

**C**riminal

**I**nvestigative

**P**olicy &

**O**versight



**Evaluation of Criminal Investigative Activities  
Performed by  
The Defense Logistics Agency**

Report Number CIPO2001S003

November 8, 2000

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

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## **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 report, visit the Inspector General, DoD, Home Page at: <http://www.dodig.osd.mil/dcis/cipo/evals.htm>, or contact Dr. Charles McDowell, Program Director, at (703) 604-8769 (DSN 664-8769) or Mr. Jack Montgomery, Project Manager, at (703) 604-8703 (DSN 664-8703)

### **Acronyms Used in This Report**

AFOSI	Air Force Office of Special Investigations
AUSA	Assistant United States Attorney
COSACS	Command Security Automated Control System
CSO	Command Security Office
DCIA	DLA Criminal Investigations Activity
DCII	Defense Clearance and Investigations Index
DCIO	Defense Criminal Investigative Organization
DCIS	Defense Criminal Investigative Service
DLA	Defense Logistics Agency
DoD	Department of Defense
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
IG, DoD	Inspector General, Department of Defense
LEAP	Law Enforcement Availability Pay
MCIO	Military Criminal Investigative Organization
NCIS	Naval Criminal Investigative Service
OPM	Office of Personnel Management
USACIDC	U. S. Army Criminal Investigation Command



**INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-2884**

**NOV - 8 2000**

**MEMORANDUM FOR DIRECTOR, DEFENSE LOGISTICS AGENCY**

**SUBJECT: Final Report on the Evaluation of Criminal Investigative Activities  
Performed by the Defense Logistics Agency  
(Report No. CIPO2001S003)**

This report is provided for your review and comment. Comments on the draft report were considered in preparing the final report and are included in the final report as Appendix F. Your agency concurred with the draft report, except for Recommendation A.1, which involved reclassifying some criminal investigators as general investigators based on the investigative work actually conducted. For the reasons set forth in the final report, we did not accept the reasons for the nonconurrence. We ask that you reconsider your position on this recommendation.

Comments on the final report are due 60 days from the date of this memorandum. They need only address your position on Recommendation A.1 and present any updated information related to actions taken or planned in response to our individual recommendations. Send your comments to the Office of the Deputy Assistant Inspector General for Criminal Investigative Policy and Oversight, Room 725, 400 Army Navy Drive, Arlington, Virginia 22202-2884. Should you have questions, please contact Mr. Jack Montgomery at 703-604-8703.

We appreciate the courtesies extended to our evaluation staff throughout this project.

A handwritten signature in black ink, appearing to read "Charles W. Beardall".

**Charles W. Beardall  
Deputy Assistant Inspector General  
Criminal Investigative Policy and Oversight**

**EVALUATION OF CRIMINAL INVESTIGATIVE ACTIVITIES  
PERFORMED BY  
THE DEFENSE LOGISTICS AGENCY**

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# EVALUATION OF CRIMINAL INVESTIGATIVE ACTIVITIES PERFORMED BY THE DEFENSE LOGISTICS AGENCY

## EXECUTIVE SUMMARY

### Introduction

Within the Department of Defense (DoD), the Defense Criminal Investigative Organizations (DCIOs) are primarily responsible for investigating crimes that involve DoD property, programs, or personnel.<sup>1</sup> The Defense Logistics Agency (DLA), like a number of other DoD components, also has a criminal investigative program and has assembled a criminal investigative staff to conduct investigations.

We undertook this evaluation to determine whether DLA criminal investigations are authorized, performed in accordance with acceptable standards, and produce appropriate results. To obtain factual information necessary to these determinations, we researched the statutory and regulatory authorities under which DLA conducts investigations. We also had DLA provide data for investigative cases closed between January 1, 1996, and February 28, 1999, a 38-month period. We then selected a statistically-valid, random sample from the closed cases that permitted us to draw conclusions at an acceptable ( $\pm 10$  percent) reliability level. Finally, we evaluated the sample cases in detail to determine:

- the specific criminal violations/offenses that DLA investigators investigate;
- the extent to which DLA investigators use generally recognized criminal investigative techniques;
- the extent to which DLA investigators present their cases to Federal, state and local prosecutors;
- the extent to which DLA investigations are conducted jointly with other agencies; and
- the criminal, civil, and administrative results that stem from DLA investigations, including:
  - the estimated Government losses resulting from the crimes and the amounts recovered through investigation; and

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<sup>1</sup> The DCIOs are the U.S. Army Criminal Investigation Command (USACIDC), the Naval Criminal Investigative Service (NCIS), the Air Force Office of Special Investigations (AFOSI), and the Defense Criminal Investigative Service (DCIS). DCIS is the criminal investigative arm of the IG, DoD. Excluding DCIS, these organizations are generally known as the Military Criminal Investigative Organizations (MCIOs).

- the administrative actions, including employee disciplinary actions, taken against DLA investigative subjects.

## **Evaluation Results**

Overall, we determined that DLA has capable investigators who conduct thorough investigations. However, we identified a significant mismatch between the investigator staffing that DLA utilizes and the type of investigations that DLA generally conducts. We also identified needs for improvement in (1) investigative program management, and (2) compliance with criminal investigative policy. Our findings in these areas are summarized below.

**Staffing vs. Investigations.** DLA is authorized to conduct criminal investigations that the DCIOs decline and has assembled a senior criminal investigative staff for this purpose. The agency's investigations, however, are primarily administrative in nature --cases are presented to criminal prosecutors only rarely (8 percent of investigative subjects). Commonly, cases result in either agency administrative action (60 percent of investigative subjects), or no action (12 percent of investigative subjects). In addition, the investigations do not generally involve a full range of criminal investigative techniques. As a result, there is a significant mismatch between actual DLA investigator duties and those prescribed for a criminal investigator. Although DLA has organized its investigative activities cost-effectively by employing noncovered criminal investigators, the agency has not ensured that its criminal investigator skills and abilities are used to the fullest extent possible as required in Office of Personnel Management (OPM) standards for classifying investigator positions.

**Program Management.** Although required in DoD Instruction 5505.2, "Criminal Investigation of Fraud Offenses," July 16, 1990, DLA has not established specific procedures for investigating matters that the DCIOs decline. DLA also does not have memoranda of understanding or other agreements with the DCIOs to guide referrals to them, or to specify investigations that DLA may conduct without first referring the matters to a DCIO. The DLA Criminal Investigations Activity (DCIA) either does not attempt to refer matters to the DCIOs or does not record its attempts. As a result, DLA investigators may conduct some investigations directly that the responsible DCIO should investigate. In addition, DLA investigators would benefit from standard policy to guide the criminal investigations actually conducted. In this regard, we support the DCIA decision to use an existing DCIO Special Agents Manual when its agents need detailed guidance. The DCIA, however, should formalize this decision in standard operating policy.

**Compliance With Policy.** Even though DLA investigations are more administrative than criminal in nature, the agency is obligated to comply with DoD policy governing criminal investigations when it conducts criminal investigations. DLA

does not always comply with the DoD policy requirements that govern:

- intercepting wire, oral and electronic communications;
- titling and indexing investigative subjects;
- fingerprinting investigative subjects that are Armed Forces members and reporting their criminal histories and final case dispositions to the Federal Bureau of Investigation; and
- assisting crime victims and witnesses.

## **Summary of Recommendations**

We recommend the following corrective or improvement actions:

- The Director, Defense Logistics Agency, reclassify current GS-1811 Criminal Investigator positions to GS-1810 General Investigator positions, except for five GS-1811 Criminal Investigator positions, including the Director, DLA Criminal Investigations Activity. To avoid operating and perception problems related to the reclassifications, the Director, Defense Logistics Agency, may make the reclassifications over time in filling current criminal investigator positions as they become vacant.
- The Director, Defense Logistics Agency, take action to ensure that the GS-1810 General Investigator employed at the Defense Supply Center, Richmond, Virginia, is operating under a proper Employee Position Description for a GS-1810 General Investigator.
- The Director, DLA Criminal Investigations Activity, enter into a Memorandum of Understanding or other agreement with each Defense Criminal Investigative Organization formalizing working arrangements between the organizations and identifying the types of investigation that DCIA may conduct without prior referral to the Defense Criminal Investigative Organizations.
- The Director, DLA Criminal Investigations Activity, formally adopt the Defense Criminal Investigative Service Special Agents Manual as detailed guidance for its investigators to use in conducting criminal investigations.
- The Director, DLA Criminal Investigations Activity, arrange needed training or take other action as necessary to ensure that DCIA investigators are familiar with, and adhere to requirements in, the following DoD policy:
  - DoD Directive 5505.9, “Interception of Wire, Electronic, and Oral Communications for Law Enforcement,” April 20, 1995;
  - DoD Instruction 5505.7, “Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense,” May 14, 1992;
  - DoD Instruction 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” December 1, 1998; and
  - DoD Directive 1030.1, “Victim and Witness Assistance,” November 23, 1994, and DoD Instruction 1030.2, “Victim and Witness Assistance

Program,” December 23, 1994

## **Management Comments**

On June 9, 2000, we distributed this report in draft form for management comments. On September 13, 2000, we received comments from DLA concurring with the draft report, except for our recommendation that DLA reclassify some criminal investigator positions as general investigators. DLA presented multiple reasons for its nonconcurrence and advised that its current staffing classifications meet its current mission requirements. DLA also advised that it reserved the right to adjust its criminal and general investigator position mixture should its mission requirements change. (See Appendix F)

We generally agree with each rationale that DLA presents to justify maintaining its criminal investigator positions. For example, DLA is clearly correct that it is not possible to know, at the outset of an investigation, whether alleged misconduct will constitute criminal behavior or meet thresholds for criminal prosecution. DLA is also correct that an investigator who does not know criminal law and Federal Rules of Criminal Procedure might handle evidence in a fashion affecting its admissibility in a criminal case. DLA’s rationale, however, does not consider several important factors. First, we did not recommend that DLA reclassify all criminal investigator positions. The five criminal investigators remaining after the reclassification we recommended should be more than adequate for DLA to:

- conduct criminal investigations that the DCIOS decline; and
- guide general investigator actions as necessary to preclude evidence and other difficulties related to specialized criminal investigator knowledge and skill needs.

Second, nothing precludes DLA from filling general investigator positions with former criminal investigators already possessing specialized criminal investigator knowledge. In fact, as discussed in the report, DLA currently has general investigators who were formerly criminal investigators. Third, DLA currently has general investigators who conduct criminal investigations, present cases to prosecutors, and participate in the resulting court proceedings. Finally, although not detailed in our report, DLA could save substantial investigator time and avoid the travel, training and other costs associated with firearm qualification and other specialized training for criminal investigators if the agency adopted our recommendation.

**EVALUATION OF CRIMINAL INVESTIGATIVE ACTIVITIES  
PERFORMED BY  
THE DEFENSE LOGISTICS AGENCY**

**PART I - INTRODUCTION**

**BACKGROUND**

DLA is a combat support agency that was established in 1961, originally as the Defense Supply Agency.<sup>2</sup> DLA is responsible for supply support, contract administration services, and technical and logistics services to the Services and several civilian agencies.<sup>3</sup> The agency supplies the Services and supports their weapon and materiel acquisitions, beginning with joint planning for new weapon system parts, continuing through production, and concluding with disposing items that have become obsolete, worn out, or no longer needed. The DLA mission includes managing over 4 million consumable items, processing over 30 million distribution actions annually, and administering over \$900 billion in DoD and other agency contracts. Headquartered at Fort Belvoir, Virginia, DLA employs approximately 40,600 civilian and military employees who perform the worldwide logistics mission at over 500 locations in all 50 states and about 27 countries. DLA facilities range from supply centers employing several thousand people to in-plant residencies at Defense contractors and property disposal offices with fewer than 10 people.<sup>4</sup>

In addition to managing contracts and buying and distributing goods, DLA manages several logistics support services:

- the Defense Automated Printing and Support Center, which administratively supports all DLA activities in the Washington, D.C., area and other DoD organizations that support DoD-wide missions;
- the Defense Reutilization and Marketing Service, which redistributes or disposes DoD equipment and supplies that have become obsolete, worn out, or no longer needed;

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<sup>2</sup> DoD Directive (DoDD) 5105.22, "Defense Logistics Agency," December 6, 1988, sets forth the overall DoD policy for DLA.

<sup>3</sup> Effective March 9, 2000, after our field work was essentially completed, the Deputy Secretary of Defense established the Defense Contract Management Agency and transferred contracting functions and 12,950 employees from DLA to the new agency. The reorganization is not expected to have an immediate impact on DCIA, which expects to serve the new agency on a reimbursable basis.

<sup>4</sup> DLA operates 4 supply centers and 1 distribution center that is responsible for 21 depots. All except four depots are tenant facilities co-located on military installations. Four are stand-alone depots.

- the Defense Logistics Information Service, which manages the Federal Supply Catalog System; and
- the Defense National Stockpile Center, which is responsible for managing and controlling strategic and critical materials.

## **CRIMINAL INVESTIGATIVE OPERATIONS**

DLA has two headquarters-level organizational elements, as well as several field activities that conduct investigations. The headquarters elements are the DLA Criminal Investigations Activity and the Command Security Office (CSO).<sup>5</sup> The field activities are:

- Defense Distribution Center, New Cumberland, Pennsylvania;
- Defense Supply Center Columbus, Columbus, Ohio;
- Defense Reutilization and Marketing Service, Battle Creek, Michigan;
- Defense Supply Center Richmond, Richmond, Virginia;

### **DLA CRIMINAL INVESTIGATIONS ACTIVITY**

DCIA conducts investigations for the Director, DLA, for DLA field activity commanders, and for the General Counsel, DLA.<sup>6</sup> Based on its mission statement, DCIA conducts investigations when the primary DoD investigative agency, a DCIO, declines investigative responsibility or accedes to a joint investigation.<sup>7</sup> DCIA investigations typically involve alleged employee time and attendance fraud, travel fraud, standards of conduct violations, workman compensation fraud, or misuse of Government resources, including computers. DCIA also provides technical guidance related to enforcing trade security controls and investigates violations of trade security controls (generally involving property sold through the Defense Reutilization and Marketing Service). Trade security control investigations typically involve (1) efforts to export Munitions List or Strategic List items, (2) technology transfer, (3) fraud involving sales of Government property, or (4) theft involving Government property.

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<sup>5</sup> DCIA is the only DLA organization specifically assigned a criminal investigative mission. DCIA is a Special Staff element for, and reports directly to, the Deputy Director, DLA. CSO reports to the Director, Corporate Administration, who reports to the Deputy Director, DLA.

<sup>6</sup> The Director, DLA, established the investigative program on December 15, 1989, to augment DCIO efforts and provide investigative capability for matters (a) of interest to the Director, (b) not suitable for referral to a DCIO, (c) not within mutually agreed DCIO investigative guidelines, or (d) declined for investigative responsibility by a DCIO.

<sup>7</sup> We note that, in accordance with DoD policy, DLA does not have the option to withhold a criminal investigation on grounds that it is not suitable for referral to a DCIO.

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DCIA is headed by a Director, a GS-1811-15 Criminal Investigator,<sup>8</sup> and organized into three operating sections: the General Investigations Team (DCIA-C); the DLA Criminal Investigations Team Europe (DCIA-E); and the Trade Security Control Team (DCIA-T). Overall, DCIA is staffed with 22 GS-1811 Criminal Investigators, 6 GS-086 Security Assistants, and 1 GS-318 Secretary, all of whom report to the Director, DCIA, either directly or through their respective section chiefs.<sup>9</sup>

## **COMMAND SECURITY OFFICE**

CSO advises and assists the Director, Corporate Administration, and others on all security matters. This office is responsible for:

- physical security at DLA facilities;
- operating the DLA Hot Line and Agency Complaint Program; and
- other law enforcement related issues.

CSO is also the organization responsible for issuing policy and staff guidance related to all DLA GS-1810 General Investigators, GS-085 Security Guards, and GS-083 Police Officers, including those assigned to DLA field activities that conduct investigations. CSO has 19 employees, including 2 GS-1810 General Investigators who conduct investigations similar to those that DCIA conducts.

## **FIELD ACTIVITIES**

Investigators and police officers at DLA field activities report to their respective base or installation commanders. Overall, these field activities have seven GS-1810 General Investigators and two GS-083 Police Officers (Detectives) who conduct investigations.

## **CRIMINAL INVESTIGATOR POSITIONS**

DLA criminal investigator positions are not “covered” under 5 U.S.C. §8336(c) and, therefore, are not eligible for special law enforcement retirement benefits generally available to GS-1811 Criminal Investigators.<sup>10</sup> They also are not authorized to receive Law Enforcement Availability Pay (LEAP).<sup>11</sup>

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<sup>8</sup> Prior to July 1999, a military officer (Colonel) headed DCIA.

<sup>9</sup> All DCIA criminal investigators report to the Director at DCIA headquarters in Fort Belvoir, Virginia. Six are located at headquarters. The remainder are assigned to Resident Offices. DCIA-C has five Resident Offices, DCIA-E has one Resident Office, and DCIA-T has seven Resident Offices (see Appendix B).

<sup>10</sup> Criminal Investigators in covered positions must pay an additional ½ percent of their salaries into the retirement system, but may retire after 20 years service and are subject to mandatory retirement at age 57. According to DLA officials, DCIA hires only experienced military criminal investigators after they retire

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## INVESTIGATIVE DATA SYSTEM

DLA Instruction (DLAI) 5705.1, "Reporting of Criminal Violations," November 7, 1996, assigns responsibilities and prescribes procedures for reporting significant criminal incidents within DLA. This instruction implements DoD Instruction (DoDI) 5240.4, "Reporting of Counterintelligence and Criminal Violations," September 22, 1992. It also establishes the Command Security Automated Control System (COSACS), which is DLA's investigative case tracking system used to follow an investigation from opening until closing.<sup>12</sup> DLA uses COSACS to:

- correlate factual information and track investigative actions; and
- analyze and report investigative information as necessary to meet law enforcement reporting requirements and respond to Secretary of Defense, congressional, and media requests.

According to COSACS data, during January 1996 through February 1999 (38 months), DLA closed investigations as shown in Table 1 below.

**Table 1**  
**DLA Investigations Closed During**  
**January 1996 – February 1999**

<b>Organization</b>	<b>Cases Closed</b>	<b>Yearly Average</b>	<b>% of Total</b>
CSO	656	207	57.34
DCIA	459	145	40.12
CSOI *	29	9	2.53
<b>Total</b>	<b>1,144</b>	<b>361</b>	<b>100.00</b>

\* Investigations conducted in Europe

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or separate from a MCIO. Due to the mandatory retirement provisions, DCIA could not follow this hiring practice if its criminal investigators were in covered positions.

<sup>11</sup> Eligible Criminal Investigators are paid LEAP equal to 25 percent of their base salaries, but also must average working 25 percent more hours, or an average 10 hour day.

<sup>12</sup> COSACS was created before DCIA was established and was not established as a criminal investigative data system only. The system is used to meet case tracking needs for DCIA, CSO, and the DLA General Counsel office. DLA is working to replace COSACS with a more current, capable system.

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## CRIMINAL INVESTIGATIVE AUTHORITY

DLA cites the following authorities for its criminal investigations:<sup>13</sup>

- DoDI 5505.2, “Criminal Investigations of Fraud Offenses,” July 16, 1990;
- 1990 verbal agreement between the DLA General Counsel and the Office of the Inspector General, Department of Defense (OIG, DoD), as documented in a letter to the Staff Director, Command Security, DLA, on February 4, 1994 (Appendix A);
- IG, DoD “Revised Interim Guidance for Criminal Investigations of Fraud Offenses Jurisdiction,” October 23, 1996; and
- authorities inherent in the Director, DLA, position.

## EVALUATION OBJECTIVES, SCOPE, AND METHODOLOGY

Our objectives were to determine whether DLA criminal investigations are authorized, performed in accordance with acceptable standards, and produce appropriate results. To obtain factual information necessary to these determinations, we researched the statutory and regulatory authorities under which DLA conducts investigations. We also had DLA prepare a COSACS “data dump” for investigative cases closed between January 1, 1996, and February 28, 1999. We then selected a statistically-valid, random sample from DLA’s closed cases for the 38-month period for detailed case evaluations. This selection resulted in a 100 case random sample upon which determinations could be made with  $\pm 10$  percent reliability.

The 100 case random sample selected for detailed evaluation involved 151 investigative subjects. However, 64 percent of the sample (64 cases involving 68 investigative subjects) were not criminal investigations with supporting investigative case files.<sup>14</sup> In addition, 4 investigations involving 10 investigative subjects were essentially duplicate case files.<sup>15</sup> Our detailed evaluations, therefore, were limited to 32 cases and 73 investigative subjects (32 percent and 48 percent, respectively, of the cases and investigative subjects included in the sample). We evaluated these cases to determine:

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<sup>13</sup> The cited authorities generally deal with fraud investigations. DLA also conducts general crimes investigations.

<sup>14</sup> Some COSACS “cases” involve trend analyses or other management initiatives to identify potential crime, but are not actual criminal investigations.

<sup>15</sup> One DCIA case involved a supervisor and two employees falsely certifying that equipment sold for scrap had been de-militarized. The case involved various equipment or metal types, and various sales transactions. DCIA treated each scrap sale transaction as a violation and established a separate investigative case file for the violation. The case files, however, were essentially duplicates even though each contained a Report of Investigation. For our purposes, we treated these cases as one investigation involving three subjects.

## *Part I - Introduction*

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- the specific criminal violations/offenses that DLA investigators investigate;
- the extent to which DLA investigators use generally recognized criminal investigative techniques;
- the extent to which DLA investigators present their cases to Federal, state and local prosecutors;
- the extent to which DLA investigations are conducted jointly with other agencies; and
- the criminal, civil, and administrative results that stem from DLA investigations, including:
  - the estimated Government losses resulting from the crimes and the amounts recovered through investigation; and
  - the administrative actions, including employee disciplinary actions, taken against DLA investigative subjects.

In addition, during the course of our evaluation, we learned that DCIA may incur substantial overtime costs or authorize substantial compensatory time (comptime)<sup>16</sup> for its criminal investigators to work the extra time involved in completing investigative functions. Since this cost could be viewed as additional compensation for DCIA criminal investigators not authorized to receive LEAP, we obtained and analyzed DCIA overtime records for the pay periods ending February 14, 1998, through March 11, 2000.<sup>17</sup> We obtained this data from the Defense Finance and Accounting Service (DFAS).

We conducted our work primarily at DLA Headquarters where the official investigative case files are maintained. We also met with and obtained information from:

- each DCIO; and
- the Legal Officer, Naval Air Station, Patuxent River, where DLA has a Defense Reutilization and Marketing Office (DRMO).

In addition, we visited the Defense Distribution Center, New Cumberland, Pennsylvania, and the Defense Supply Center Richmond, Richmond, Virginia, to review investigations that GS-1810 General Investigators and GS-083 Police Officers at these locations conduct for their installation commanders. At these locations, we also met with and obtained information from the installation security, police, and legal staffs.

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<sup>16</sup> OPM defines Compensatory Time Off as:

- o “Time off with pay in lieu of overtime pay for irregular or occasional overtime work, or
- o When permitted under agency flexible work schedule programs, time off with pay in lieu of overtime pay for regularly scheduled or irregular or occasional overtime work.” (<http://www.opm.gov/oca/pay/HTML/COMP.htm>. See also 5C.F.R §550.114)

<sup>17</sup> At the time of our data request, this period represented the total period following the DLA conversion to the Defense Civilian Pay System and the total period for which automated pay system data were reasonably available. DFAS would have had to use manual collection methods to furnish overtime data for any prior period.

We announced our evaluation on August 26, 1998. After obtaining information and conducting research work, we conducted fieldwork and completed the evaluation during April 7, 1999, through May 3, 2000.

**EVALUATION OF CRIMINAL INVESTIGATIVE ACTIVITIES  
PERFORMED BY  
THE DEFENSE LOGISTICS AGENCY**

**PART II - RESULTS OF EVALUATION AND  
RECOMMENDATIONS**

**A. INVESTIGATOR STAFFING VS. INVESTIGATIONS CONDUCTED**

DLA is authorized to conduct criminal investigations that the DCIOs decline and has assembled a senior criminal investigative staff for this purpose. The agency's investigations, however, are primarily administrative in nature -- cases are presented to criminal prosecutors only rarely (8 percent of investigative subjects). Commonly, these cases result in agency administrative action (60 percent of investigative subjects) or no action against the investigative subject (12 percent of investigative subjects). In addition, the investigations do not generally involve a full range of criminal investigative techniques. As a result, there is a significant mismatch between actual DLA investigator duties and those prescribed for criminal investigators. Although DLA has organized its investigative activities cost-effectively, e.g., employing criminal investigators who are not entitled to 20 year retirement or LEAP, the agency has not ensured that its criminal investigator skills and abilities are used to the fullest extent possible as OPM standards require.

**INTRODUCTION**

Within DoD, the DCIOs are primarily responsible for investigating crimes that involve DoD property, programs, or personnel. DoD policy requires DoD components, including the Defense Agencies, to refer fraud matters to DCIS or the appropriate MCIO, depending on the specific jurisdictional responsibilities assigned in DoDI 5505.2, "Criminal Investigation of Fraud Offenses," July 16, 1990, as modified in "IG, DoD Revised Interim Guidance for Criminal Investigation of Fraud Offenses Jurisdiction," October 23, 1996. Furthermore, the MCIOs are responsible for investigating major crimes in their respective Services, and Service policies require referrals to the MCIO when Service member criminal activity is suspected. As a result, Defense Agencies generally have internal policies and procedures requiring their personnel to refer to the appropriate MCIO any criminal matter involving a military member assigned to work for the Defense Agency.<sup>18</sup> However, DoDI 5505.2 also requires heads of Office of the

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<sup>18</sup> DoD has not promulgated policy mandating such referrals. The MCIOs generally rely on their field commanders and agents-in-charge to foster relationships and local procedures that will ensure the referrals.

*Part II – Evaluation Results*

*A – Investigator Staffing vs. Investigations Conducted*

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Secretary of Defense components and Defense Agencies to “... [e]stablish procedures providing for the investigation of less significant fraud allegations when the DCIOs neither investigate the matter nor refer it elsewhere for investigation.” Furthermore, the OIG, DoD, specifically allowed DLA to conduct certain criminal investigations that the DCIOs decline (see Appendix A). Accordingly, DLA is authorized to have an investigative program and conduct certain criminal investigations.

DLA Directive (DLAD) 5700.8, “Conduct of Investigations by DLA Criminal Investigators,” November 7, 1996:

“... prescribes DLA policy for investigations performed by criminal investigators assigned to ... DCIA ... and provides basic authority for conducting investigations, crime prevention surveys, and collecting, retaining, and disseminating criminal information by DLA investigators concerned with possible violations of civil and military laws and DoD publications.”

According to DLAD 5700.8:

“DCIA criminal investigators will provide criminal investigative support to the Director, DLA, the Commanders of DLA field activities, and to DLA GC, upon request, when the primary DoD investigative agency declines investigative responsibility or accedes to a joint investigation. This includes investigations involving contract fraud and related irregularities such as bribes, gratuities, standards of conduct, or antitrust which will be performed only when requested by DLA GC or the cognizant DLA field activity office of counsel.”

## **DLA INVESTIGATIONS**

Overall, our evaluation showed that:

- DCIA is responsible for most (91 percent) DLA-conducted investigations. CSO (including field activities) is responsible for the remaining investigations.
- Fifty three percent of DLA investigations cite violations of Federal or state law. However, DLA investigates more cases that deal with employee standards of conduct (22 percent) than any other type of case. This case category is almost twice as large as the next highest case category, False Statements, which accounts for 13 percent of all DLA investigations.

## *Part II – Evaluation Results*

### *A – Investigator Staffing vs. Investigations Conducted*

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- Most DLA investigative subjects (89 percent) are DLA employees or military members assigned to work at DLA.
  - About 3 percent are military members on whom DCIA conducts investigations without referral to the MCIO. These investigations may result in DLA returning the military member to his/her Service before the duty assignment with DLA is scheduled to end. However, the Service must initiate action under the Uniform Code of Military Justice. DLA does not have such authority.
- DLA investigators routinely use some generally recognized criminal investigative techniques, such as Defense Clearance and Investigations Index (DCII) checks, record reviews, and witness interviews. However, DLA investigations rarely involve:
  - Surveillance (15 percent of the subjects);
  - National Crime Information Center (NCIC) checks (3 percent of the subjects);
  - crime lab analysis (3 percent of the subjects);
  - sting operations (1 percent of the subjects);
  - search warrants (0 percent of the subjects);
  - arrest warrants (0 percent of the subjects); or
  - polygraph examinations (0 percent of the subjects).
- DLA investigators rarely present their cases to criminal prosecutors (only 8 percent of the subjects), and court results (4 percent of the subjects) are rare in DLA cases.
- DCIA maintains and adequately controls one security container, a combination safe to store and protect physical evidence collected during criminal investigations. However, DLA collects physical evidence infrequently. The DCIA evidence log had four entries involving one investigation for calendar year (CY) 1998, two entries involving two investigations for CY 1999, and no entries for CY 2000 through May 3, 2000.
- DCIA follows reasonable and appropriate steps to protect grand jury information, but does not have specific, formal policy to guide its actions related to grand juries.<sup>19</sup> However, DCIA deals with grand juries infrequently. None of the investigations that we evaluated in detail involved a grand jury.
- DCIA has an informant or source program and budgets about \$3,000 a year for this program. According to the Director, however, the agency has only three or four registered informants and when it utilizes informants, they are generally unpaid, informal informants.
- Joint investigations with other Federal agencies, primarily the DCIOs, account for 34 percent of DLA investigative cases and 33 percent of DLA investigative subjects. Joint investigations account for the larger, more serious DLA investigations.

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<sup>19</sup> Rule 6(e), Federal Rules of Criminal Procedure, limits access to grand jury information to those persons that an Assistant United States Attorney authorizes, normally in writing, to have access.

## *Part II – Evaluation Results*

### *A – Investigator Staffing vs. Investigations Conducted*

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However, we did not identify any criminal investigation in which DCIA initially referred the matter to a DCIO.

- DLA recovers a substantial portion (58 percent) of the estimated Government losses resulting from the activities investigated.<sup>20</sup>
  - Court-ordered fines, penalties, restitution, and special assessments account for 35 percent of total DLA investigative recoveries.
  - Administrative recoveries account for the remaining 65 percent.
- DLA investigations result primarily in either employee disciplinary actions (60 percent of the subjects) or no action against the investigative subject (12 percent of the subjects).
  - Most employee disciplinary actions are verbal or written reprimands (84 percent of the subjects with disciplinary actions).
  - Some employees (3 percent) resign from DLA or retire from Federal Service following investigation. However, employees who are investigated by DLA generally are not removed from Federal Service as a result of the investigations.
- Approximately 13 percent of DLA investigations are closed as unsubstantiated.
- Although DLA criminal investigators earn substantial overtime and comptime, the cost for this time is 71.2 percent less than DLA would incur if its criminal investigators earned Law Enforcement Availability Pay.

See Appendix C for our complete analysis of DLA investigations. See Appendix D for our complete analysis of DLA overtime.

The question that arises from these facts is whether DLA needs GS-1811 Criminal Investigators to conduct its investigations. Although the allegations that DLA investigates are generally (53 percent) criminal in nature, DLA investigators normally (92 percent) pursue agency administrative remedies without presenting the matters to criminal prosecutors. In addition, DLA investigations generally do not involve the full range of criminal investigative techniques. DLA investigations do not routinely involve surveillance, NCIC checks, crime lab analysis, sting operations, search warrants, arrest warrants, or polygraph examinations. Overall, DLA investigations are primarily administrative in nature (compliance with rules and regulations), and DLA investigator duties primarily involve collecting data through interviews and record reviews, and writing investigative reports for management action. These primary duties do not require the knowledge, skill, and abilities required for a GS-1811 Criminal Investigator.

As noted in the Introduction Section, DLA utilizes both GS-1811 Criminal Investigators (DCIA) and GS-1810 General Investigators (CSO) to conduct

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<sup>20</sup> As discussed in Appendix C, DCIA claimed a large recovery in one investigation that was not typical of its day-to-day investigative activities. In addition, DCIA claimed this recovery without recognizing a corresponding loss to the Government. For the reasons discussed in Appendix C, we excluded the recovery claimed in this case for purposes of assessing DLA recovery rates.

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### ***A – Investigator Staffing vs. Investigations Conducted***

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investigations. DCIA has 22 criminal investigators. CSO has nine general investigators. The GS-1810 General Investigators carry badges and credentials similar to criminal investigators, and some are armed. In fact, the one employed at the Defense Supply Center, Richmond, Virginia, was apparently hired under a criminal investigator position description and, following the OIG, DoD, memorandum guidance (Appendix A), the coversheet for the position description was changed to GS-1810. The position description itself, however, was not changed in overall content. This investigator advised us that he routinely interfaces with other Federal, state, and local law enforcement officials, including Assistant United States Attorneys, Federal Magistrates, and state and local prosecutors. This general investigator, as well as the two that we visited at the Defense Distribution Depot, New Cumberland, Pennsylvania, indicated they do essentially the same type investigations as DCIA criminal investigators and believe that their positions should be classified in the same series as DCIA investigators.

CSO management personnel at both locations also believe their investigators should be criminal investigators. Those at the Defense Distribution Depot, New Cumberland, advised us that labor union officials representing New Cumberland employees do not view GS-1810 investigators as “capable” of conducting criminal investigations and have challenged investigations conducted by GS-1810 investigators. These CSO personnel also advised us that several years ago management disciplinary actions taken against employees based on the investigations were reduced or set aside completely due to labor union challenges. However, that situation was temporary, lasting only until management became adept at dealing with the labor union challenges.

### **STANDARDS FOR CLASSIFYING INVESTIGATOR POSITIONS**

OPM standards are the basis for classifying investigator positions. According to the OPM “Grade Level Guides For Classifying Investigator Positions GS-1810/1811,” February 1972, TS-8:

“All Federal investigators perform fact-finding and reporting duties on assignments that normally unfold over a period of time. The key distinctions between the general and criminal investigating occupations lie in the different kinds of investigations performed by each and the different knowledge, skills, and abilities those different kinds of investigations impose.”

Criminal investigators, in addition to requiring the knowledge, skills and abilities described for the GS-1810 General Investigating Series, require:

“... **knowledge** of the criminal laws and Federal rules of procedure which apply to cases involving crimes against

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*A – Investigator Staffing vs. Investigations Conducted*

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the United States, for example:

- Knowledge of what constitutes a crime or violation as defined in pertinent statutes, including the Uniform Code of Military Justice, and statutes with anti-fraud or similar criminal penalties; The kind of evidence that is required to prove that a crime was committed;
- The relationships among the criminal investigative jurisdictions of various agencies;
- Decisions and precedent cases involving:
  - o admissibility of evidence;
  - o search and seizure;
  - o arrest authority;
- Sources of information, i.e., informants, and methods of obtaining required evidence;
- The methods and patterns of criminal operations;
- Availability and use of modern detection devices and laboratory services;
- Awareness of continuing advances in investigative technology” (Emphasis added)

...

“... *skill*... in such activities as:

- Maintaining surveillance;
- Performing undercover work;
- Making arrests;
- Taking part in raids.” (Emphasis added)

...

“... [*ability* in the] application of a number of techniques, such as:

- Interviewing or interrogating suspects and witnesses;
- Searching for physical or documentary evidence or clues;
- Using evidence to substantiate findings or conclusions;
- Examining records to detect links in a chain of evidence or information;
- Using cameras and photostatic machines to record evidence and documents;
- Doing undercover work assignments;
- Developing and using informants to get leads to

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information;

- Maintaining surveillance;
- Preparing reports of investigation. (Emphasis added)

Since DLA investigations are generally administrative in nature, DCIA investigators do not generally need criminal investigative knowledge, skills and abilities to conduct the investigations. In this regard, according to Section III, Paragraph J, OPM “Grade Level Guides For Classifying Investigator Positions GS-1810/1811,” Feb 1972, TS-8:

“... the organization of work and the assignment of duties and responsibilities to positions are the responsibilities of agency managers and supervisors. This includes the requirement to assure that work is organized in an efficient and cost-effective manner and that the skills and abilities of employees are used to the fullest extent possible...”

We do not question whether DLA has assigned duties and responsibilities to investigator positions in an efficient, cost-effective manner. As noted previously, DLA criminal investigators are in noncovered positions and, therefore, are not entitled to 20 year retirement or Law Enforcement Availability Pay. As also noted previously, although DLA criminal investigators earn overtime and comptime, the cost is less than the agency would pay for Law Enforcement Availability Pay. As a practical matter, therefore, DLA does not incur higher costs from hiring criminal, rather than general, investigators to staff DCIA. As a result of employing criminal investigators at DCIA, however, DLA is not meeting the OPM requirement to use its employee skills and abilities to the fullest extent possible and is operating contrary to the purpose for which the criminal investigative series was established.

On the other hand, DCIA investigators do perform some criminal investigations and should have at least a core group of criminal investigators with the knowledge, skills, and abilities necessary to complete these investigations. After considering

- the total number of DLA criminal investigators (22),
- the proportion of DLA investigations actually presented to criminal prosecutors (8 percent of investigative subjects),
- the need for adequate coverage during individual employee absences, and
- the need for agency flexibility,

we believe that DLA should retain five criminal investigator positions, including the

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Director, DCIA, and reclassify its remaining GS-1811 Criminal Investigator positions to GS-1810 General Investigator positions. To avoid operating and perception problems related to the reclassifications, DLA may make the change over time in filling current criminal investigator positions as they become vacant.

In addition, DLA should ensure that the GS-1810 General Investigator employed at Defense Supply Center, Richmond, Virginia, is operating under a proper Employee Position Description for a GS-1810 General Investigator.

**RECOMMENDATIONS, MANAGEMENT COMMENTS AND EVALUATION  
RESPONSE**

**Recommendation A.1** The Director, Defense Logistics Agency, reclassify current GS-1811 Criminal Investigator positions to GS-1810 General Investigator positions, except for five GS-1811 Criminal Investigator positions, including the Director, DCIA. To avoid operating and perception problems related to the reclassifications, the Director, Defense Logistics Agency, may make the reclassifications over time in filling current criminal investigator positions as they become vacant.

**Management Comments**

DLA nonconcurred. According to DLA:

- at the outset of an investigation, it is impossible to know whether misconduct that has been alleged will constitute criminal behavior and, if criminal, whether the conduct meets Office of the United States Attorney thresholds for prosecution in a particular district;
- a general investigator without knowledge of criminal law or Federal Rules of Criminal Procedure may handle evidence in a fashion affecting its admissibility and may not be familiar with search and seizure rules and procedures, arrest authority, or criminal operation methods and patterns;
- the outcome of an investigation should not dictate the type of investigator that should conduct the investigation;
- a U.S. Attorney declination to prosecute does not mean a crime was not committed; it means the U.S. Attorney had other prosecutorial criteria, a heavy caseload, or other priorities;<sup>21</sup>

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<sup>21</sup> There are additional reasons why an AUSA may decline prosecution; for example, the case may not have been fully developed. Our point in the report, however, was not that most DLA cases were declined for prosecution. Our point was that most DLA cases (about 92 percent) are not even presented to criminal prosecutors for acceptance or declination.

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### *A – Investigator Staffing vs. Investigations Conducted*

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- in 1986, DLA addressed the issue of how to proceed when a U.S. Attorney declines prosecution and decided against participating in the U.S. Magistrate court system because administrative remedies afforded the agency greater flexibility;
- because DCIS routinely declines to investigate matters that U.S. Attorney's decline for prosecution, DLA must resolve these matters internally and, in fact, established its criminal investigative activity to investigate less significant cases the DCIOs decline to investigate;
- DLA assumes a criminal prosecution may result when initiating every investigation of potential criminal conduct; and needs investigators with the knowledge, skills and abilities to conduct criminal investigations;
- the draft report relied on a statistically valid case sample and concluded that most resulted in administrative remedies; DLA suspects that the case sample included general investigator, police detective and DoD police investigations completed at post, camp, or station levels; DLA was not given the case listing and was unable to review the same cases; however, based on the 64 cases (ROIs) that DCIA closed in 1999:
  - 48 (75 percent) dealt with Title 18 or UCMJ violations;
  - 1 (1.6 percent) was unfounded;
  - 42 (66 percent) used investigative techniques beyond standard interview and interrogation that general investigators normally employ;
    - 21 (33 percent) used surveillance and photography;
    - 14 (22 percent) used coordination with other law enforcement organizations;
    - 12 (19 percent) used forensic computer examination;
    - 7 (11 percent) used Internet data searches;
    - 1 (1.5 percent) used forensic laboratory analysis; and
    - 1 (1.5 percent) used polygraph examination;
  - employing criminal investigators costs no more and ensures that investigations of potentially criminal conduct are done by criminal investigators who have the skills, knowledge and experience to finish those investigations properly in a fashion which will merit criminal prosecution where appropriate and enable DLA to take timely and effective administrative action where criminal prosecution is declined;
  - in military member cases, conducting preliminary investigative inquiries ensures that:
    - parent Service law enforcement personnel will take DLA investigative conclusions seriously; and
    - DLA can rely on the investigative results when requesting the parent Service to accept the military member's return to parent Service control for UCMJ action.

## **Evaluation Response**

We agree with many DLA arguments presented to justify maintaining its criminal investigator positions. For example, DLA is clearly correct in arguing that it is not possible to know, at the outset of an investigation, whether alleged misconduct will constitute criminal behavior or meet thresholds for criminal prosecution. DLA is also correct that an investigator who does not know criminal law and Federal Rules of Criminal Procedure might handle evidence in a fashion affecting its admissibility in a criminal case. Further, DLA is correct that our case sample included investigations that both CSO (general investigators and police detectives/officers) and DCIA (criminal investigators) conducted. As described previously in the evaluation scope and methodology section, our evaluation scope included both CSO and DCIA investigations. It would have been inappropriate for us to limit our case sample to DCIA cases.<sup>22</sup>

Overall, however, DLA's arguments and rationale do not consider several important factors. First, we did not recommend that DLA reclassify all criminal investigator positions. The five criminal investigators remaining after the reclassification we recommended should be more than adequate for DLA to:

- conduct criminal investigations that the DCIOs decline; and
- guide general investigator actions as necessary to preclude evidence and other difficulties related to specialized criminal investigator knowledge and skill needs.

Second, nothing precludes DLA from filling general investigator positions with former criminal investigators already possessing specialized criminal investigator knowledge, skills and abilities. In fact, as discussed in the report, DLA currently has general investigators who were formerly criminal investigators. Finally, DLA is not completely correct in stating that it does not incur higher costs from employing criminal investigators. Although not detailed in our report, DLA invests substantial investigator time and incurs travel, training and other costs associated with firearm qualification and other specialized training for criminal investigators. The agency could avoid this cost if it adopted our recommendation.

**Recommendation A.2** The Director, Defense Logistics Agency, take action to ensure that the GS-1810 General Investigator employed at Defense Supply Center, Richmond, Virginia, is operating under a proper Employee Position Description for a GS-1810 General Investigator.

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<sup>22</sup> It is important to note, however, that our case sample included only four (12.5 percent of the total) CSO investigations. Our overall analytic results, therefore, are based primarily on DCIA investigations. For example, overall, we found that only 8 percent of DLA investigations were presented to prosecutors and only 4 percent of DLA investigative subjects were taken to court. For DCIA cases alone, only 9 percent were presented to prosecutors and only 5 percent of the subjects were taken to court. Our analysis was based on cases closed during the last 3 years and should better indicate DLA's continuing investigative program.

## **Management Comments**

DLA concurred and advised that the action had been completed.

## **Evaluation Response**

The DLA comments are responsive.

## **B. INVESTIGATIVE PROGRAM MANAGEMENT**

Although required in DoDI 5505.2, DLA has not established specific procedures for investigating matters that the DCIOs decline. DLA also does not have memoranda of understanding or other agreements with the DCIOs to guide referrals to the DCIOs, or to specify investigations that DLA may conduct without first referring the matters to a DCIO. In fact, DCIA either does not refer matters to the DCIOs initially or does not record either its referral attempts or DCIO declinations in its investigative case files. As a result, DCIA may conduct some investigations directly that the responsible DCIO should investigate. DCIA and the DCIOs would benefit from agreements identifying the types of investigations that DCIA may conduct directly without prior referral to the appropriate DCIO. In addition, DCIA and its individual investigators would benefit from standard policy to guide DCIA investigations. In this regard, we support the apparent DCIA decision to use the DCIS Special Agents Manual when its agents need detailed guidance. DCIA, however, should formalize this decision in standard operating policy.

### **INTERNAL OPERATING GUIDANCE**

DLA criminal investigators are generally former MCIO criminal investigators hired after they complete military careers. According to DCIA management, DCIA staffs its criminal investigative operations with seasoned criminal investigators who know how to conduct investigations. As a result, DLA does not have substantial internal policy or other guidance for its criminal investigative activities. Unlike the DCIOs, for example, DCIA does not have a “Special Agents Manual” or “Criminal Investigator Manual” setting forth detailed procedures and guidance for its investigators to follow when initiating and completing different investigative actions or different types of investigations.<sup>23</sup> DLA also does not have internal policy requiring referrals to the DCIOs, either generally or when Service member criminal activity is suspected. Further, DLA does not have memoranda of understanding or other agreements with the DCIOs to guide referrals to the DCIOs, or to specify investigations that DLA may conduct without first referring the matters to a DCIO.

As noted previously, our detailed case file reviews did not identify any case in which DCIA referred a criminal investigative matter to a DCIO before undertaking the investigation directly.<sup>24</sup> Our evaluations also did not identify any case involving a Service member where DCIA attempted to refer the matter to the responsible MCIO. For example, in one 1997 investigation involving a U.S. Army Colonel, DCIA conducted the

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<sup>23</sup> We were advised that DCIA criminal investigators use the DCIS Special Agents Manual on occasion when they need such detailed guidance.

<sup>24</sup> It is possible that DCIA used telephone contacts with the DCIOs to identify referral potential. However, the investigative files did not reflect the contacts.

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*B – Investigative Program Management*

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investigation without first referring the matter to the USACIDC. In this case, the Colonel was alleged to have committed a number of illegal acts by:

- using airline frequent flyer miles earned while on official Government travel to upgrade him and his family to first class seating during a permanent change of station move;
- authorizing and purchasing higher priced airline tickets to solicit upgrades to business class seating;
- using a false official travel status to receive a lesser lodging rate in civilian accommodations when he was not entitled to the lesser rate; and
- using a subordinate employee to tap into a cable television system for personal use at his Government office without paying for the services.

The alleged acts violated specific laws, Joint Federal Travel Regulations, and DoD Standards of Conduct, and were punishable under the Uniform Code of Military Justice.<sup>25</sup>

Before DCIA completed the investigative work and wrote the report of investigation (ROI), the Colonel completed the duty assignment where the alleged violations occurred and was reassigned to a new duty station. After DCIA completed the investigation, in March 1997, DCIA referred the ROI and a request for an after-action report to the Colonel's new commander. In response, in February 1998, DCIA received a memorandum advising that the Office of the Staff Judge Advocate handled the disciplinary proceedings and that the matter was concluded in July 1997. The report was unclear as to the nature, extent, or outcome of the "disciplinary proceedings" involving the Colonel.<sup>26</sup>

In attempting to follow up on this case and determine the actual outcome, we were told that:

- the Commanding General at the new duty station and the Colonel entered into an informal agreement under which the Colonel was to retire from the Army not later than March 31, 1998;
- anticipating the retirement, the Colonel began transition leave in January 1998, and accepted employment with a civilian company;
- after the agreement, the Commanding General retired from the Service effective in December 1997;

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<sup>25</sup> In 1995, DCIA investigated the same Colonel for similar alleged violations, which resulted in the Colonel receiving an official Letter of Reprimand.

<sup>26</sup> This investigation did not involve a "Senior Official" as defined in DoDD 5505.6, "Investigations of Allegations Against Senior Officials of the Department of Defense," July 12, 1991, which would have required reporting to IG, DoD. Although the Colonel's rank would have warranted a Significant Incident Report to IG, DoD, in accordance with DoDI 5240.4, "Reporting of Counterintelligence and Criminal Violations," September 22, 1992, the estimated loss to the Government did not warrant the reporting.

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*Part II – Evaluation Results*

*B – Investigative Program Management*

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- after the Commanding General retired, the Colonel asked to withdraw his retirement papers and be reinstated;
- the Commanding General did not formalize a punitive action based on the investigative findings; and
- since nothing appeared in the Colonel’s official personnel record, the Army reinstated the Colonel, and he continues on active duty to the current time.

We posit that this matter likely would have been handled more effectively had USACIDC conducted the investigation and maintained judge advocate participation throughout the case.<sup>27</sup> In any event, DCIA and the DCIOs would benefit from agreements identifying the types of investigations that DCIA may conduct directly without prior referral to the appropriate DCIO. In addition, DCIA and its individual investigators would benefit from standard policy to guide DCIA investigations. In this regard, we support the apparent DCIA decision to use the DCIS Special Agents Manual when its agents need detailed guidance. DCIA, however, should formalize this decision in standard operating policy.

**GOALS, OBJECTIVES AND PERFORMANCE MEASURES**

DCIA does not prepare an annual plan and, instead, contributes to the overall DLA Strategic Plan. Goal 2, DLA Strategic Plan 2000, is “Reduce Costs – improve efficiency – increase effectiveness,” which is consistent with stated DCIA goals and is consistent with the stated DCIA objective “... to reduce ultimate costs by reducing theft, fraud, waste and abuse within DLA.”

Although DCIA has not developed specific performance measures against which to compare accomplishment of the objective, its Mission Statement declares:

“Measures of success are the investigation results that provide sufficient products to enable customers to take appropriate action. Investigative products are effectively used to resolve high and low profile incidents of potential embarrassment to the Agency.”

Our evaluation did not reveal any prior assessment of actual DCIA performance relative to its stated goals and objective. However, our evaluation showed that DCIA investigations generally do produce remedies, albeit remedies that are primarily agency administrative actions. Overall, they also result in significant Government recoveries that include both monetary and property/equipment recoveries. The investigations, therefore, do contribute to reducing theft, fraud, and abuse in DoD.

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<sup>27</sup> USACIDC did run some investigative leads in the case, but did not assume lead agency responsibility and the investigation was not subject to USACIDC requirements.

**RECOMMENDATIONS, MANAGEMENT COMMENTS AND EVALUATION  
RESPONSE**

**Recommendation B.1** The Director, DLA Criminal Investigations Activity, enter into a Memorandum of Understanding or other agreement with each Defense Criminal Investigative Organization formalizing working arrangements between the organizations and identifying the types of investigation that DCIA may conduct without prior referral to the Defense Criminal Investigative Organization.

**Management Comments**

DLA concurred and advised that its estimated completion date for the action is October 1, 2001.

**Evaluation Response**

The DLA comments are responsive.

**Recommendation B.2** The Director, DLA Criminal Investigations Activity, formally adopt the Defense Criminal Investigative Service Special Agents Manual as detailed guidance for program administration and for investigator use in conducting criminal investigations.

**Management Comments**

DLA concurred and advised that its estimated completion date for the action is October 1, 2001.

**Evaluation Response**

The DLA comments are responsive.

## C. COMPLIANCE WITH CRIMINAL INVESTIGATIVE POLICY

When DLA conducts criminal investigations, the agency is required to comply with DoD policy governing criminal investigations. Our evaluation shows that DLA does not always comply with policy requirements that govern:

- Investigating fraud offenses.
- Intercepting wire, oral and electronic communications.
- Titling and indexing investigative subjects.
- Fingerprinting investigative subjects that are Armed Forces members and reporting their criminal histories and final case dispositions to the Federal Bureau of Investigation.
- Assisting crime victims and witnesses.

### INVESTIGATING FRAUD OFFENSES

DoDI 5505.2, “Criminal Investigations of Fraud Offenses,” July 16, 1990, requires that heads of OSD components and Defense Agencies (a) “[e]stablish procedures ... to ensure that *all allegations of fraud involving persons affiliated with the Department of Defense and any property or programs under their control or authority are referred promptly to the DCIS...*” (emphasis added), and (b) “[e]stablish procedures providing for the investigation of less significant fraud allegations when the DCIOs neither investigate the matter nor refer it elsewhere for investigation. (Examples of alternative investigative resources include military or security police elements, other designated DoD investigators, or command authorities.)” DCIA has not established procedures for referring fraud allegations to DCIS. Furthermore, based on our detailed case evaluations, DCIA either does not attempt to refer matters to a DCIO initially or does not record such attempts in its investigative case files, which indicates the investigative files are incomplete. Moreover, although DLA has issued policy implementing DoDI 5505.2, the agency has not established specific procedures for investigating matters that the DCIOs decline as specifically required in DoDI 5505.2. (Recommendation B.1 in Section B above obviates the need for specific corrective action related to this noncompliance issue.)

### INTERCEPTING WIRE, ELECTRONIC, AND ORAL COMMUNICATIONS

DoDD 5505.9, “Interceptions of Wire, Electronic, and Oral Communications for Law Enforcement,” April 20, 1995, establishes policy and responsibilities governing intercepts conducted by DoD law enforcement personnel. The Directive provides that:

“The Secretaries of the Military Departments, or designees,

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*C – Compliance with Criminal Investigative Policy*

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the IG, DoD, or designee, and the Director, Washington Headquarters Services (WHS), shall authorize consensual interception of wire, electronic, and oral communications for law enforcement with legal approval...”

“The only DoD Components authorized to intercept wire, electronic, and oral communications, ... are ... USACIDC, ... NCIS, ... AFOSI, and ... DCIS.”

“The DPS is authorized to employ only consensual interception techniques...after legal approval and approval by the Director, WHS. The authorization is limited to the extent that the interception techniques pertain to the enforcement of laws for the protection of persons or property under jurisdiction of the DPS.”

In addition to this policy, DoD O-5505.9M sets forth procedures for requesting and approving law enforcement intercepts, the related reporting requirements, and specific guidance for storing, retaining and disposing interception equipment. The manual specifies that:

“...consensual interceptions of wire, electronic, or oral communications shall be approved in writing by the Secretaries of the Military Departments, or their designees, by the IG, DoD, or designee, or the Director, Washington Headquarters Services, before such interception is conducted, except in emergency situations...”

“...the Secretaries of the Military Departments, or designees; the Director, DCIS, or designee; and the DPS, shall submit reports...”

“Quarterly. For the quarters ending in March, June, September, and December, to be received by the 30<sup>th</sup> day of each following month, a report of all consensual interceptions of wire, electronic, and oral communication approved or done, or for which approval extensions were granted during the quarter...”<sup>28</sup>

“The IG, DoD, shall consolidate all reports provided...and provide them to the Attorney General of the United States.”

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<sup>28</sup> This reporting requirement was in effect at the time that DCIA performed the consensual monitoring discussed in this report. Based on subsequent U.S. Attorney General guidance, this reporting was deleted from DoD O-5505.9M following required February 1999 reporting to the Attorney General.

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*C – Compliance with Criminal Investigative Policy*

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Our random sample of DCIA investigations included *one case* (3 percent of the total sample) in which DCIA conducted a consensual monitoring of a former DLA employee. DCIA sought and obtained AUSA approval to conduct the monitoring. However, the monitoring was contrary to the DoD policy requirements described above, which limit approval authority for consensual monitoring and the DoD organizations that may engage in consensual monitoring. In addition, DCIA did not report the consensual monitoring to OIG, DoD, as required for inclusion in overall DoD reporting to the U.S. Attorney General.

### TITLING AND INDEXING INVESTIGATIVE SUBJECTS

DoDI 5505.7, “Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense,” May 14, 1992, requires investigating agencies to report “[t]he fact that an investigation has started and the identity of the subject when known ... to the Defense Clearance and Investigations Index for indexing.”<sup>29</sup> Our detailed case evaluations established that DCIA generally complied with these reporting requirements. However, our case evaluations also showed that some DCIA investigative “suspects” never became investigative subjects after DLA counsels opined that there was “*insufficient evidence*” or “*insufficient probable cause*” to title the suspects. Since DoD policy requires *investigators* to make titling decisions based on a “*credible information*” standard, the agency’s DCII inputs may be incomplete.

The primary purpose for titling and indexing an individual or entity as the subject of a criminal investigation in the DCII is to ensure that information in a report of investigation can be retrieved at some future time for law enforcement and security purposes. DoDI 5505.7, “Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense,” May 14, 1992, prescribes policy for titling and indexing, as follows:

“4.3. The DoD standard that shall be applied when titling and indexing the subjects of criminal investigations is a determination that *credible information* exists that a person or entity may have committed a criminal offense or is otherwise made the object of a criminal investigation.” (Emphasis Added)

“4.4. Titling is an operational rather than a legal decision and *final responsibility* for the decision to title an individual or entity shall rest with the *investigative officials* designated to do so by the DoD Components.” (Emphasis Added)

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*C – Compliance with Criminal Investigative Policy*

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DoDI 5505.7 defines the terms “credible information” and “subject,” as follows:

“Credible Information. Information disclosed or obtained by an investigator that, considering the source and nature of the information and the totality of the circumstances, is sufficiently believable to indicate criminal activity has occurred and would cause a reasonable investigator under similar circumstances to pursue further the facts of the case to determine whether a criminal act occurred or may have occurred.”

“Subject. A person, corporation, other legal entity, or organization about which credible information exists that would cause a reasonable person to suspect the person, corporation, other legal entity, or organization may have committed a criminal offense, or otherwise make a person, corporation, legal entity, or organization the object of a criminal investigation.”

Our case analyses indicate that DLA criminal investigators do not title subjects in accordance with DoDI 5505.7. We reviewed DLA criminal investigative files to identify the dates on which the investigators presented the cases to internal DLA counsels or non-DLA counsels, such as an AUSA, and to review the counsels' decisions. We found that DLA presented most cases to internal DLA counsels and, while the counsels' decisions varied to some extent, most addressed whether the subject should be titled. We also found that the decisions addressed titling in terms of either “probable cause” or “sufficient evidence,” not credible information.

The Director, DCIA, advised us that criminal investigators, not DLA counsels, actually make titling decisions in all DCIA investigations. According to the Director, standard ROI language may need changing to prevent misperceptions that DLA counsels make these decisions. However, we could not adequately correlate this situation to imprecise standard ROI language. Specifically, we did not review any file that identified an *investigator's* decision to title based on “credible information.” Files that we reviewed, however, did include “*suspects*” *who were not titled* after a DLA counsel opined that either (1) the evidence was insufficient to title, or (2) there was insufficient probable cause to title. Therefore, even if the Director was correct that criminal investigators were making the titling decisions, action was needed to avoid the appearance that DLA counsels made these decisions.

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<sup>29</sup> DCII was established in 1966, as a “computerized central index of investigations for all DoD investigative activities.” (DoDD 5505.7, Paragraph F.4.) DCII is a comprehensive tool used by DoD criminal investigators, personnel security specialists, and clearance adjudicate personnel to locate investigative files.

*Part II – Evaluation Results*

*C – Compliance with Criminal Investigative Policy*

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Following our exit conference on May 15, 2000, the Director, DCIA, issued a Policy Memorandum, Subject: “Titling and Counsel Coordination,” confirming the DoD policy that investigators are responsible for titling and indexing decisions. The policy memorandum also adopts standard report language “... to ensure there is no misinterpretation of the coordination with counsel ... as being the basis for titling a subject...” This new policy should help alleviate the perception that DLA counsels make the titling decisions in DLA investigations.

### **FINGERPRINT CARDS AND CRIMINAL HISTORY REPORTING**

DoDI 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” December 1, 1998, requires fingerprint cards, criminal history, and final case disposition reporting to the Federal Bureau of Investigation for all military investigative subjects. DLA has not issued guidance implementing this policy. In addition, our detailed case evaluations indicated, and the Director, DCIA confirmed, that DCIA has not previously complied with DoDI 5505.11 requirements.

### **VICTIM AND WITNESS ASSISTANCE**

DoDD 1030.1, “Victim and Witness Assistance,” November 23, 1994, and DoDI 1030.2, “Victim and Witness Assistance Program,” December 23, 1994, require heads of Defense Agencies, among other things, to “... develop policies and procedures to implement the victim and witness assistance program in their components...” DoDI 1020.2 requires ***the local responsible official, law enforcement officer, or criminal investigation officer***, at the earliest opportunity after a crime victim or witness is identified, to provide the following services to each victim and witness, as appropriate:

- DD Form 2701, “Initial Information for Victims and Witnesses of Crime, as a handout to convey basis information and points of contact;
- information about available military and civilian emergency medical and social services and, when necessary, assistance in securing these services;
- information about restitution or other relief a victim may be entitled to under 42 U.S.C. §10601 et seq, 42 U.S.C. §10681, 18 U.S.C. §1512-1514, or other applicable laws, and the manner in which such relief may be obtained;
- information to victims of intra-familial abuse offenses on the availability of limited transitional compensation benefits and possible entitlement to some of the active duty member’s retirement benefits under 10 U.S.C. §1058, §1059, and §1408;
- information about public and private programs that are available to provide counseling, treatment and other support, including available compensation through Federal, state, and local agencies, using the Department of Justice Resource Guide to Victim and Witness Assistance;
- information about the prohibition against intimidation and harassment of

*Part II – Evaluation Results*

*C – Compliance with Criminal Investigative Policy*

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victims and witnesses, and arrangements for the victim or witness to receive reasonable protection from threat, harm, or intimidation from a suspected offender and from people acting in concert with or under the control of the suspected offender;

- information about the military criminal justice process, the role of the victim or witness in the process, and how the victim or witness can obtain additional information concerning the process and the case; and
- if necessary, assistance in contacting the people responsible for providing victim and witness services and relief.

DoDI 1030.2 further provides that *law enforcement investigators and criminal investigators* shall inform all victims and witnesses, as appropriate of:

- the status of the investigation of the crime, to the extent providing such information does not interfere with the investigation;
- the arrest of the suspected offender;
- a decision not to pursue prosecution; and
- the preferral or referral of charges against the suspected offender.

DLA has not issued guidance to implement the DoD policy on victims and witnesses. Even though our case evaluations showed that DCIA investigations generally do not involve victim and witness issues, DCIA should nonetheless promulgate procedures to ensure compliance with victim and witness assistance requirements. In fact, the infrequency of victim/witness issues further supports formal procedures to ensure effective compliance when the need arises.

**RECOMMENDATIONS, MANAGEMENT COMMENTS AND EVALUATION  
RESPONSE**

**Recommendation C.1** The Director, Defense Logistics Agency, issue necessary guidance to implement the following DoD policies:

- DoD Instruction 5505.11, “Fingerprint Card and Final Disposition Report Submission Requirements,” December 1, 1998; and
- DoD Directive 1030.1, “Victim and Witness Assistance,” November 23, 1994, and DoD Instruction 1030.2, “Victim and Witness Assistance Procedures,” December 23, 1994.

**Management Comments.**

DLA concurred and advised that its estimated completion date for actions is October 1, 2001. The agency noted, however, that it does not have UCMJ authority and must defer considerations concerning Service member compliance with DoD directives

and instructions, as well as judicial and nonjudicial punishments, to the parent Service.

## **Evaluation Response**

The DLA comments are responsive.

**Recommendation C.2** The Director, DLA Criminal Investigations Activity, arrange needed training and/or take other action as necessary to ensure that DLA Criminal Investigations Activity investigators are familiar with, and adhere to requirements in, the following DoD policies:

- DoD Directive 5505.9, “Interception of Wire, Electronic, and Oral Communications for Law Enforcement,” April 20, 1995;
- DoD Instruction 5505.7, “Titling and Indexing of Subjects of Criminal Investigations in the Department of Defense,” May 14, 1992;
- DoD Instruction 5505.11, “Fingerprint Cards and Final Disposition Report Submission Requirements,” December 1, 1998; and
- DoD Directive 1030.1, “Victim and Witness Assistance,” November 23, 1994, and DoD Instruction 1030.2, “Victim and Witness Assistance Program,” December 23, 1994.

## **Management Comments**

DLA concurred and advised that its estimated completion date for actions is October 1, 2001.

## **Evaluation Response**

The DLA comments are responsive.



# Appendix A. OIG, DoD Memorandum Regarding DLA Investigative Jurisdiction



(Criminal Investigative  
Policy and Oversight)

INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
400 ARMY NAVY DRIVE  
ARLINGTON, VIRGINIA 22202-2804



FEB 4 1994

MEMORANDUM FOR STAFF DIRECTOR, COMMAND SECURITY  
DEFENSE LOGISTICS AGENCY

SUBJECT: Investigative Jurisdiction

On November 18, 1993, the Deputy Inspector General, Department of Defense, issued a memorandum, SUBJECT: Interim Guidance Regarding Criminal Investigations of Fraud Offenses by Defense Criminal Investigative Organizations. That memorandum contained clarifying language regarding investigative responsibility for a number of Defense Agencies and components, including the Defense Reutilization and Marketing Service. Consideration was given to issuing a complete revision of DoD Instruction 5505.2, "Criminal Investigations of Fraud Offenses," replacing the July 16, 1990, version of that Instruction. The memorandum was issued in lieu of a revision of the Instruction partially because of the establishment of the Advisory Board on the Investigative Capability of the Department of Defense. Consolidation of the investigative functions within the Department is a major topic of study this Board will address.

In 1990, at the time of the last revision of DoD Instruction 5505.2, this office reached an agreement with the Office of General Counsel, Defense Logistics Agency (DLA) to allow DLA Command Security to conduct investigations of certain criminal allegations that were declined by the Defense Criminal Investigative Organizations (DCIOs). The agreement was reached because of the DLA concept of centralized control of the criminal investigative function, which is consistent with the operation of the DCIOs and to meet a need identified by the Director, DLA in support of his mission. The DLA Regulation 5700.8, "Conduct of Investigations by DLA Criminal Investigators" was changed to reflect that centralization.

Should your Agency, at any time prior to the re-issuance of DoD Instruction 5505.2, decide to decentralize the criminal investigative function, please notify this office prior to instituting any formal changes.

*Joel L. Leson*  
for Joel L. Leson  
Assistant Inspector General  
for Criminal Investigative  
Policy and Oversight



## **Appendix B. DCIA Resident Offices**

### **DCIA-C (General Investigations Resident Offices)**

- Ft. Belvoir, Virginia
- Boston, Massachusetts
- Columbus, Ohio
- Stockton, California
- Los Angeles, California

### **DCIA-E (Europe Resident Office)**

- Wiesbaden, Germany

### **DCIA-T (Trade Security Control Resident Offices)**

- Atlanta, Georgia
- Battle Creek, Michigan
- Ft Belvoir, Virginia
- Memphis, Tennessee
- Columbus, Ohio
- Ogden, Utah
- Pacific (Hawaii)



## Appendix C. Evaluation Results -- Random Case Sample

DLA provided a COSACS “data dump” for investigative cases closed between January 1, 1996, and February 28, 1999. After performing necessary data conversions, we had OIG statisticians select a statistically valid, random sample from DLA’s closed cases for the 38-month period for detailed case evaluations. This selection resulted in a 100 case random sample upon which determinations could be made with  $\pm 10$  percent reliability.

The 100 case random sample selected for detailed evaluation involved 151 investigative subjects. However, 64 percent of the sample (64 cases involving 68 investigative subjects) were not criminal investigations with supporting investigative case files. In addition, 4 investigations involving 10 subjects were essentially duplicative case files.<sup>30</sup> Our detailed evaluations were limited to actual investigations with supporting investigative files, which totaled 32 cases and 73 investigative subjects (32 percent and 48 percent, respectively, of the cases and investigative subjects included in the sample). We evaluated these cases to determine:

- the specific criminal violations/offenses investigated by DLA investigators;
- the extent to which DLA investigators use generally recognized criminal investigative techniques;
- the extent to which DLA investigators present their cases to Federal, state and local prosecutors;
- the extent to which DLA investigations are conducted jointly with other agencies; and
- the criminal, civil, and administrative remedies that result from DLA investigations, including:
  - the estimated Government losses resulting from the crimes and the amounts recovered as a result of the investigations; and
  - the administrative, including disciplinary, actions taken against DLA investigative subjects.

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<sup>30</sup> One DCIA case involved a supervisor and two employees falsely certifying that equipment sold for scrap had been de-militarized. The case involved various equipment or metals and various sales transactions. DCIS treated each scrap sale transaction as a violation and established a separate case file for the violation. The case files, however, were essentially duplicates even though each contained a Report of Investigation. For example, the cases resulted in one employee administrative action for each subject, which was the basis for closing all the case files. For our purposes, we treated these cases as one investigation involving three subjects.

## DLA Investigative Subjects

Most DLA criminal investigative subjects (89.04 percent) are DLA employees or military members assigned to work at DLA.

**Table 2**  
**Type of Investigative Subjects**

Subject Type	Subjects	
	No	%
DLA Employee *	65	89.04%
Contractor	4	5.48%
Civilian	3	4.11%
Contractor Employee	1	1.37%
<b>Total</b>	<b>73</b>	<b>100.00%</b>

\* Includes two military members assigned to work at DLA

## Criminal Violations/Offenses Investigated by DLA Investigators

DLA investigates more cases that deal with employee standards of conduct (21.9 percent of cases and 12.3 percent of subjects) than any other type case. The next highest case category, False Statements, is 12.5 percent of total cases and 5.5 percent of total subjects.

**Table 3**  
**Types of Offenses Investigated**

Offense		Cases		Subjects	
Code	Description	No.	%	No.	%
9000	Standards of Conduct	7	21.88%	9	12.33%
9A05	False Statements	4	12.50%	4	5.48%
8C04	Security Trade Control Violations	3	9.38%	8	10.96%
7F0D	Larceny, Government Funds	3	9.38%	3	4.11%
7I00	Wrongful Sale/Diversion (Government Property)	2	6.25%	9	12.33%

*Appendix C. Evaluation Results—Random Case Sample*

9A07	Time & Attendance/Leave Violations	2	6.25%	2	2.74%
9B03	Gambling	1	3.13%	23	31.51%
4B00	Security Violation/Sabotage	1	3.13%	4	5.48%
7F0C	Larceny, Government Property (Over \$100)	1	3.13%	2	2.74%
8A01	ADP Irregularities/Other	1	3.13%	2	2.74%
5C03	Assault, Simple	1	3.13%	1	1.37%
5Q0B	DWI (Drugs/Alcohol)	1	3.13%	1	1.37%
9A06	Fraudulent Travel Claims	1	3.13%	1	1.37%
600B	Sex Crimes (Involving Adult)	1	3.13%	1	1.37%
8B01	Progress Payments	1	3.13%	1	1.37%
9A11	False Claims	1	3.13%	1	1.37%
5S00	Communications Incidents (Threat/Demonstration)	1	3.13%	1	1.37%
<b>Totals</b>		<b>32</b>	<b>100.00%</b>	<b>73</b>	<b>100.00%</b>

### **Extent To Which DLA Investigators Routinely Use Generally Recognized Criminal Investigative Techniques**

DLA investigators routinely use some, but not all, generally recognized criminal investigative techniques.

**Table 4  
Generally Recognized Investigative Techniques  
That DLA Investigators Use Routinely**

Investigative Technique	Subjects Used On	
	No	%
DCII Check	72	99%
Records Review	72	99%
Witness Interview	61	84%

DLA investigators also generally use surveillance in cases where this technique is applicable:

- Time and Attendance investigations (100 percent of the subjects);
- Larceny of Government Property--Over \$100 (100 percent of the subjects); and
- False Claims (100 percent of the subjects).

DLA investigators also conducted Electronic Surveillance in one investigation.<sup>31</sup> Based on total investigations, however, surveillance is not an investigative technique that is used routinely.

**Table 5**  
**Generally Recognized Investigative Techniques**  
**That DLA Investigators Do Not Use Routinely**

Investigative Technique	Subjects Used On	
	No.	%
Surveillance	11	15%
National Crime Information Center (NCIC) Check	2	3%
Crime Lab Analysis	2	3%
Sting Operation	1	1%
Search Warrant	0	0%
Arrest Warrant	0	0%
Polygraph Examination	0	0%

## **Extent To Which DLA Investigators Present Their Cases To Federal, State And Local Prosecutors**

DLA investigators generally presented their cases to DLA counsel (78 percent of the subjects). However, they rarely presented their cases to criminal prosecutors (8 percent of the subjects) and court results were rare in DLA cases (4 percent of the subjects).<sup>32</sup>

## **Extent To Which DLA Investigations Are Conducted Jointly With Other Agencies**

Investigations that DLA conducted jointly with other agencies represented 34 percent of the cases and 33 percent of the subjects in our random sample. The joint investigations involved the following offenses.

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<sup>31</sup> The investigator requested and received authorization from an Assistant United States Attorney before using this technique. However, as discussed in the report, use of this investigative technique was contrary to DoD policy.

<sup>32</sup> None of the cases in the sample involved Rule 6(e) Grand Jury Information.

**Table 6**  
**Violations/Offenses Involved In DLA Joint Investigations**

Violation/Offense	Joint Investigations (% of Offense Total)	
	Cases	Subjects
Wrongful Sale/Diversion (Government Property)	100%	100%
Progress Payment	100%	100%
Security Trade Control Violation	67%	88%
False Statement	50%	50%
Standards of Conduct	43%	44%
Larceny, Government Funds	33%	33%

In contrast, nonjoint DLA investigations involved the following offenses:

- Assault, Simple;
- ADP Irregularities/Other;
- Communications Incidents Threat/Demonstration ( 1 case, 1 subject--threatening coworkers);
- DWI (Drugs/Alcohol);
- False Claims;
- Fraudulent Travel Voucher;
- Gambling;
- Larceny, Government Property (Over \$100);
- Security Violation/Sabotage (1 case, 4 subjects--exchanged computer password);
- Sex Crime Involving Adult (1 case, 1 subject--alleged to have committed adultery while on official duty travel—case administratively closed due to insufficient evidence); and
- Time & Attendance/Leave Violation.

## **Criminal, Civil And Administrative Remedies That Result From DLA Investigations**

### **Estimated Government Losses Resulting From The Crimes And The Amounts Recovered Through the Investigations**

As shown in the table below, overall, DLA investigations resulted in either court

recoveries or administrative recoveries that totaled 99.7 percent of the estimated Government losses resulting from the activities investigated.<sup>33</sup>

**Table 7**  
**Investigative Recoveries**

Type of Subject	No. of Subjects	Estimated Gov. Loss	Court Recoveries*	Administrative Recoveries
Civilian	3	\$32,074,306	\$9,500	\$32,074,306
Contractor	4	223,363	28,750	80,000
Contractor Employee	1	0	0	0
DLA Employee**	65	60,079	18,649	26,279
<b>Total</b>	<b>73</b>	<b>\$32,357,748</b>	<b>\$56,899</b>	<b>\$32,180,585</b>
<b>% Recovery</b>			<b>.2%</b>	<b>99.5%</b>

\* Fines, penalties, restitution and special assessments

\*\* Includes 2 military members assigned to work at DLA

However, both the estimated Government losses and investigative recoveries are substantially influenced by one investigation, which was not typical of day-to-day DLA investigations.<sup>34</sup> The table below shows the same data after excluding this investigation.

**Table 8**  
**Investigative Recoveries Excluding Atypical Case**

Type of Subject	No. of Subjects	Estimated Gov. Loss	Court Recoveries*	Administrative Recoveries
Civilian	3	\$0	\$9,500	\$0
Contractor	4	223,363	28,750	80,000
Contractor Employee	1	0	0	0
DLA Employee**	65	60,079	18,649	26,279

<sup>33</sup> Estimated Government losses for equipment recoveries are valued at original acquisition cost, which may exceed significantly the current fair market value.

<sup>34</sup> This investigation, case number T920872, represents 99.1 percent of the total estimated loss and 99.5 percent of the total recoveries. In this regard, we note that DLA included the recovery involved in this case in COSACS, but did not include the amount as an estimated Government loss. According to DLA, the Government property involved was seized before being unloaded from a contracted Government hauler to avoid reloading costs and, while the property was never physically removed from Government control, it was recovered. We cannot accept this position. It is not possible to recover property that was not lost. Accordingly, we treated the property as both a loss and a recovery for our purposes. The only alternative would have been to treat it as a “loss avoidance” and exclude it from recoveries.

<b>Total</b>	<b>73</b>	<b>\$283,442</b>	<b>\$56,899</b>	<b>\$106,279</b>
<b>% Recovery</b>			<b>20.1%</b>	<b>37.5%</b>

\* Fines, penalties, restitution and special assessments

\*\* Includes two military members assigned to work at DLA

As can be seen in this table, which better portrays the financial consequences of DLA’s day-to-day investigative results, DLA recovers a substantial portion (20.1% + 37.5% = 57.6 percent) of the estimated Government losses resulting from the activities investigated. Court-ordered fines, penalties, restitution and special assessments accounted for 35 percent of the total recoveries and administrative recoveries accounted for the remaining 65 percent.

### Administrative, Including Disciplinary, Actions Taken Against DLA Investigative Subjects

DLA investigations result primarily in either no action against the investigative subject (12 percent of the subjects) or employee disciplinary actions (60 percent of the subjects).<sup>35</sup> In addition, most of the disciplinary actions taken are verbal or written reprimands (84 percent of the subjects with disciplinary actions).<sup>36</sup> In more serious employee disciplinary cases, employees are generally allowed to resign or retire, rather than face removal from Federal service.

**Table 9**  
**Types of DLA Investigative Results**

Investigative Results	Cases		Subjects	
	No.	Percent	No.	Percent
<b>Administrative Action</b>	<b>15</b>	<b>47%</b>	<b>44</b>	<b>60%</b>
Verbal Reprimand	1	7%	19	43%
Written Reprimand	9	60%	18	41%
Total Reprimands	10	67%	37	84%
Suspension from Work	1	7%	3	7%
Job Reassignment	2	13%	2	5%
Resignation	1	7%	1	2%
Retirement	1	7%	1	2%
<b>Total Administrative</b>	<b>15</b>	<b>100%</b>	<b>44</b>	<b>100%</b>

<sup>35</sup> As can be seen in Table 9, employee discipline represented the only type of administrative action that resulted from DLA investigations.

<sup>36</sup> Some actions were not completed on subjects at the time of our fieldwork -- 13 percent of the cases in our random sample did not have final action reports.

*Appendix C. Evaluation Results—Random Case Sample*

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No Action Taken	6	19%	9	12%
Allegation(s) Unsubstantiated	4	13%	7	10%
Court Action	3	9%	3	4%
Final Action Report Not Received	4	13%	10	14%
<b>Total</b>	<b>32</b>	<b>100%</b>	<b>73</b>	<b>100%</b>

## **Extent To Which DLA Investigations Substantiate The Allegations**

Neither the investigative case tracking system, COSACS, nor individual investigative case files specifically identify whether an investigation substantiated the allegation(s) investigated. However, they do identify when the investigation did not substantiate the allegation(s).<sup>37</sup> For our random sample, this data indicated that 13 percent of the cases (4 cases involving 7 subjects, or 10 percent of the total subjects) were closed as unsubstantiated (See Table 9).

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<sup>37</sup> COSACS includes a “Violations” data field. When investigation does not substantiate that a violation occurred, the initial data entry in this field is deleted.

## Appendix D. DCIA Overtime and Comptime

**Table 10**  
**DLA Overtime and Comptime Cost**  
**Compared to**  
**What LEAP Would Have Cost**  
**(By Criminal Investigator and Total)**

Period Ended 1/30/1999*					Period Ended 1/29/2000*			
No **	Regular Pay	LEAP @ (25%)	Comptime Overtime \$	Comptime Overtime %	Regular Pay	LEAP @ (25%)	Comptime Overtime \$	Comptime Overtime %
1	\$53,460	\$13,366	\$10,231	19.14%	\$58,873	\$14,718	\$13,243	22.49%
2	\$53,370	\$13,342	\$9,208	17.25%	\$59,906	\$14,976	\$9,445	15.77%
3	\$50,790	\$12,698	\$7,607	14.98%	\$59,570	\$14,893	\$9,292	15.60%
4	\$59,263	\$14,816	\$8,062	13.60%	\$57,398	\$14,349	\$7,970	13.89%
5	\$53,080	\$13,270	\$6,901	13.00%	\$53,766	\$13,442	\$7,456	13.87%
6	\$52,962	\$13,240	\$5,782	10.92%	\$60,054	\$15,014	\$7,067	11.77%
7	\$52,921	\$13,230	\$5,619	10.62%	\$62,743	\$15,686	\$6,411	10.22%
8	\$17,863	\$4,466	\$1,762	9.86%	\$59,165	\$14,791	\$5,071	8.57%
9	\$74,001	\$18,500	\$6,161	8.33%	\$49,615	\$12,404	\$4,163	8.39%
10	\$59,608	\$14,902	\$3,792	6.36%	\$77,435	\$19,359	\$6,468	8.35%
11	\$43,298	\$10,824	\$2,741	6.33%	\$58,820	\$14,705	\$4,734	8.05%
12	\$51,137	\$12,784	\$2,886	5.64%	\$66,466	\$16,616	\$4,662	7.01%
13	\$50,256	\$12,564	\$2,552	5.08%	\$62,728	\$15,682	\$3,641	5.80%
14	\$52,706	\$13,177	\$2,664	5.06%	\$55,117	\$13,779	\$2,830	5.13%
15	\$83,322	\$20,830	\$4,084	4.90%	\$52,690	\$13,172	\$1,974	3.75%
16	\$54,573	\$13,643	\$1,867	3.42%	\$59,039	\$14,760	\$1,871	3.17%
17	\$58,702	\$14,676	\$1,855	3.16%	\$92,741	\$23,185	\$2,722	2.93%
18	\$59,110	\$14,778	\$1,668	2.82%	\$67,456	\$16,864	\$1,745	2.59%
19	\$56,003	\$14,001	\$1,542	2.75%	\$62,670	\$15,668	\$626	1.00%
20	\$54,394	\$13,599	\$982	1.80%	\$60,214	\$15,054	\$281	0.47%
21	\$55,523	\$13,881	\$790	1.42%	\$57,795	\$14,449	\$128	0.22%
22	\$56,995	\$14,249	\$608	1.07%	\$34,227	\$8,557	\$0.00	0.00%

23	\$20,362	\$5,090	\$113	0.56%				
24	\$62,974	\$15,743	\$285	0.45%				
<b>Tot</b>	<b>\$1,286,678</b>	<b>\$321,670</b>	<b>\$89,760</b>	<b>6.98%</b>	<b>\$1,203,343</b>	<b>\$300,836</b>	<b>\$89,362</b>	<b>7.43%</b>

\* 26 Pay Periods

\*\* GS-1811 Criminal Investigators

**Table 11**  
**DLA Overtime and Comptime Cost**  
**Compared To**  
**What LEAP Would Have Cost**  
**(Total)**

Period Ended	LEAP Would Have Cost	Actual Comp/Overtime Cost	LEAP Would Have Cost More	
			Amount	Percent
1/30/1999 *	\$321,670	\$89,760	\$231,910	72.1%
1/29/2000 *	\$300,836	\$89,362	\$211,474	0.70
<b>Total – Amount</b>	<b>\$622,505</b>	<b>\$179,122</b>	<b>\$443,383</b>	<b>71.2%</b>
<b>Total – Percent **</b>	<b>25.0%</b>	<b>7.2%</b>		

\* 26 Pay Periods

\*\* Percentage of salary without LEAP or Comptime/Overtime

# **Appendix E. Report Distribution**

## **Office of the Secretary of Defense**

None

## **Department of the Army**

Assistant Secretary of the Army (Financial Management and Comptroller)\*  
Inspector General, Department of the Army  
Commander, U.S. Army Criminal Investigation Command\*

## **Department of the Navy**

Naval Inspector General\*  
Director, Naval Criminal Investigative Service\*

## **Department of the Air Force**

Assistant Secretary of the Air Force (Financial Management and Comptroller)\*  
Inspector General, Department of the Air Force  
Commander, Air Force Office of Special Investigations\*

## **Other Defense Organizations**

Director, Defense Criminal Investigative Service\*

## **Non-Defense Federal Organizations and Individuals**

None

\* Recipient of draft report



# Appendix F. Management Comments



IN REPLY  
REFER TO

DLA-DE

**DEFENSE LOGISTICS AGENCY**  
HEADQUARTERS  
8725 JOHN J. KINGMAN ROAD, SUITE 2533  
FT. BELVOIR, VIRGINIA 22060-6221

SEP 11 2000

MEMORANDUM FOR THE ASSISTANT INSPECTOR GENERAL FOR CRIMINAL INVESTIGATIONS, OFFICE OF THE INSPECTOR GENERAL DEPARTMENT OF DEFENSE

SUBJECT: Draft Report on the Evaluation of Criminal Investigative Activities Performed by the Defense Logistics Agency

I am forwarding the Defense Logistics Agency 's response for subject audit report for your consideration. The subject report has six recommendations, we nonconcur with the first recommendation and concur with the remaining five recommendations. Our estimated completion date for the five recommendations we concur with is October 1, 2001.

If you have any question or concerns please contact Doye Hambrick, DI, (703) 767-5440.

  
GARY S. THURBER  
Executive Director

Attachment

Federal Recycling Program  Printed on Recycled Paper

DCIA  
SUBJECT: DLA review and comment on DoD IG Draft Report on the  
Evaluation of Criminal Investigative Activities  
Performed by the Defense Logistics Agency (Project No.  
9850021K)

July 27, 2000

**RECOMMENDATION A.1 (Pg. 15)**

DLA COMMENTS: Nonconcur with CIPO's recommendation to reclassify current criminal investigator positions (GS-1811 series) to general investigator positions (GS-1810 series). DLA's current staffing classifications for GS-1811 and GS-1810 meet current mission requirements. DLA reserves the right to adjust its GS-1811 and GS-1810 position mixture should its mission requirements change.

Discussion: At the outset of an investigation, it is impossible to know whether the alleged misconduct constitutes criminal behavior or, if criminal, whether the conduct meets Office of the United States Attorney (OUSA) thresholds for prosecution in a particular district. If an investigator does not have knowledge of the criminal laws and Federal Rules of Criminal Procedure, which apply to crimes against the United States, then the **general investigator** may handle evidence in a fashion affecting its admissibility in a criminal proceeding. Additionally, a **general investigator** may not be familiar with search and seizure rules and procedures or arrest authority or the methods and patterns of criminal operations.

The CIPO report (Reference Paragraph A, Part II, Page 8, CIPO Draft Report) concludes that because an investigation results in administrative disciplinary action, the investigation was an administrative investigation. The difficulty with this conclusion is that the outcome of an investigation should not dictate what type of investigator should conduct the investigation. When evaluating allegations, one cannot always divine the end result at the beginning. Additionally, the resolution of criminal conduct depends on many factors. A U.S. Attorney declination to prosecute does not mean that the employee who engaged in time and attendance fraud or the employee who filed a false PCS travel claim did not commit a crime. It does mean that the local U.S. Attorney had other prosecutorial criteria, a heavy caseload, or other priorities. For example,

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\$100,000 serves as the threshold for prosecution in many Federal District Courts. Other Federal Districts may focus on health care fraud, drug cases or violent crimes.

The subject matter of an investigation determines its nature. If the investigation concerns a violation of Federal criminal law, it is usually a criminal investigation. DLA's experience with travel fraud provides useful examples. The U.S. Attorney in Richmond, Virginia, accepted a DCIA investigation of travel fraud for prosecution. Two similar investigations by DCIA were prosecuted in Grand Rapids and Lansing, Michigan. These completed investigations did not become "criminal" investigations when the U.S. Attorney accepted them for prosecution. The U.S. Attorneys in other districts declined prosecution of travel fraud notwithstanding a DCIA completed investigation. Because DCIS routinely declines to investigate those matters declined for prosecution by a U.S. Attorney, DLA was required to resolve these types of matters internally. In fact, DLA established its criminal investigative activity in order to investigate the less significant fraud or misconduct declined by the DCIOs or DCIS.

In 1986, DLA addressed the issue of how to proceed when the U.S. Attorney declined to prosecute. The DLA General Counsel recommended against DLA participation in the U.S. Magistrate Court System because administrative remedies afforded DLA greater flexibility.

Frequently, an administrative remedy can make the agency whole even in the absence of criminal prosecution. In one of the cases mentioned above, the subject was prosecuted in Federal Magistrate's court after DCIS had assumed investigative jurisdiction following a DCIA investigation. The Magistrate's Court convicted the defendant of a misdemeanor and ordered restitution of \$3,179.57. Had the matter been resolved administratively, DLA could have recovered an unliquidated travel advance for an additional \$8,910.75. As the court decision precluded the Government from any further collection action, the Government did not recover almost \$6,000 that it could have recovered administratively.

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DLA initiates every investigation of potentially criminal conduct with the assumption that a criminal prosecution may result. DLA needs investigators with the knowledge, skills and ability to conduct criminal investigations. CIPO commented that DCIA investigators did not employ the full range of investigative techniques of which a criminal investigator is capable of investigating. Not every investigator employs a full range of investigative techniques in every criminal case.

As OPM states, *"The specific techniques applied and the functions performed by investigators differ with agency missions. Thus, the techniques and knowledge applied by the undercover narcotics agent are different from the techniques and knowledge applied by the investigator seeking information regarding the suitability of a person for employment in a position of trust, and these, in turn, differ from those applied by the investigator examining tax records in search of evidence indicating intent to defraud."*

OPM also says that, *"All Federal investigators perform fact-finding and reporting duties on assignments that normally unfold over a period of time. The key distinctions between the general and criminal investigating occupations lie in the different kinds of investigations performed by each and the different knowledge, skills, and abilities those different kinds of investigations impose."*

The CIPO report analysis relied on a statistically valid sample of cases and concluded that most of the cases resulted in an administrative remedy. Several of the 32 cases examined by CIPO may have included investigations performed by personnel assigned at the post, camp, or station level by detectives, GS-1810s, or DoD Police. This suspicion is based on CIPO's listing of nonjoint investigations, which included DWI, and which DCIA has never investigated. As CIPO did not provide a listing of the case numbers CIPO randomly selected from the data, DLA was unable to conduct its own analysis of the same cases. CIPO possibly included investigations conducted by non-DCIA investigators. By

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way of further examination, DLA reviewed DCIA reports of investigation (ROIs) conducted during 1999. DLA's review of all 64 closed cases reveals that three quarters concerned criminal conduct. Specifically, 48 ROIs dealt with violations of Title 18 or with violations of the UCMJ. Of the 64 ROIs, only one was unfounded. Of the 64 total ROIs in 1999, 42 (66%) used investigative techniques beyond the standard interview and interrogation normally employed by a general investigator. In 21 (33%) of the cases, DCIA used investigative techniques that included surveillance and photography. CIPO's evaluation identified surveillance as being used in only 15% (+/- 10%) of investigations. Other investigative techniques used by DCIA investigators included coordination with other Law Enforcement or Investigative organizations during 14 (22%) of the investigations, forensic computer examination during 12 (19%) of the investigations, Internet data searches during 7 (11%) of the investigations, evidence seizure during 6 (9%) of the investigations, forensic laboratory analysis during 1 (1.5%) of the investigations, and polygraph during 1 (1.5%) of the investigations. A copy of the spreadsheet used in the analysis of the 1999 DCIA-conducted investigations is at Attachment- 1.

While CIPO's statistics may be accurate in terms of **DLA** investigations, **DLA** maintains they are inaccurate in terms of **DCIA** investigations as evidenced by DCIA's analysis cited in the paragraph above. **DLA** concludes that the primary duties of its criminal investigators require the knowledge, skill, and abilities required for a GS-1811 Criminal Investigator.

Employment of criminal investigators costs no more and ensures that investigation of potentially criminal conduct is done by criminal investigators who have the skills, knowledge and experience to properly finish those investigations in a fashion which will merit criminal prosecution where appropriate and enable DLA to take timely and effective administrative action where criminal prosecution is declined. In the case of military members, using criminal investigators to conduct the preliminary investigative inquiries ensures that law enforcement personnel of

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the parent service will take DLA investigative conclusions seriously. DLA can rely upon those investigative results when it requests the military service to accept the return of the service member to parent service control for initiation of action under the UCMJ.

In conclusion, DLA's organization of work and the assignment of duties and responsibilities to positions are the responsibilities of agency managers and supervisors. This includes the requirement to assure that work is organized in an efficient and cost-effective manner and that the skills and abilities of employees are used to the fullest extent possible.

**DISPOSITION:**

Action is considered complete.

**RECOMMENDATION A.2 (Pg. 15)**

DLA COMMENT: Concur.

DISPOSITION: Action completed.

**RECOMMENDATION B.1 (Pg 19)**

DLA COMMENTS: Concur.

**DISPOSITION:**

October 1, 2001 set as the estimated completion date.

ACTION OFFICER: Hambrick  
REVIEW/APPROVAL: DI  
COORDINATIONS: ED/DG

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**RECOMMENDATION B.2 (Pg 19)**

DLA COMMENT: Concur

DISPOSITION:

October 1, 2001 set as the estimated completion date.

ACTION OFFICER: Hambrick  
REVIEW/APPROVAL: DI  
COORDINATIONS: ED/DG

**RECOMMENDATION C.1 (Pg 25)**

DLA COMMENT: Concur

DLA notes that it may not initiate judicial or nonjudicial proceedings against any service member due to its lack of UCMJ authority. DLA defers to the parent service for consideration of judicial or nonjudicial punishment and compliance with appropriate DoD Directives and Instructions. To that extent, DCIA reports of investigation serve as the basis for the DLA Director's decision to return a service member to their parent service. DCIA reports are subsequently forwarded to the parent service for consideration of judicial or nonjudicial punishment. Historically, DCIA reports of investigation have served as the basis for further investigation by the MCIOs prior to initiation of judicial or nonjudicial punishment.

DISPOSITION:

October 1, 2001 set as the estimated completion date.

ACTION OFFICER: Hambrick  
REVIEW/APPROVAL: DI  
COORDINATIONS: ED/DG

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**RECOMMENDATION C.2 (Pg 25)**

DLA COMMENTS: Concur

DISPOSITION:

October 1, 2001 set as the estimated completion date.

ACTION OFFICER: Hambrick  
REVIEW/APPROVAL: DI  
COORDINATIONS: ED/DG

## **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.

***Jack L. Montgomery, Project Manager***

***Thomas Gribben, Criminal Investigator***

***Ms. Nakita Pounds, Investigative Review Specialist***