

Office of the Inspector General, DoD

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(Project No. 9950010J)

Sufficiency of Subpoena Authority within the Department of Defense in Support of General Crimes Investigations

Executive Summary

Introduction. This evaluation was performed to address two matters. First, a report by the National Academy of Public Administration noted that the Military Criminal Investigative Organizations (MCIOs)¹ lacked direct subpoena authority and recommended that DoD consider providing approval authority to the Services' General Counsels or another appropriate Service official. Second, an April 19, 1999, Air Force Office of Special Investigations memorandum to the Inspector General, Department of Defense (IG, DoD), recommended the establishment of subpoena authority for criminal investigations as an issue for the IG, DoD, Office of Criminal Investigative Policy and Oversight FY 2000 Project Plan.

Objectives. Our primary objective was to evaluate whether the limitations on the Services' authority to issue subpoenas adversely impacts their ability to conduct general crimes investigations.² The evaluation focused on the effectiveness of the authorities and mechanisms currently available to the MCIOs for obtaining documents or other evidentiary material during the course of their investigations. We also assessed whether the subpoena authority within the Office of the IG, DoD, adequately supports general crimes investigations conducted by the MCIOs.

Results. MCIO investigators lack fully effective mechanisms for compelling production of evidence in general crimes investigations. Results of a survey addressed to MCIO agents identified a significant number of situations in which a certain mechanism was needed but was not available. This condition exists because of the Services' limited authority to issue subpoenas and because the Inspector General does not normally issue

¹The MCIOs are the U.S. Army Criminal Investigation Command; the Air Force Office of Special Investigations; and the Naval Criminal Investigative Service, which services the Navy and the Marine Corps. The MCIOs are responsible for investigating most major crime in the Military Departments, including general crimes and fraud.

²For purposes of this evaluation, the term general crimes includes any felony type offense under the Uniform Code of Military Justice (UCMJ) punishable by a dishonorable discharge and 1 year confinement or greater. This definition does not include fraud or economic crimes, or purely military offenses (for example, desertion). Drug offenses are included in the general crimes category.

subpoenas in general crimes investigations unless the Department of Defense is the victim. The conclusion of the MCIO agents was further validated through a survey of the Services' judge advocates (JAs) with prosecution experience.

As a result of this lack of a fully effective mechanism to compel production of evidence, some investigations are incomplete and some prosecutions may be precluded. For details of the evaluation results, see the Finding section of this report.

Summary of Recommendation. We recommend that the General Counsel, Department of Defense, under the authority of DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamation, and Reports and Comments Thereon," May 21, 1964, initiate or direct action to establish additional subpoena authority within the military justice system as supported by this evaluation.

Management Comments. The DoD General Counsel, the Army, Navy, and Air Force concurred that Military Criminal Investigative Organizations lack effective mechanisms for compelling production of evidence in general crimes investigations. The Services also concurred in the recommendation to have the DoD General Counsel initiate or direct action to establish additional subpoena authority within the military justice system. The DoD General Counsel, the Air Force Judge Advocate, and the Navy Deputy Assistant Judge Advocate General (Criminal Law) stated that implementation of any expanded subpoena authority would be best initiated through a review by the Joint Services Committee.³ See the Finding section of the report for a discussion of the management comments and the Management Comments section for a complete text of the comments.

³ DoD Directive (DoDD) 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996, formalizes the JSC and defines the roles, responsibilities and procedures for any changes to the Manual for Courts-Martial and the Uniform Code of Military Justice.