

Office of the Inspector General, DoD

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(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.