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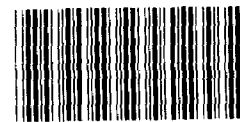
Report To The Chairman, Committee On Governmental Affairs, United States Senate OF THE UNITED STATES

DOD Can Combat Fraud Better By Strengthening Its Investigative Agencies

Army, Navy, and Air Force criminal investigators could fight fraud better if they

- emphasized detecting and preventing serious fraud,
- investigated fraud without first seeking management's approval,
- assessed the adequacy of actions taken on their findings, and
- were more independent organizationally from activities they must investigate.

Also, the Congress could strengthen the Department of Defense's efforts to fight fraud by enacting legislation to extend U.S. criminal jurisdiction to cover U.S. citizen employees accompanying the Armed Forces overseas.



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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON D.C. 20548

B-186178

The Honorable William V. Roth, Jr.
Chairman, Committee on Governmental
Affairs
United States Senate

Dear Mr. Chairman:

This report is in response to your May 24, 1982, request that we review efforts of the Army, Navy, and Air Force criminal investigative agencies to combat fraud. The report discusses (1) areas in which the criminal investigative agencies are concentrating their resources, (2) problems facing fraud investigators, and (3) investigators' independence.

We did not obtain official agency comments on this report. As arranged with your office, unless you publicly announce its contents earlier, we plan no further distribution of this report until 30 days from its date. At that time, we will send copies to interested parties and make copies available to others upon request.

Sincerely yours,

A handwritten signature in cursive script that reads "Charles A. Dowsley".

Comptroller General
of the United States

D I G E S T

The Department of Defense has four separate criminal investigative agencies to prevent, detect, and investigate fraud in the Department's operations.

The Congress acted in 1982 to strengthen efforts to eliminate fraud from Defense programs by creating an Inspector General modeled after those in civilian departments and agencies. The Inspector General directs the operations of one of the Department's criminal investigative agencies. The other three agencies, located in the Departments of the Army, Navy, and Air Force, will get policy guidance and oversight from the Defense Inspector General, but will continue their separate fraud investigative programs.

At the request of the Chairman, Senate Committee on Governmental Affairs, GAO examined the need to strengthen Defense's efforts to combat fraud in the Army, Navy, and Air Force. GAO evaluated the emphasis placed on fraud, problems facing fraud investigators, and the independence of criminal investigative agencies in the Army, Navy, and Air Force.

GREATER EMPHASIS SHOULD BE
PLACED ON DETECTING AND
PREVENTING SIGNIFICANT FRAUD

One way these agencies can strengthen their fraud investigations is to limit their investigations to cases involving significant allegations. For example, GAO's sample of the three agencies' fraud investigations during the first 6 months of fiscal 1981 showed 62 percent pertain to frauds involving under \$500, or no known losses. Only 4 percent involve losses over \$5,000. GAO concluded that minor allegations can usually be handled by the military police or program managers rather than criminal investigators. (See p. 5.)

One more worthwhile use of criminal investigator resources is to conduct fraud prevention surveys of Defense operations most susceptible to significant fraud. These surveys, already used extensively by the Army investigators and less often by the Navy and Air Force investigators, are specifically designed to use an investigator's knowledge of how fraud can occur in order to detect it and eliminate conditions that foster it. GAO also recognizes there are other worthwhile uses of the criminal investigator resources, such as increased emphasis on investigation of significant fraud. (See p. 8.)

PROBLEMS FACING
FRAUD INVESTIGATORS

Some problems hinder criminal investigators in pursuing fraud in Defense programs. The Navy and Air Force require their criminal investigators to seek a commanding officer's request to conduct an investigation before it can proceed. In addition, Army investigators must receive approval before they can investigate high ranking officials. GAO cites instances in the Air Force when this practice has restricted investigators. (See p. 12.)

Further, Defense's uncertainty about applying an 1878 law, the Posse Comitatus Act, that was designed to keep military personnel from enforcing civilian laws, has restricted criminal investigators' pursuit of fraud. The Congress, however, recently took action in its passage of the Inspector General legislation that may remedy the difficulties. (See p. 15.)

Also, a criminal investigator is hindered by virtually nonexistent U.S. legal jurisdiction over the 340,000 civilians accompanying the Armed Forces overseas. GAO previously reported this problem, and recommended that the Congress enact legislation to extend criminal jurisdiction over U.S. civilian employees. GAO believes its earlier recommendation remains valid. (See p. 17.)

The investigators also do not follow up to see if there is an adequate response to their findings. Usually the investigator's report is turned over to a commanding officer who decides whether there will be any further action. In GAO's view, an investigator's assessment of the actions taken would enhance ac-

countability. However, officials in the Army, Navy, and Air Force investigative agencies view their agencies' role to be only "fact finders." (See p. 18.)

INVESTIGATORS DO NOT
HAVE THE INDEPENDENCE OF
INSPECTORS GENERAL

Efforts to combat fraud in the Department of Defense could also be strengthened if the criminal investigators were more independent of operations. The Congress mandated independent investigative organizations when it created the inspector general organizations in major civilian departments and now in the Department of Defense. Compared with the inspector general organizations, the criminal investigators who investigate fraud in the Army, Navy, and Air Force are less independent of operations. For example, the top managers in two of the investigative agencies rotate in and out of noninvestigative operations. Also, these investigative agencies are lower in the organizational structure than inspectors general in other departments. (See p. 22.)

RECOMMENDATIONS

GAO recommends that:

- The Department of Defense Inspector General issue guidelines that will enable the criminal investigators to investigate only significant fraud allegations and to use a larger proportion of DOD investigative resources for other work, such as fraud prevention surveys. (See p. 11.)
- The Secretary of Defense direct the Secretaries of the Army, Navy, and Air Force to authorize their investigative agencies to pursue an investigation without first seeking command approval and to follow up to assess the adequacy of actions taken after the investigations are completed. (See p. 20.)
- The Secretary of Defense make organizational changes to make the Defense criminal investigators more independent. GAO proposes three alternatives and recognizes the potential of other approaches. (See p. 29.)

--The Congress enact legislation to extend criminal jurisdiction over U.S. citizen civilian employees and dependents accompanying the Armed Forces overseas. (See p. 21.)

GAO did not obtain official agency comments on this report. However, GAO did discuss its findings with Defense officials and considered their comments in preparing this report.

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ABBREVIATIONS

DCAA	Defense Contract Audit Agency
DOD	Department of Defense
FBI	Federal Bureau of Investigation
GAO	General Accounting Office

CHAPTER 1

INTRODUCTION

The Department of Defense (DOD) has programs designed to reduce fraud within its operations. Four DOD criminal investigative agencies are responsible for detecting, preventing, and investigating fraud and related crimes; one is in each military branch and one is under the DOD Inspector General.

We evaluated the fraud work conducted by the agencies in the Army, Navy, and Air Force. We did not review the DOD Inspector General organization because it is relatively new.

A MISSION OF DOD'S CRIMINAL INVESTIGATORS IS TO PREVENT, DETECT, AND INVESTIGATE FRAUD

DOD's four criminal investigative agencies are the United States Army Criminal Investigation Command, the Air Force Office of Special Investigations, the Naval Investigative Service, and the Defense Criminal Investigative Service. Collectively, they possess criminal investigative jurisdiction for the entire Department. A profile of each of the three agencies that we reviewed is in appendix I.

One mission of the DOD investigative agencies is to detect, prevent, and investigate fraud. Fraud detection activities include using informants, referrals, and surveys of activities. Prevention efforts include surveys to identify fraud-conducive conditions, distribution of special publications warning managers about activities susceptible to fraud, and other educational efforts. Investigation activities include interviews, surveillance, examinations of records, and administration of polygraph tests.

The agencies also have other missions which make them different from the investigative portions of the civilian agency inspector general offices which primarily probe for fraud, waste, and abuse. For instance, the Army, Navy, and Air Force agencies investigate a wide range of other crimes from murder, arson, and treason, to illegal use of narcotics. The Air Force and Navy investigative agencies also engage in counterintelligence.

The agencies investigate crimes under two sets of laws, the Uniform Code of Military Justice being applicable to military personnel, and title 18 of the United States Code and other Federal criminal statutes being applicable to civilian personnel, contractors, and in some instances, military personnel.

NEWLY CREATED DOD OFFICE OF INSPECTOR GENERAL
HELPS COMBAT FRAUD, WASTE, AND ABUSE

Provisions in the 1983 Defense authorization act established a statutory DOD Inspector General patterned after the civilian agency Inspector General offices created by Public Law 95-452 (the Inspector General Act of 1978). This new legislation mandates that the Inspector General be appointed by the President with the advice and consent of the Senate. The Inspector General can perform audits and criminal investigations of fraud throughout DOD; recommend action to the Secretary and the Congress to correct fraud, abuses, and program deficiencies; and report the progress being made to implement the corrective action. The Inspector General's office also investigates "whistle blower" complaints.

The legislation gives the new Inspector General latitude to determine when and where to conduct audits and investigations. The only restrictions concern national security matters. The Congress allowed the Secretary of Defense to prohibit audits or investigations that could affect sensitive operational plans, intelligence or counterintelligence matters, other units' ongoing criminal investigations related to national security, and other matters which could constitute a serious threat to national security. Both the Secretary and Inspector General must send a report to certain congressional committees if the Secretary decides to prohibit an audit or investigation.

The legislation combines several existing DOD organizations under the Inspector General, including the Defense Audit Service, the Defense Criminal Investigative Service (formerly a part of the Defense Investigative Service), and the Defense Logistics Agency Office of Inspector General. The DOD Inspector General's office does not include auditors, inspectors general, or criminal investigators with the Army, Navy, and Air Force. Although the legislation does not combine all the investigative units with the DOD Inspector General's Office, it requires the DOD Inspector General to provide them policy guidance and oversight.

The Inspector General is authorized to investigate fraud throughout all branches of DOD, but Army, Navy, and Air Force criminal investigators will continue to play a very important role in combating fraud. For instance, the Army, Navy, and Air Force criminal investigators outnumber by 50 to 1 those working for the DOD Inspector General. For fraud investigations alone, the combined staff years of Army, Navy, and Air Force investigators and support personnel total about 1,000. Comparatively, the Defense Criminal Investigative Service under the new Inspector General is staffed with about 100 employees.

OBJECTIVES, SCOPE, AND METHODOLOGY

We conducted this review at the request of the Chairman, Senate Committee on Governmental Affairs. Our objectives were to (1) determine whether the Army, Navy, and Air Force investigative agencies concentrate their resources in the areas where fraud is most significant, (2) identify improvements which would enhance surveys designed to detect and prevent fraud, (3) identify policies, laws, or procedures that unnecessarily hamper the criminal investigators in detecting, preventing, or investigating fraud, and (4) evaluate the independence of the investigators in combating fraud.

To determine whether the agencies concentrate their resources in the areas where fraud is most significant, we randomly sampled 285 fraud investigation files from 4,217 cases which the Army, Navy, and Air Force investigative agencies had opened between October 1, 1980, and March 31, 1981, and closed by the time of our work in each agency. Our work was performed from October 1981 through June 1982. A discussion of our sampling results and their statistical reliability is in appendix II.

We sampled cases of "white collar crimes," which we defined as crimes involving attempts to circumvent agencies' internal controls. The samples were of crimes that the agencies categorized into pay and benefit fraud, bribery and kickbacks, procurement fraud, larceny by fraud (such as computer-related fraud), and morale-, welfare-, and recreation-related fraud (such as fraud involving nonappropriated fund activities). We chose not to sample investigations involving larceny or burglary because they are not usually described as white collar crimes, but we recognize that the Government can also lose substantial amounts from these crimes.

We also randomly sampled fraud prevention surveys and selected 134 survey reports from 898 reports that the agencies prepared between October 1, 1980, and March 31, 1981. We examined these surveys for characteristics which we thought may limit their value. The characteristics included limiting coverage of programs most susceptible to fraud, surveying similar activities without compiling a report covering departmentwide activities, and concentrating on noncompliance with regulations rather than identifying fraud conducive conditions and their underlying causes. We did not calculate the statistical reliability of our survey report sample, but our interviews with investigative officials responsible for the surveys confirmed that the characteristics we observed were common.

We reviewed previous studies and congressional hearings to identify policies, laws, and procedures that can hamper criminal investigators in fraud detection, prevention, or investigation.

We also interviewed numerous DOD officials within and outside the investigative agencies and a Department of Justice official. We used these sources to evaluate the independence of the criminal investigators and to identify organizational changes which would enhance their independence.

Our review was conducted primarily at the headquarters of the Army, Navy, and Air Force criminal investigative agencies, which are all in the Washington, D.C., area. In addition, we visited the following field offices of the investigative agencies because of their proximity to large installations:

- Fort Bragg, North Carolina (Army).
- Naval Shipyard, Norfolk, Virginia.
- Andrews Air Force Base, Washington, D.C.

This audit was conducted in accordance with generally accepted government audit standards.

We did not obtain official agency comments on this report. However, we did discuss its findings with Defense officials and considered their comments in preparing our report.

CHAPTER 2

EMPHASIS SHOULD BE SHIFTED TO

PREVENTION AND DETECTION OF SIGNIFICANT FRAUD

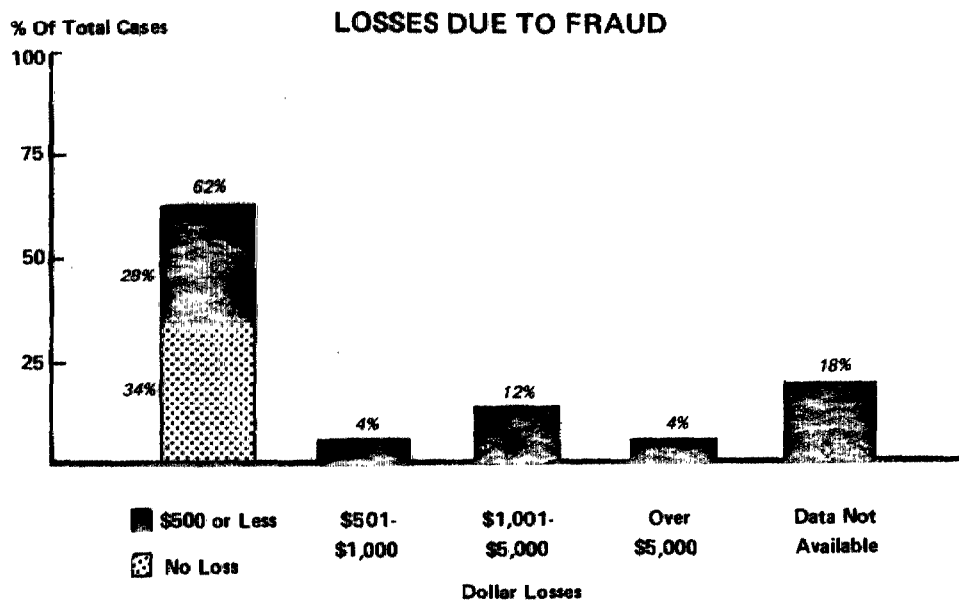
Criminal investigators in DOD often investigate rather minor fraud allegations. Though criminal investigators should not ignore them, minor fraud allegations may be more appropriately handled by commanding officers, military inspectors general, or the military police because courts-martial or Department of Justice prosecutions are unlikely and the matters can be dealt with administratively. A criminal investigator's time could be better used for preventing and detecting more serious fraud.

MUCH OF AN INVESTIGATOR'S FRAUD CASELOAD CONCERNS RELATIVELY MINOR MATTERS

Most Army, Navy, and Air Force fraud cases involve relatively minor allegations. We estimate that 2,599 cases, or 62 percent of the 4,217 fraud cases we reviewed, involve losses of \$500 or less, or not any losses. Only 4 percent of the fraud investigations involve losses of more than \$5,000. Sometimes, the allegations appear more serious than they turn out to be, but other times the investigators know beforehand that the losses are not significant. We cannot calculate how much these investigations cost because the agencies did not maintain records on individual investigations.

These allegations may be more appropriately dealt with by commanding officers, military inspectors general, or the military police because the investigations rarely lead to courts-martial or Department of Justice prosecution. Instead, the investigations often lead to administrative action. Based on our sampling, we estimate that 124 investigations (3%) of the fraud cases resulted in courts-martial and no individuals in our sample cases were prosecuted by the Department of Justice. However, we did not determine how many of the cases were referred to U.S. attorneys to accept or decline for prosecution. Another 264 investigations (6%) resulted in non-judicial military punishment by commanding officers, such as reductions in rank or fines, under the provisions of article XV of the Uniform Code of Military Justice. We further estimate that administrative action--usually by the military department--followed in 1,212 investigations (29%).

The chart on the next page shows how much the Government lost in fraud cases that we reviewed.



The following examples, selected from our random sample, detail fraud cases involving losses of \$500 or less, or no known losses, which were investigated by the criminal investigators in the Army, Navy, and Air Force.

- A serviceman filed a travel voucher for living quarters expenses. The travel office, identifying an overcharge, sent the voucher to the investigative agency, which found an overpayment of \$18. The individual denied any intent to defraud the Government while admitting that he had received excess reimbursement.
- An individual claimed excessive tips on his travel voucher. A travel section supervisor notified the investigative agency. The traveler admitted he had falsified his claim to receive maximum per diem. The amount overpaid was \$46.
- A serviceman prepared fraudulent promotion orders, which caused his payment for unused leave to be made at a higher rate. He received an excess \$222. Records management personnel uncovered the transaction and the offender was reprimanded.
- An employee was investigated for charging \$26 in unauthorized long distance telephone calls. The employee was warned and \$26 was recouped. In this case, other employees responsible for communications already knew the identity of the caller before the investigators were notified.

--A meat cutter at a commissary offered special butcher services during duty hours. Nothing indicated that he was paid by customers for the services. He was admonished, his personnel file was annotated, and other employees were warned not to engage in this practice. No money was lost.

--Theater cashiers bypassed internal control procedures and personally paid for shortages while not disclosing excess receipts from ticket sales. The Army-Air Force Exchange Service, which oversees the theaters initiated the investigation. Overages and shortages were about \$5. Investigators found there was no intent to steal. Proper controls were reinstated.

Why minor allegations are investigated

The charters of the investigative agencies grant them administrative authority to investigate allegations of those crimes which carry a potential punishment of 1 year or more in prison. Such penalties are prescribed by the United States Code and by the Uniform Code of Military Justice.

Also, the investigative agencies often probe minor allegations following requests by commanding officers, inspectors, and other DOD managers. The Navy and Air Force investigative agencies view themselves as "service" organizations and feel compelled to comply with these requests if the alleged crimes fall within their jurisdiction. We estimate that 1,591, or 42 percent, of the Navy and Air Force fraud investigations are initiated by such requests.

Navy investigative agency officials also told us that investigating some of these minor crimes was having a deterrent effect, but there is no way to document whether this was true.

Screening criteria could free fraud investigative resources for higher priority work

One approach available to reduce the fraud caseload and allow investigators to perform higher priority work is to use screening criteria to determine what fraud allegations will be investigated. Such criteria is regularly used by investigators in the Federal Bureau of Investigation (FBI) and by civilian agency inspectors general. Army investigators already successfully use such criteria, although on a limited basis.

Normally, the FBI investigates or participates in fraud cases that can lead to prosecution. Usually allegations and the results of preliminary FBI investigations are presented to U.S. attorneys or

other Department of Justice officials who decide whether to prosecute. Fraud cases not prosecuted are returned to the Government agencies for whatever administrative actions they deem appropriate.

The inspectors general in civilian departments and agencies also screen fraud allegations and refer some to program officials. For example, the inspectors general sometimes refer allegations of fraud committed by beneficiaries of Federal programs to agency program officials who determine the validity of the allegations.

The Army has already established a threshold of \$500 before it will investigate a fraud allegation. The threshold was recently increased from \$250. Military police or base commanders can investigate losses below this amount.

Officials in the investigative agencies did not agree on whether screening was necessary. Some said that investigating relatively minor allegations can lead to the discovery of bigger problems. Others felt that, cumulatively, the smaller allegations take on dimensions of greater significance. Still others said that the resulting punishments and dollar recoveries did not warrant the attention given to the minor allegations. Finally, some investigative officials thought that the perpetrators and their abuses are already known by the time some investigations into minor allegations begin, and these investigations are unnecessary.

THE NAVY AND AIR FORCE COULD GIVE GREATER EMPHASIS TO FRAUD PREVENTION SURVEYS OR OTHER WORK

By relieving investigators from pursuing less serious fraud allegations, investigative agencies in the Navy and Air Force could give greater emphasis to conducting fraud prevention surveys. Every DOD investigative agency performs them to identify conditions susceptible to fraud. However, compared to the Army, the Navy and Air Force emphasize them far less.

The agencies could also give greater emphasis to other work such as investigations of more significant fraud. Also, as discussed in chapter 3, investigators could follow up on actions taken in fraud cases.

Fraud prevention surveys are similar to evaluations of agency operations conducted by civilian auditors or military inspectors general. They help reveal how operations function, explain past incidents involving fraud or theft, and test internal controls to identify ways to prevent recurrence of fraud and theft. A survey can last from a few hours to several weeks, depending on the size of the operation. The surveys can involve a team of investigators or an individual investigator. Written reports are usually prepared upon completion.

In addition, surveys can help managers and auditors to identify the systemic causes of fraud, and provide a basis for followup work to correct these causes.

The Army conducted about 1,500 surveys in a year, compared to the approximately 300 done by the Air Force and about 30 by the Navy. Army investigators worked 62 staff years on surveys, while the Navy and Air Force investigators did not record the time spent on surveys.

Often the Government continues to be victimized even after a perpetrator is identified and the fraud is discovered because the Government's losses cannot be recovered. Therefore, officials in the Army's investigative agency give fraud prevention high priority, making it a goal of the agency to devote 10 percent of its efforts to crime prevention, including the prevention of fraud. Navy and Air Force officials gave us varying reasons for not conducting more fraud prevention surveys. Air Force investigative officials maintain that their agency does not have enough resources to do more fraud prevention surveys if existing levels of effort are to be upheld in other areas. A Navy investigative official said his agency, as a matter of practice, only makes fraud prevention surveys upon the request of other Navy or Defense organizations.

IMPROVING FRAUD PREVENTION SURVEYS WOULD ENHANCE THEIR VALUE

Fraud prevention surveys, as they are currently conducted by Army, Navy, and Air Force investigative agencies, could be strengthened. One way the investigative agencies could strengthen their survey programs is to develop annual plans which detail activities to be surveyed and ensure coverage of programs most susceptible to fraud. Currently, surveys in the Navy and Air Force are usually conducted in response to a request by program managers. In the Army, investigators annually solicit ideas for surveys from commanding officers and program managers. Consequently, the programs selected may not be those most costly or those most susceptible to fraud. For example, few surveys cover procurement programs, although procurement totals about \$80 billion (34%) of fiscal 1983 Defense budget authority. Instead, the surveys focus heavily on less costly programs, such as commissaries, clubs, exchanges, and other nonappropriated fund activities. For instance, the Army investigators surveyed 226 exchange operations in calendar 1981, but only 29 procurement activities.

Another way the agencies can strengthen the survey programs is to identify causes of problems that make programs susceptible to fraud and recommend corrective actions. The investigators in all the agencies generally do not identify the causes of fraud conducive conditions because they do not believe it is their responsibility to

look for the causes. Also, Air Force investigators have a practice of not recommending actions to correct the causes of problems identified during the course of their surveys. According to one Air Force official, investigators, whether in a criminal investigation or fraud prevention survey, simply give the facts to a commanding officer. The solution, if one is needed, is up to the commanding officer. In contrast, Navy and Army investigators recommend actions to correct conditions conducive to fraud. Thus, commanding officers and program managers in all three services did not have the expert advice of fraud investigators on what caused the problems, and in the case of the Air Force, on what actions may be needed to correct the problems.

Still another way the investigative agencies could strengthen their survey programs is to analyze the surveys that they do for departmentwide problems and report these systemic problems to DOD program managers. Also, the agencies could do some surveys departmentwide rather than at a single location. Each of the 134 surveys that we reviewed measured the performance of a single operation. The investigative agencies prepared separate reports about each survey even though similar activities were surveyed. For example, a typical survey and its report cover a single post exchange. The investigators typically do not summarize the results of these individual surveys to identify major systemic problems for reporting to top management. The agencies conduct surveys and write reports on single operations because they are responding to commanding officers' requests to survey certain locations. Thus, the surveys appear to have little value for top DOD program managers because departmentwide, systemic fraud problems and their magnitude are not identified.

CONCLUSIONS

We conclude that the work of criminal investigators in the Army, Navy, and Air Force could benefit from increased emphasis on preventing and detecting more significant fraud. Often an investigator becomes involved in a less serious case because of a request by a commanding officer or program manager. A commanding officer, a military inspector general, or the military police could often deal with the case without the need for a criminal investigator's report because the cases most often result in administrative actions rather than courts-martial or Department of Justice prosecutions.

The Army's investigative agency has limited its involvement in some matters by setting a threshold of \$500. We favor this plan.

A threshold might be combined with the likelihood of prosecution as a criteria for determining whether the investigation should proceed. Preliminary information could be presented to commanding officers who must decide whether to court-martial; or, for civilians, the information could be referred to U.S. attorneys for

possible action in Federal courts. If these officials express sufficient interest in taking judicial action should the allegations be proven, then the investigators should investigate. Otherwise, only those allegations appearing to involve losses over the dollar threshold should be investigated by criminal investigators. All other allegations should be referred for possible action to the appropriate commanding officers, military inspectors general, or military police.

The investigative criteria should allow sufficient flexibility to accommodate exceptional situations. A series of related crimes, each falling below the threshold, but collectively significant, would be such an exception.

Getting out of the business of investigating relatively minor fraud should free resources that the agencies could use for other work.

We found numerous ways for fraud prevention surveys to better serve their purpose in all branches of DOD. Improvements are needed in the selection of operations to survey, the scope of survey work, the development of causes underlying fraud conducive conditions, and the recommendations for remedying the problems found.

RECOMMENDATION TO THE DEPARTMENT OF DEFENSE
INSPECTOR GENERAL

We recommend that the Department of Defense Inspector General issue guidelines to the Department's criminal investigators that will require them to investigate only fraud allegations that will probably result in prosecutions if substantiated, meet a minimum dollar loss, or indicate larger or systemic problems that must be investigated and refer the remaining allegations to commanding officers, military inspectors general, or military police for investigating.

Thus, the Inspector General will free criminal investigative resources that could be used for other work. We also recommend that the guidelines from the Inspector General ensure at a minimum that fraud prevention

--surveys cover all types of operations both servicewide and at individual locations,

--survey reports are addressed to the program management level,

--surveys are part of a plan developed by the investigative agency, and

--surveys identify causes and make recommendations for corrective action.

CHAPTER 3

IDENTIFIED PROBLEMS FACING

FRAUD INVESTIGATORS

We identified four problems facing fraud investigators.

- An investigator must solicit a commander's request before conducting an investigation or survey.
- An investigator's authority in cases involving civilians has sometimes been uncertain because of interpretations of the 1878 Posse Comitatus Act.
- The U.S. has virtually no criminal jurisdiction over the more than 340,000 DOD civilians accompanying the Armed Forces overseas, and as a result, investigators do not develop some fraud cases or other serious criminal cases.
- Investigators do not follow up to assess the adequacy of actions taken by military commanders and program officials in response to fraud investigations and crime prevention surveys.

COMMANDER'S REQUEST SYSTEM SEEMS UNNECESSARY

Air Force and Navy investigators both must obtain a commander's request before they can begin an investigation or survey. Usually, Army investigators do not first have to obtain a request to investigate. They, however, must obtain approval from the Army Chief of Staff to investigate crimes involving general officers, civilians rated at GS-16 and above, and all other military or civilian personnel with key positions.

The requirement that a commander must first request an investigation of fraud and other crimes is intended to maintain the respect and esteem for commanding officers in the military. Officials in the Air Force and Navy investigative agencies believe that the command prerogative to not request any investigation or survey is consistent with their views that investigations and surveys must serve the needs of the command. However, we found instances when this requirement restricts a fraud investigation.

When a commander refuses to request an investigation, Navy and Air Force investigators can go to a higher official in the chain of command and solicit a request for the investigation. However, calling the attention of a higher official to the commander's refusal can create tensions between the investigator and the commander who denied the request. As a result, investigators may be

reluctant to report a commander's refusal to request an investigation. While acknowledging that tensions might result, agency officials think investigators will perform their duty and bypass a commander's refusal when necessary.

In May 1980, a DOD task force which evaluated the department's audit and investigative activities reported that it found no problems with the process of obtaining a commander's request before investigating fraud allegations. The task force did not report any instances in which serious fraud allegations were not investigated, or where DOD's investigators were prevented from employing commonly used investigative techniques. Air Force, Navy, and Army officials reported that requests for investigations are denied infrequently.

We found no instance in our sample when a request for investigation was denied, despite the need to solicit the requests for about 65 percent of the allegations investigated. These allegations came from informants, military police, audits or inspections, and the investigators' own crime prevention surveys. The remaining 35 percent of allegations that were investigated originated with commanding officers or other managers in the Navy and Air Force or came from the Army where investigators generally did not have to solicit requests for investigations.

However, we found instances, although not in our sample, when commands did prohibit an investigation. For example, in our interviews with DOD investigators and auditors, we were told of two instances in the Air Force when commands prevented the investigators from pursuing allegations of fraud. A check of pertinent investigative and audit records confirmed these two instances which are discussed in the following two sections.

The Air Force blocked an investigation of contract fraud allegations

Air Force investigators did not investigate allegations of contract fraud referred to them from the Defense Contract Audit Agency (DCAA) because a commanding officer discounted the existence of fraud and refused to request an investigation. DCAA, first in a routine audit, and later from an informant's tip, suspected irregularities in the pricing of a subcontract with multimillion dollar estimated costs and fees. This case was referred to the Air Force investigators in 1981. However, the audit agency received no further report on the status of the case until almost a year later, when the Air Force wrote a memorandum advising that there would not be an investigation. The following is an excerpt from the Air Force investigative agency's memorandum to DCAA:

"Upon receipt of your * * * memorandum report of suspected irregularity, the Air Force commander having cognizance over the administration of the contract was briefed. The commander felt that no violation of law had taken place. He advised that an * * * investigation was not deemed necessary as payments * * * were now in the negotiation stage and the matter would be handled administratively."

Air Force investigators deferred to the commanding officer's decision because, according to one official, there had been neither negotiation nor actual exchange of funds. However, based on the information turned over to Air Force investigators by DCAA, the subcontractor was already working under a letter agreement and a billing had previously been made. DCAA officials did not favor abandoning the investigation because they suspected criminal conduct. DCAA thought the Air Force investigators would not investigate because they had not been invited in by the cognizant commanding officer.

Frustrated in its attempts to initiate an Air Force investigation, DCAA later reported the matter to the Assistant to the Secretary of Defense for Review and Oversight. Subsequently, the Air Force investigators obtained a request to investigate, and the investigation was ongoing when we completed our review.

This matter illustrates how serious fraud allegations can be ignored when fraud investigators defer to a commanding officer's decision. If a confidential source, rather than another Defense agency, had made the allegation, this investigation may not have been ordered.

Air Force investigators have been denied use of confidential sources within a major command and contractor plants

An Air Force investigator depends heavily on informants for starting investigations. However, for the past 18 years, Air Force Systems Command officials have limited the use of informants even when an investigator considers individuals assigned to the command to be prime targets for industry officials seeking favoritism in contract administration. Gradually, the Systems Command has permitted Air Force investigators to use these sources, but investigators are still limited in evaluating the extent of fraud in some major acquisition programs.

For instance, the Systems Command's current policy is to prevent Air Force investigators from developing informant sources in either a contractor's plant or the Air Force's plant representative offices where a contractor's performance is monitored. In addition,

according to a memo dated November 2, 1981, from the Air Force Inspector General to the Air Force Chief of Staff, some commanders prohibit using informant sources for any purposes at Systems Command bases. Systems Command officials have argued that developing informant sources in these locations would undermine the "special relationship of trust and good will" built between the command and its contractors. "The Air Force would have difficulty defending this policy if it became generally known," according to the Inspector General's memo.

To help remedy this situation, the Air Force's investigative agency has proposed an agreement with the Systems Command which would allow the use of informant sources among Air Force employees, including those at plant representative offices, but this draft agreement still would prohibit the use of contractor employees as informants unless approved by an appropriate Systems Command commander. The Systems Command had not responded to this proposal when our audit work ended.

The restrictions placed upon the criminal investigators by the Systems Command seem somewhat inconsistent with today's environment in which the Congress and the public are concerned about fraud, waste, and abuse in Government programs. And with rising deficits, Defense contractors must, more than ever, be held accountable to ensure that our procurement dollars are properly spent.

DOD'S UNCERTAINTY ABOUT
THE POSSE COMITATUS ACT HAS
HINDERED FRAUD INVESTIGATIONS

Another problem stems from the apparent uncertainty in DOD concerning application of an 1878 law, the Posse Comitatus Act. This law restricts military involvement in civilian law enforcement, but DOD's fraud investigators have shown uncertainty about how it applies to their cases. Title 18 of the United States Code, section 1385 (1976) states:

"Whoever, except in cases and under circumstances expressly authorized by the Constitution or Act of Congress, willfully uses any part of the Army or the Air Force as a posse comitatus or otherwise to execute the laws shall be fined not more than \$10,000 or imprisoned not more than two years or both."

The act was passed in response to the use of Federal troops for law enforcement purposes in the South during the Reconstruction era. The Congress was concerned that United States marshals, on their own initiative, would summon Federal troops to enforce the civil law.

According to a DOD study, DOD criminal investigators are not clear how the Department of Justice interprets the act. As evidence, the study cites a 1978 Department of Justice interpretation of the act that concludes DOD criminal investigators are prohibited from making arrests, searches, seizures, or custodial interrogations of civilians within the civilian community. Thus, this interpretation would appear to prohibit DOD investigators from a search and seizure of a contractor's records outside a military base in connection with a procurement fraud. On the other hand, the Justice interpretation states that witnesses may be interviewed or documents examined when the information is necessary for DOD to take administrative actions to correct a problem. Further, Justice has concluded that the investigators may disclose the information they collect to such civilian law enforcement authorities as the FBI.

A Department of Justice official told us that the Posse Comitatus Act has a "chilling effect" on DOD investigations of such crimes as procurement fraud which inevitably would involve civilian subjects. Also, according to the official, the complexity of issues regarding the act may discourage agents from an aggressive investigation or even a search for procurement fraud. Furthermore, the official told us that the act, because of its restrictions, limits the DOD role in joint DOD and FBI investigations.

Instances are infrequent when the Posse Comitatus Act interferes with fraud investigations. Our sample of DOD fraud investigations included one case where the act was restrictive. In this case, Air Force investigators refused an assistant U.S. attorney's request to assist the FBI in seizing a contractor's records needed as evidence in the prosecution of the contractor. Later on, however, the Air Force investigators agreed to participate after the U.S. attorney argued that Air Force personnel had a better understanding of what was involved in the investigation.

Air Force investigators detailed several other cases showing how uncertainty about the act restricted their investigations. For example, a commanding officer expressed doubt that the investigators had the legal right under the Posse Comitatus Act provisions to investigate abuses of the workmen's compensation program by Air Force civilian employees. Eventually, an interpretation permitting the investigations prevailed and the investigations proceeded after several months of delays. The Navy and Army did not recall any instances when the Posse Comitatus Act restricted their investigations of fraud. Army officials, however, expressed concern about the need for legal opinion to clarify situations that might be subject to the act's provisions.

The recently enacted 1983 DOD authorization act that established a DOD Inspector General may allow DOD to avoid some of these problems. The law includes a provision stating that any audit or

investigation conducted by, under the direction of, or at the request of the Inspector General will not be subject to the Posse Comitatus Act restrictions. By including this provision, the Congress appears in some cases to give DOD relief from the act's restrictions. The Department of Justice official with whom we spoke and investigative agency officials in DOD all agreed that this legislation appears to be a remedy to past uncertainties about the act. In their view, the provision does not specifically except Army, Navy, and Air Force criminal investigators from Posse Comitatus Act restrictions; the investigators would apparently be excepted only if the Inspector General requests their assistance in a fraud investigation.

OVERSEAS JURISDICTIONAL VOID HINDERS INVESTIGATIONS AND PROSECUTIONS

We previously reported that the United States has virtually no criminal jurisdiction over the 340,000 DOD civilians accompanying the Armed Forces overseas ("Some Criminal Offenses Committed Overseas by DOD Civilians are not Being Prosecuted: Legislation is Needed," FPCD-79-45; Sept. 11, 1979). This jurisdictional void has existed since the Supreme Court ruled in a series of cases from 1957 to 1960^{1/} that during peacetime it is unconstitutional to subject civilians to military law.

As a result, the U.S. does not try alleged civilian offenses committed overseas, including fraud and other serious crimes, even if foreign countries choose not to prosecute. Furthermore, we reported finding indications that in many instances investigations were less thorough where the jurisdictional void existed and, therefore, cases which could have been developed were not.

Without U.S. jurisdiction, civilian personnel and dependents who commit criminal acts overseas fall almost exclusively under the criminal jurisdiction of the host country. This does not adequately substitute for U.S. jurisdiction because foreign courts do not always (1) guarantee the protections and safeguards of the U.S. Constitution and (2) exercise their jurisdiction over these offenses.

We recommended that the Congress enact legislation to extend criminal jurisdiction to U.S. citizen civilian employees and dependents accompanying the Armed Forces overseas. We think this recommendation still merits congressional consideration because problems persist.

Investigative agency officials cited two examples of this overseas jurisdictional void involving fraud crimes:

^{1/}Reid v. Covert, 354 U.S. 1 (1957).
Kinsella v. Singleton, 361 U.S. 234 (1960).
Grisham v. Hagan, 361 U.S. 278 (1960).

- In 1980, Air Force investigators reviewed allegations that a U.S. civilian, employed by a U.S. contractor in Turkey, was diverting housing supplies. The investigators discovered that the Air Force had lost approximately \$100,000 in stolen supplies. The Air Force could not recoup its losses and the civilian was not prosecuted because of the lack of jurisdiction; however, he was fired by the contractor.
- A frequent area of abuse has involved the special living quarters allowance authorized for U.S. civilians employed by DOD abroad. This allowance is granted to employees to help defray the annual cost of suitable quarters, including rent, utilities, required insurance, and host country taxes. During 1979 and 1980, Air Force investigators conducted numerous investigations of DOD civilians, primarily teachers, who were defrauding the U.S. Government by using various methods to make false claims regarding their allowances. In one investigation, the investigators proved that six DOD teachers in the United Kingdom had received a total of \$25,000 in overpayments. The U.S. Government took administrative action to recoup the money, but the civilians were not prosecuted because of the lack of jurisdiction.

AIR FORCE AND ARMY INVESTIGATORS DO NOT
FOLLOW UP ON ACTIONS TAKEN IN FRAUD CASES

Army and Air Force investigative agencies do not make a followup assessment of how military commanders and program officials respond to fraud investigations. Consequently, those officials responsible for correcting a crime are not clearly accountable to top departmental managers and the investigators do not know what actions were taken on their findings.

In the view of the investigators, managerial action does not always adequately respond to their findings. Both Air Force and Army investigators told us that they can spend numerous hours developing a strong case and yet, little or no judicial or administrative action follows.

This is caused by the absence of any independent assessment of how to treat a fraud case following the completion of an investigation. The investigative agencies in the Army, Navy, and Air Force view themselves as fact finders. They gather the facts and turn them over to commanding officers who are responsible for determining any further appropriate actions. The investigators do not draw conclusions or offer any recommendations.

The investigator's role as a fact finder stems from both not having more responsibilities and military tradition of respect for the chain of command. Generally, no one outside the military chain of command will question a commander's decision based on the investigation even if the decision rules out any action on apparent fraud.

In many instances, copies of investigative reports do go to higher command levels or the military inspectors general; however, there are no established processes or requirements for even these officials to determine the appropriateness of corrective actions.

However, the Navy responds differently to the need for following up on significant fraud cases. A Navy investigator assigned to the Naval Inspector General reviews and assesses the adequacy of a commander's actions on what the Navy categorizes as significant cases. When the actions are judged inadequate, the Naval Inspector General begins an inquiry through the chain of command to determine why little or no corrective action is being taken. Significant cases would include any of the following conditions.

- An aggregate dollar amount of \$20,000 or more.
- Suspected misconduct involving the Navy's rank of commander or civilian GS-13s and above.
- Computer fraud.
- Cases which are otherwise deemed potentially significant because of unusual or noteworthy conditions.

None of the investigative agencies follow up on fraud prevention survey recommendations to determine what actions have been taken nor do they try to reconcile differences between the investigators and commands. While Army investigators get statements from surveyed activities on planned actions, they do not attempt to resolve their differences with the commands.

In one survey, Army investigators recommended internal control procedures to prevent thefts from cash registers in a nonappropriated activity. Management rejected the recommendations calling them unnecessary. Instead of an attempt to resolve differences or appeal to higher management, the investigators closed their survey with their files reflecting agreement about the case. This case illustrates how investigators view their role as serving commanding officers and other managers; rebutting higher authority would be inappropriate.

The criminal investigators, in our opinion, are well suited to follow up on the completion of their fraud investigations and surveys. They can obtain statements from those who are responsible for correcting abuses. When no action follows the finding of a significant, substantiated allegation of fraud or the uncovering of a fraud conducive situation, the investigators should be allowed to inform the Department's top managers or the military inspector general organizations.

CONCLUSIONS

Several policies and laws limit the authority of DOD's criminal investigators to investigate fraud. We think the policy requiring that a commanding officer be solicited for a request or approval to investigate fraud diminishes a criminal investigator's effectiveness and independence and affects the types of fraud cases selected for investigations. When a serious allegation of fraud arises in DOD or any other Department, we think it should be investigated, whether or not management approves. The only exception in DOD would be an investigation that might affect national security.

Furthermore, investigators should be permitted to use whatever legal techniques might prove effective in stopping fraud, including the use of contractor employees as sources of information. Military commanders should not be permitted to dictate which investigative techniques should be used in order to preserve goodwill with a contractor. As long as the use of whistle blowers remains objective and legal and respects the constitutional rights of the accused, the criminal investigators should not be discouraged from enlisting them.

Uncertainties about how the Posse Comitatus Act applies to DOD investigations presents another problem, but it may have been alleviated by legislation establishing the DOD Inspector General.

There is a continuing need for authority to prosecute civilians who defraud the Government or commit other crimes overseas. During this review, as well as an earlier one, we identified problems caused by the absence of authority to prosecute.

We also think that investigators should follow up to assess whether commands have taken appropriate actions in response to fraud investigations and surveys. A follow up would help determine if commanding officers are being held accountable for their actions. Some of the investigative resources which are currently assigned to the less serious fraud cases discussed in chapter 2 might be used for followup.

RECOMMENDATION TO THE SECRETARY OF DEFENSE

We recommend that the Secretary of Defense direct the Secretaries of the Air Force, Navy, and Army to authorize their investigative agencies to

- conduct investigations and surveys and solicit information from all available sources without seeking command approval and
- follow up to assess the adequacy of actions taken by commanding officers.

RECOMMENDATION TO THE CONGRESS

We recommend that the Congress enact legislation to extend criminal jurisdiction over U.S. citizen civilian employees and dependents accompanying the Armed Forces overseas.

CHAPTER 4

DOD'S INVESTIGATORS NEED

MORE INDEPENDENCE

The Defense Criminal Investigative Service is the only criminal investigative agency in DOD to be placed under the new DOD Inspector General, who has been given independence and authority similar to other statutory inspectors general. The three other investigative agencies in DOD will not work in the inspector general organization, and they do not have the same degree of independence.

The statutory inspectors general offices are structured to maximize their independence from the organizations they investigate. A statutory inspector general reports to the highest management level in the department, initiates investigations without requesting approval from the department, and, usually, has permanently assigned staff who are independent of department operations. By contrast, in the Army, Navy, and Air Force:

- Two investigative agency heads do not report to the Department Secretary, nor do they report directly to the highest ranking military officials.
- Top investigative agency officials routinely rotate among organizations that they may investigate.
- High level investigative agency officials are assigned additional duties under commanders who they might also have to investigate.

Also, as discussed in chapter 3, two investigative agencies in DOD will investigate fraud only after a commanding officer requests an investigation. In addition, two of the agencies do not assess whether appropriate actions are taken in response to their investigations.

We identified three options for restructuring DOD's investigative organizations to make them more independent. We discuss these options in this chapter.

HIGHER PLACEMENT IN THE DEPARTMENT COULD IMPROVE INDEPENDENCE

Army, Navy, and Air Force investigative agencies vary in terms of reporting levels and access to the Department Secretaries. The Navy investigative agency reports to the Director of Naval Intelligence on the Chief of Naval Operations' staff. The head of the

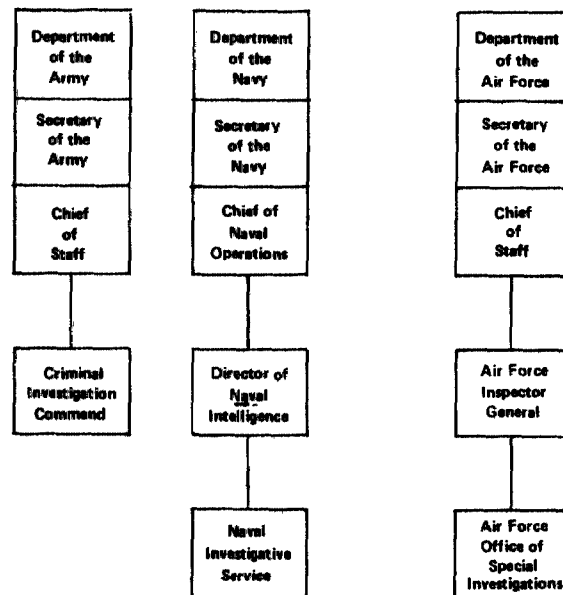
Navy investigative agency does not have direct access to the Secretary of the Navy or Chief of Naval Operations. The agency head told us that, if necessary, he could probably have access, but we spoke to no one at the agency who knew any circumstances warranting such a meeting. Only if the investigative agency could follow up on its investigations would such a meeting be likely.

Also, the Air Force investigative agency reports to the Air Force Inspector General. The Inspector General is a military officer who, unlike the civilian statutory inspectors general in other agencies, has program responsibilities for such matters as inspections, flight safety, and nuclear safety. The Inspector General reports to the Air Force Chief of Staff and has access to the Department Secretary.

Unlike the Navy and Air Force, the Army investigative agency has direct access to the Department's Secretary. The Army investigators report to the Army Chief of Staff.

Each of these organizational relationships is shown in the chart below.

ORGANIZATIONAL PLACEMENT OF INVESTIGATIVE AGENCIES



DOD's task force on audit and investigative activities concluded in 1980 that the Army Criminal Investigation Command had maximum independence because it is headed by a full-time, high ranking officer with no other program responsibilities and because it is placed high in the organizational alignment. The task force recommended changing the Air Force and Navy organizations so that (1) Air Force investigators report directly to the Chief of Staff and are removed from the Inspector General's control and (2) Navy investigators report to the Chief of Naval Operations through the Director of Naval Intelligence. The Air Force rejected the task force's recommendation and said that the present organizational structure is working well and the Secretary of the Air Force is fully informed of investigative activities. The Navy adopted the recommendation.

The DOD task force did not address the need for Navy and Air Force investigators to have direct access to the Department Secretary as do investigators in the Army. Also, the task force did not address, as it did for the Air Force, the fact that the Navy criminal investigators rank lower in the organization than do investigators with the Army.

SOME TOP LEVEL INVESTIGATIVE PERSONNEL
ARE NOT PERMANENTLY ASSIGNED AND HAVE
ADDITIONAL DUTIES

Both the Army and Navy routinely rotate commissioned officers in and out of managerial positions of their investigative agencies at intervals not exceeding 3 years. Army officers serve as directors of headquarters units and as commanders and supervisors of field units in the Army investigative agency. Investigations in the Army are usually performed by military warrant officers or civilians who do not rotate from the investigative agency. Approximately 7 percent, or 139 officers, of the Army investigative personnel who constitute much of their managerial staff are subject to the rotation policy. Most rotating personnel have military police or other law enforcement experience.

In the Navy investigative agency, the agency director and commanding officers as well as the executive officers in each of 10 regional offices are among the agency's top managers who must rotate in and out of the investigative agency. They usually have experience in military intelligence or as ship commanders. Other agency managers, including the deputy director, are civilians who may remain in the investigative agency for their entire careers.

In addition to rotating in and out of the investigative agency, the Navy military officers are sometimes assigned duties other than their investigative responsibilities. For example, the commanding officer in an investigative agency region may also serve

as the counterintelligence advisor to the head of a major command. For this work, the commanding officer's performance is evaluated by a supervisor outside the investigative agency. The remainder of the criminal investigative staff, which is almost entirely civilian, is not assigned additional duties.

Investigative personnel are divided over the merits of military officers who rotate in and out of the agencies or who are given duties in addition to their investigative responsibilities. Army officials generally support the rotation policy because they classify commissioned military officers as generalists who should have broad based management and leadership skills applicable to all military units. They point out that investigative work in the Army is actually performed by nonrotating lower ranking military personnel.

Several civilian Navy investigative officials told us they dislike the rotational policy and the additional duties for their military officers. They said that the military officers sometimes hinder investigative efforts because of the desire to please other military officials, or a lack of experience. We were unable to verify any instance in which military officers assigned to the Navy investigative agency hindered an investigation. Other officials in the Navy investigative agency viewed the rotational policy favorably because it is based on overall Navy needs for giving officers different experiences and because the assigned officers are managers who are trained to command any Navy unit.

Officials in the Air Force investigative agency, which permits its largely military staff of criminal investigators to make their careers in the agency and to eventually become managers, consider the investigative experience important for its managers. The Air Force agency does not routinely rotate its personnel outside the organization.

STATUTORY INSPECTORS GENERAL AND DOD
AUDITORS GENERAL ARE MORE INDEPENDENT
THAN THE INVESTIGATORS

The criminal investigative agencies in the Army, Navy, and Air Force lack the independence which the Congress has mandated for the inspector general offices of the major civilian departments and agencies and DOD. Public Law 95-452 (The Inspector General Act of

1978) and its amendments established independent inspector general offices^{1/} in civilian agencies to probe for fraud, waste, and abuse. The Army, Navy, and Air Force have established auditor general organizations that are required to adhere to generally accepted audit standards regarding independence.

Both statutory inspectors general in civilian agencies and the auditors general are authorized to perform investigations and audits without soliciting a request or approval. They are to be given complete access to books and records in order to do their work, and are allowed to evaluate whether action taken after investigations is appropriate.

A statutory inspector general and the Army, Navy, and Air Force auditors general report to the highest management levels of their departments and agencies. For instance, the Inspector General of the Department of Agriculture reports to the Secretary. Similarly, Army, Navy, and Air Force auditors general work under either the Secretary or Under Secretary and receive policy guidance from an Assistant Secretary.

A final contrast is the staffing of the inspector general and auditor general organizations. Usually, the auditors and investigators are permanently assigned to their positions and are independent of agency operations.

ALTERNATIVES TO MAKE FRAUD INVESTIGATORS MORE INDEPENDENT

In our opinion, there are three alternatives for making the fraud investigators appropriately independent of DOD operations. Each alternative and its major advantages and disadvantages are discussed in the following sections.

Alternative 1

One alternative is to improve the independence of the existing criminal investigative agencies in the Army, Navy, and Air Force. Under this alternative, the Navy and Air Force investigative agencies would move into higher positions in their organizational hierarchies and the agency heads would have direct access to the highest management levels of the department, including the Secretaries. Also, Navy and Army investigative personnel, especially the top officials, would be permanently assigned to the investigative agencies

^{1/}The statutory inspector general offices, which the Congress established in DOD in 1982, should not be confused with the several military inspector general organizations whose roles include being the commander's "eyes and ears."

in order to preclude any apparent or potential conflicts of interest. Finally, duties of Navy investigative personnel would be limited to the responsibilities of the investigative agency.

In our view, major advantages and disadvantages of this alternative are:

Advantages

1. Enhances organizational and individual independence.
2. Provides latitude to allocate criminal investigative resources between fraud and other crimes.
3. Permits criminal investigators to specialize in the functions of the military department in which they work.

Disadvantage

1. Conflicts with rotational policies and management philosophies (e.g., preference for generalist officers) of Navy and Army.

Alternative 2

A second alternative is to give the newly created DOD Inspector General all the responsibility and resources to investigate fraud in DOD including the three military departments. By statute, the Inspector General is independent of operations and reports to and is under the general supervision of the Secretary of Defense.

Under this alternative, the existing criminal investigative agencies would transfer about 21 percent of their staffs, or about 1,000 people, which equates to that portion of the investigators and their support personnel who investigate fraud and conduct fraud prevention surveys. The agencies' workloads would correspondingly be reduced because fraud investigations would be handled by the DOD Inspector General.

The major advantages and disadvantages of Alternative 2 are:

Advantages

1. Strongly enhances organizational independence.
2. Centralizes all DOD fraud investigations.

Disadvantages

1. Removes investigative resources from the direction of the military departments.
2. Reduces flexibility for assigning criminal investigators where they may be needed within the military departments.
3. Creates possible jurisdictional problems because investigations sometimes cover both fraud and other crimes.

Alternative 3

A third alternative is to give the auditors general in each military department new responsibilities and resources to investigate DOD fraud. This alternative would make the auditor general organizations similar to statutory inspector general organizations in the major departments and agencies of the Government. As in alternative 2, about 21 percent of the existing investigative and support staffs would transfer from the existing criminal investigative agencies to the auditor general organizations.

Advantages

1. Enhances organizational independence.
2. Retains responsibility for fraud investigations under each military department.

Disadvantages

1. Reduces flexibility for assigning criminal investigators where they may be needed within the department.
2. Creates possible jurisdictional problems because investigations sometimes cover both fraud and other crimes.

CONCLUSIONS

Investigations of fraud should be carried out by personnel and organizations who are independent of departmental operations. The Congress, in establishing the civilian and DOD inspector general offices, mandated a high degree of independence which we believe is a good model for DOD's criminal investigative agencies. We have long advocated similar ideas in our support of legislation setting up inspector general offices. Presently, DOD's criminal investigative agencies do not have the same degree of independence as the inspectors general.

We have provided three alternatives for increasing the degree of independence of the criminal investigative agencies. Each alternative has advantages and disadvantages. We do not recommend one alternative over the other, and we recognize there may be other alternatives for accomplishing this objective.

RECOMMENDATION TO THE SECRETARY OF DEFENSE

We recommend that the Secretary of Defense make organizational changes to enhance the independence of the Department's criminal investigators. We have outlined three alternatives in this report but realize there may be others.

PROFILES OF THE ARMY, NAVY, AND
AIR FORCE CRIMINAL INVESTIGATIVE AGENCIES

ARMY CRIMINAL INVESTIGATION COMMAND

The Army Criminal Investigation Command has provided continuous criminal investigative services for the Army since 1944 although the organization was not centralized and elevated to the status of a major Army command until 1971. Unlike the other two DOD investigative organizations, it has no counterintelligence function.

The Service's headquarters in Falls Church, Virginia, commands all Army criminal investigative activities worldwide. Its Operations Directorate includes the Economic Crime and Crime Prevention Divisions which, respectively, oversee fraud and other economic crime investigations and develop and implement the crime prevention survey program.

Daily investigative support to Army commanders is provided by the Service's field elements consisting of 5 regional offices, 23 district offices, 18 field offices, 48 resident agencies, and 40 branch offices worldwide.

The Service is staffed mainly by military personnel. As of December 31, 1981, it was authorized 2,137 personnel including 1,126 military criminal investigators, 9 civilian criminal investigators, 433 military support personnel, and 569 civilian support personnel. The Service is headed by a commanding general who reports to the Army Chief of Staff and to the Secretary of the Army. The Operations Directorate, its subordinate divisions, and all field units are also headed by military officers.

In fiscal 1981, about 16 percent of the Service's staff time was spent on investigating fraud cases and performing crime prevention surveys.

The chart on the next page shows, by category, the percentage of cases the Army Criminal Investigation Command opened during fiscal 1981.

Army Criminal Investigation Command Workload
(Fiscal 1981)

<u>Category</u>	<u>Percent</u>
Fraud investigations and crime prevention surveys	18
Other criminal investigations	<u>82</u>
Total	<u>100</u>

NAVAL INVESTIGATIVE SERVICE

The Naval Investigative Service, established in 1966, is the primary criminal investigative and counterintelligence agency for the Department of the Navy which includes the Marine Corps. The service investigates major criminal offenses under the Uniform Code of Military Justice and other Federal laws. Its counterintelligence jurisdiction includes all Department of the Navy matters involving sabotage, espionage, subversive activities, and defection of Navy and Marine Corps members.

The Service's headquarters in Suitland, Maryland, provides leadership and policy guidance for the entire organization. It comprises seven departments, with each department consisting of two or more divisions. The Special Operations/Fraud Division of the Criminal Investigations Department, staffed by seven criminal investigators, directs the Service's efforts in combating fraud in the Navy; and, like other headquarters units, rarely gets involved in actual investigations which are done in the field by the Service's 10 regional offices worldwide. The regions are organized into resident agencies and resident units located at Navy installations and aboard ships.

Although the Service is composed largely of civilians, many top managers are military personnel. As of December 31, 1981, the Service employed 653 civilian criminal investigators, 341 civilian support personnel, and 141 military personnel. The Service is headed by a Navy captain who reports to the Director of Naval Intelligence, a member of the staff of the Chief of Naval Operations. His deputy is a civilian. In addition, each of the Service's 10

regional offices is headed by a Navy captain who shares responsibility for the administration and operation of the office with a civilian regional director for operations.

In fiscal 1981, criminal investigators devoted about 26 percent of their time to investigating fraud allegations Navy-wide or performing fraud prevention surveys for the Defense Logistics Agency and the Navy Material Command.

The following chart shows the percentage of cases opened, by category, during fiscal 1981 by the Naval Investigative Service.

Naval Investigative Service Workload
(Fiscal 1981)

<u>Category</u>	<u>Percent</u>
Fraud investigations	9
Other criminal investigations	81
Counterintelligence	8
Other	<u>2</u>
Total	<u>100</u>

AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS

The Office of Special Investigations, established in 1948, is responsible for (1) investigating crimes committed against the Air Force that are punishable by 1 year or more imprisonment, (2) investigating violations of public trust such as fraud or similar activities, and (3) providing counterintelligence support.

The Service's headquarters is at Bolling Air Force Base, Washington, D.C. It comprises directorates, one of which, the Directorate of Fraud Investigations, supervises and reviews fraud efforts. Most investigations are conducted in the field by 27 districts and 125 detachments worldwide.

The Office is staffed mainly by military personnel. For fiscal 1982, the office was authorized 1,286 military criminal investigators, 83 civilian criminal investigators, 395 military support

personnel, and 306 civilian support personnel. It is headed by a military officer who reports to the Inspector General of the Air Force who is responsible to the Air Force Chief of Staff. Each of the Service's field activities is also headed by a military officer.

In calendar 1981, about 22 percent of staff time was spent on fraud-related matters, including performing fraud prevention surveys.

The following chart shows the percentage of activities opened in different categories during calendar 1981.

Office of Special Investigations Workload
(Calendar 1981)

<u>Category</u>	<u>Percent</u>
Fraud investigations	7
Other criminal investigations	34
Counterintelligence	55
Other	<u>4</u>
Total	<u>100</u>

SAMPLING RESULTSPROJECTIONS TO UNIVERSE

We based our review of fraud investigation files on random samples at 3 of the 4 investigative agencies. (See Objectives, Scope, and Methodology, ch. 1.) The sample results can be projected to the universe of similar crime cases at the three agencies for the period from October 1, 1980, to March 31, 1981. These projections are included in the table in this appendix.

Statistical sampling enables us to draw conclusions about a universe using a sample of that universe as a basis of information. The results from a statistical sample are subject to some uncertainty (sampling error) because only a portion of the universe has been selected for analysis. The sampling error consists of two parts: confidence level and range. The confidence level is the degree of confidence that we can have in the estimates derived from the sample. The range runs between the upper and lower limits and is where the actual universe value will be found.

For example, the random sample of fraud case files showed that 27.8 percent of the cases involved estimated losses to the Federal Government of \$500 or less. Using a sampling error formula with a 95-percent confidence level, the true percentage of fraud cases involving estimated losses of \$500 or less would fall within plus or minus 6.2 percent of the sample results.

Thus, if all the fraud case files in the universe were reviewed, chances are 95 in 100 that the actual percent involving estimated losses under \$500 would fall between 21.6 (27.8 - 6.2) and 34.0 (27.8 + 6.2) percent. The upper and lower limits (range) for all estimates presented in the report are shown in the following table.

Projections of Sample Results for
Fraud Investigations from
October 1, 1980 to March 31, 1981

Sample Size 285
Universe Size 4,217

	<u>Universe estimate</u>		<u>Range</u> <u>(95% confidence)</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
1. Principal types of fraud				
A. Pay and allowance	2,204	52.3	1,927 - 2,481	45.7 - 58.8
B. Bribery/Kickbacks	115	2.7	47 - 183	1.1 - 4.3
C. Procurement	549	13.0	343 - 755	8.1 - 17.9
D. Larceny by fraud	248	5.9	122 - 374	2.9 - 8.9
E. Morale, welfare, and recreation	637	15.1	417 - 857	9.9 - 20.3
F. Other	<u>464</u>	<u>11.0</u>	297 - 631	7.1 - 15.0
	<u>4,217</u>	<u>100.0</u>		
2. How investigations are initiated				
A. Command/managerial request	1,202	28.5	951 - 1,453	22.5 - 34.5
B. Initiated by investigators	910	21.6	682 - 1,138	16.2 - 27.0
C. Informant's tip	1,477	35.0	1,205 - 1,749	28.6 - 41.5
D. Military police/security	155	3.7	66 - 244	1.6 - 5.8
E. Audit or inspection referral	214	5.1	84 - 344	2.0 - 8.2
F. Fraud prevention survey	27	.6	9 - 45	.2 - 1.1
G. Other	<u>232</u>	<u>5.5</u>	112 - 352	2.7 - 8.3
	<u>4,217</u>	<u>100.0</u>		

(continued)

	<u>Universe estimate</u>		<u>Range</u> <u>(95% confidence)</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
3. Investigations for which investigators were required to solicit a command/managerial request	2,758	65.4	2,509 - 3,007	59.5 - 71.3
4. Investigations for which investigators were <u>not</u> required to solicit a command/managerial request	1,459	34.6	1,210 - 1,708	28.7 - 40.5
5. The Government's dollar losses				
A. \$500 or less	1,173	27.8	914 - 1,432	21.6 - 34.0
B. \$501 to \$1,000	155	3.7	54 - 256	1.3 - 6.1
C. \$1,001 to \$5,000	512	12.1	330 - 694	7.8 - 16.5
D. Above \$5,000	185	4.4	60 - 310	1.4 - 7.4
E. No dollar loss	1,426	33.8	1,172 - 1,680	27.8 - 39.8
F. Amount not available	765	18.1	536 - 994	12.7 - 23.6
	<u>a/4,217</u>	<u>a/100.0</u>		
6. Number of investigations where wrongdoing and/or mismanagement was indicated	2,754	65.3	2,483 - 3,025	58.9 - 71.7

(Continued)

	<u>Universe estimate</u>		<u>Range</u> <u>(95% confidence)</u>	
	<u>Number</u>	<u>Percent</u>	<u>Number</u>	<u>Percent</u>
7. Action resulting from the investigations				
A. Administrative action	1,212	28.7	951 - 1,473	22.5 - 34.9
B. Nonjudicial military punishment	264	6.3	151 - 377	3.6 - 8.9
C. Court-martial	124	2.9	51 - 197	1.2 - 4.7
D. Department of Justice civil action	27	.6	5 - 144	.1 - 3.4
E. No action taken but wrongdoing or mismanagement was indicated	777	18.4	551 - 1,003	13.1 - 23.8
F. No action taken when no wrongdoing nor mismanagement was indicated	1,463	34.7	1,192 - 1,734	28.3 - 41.1
G. Investigators do not know what action took place	<u>350</u>	<u>8.3</u>	232 - 468	5.5 - 11.1
	<u>4,217</u>	<u>a/100.0</u>		

a/May not add to totals due to weighting of data and rounding of numbers.

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