



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

OCT 1 1987

MEMORANDUM FOR SECRETARY OF THE ARMY
SECRETARY OF THE NAVY
SECRETARY OF THE AIR FORCE

SUBJECT: Criminal Investigations Policy Memorandum Number 5 -
Criminal Drug Investigative Activities

- REFERENCES:
- (a) Public Law 95-452, Inspector General Act of 1978, as amended by P.L. 97-252 (cited as Title 5, United States Code, Appendix 3)
 - (b) DoD Directive 5106.1, "Inspector General of the Department of Defense," March 14, 1983
 - (c) DoD Directive 5525.7, "Implementation of the Memorandum of Understanding between the Department of Justice and the Department of Defense Relating to the Investigation and Prosecution of Certain Crimes", January 22, 1985
 - (d) Manual for Courts-Martial, United States, 1984
 - (e) Title 10, United States Code, Section 801-940. (Articles 1-140), "Uniform Code of Military Justice (UCMJ)"

A. PURPOSE

This Memorandum:

1. Supercedes Criminal Investigations Policy Memorandum Number 5, "Criminal Drug Investigative Activities," December 17, 1985.
2. Is issued under the authority of the Inspector General (references (a) and (b)); provides guidance on the scope of drug investigative activities; and implements DoD Directive 5525.7 (reference (c)), with respect to drug offenses.
3. Establishes policies concerning coordination between the military criminal investigative organizations and other law enforcement officials. It is not intended to confer any rights, benefits, privileges or form of due process procedure upon individuals, associations, corporations, or other persons or entities.

B. APPLICABILITY AND SCOPE

This Memorandum applies to investigation of drug offenses within the United States, its territories, and possessions by the United States Army Criminal Investigation Command, the Naval Security and Investigative Command, and the Air Force Office of Special Investigations (herein referred to collectively as the "military criminal investigative organizations").

C. DEFINITIONS

1. "Appropriate prosecutorial authority" means:
 - a. A United States Attorney;
 - b. A Federal civilian investigative organization designated by the U.S. Attorney to receive information concerning a particular case or class of cases; or
 - c. A prosecuting attorney of a local jurisdiction when the U.S. Attorney has declined to exercise jurisdiction over a particular case or class of cases;
 - d. An investigative organization designated by a prosecuting attorney of a local jurisdiction to receive information concerning a particular case or class of cases under 1.c., above.
2. "Military Installation" includes an aircraft, vessel, or other facility under military control.
3. "DoD personnel" means civilian employees of the Department of Defense and members of the Armed Forces.
4. "Immediate source" means a person who is directly and immediately involved in the transfer or distribution of illegal drugs to DoD personnel.

D. POLICY

1. In General. Drug offenses by DoD personnel and the introduction of drugs onto military installations adversely affect the efficiency and effectiveness of DoD programs.
2. Investigative Actions on Military Installations. Military criminal investigative organizations have the primary responsibility for investigating drug offenses on military installations under the Manual for Courts-Martial (reference (d)), DoD Directive 5525.7 (reference (c)), and rules issued by the Secretary of the Military Department concerned. The investigation of drug offenses on military installations, committed by persons not subject to the UCMJ (reference (e)), may include, on the installation, search, seizure, detention of

persons, and other actions necessary to maintain good order and discipline on the installation to the extent authorized by the Secretary of the Military Department concerned.

3. Investigative Actions Outside Military Installations. The investigation of drug offenses outside the military installation normally is the responsibility of non-DoD law enforcement officials. The following investigative actions outside military installations are authorized and may be conducted under regulations prescribed by the Secretary of the Military Department concerned, subject to the requirements set forth below:

a. Investigative actions involving members of the Armed Forces. Drug offenses by members of the Armed Forces may be investigated by military criminal investigative organizations to the extent authorized by the Manual for Courts-Martial (reference (d)), DoD Directive 5525.7 (reference (c)), rules issued by the Secretary of the Military Department concerned, and other applicable laws and regulations.

b. Investigative actions involving persons not subject to the Uniform Code of Military Justice. The Military criminal investigative organizations may undertake investigative actions with respect to a person not subject to the UCMJ:

(1) If there are reasonable grounds to believe that such person has committed a drug offense in conjunction with a member of the Armed Forces, and the investigative actions are undertaken to obtain evidence concerning all illegal drug transactions between such a person and any member of the Armed Forces.

(2) If there are reasonable grounds to believe that such person is the immediate source of the introduction of illegal drugs onto the military installation and the investigative actions are undertaken to obtain evidence concerning all persons engaged in drug trafficking on the installation.

c. Investigative policies. In conducting investigations outside the military installation under this subsection, the following policies apply:

(1) All investigations will be coordinated with the appropriate prosecutorial authority.

(2) DoD personnel assigned to or under the control of military criminal investigative organizations may be utilized as informants and undercover agents for the purposes set forth in this paragraph. They may obtain evidence concerning illegal drug transactions by military personnel or other persons engaged in illegal drug trafficking on the military installation.

(3) The military criminal investigative organizations may participate in joint investigations with non-DoD law enforcement organizations for the purposes set forth in this paragraph. Those organizations may obtain evidence concerning illegal drug transactions by military personnel or other persons engaged in illegal drug trafficking on the military installation.

(4) Purchases of illegal drugs from persons not subject to the UCMJ may be made outside military installations for the purposes set forth in this paragraph. Those organizations may obtain evidence concerning illegal drug transactions by military personnel or other persons engaged in illegal drug trafficking on the military installation.

(5) Unless otherwise authorized by law, personnel assigned to the military criminal investigative organizations may not participate in searches, arrests or apprehensions of persons not subject to the UCMJ. Personnel assigned to the military criminal investigative organizations may provide information, under subsection D.5., to non DoD law enforcement organizations to obtain evidence concerning places to be searched, objects to be seized or persons to be arrested.

5. Information. Information obtained by military criminal investigative organizations in the course of an investigation under this Memorandum, including information obtained about non DoD personnel, may be provided to civilian law enforcement officials and appropriate prosecutorial authorities. Furthermore, personnel assigned to or under the control of the military criminal investigative organizations are authorized to testify in non DoD judicial and administrative proceedings related to their investigation.

E. PROCEDURES

1. Notice to Civilian Authorities. When there are reasonable grounds to believe that one or more subjects of an investigation, conducted under subsections D.2. or D.3. above, are not subject to the UCMJ (reference (e)), the military criminal investigative organization shall provide prompt notice to the appropriate prosecutorial authority.

2. Purchases of Illegal Drugs.

a. The Secretary of each Military Department shall establish regulations governing the authority to approve purchases of illegal drugs from persons not subject to the Uniform Code of Military Justice outside military installations under paragraph D.3.c., above. Such regulations shall provide for legal review for compliance with this memorandum prior to

action by the approval authority established by subsection 2.2a.(1), below. Approval for use of this technique may be granted for a period of up to 60 days with respect to a specific subject or persons (whether known or unknown) associated with the subject. Extensions may be granted by the approving authority.

(1) Approval authorities for the respective military criminal investigative organizations are:

(a) In the case of the U.S. Army Criminal Investigation Command, the cognizant regional commander.

(b) In the case of the Naval Investigative Service, the cognizant regional director for operations.

(c) In the case of the Air Force Office of Special Investigations, the cognizant district commander.

b. The request for authority to use this technique shall set forth:

(1) The facts and circumstances constituting reasonable grounds to believe that the seller is a significant supplier of drugs to military personnel;

(2) Specific statement which justifies the need for involvement in the investigation of personnel assigned to or under the control of the military criminal investigative organization with particular reference to the reason why non DoD investigative agencies are unable or unwilling to conduct the investigation;

(3) A specific plan designed to obtain information about drug trafficking on the installation or other drug trafficking by military personnel; and

(4) Concurrence of the prosecutor in the civilian jurisdiction.

c. If the approval authority for the appropriate military criminal investigative organization cannot be contacted and there is a unique opportunity that is not likely to recur requiring prompt action to consummate the purchase, the following procedures apply:

(1) The deputy of the approving authority may authorize the activity in the capacity as acting regional or district commander/director.

(2) The head of the military criminal investigative organization or the deputy may authorize the activity.

(3) Requests for approval under this paragraph shall contain the information required by paragraph E.2.b.

(4) When such approval is obtained, the cognizant approval authority for the military criminal investigative organization shall be notified of the authorization and of the specific circumstances which made it necessary to act with approval of an alternate authority.

d. Information concerning each approval under paragraphs E.2.a. and E.2.c. shall be subsequently transmitted promptly by the military criminal investigative organization to the General Counsel of the Military Department concerned.

F. RESPONSIBILITIES

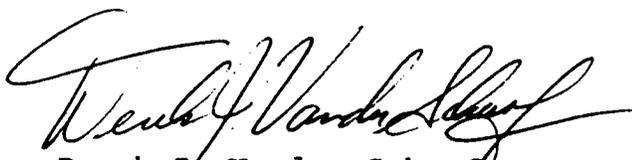
1. The commanders/directors of the DoD criminal investigative organizations shall establish and disseminate policy and procedural documents implementing this Memorandum.

2. Copies of implementing documents should be forwarded within 120 days of the date of this Memorandum to:

Assistant Inspector General for Criminal
Investigations Policy and Oversight
Office of the Inspector General
Department of Defense
400 Army Navy Drive, Suite 1037
Arlington, Virginia 22202-2884

G. EFFECTIVE DATE

This Criminal Investigations Policy Memorandum is effective immediately and shall remain in effect until incorporated into a DoD directive, instruction, or other regulation.



Derek J. Vander Schaaf
Deputy Inspector General

(b) In the case of the Naval Investigative Service, the cognizant regional director for operations.

(c) In the case of the Air Force Office of Special Investigations, the cognization district commander.

(2) Requests for approval under this paragraph shall contain the information required by paragraph E.2.b.

(3) When such approval is obtained, the head of the military criminal investigative organization shall be notified of the authorization and of the specific circumstances which made it necessary to act without his approval.

d. Information concerning each approval under paragraphs E.2.b. and E.2.c. shall be transmitted promptly by the approving authority to the General Counsel of the Military Department concerned.

F. RESPONSIBILITIES

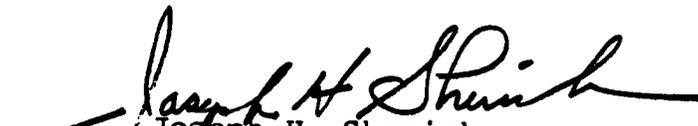
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2. Copies of implementing documents should be forwarded within 120 days of the date of this Memorandum to:

Assistant Inspector General for Criminal
Investigations Policy and Oversight
Office of the Inspector General
1600 Wilson Boulevard, Suite 431
Arlington, Virginia 22209-2590

G. EFFECTIVE DATE

This Criminal Investigations Policy Memorandum is effective immediately and shall remain in effect for two years from the date of issue or until incorporated into a DoD directive, instruction, or other regulation.


Joseph H. Sherick
Inspector General



DEPARTMENT OF DEFENSE
INSPECTOR GENERAL
WASHINGTON, D.C. 20301

Cancelled by 10/1/87 Reissman 17 DEC 1985

MEMORANDUM FOR SECRETARY OF THE ARMY
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 - (d) Manual for Courts-Martial, United States, 1984
 - (e) Title 10, United States Code, Sections 801-940 (Articles 1-140), "Uniform Code of Military Justice (UCMJ)"

A. PURPOSE

1. This Memorandum, issued under the authority of the Inspector General (references (a) and (b)), provides guidance on the scope of drug investigative activities and implements DoD Directive 5525.7 (reference (c)) with respect to drug offenses.

2. This Memorandum establishes policy concerning coordination between DoD criminal investigative organizations and other law enforcement officials. It is not intended to confer any rights, benefits, privileges or form of due process procedure upon individuals, associations, corporations, or other persons or entities.

B. APPLICABILITY AND SCOPE

This Memorandum applies to investigation of drug offenses within the United States, its territories, and possessions by the United States Army Criminal Investigation Command, the Naval Investigative Service, and the Air Force Office of Special

Investigations (hereafter referred to collectively as the "military criminal investigative organizations").

C. DEFINITIONS

1. "Appropriate prosecutorial authority" means:
 - a. A United States Attorney;
 - b. A Federal civilian investigative organization designated by the U.S. Attorney to receive information concerning a particular case or class of cases;
 - c. A prosecuting attorney of a local jurisdiction when the U.S. Attorney has declined to exercise jurisdiction over a particular case or class of cases; or
 - d. An investigative organization designated by a prosecuting attorney of a local jurisdiction to receive information concerning a particular case or class of cases under l.c., above.
2. "Military installation" includes an aircraft, vessel, or other facility under military control.
3. "DoD personnel" means civilian employees of the Department of Defense and members of the Armed Forces.
4. "Immediate source" means a person who is directly and immediately involved in the transfer or distribution of illegal drugs to DoD personnel.

D. POLICY

1. In general. Drug offenses by DoD personnel and the introduction of drugs onto military installations adversely affect the efficiency and effectiveness of DoD programs.
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installation to the extent authorized by the Secretary of the Military Installation concerned.

3. Investigative Actions Outside Military Installations. The investigation of drug offenses outside the military installation normally is the responsibility of non-DoD law enforcement officials. The following investigative actions outside military installations are authorized and may be conducted under regulations prescribed by the Secretary concerned subject to the requirements set forth below:

a. Investigative actions involving members of the Armed Forces. Drug offenses by members of the Armed Forces may be investigated by DoD criminal investigative organizations to the extent authorized by the Manual for Courts-Martial (reference (d)), DoD Directive 5525.7 (reference (c)), rules issued by the Secretary of the Military Department concerned, and other applicable laws and regulations.

b. Investigative actions involving persons not subject to the Uniform Code of Military Justice. The military criminal investigative organizations may undertake investigative actions with respect to a person not subject to the UCMJ:

(1) If there are reasonable grounds to believe that such person has committed a drug offense in conjunction with a member of the Armed Forces and the investigative actions are undertaken to obtain evidence concerning all illegal drug transactions between such person and any member of the Armed Forces, or

(2) If there are reasonable grounds to believe that such person is the immediate source of the introduction of illegal drugs onto the military installation and the investigative actions are undertaken to obtain evidence concerning all persons engaged in drug trafficking on the installation.

c. Investigative policies. In conducting investigations outside the military installation under this subsection, the following policies apply:

(1) All investigations will be coordinated with the appropriate prosecutorial authority.

(2) DoD personnel assigned to or under the control of military criminal investigative organizations may be utilized as informants and undercover agents for the purposes set forth in this paragraph. They may obtain evidence concerning illegal drug

transactions by military personnel or other persons engaged in illegal drug trafficking on the military installation.

(3) The military criminal investigative organizations may participate in joint investigations with non-DoD law enforcement organizations for the purposes set forth in this paragraph. Those organizations may obtain evidence concerning illegal drug transactions by military personnel or other other persons engaged in illegal drug trafficking on the military installation.

(4) Purchases of illegal drugs from persons not subject to the UCMJ may be made outside military installations for the purposes set forth in this paragraph to obtain evidence concerning illegal drug transactions by military personnel or other other persons engaged in illegal drug trafficking on the military installation.

(5) Unless otherwise authorized by law, personnel assigned to the military criminal investigative organizations may not participate in searches, seizures, arrests, or apprehensions of persons not subject to the UCMJ. Personnel assigned to the military criminal investigative organizations may provide information, under subsection D.4., to non-DoD law enforcement organizations to obtain evidence concerning places to be searched, objects to be seized, or persons to be arrested.

4. Information. Information obtained by DoD criminal investigative organizations in the course of an investigation under this Memorandum, including information about non-DoD personnel, may be provided to civilian law enforcement officials with jurisdiction over the applicable offenses and appropriate prosecutorial authorities. Personnel assigned to or under the control of the military criminal investigative organizations may testify concerning such information in DoD and non-DoD judicial and administrative proceedings.

E. PROCEDURES

1. Notice to civilian authorities. When there are reasonable grounds to believe that one or more subjects of an investigation conducted under subsections D.2. or D.3., above, is not subject to the UCMJ, the military criminal investigative organization shall provide prompt notice to the appropriate prosecutorial authority.

2. Purchases of illegal drugs.

a. The Secretary of each Military Department shall establish regulations governing the authority to approve purchases of illegal drugs from persons not subject to the Uniform Code of Military Justice outside military installations under paragraph D.3.c.(3), above. Such regulations shall provide for legal review prior to action by the approval authority. The approval authority may not be delegated below the level of the head of the military criminal organization or his deputy. Approval for use of this technique may be granted for a period of up to 60 days with respect to a specific subject or persons (whether known or unknown) associated with the subject. Extensions may be granted by the approving authority.

b. The request for authority to use this technique shall set forth:

(1) The facts and circumstances constituting reasonable grounds to believe that the seller is a significant supplier of drugs to military personnel;

(2) A specific statement which justifies the need for involvement in the investigation of personnel assigned to or under the control of the military criminal investigative organization with particular reference to the reason why non-DoD investigative agencies are unable or unwilling to conduct the investigation;

(3) A specific plan designed to obtain information about drug trafficking on the installation or other drug trafficking by military personnel; and

(4) Concurrence of the prosecutor in the civilian jurisdiction.

c. If the head of the military criminal organization or his deputy cannot be contacted and there is a unique opportunity that is not likely to recur requiring prompt action to consummate the purchase, the following procedures apply:

(1) Approval may be obtained from the following individuals after legal review for compliance with this Memorandum:

(a) In the case of the U.S. Army Criminal Investigation Command, the cognizant regional commander.