not have a Code of Ethics for special agents, but has general regulatory language that requires the reporting of information alleging or indicating involvement OIG-INV personnel in misconduct to the Program Review Directorate.⁵ That guidance could be worded in more specific terms to ensure the clear understanding of the individual responsibility to report misconduct. DCIS also relies, as do all other DoD agencies, on general DoD rules of conduct as set out in DoD Directive 5500.7, which prescribes standards of ethical conduct pertaining to all DoD employees.

USACIDC: USACIDC is unique among the DCIOs in that until February 1999⁶ it followed a decentralized process for reporting and investigating allegations of agent misconduct. Previously, only conduct affecting the accreditation⁷ of an agent was reported to HQ USACIDC. However, since February 1999, all allegations of agent misconduct are required to be reported to HQ USACIDC. The Accreditation Branch, HQ USACIDC, is the proponent and lead staff agency

June 11, 1997.

³ DEA “Inspectors Handbook,” page 2, September 1996.

⁴ Federal Bureau of Investigation, “Manual of Administrative Operations and Procedures,” Section 13, “Disciplinary Procedures,” section 13-1(2), undated.

⁵ DCIS “Special Agent’s Manual,” Chapter 34, “Internal Inquiries,” November 1994, Section 3403.2.

⁶ HQ, USACIDC, published a revision to CIDR 195-1, Chapter 19, “Agent Misconduct, Substandard Performance and Accreditation Review Procedures, and Criminal Investigation Accreditation File (CIAF),” February 18, 1999, which revamps overall accreditation review procedures and filing requirements, and clarifies the filing of documentation in the CIAF.

⁷ In this instance, defined as the certification of a person’s status as special agent by meeting certain criteria.

for the management and headquarters coordination of agent accreditation actions involving misconduct.

USACIDC does not have a formal Code of Ethics nor other particular instructions directing its personnel to report acts of agent misconduct. Criminal Investigation Division Regulation (CIDR) 195-1, "Criminal Investigation Operational Procedures," October 1, 1994, refers the reader to Army Regulation (AR) 195-3, "Acceptance, Accreditation, and Release of United States Army Criminal Investigation Command Personnel," April 22, 1987, which admonishes all individuals assigned to USACIDC to maintain the highest standards of personal conduct and professionalism, but does not specifically require that members of USACIDC report knowledge of possible agent misconduct.

NCIS: NCIS' internal inquiry process is centralized, with misconduct issues reported to and conducted under the auspices of the Inspection Department at NCIS Headquarters.

Closely following the FBI model, paragraph 18-2.5, NCIS-1,⁸ "Manual for Administration," May 1996, states, "It is imperative that any information pertaining to allegations of misconduct or deficient performance coming to the attention of any NCIS employee be promptly and fully reported to the Assistant Director for Inspections (0006) via the employee's chain of command" While we view this as a clear and creditable mandate, we would restate the sentence such that the word "imperative" will not be misconstrued in this instance as meaning "important," rather than "mandatory."⁹ The policy is effectively strengthened by additional language that makes it the responsibility of supervisors to ensure employees "fully understand" and "comply" with the requirement.

AFOSI: AFOSI follows a centralized process by reporting all agent misconduct issues to HQ AFOSI. AFOSI has published its "AFOSI Code of Conduct and Moral Standards," AFOSI Instruction (AFOSII) 36-2901, November 12, 1996. The Code enumerates seven specific expectations of its personnel, but does not include responsibility for *reporting* acts of misconduct.

Initiating the Investigative Process

The President's Council on Integrity and Efficiency (PCIE) has established "quality standards for investigations." These general standards are offered as "guidelines applicable to the investigative efforts conducted by criminal investigators working for the Offices of Inspector General affiliated with the President's Council on Integrity and Efficiency and the Executive Council on Integrity and Efficiency." Although these standards do not apply to the military criminal investigative organizations (MCIOs), they have general merit in their

⁸ NCIS-1, Chapter 18, "Disciplinary and Adverse Action Procedures," sets out guidance and requirements for handling NCIS employees misconduct issues.

⁹ We suggest, "Any information pertaining to allegations of misconduct or deficient performance by NCIS employees which comes to the attention of a NCIS employee **must** be promptly and fully reported by that employee to the Assistant Director for Inspections (0006) via the chain of command. . . ."

own right. Throughout the document, the PCIE stresses timeliness in virtually every aspect (due professional care, planning, execution, reporting) of investigations. In the Information Management section, the PCIE recommends guidelines be established for case initiation and states in part:

Case Initiation – Establish guidelines, including the level of the approving authority, *for making a determination to initiate an investigation or to pursue another course of action.* Case assignments should be based on the number of investigators, their geographical dispersion, level of experience, and pending workloads.¹⁰ [emphasis added.]

Certainly, timeliness is an important factor to be set out in guidelines for determining the initiation of an investigation and to be tracked through data management. Timely investigations and the prompt initiation of these in agent misconduct cases significantly maintain the public trust in criminal investigative agencies and sustain the morale and confidence of the agencies' employees.

Overall, the DCIOs have acceptable formal requirements and policies for initiating investigations into allegations of agent misconduct. DCIS has a specific timeliness standard for initiating agent misconduct investigations, and meets that standard in the majority of these cases. NCIS only has a timeliness standard for *general* investigative actions and over half of their agent misconduct cases meet this goal. Neither USACIDC nor AFOSI have explicit timeliness standards for initiating agent misconduct investigations. A USACIDC regulation directs the first commander to “immediately” notify a higher commander and conduct a preliminary inquiry (to be finished in three working days). AFOSI guidance speaks only of “immediate” notification in agent misconduct cases,¹¹ but like NCIS it does have a general standard for initiating investigations (within 2 days of receiving credible information). Nonetheless, timeliness in case initiation could not be gauged in either USACIDC or AFOSI because neither had an effective manner with which to measure compliance for the period covered by our review.

DCIS: The DCIS “Special Agents Manual,” Chapter 34, “Internal Inquiries,” November 1994, requires that an internal inquiry be initiated within five days following receipt of an allegation of misconduct. Case initiation requires the approval of the Deputy Assistant Inspector General for Investigations (DAIG-INV). We found that of 16 cases initiated during the reporting period,¹²

10 (63 percent) met this five-day standard. A revision to Chapter 34 of the Special Agents Manual on July 19, 1999, modified this requirement. The revision

¹⁰ President’s Council on Integrity and Efficiency, Executive Council on Integrity and Efficiency, “Quality Standards for Investigations.” Office of the Inspector General, U.S. Office of Personnel Management, September 1997, page 13.

¹¹ We note also that AFOSI Instruction 71-107, “Special Investigations: Processing Investigative Matters,” December 9, 1996, Attachment 2, refers to an “item report” for “incidents involving AFOSI personnel” and establishes a 48 hour standard for reporting such incidents by e-mail.

¹² Actually, 21 cases were initiated during this period. However, we were not able to determine from the files the date the misconduct was reported in four cases, and another case was handled outside of the normal DCIS process (see Appendix F).

states that, “The determination will be made to initiate an internal inquiry within 5 *work* days following receipt of the information or allegation (emphasis added). Of the 16 investigations cited above, by using the revised standard, 12 (75 percent) met the standard. If an internal inquiry is warranted, a case initiation Form 1 will be prepared within ten calendar days of receipt of allegations.

USACIDC: AR 195-3 states that USACIDC commanders will, “on receipt of any information regarding occurrences. . . conduct a preliminary inquiry to determine the source and validity of the information.” Paragraph 19-5 of CIDR 195-1,¹³ directs the first commander in the agent’s chain of command to “immediately” notify the group or region commander and to conduct a preliminary inquiry to determine whether the allegation is credible. The preliminary inquiry is to be completed within three working days. We were unable to determine accurately how well USACIDC met either standard – immediate notification or completion of the preliminary inquiry within three working days – because as previously noted USACIDC did not require *all* agent misconduct cases to be reported to HQ USACIDC. We, therefore, could not account for the time elapsed for an unknown number of cases investigated in the field.

NCIS: NCIS has no specific timeliness standard for initiating internal agent misconduct investigations. NCIS-1, Chapter 13, “Special Agent Standards and Performance,” May 1995, Section 13-5, “Internal Personnel Inquiry (IPI) Investigations,” provides for the initiating and controlling authority and sets forth reporting requirements and guidance on the scope of investigations. However, how soon an investigation should be initiated after receipt of an allegation is not specified. We did, however, find guidance pertaining to general investigative actions addressed in NCIS-1, Chapter 25, “Report Writing,” Section 25-4, “Timeliness Requirements,” December 1995. Initiation requirements include one working day for Priority I cases and three working days for Priority II cases.¹⁴ If we conclude that the timeliness requirements for initiating an IPI are the same as for any other Priority II NCIS criminal investigation, then the three-day standard would apply. Of the 65 case files we reviewed, only 57 recorded the date the misconduct was reported. Of those 57, 38 (67 percent) met the three-day standard.

AFOSI: AFOSI 71-138, “Investigations of AFOSI Personnel,” outlines the investigative process from initiation to final action and identifies the office responsible for supervising, directing, or conducting (if required) all substantive and internal affairs investigations. This instruction states that Region and Squadron commanders will immediately notify AFOSI, IG (Inquiries and Complaints Division) (AFOSI/IGQ), when AFOSI personnel or their family members become the subject or victim of actual or suspected criminal behavior. This requirement extends to AFOSI personnel who are believed to be involved in incidents of professional or ethical misconduct or in violation of regulations or

¹³ CIDR 195-1, Chapter 19, “Agent Misconduct, Substandard Performance and Accreditation Review Procedures, and Criminal Investigation Accreditation File (CIAF),” February 18, 1999.

¹⁴ Priority I investigations include those offenses that have a major impact at the Seat of Government or that involve the operational capability or effectiveness of the Department of the Navy. All other investigations are Priority II.

directives. We were unable to determine how timely AFOSI was in initiating an investigation or whether notifications were “immediate,” because AFOSI/IGQ does not capture the data necessary to make this assessment.

Completion of the Investigative Process

As previously stated, investigations must be conducted with due diligence, and that holds true for agent misconduct investigations which may have even greater public scrutiny because they involve the integrity of the law enforcement community. DCIS and USACIDC have definite time requirements for completing their agent misconduct investigations. In general, DCIS meets its standards. We were unable to assess USACIDC’s performance because its decentralized system for investigating agent misconduct cases which was in place during the period covered by our review precluded gathering necessary data to measure compliance with its standards. NCIS does not have an explicit standard for completing these investigations but generally completes them in a reasonable time. AFOSI has a stringent timeliness standard for completing its agent misconduct cases but on average does not attain its goal. Nevertheless, AFOSI’s average completion time for these important investigations is highly satisfactory.

While the PCIE standard states that “all investigations must be conducted and reported with due diligence and in a timely manner,”¹⁵ there is no objective standard that defines either “due diligence” or “timely manner.” It is therefore the responsibility of each agency to establish its own reasonable standards for due diligence and timeliness as well as its own metrics for measuring compliance. The ATF, for example, allows 120 days for the completion of an internal affairs investigation, but provides for exceptions as needed. The DEA requires a status report of investigative activities at 30-day intervals, and the FBI expects their internal affairs investigations to be closed in 180 days or less (with exceptions as authorized).

DCIS: The revision to Chapter 34 of the DCIS “Special Agents Manual,” July 19, 1999, requires that “. . . every effort will be made to complete internal inquiries within 90 days after initiation.” The Director, PRD, must approve circumstances requiring delays beyond the 90-day period. The prior standard was 45 days. We found that of the 20 DCIS cases reviewed during this evaluation, 9 (42 percent) met the 45 day standard. The average time required by DCIS to complete an internal inquiry was 79 days. The average of this small number of cases was skewed by 3 cases that took much longer than 45 days (i.e., 166 days, 176 days, and 364 days) because of case-specific complexities. In any event, the 90-day standard and DCIS’ actual performance are very satisfactory, especially when compared to the FBI and ATF standards.

USACIDC: CIDR 195-1 specifies that the Commander’s Inquiry will be completed in 30 days.¹⁶ During the period covered by the evaluation, 26 case

¹⁵ PCIE, *Op Cit*, page 7.

¹⁶ In February and July of 1999, USACIDC revised Chapter 19 of CIDR 195-1 to include time standards for additional phases of the review process from the initiation of a preliminary inquiry through recommendation for final action by the Accreditation Review Board. See USACIDC

files (23 military and 3 civilian) were received and processed by the Accreditation Branch at Headquarters USACIDC. We reviewed those files, but again could not account for the unknown number of cases investigated in the field that were not forwarded to HQ USACIDC because regional commanders did not determine that decertification of the agent was warranted. Without those case files, we could not accurately gauge overall success in meeting the 30-day standard.

NCIS: NCIS-1, Chapter 13, "Special Agent Standards and Performance," May 1995, requires that "all investigations should be completed and reported as expeditiously as possible." Furthermore, timeliness in resolving issues and reporting investigative results is emphasized as being a critical, mandatory function of supervisors; however, it is not clearly quantified. We reviewed a total of 62 NCIS agent misconduct cases which had investigation closing dates (2 military and 60 civilian). It took an average of 63 days to complete an investigation during the period under review, clearly an acceptable performance history.

AFOSI: AFOSII 71-138 states that priority will be given to investigations of AFOSI personnel and notes that they should be completed within 30 days. Our review of the 1996-1998 case files (a total of 99 cases, 12 with multiple subjects) revealed that half of the cases met the standard and that it took an overall average of only 58 days to complete an agent misconduct investigation. Despite missing its internal benchmark half of the time, AFOSI's diligence in completing the investigative portion of agent misconduct cases is particularly noteworthy.

Management Review and Final Action

Once an investigation has been completed and a report has been issued, the findings must be reviewed. When the report is submitted for review, all appropriate administrative and regulatory requirements must be followed and should be completed in a timely manner. Each DCIO has procedures for reviewing investigations of agent misconduct and taking final action after that review. Our evaluation determined that the review procedures provided sufficient oversight of the thoroughness and accuracy of the investigation and that the subjects of these investigations were afforded due process commensurate with the potential outcome of the investigation. However, as with the other stages of the agent misconduct investigation process, we believe that clear, reasonable timeliness standards should be established, monitored, assessed, and, where deficient, corrected.

DCIS: As is the case for all DCIOs, DCIS procedures for management review and action are sound and routinely followed. Upon receipt of a closed report of investigation involving an allegation of agent misconduct, the Proposing Official¹⁷ determines if there is a basis for disciplinary action. If so, the case is

ALCID Memorandum 004-99, February 18, 1999, and ALCID Memorandum 014-99, July 14, 1999.

¹⁷ Proposing Official/Deciding Official: If the subject of an internal inquiry is a Director or Special Agent in Charge, the DAIG-INV is the Proposing Official, the Assistant Inspector General for Investigations is the Deciding Official. If the subject is an Assistant Special Agent in

referred to the Special Agent Administrative Review Board (SAARB)¹⁸ which then reviews the investigation and makes its recommendation to the Proposing Official. After the Proposing Official reviews the recommendation of the SAARB and determines disciplinary action is warranted, he or she forwards it through the Director of Investigative Support to the Employee Relations Division of the DoD Inspector General's Office of Administration and Information Management, which prepares formal disciplinary actions. The Proposing Official then delivers the formal notice of intended action to the agent involved. After a response from the agent, if any, the Deciding Official renders a decision in accordance with Inspector General Regulation 1400.4, "Disciplinary and Adverse Action," December 30, 1994.

Of the 20 DCIS cases we reviewed, 12 were referred to the SAARB for review. The disposition of these cases can be found at Appendix G.

The DCIS "Special Agents Manual," Chapter 44, "Disciplinary and Adverse Action," March 1995, provides specific timelines for each level of management review and, when applicable, review by the SAARB. There is no timeliness standard for the Deciding Official to render a decision on the matter subsequent to the agent being served a formal notice and given an opportunity to respond.

USACIDC: The post-investigation process for USACIDC agent misconduct cases appears in Chapter 19 of CIDR 195-1. It specifies the composition and purpose of USACIDC's Accreditation Review Board (ARB)¹⁹ and sets forth the procedures for its operation. The ARB provides an agent with the opportunity to explain why he or she should be retained in USACIDC after the adverse outcome of an investigation. It also provides the USACIDC Commander with an independent assessment of whether the agent should be retained. The USACIDC Commander is the final approval authority on elimination, retention, or probation of active duty special agents. The Commander's decision is final and is not subject to appeal.

As noted earlier, CIDR 195-1, outlines specific time requirements for completing the preliminary and commander's inquiries, immediate and Major Subordinate Commander actions, and for the respondent's rebuttal. However, after the

Charge, Assistant Director, Program Director or below, the Special Agent in Charge is the Proposing Official and the Deputy Assistant Inspector General for Investigations is the Deciding Official.

¹⁸ DCIS "Special Agents Manual," Chapter 44, "Disciplinary and Adverse Action," March 1995, outlines the procedures and responsibilities of the SAARB. The SAARB consists of the Director, Investigative Operations Directorate, as Chair; two Special Agents in Charge (appointed for 2 years) and an alternate; and the Director, Investigative Support Directorate, as an advisor. The SAARB reviews cases and recommends a course of action to the Proposing Official.

¹⁹ The Accreditation Review Board (ARB) consists of 5 members appointed by the Deputy Chief of Staff for Support, HQ USACIDC. For officers, the ARB consists of four warrant officer agents and at least one commissioned officer, all of whom have an equal vote. For enlisted agents, the ARB consists of not less than one commissioned officer, two warrant officers, and two NCO members, all with an equal vote. All members must be senior to the respondent CID special agent. The President of the Board must be a major or higher in rank.

investigation is completed, there are no timeliness standards for reviewing or adjudicating the investigation. Our review of the 26 cases forwarded to HQ USACIDC for accreditation determinations discovered a number of cases that appear to have taken a prolonged period of time from initiation to closing the case after final action (i.e., 525, 476, 347, 266, and 233 days, with only four of these involving review by the ARB). With standards in place for all phases of the process and with a system to capture the time expended in each phase, HQ USACIDC could accurately and quickly assess performance in these cases and correct deficiencies discovered or at a minimum be able to account for seemingly inordinate times (e.g., as in one case where delays resulted from the respondent seeking relief in Federal court).

NCIS: Allegations of agent misconduct in NCIS are reported to and investigated under the auspices of the Inspections Department, NCIS Headquarters. After the closed investigation is delivered to the Inspections Department, the complete file is sent to the Career Services Department (Career Services) for administrative review and processing. Career Services coordinates input from other sections within NCIS, including the legal office, to determine what misconduct is revealed by the investigation and the range of punishment available.²⁰ Special Agents in Charge (SACs) of field offices have the opportunity to provide written recommendations, to include aggravating or mitigating comments, to Career Services. The head of Career Services also acts as the Proposing Official. It is the responsibility of the Proposing Official to make a recommendation of disciplinary action and to send a letter to the agent involved informing him or her of the proposed action and affording the opportunity to show cause why such an action should not be implemented. After the agent is given an opportunity to reply to the allegations and the proposed punishment, it is the agent's department head, acting as the Deciding Official, who makes the final decision on punishment.

The NCIS-1 Manual, Chapter 18, "Disciplinary and Adverse Action Procedures," April 30, 1996, does not provide timeliness standards for the review process as a whole or for each segment, i.e., review by the Inspections Department, coordination through NCIS Career Services, legal review, and final action by the Deciding Official.

AFOSI: AFOSI/IGQ is responsible for supervising, monitoring, and performing quality reviews of agent misconduct investigations. Administrative, corrective, or disciplinary action can take place at various levels in the organization, depending on the gravity of the matter and the rank and assignment of the offender. AFOSI does not have a board to review agent misconduct cases but instead follows a process of multiple levels of senior officer review. After completing the investigation, if disciplinary action is appropriate, the region or squadron commander either recommends or imposes the action to be taken against the agent. Further, region or squadron commanders provide a suitability

²⁰ NCIS-1, Section 13-5, "Internal Personnel Inquiry (IPI) Investigations," Paragraph 13-5.5, "Administrative Use of the IPI," references an entity known as the Special Agent Performance Review Board (SAPRB). NCIS Policy Document 93-13, "Personnel," August 24, 1993, eliminated the SAPRB. Although we found that the pertinent sections of NCIS-1 that mention the SAPRB are under revision, the SAPRB was eliminated over six years ago, and the change that eliminated the SAPRB should have been reflected in the manuals.

determination letter to the AFOSI Commander through AFOSI/IGQ. AFOSI/IGQ then submits the recommendation along with the agent's investigative case file through the AFOSI Vice Commander to the AFOSI Commander. The Commander is responsible for deciding whether retention or decertification is the appropriate final action and has sole discretion over such decisions.

AFOSII 71-138 does not provide timeliness standards once the investigation is completed and the ROI forwarded to AFOSI/IGQ for review and submission through the AFOSI Vice Commander to AFOSI Commander for a final determination.

Conclusion

DCIS and NCIS have policies regarding the reporting of agent misconduct. We did not discern similar USACIDC or AFOSI policies. Although we did not identify instances where DCIO personnel failed to report misconduct by other DCIO personnel, we believe it is sound policy to clearly require such reporting, to further ensure the integrity of law enforcement organizations.

The DCIOs all have effective formal requirements and policies for investigating allegations of agent misconduct and routinely follow these provisions. However, timeliness standards are either not in place for all phases of the agent misconduct resolution process or in some portions are imprecise. Additionally, record keeping is not uniform for all phases of the process, thus further hampering the ability to fully assess compliance and performance in these important cases.

Recommendations, Management Comments, and Evaluation Response

A.1. All DCIOs develop (or revise) a Code of Ethics or other regulatory instrument that requires DCIO personnel who know of or suspect incidents of agent misconduct to report them promptly through proper channels. The publication should clearly define the standards of conduct expected of DCIO personnel and explicitly address the obligation to report violations of those standards.

DCIS Comments. DCIS partially concurred, stating that DCIS does not have a special Code of Ethics for agents, but believes its standard Code of Ethics is appropriate. However, DCIS concurred that specific regulatory guidance requiring employees to report known or suspected acts of agent misconduct is necessary. DCIS highlights that the "Special Agents Manual," Chapter 34, "Internal Inquiries," Section 3403.2, states, "All information alleging or indicating involvement of OAIG-INV personnel in the situations described above (paragraph 1), shall be reported immediately to the Program Review Office of the Program Review Directorate (PRD)." In what is a constructive effort to

underscore the requirement, DCIS indicates it will also add this requirement to Chapter 1, Organization, Mission, Jurisdiction and Authorities, of the Special Agent Manual in early FY 2001, and will include a notification in its next newsletter (October 2000).

Evaluation Response. We accept DCIS' comments. The manual language is positive guidance; however, we suggest more explicit language to ensure DCIS personnel clearly understand their duty to report employee misconduct. We have reflected the manual provision in the discussion and the conclusion portions of this finding.

Army Comments. The Army concurred stating that a revision of USACIDC Regulation 195-1, Criminal Investigation Operational Procedures, will be drafted in an effort to define the standards of conduct expected of a CID special agent. CIDR 195-1 will also include a code of ethics consistent with the recommendations in the draft report and specific language on reporting suspected agent misconduct. The revision is scheduled for publication in January 2001.

Navy Comments. The Navy concurred.

Air Force Comments. The Air Force concurred stating that AFOSI Instruction 36-2901, "Standards of Professional Conduct for AFOSI Personnel," will be revised to meet the requirements of the recommendation. Estimated completion date is October 1, 2000.

A.2. The DCIOs review their agent misconduct investigation policies and procedures and establish appropriate standards of timeliness for each phase of the investigation, review, and final action processes. Concomitantly, the DCIOs should develop a system to record and monitor compliance and performance with respect to these standards.

DCIS Comments. DCIS concurred, stating a review of its system disclosed that they are in compliance with the recommendation. However, a review of the "Special Agents Manual," Chapter 44, "Disciplinary Actions," did not establish a time standard for the Deciding Official to render a decision. The chapter is being revised to include direction that the Deciding Official will render a decision within 30 days after an agent has been given the opportunity to respond. The chapter is anticipated to be completed by January 2001.

Army Comments. The Army concurred and provided a summary of their process from receipt of an allegation of agent misconduct through written notification of the final decision to the subordinate commander. This guidance is published in CIDR 195-1.

Navy Comments. The Navy nonconcurred stating that the draft report indicates that the NCIS investigative process is already timely. The Navy stated that additional standards would not effectively address the efficiency of the process and that instead of establishing time standards and a system for monitoring those time standards, NCIS could better use its time and resources with an ongoing review of its current process to determine whether it is efficient or in need of improvement.

Evaluation Response. We do not accept the Navy’s nonconcurrency to the recommendation.

In assessing the timeliness of NCIS internal investigations, we found that the cases we reviewed took an average of 63 days to complete, with a standard deviation of 61. We noted that the average amount of time it took DCIS to complete an agent misconduct investigation was 79 days, and that AFOSI completed them in an average of 58 days. We were unable to ascertain a comparable average for USACIDC; however, the average for the DCIOs (minus USACIDC) was 67 days. Because of this, we concluded that in general the amount of time NCIS spent on its cases was within normal limits. However, we also found that twenty-five (or 40 percent) of the NCIS agent misconduct investigations we reviewed exceeded one standard deviation. This means it took *significantly* longer than the average to complete these investigations. Although the *overall* average amount of time they expended was within normal limits, there remained a great spread in the amount of time it took NCIS to conduct these investigations.

We found that paragraph 13-5.2.a of NCIS-1 required the IG to “establish the priority of the investigation.” The only other discussion of “priority” appears in paragraphs 25-3.2.a. and c. of NCIS-1, which establishes Priority I and II investigations. These paragraphs do not specify whether NCIS agent misconduct investigations should be classified as Priority I or II investigations, so we assume they would be classified according to the substantive nature of the investigation itself. NCIS-1 does not provide a timeliness standard for completing an investigation, but does state that, “timeliness in resolving issues and reporting the findings is a critical function of supervision. This reporting requirement extends past the active investigative phase to include timely reporting of the disposition of Subject, Co-subject and Corporation.” We agree with the NCIS philosophy, and it is for that reason that we recommended the establishment of timeliness standards.

By establishing a timeliness standard for each phase of agent misconduct investigations, the DCIOs in general and NCIS in particular would have a “tripwire” that alerts them to investigations that are taking longer than normal to complete and where specifically the delay is occurring. Because our recommendation is a reasonable management control that would enable NCIS to more effectively manage these investigations, we do not accept its nonconcurrency to recommendation A.2. We request that the Navy reconsider its position and provide comments on the final report.

Air Force Comments. The Air Force concurred stating AFOSI Instruction 71-138, Investigations of AFOSI Personnel, will be revised to establish standards of timeliness for each phase of an investigation, review, and final action on AFOSI personnel. Metrics will be developed to measure compliance rates. The estimated effective date for implementation of this process is October 1, 2000.

B. Preventing Agent Misconduct

The DCIOs do not have procedures in place for aggregating, analyzing, and disseminating information on agent misconduct as part of a larger preventive effort. Although they do have policies and procedures that enable them to investigate and resolve allegations of agent misconduct, the information that collectively results from those investigations is not compiled and used to develop systematic programs of prevention. As a result, the DCIOs do not derive maximum organizational benefit from the experience gained in the agent misconduct investigations they conduct.

Background

In order for DCIO leaders and managers to prevent agent misconduct, they must identify its nature and distribution. If cases of agent misconduct investigated over time can be shown to follow patterns or trends, awareness of those patterns and trends might suggest systemic weaknesses or vulnerabilities that can be addressed, alleviated, or corrected. For this reason, it is important for the DCIOs to approach agent misconduct at both the individual level and as a collective or institutional problem. In order to do this, the DCIOs should regularly collect data on agent misconduct and subject it to periodic analysis.

External Standards

In an effort to identify appropriate standards for gathering and reporting agent misconduct data, we benchmarked several sources. The first was the Commission on Accreditation for Law Enforcement Agencies (CALEA), a non-governmental, non-operational law enforcement accrediting organization that seeks to improve delivery of law enforcement services by offering a body of standards, developed by law enforcement practitioners, covering a wide range of up-to-date law enforcement topics. CALEA has a standard requiring law enforcement agencies to compile annual statistical summaries based upon records of internal affairs investigations and recommends that these summaries be made available to the public and to agency employees. We also reviewed the standards employed by the FBI, ATF, and DEA. Our objective was to identify practices that have been beneficial to other law enforcement organizations and to see if they could be productively applied to the DCIOs. We noted also that the National Academy of Public Administration (NAPA), in its 1999 report, "Adapting Military Sex Crimes Investigations to Changing Times," recommended that the DCIOs publish statistical summaries of internal affairs investigations, conduct analyses of such events, and develop an ethics and professional standards course for special agents.

We found that the civilian Federal law enforcement agencies we used as benchmarks all gather data on agent misconduct and issue reports that outline the nature and distribution of the internal affairs investigations they conduct.

FBI: The FBI's Office of Professional Responsibility (FBI/OPR) issues a semiannual report on its Disciplinary Program. These reports provide historical data on the age of pending cases as well as information on allegations of

misconduct by category. In addition, FBI/OPR provides information on the percentages of employees who were disciplined by type of misconduct and the outcome of FBI/OPR investigations. Their reports also note disciplinary trends and policy revisions pertinent to integrity issues.

ATF: ATF does not issue a separate report but instead provides pertinent information to the Department of the Treasury Inspector General, who issues a consolidated semiannual report to Congress.²¹ This report aggregates performance and case statistics from a variety of Treasury agencies and includes multiple topics, including substantive sections on agent misconduct.

DEA: The DEA's Office of Professional Responsibility (DEA/OPR) issues periodic reports that identify five-year trends in its internal affairs investigations.²² The DEA/OPR report also provides information on the geographic distribution of the allegations it investigates; the most common DEA-wide allegations; disciplinary decisions taken based upon DEA/OPR investigations; and MSPB decisions that have been issued. DEA/OPR also discusses the proactive measures it takes in dealing with integrity issues and provides examples of the types of matters it investigates.²³

DCIO Analyses and Reports of Agent Misconduct Cases

Each DCIO maintains files and some data on agent misconduct at its respective Headquarters.²⁴ USACIDC also has the supervisors of agents who are on probation provide quarterly reports on the agent's progress, particularly as concerns the matter investigated. NCIS requires quarterly reports from Special Agents in Charge and the Deputy Assistant Director Career Services of any oral admonishments or letters of caution to ensure uniformity of disciplinary action within NCIS, but compliance with such reporting has been sporadic at best. DCIS and AFOSI do not have comparable reports. The DCIO officials we interviewed stated that due to the low number of agent misconduct investigations, analysis and identification of trends are not routinely done and would not, in their opinion, be effective. In addition, none of the DCIOs publishes an annual or semiannual

²¹ This semiannual report includes activities investigated by the following Treasury agencies: Office of the Inspector General, the Internal Revenue Service Inspection Service, the Customs Office of Internal Affairs, the ATF Office of Inspection, and the Secret Service Office of Inspection.

²² DEA's most recent report is in the form of a memorandum from the Deputy Chief Inspector, DEA Office of Professional Responsibility, to the Counsel, Department of Justice Office of Professional Responsibility, December 22, 1999.

²³ Examples include corruption; conduct unbecoming a DEA employee; failure to follow instructions of a supervisor and failure to follow written instructions; unauthorized disclosure of information; theft of government funds; improper association with a confidential source; unauthorized charges on a government credit card; refusal to cooperate in an OPR investigation; providing false statements in an OPR interview; unprofessional conduct; assault; and falsification of official records.

²⁴ Prior to January 1999, the Army USACIDC Accreditation Branch only maintained files on those agents recommended for decertification.

report on its agent misconduct investigations. We were unable to locate or identify any products that used historical data to identify categories of risk or vulnerability. We were likewise unable to identify DCIO products that were, or could be, used to link patterns or trends of agent misconduct to specifically focused efforts to reduce agent misconduct.

In January 1997, AFOSI issued a report entitled, “Internal AFOSI Inquiries Evaluation 96-2” which “. . . was chartered to examine all internal inquiries conducted on AFOSI agents during the five year period 1991-1995 . . .” A primary goal of this evaluation was “. . . to determine if there were any identifiable indicators or flags in the ‘110’,²⁵ pre-selection process that might identify possible future ‘problem agents’.” The AFOSI evaluators identified 144 internal inquiries and reviewed half of them. The AFOSI evaluation found that, “Agents of all ages, experience levels, locations and gender occasionally make mistakes and/or do stupid, unethical or illegal things.” The evaluation concluded that “Normally good people occasionally do stupid things or make poor judgments that seem to be out of character for that person.” They further concluded, “that ‘good agents’ sometimes transgress is probably a reflection of human nature and to a large degree, our societal values.” The AFOSI report made no recommendations.

Management Controls Designed to Deter Agent Misconduct

DoD Directive 5010.38, “Management Controls,” August 26, 1996, requires each DoD Component to implement a comprehensive strategy for management controls that provides reasonable assurance, *inter alia*, that “[p]rograms and administrative and operating functions are efficiently and effectively carried out in accordance with applicable law and management policy.” We met with representatives of the DCIOs to determine what management controls they have instituted to affirmatively deter agent misconduct. They reported some mechanisms such as focused instruction in basic agent training and annual ethics in-service training;²⁶ inspection programs; policies; internal assessments; an emphasis on integrity from the top to the bottom; and a few other specific efforts. Examples of the latter include the NCIS Assistant Director for Inspections routinely addressing agent misconduct at a two-week Federal Law Enforcement Training Center managerial training course, and AFOSI’s program where sensitivity and misconduct scenarios are presented at an advanced training course for supervisors.

In addition, DCIO officials stated that to emphasize ethics-related awareness and policies they periodically place articles and reminders on ethical issues in their newsletters and in policy memoranda to all employees. For example, DCIS has produced a newsletter reminding agents of prohibited practices. NCIS publishes reminders in its weekly publications, *Plan of the Week*, and in its bimonthly publication, *Legal Briefs*. In August 1998, AFOSI began publishing a monthly

²⁵ 110 refers to the evaluation of the suitability of candidates to become AFOSI agents.

²⁶ DoD Directive 5500.7-R is the source of standards of ethical conduct and ethics guidance for the Department of Defense. In accordance with the requirements of this Directive, agents receive initial and mandatory annual ethics training of general DoD standards of conduct.

publication *The IG News* which replaced the *Crosstell*. This publication presents the command's critical success factors, special interest items, and provides trends seen during inspections and processing internal complaints. It highlights the most common and serious issues undertaken by the IG office in both the inspections and inquiries components.

Reporting and Disseminating Agent Misconduct Information

Currently, there is no centrally maintained Special Agent Misconduct Reporting System at the DoD level to monitor misconduct issues. Each DCIO maintains files and data on agent misconduct within its appropriate organizational component. The NAPA Report, "Adapting Military Sex Crime Investigations to Changing Times," recommended in Chapter 13 that DoD initiate a centrally maintained Special Agent Misconduct Reporting System at the DoD level to monitor misconduct issues, analyze specific instances for patterns, identify systemic problems, and track corrective actions for consistency and appropriateness. In our conversations with DCIO officials, they stated that due to the low number of agent misconduct investigations, analysis and identification of trends are not routinely done. The NAPA report also recommended that "To gain public confidence, misconduct allegations, proven and otherwise, should be included in semi-annual statistics reports similar to those published by the FBI." DCIO officials stated that providing statistical reports for small agencies like the DCIOs, with few incidents of misconduct, would be problematic since descriptions of infrequent misconduct and disciplinary action would most likely lead to the inadvertent and unnecessary identification of the agent involved.

Conclusion

The DCIOs' management controls to deter agent misconduct appear to be adequate. Basic training along with mandated annual ethics training and in-service training by the DCIOs is useful. We believe that the high priority given to agent misconduct investigations by the DCIOs and the current oversight controls identified in this evaluation play a satisfactory role in deterring, identifying, and managing agent misconduct within the DCIOs. We believe, however, that the DCIOs must aggregate and analyze agent misconduct data and that this practice would enhance their ability to affirmatively address agent misconduct issues through a more aggressive program of misconduct prevention. For this reason we agree in principle with the first recommendation made by NAPA, that "To gain public confidence, misconduct allegations, proven and otherwise, should be included in semi-annual statistics reports similar to those published by the FBI." However, because of the small number of cases within the DCIOs, we do not agree that semi-annual reporting is warranted. We do conclude that information on these cases should be aggregated, analyzed, and reported at periodic intervals (particularly throughout the respective DCIO) and that specific patterns, trends, lessons learned, or other useful information be presented to derive maximum benefit from the experience gained during agent misconduct investigations.

Recommendations, Management Comments, and Evaluation Response

B.1. The DCIOs establish a program at their headquarters for aggregating and analyzing all agent misconduct cases.

DCIS Comments. DCIS nonconcurred with the recommendation stating that on the average DCIS conducts 15 agent misconduct cases per year. In an effort to eliminate agent misconduct, they review each allegation and regularly provide patterns of misconduct to employees and managers through senior manager conferences, group manager and RAC conferences, and through in-service training. They further stated that with the reviews they already do, an additional “official” program to analyze the few cases they have would provide no additional benefit to the agency.

Evaluation Response. DCIS provided numerous examples of conference materials containing agent misconduct statistical information. We therefore conclude that the DCIS practice is responsive to the recommendation.

Army Comments. The Army concurred with the recommendation stating that the recommendation will be accomplished under the same provisions outlined in “Comment 3” of their response to the draft report.

Evaluation Response. The Army’s response to this recommendation is unclear. We request the Army provide additional information in their comments on the final report to include actions taken or planned.

Navy Comments. The Navy nonconcurred with the recommendation stating that the draft report indicates that there are too small a number of agent misconduct cases within the DCIOs to justify semi-annual reporting. Navy also stated there are too few misconduct cases for “aggregating and analyzing.”

Evaluation Response. We identified an average of 22 NCIS agent misconduct investigations per year. Although this number is too low to justify semi-annual reporting – or perhaps even annual reporting – it *does* justify aggregating and analyzing those cases at periodic intervals. The failure to do so would deprive NCIS leadership of valuable and important insight into potential problem areas and trends. Moreover, the failure to do so would render the cases that are investigated anecdotal and preclude a systematic approach to “lessons learned.” For these reasons we do not accept NCIS’ nonconcurrence to recommendation B.1. We request that the Navy reconsider its position and provide comments on the final report.

Air Force Comments. The Air Force concurred with the recommendation stating that data collected from metrics referenced in recommendation B.1 will be used to collect, analyze, evaluate, and modify internal investigations processes as needed.

B.2. The DCIOs publish periodic reports on agent misconduct and disseminate those reports throughout their respective organizations. These reports should highlight patterns and trends in agent misconduct and offer guidance for their detection and prevention.

DCIS Comments. DCIS partially concurred with the recommendation stating that DCIS provides general misconduct information in *The Eagle* (their internal newsletter) and the topic is discussed at all senior manager, group manager, and RAC meetings, and at In-Service Training sessions held during the year. Additional reporting requirements would not provide any additional benefit to the agency.

Evaluation Response. Based on examples of documents provided by DCIS, we conclude that the DCIS practice is responsive to the recommendation.

Army Comments. The Army concurred with the recommendation stating they will take action to develop and disseminate periodic reports throughout the organization. Their primary focus will be to provide information regarding possible trends in agent misconduct with a goal towards detection and possible prevention.

Evaluation Response. We request the Army provide information on actions taken or planned and dates of those actions in their comments on the final report.

Navy Comments. The Navy concurred.

Evaluation Response. We request the Navy provide information on actions taken or planned and dates of those actions. We also request that in their comments on the final report the Navy address compliance with quarterly reporting requirements by senior management as referenced in NCIS-1, paragraph 18-8.1.e.

Air Force Comments. The Air Force concurred with the recommendation stating AFOSI IG will begin issuing semi-annual reports in January and July 2001. The semi-annual reports will analyze agent misconduct investigations, show patterns and trends, and offer guidance to commanders and supervisors for the detection and prevention of agent misconduct. The first semi-annual report will be issued in January 2001 and will cover all closed cases in which final action has been completed during the period July through December 2000.

Appendix A. Evaluation Process

Scope

We reviewed DCIO policies, procedures, and processes; gathered data from non-DoD organizations to use as benchmark measures; and we evaluated DCIO agent misconduct investigations that were closed during calendar years 1996 through 1998. We limited our evaluation to misconduct matters, which excluded performance-related issues and grievances. In addition, we did not attempt to contrast the individual DCIO agent misconduct investigation processes, since their diverse programs preclude fully meaningful comparisons. Instead, we focused on whether each DCIO process for handling agent misconduct allegations was effective and highlighted areas where additional emphasis might be needed or be beneficial.

Methodology

Work Performed. We assessed DCIO policies, procedures, and processes for addressing agent misconduct cases, beginning with the initial allegation and continuing through the internal investigation and any resulting disciplinary action.

For each DCIO, we identified the organizational component responsible for receiving initial allegations of agent misconduct. We also reviewed the DCIOs' authorities, policies, and procedures for processing these allegations. In addition, we reviewed closed case files for calendar years 1996 through 1998, to assess compliance with policy and other requirements, and to make comparisons with other agency benchmarks. Finally, we interviewed management officials, review board officials, and agents involved in the agent misconduct investigation process, including management officials responsible for deciding disciplinary actions.

Evaluation Period and Contacts. This evaluation was performed from February 1999 through December 1999. We visited or contacted individuals and organizations within the DoD and other Federal agencies. Further details are available on request.

Prior Coverage (Details at Appendix B)

- GAO/NSIAD-97-117, “Naval Criminal Investigative Service, Fraud Interview Policies Similar to Other Federal Law Enforcement Agencies,” April 1997.
- Air Force Office of Special Investigations, “Internal AFOSI Inquiries: Evaluation 96-2,” January 1997.
- National Academy of Public Administration Report, “Adapting Military Sex Crime Investigations to Changing Times,” June 1999.
- U.S. Senate Majority Staff report to the Chairman, Senate Judiciary Subcommittee on Administrative Oversight and the Courts, “The Defense Criminal Investigative Service, Department of Defense,” November 2, 1999.

Appendix B. Relevant Prior Reviews

Summary of Prior Coverage

Air Force Office of Special Investigations, “Internal AFOSI Inquiries: Evaluation 96-2,” January 1997. This internal evaluation concluded that the current AFOSI pre-selection policy is a reasonable process that is working as intended and almost always results in good agents being approved for AFOSI duty. The evaluation provided no specific recommendations.

The U.S. General Accounting Office Report GAO/NSIAD-97-117, “Naval Criminal Investigative Service, Fraud Interview Policies Similar to Other Federal Law Enforcement Agencies,” April 1997. This report concluded that the Naval Criminal Investigative Service has established controls to deter, detect, and deal with agent misconduct. Agents are trained in interview policies during their initial training at the Federal Law Enforcement Training Center and through in-house and contractor training. In addition, other controls include: (1) periodic inspections of Naval Criminal Investigative Service field offices; (2) internal investigations of alleged agent misconduct; (3) oversight of cases and allegations of agent misconduct by the DoD Inspector General; and (4) the involvement of the U.S. Attorney’s offices in grand jury investigations and prosecutions.

The National Academy of Public Administration Report, “Adapting Military Sex Crime Investigations to Changing Times,” June 1999. This report stated that increased management attention to agent misconduct would increase trust and confidence in the MCIOs. To enhance the MCIOs’ ability to handle instances of agent misconduct, the report offered three recommendations. First, it recommended that MCIO managers elevate the issue of agent misconduct within the MCIOs through publicity, training aids, and ethics conferences. To gain public confidence, misconduct allegations, proven and otherwise, should be included in semi-annual statistical reports similar to those published by the FBI. Second, it recommended that DoD initiate a centrally maintained Special Agent Misconduct Reporting System to monitor misconduct issues, analyze specific instances for patterns, identify systemic problems, and to track corrective actions for consistency and appropriateness. Third, it recommended that the MCIOs develop a single ethics and professional standards training course, either during basic agent training or as an add-on or graduate course. Agent attendance at the course should be mandatory. Except as specifically discussed in the body of this report, we found no basis for fully adopting the NAPA conclusions and recommendations.

U.S. Senate Majority Staff report to the Chairman, Senate Judiciary Subcommittee on Administrative Oversight and the Courts, “The Defense Criminal Investigative Service, Department of Defense,” October 1999. The Senate Majority Staff Report criticized the DoD Acting Inspector General for management decisions made in a senior agent misconduct case when the Acting Inspector General was the Assistant Inspector General for Investigations and headed DCIS. It also criticized a former DCIS special agent’s work in conducting internal investigations. Both the Secretary of Defense and the Acting Inspector General sent rebuttals to Congress.

Appendix C. Policies, Procedures, and Regulations Reviewed

Department of Defense, Inspector General

- (1) Inspector General Regulation 1400.4, "Disciplinary and Adverse Action," December 30, 1994.
- (2) DoD Directive 5500.7, "Standards of Conduct," August 30, 1993.

DCIS

- (1) Special Agents Manual, Chapter 34 (Operations), "Internal Inquiries," November 1994.
- (2) Special Agents Manual, Chapter 44 (Administration), "Disciplinary and Adverse Action," March 1995.
- (3) Memorandum for all Special Agents, Revision of Chapter 34, "Internal Inquiries," DCIS Special Agents Manual, July 16, 1999.

Army

- (1) AR 15-6, "Procedure for Investigating Officers and Boards of Officers," September 30, 1996.
- (2) AR 195-3, Chapter 4, "Acceptance, Accreditation, and Release of United States Army Criminal Investigation Command Personnel," April 22, 1987.
- (3) AR 690-700, "Personnel Relations and Services (General) - Discipline," Table 1-1, "Table of Penalties for Various Offenses," Undated.
- (4) CIDR 1-201, "Office of the Inspector General, Organization Inspection Program," January 1, 1996.
- (5) CIDR 195-1, "Criminal Investigation Operational Procedures," October 1, 1994.
- (6) ALCID Memorandum 004-99, Change to CIDR 195-1, "Criminal Investigation Operational Procedures" (Chapter 19), February 18, 1999.
- (7) ALCID Memorandum 013-99, Change to CIDR 195-1, "Criminal Investigations Operational Procedures" (Chapter 7), June 30, 1999.

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- (8) ALCID Memorandum 014-99, Change to CIDR 195-1, "Criminal Investigation Operational Procedures" (Chapter 19), July 14, 1999.

Navy

- (1) NCIS-1, "Manual for Administration," Chapter 13, "Special Agent Standards and Performance," Chapter 13-5, Internal Personnel Inquiry Investigations, May 1995.
- (2) NCIS-1, "Manual for Administration," Chapter 18, "Disciplinary and Adverse Action Procedures," May 1996.
- (3) NCIS-1, "Manual for Administration," Chapter 25, "Report Writing," December 1995.

Air Force

- (1) Air Force Instruction 36-704, Civilian Personnel, "Discipline and Adverse Actions," July 22, 1994.
- (2) AFOSII 36-2103, Personnel, "Release of Personnel from Duty with AFOSI," March 24, 1997.
- (3) AFOSII 36-2901, Personnel, "Standards of Professional Conduct for AFOSI Personnel," November 12, 1996.
- (4) AFOSII 71-107, Special Investigations, "Processing Investigative Matters," December 9, 1996.
- (5) AFOSII 71-107, Special Investigations, "Processing Investigative Matters," September 23, 1998.
- (6) AFOSII 71-109, Special Investigations, "Case File Numbering System and Hundred Series Case Types," August 31, 1998.
- (7) AFOSII 71-138, Special Investigations, "Investigations of AFOSI Personnel," November 27, 1996.

Civilian Law Enforcement Agencies and Other Law Enforcement References

- (1) Commission on Accreditation for Law Enforcement Agencies, Inc. (CALEA). "Standards for Law Enforcement Agencies, The Standards Manual of the Law Enforcement Agency Accreditation Program," Third Edition, Chapter 52, "Internal Affairs," April 1994.

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- (2) Institute of Police Technology and Management (IPTM), Jacksonville, Florida.
 - (3) National Internal Affairs Investigators Association, Richmond, VA
 - (4) Federal Law Enforcement Officers Association (FLEOA)

Other Referenced Documents

- (1) National Academy of Public Administration (NAPA). A report by a panel of the NAPA for the Department of Defense and the United States Congress, "Adapting Military Sex Crime Investigations to Changing Times," June 1999.
- (2) U.S. Senate Majority Staff report to the Chairman on the Oversight Investigation -- The Defense Criminal Investigative Service, Department of Defense, November 2, 1999.
- (3) President's Council on Integrity and Efficiency (PCIE), "Quality Standards for Investigations," September 1997.

APPENDIX D. ORGANIZATIONS VISITED OR CONTACTED

DEPARTMENT OF DEFENSE INSPECTOR GENERAL

- Headquarters, DCIS, Arlington, VA

DEPARTMENT OF THE ARMY

- Headquarters, USACIDC, Fort Belvoir, VA
- Inspector General, Department of the Army, Pentagon, Washington, DC

DEPARTMENT OF THE NAVY

- Headquarters, NCIS, Inspections Department, Washington Navy Yard, Washington, DC
- Naval Inspector General, Investigations, Washington Navy Yard, Washington, DC

DEPARTMENT OF THE AIR FORCE

- Headquarters, AFOSI, Andrews Air Force Base, Washington, DC
- Inspector General, Department of the Air Force, Andrews AFB, Maryland

FEDERAL ORGANIZATIONS

- Headquarters, Bureau of Alcohol, Tobacco, and Firearms, Washington, DC
- Headquarters, US Coast Guard, Washington, DC
- Headquarters, US Customs Service, Washington, DC
- Headquarters, Federal Bureau of Investigation, Washington, DC
- Headquarters, Drug Enforcement Agency, Arlington, VA

PROFESSIONAL & ACADEMIC ORGANIZATIONS

- Commission on Accreditation for Law Enforcement, Inc., Fairfax, VA.
- Federal Law Enforcement Officers Association, Garden City, NY
- National Association of Internal Affairs Investigators, Richmond, VA
- Institute of Police Technology and Management, Jacksonville, FL

Appendix E. Benchmark and Reference Agency Profiles

Federal Bureau of Investigation

The Federal Bureau of Investigation is the principal investigative arm of the U.S. Department of Justice. The FBI investigates suspected violations of Federal law and its responsibilities include providing protection from foreign intelligence and terrorist activities, and assistance to other law enforcement organizations. The FBI has approximately 11,400 special agents and 16,400 other professional, administrative, technical, clerical, craft, trade, or maintenance operations employees. The internal affairs organization within the FBI is the Office of Professional Responsibility. During fiscal year 1998, OPR opened 457 new inquiries of alleged criminality or serious misconduct by 517 employees. In addition, 528 cases involving 615 employees were closed during this same period. Of the 615 employees, 140 special agents and 161 support personnel were disciplined.

Drug Enforcement Agency

The Drug Enforcement Agency is a part of the U.S. Department of Justice. Its mission is to enforce the controlled substance laws and regulations of the United States and to bring to the criminal and civil justice system those organizations and individuals involved in the growing, manufacture, or distribution of controlled substances appearing in or destined for illicit traffic in the United States. DEA also recommends and supports non-enforcement programs aimed at reducing the availability of illicit controlled substances on the domestic and international markets. DEA currently has 4,515 special agents and 3,900 support staff. The internal affairs apparatus in DEA is the Office of Professional Responsibility. In fiscal year 1998, OPR opened 229 cases, resulting in disciplinary actions taken against 31 special agents and 54 non-special agents.

The Bureau of Alcohol, Tobacco and Firearms

The Bureau of Alcohol, Tobacco and Firearms is a law enforcement organization within the United States Department of the Treasury with responsibilities to collect taxes and enforce the Federal laws and regulations relating to alcohol, tobacco, firearms, explosives, and arson. ATF has approximately 3000 employees, including 1300 special agents. The internal affairs organization within ATF is the Office of Inspection. In the six months that ended on March 31, 1998, the ATF Office of Inspection opened 129 cases and referred 5 to

prosecution authorities, of which one was accepted for prosecution. An additional 32 personnel actions were taken against ATF employees. These figures include all ATF employees, including special agents.

Commission on Accreditation for Law Enforcement Agencies

The Commission on Accreditation for Law Enforcement Agencies (CALEA) was founded in 1979 to establish a body of standards designed to: (1) increase law enforcement agency capabilities to prevent and control crime; (2) increase agency effectiveness and efficiency in the delivery of law enforcement services; (3) increase cooperation and coordination with other law enforcement agencies and with other agencies of the criminal justice system; and (4) increase citizen and employee confidence in the goals, objectives, policies, and practices of the agency. In addition, the Commission was formed to develop an accreditation process that provides law enforcement agencies an opportunity to demonstrate *voluntarily* that they meet an established set of professional standards. CALEA is a joint effort of the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives; the National Sheriff's Association; and the Police Executive Research Forum. CALEA publishes the *Standards for Law Enforcement Agencies*.

Institute of Police Technology & Management

The Institute of Police Technology and Management (IPTM), University of North Florida, was established in January 1980 for the purpose of providing management, traffic, and specialty training to municipal, county, state, and federal law enforcement officers. Since its establishment, the institute's role in the police community has expanded to include the publishing of texts and serving as management consultants to police organizations throughout the world. IPTM trains annually more than 12,000 civilian and military law enforcement personnel throughout the United States and the abroad.

National Internal Affairs Investigators Association

The National Internal Affairs Investigators Association is a professional group of law enforcement officers employed by various city, county, state and federal agencies who are involved in internal affairs investigations. It is a professional organization and not an investigative agency. The purpose of the Association is to develop and establish standards of performance and integrity for internal affairs investigators and to provide training to bring about professional growth and development. They present forums for discussion of common problems and court decisions, gather and disseminate information regarding improved administrative and technical practices, foster law enforcement cooperation, and exchange information and experiences among internal affairs investigators throughout the United States.

President's Council on Integrity and Efficiency

Established by executive order, the President's Council on Integrity and Efficiency (PCIE) is comprised of all Presidentially-appointed Inspectors General. In addition, the Executive Order specifies the Office of Government Ethics, the Office of Special Counsel, the Federal Bureau of Investigations, and the Office of Management and Budget (OMB) as members of the PCIE. The Council is chaired by the Deputy Director for Management at OMB and an IG holds the position of Vice Chair.

The PCIE is charged with conducting interagency and inter-entity audit, inspection, and investigation projects to deal effectively and efficiently with government-wide issues of fraud, waste and abuse. The Council accomplishes this through committee activity. Established committees of the PCIE include Audit, Inspection and Evaluation, Integrity, Investigations, Legislation and Professional Development.

There is also an Executive Council on Integrity and Efficiency (ECIE). The ECIE and PCIE are the same except that the ECIE is comprised mainly of the designated Inspectors General. An ECIE member serves as a Council representative on each of the PCIE Committees.

Appendix F. DCIO Case Review: Anomalies

A small number of DCIO agent misconduct investigations were examined in greater detail because they presented unusual aspects, or because we heard about staff allegations that either the DCIO managers or investigating agents had handled the matters improperly. These cases are summarized below.

Defense Criminal Investigative Service

The DoD Hotline received a complaint alleging a number of violations. Among the allegations were charges that managers at a DCIS field office permitted the widespread misuse of Government vehicles and allowed inappropriate activities, such as certain types of liaison activities, to be credited as official duty. Since former members of the particular field office had been transferred to DCIS Headquarters, the then DoD Deputy Inspector General, Derek Vander Schaff, directed that the Office of the Assistant Inspector General for Criminal Investigative Policy and Oversight (CIPO) conduct an investigation of how the field office was managed and whether DCIS policy was complete and clear in addressing the issues raised in the allegation. Utilizing CIPO to conduct this review was a departure from normal procedures outlined in the DCIS *Special Agents Manual*. This resulted in eliminating this case from consideration in this evaluation.

Naval Criminal Investigative Service

The Naval IG Hotline received a complaint alleging that a senior NCIS manager was promoted after being investigated and disciplined by NCIS. The allegations included a claim that the senior manager diverted a military aircraft for personal business reasons during an overseas temporary duty (TDY) trip. The Naval IG staff conducted a preliminary inquiry and determined that the senior manager had taken a TDY trip as alleged, but used commercial airlines, not a military aircraft. The Naval IG also determined that the TDY involved a stop in a third country, but the stop was to attend a scheduled conference, and the travel had all been approved before the TDY. Therefore, the Naval IG concluded the matter without the need for a full investigation or referral to NCIS. Our evaluation did not disclose a problem with the manner in which the Naval IG handled the case.

Another NCIS investigation involved a complaint to the DoD Hotline, which was referred to the Naval IG and, in turn, to NCIS for internal investigation. The complaint included several misconduct allegations, including claims that Government vehicles and Government credit cards had been misused. NCIS conducted an internal investigation that did not substantiate the allegations and submitted a report to the Naval IG. The Naval IG, however, returned it to NCIS for further investigation because not all the issues referred for investigation had

been addressed. The second NCIS investigation identified a minor state motor vehicle violation, but did not find that Government vehicles or credit cards had been misused. The Naval IG accepted the second investigation as the basis for closing the matter. Based on our evaluation, NCIS policies and procedures for internal investigations were not initially effective in this case, but the problems were isolated to the particular case and did not constitute systemic problems in NCIS applying its policies and procedures for internal investigations.

Air Force Office of Special Investigations

AFOSI received a complaint containing several allegations, the most serious of which was that a junior manager made unauthorized deletions in the Defense Clearance and Investigations Index (DCII). Another allegation claimed that this agent was absent from his office for several hours a day on personal business. AFOSI appointed an investigating agent upon receiving the complaint. A senior AFOSI manager instructed the investigating agent to complete an investigative report within a week, concentrating on the most serious allegation pertaining to DCII data deletions. The investigating agent, acting in accordance with management guidance, reviewed records and interviewed local personnel in positions to confirm or refute the allegations regarding the DCII issue. He did not substantiate the allegations. However, due to the management decision to limit the investigation to the more serious allegation involving DCII, the investigating agent did not apply investigative techniques that were applicable to the allegations and did not thoroughly investigate the allegations regarding absences from the office. Notwithstanding shortcoming in the investigation, AFOSI initially proposed to remove the manager from Federal Service, based largely on the individual's absences from his office. Following an appeal to the Merit Systems Protection Board, AFOSI and the junior agent entered into an agreement permitting the agent to remain as an AFOSI agent with a temporary, one-grade level demotion in rank and pay for one year. This investigation was an example of not applying governing policies and procedures fully, as intended. As was true in the NCIS case, however, the problems were isolated to the particular case and did not reflect a systemic problem in AFOSI applying its policies and procedures to internal investigations.

Appendix G. Outcome of Investigations (1996 – 1998)

DEFENSE CRIMINAL INVESTIGATIVE SERVICE (DCIS)									
	Type of Misconduct	Dismissal	Suspension (without pay)		Letter of Caution	Letter of Reprimand	Counseled	No Adverse Action	Total
			=>15 days	=<14 days					
1	Accidental Discharge of Weapon					1			1
2	Assault	1			1				2
3	Conflict of Interest							1	1
4	Loss of Badge & Credentials					1	1	1	3
5	Loss of Government Equipment			1	1				2
6	Loss of Weapon		1	1			1		3
7	Misuse of Government Property						1		1
8	Misuse of Government Vehicle		1		1			1	3
9	Misuse of Official Position		1					1	2
10	Sexual Misconduct							1	1
11	Threatened Spouse with Bodily Harm							1	1
12	Unprofessional Conduct, Threats, Drunk & Disorderly				1	1	1	2	5
	Total	1	3	2	4	3	4	8	

"Suspension =>15 days" signifies a suspension without pay for 15 or more days.

"Suspension =<14 days" signifies a suspension without pay for 14 or less days.

APPENDIX G. OUTCOME OF INVESTIGATIONS (1996 – 1998)

U.S. ARMY CRIMINAL INVESTIGATION COMMAND (USACIDC)													
	Type of Misconduct	Confine- ment	Elimi- nation	Relieved of Duties	Temp Relieved of Duties	Reduction in Grade	Article 15	Fine	Letter of Reprimand	Memo of Reprimand	Probation	Counseled	Total
1	Alcohol-Related		2				2	1					5
2	Assault									1	1	1	3
3	Derelect in duties		5						1	3	1		10
4	Falsification		9			2	2	1	2	3	2	2	23
5	Adultery		1			1							2
6	Integrity		2						1	1			4
7	Misuse of Government Property		1							1			2
8	Sexual Misconduct		1										1
9	Unprofessional conduct			1	1				1	3		1	7
10	Financial		1										1
11	Larceny		1			1	1						3
12	Loss of Weapon									1			1
13	Indecent Assault	1	1			1							2
	Total	1	24	1	1	5	5	2	5	13	4	4	

Totals represent the outcome for each offense. There may be multiple outcomes for each Subject.

Note: Table reflects only those cases that were recommended for elimination.

APPENDIX G. OUTCOME OF INVESTIGATIONS (1996 – 1998)

NAVAL CRIMINAL INVESTIGATIVE SERVICE (NCIS)												
	Type of Misconduct	Dismissal	Demotion	Suspension (without pay)		Letter of Caution	Letter of Reprimand	Oral Reprimand	Unfounded	Other	No Adverse Action	Total
				= > 15	= < 14							
1	Alcohol Abuse				1						1	2
2	Assault	1			1		1					3
3	Compromise of Criminal Intelligence								1			1
4	Dereliction of Duty								1			1
5	Discharge of Weapon, Accidental					2			1			3
6	Discharge of Weapon, Line of Duty								1			1
7	Discrepancy in Cash Account						1					1
8	Domestic Violence									2	1	3
9	DWI				1							1
10	False Statement on Application	1					1					2
11	False Travel Claim		1									1
12	Falsified Report								1			1
13	Loss of Badge and Credentials					8	1		2		2	13
14	Loss of Classified Material						1					1
15	Loss of Government (C&CI) Funds					1						1
16	Loss of Weapon				2				1			3
17	Mishandling of Evidence				2		1	1				4
18	Misuse of Government Computer									1		1
19	Misuse of Government Equipment				1							1
20	Misuse of Government Vehicle				2		2					4
21	Misuse of Official Position				1	3						4
22	Passing Bad Checks	1										1
23	Resisting Arrest	1										1
24	Sexual Harassment						1					1

25	Theft		1						1			2
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APPENDIX G. OUTCOME OF INVESTIGATIONS (1996 – 1998)

NCIS (Con't.)												
26	Threats				2	1				1		4
27	Unauthorized Disclosure of Official Manuals						1					1
28	Unprofessional Conduct			1	1	1						3
29	Other	1					2		1			4
Total		6	1	3	12	16	12	1	11	3	4	

"Suspension = > 15" signifies a suspension without pay for 15 or more days.

"Suspension = < 14" signifies a suspension without pay for 14 or less days.

"Other" column includes a Marine CID agent who was terminated from NCIS due to misconduct, a RAC who was relieved of his RAC position, and misconduct that was handled as a performance issue rather than a discipline problem

The "Other" row (Item 29) under Type of Misconduct includes an improper letter written to a gun manufacturer, unauthorized part-time employment, concern about an agent's mental condition, and the showing of an obscene videotape during an agents' training session.

APPENDIX G. OUTCOME OF INVESTIGATIONS (1996 – 1998)

AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS (AFOSI)													
	Type of Misconduct	Court Martial	Decertified	Article 15	Demotion	Suspension	UIF/ Probation	Letter of Reprimand	Letter of Admonishment	Letter of Counseling	Verbal Counseling	Adverse Action	Total
1	Adultery		3	3			5	6		2			19
2	Alcohol abuse						2	2					4
3	Assault (domestic violence, indecent assault)	1	1	1			5	6				1	15
4	AWOL		1										1
5	Badge and credentials lost							2	2	6	4	2	16
6	Badge and credentials stolen									1		1	2
7	Battery		1				2	2					5
8	Brandishing a deadly weapon		1	1				1					3
9	Breaking and entering									1		1	2
10	Communication of a threat											2	2
11	Conduct prejudicial to good order and discipline									1			1
12	Conduct unbecoming an officer						2	2	2	1			7
13	Conspiracy to break and enter									1		1	2
14	Consuming alcohol at duty location				1								1
15	Dereliction of duty		1	2	2		3	6	1	3	1	3	22
16	Destruction of government property				1								1
17	Driving under the influence		1	1				1					3
18	Evidence handling irregularities (loss of evidence)		1					4	1	5	1	3	15
19	Excessive use of force						1	1					2

APPENDIX G. OUTCOME OF INVESTIGATIONS (1996 – 1998)

AFOSI (Con't)												
20	Failure to enforce good order and discipline						2	2				4
21	Failure to obey an order or regulation		2	3			5	9		5		24
22	Failure to pay just debt		1			1	1	2				5
23	Failure to report		1				1	1				3
24	False official statement		1	1			1	2	1	1		8
25	Falsifying time cards				1							1
26	Financial misconduct		1	1	1			1				4
27	Fraudulent receipt of BAQ						1	1				2
28	Illegal search and seizure								1		1	2
29	Illegal use of drugs		1					1				2
30	Improper use of government charge card		2	2		1	2	3				10
31	Indecent acts with another		1									1
32	Indecent exposure						2	2				4
33	Larceny			1	1			1				3
34	Leave fraud							1				1
35	Loss of weapon			1			1	2				4
36	Maintaining pornographic material				1							1
37	Making inappropriate racial comments						1	1				2
38	Misprision of felony							1				1
39	Misuse of C-Funds								1	2		3
40	Misuse of government equipment						2	3				5
41	Misuse of government vehicle				1							1
42	Obstruction of justice										1	1
43	Possession and distributing stolen gov't property										1	1
44	Property damage						1	1				2

APPENDIX G. OUTCOME OF INVESTIGATIONS (1996 – 1998)

AFOSI (Con't)												
45	Providing false information to LE agency						1	1				2
46	Rape	1	1	1								3
47	Security violation		1				1	1				3
48	Sexual harassment						1	1	1		1	4
49	Sexual misconduct		2				1	2				5
50	Sodomy	1	1	1								3
51	Theft of government property										1	1
52	Unauthorized disclosure of investigative activity									1		1
53	Unauthorized possession of AFOSI firearm							1				1
54	Unauthorized use of badge and credentials								1			1
55	Unprofessional conduct						1	1	1		1	3
56	Unreported contacts with foreign nationals		1					1				2
57	Use and possession of marijuana										1	1
58	Violation of academic integrity									1		1
59	Wrongful appropriation of credit cards and loans						1	1				2
	Total	3	26	19	9	2	46	76	9	31	10	24

UIF (Unfavorable information file). An official record of unfavorable information about an individual. It documents administrative, judicial, or nonjudicial censures concerning the member's performance, responsibility, behavior, and so on.

Probation. Some employees were placed on probation in conjunction with other discipline.

Totals represent possible multiple outcomes for each Subject.

Appendix H. Report Distribution

OFFICE OF THE SECRETARY OF DEFENSE

Under Secretary of Defense (Personnel and Readiness)
Assistant Secretary of Defense (Command, Control, Communications and Intelligence)
General Counsel, Department of Defense
Deputy General Counsel (Inspector General)
Director, Defense Criminal Investigative Service

DEPARTMENT OF THE ARMY

Assistant Secretary of the Army (Financial Management and Comptroller)
Assistant Secretary of the Army (Manpower and Reserve Affairs)
General Counsel, Department of the Army
Inspector General, Department of the Army
Auditor General, Department of the Army
Deputy Chief of Staff for Operations and Plans
Commander, Army Criminal Investigation Command

DEPARTMENT OF THE NAVY

Assistant Secretary of the Navy (Manpower & Reserve Affairs)
General Counsel, Department of the Navy
Inspector General, Department of the Navy
Director, Naval Criminal Investigative Service
Deputy Chief of Staff for Plans, Policies and Operations, Headquarters, U.S. Marine Corps
Inspector General, U.S. Marine Corps

DEPARTMENT OF THE AIR FORCE

Assistant Secretary of the Air Force (Financial Management & Comptroller)
General Counsel, Department of the Air Force
Inspector General, Department of the Air Force
Commander, Air Force Office of Special Investigations
Director of Security Forces

OTHER DEFENSE ORGANIZATIONS

Director, Defense Logistics Agency
General Counsel, Defense Logistics Agency
Director, National Security Agency
Inspector General, National Security Agency
Inspector General, Defense Intelligence Agency

NON-DEFENSE FEDERAL ORGANIZATIONS

None

CONGRESSIONAL COMMITTEES AND SUBCOMMITTEES, CHAIRMAN AND RANKING MINORITY MEMBER

Chairman and ranking minority member of each of the following congressional committees and subcommittees:

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Management, Information, and Technology,
Committee on Government Reform
House Subcommittee on National Security, Veterans Affairs, and International Relations,
Committee on Government Reform

Under Secretary of Defense (Personnel and Readiness) Comments



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000



20 JUL 2000

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL
CRIMINAL INVESTIGATIVE POLICY AND OVERSIGHT

SUBJECT: Draft Report on the Evaluation of Defense Criminal Investigative Organization
Policies and Procedures for Investigating Allegations of Agent Misconduct
(Project No. 9950002B)

We have reviewed the subject draft report and have no comments.

Charles L. Cragin
Principal Deputy Under Secretary



Department of the Army Comments



DEPARTMENT OF THE ARMY
OFFICE OF THE DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS
400 ARMY PENTAGON
WASHINGTON DC 20310-0400

REPLY TO
ATTENTION OF

08 SEP 2000

DAMO-ODL

MEMORANDUM THRU ~~DEPUTY CHIEF OF STAFF FOR OPERATIONS AND PLANS~~^{Supra}
DIRECTOR OF THE ARMY STAFF
ASSISTANT SECRETARY OF THE ARMY (MANPOWER AND
RESERVE AFFAIRS)

FOR DEPARTMENT OF DEFENSE DEPUTY ASSISTANT INSPECTOR GENERAL
CRIMINAL INVESTIGATION POLICY AND OVERSIGHT

SUBJECT: Draft Evaluation of Defense Criminal Investigative Organizations Policies
and Procedures for Investigating Allegations of Agent Misconduct (Project
No. 9950002B)

1. Subject report (Tab A) has been reviewed by the staff of the U.S. Army Criminal
Investigation Command (USACIDC) and the Army staff proponent for law enforcement
policy. The following comments are provided:

a. Reference. Page 2, Paragraph titled "U.S. Army Criminal Investigation Command
(USACIDC)."

Comment. Please revise the last line of the paragraph to read: "In FY 98, this
manning included 795 special agents; 343 warrant officers, 350 non-commissioned
officers, and 102 civilians."

Reason. Accurate statistical reporting of manpower strength.

b. Reference. Page 13, Recommendation A.1.

Comment. Concur. A revision of USACIDC Regulation (CIDR) 195-1, Criminal
Investigation Operational Procedures, will be drafted in an effort to define the standards
of conduct expected of a CID special agent. CIDR 195-1 will also include a code of
ethics consistent with the recommendations in the draft report and specific language on
reporting suspected agent misconduct. The revision is scheduled for publication in
Jan 01.

c. Reference. Page 13, Recommendation A.2.

DAMO-ODL

SUBJECT: Draft Evaluation of Defense Criminal Investigative Organizations Policies and Procedures for Investigating Allegations of Agency Misconduct (Project No. 9950002B)

Comment. Concur. Upon receipt of allegations of agent misconduct, the agent's supervisor is required to provide immediate notification to the first commander (battalion level). After coordination with the supporting legal advisor, a preliminary investigation must be conducted within three working days. If the allegations are founded, immediate notification is made to the group commander and with the concurrence of the legal advisor, a Commander's Inquiry is initiated. The group commander is then required to notify the HQ USACIDC Accreditation Division and Office of the Staff Judge Advocate (OSJA), and provide weekly updates regarding the status of the investigation. The Commander's Inquiry must be completed within 30 working days and any extensions approved by the Deputy Commander, USACIDC. Upon completion of the Commander's Inquiry, the battalion commander has three days to forward recommendations pertaining to any disciplinary action to the group commander. If the Commander's Inquiry determines that a criminal offense has occurred, a report of investigation will be conducted in accordance with CIDR 195-1. If the results of the Commander's Inquiry warrant a recommendation for elimination from the CID program, the group commander is responsible to immediately suspend the agent from investigative duties. Within three working days of completion of the Commander's Inquiry, the battalion commander will forward the investigation with appropriate recommendations to the group commander. If the group commander recommends the agent be eliminated, the agent must be notified in writing and given 10 working days to respond. Upon receipt of the documentation at HQ USACIDC, the OSJA must review for legal sufficiency within five working days and provide recommendations to the Commanding General for final decision, if the agent is not entitled to an Accreditation Review Board (ARB). If entitled, the ARB must be convened within five working days and recommendations documented in a report within three working days for OSJA review and final decision by the Commanding General. Written notification of the final decision to the subordinate commander must be made within three working days. This guidance is already published in CIDR 195-1.

d. Reference. Page 18, Paragraph B.1.

Comment. Concur. This will be accomplished under the same provisions outlined in Comment 3 above.

e. Reference. Page 18, Paragraph B.2.

Comment. Concur. The USACIDC will take action to develop and disseminate periodic reports throughout the organization. The primary focus will be to provide

Department of the Army Comments

DAMO-ODL

SUBJECT: Draft Evaluation of Defense Criminal Investigative Organizations Policies
and Procedures for Investigating Allegations of Agency Misconduct (Project
No. 9950002B)

information regarding possible trends in agent misconduct with a goal towards detection
and possible prevention.

2. Point of contact is Mr. Jeffery Porter, (703) 681-4868.

Encl
as



MICHAEL D. MAPLES
Brigadier General, GS
Director of Operations,
Readiness and Mobilization



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

SEP 21 2000

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

SUBJECT: DRAFT REPORT ON THE EVALUATION OF DEFENSE CRIMINAL INVESTIGATIVE ORGANIZATION POLICIES AND PROCEDURES FOR INVESTIGATING ALLEGATIONS OF AGENT MISCONDUCT (PROJECT NO. 9950002B)

The Department of the Navy has reviewed the subject report and, except as noted below, concur with the findings and recommendations. The following comments on the report's four recommendations are provided.

1. Recommendation A.1: CONCUR.

2. Recommendation A.2: NONCONCUR. The DOD IG report indicates that the NCIS investigative process is already timely. Establishing such additional standards would not effectively address the efficiency of the process. Instead of establishing time standards and a system for monitoring those time standards, NCIS could better use its time and resources with an ongoing review of its current process to determine whether it is efficient or in need of improvement.

3. Recommendation B.1: NONCONCUR. The DOD IG report indicates that there are too small a number of agent misconduct cases within the DCIOs to justify semi-annual reporting. There are also too few misconduct cases for "aggregating and analyzing."

4. Recommendation B.2: CONCUR.

If additional information or assistance is needed, the NCIS point of contact is Ms. Veronica McCarthy, Assistant Director of Inspections, (202) 433-8830.

A handwritten signature in black ink that reads "Karen S. Heath".

KAREN S. HEATH
Principal Deputy
Assistant Secretary of the Navy
(Manpower & Reserve Affairs)

Department of the Air Force Comments



**DEPARTMENT OF THE AIR FORCE
OFFICE OF THE INSPECTOR GENERAL
WASHINGTON, DC**

AUG 14 2000

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING, OFFICE
OF THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

FROM: SAF/IG

SUBJECT: DoDIG Draft Report, Evaluation of Defense Criminal Investigative Organization
Policies and Procedures for Investigating Allegations of Agent Misconduct,
(Project No. 9950002B) (DoDIG Report, dated 23 June 2000)

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force
(Financial Management and Comptroller) to provide Air Force comments on subject report.
Following are the Air Force comments:

**Part I, Background, paragraph Entitled Air Force Office of Special Investigations
(AFOSI). Request the second sentence of this paragraph be revised as follows to show the
correct numbers of AFOSI subordinate units:**

The agency is comprised of 8 regional offices, 6 overseas squadrons, 1 CONUS squadron
(Washington Field Office), and more than 160 installation-level detachments.

**Part I, Background, paragraph Entitled Air Force Office of Special Investigations
(AFOSI). Request the third and fourth sentences of this paragraph be revised as follows to
show the correct numbers of AFOSI civilians assigned to GS1811 job series:**

AFOSI has approximately 2000 personnel, about 1300 of whom are special agents. Of the
number of agents, approximately 1050 are active duty military personnel and 250 are civilians in
the GS-1811 job series.

Recommendation A.1. All DCIOs develop (or revise) a Code of Ethics or other regulatory
instrument that requires DCIO personnel who know of or suspect incidents of agent misconduct
to report them promptly through proper channels. The publication should clearly define the
standards of conduct expected of DCIO personnel and explicitly address the obligation to report
violations of those standards.

AFOSI COMMENT. Concur. AFOSI Instruction 36-2901, Standards of Professional Conduct
for AFOSI Personnel will be revised to meet the requirements of this recommendation.
Estimated completion date is 1 October 2000.

Recommendation A.2. The DCIOs review their agent misconduct investigation policies and procedures and establish appropriate standards of timeliness for each phase of the investigation, review, and final action process. Concomitantly, the DCIOs should develop a system to record and monitor compliance and performance with respect to these standards.

AFOSI COMMENT. Concur. AFOSI Instruction 71-138, Investigations of AFOSI Personnel, will be revised to establish standards of timeliness for each phase of an investigation, review, and final action on AFOSI personnel. Metrics will be developed to measure compliance rates. Estimated effective date for implementation of this process is 1 Oct 2000.

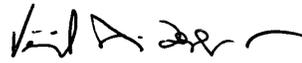
Recommendation B.1. The DCIOs establish a program at their headquarters for aggregating and analyzing all agent misconduct cases.

AFOSI COMMENT. Concur. Data collected from metrics referenced in recommendation B.1. will be used to collect, analyze, evaluate, and modify internal investigations processes as needed.

Recommendation B.2. The DCIOs publish periodic reports on agent misconduct and disseminate those reports throughout their respective organizations. These reports should highlight patterns and trends in agent misconduct and offer guidance for their detection and prevention.

AFOSI COMMENT: Concur. The AFOSI Inspector General will begin issuing semi-annual reports in January and July of each year. The semi-annual reports will analyze agent misconduct investigations, show patterns and trends, and offer guidance to commanders and supervisors for the detection and prevention of agent misconduct. The first semi-annual report will be issued in January 2001 and will cover all closed cases in which final action has been completed during the period July through December 2000.

My POC for this reply is Lt Col Paul Clark, SAF/IGX, (703) 695-3045.



VIRGIL J. TONEY, JR.
Major General, USAFR
MA to The Inspector General

cc:
HQ AFOSI/CC
SAF/IGX

Assistant Inspector General for Investigations Comments



(Investigations)

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-2885

August 31, 2000

MEMORANDUM FOR DEPUTY ASSISTANT INSPECTOR GENERAL, CRIMINAL
POLICY AND OVERSIGHT

SUBJECT: Draft Report on the Evaluation of Defense
Criminal Investigative Organization Policies and
Procedures for Investigating Allegations of Agent
Misconduct (Project No. 9950002B)

By memorandum dated June 23, 2000, your office
requested our review and comments on subject report. Below
please find the results of this review.

Finding A1. All DCIOs develop (or revise) a Code of Ethics
or other regulatory instrument that requires DCIO personnel
who know of or suspect incidents of agent misconduct to
report them promptly through proper channels. The
publication should clearly define the standards of conduct
expected of DCIO personnel and explicitly address the
obligation to report violations of those standards.

DCIS Response: Partially Concur. DCIS does not have a
special Code of Ethics for the agents. It is felt that the
standard Code of Ethics is appropriate for the DCIS special
agents. However, we concur that specific regulatory
guidance requiring employees to report known or suspected
acts of agent misconduct is necessary. The Special Agent
Manual, Chapter 34, Internal Inquiries, Section 3403.2.
states, " All information alleging or indicting involvement
of OAIG-INV personnel in the situations described above
(paragraph 1), shall be reported immediately to the Program
Review Office of the Program Review Directorate (PRD)." We
are also going to add this requirement to Chapter 1,
Organization, Mission, Jurisdiction and Authorities, of our
Special Agents Manual (early FY 2001); along with
notification in the next issue of "The Eagle" Newsletter
(October 2000).

Assistant Inspector General for Investigations Comments

Finding A2: The DCIOs review their agent misconduct investigation policies and procedures and establish appropriate standards of timeliness for each phase of the investigation, review and final action processes. Concomitantly, the DCIOs should develop a system to record and monitor compliance and performance with respect to these standards.

DCIS Response: Concur. A review of our system disclosed that we were in compliance with the recommendation. A review of Chapter 44, Disciplinary Actions, Special Agent Manual, however, did not disclose a time response for the Deciding Official. This chapter is currently being revised and the revision will include directions that the Deciding Official will render a decision within 30 days after an agent has been given the opportunity to respond. The chapter is anticipated to be completed by January 2001.

Finding B1. The DCIOs establish a program at their headquarters for aggregating and analyzing all agent misconduct cases.

DCIS Response: Nonconcur. On the average, DCIS conducts 15 agent misconduct cases per year. The Director of the Program Review Directorate and staff review each allegation and regularly provide patterns of misconduct to the employees and managers in an effort to eliminate the misconduct. This is done during Senior Manager Conferences, Group Manager and RAC Conferences and In-Service training which held during the year. (See attached Power Point presentation.) With the reviews we already do, an additional "official" program to analyze the few cases we have would provide no additional benefit to the agency.

Finding B2: The DCIOs publish periodic reports on agent misconduct and disseminate those reports throughout their respective organizations. These reports should highlight patterns and trends in agent misconduct and offer guidance for their detection and prevention.

DCIS Response: Partially concur. DCIS has provided general misconduct information in The Eagle, the Investigations Newsletter (April 1999, Prohibited Practices; and May 2000, Use of Government travel card; and Inappropriate E-Mail). In the October issue there will be an article on misuse of the Government Vehicles. The topic is also discussed at all Senior Manager meetings, Group Manager and RAC meetings

Assistant Inspector General for Investigations Comments

and In-Service Training sessions that are held periodically during the year. Additional reporting requirements would not provide any additional benefit to the agency.

If you have any questions regarding this matter, please contact Mrs. J. Annette Wright, Director, Program Review Directorate, at (703) 604 8639.



Carol L. Levy
Assistant Inspector General
for Investigations

Enclosure

Evaluation Team Members

Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight,
Office of the Assistant Inspector General for Investigations, Office of the Inspector
General, Department of Defense.

LTC Paul Nigara, Project Manager

Mr. David Oberholzer, Criminal Investigator

Ms. Phyllis Brown, Investigative Review Specialist

Ms. Terry Hammer, Program Analyst