UNITED STATES ARMY INSPECTOR GENERAL SCHOOL

THE ASSISTANCE AND INVESTIGATIONS GUIDE

DEPARTMENT OF THE ARMY INSPECTOR GENERAL AGENCY
TRAINING DIVISION
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January 2012

Introduction

The Assistance and Investigations Guide

1. **Purpose:** This guide outlines the specific techniques, formats, and procedures used when performing Assistance, Investigations, and Investigative Inquiries.

2. **The Assistance and Investigations Guide:** The Inspector General Action Process (IGAP) is the process IGs use when performing Assistance and conducting Investigations. Although Assistance and Investigations are both separate functions, each one shares this same process and, as a result, many of the same steps, formats, and techniques. Factors that bear on Assistance also have an impact on Investigations and vice versa. Since both functions share similar doctrine, they appear together -- for doctrinal purposes -- in one complete guide for ease of reference.

3. **The Guide as a Handbook:** This guide is designed to serve as a ready reference and step-by-step handbook that will allow an IG serving in the field to follow each step of the IGAP and perform Assistance or conduct an Investigation (or Investigative Inquiry) as necessary. Part One of the guide addresses the IGAP and its application to Assistance while Part Two addresses the IGAP and the performance of Investigations. Many of the techniques and formats offered herein are not mandatory for use but instead offer all Army IGs a common frame of reference and a generally approved way of executing both of these functions. The rules bearing on these two functions, as outlined in Chapters 6 and 7 of Army Regulation 20-1, Inspector General Activities and Procedures, represent the policy that frames this doctrine and, ultimately, the execution of both functions. Therefore, IGs must use this guide in concert with the policy outlined in the regulation.

4. **Format for Sample Memorandums:** This guide contains numerous sample memorandums that adhere to the format requirements outlined in Army Regulation 25-50, Preparing and Managing Correspondence. However, in an effort to save space and paper, some of the required font sizes and spacing have been compressed. Refer to Army Regulation 25-50 for the precise format specifications.

5. **Questions and Comments:** For questions or comments concerning this guide, please contact the authors at the U.S. Army Inspector General School, 5500 21st Street, Suite 2305, Fort Belvoir, Virginia 22060-5935 or call commercial (703) 805-3900 or DSN 655-3900. The authors' names are as follows:

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Summary of Change

This version of The Assistance and Investigations Guide supersedes the version dated June 2010**.** The major changes included in this version are as follows:

- Corrects typographical and other minor errors throughout.
- Replaces the DA Form 1559 with the current version dated 2011 (Part One, Sections I-6-1 and I-2-1)
- Replaces the Electronic DA Form 1559 with the current IGARS Database version (Part One, Section I-6-2)
- Updates the Seven-Step Inspector General Action Process (IGAP) chart to reflect correct terminology of Step 5, Make Notification of Results (Part One, Section 2-1)
- Updates DAIG's Investigations Division phone number (Part One, Section 2-3-5)
- Clarifies the process for handling allegations against Senior Officials (Part One, Section 3-6)
- Updates the footer on the sample Hotline Completion Report (Part One, Section 9-1)
- Corrects the requirement that legal reviews for substantiated Hotline Completion Reports must be in memorandum format (Part One, Section 9-2)
- Updates Part One, Section 10-1, to reflect that the repeal of "Don't Ask, Don't Tell" (DADT) was officially implemented on 21 September 2011
- Adds Chapter 11, Morale Assessments, to Part One
- Updates reporting requirement for allegations against all subjects and suspects into the IGARS database (Part Two, Section 2-5)
- Provides expanded guidance for completing Reports of Investigation (ROI) (Part Two, Section 4-14)
- Includes a complete sample ROI with exhibits (Part Two, Section 4-14)
- Addresses a policy change for the use of IG records in substantiated allegations of Whistleblower Reprisal (Part Two, Section 9-1)
- Provides expanded and more in-depth guidance for developing better interrogatories and conducting interviews (Part Two, Appendix B)

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Pagination Key: This guide uses a pagination format that identifies the part, chapter, and page in one single entry at the bottom (or footer) of each page. The format does not identify portions of the guide below the chapter level, so sub-sections are not included to avoid confusion. The following example and subsequent explanation serve as a key to the pagination format:

II - 4 - 18

The Roman numeral "II" indicates Part Two of the guide.

The number "4" indicates the chapter within Part Two.

The number "18" indicates the page within Chapter 4.

Note: The only variation to this format occurs with the appendices when a chapter number is replaced with the appropriate letter for the appendix (for example, II - A - 17).

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Assistance

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Chapter 1

Overview

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Section 1-1

Introduction

1. **Purpose**: The purpose of Part One of this guide is to help Inspectors General at all levels within the Army carry out the Assistance function. The U.S. Army Inspector General School uses this guide to teach the Assistance function and the seven-step Inspector General Action Process (IGAP) to newly selected Inspectors General. Hence, this guide will also aid Acting Inspectors General in performing their Assistance duties.

2. **Army Regulation 20-1**: This guide creates a tool that, when used in conjunction with Army Regulation 20-1, Inspector General Activities and Procedures, will prepare an Inspector General to provide the best support to Soldiers, civilians, Family members, their commands, and the U.S. Army.

The policy outlined in Army Regulation 20-1, Inspector General Activities and Procedures, takes precedence in the event of a conflict between the regulation and this guide.

Section 1-2

Definitions

1. **Purpose**: The purpose of this section is to explain some key terms associated with the Inspector General Assistance function.

2. **Allegation**: An allegation is a statement or assertion of wrongdoing by an individual formulated by the IG. An allegation contains four essential elements: who, improperly, did or failed to do what, in violation of an established standard. The IG refines allegations based upon evidence gathered during the course of an investigation or inquiry. An allegation is either substantiated or not substantiated.

3. **Army Command (ACOM)**: An Army force, designated by the Secretary of the Army, performing multiple Army Service Title 10 functions across multiple disciplines.

4. **Army Service Component Command (ASCC)**: An Army Force, designated by the Secretary of the Army, comprised primarily of operational organizations serving as the Army component of a combatant command or subunified command.

5. **Assistance**: Assistance is the process of receiving, inquiring into, recording, and responding to complaints or requests for Assistance either brought directly to the Inspector General or referred to the Inspector General for action concerning matters of Army interest.

6. **Assistance Inquiry**: An informal fact-finding process used to address or respond to a complaint involving a request for help, information, or issues but not allegations of impropriety or wrongdoing. An Assistance inquiry may simply provide the facts to answer a question posed by the complainant.

7. **Complainant**: A person who submits a complaint, allegation, or other request for assistance to an IG.

8. **Complaint**: An expression of dissatisfaction or discontent with a process or system. Complaints may contain an issue or an allegation -- or both.

9. **Direct Reporting Unit (DRU)**: An Army organization of one or more units with institutional or operational support functions, designated by the Secretary of the Army, normally to provide broad general support to the Army in a single, unique discipline not otherwise available elsewhere in the Army.

10. **Inspector General Action Request (IGAR)**: IGAR is the term used to refer to the process of receiving, inquiring into, recording, and responding to complaints or requests either brought directly to the Inspector General or referred to the Inspector General for action. Inspectors General record this information on DA Form 1559, Inspector General Action Request.

11. **Inspector General Action Request System (IGARS)**: The IG database that documents all IGARs within the Department of the Army. Only trained and qualified IGs have access to this database.

12. **Inspector General Investigation**: A formal fact-finding examination by a detailed IG into allegations, issues, or adverse conditions that provides the Directing Authority a sound basis for making decisions and taking action. (See Part Two of this guide.)

13. **Inspector General Investigative Inquiry**: An informal fact-finding examination by a detailed IG into allegations, issues, or adverse conditions that are not significant in nature and when the potential for serious consequences (such as potential harm to a Soldier or negative impact on the Army's image) are not foreseen. IGs use the investigative inquiry to gather information needed to address allegations of impropriety against an individual that do not require a **formal** investigation. (See Part Two of this guide.)

14. **Issue**: An issue is a request for information, an expression of dissatisfaction, or a request for assistance to the Inspector General that does not list a "who" as the violator of a standard or policy. An issue is either founded if it has merit and requires resolution or unfounded if it does not have merit and requires no action.

15. **Office of Inquiry (OOI)**: If another IG office refers an IGAR to a lower-echelon IG office for action but retains office of record status, the IG office acting on the IGAR becomes the office of inquiry. The OOI must gather all pertinent information and submit the completed case to the office of record for final disposition.

16. **Office of Record (OOR)**: Normally the IG office that receives the complaint. This office may request to refer the office of record status to another IG office if the case falls under another's IG area of command. The OOR must ensure that all issues are addressed and all IG responsibilities were fulfilled.

17. **One-Minute IGAR (OMI)**: OMIs are a shorthand method to document certain types of IGARs for information requests only. The only two OMI types are 1A (Routine Request for Information) and 1B (Request for Support IG to IG).

18. **Senior Official (SO)**: Includes general officers (Active Army and Reserve Component), colonels selected for promotion to brigadier general, retired general officers, and current or former civilian employees of the Department of the Army Senior Executive Service (SES) or equal positions, to include comparable political appointees.

19. **Standard IGAR**: A standard IGAR will be opened in the IGARS database when the request to the IG is more than what a One-Minute IGAR would entail. The standard IGAR includes detailed information on the initiator, complainant, subject / suspect, function codes, case notes, and synopsis.

20. **Subject**: A person against whom non-criminal allegations have been made such as a violation of a local policy or regulation that is not punitive.

21. **Suspect**: A person against whom criminal allegations were made. The allegations include violations of UCMJ punitive articles, punitive regulations, or violations of other criminal laws. A person may also become a suspect as a result of incriminating

information that arises during an investigation or interview, or whenever the questioner believes, or reasonably should believe, that the person committed a criminal offense.

Section 1-3

Categories of Inspectors General

1. **Purpose**: The purpose of this section is to discuss and describe the five Inspector General Categories (Detailed Inspectors General, Assistant Inspectors General, Temporary Assistant Inspectors General, Acting Inspectors General, and Office and Administrative Support Staff).

2. **Detailed Inspector General**: Detailed Inspectors General are commissioned officers in the grade of O-3 and above, commissioned chief warrant officers (CWOs), and DA civilians in the grade of GS-12 (or equivalent NSPS pay band) and above with TIG's approval. A detailed IG may receive and process requests for Assistance, direct and conduct Inquiries, conduct Investigations and Inspections, and administer oaths. Uniformed detailed Inspectors General wear the Inspector General insignia (except for DA photos). Detailed Inspectors General must be trained and qualified at the Army Inspector General School at Fort Belvoir, Virginia.

3. **Assistant Inspector General**: Assistant Inspectors General are noncommissioned officers in the grade of staff sergeant promotable and above and DA civilians in Pay Band 2 (YA-02) or GS-09 to GS-11. This category of Inspector General may lead the IG functions of assistance, inspections, and teaching and training; assist detailed Inspectors General with Inspector General Investigative Inquiries and Inspector General Investigations; and perform administrative duties. They may also administer oaths during sworn, recorded testimony and wear the Inspector General insignia (except for DA photos). Assistant Inspectors General must be trained and qualified at the Army Inspector General School at Fort Belvoir, Virginia.

4. **Temporary Assistant Inspector General**: These individuals are commissioned officers, chief warrant officers, enlisted Soldiers, Department of the Army civilians, and Subject-Matter Experts (SME) in a particular subject area temporarily detailed to augment an Inspector General Inspection or Investigation team for a specified period. The Inspector General (TIG) must approve temporary assistant Inspectors General serving for longer than 180 days, and they must attend the Inspector General School at Fort Belvoir, Virginia. The ACOM, ASCC, or DRU commander is the approving authority for those temporary assistant Inspectors General serving between 90 and 180 days. The command or State IG is responsible to train the temporary assistant IGs prior to them performing IG duties.

5. **Acting Inspector General**: Acting Inspectors General are commissioned officers in the grade of captain or above or civilians in the grade of YA-02 / YC-02 or GS-12 and above whose ACOM, ASCC, or DRU commander has assigned them to serve as Acting Inspectors General as an additional, temporary duty. The TIG is the approving authority for all exceptions to policy. An Acting Inspector General assists a detailed Inspector General with receiving IGARs in population areas for which the detailed Inspector General has responsibility but from which the detailed Inspector General is often geographically separated. The detailed Inspector General has several other options in lieu of appointing an Acting Inspector General such as conducting periodic assistance visits, using phones and faxes, and developing Memorandums of Agreement (MOA) with

other IGs. Acting Inspectors General will only provide Assistance for requests for help. They will not conduct Investigative Inquiries or Investigations, serve on Inspector General Inspection teams, or perform duties in the office of a Detailed Inspector General. They may not administer oaths and may not wear Inspector General insignia. Detailed Inspectors General at the ACOM, ASCC, or DRU level will train and supervise Acting Inspectors General.

6. **Office and Administrative Support Staff**: These individuals are Soldiers and civilians who serve in administrative and support positions such as secretaries, computer operators, etc. They will take the Inspector General oath because they are part of the Inspector General system and may have access to Inspector General records. Administrative Support Staff personnel will not lead, assist, or conduct Inspector General Inspections, Assistance, Inquiries, or Investigations. Administrative Support Staff may attend the Army Inspector General School at Fort Belvoir. The primary IG, after receiving TIG's permission, may designate school-trained office and administrative support staff personnel to serve temporarily as an assistant IG for a specified period of time on an emergency basis.

Section 1-4

The Assistance Function

1. **Purpose**: This section explains the Assistance function.

2. **Assistance Function**: The Assistance function is the process of receiving, inquiring into, and responding to complaints, requests for information, and requests for help presented or referred to an Inspector General. This process is used to correct problems indirectly. Inspectors General correct problems by bringing the matter to the attention of the command and letting the command do the right thing. This referral occurs at the lowest level of command appropriate to take the corrective action and elevated only when deemed appropriate. This process assists in eliminating conditions detrimental to the morale, efficiency, or reputation of the unit and the Army.

The Assistance function is a major portion of the Inspector General workload. It complements the Inspections and Investigations functions of the Inspector General system. For example, during an Inspection you may receive IGARs with either issues or allegations following interviews and sensing sessions. Likewise, a simple request for Assistance may require an Inspection to resolve -- especially in cases where a systemic problem is suspected. Some complaints may expand into an Investigation depending on the situation. Any Inspector General can perform the Assistance function.

The Assistance function is another opportunity for the Inspector General to teach and train; provide information about Army systems, processes, and procedures; and assess attitudes while assisting, inspecting, and investigating. The Inspector General Teaching and Training function is an integral part of all Inspector General functions.

Section 1-5

Who May Submit a Complaint to an Inspector General?

1. **Purpose**: This section explains who may submit a complaint to an Inspector General and lists and describes some of the many sources of Inspector General Action Requests (IGARs).

2. **Who May Submit a Complaint to an Inspector General?** Anyone, regardless of status, may make a complaint, allegation, or request for information or Assistance to any Army Inspector General concerning matters of Army interest. There are no pre-conditions for coming to the Inspector General for Assistance. However, during normal duty hours, military and Department of Defense (DoD) personnel must inform the chain of command that they are leaving their place of duty. They cannot just walk off the job and fail to inform their supervisors where they are going. After duty hours, they may go to the Inspector General without notifying their supervisors.

An Inspector General will encourage the Soldier or civilian employee to discuss complaints, allegations, or requests for assistance first with the commander, chain of command, or supervisor as outlined in Army Regulation 600-20. If the complainant does not wish to do so, the Inspector General will accept the IGAR. If specific redress procedures are available, the Inspector General will teach and train the complainant on using the appropriate, formally established redress process and refer him or her to that process (see Section 3-4, Issues with Other Forms of Redress).

3. **Sources of Inspector General Action Requests (IGARs)**: IGARs can come from anyone and anywhere. They come from walk-ins, call-ins, e-mail messages, write-ins, anonymously, or with Inspectors General hearing the IGARs for themselves. The following are some examples of sources of Inspector General Action Requests:

a. Active, Army Reserve, and National Guard Soldiers (Example: Reserve Soldiers not getting the same treatment as an active counterpart when they access the Army systems).
b. Anonymous (Example: An unidentified person complains about a lack of command opportunities in a specific unit).
c. Family members (Example: Nonsupport issues).
d. Retirees / Veterans (Example: Veteran administration (VA) benefits / medical problems).
e. Commander (Example: Discussing a policy or consulting the Inspector General).
f. Other services (Example: Member of the Navy comes to an Army Inspector General for Assistance).
g. Civilian-civilians (Example: Civilians complaining about a Soldier driving too fast or drinking while driving a government vehicle).
h. Media (Example: Requesting that the Inspector General confirm or deny something).
i. Contractors (Example: Contractors not meeting requirements or the Government exceeding the requirements of a contract).
j. Third parties (Example: Parents complaining on behalf of a son or daughter).

k. Other Inspectors General (Example: Another Inspector General received your case by mistake, or a Soldier is not in his or her command).

l. Congress (Example: A Soldier went to his or her Congressperson about a matter).

An Inspector General's responsibility is to receive the IGAR and determine if it is appropriate for that Inspector General to work or refer to another agency. Because an Inspector General assists on an area basis, these IGARs can come from anyone and anywhere. As long as the matter is Army-related, the Inspector General will provide Assistance by working the case or referring the issue to the appropriate agency for action.

Section 1-6

The Purpose and Use of DA Form 1559

1. **Purpose**: This section describes the DA Form 1559, Inspector General Action Request, and its use.

2. **The Purpose of DA Form 1559 and its Use**: Inspectors General use DA Form 1559, Inspector General Action Request, to record complaints and Inspector General requests for information and assistance. This form acts as the base-control document, assists in documenting Inspector General workload, and assists in identifying trends and systemic issues. Also, the form allows the Inspector General to provide the Commanding General (CG) with information to improve the command. The Inspector General will complete DA Form 1559 every time there is a complaint, request for information, or request for Inspector General Assistance. The only time an Inspector General will not complete a DA Form 1559 is when there is a complaint against a senior official (colonel promotable, general officer, or senior executive service civilian) (see Part Two, Section 2-5).

Section 1-6-1

DA Form 1559

1. **Purpose**: This section discusses DA Form 1559, Inspector General Action Request.

2. **DA Form 1559**: Complete the DA Form 1559 in as much detail as possible for every request for Inspector General Assistance except for those regarding senior officials (see AR 20-1, paragraph 7-1l. A good rule of thumb is to complete this form with sufficient detail to allow another Inspector General without prior knowledge of the case to work the issue. The Inspector General will ensure that he or she gets a good phone number to contact the complainant and ask the complainant exactly what it is that he or she wants the Inspector General to do for him or her.

During the initial interview with the complainant, the Inspector General will advise the complainant of the Privacy Act Statement of 1974 on the DA Form 1559. The purpose of discussing the Privacy Act is to show that the Inspector General has the authority to request personal information and that the release of the complainant's social security number, home address, and home telephone number is voluntary.

Also review the statement concerning presenting false information or allegations to an Inspector General at the bottom of the page with the complainant. For walk-in cases, the Inspector General will have the complainant complete, or will assist the complainant in completing, DA Form 1559. The complainant will then sign the form. The Inspector General may provide the complainant with a copy of this form when completed and signed. If the Inspector General receives the complaint via telephone, the Inspector General will complete a DA Form 1559 and, in the signature block, write the word telephonic. If the complaint arrives via e-mail, fax, or letter, the Inspector General will attach a DA Form 1559 to the source document and write in the "specific action requested" block the following phrase: see attached document. If the complaint is anonymous, the IG will write the word anonymous in the signature block. This entry will help remind the IG not to try to identify the complainant.

This form is available through the Army Publishing Directorate Web site and through the IGARS database in the Reports Menu.

A Blank DA Form 1559

INSPECTOR GENERAL ACTION REQUEST

For use of this form, see AR 20-1; the proponent agency is the Office of The Inspector General.

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Title 10, USC, Section 3020; Inspector General Act of 1978 (Pub.L. 95-452), as amended; E.O. 9397 (SSN).

PRINCIPAL PURPOSE: To secure sufficient information to inquire into the matters presented and to provide a response to the requestor(s) and / or take action to correct deficiencies.

ROUTINE USES: Information is used for official purposes within the Department of Defense; to answer complaints or respond to requests for assistance, advice, or information; by Members of Congress and other Government agencies when determined by The Inspector General to be in the best interest of the Army; and, in certain cases, in trial by courts-martial and other military matters as authorized by the Uniform Code of Military Justice. Department of Defense Blanket Routine Uses also apply.

DISCLOSURE: THE SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE COMPLETE INFORMATION MAY HINDER PROPER IDENTIFICATION OF THE REQUESTOR, ACCOMPLISHMENT OF THE REQUESTED ACTION(S), AND RESPONSE TO THE REQUESTOR.

LAST NAME - FIRST NAME - MIDDLE INITIAL	GRADE / RANK	SSN	COMPONENT / STATUS
UNIT AND COMPLETE MILITARY ADDRESS		PREFERRED CONTACT TELEPHONE *(Duty, home, and / or c*	
PREFERRED MAILING ADDRESS *(If different from military address, including ZIP Code)*		E-MAIL ADDRESS *(Optional)*	

SPECIFIC ACTION REQUESTED *(What do you want the IG to do for you?)*

INFORMATION PERTAINING TO THIS REQUEST *(Background. Use additional sheets if necessary; list enclosures if applicable.)*

I do ☐ I do not ☐ consent to release my personal information outside of IG channels (but within DoD official channels) in order to resolve the matters listed above. I understand that if I do not agree to release my personal information, my request for assistance may go unresolved.

This information is submitted for the basic purpose of requesting assistance, correcting injustices affecting the individual, or eliminating conditions considered detrimental to the efficiency or reputation of the Army. Those who knowingly and intentionally provide false statements on this form are subject to potential punitive and administrative action (UCMJ Art 107, 18 USC 1001).

SIGNATURE	DATE *(YYYYMMDD)*

DA FORM 1559, JUL 2011 PREVIOUS EDITIONS ARE OBSOLETE. APD PE v1.00ES

What do you want the IG to do for you?

Be sure to get a good phone number.

Section 1-6-2

IGARS Database 1559 Form

1. **Purpose**: This section discusses the IGARS Database 1559 Form.

2. **IGARS Database 1559 Form**: The IGARS Database 1559 is known as the electronic copy. This blank form exists only within the IGARS database and is for Inspector General use only. This form is simply a graphic, hard-copy representation of the data that an Inspector General will enter into the IGARS database when opening and editing a case. Inspectors General should keep copies of this blank form on hand in case the Inspector General has no computer or the computer fails. The Inspector General may then capture the same information on the blank database form and then input that same data later when the computer resumes operation or a computer becomes available. The Inspector General must complete each field marked with an asterisk prior to closing the case. Unlike the DA Form 1559, the Inspector General may not release a completed copy of this IGARS Database 1559 to the complainant. Inspectors General store sensitive and confidential information on this form.

Since the IGARS database will undergo continuous refinement, this database form will be updated routinely to include new fields for required information. Inspectors General should keep abreast of these changes by checking the current form available on the IGARS database at least monthly. A feature within the IGARS database in the Reports Menu allows Inspectors General to click on a button, open a copy of the blank form in IGARS, and print it for hard-copy reproduction and use as necessary.

Acting IGs do not have access to the IGARS database to enter and track cases. This responsibility falls to the supervising detailed IG's office. The acting IG can fill out this form to capture pertinent case data and then send it to the detailed IG's office for entry into IGARS to complete the case record.

A Blank IGARS Database
1559

Department of the Army
Inspector General Action Request System

11-29-2011

Electronic 1559

Case Number: **Close Date:** **Open Date:**
Suspense Date: **External Suspense Date:**
Complaint Made To: **Receipt Mode:**
Case Status: **Non-IG Referral:**
Priority Flag:

Iinitiator(s) Information

Name	Component	Gender	Grade	Race

Complainant(s) Information

Name	Component	Gender	Grade	Race

Case Label:
Notification Date: **Home IG:** **IG:**
Location:
Problem Area:

Subject Information

Name:
Component: **SSN:**
Race: **Grade:**
Organization: **Gender:**
Mobilization: **Email:** **Consent:**

Function Information

Function:
Stated Allegation:
Discussion:
Conclusion:
Determination: **User Data:** **TIM Category:**
Characterization:

Other Issues or Allegations:

Function:
Stated Allegation:

FOR OFFICIAL USE ONLY. DISSEMINATION IS PROHIBITED EXCEPT AS AUTHORIZED BY AR 20-1.

1 of 2

Chapter 2

Seven-Step Inspector General Action Process (IGAP)

Section 2-1 - The IGAP Chart

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Section 2-3-4 - Acknowledge Receipt

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Section 2-6 - Step 5, Make Notification of Results

Section 2-6-1 - Make Notification of Results for an Assistance Inquiry

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Section 2-7 - Step 6, Conduct Follow-up

Section 2-7-1 - The Inspector General's Responsibilities in Conducting Follow-up

Section 2-8 - Step 7, Close the IGAR

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Section 2-8-2 - Close the IGAR in the Database

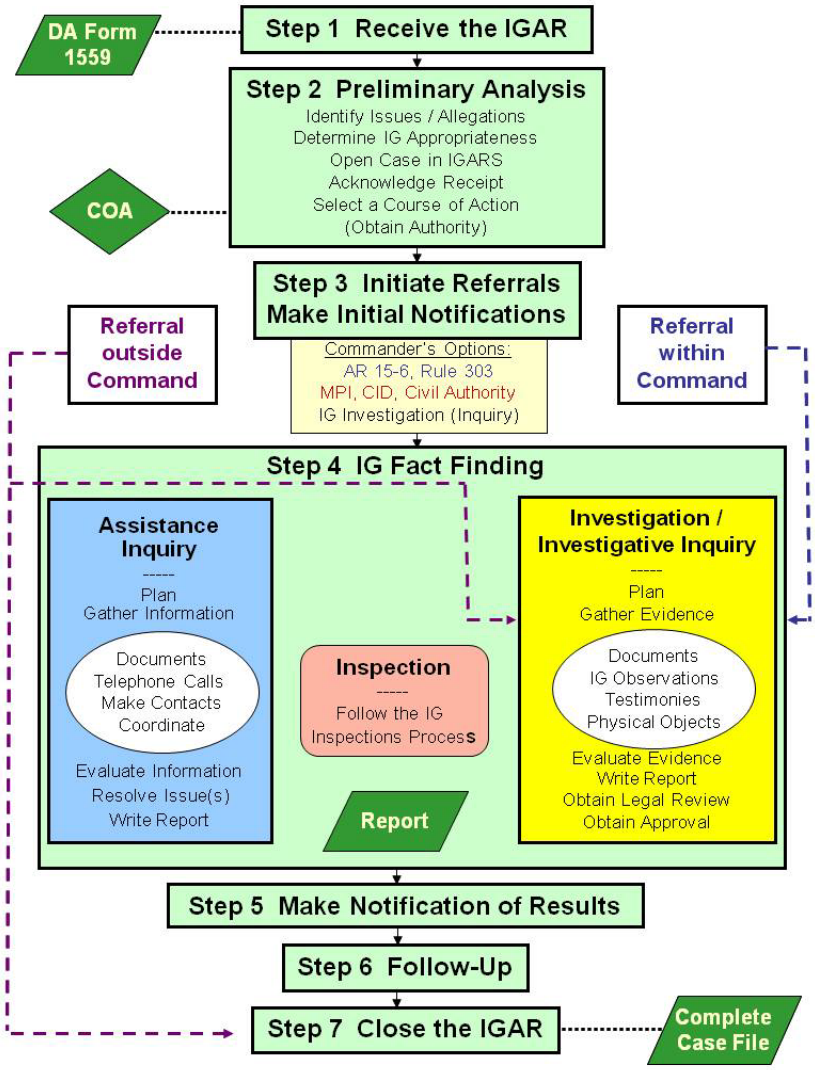
Section 2-8-3 - Make Appropriate Reports

Section 2-8-4 - Analyze for Developing Trends

Section 2-1

The Inspector General Action Process (IGAP) Chart

1. **Purpose**: This section explains the Inspector General Action Process (IGAP) Chart.



2. **The Inspector General Action Process Chart**: This chart covers seven steps beginning with receiving the IGAR in Step One to closing the IGAR in Step Seven. The IGAP Chart will assist Inspectors General in following a logical sequence in which to process an IGAR from beginning to end. The process does not require a dogmatic, sequential application of each step for every case, but using this process allows the Inspector General to accomplish all critical tasks in resolving complaints. Subsequent pages will explain each of the seven steps.

Section 2-2

Step One, Receive the IGAR

Section 2-2-1 – Walk-in IGAR

Section 2-2-2 – Call-in IGAR

Section 2-2-3 - Write-in IGAR

Section 2-2-4 - E-mail IGAR

Section 2-2-5 - Anonymous IGAR

Section 2-2

Step One, Receive the IGAR

1. **Purpose**: This section explains step one in the seven-step Inspector General Action Process.

2. **Step One, Receive the IGAR**: Step one starts the seven-step Inspector General Action Process when an Inspector General receives a request for assistance, a request for information, or a complaint or allegation. These things constitute an IGAR. The receiving Inspector General records all information received during step one on a DA Form 1559, which serves as the base-control document.

The Inspector General will encourage the Soldier or civilian employee first to discuss complaints, allegations, or requests for assistance with the commander, chain of command, or supervisor as explained in Army Regulation 600-20, Army Command Policy. If the complainant has not already contacted or allowed the chain of command to resolve the issue, but at this time agrees to try this avenue, the IG will document this course of action and follow up with the complainant later to ensure that the issue has been resolved. If a complainant does not wish to use the chain of command at this time, the Inspector General still accepts the IGAR and asks the complainant for reasons. If the complainant is concerned about reprisal or does not trust the current chain of command to properly address the issue(s), then the IG needs to proceed with caution to protect the individual. If specific redress procedures are available, the Inspector General will teach and train the complainant on using the appropriate, formally established redress process and refer him / her to that process (see Chapter 3, Issues with Other Forms of Redress).

Even if the case is not appropriate for Inspector General action, the Inspector General receiving the IGAR will always open a case in the IGARS database -- unless the complaint contains classified information. For complaints involving a senior official (SO), follow Section 3-6; and, for members of special-access programs (SAPs) or sensitive activities (SAs), see Section 3-7. If the case is referred to an agency outside the chain of command, the Inspector General will close the case once the other IG office or agency has accepted the referral. When referring to the local chain of command, the Inspector General will keep the case open to monitor the chain of command's actions and to document actions in IGARS before closing the case.

Anyone can submit a complaint, allegation, or request for information or assistance to any Army Inspector General concerning a matter of Army interest. IGARs come from all directions: walk-ins, call-ins, write-ins, emails, and indirectly. An example of an indirect IGAR is an Inspector General shopping in the Post Exchange (PX) who overhears two individuals discussing double standards in the awards program in their unit. The Inspector General just received an IGAR.

Section 2-2-1

Step One, Receive the IGAR
Walk-in IGAR

1. **Purpose**: This section explains the process of receiving a walk-in IGAR.

2. **Walk-in IGARs**: Walk-in is one of many options to a complainant for requesting assistance from the Inspector General. The Inspector General will conduct an interview with the complainant to capture the essence of that person's complaint. The Inspector General must record information received from the complainant on DA Form 1559. The Inspector General will follow the procedures listed below when interviewing a complainant **(prescriptive provision in AR 20-1, paragraph 6-1d (1)(a)).**

a. **Interview**: The Inspector General will interview the complainant during a walk-in complaint. The key to a successful interview is to establish rapport and to listen actively.

b. **Private Area**: The Inspector General will interview the complainant in a private or semi-private area that affords confidentiality between the Inspector General and the complainant. If there are two or more complainants, the Inspector General will attempt to conduct separate interviews.

c. **Action Desired**: The Inspector General will ask the complainant at a minimum these five basic questions:

(1) What do you want the Inspector General to do for you?
(2) Do you have any supporting documentation?
(3) Have you asked any other agency to assist you?
(4) Is your chain of command aware of your problem?
(5) What is your status?

d. **DA Form 1559**: A complainant may submit an IGAR in any form such as by telephone, in person, or by letter. The preferred method is for the complainant to submit a completed DA Form 1559 because it facilitates the standardization and implementation of IGARs. DA Form 1559 also provides the complainant with Privacy Act information. The Inspector General should read the Privacy Act statement to each complainant. The Inspector General must also ensure that DA Form 1559 is completed with as much detail as possible and must give the complainant an opportunity to review the form before signing and departing the Inspector General office. See the example of the Privacy Act statement on the following page.

Privacy Act of 1974

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Title 10, USC, Section 3020

PRINCIPAL PURPOSE: To secure sufficient information to inquire into the matters presented and to provide a response to the requestor(s) and / or take action to correct deficiencies.

ROUTINE USES: Information is used for official purposes within the Department of Defense; to answer complaints or respond to requests for assistance, advice, or information; by Members of Congress and other Government agencies when determined by The Inspector General to be in the best interest of the Army; and, in certain cases, in trial by courts-martial and other military matters as authorized by the Uniform Code of Military Justice. Department of Defense Blanket Routine Uses also apply.

DISCLOSURE OF THE SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE COMPLETE INFORMATION MAY HINDER PROPER IDENTIFICATION OF THE REQUESTOR, ACCOMPLISHMENT OF THE REQUESTED ACTION (S), AND RESPONSE TO THE REQUESTOR.

e. **Confidentiality**: Inspectors General will ensure complainant confidentiality to the maximum extent possible. The complainant does not necessarily need to request confidentiality; the Inspector General will automatically maintain confidentiality. **However, Inspectors General never guarantee confidentiality because the nature of the complaint may require the Inspector General to reveal the person's name in order to resolve the issue.** If an Inspector General must release a person's identity, he or she will first attempt to notify the complainant and to obtain a DA Form 7433, Privacy Act Information Release Statement, or a similar statement, before doing so.

f. **Commitments**: The Inspector General will avoid making any promises or commitments. Instead, the Inspector General will inform the complainant that he or she will look into the matter and, when appropriate, respond to the complainant **(prescriptive provision in AR 20-1, paragraph 6-1d (1)(c)).**

g. **Case File**: All information gathered during an interview in Step One, Receive the IGAR, will be included in the Inspector General case file. This information includes the Inspector General's notes and documents received from the complainant's initial interview. The Inspector General will then make copies of all documents received from the complainant but will not take original documents from the complainant.

A Sample DA Form 1559 for a Walk-in IGAR

INSPECTOR GENERAL ACTION REQUEST

For use of this form, see AR 20-1; the proponent agency is the Office of The Inspector General.

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Title 10, USC, Section 3020; Inspector General Act of 1978 (Pub.L. 95-452), as amended; E.O. 9397 (SSN).

PRINCIPAL PURPOSE: To secure sufficient information to inquire into the matters presented and to provide a response to the requestor(s) and / or take action to correct deficiencies.

ROUTINE USES: Information is used for official purposes within the Department of Defense; to answer complaints or respond to requests for assistance, advice, or information; by Members of Congress and other Government agencies when determined by The Inspector General to be in the best interest of the Army; and, in certain cases, in trial by courts-martial and other military matters as authorized by the Uniform Code of Military Justice. Department of Defense Blanket Routine Uses also apply.

DISCLOSURE OF THE SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE COMPLETE INFORMATION MAY HINDER PROPER IDENTIFICATION OF THE REQUESTOR, ACCOMPLISHMENT OF THE REQUESTED ACTION(S), AND RESPONSE TO THE REQUESTOR.

LAST NAME - FIRST NAME - MIDDLE INITIAL	GRADE / RANK	SSN	COMPONENT / STATUS
Moophing, Tye M.	E-4	123-45-6789	AC

UNIT AND COMPLETE MILITARY ADDRESS	PREFERRED CONTACT TELEPHONE *(Duty, home, and / or cell)*
HHC, 66th Sustainment Bde Fort Von Steuben, VA 22605	Duty - DSN 555-3449 Cell - 540-208-4321

PREFERRED MAILING ADDRESS *(If different from military address, including ZIP Code)*	E-MAIL ADDRESS *(Optional)*
2 Some Place City, VA 22601	tmm@email.com

SPECIFIC ACTION REQUESTED *(What do you want the IG to do for you?)*

I want PCS orders

INFORMATION PERTAINING TO THIS REQUEST *(Background. Use additional sheets if necessary; list enclosures if applicable.)*

I'm an AC Soldier and have been here for over 3 years.
It's time to move - PCS - to another place.
I've asked my Company Commander, but he did not know how I could get orders

I do [X] I do not [ ] consent to release my personal information outside of IG channels (but within DoD official channels) in order to resolve the matters listed above. I understand that if I do not agree to release my personal information, my request for assistance may go unresolved.

This information is submitted for the basic purpose of requesting assistance, correcting injustices affecting the individual, or eliminating conditions considered detrimental to the efficiency or reputation of the Army. Those who knowingly and intentionally provide false statements on this form are subject to potential punitive and administrative action (UCMJ Art 107, 18 USC 1001).

SIGNATURE	DATE *(YYYYMMDD)*
Tye M. Moophing	20110825

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Section 2-2-2

Step One, Receive the IGAR
Call-in IGAR

1. **Purpose**: This section explains the process of receiving a call-in IGAR.

2. **Call-in IGARs**: Call-in is one of the options to a complainant for requesting assistance from the Inspector General. The Inspector General will conduct an interview with the complainant over the telephone to capture the essence of that person's complaint. The Inspector General will record the information from the complainant on DA Form 1559. Receipt of a telephonic complaint does not mean that the Inspector General must handle it. However, Inspectors General analyze all complaints in accordance with Step Two (Preliminary Analysis) of the seven-step IGAP. In addition to the interview, the Inspector General will follow the four steps listed below during a call-in interview:

a. **Written Follow-up Documentation**: The Inspector General will ask the complainant to forward any supporting documentation to the Inspector General office.

b. **Privacy Act**: The Inspector General will read the Privacy Act Statement of 1974 to the complainant. The Inspector General must ensure that the complainant understands the Privacy Act statement before the Inspector General begins working the complainant's case **(prescriptive provision in AR 20-1, paragraph 6-1d (1)(b)).**

c. **Read Back DA Form 1559**: The Inspector General will read back to the complainant the information taken during the telephone interview for clarity and accuracy.

d. **Telephonic**: When taking complaints via the telephone, the Inspector General annotates in the signature block the word "Telephonic." The Inspector General may forward to the complainant a copy of DA Form 1559 for that person's records.

A Sample DA Form 1559 for a Call-in IGAR

INSPECTOR GENERAL ACTION REQUEST

For use of this form, see AR 20-1; the proponent agency is the Office of The Inspector General.

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Title 10, USC, Section 3020; Inspector General Act of 1978 (Pub.L. 95-452), as amended; E.O. 9397 (SSN).

PRINCIPAL PURPOSE: To secure sufficient information to inquire into the matters presented and to provide a response to the requestor(s) and / or take action to correct deficiencies.

ROUTINE USES: Information is used for official purposes within the Department of Defense; to answer complaints or respond to requests for assistance, advice, or information; by Members of Congress and other Government agencies when determined by The Inspector General to be in the best interest of the Army; and, in certain cases, in trial by courts-martial and other military matters as authorized by the Uniform Code of Military Justice. Department of Defense Blanket Routine Uses also apply.

DISCLOSURE: THE SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE COMPLETE INFORMATION MAY HINDER PROPER IDENTIFICATION OF THE REQUESTOR, ACCOMPLISHMENT OF THE REQUESTED ACTION(S), AND RESPONSE TO THE REQUESTOR.

LAST NAME - FIRST NAME - MIDDLE INITIAL	GRADE / RANK	SSN	COMPONENT / STATUS
Moophing, Tye M.	E-4	123-45-6789	AC

UNIT AND COMPLETE MILITARY ADDRESS	PREFERRED CONTACT TELEPHONE *(Duty, home, and / or cell)*
HHC, 66th Sustainment Brigade Fort Von Steuben, VA 22605	Duty: DSN 555-3449 Cell: 540-208-4321
PREFERRED MAILING ADDRESS *(If different from military address, including ZIP Code)*	E-MAIL ADDRESS *(Optional)*
2 Some Place City, VA 22601	tmm@email.com

SPECIFIC ACTION REQUESTED *(What do you want the IG to do for you?)*

Wants his PCS Orders

INFORMATION PERTAINING TO THIS REQUEST *(Background. Use additional sheets if necessary; list enclosures if applicable.)*

Contacted his chain of command: His company commander was unable to get him his orders.

Other agencies contacted: None

Supporting documentation: None

Soldier has been on station for more than three years and is due to PCS.

Soldier consented to release information to resolve his request.
He stated he understood the Privacy Act Statement

I do [X] I do not [ ] consent to release my personal information outside of IG channels (but within DoD official channels) in order to resolve the matters listed above. I understand that if I do not agree to release my personal information, my request for assistance may go unresolved.

This information is submitted for the basic purpose of requesting assistance, correcting injustices affecting the individual, or eliminating conditions considered detrimental to the efficiency or reputation of the Army. Those who knowingly and intentionally provide false statements on this form are subject to potential punitive and administrative action (UCMJ Art 107, 18 USC 1001).

SIGNATURE	DATE *(YYYYMMDD)*
Telephonic	20110825

DA FORM 1559, JUL 2011 PREVIOUS EDITIONS ARE OBSOLETE. APD PE v1.00ES

Section 2-2-3

Step One, Receive the IGAR
Write-in IGAR

1. **Purpose**: The purpose of this section is to explain the process of receiving a write-in IGAR.

2. **Write-in IGARs**: Inspectors General may receive written complaints, allegations, and requests for Inspector General assistance in a variety of written formats. Upon receipt of a written request for assistance, the Inspector General will attach the document to a DA Form 1559 and write in the "specific action requested" block the words "see attached letter." The following are some types of write-in IGARs.

a. **Congressional Correspondence**: These referrals from Members of Congress include requests from constituents who may be Soldiers, Family members, or private citizens. The Office of the Chief of Legislative Liaison (OCLL) receives cases from Members of Congress (MoC) and refers them to the Army Staff, the chain of command, Adjutant General (AG) congressional channels, or DAIG Assistance Division. The DAIG Assistance Division normally refers the correspondence through the ACOM, ASCC, or DRU Inspectors General to the field Inspectors General for action. The command or state Inspectors General complete the case and return a copy of the report of inquiry or investigation through the ACOM, ASCC, or DRU Inspector General to DAIG Assistance Division for reply to the MoC. The MoC then responds to the constituent. If an IG receives congressional correspondence directly from a MoC, the IG must contact DAIG Assistance Division immediately and then forward the correspondence to that office -- even though the IG who received the correspondence may later handle the issue on behalf of DAIG Assistance Division. See Chapter 7 of this guide for more information.

b. **White House Correspondence**: The Army White House Liaison Office refers selected requests from the President, Vice President, or their spouses to Department of The Army Inspector General Assistance Division (SAIG-AC). The local Inspector General will work case as the office of inquiry and forward all findings to DAIG Assistance Division. DAIG Assistance Division will respond to The Office of the White House. If the command or activity's congressional liaison office receives a case on which the Inspector General is currently working or has already completed an Inspector General inquiry, the local Inspector General must inform the tasking official that the response will be forwarded through Inspector General channels to DAIG Assistance Division. See Chapter 8 of this guide for more information.

c. **Secretary of Defense, Secretary of the Army, and Army Chief of Staff Correspondence**: The Army Administrative Assistant and the Office of Executive Communications and Control (ECC) receive referrals from the Secretary of Defense, Secretary of the Army, Army Chief of Staff, and other senior leaders. ECC reviews the information provided and refers the case to the Army agency or headquarters best able to gather the facts and respond. At the installation level, the field Inspector General may receive this type of referral from the local chain of command. These referrals normally

include instructions as to the type of action requested and the desired form of reply. The Inspector General should advise the command of the Inspector General's policy that DAIG Assistance Division answer all investigative work done by an Inspector General for those types of cases.

d. **Department of Defense (DoD) Hotline Correspondence**: DoD Hotline cases come through DAIG Assistance Division. The coordinator at DAIG Assistance Division refers all DoD Hotline cases to the field Inspector General offices for appropriate action and reply in a specific format. The format for this report is in Department of Defense Instruction (DoDI) 7050.01, Defense Hotline Program. The Inspector General must meet the suspense established for DoD Hotline cases or put in writing a request for extension. See Chapter 9 of this guide for more details.

e. **Normal Correspondence**: These are letters written to the Inspector General presenting an allegation, concern, or request for assistance. Enter "see attached" in the "specific action requested" block rather than transferring the contents of the correspondence onto the form.

A Sample DA Form 1559 for a Write-in IGAR

INSPECTOR GENERAL ACTION REQUEST

For use of this form, see AR 20-1; the proponent agency is the Office of The Inspector General.

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: Title 10, USC, Section 3020; Inspector General Act of 1978 (Pub.L. 95-452), as amended; E.O. 9397 (SSN).

PRINCIPAL PURPOSE: To secure sufficient information to inquire into the matters presented and to provide a response to the requestor(s) and / or take action to correct deficiencies.

ROUTINE USES: Information is used for official purposes within the Department of Defense; to answer complaints or respond to requests for assistance, advice, or information; by Members of Congress and other Government agencies when determined by The Inspector General to be in the best interest of the Army; and, in certain cases, in trial by courts-martial and other military matters as authorized by the Uniform Code of Military Justice. Department of Defense Blanket Routine Uses also apply.

DISCLOSURE: THE SOCIAL SECURITY NUMBER AND OTHER PERSONAL INFORMATION IS VOLUNTARY. HOWEVER, FAILURE TO PROVIDE COMPLETE INFORMATION MAY HINDER PROPER IDENTIFICATION OF THE REQUESTOR, ACCOMPLISHMENT OF THE REQUESTED ACTION(S), AND RESPONSE TO THE REQUESTOR.

LAST NAME - FIRST NAME - MIDDLE INITIAL	GRADE / RANK	SSN	COMPONENT / STATUS
Moophing, Tye M.	E-4	123-45-6789	AC

UNIT AND COMPLETE MILITARY ADDRESS	PREFERRED CONTACT TELEPHONE *(Duty, home, and / or cell)*
HHC, 66th Sustainment Brigade Fort Von Steuben, VA 22605	Duty: DSN 555-3449 Cell: 540-208-4321
PREFERRED MAILING ADDRESS *(If different from military address, including ZIP Code)* 2 Some Place City, VA 22601	E-MAIL ADDRESS *(Optional)* tmm@email.com

SPECIFIC ACTION REQUESTED *(What do you want the IG to do for you?)*

See attached letter.

INFORMATION PERTAINING TO THIS REQUEST *(Background. Use additional sheets if necessary; list enclosures if applicable.)*

I do ☐ I do not ☐ consent to release my personal information outside of IG channels (but within DoD official channels) in order to resolve the matters listed above. I understand that if I do not agree to release my personal information, my request for assistance may go unresolved.

This information is submitted for the basic purpose of requesting assistance, correcting injustices affecting the individual, or eliminating conditions considered detrimental to the efficiency or reputation of the Army. Those who knowingly and intentionally provide false statements on this form are subject to potential punitive and administrative action (UCMJ Art 107, 18 USC 1001).

SIGNATURE	DATE *(YYYYMMDD)*
	20110825

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Section 2-2-4

Step One, Receive the IGAR
E-mail IGAR

1. **Purpose**: This section explains the process of receiving an e-mail IGAR.

2. **E-mail IGARs**: Inspectors General may receive complaints, allegations, and requests for Inspector General assistance via electronic mail (e-mail). Upon receipt of an e-mail request for assistance, the Inspector General will acknowledge receipt by sending a generic e-mail if the complainant did not provide a mailing address or phone number. When using e-mail to acknowledge receipt, the Inspector General must use a generic subject line to ensure confidentiality of the complainant. Never respond to the actual message; develop and send a new message so that you do not inadvertently send any confidential information through an open e-mail server. Also, there is no way for the Inspector General to know if the person making the complaint is actually the same person on the e-mail address line. The Inspector General should make every attempt to speak with the complainant by phone. The bottom line is that the Inspector General receiving the case should treat e-mail IGARs just like a call-in IGAR and ask the complainant to confirm the issue(s) or allegation(s) in writing. If the complainant refuses to reply in writing or to call the Inspector General, treat the case just like an anonymous one and work it if there is enough information. If the complainant did not provide sufficient information, then close the case. The following is an example of an e-mail IGAR sent to the Inspector General for action from a complainant.

Sample E-mail IGAR

From: Doe, SGT Jane
Sent: Monday, June 20, 2009 3:19 PM
To: Britton, MAJ Richard (IG)
Subject: My IG Complaint

Dear IG

I am making this complaint because I cannot live with my conscience anymore.
I just returned from having sex with my 1SG in his quarters.

What can you do about this?

Jane

The e-mail listed below is in response to SGT Jane Doe's e-mail message to the Inspector General regarding an improper relationship with the first sergeant. Notice the subject line and the content of this reply e-mail. Send a new message; do not "reply" to the message sent to you so that you do not transmit this person's IGAR through the e-mail system once again unnecessarily.

Sample Response to an E-mail IGAR

Subject: Your E-mail

We are in receipt of your e-mail dated June 20, 2009. Please give us a call at (540) 802-0001 or e-mail us back with your mailing address or phone number so that we can discuss this matter with you. By policy, the Inspector General will not initiate an inquiry on your behalf based upon an e-mail message. To ensure that you are the one presenting these matters, we request that you provide us with a signed DA Form 1559, Inspector General Action Request (IGAR). You may fax or mail this request to our office. Our fax number is (540) 802-0003, and our mailing address is Iron Mountain Road, Suite 2222, Fort Von Steuben, VA 22605.

Sincerely,

MAJ Richard Britton
Deputy Inspector General
(540) 802-0002
DSN 555-0002

Section 2-2-5

Step One, Receive the IGAR
Anonymous IGAR

1. **Purpose**: This section explains the process of receiving an anonymous IGAR.

2. **Anonymous IGAR**: Inspectors General will always look into anonymous IGARs. The substantiation rate for anonymous allegations has historically been slightly higher than signed Inspector General Action Requests (IGARs). Inspectors General will take action to resolve anonymous IGARs and protect the interests of the government. When processing anonymous allegations and complaints, Inspectors General should not create the appearance of unduly trying to identify a complainant. IGs will not attempt to identify the complainant or create the appearance of doing so. The determination of the facts and circumstances related to the IGAR is the Inspector General's primary concern **(prescriptive provision in AR 20-1, paragraph 6-2a).**

If the Inspector General does not have enough information to work the case, the Inspector General should close the case and annotate that fact in the synopsis. Since the complaint is anonymous, there is no need for the Inspector General to reply to the complainant even if the Inspector General discovers the identity of the complainant.

Section 2-3

Step Two, Conduct Inspector General Preliminary Analysis (IGPA)

Section 2-3-1 - Analyze for Issue(s) and Allegation(s)

Section 2-3-1-1 - What is an Issue?

Section 2-3-1-2 - What is an Allegation?

Section 2-3-1-3 - What is a Complaint?

Section 2-3-2 - Determine IG Appropriateness

Section 2-3-3 - Open a Case in IGARS

Section 2-3-4 - Acknowledge Receipt

Section 2-3-4-1- Acknowledge Receipt to a Complainant

Section 2-3-4-2 - Acknowledge Receipt to a Third Party

Section 2-3-5 - Select a Course of Action

Section 2-3

Step Two, Conduct Inspector General Preliminary Analysis (IGPA)

1. **Purpose**: This section describes step two, Conduct Inspector General Preliminary Analysis (IGPA).

2. **Step 2, Conducting Inspector General Preliminary Analysis (IGPA)**:

a. Inspector General Preliminary Analysis (IGPA) is a process used by an Inspector General to determine how best to proceed with a case. IGPA may take a few moments, hours, or days. This process helps identify the issues and / or allegations, determines whether those issues or allegations are appropriate for Inspector General action, acknowledges receipt to the complainant, and assists the Inspector General in developing a course of action. It helps the Inspector General determine who should resolve the problem and how to solve it. IGPA is the beginning of a process that may result in several courses of action. The Inspector General may provide Assistance; conduct an Inspector General Inspection or Investigation; refer the case to another Inspector General or agency; or refer the case to the local chain of command. The commander, usually at the lowest appropriate level, should check with the SJA when deciding which follow-on Investigation to use such as a commander's inquiry, Army Regulation 15-6 Investigation, Military Police Investigation (MPI), or Criminal Investigation Command (USACIDC) Investigation. An Inspector General is usually in IGPA until he or she selects a course of action.

b. Inspectors General always look for the central issues at the core of a problem (or problems) when formulating allegations and providing assistance. Many Assistance cases require the Inspector General to turn a matter of concern over to another individual or agency. This referral process requires the Inspector General to be aware of the possible implications concerning the confidentiality of the complainant. A Soldier who asks for help may not want his first sergeant to know that he made a complaint to the Inspector General. While interviewing the complainant, the Inspector General should determine the circumstances and act accordingly. Referring the complaint to another agency usually means the Inspector General will need to follow-up to determine the action taken and whether or not it addressed the complaint. The Inspector General should request that the individual or agency provide the response back to the Inspector General. The Inspector General reviews the response to ensure that he or she addresses each concern before the complainant receives a final response. A response provided directly to a complainant, if not complete, may require additional time to resolve completely and may decrease the credibility of the Inspector General.

Section 2-3-1

Step Two, Conduct Inspector General Preliminary Analysis Analyze for Issue(s) and Allegation(s)

1. **Purpose**: This section explains the process of analyzing complaints or requests for assistance for issues and allegations.

2. **Analyzing for Issues and Allegations**: Inspectors General will analyze the information presented by the complainant and determine whether that information is a systemic issue, an allegation of impropriety, a request for help (assistance), or a combination of two or more of these elements. For example, a Soldier who complains about not receiving a paycheck is a request for help, but it could also be a systemic problem if trends indicate that the same problem may be pervasive throughout the organization. The Inspector General will determine the assistance requested and what issues or allegations the complainant presented.

The Inspector General must identify all requests for help and matters of concern, even if the complainant did not specifically mention them. The Inspector General should contact the complainant to clarify the issues, allegations, or concerns. The Inspector General may later refer the complainant to the chain of command or an appropriate staff agency for action. For example, a Soldier with a pay complaint who has not initiated the complaint with his or her chain of command or servicing Personnel Administration Center should do so first. The Inspector General will follow-up referrals to ensure that the complainant receives the appropriate assistance.

Section 2-3-1-1

Step Two, Conduct Inspector General Preliminary Analysis
What is an Issue?

1. **Purpose**: This section explains what an Inspector General determines to be an Inspector General issue.

2. **An Issue**: An issue is a request for information or assistance to the Inspector General that does not list a who as the violator of a standard or policy. The Inspector General determines the issues and allegations, not the complainant. If the information from the complaint has a who for the violator, then this complaint is an allegation, and the Inspector General must conduct an Investigative Inquiry or Investigation (See Part Two, Chapter 2).

However, there are times when the complainant will express dissatisfaction, resentment, or discontent that does not necessarily imply a violation of a standard but is more appropriate for the chain of command. If the IGAR involves more than simple assistance, the Inspector General must determine the action necessary to resolve the issues -- referral, Inspector General Inspection, Assistance Inquiry, or an Investigative Inquiry. The following are some examples of issues:

a. A request for pay by a Soldier.

b. A request to locate a Soldier's missing household goods.

c. A request for a copy of a Soldier's travel voucher.

d. The finance office improperly failed to process a Soldier's TDY voucher in a timely manner in violation of the 66th ID Finance Battalion SOP.

Final resolution of issues presented to and worked by an Inspector General will be categorized as either "Founded" or "Unfounded" when the final determination is completed in the ROI / ROII and in the synopsis of the IGARS case. The determination code in the IGARS remains A for assistance.

Section 2-3-1-2

Step Two, Conduct Inspector General Preliminary Analysis
What is an Allegation?

1. **Purpose**: This section explains what represents an allegation to an Inspector General.

2. **Allegation**: The Inspector General will analyze all requests for assistance, requests for information, and allegations. The Inspector General will take the information provided by the complainant and form the allegation, which must identify a specific who by name. The Inspector General is responsible to place the allegation into the proper allegation format. The Inspector General will use the investigative process (or refer the allegation to a command or an agency that can investigate) when the information from the complaint has the following four elements:

a. Who? -- The complaint involves an individual. For example, my company commander, CPT Smith. If no name is given, the Inspector General must learn the company commander's name or this matter remains an issue.

b. Improperly? -- The complainant alleges the subject or suspect to have committed an improper action. For example, the company commander, CPT Smith, improperly did something. Some standards already include language that indicates a wrongful act. In these cases, the word "improperly" might not be required. Seek the SJA's advice when formulating allegations.

c. Did or did not do what? -- Describing of improper behavior. For example, the company commander, CPT Smith, improperly used a government vehicle.

d. In violation of what standard? -- There is a policy, regulation, or law that has allegedly been violated. For example, the company commander, CPT Smith, improperly used a government vehicle in violation of the Joint Ethics Regulation (JER).

A correctly worded allegation by an Inspector General must contain all parts: who improperly did or did not do something in violation of an existing standard. For example, CPT Smith improperly used a government vehicle to transport his girlfriend to the movies in violation of the JER.

Inspectors General should always look for larger systemic problems, implied allegations, and the condoning of wrongdoing. If the preliminary analysis resulted in a decision to conduct an Investigative Inquiry or Investigation, use Part Two, Chapter 2, of this guide, as well as Army Regulation 20-1, Inspector General Activities and Procedures, for the correct procedures.

All allegations require an Inspector General to pursue either an investigative inquiry or investigation. Inspections and Assistance inquiries are not appropriate forms of action for resolving any allegation. Therefore, the Inspector General will use a Report of Investigation (ROI), Report of Investigative Inquiry (ROII), or Hotline Completion

Report (HCR) to document all evidence and information reviewed and the final determination of either "Substantiated" or "Not Substantiated."

On rare occasions, IGs might close a case prior to completion if the investigation or investigative inquiry is terminated due to a special circumstance. These circumstances include an allegation that relates to actions that are more than three years old or a legal process that may terminate the ongoing inquiry or investigation (see AR 20-1, paragraph 7-2b (7)). In these instances the IG will document this situation in the case file, including the synopsis in IGARS, as "closed without findings" and include all details such as the timeline, the court order, or the settlement. The IGARS entry will then be changed from an allegation into an issue with a determination code of A (Assistance).

Section 2-3-1-3

Step Two, Conduct Inspector General Preliminary Analysis
What is a Complaint?

1. **Purpose**: This section explains what an Inspector General determines to be a complaint.

2. **Complaint**: A complaint is an expression of dissatisfaction or discontent with a process or system such as leave policies or the pay system. In some cases, the Inspector General may not be able to assist the complainant with his or her complaint. The Inspector General will conduct some teaching and training with the complainant and explain the role of the Inspector General. Even though the Inspector General knows that the complaint is not appropriate for the Inspector General, the Inspector General must still analyze the entire complaint for any issues and / or allegations. The following is an example of a complaint.

Sample Complaint

LTC Jones complains to the Inspector General about the Basic Allowance for Housing (BAH). He is dissatisfied with the amount that he is receiving based upon the zip code for Arkansas. He feels that he should be getting more.

The Inspector General's job is to teach and train the individual while at the same time analyzing the complaint for larger issues. In this case, the Inspector General must explain the BAH process to the complainant and, if necessary, refer the complainant to either the Housing or Finance office for a more informed explanation. If the complainant is receiving BAH in accordance with approved rates, then the Inspector General can refer his dissatisfaction about the approved BAH rate to the chain or command or recommend that the complainant use another established appeal or grievance process (if one exists). Many complaints presented to the Inspector General will have an established appeal process. If so, the complaints are not appropriate for Inspector General action until the complainant uses the established process. If the complainant is still dissatisfied, the Inspector General can check the appeal action for due process.

Section 2-3-2

Step Two, Conduct Inspector General Preliminary Analysis Determine IG Appropriateness

1. **Purpose**: This section explains what issues are appropriate for Inspector General action.

2. **Determining Inspector General Appropriateness**: If the results of preliminary analysis indicate that the IGAR received is appropriate for Inspector General action, the Inspector General will accept the IGAR and open a case file. As a rule, not all matters presented to the Inspector General are appropriate for Inspector General action (See Chapter 3 for specific examples).

a. When presented with non-Inspector General appropriate matters of concern, Inspectors General will advise complainants of the appropriate agency that can resolve the complaint and normally allow complainants to present their issues to that agency directly. Inspectors General may elect to refer the issue to the appropriate agency on behalf of the complainant but must be mindful of confidentiality concerns. Inspectors General will provide the necessary information to the agency and determine whether to monitor the action until completion. For example, if an individual alleges criminal activity, Inspectors General will refer the case to the local U. S. Army Criminal Investigation Division Command (USACIDC) investigative office. The bottom line is that if the Inspector General knows of this problem (whether it is appropriate for Inspector General action or not), he or she must act on what is known. This action could be the Inspector General's own work or referral to another agency. The Inspector General will still open the case, complete the DA Form 1559 stating why the issue is not appropriate for Inspector General action, and explain what the Inspector General did with the IGAR. The Inspector General will then close the case in the IGARS database.

b. If the Inspector General determines that the matters of concern are appropriate for Inspector General involvement, the Inspector General should ask the following questions as part of preliminary analysis:

(1) Is the matter of concern clearly systemic in nature? If so, does the Inspector General need to conduct an Inspection?

(2) Is there any indication of general officer or senior executive service misconduct or violations of 18 U.S.C., 207(a), (b), or (c) (post employment violations)? Refer these allegations directly to the DAIG Investigations Division within two working days of receipt. Paragraph 7-1l, Army Regulation 20-1, Inspector General Activities and Procedures, provides guidance on allegations against general officers and senior executive service civilians.

(3) Do the matters of concern involve an allegation against an Inspector General? If so, refer them, within two working days of receipt, to that Inspector General's next higher-echelon Inspector General for appropriate action while also

informing DAIG Assistance Division. Paragraph 8-3h, Army Regulation 20-1, provides guidance on Inspector General action for allegations against other Inspectors General.

(4) Are the concerns within the purview of the Inspector General's Directing Authority? If not, refer them to the Inspector General of the appropriate organization.

Section 2-3-3

Step Two, Conduct Inspector General Preliminary Analysis Open a Case in IGARS

1. **Purpose**: This section provides an overview of the Inspector General Action Request System (IGARS).

2. **Inspector General Action Request System (IGARS)**: IGARS is a database accessed through Thin Client that stores all cases entered into it as a complete record of all issues and allegations presented to an IG. This database facilitates the identification of trends and helps IGs in the field to monitor and track open cases and refer back to closed cases as necessary

3. **When to Open a Case in IGARS**: The IG will open a case in the IGARS database prior to completing Step Two, Preliminary Analysis.

a. All complaints will be logged in the IGARS database. Even if the case is referred to another agency outside the command such as CIDC or falls under civilian IGARs not appropriate for IG action and also referred to another agency, the IG will still open a case and annotate all actions taken (for instance referral to the appropriate agency such as CIDC, EEO, CPAC, etc.) **(prescriptive provision in AR 20-1, paragraph 6-1d (2)(j)).**

b. See Section 3-6 for special considerations when the complaint includes allegations against senior officials and Section 3-7 when the complaint includes allegations against members of special-access programs or sensitive activities.

4. **Entries**: This database has several entry fields to identify and track all pertinent information for each particular case. Some fields are explained below.

a. Function Codes: The function code explains the allegation, issue, or complaint. Each functional area has sub-categories that provide a more detailed explanation. Accurate and specific entries make the database useful and the information gleaned from it meaningful. Complaints are grouped into various functions, which are assigned a specific letter or number. For example, all finance issues are grouped under the function code "K," Finance and Accounting, and all health- and medical-related issues under "H," Health Care. Further characters identify more specific categories to provide a better trends-analysis tool. Hence, the function code for a Soldier requesting assistance to correct his or her temporary duty (TDY) travel pay will have a function code of "KGB."

K - Finance and Accounting
KG - Travel Pay
KGB - Issue regarding temporary duty (TDY) travel pay for Soldiers

A complete list of the function codes is embedded in IGARS under the Utilities tab.

b. Agency / Command Code: The agency or command that best defines where the allegation, issue, or complaint resides. A complete list of the command codes is embedded in IGARS under the Utilities tab.

c. Determination Codes: Shows the final determination of the allegation as either S (Substantiated) or N (Not Substantiated) or indicates that the case is A (Assistance).

d. Case Notes: Case notes are a detailed, chronological listing of everything pertaining to the case. Case notes will include, at a minimum --

- phone calls, including names, phone numbers, summary of topic / discussion
- notifications, if verbal or written
- coordination with staff / command (who, what, ...)
- legal reviews
- any e-mails, faxes, or correspondence received or sent
- additional information as required

Case notes will be in the following format: Date (IG Name) Notes

Sample Case Notes

01/05/2010 (John Jones): SPC Needs Money, Alpha Company, 66th Signal, walked into the IG office complaining that an allotment he started last month is not reflected on his Leave and Earnings Statement (LES). SPC Money provided a copy of his LES and the allotment he submitted. Completed a DA Form 1559.

01/05/2010 (Jane Johnson): Contacted the Fort Von Steuben Finance office, Mr. Cash Flow, regarding SPC Money's allotment. Mr. Flow determined that the finance office encountered an error while processing SPC Money's allotment, which caused a delay in payment. Mr. Flow stated that he corrected the error, and SPC Money's allotment will appear on his end-of-month LES.

01/06/2010 (John Jones): Contacted SPC Money to inform him that his allotment should appear on his end-of-month LES due to an error in processing his allotment.

02/02/2010 (John Jones): Received confirmation from SPC Money that his allotment has processed and appears on his LES.

Provided complainant, SPC Money, a final reply and closed the case in the IGARS database.

(1) Several entries may be written on the same date without repeating the date and IG's name if the same IG is responsible for the multiple entries.

(2) IGARS allows more than one IG to input data into the same case file. IGs should make use of that capability and update cases notes, even if he or she is not

the primary IG working a particular case but merely answered or processed information on behalf of -- or during the absence of -- the primary action officer.

(3) The IG may want to include personal opinions or observations in case notes at times, but the IG needs to be careful what subjective comments he or she writes. Although the IG system protects and restricts access to information, an entire IG file with case notes can be released under certain circumstances. Only write what you want others to read; the IGARS database is not the IG's personal diary.

e. Synopsis: The synopsis is a concise summary of everything pertaining to the case. See Section 2-8-2, Close an IGAR in the Database, for more detail.

f. One-Minute IGAR (OMI): The one-minute IGAR is a one-page IGAR used to document IG- to-IG requests for support (function code 1B) and routine requests for information (function code 1A). One-minute IGARS are the preferred method of documenting referrals of senior official (SO) allegations to DAIG Investigations Division. IGs will use OMIs only for simple requests for information that the IG can resolve easily **(prescriptive provision in AR 20-1, paragraph 6-1d (2)(k)).**

Section 2-3-4

Step Two, Conduct Inspector General Preliminary Analysis Acknowledge Receipt

1. **Purpose**: This section explains when and how to acknowledge receipt of an IGAR.

2. **Acknowledge Receipt**: Inspectors General will properly acknowledge receipt of all IGARs. Inspectors General acknowledge, orally or in writing, individual complaints, allegations, or requests for assistance. An acknowledgment is simply a notification that the Inspector General received the request and may either open a case, refer the IGAR, or do nothing if the issue does not meet the criteria for Inspector General action. In some cases, it may be appropriate to provide a more substantive acknowledgment based upon the nature of the correspondence **(prescriptive provision in AR 20-1, paragraph 6-1d (2)(a)).**

Inspectors General receiving an oral IGAR may acknowledge it at that time but will make a written record of the acknowledgment in the file's case notes. Inspectors General do not acknowledge anonymous complaints or requests for assistance.

An individual may ask an Inspector General for assistance and at the same time seek help from a MoC. Once a MoC intervenes, the complainant will not receive a response from the Inspector General. Rather, the MoC will receive the Inspector General response from DAIG Assistance Division (SAIG-AC). The Inspector General must therefore inform the complainant that he or she will receive a response from the MoC and not directly from the Inspector General. It is important that when the local Inspector General discovers Congressional involvement, the Inspector General must immediately contact DAIG Assistance Division, which is the office of record for all Congressional correspondence.

In acknowledging a request, inform the complainant that he or she will only receive information on the results of the Inquiry or Investigation that affect him or her directly and personally **(prescriptive provision in AR 20-1, paragraph 6-1d (2)(e)).**

Inspectors General acknowledge IGARs received from another Inspector General via telephone with the exception of those IGARs received from DAIG Assistance Division unless otherwise noted. However, the Inspector General is not required to acknowledge receipt of information copies of letters addressed to other agencies unless that Inspector General is required to take some type of action.

Section 2-3-4-1

Step Two, Conduct Inspector General Preliminary Analysis Acknowledge Receipt to a Complainant

1. **Purpose**: This section explains when and how to acknowledge receipt to a complainant.

2. **Acknowledge Receipt to a Complainant**: Inspectors General choosing to acknowledge receipt of a complaint in writing should use a letter format. This recommended example is direct and to the point; appears less awkward to a civilian recipient; and is in accordance with Army Regulation 25-50, Preparing and Managing Correspondence. A sample acknowledgement letter of receipt to a complainant appears on the next page:

Sample of an Acknowledgment Letter to a Complainant

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION
FORT VON STEUBEN, VIRGINIA 22605

December 2, 20XX

Office of the Inspector General

Captain John Doe
3030 Anywhere Lane
Anywhere, VA 22060

Dear Captain Doe:

We received your letter to The Inspector General dated November 29, 20XX, concerning incorrect retirement points.

The Inspector General initiated a thorough inquiry into your complaint (or request for assistance). We will advise you of the results at the conclusion of the inquiry.

Sincerely,

Richard Britton
Richard Britton
Major, US Army
Inspector General

Section 2-3-4-2

Step Two, Conduct Inspector General Preliminary Analysis Acknowledge Receipt to a Third Party

1. **Purpose**: This section explains how to acknowledge receipt to a third party.

2. **Acknowledge Receipt to a Third Party**: Inspectors General reply to third-party complainants in a very general manner. Inspectors General may divide third-party letters into two types. The first type is a letter sent by someone on behalf of someone else. For example, parent or Family members may submit complaints on behalf of a Soldier without the Soldier's knowledge. The second type of third-party letter pertains to someone giving information about another person who alleges that someone has done something wrong. The resultant inquiries in both cases will produce information not directly pertaining to the individuals who initiated the letters. Remember that the Privacy Act generally prohibits the release of personal information to third parties without consent. However, the Privacy Act has provisions that may require an Inspector General to release personal information without the individual's consent (such as a subpoena); in this situation, the IG will attempt to contact the complainant and obtain a Privacy Act release statement (such as a DA Form 7433 or similar statement) from the complainant. In general, Inspector General replies to third parties are direct in nature and simply acknowledge receipt of the complaint or allegation. The replies contain no specific information about the complaint or what the Inspector General has done with the complaint. Also, replies to third parties must not violate an individual's right to privacy (unless an exception exists as mentioned above). In general, the Inspector General should always obtain a Privacy Act release authorization as shown below from the individual about whom the complaint is made in order to release personal information to any third party -- unless a specific Privacy Act provision demands that release (see above). Shown below is a sample copy of a Privacy Act Information Release Form. **(prescriptive provision in AR 20-1, paragraph 6-1d (2)(f)).**

Privacy Act Information Release Form

PRIVACY ACT INFORMATION RELEASE STATEMENT
For use of this form, see AR 20-1; the proponent agency is the Office of The Inspector General.

I, _____, authorize access or release of:
(Rank/Title, First MI Last Name)

☐ Any inspector general information or records pertaining to me

☐ Inspector general information or records pertaining to my request specifically for

_____

to the following individual(s):

☐ General release

☐ _____

_____

_____
(Rank/Title, First MI Last Name)

_____ SIGNATURE

_____ DATE*(YYYYMMDD)*

DA FORM 7433, APR 2009 APD PE v1.00ES

Section 2-3-5

Step Two, Conduct Inspector General Preliminary Analysis Select a Course of Action

1. **Purpose**: This section explains how to select a course of action.

2. **Select a Course of Action**: There are normally four courses of action available: conduct an Inspector General Inspection, conduct an Inspector General Investigation or Investigative Inquiry, conduct an Inspector General Assistance Inquiry, or refer the matter to another agency. Inspectors General should determine the appropriate courses of action for each issue and allegation presented in the IGAR. IGARs often contain issues that result in more than one course of action.

a. If a systemic problem exists and warrants an Inspection, the Inspector General should follow the Inspector General Inspections process outlined in The Inspections Guide.

b. If an Inspection is not appropriate, you may use the IGAP for Assistance or an Investigation depending on the nature of the issue or allegation. If conducting an Investigation, remember that the local Inspector General must obtain authority from his or her Directing Authority (Commanding General) (see Part Two, Section 2-10, of this guide).

c. Whether or not the complaint contains allegations of wrongdoing by an individual or an adverse condition or issue, refer to the process outlined in Part Two, Section 2-7, of this guide for action. Inspectors General not assigned to DAIG Investigations Division are not authorized to handle allegations against senior officials (promotable Colonels, General Officers, or civilian members of the Senior Executive Service). These allegations require referral to DAIG Investigations Division within two working days at commercial (703) 545-4556 or DSN 865-4556. Refer allegations against members of Army special-access programs (SAPs) and sensitive activities (SAs) to DAIG Intelligence Oversight Division.

d. Inspectors General could also determine if they should forward the case to another Inspector General office or recommend a follow-on investigation. Complaints or requests for assistance may be referred for appropriate action to the responsible Army leader, commander, or management official within the Inspector General's command; to other Army Inspectors General using Inspector General technical channels; to the Inspector General, DoD; Inspectors General in other Services; or to other DoD, Army, and non-military agencies.

Section 2-4

Step Three, Initiate Referrals and Make Initial Notifications

Section 2-4-1- Initiate Referrals

Section 2-4-2- Make Initial Notifications

Section 2-4-1

Initiate Referrals

1. **Purpose**: This section explains the process of initiating referrals.

2. **When to Initiate a Referral**: Depending upon the nature of the issue, Inspectors General may decide during preliminary analysis that their best course of action for resolution of the issues and / or allegations would be to refer complaints to the chain of command, outside the chain of command, or to other Inspector General offices.

3. **Initiate a Referral to the Local Chain of Command**: When referring complaints to the local chain of command, the chain of command has the responsibility and the authority to address the complaints. Where appropriate, the Inspector General should refer matters to the chain of command and then monitor these matters to ensure that the chain of command takes proper action. If the Inspector General refers or recommends a case to a commander for the commander to conduct an inquiry or investigation, the Inspector General will keep the case open until the commander provides a copy of the inquiry or investigation **(prescriptive provision in AR 20-1, paragraph 6-1d (3)(a)).**

a. All referral documents sent to commanders requesting an inquiry or investigation will include all allegations written in the correct format (i.e., who, improperly did or did not do something, in violation of a standard). The referral document must also inform the commander that the Inspector General requires a copy of the inquiry or investigation to use as evidence when making the final Inspector General determination and closing the case. The Inspector General will also provide the name of an Inspector General whom the command's investigating officer can contact. When working with the investigating officer, the Inspector General must be careful to provide only the information allowed by paragraph 3-5d (3) Army Regulation 20-1. Additionally, the Inspector General will inform the commander that he or she will notify the subject or suspect of the inquiry and of the investigation results posted in the IGARS database.

b. If the Inspector General, in reviewing the inquiry or investigation, notes that information is missing or that all issues were not addressed, the Inspector General will discuss the discrepancies with the Staff Judge Advocate (SJA) and the commander (if necessary) and ask that corrections be made. If the commander decides not to address the missing issues or add the missing information, the Inspector General will conduct an inquiry on only those areas that the commander did not address and resolve. If the Inspector General, in reviewing the inquiry or investigation, disagrees with the procedures followed for the investigation, the Inspector General will attempt to resolve the issues with the command; if he or she cannot resolve the issues, the Inspector General will contact DAIG Assistance Division for guidance before proceeding. If the commander does not provide the Inspector General with a copy of his inquiry or investigation, the Inspector General will explain to the commander that in accordance with (IAW) Army Regulation 20-1, Inspector General Activities and Procedures, paragraph 1-7a, the Inspector General is authorized a copy of the inquiry or investigation report.

c. If, during an IG inquiry or investigation, the Inspector General feels that he or she will substantiate the allegation(s), the Inspector General should inform the Directing Authority (DA) (that is, the commander) and request that the DA do his or her own investigation. The Inspector General will keep the case open, request a copy of the other investigation, and then close the case in the same manner as stated above. If the Inspector General is conducting an inquiry or investigation and then discovers that a commander at some other level is conducting an inquiry or investigation on the same case, the Inspector General will contact that commander and request a copy of the commander's inquiry or investigation. If the commander does not comply, the Inspector General will contact DAIG Assistance Division for guidance before proceeding.

4. **Initiating Referrals Outside the Chain of Command**: The Inspector General may elect to refer the issue to the appropriate agency on behalf of the complainant, but be mindful of confidentiality concerns. Provide the necessary information to the agency, and determine whether or not to monitor the action until completion. For example, if an individual alleges criminal activity, the Inspector General, following a consultation with the SJA, should refer the information to the local Criminal Investigation Division Command (CIDC) field office. The Inspector General will request that the CIDC office follow up with the individual and advise the Inspector General of the results or reply directly to the complainant. The Inspector General should retain a copy of the complaint. CIDC may not accept it, and the Inspector General may need to refer the allegation to Military Police Investigators (MPI) or to the chain of command for inquiry or investigation **(prescriptive provision in AR 20-1, paragraph 6-1d (3)(b)).**

5. **Initiating Referrals to Another Inspector General Office**: The IG receiving an IGAR may decide during his or her preliminary analysis that another IG office is best suited to handle a particular issue due to jurisdictional or other reasons. A referral to another IG can occur by either retaining Office of Record status and requesting the other IG office work the case as an Office of Inquiry, or referring the case to the new IG office and giving them full Office of Record status. In all cases, the receiving IG office must agree to accept the referral **(prescriptive provision in AR 20-1, paragraph 6-1d (3)(c)).**

a. There will be times when a higher vertical-echelon command IG needs assistance from another IG in order to resolve the issues raised by the complainant. If this IG office chooses to refer the issue to the other IG office and retain Office of Record status, the new IG office (if that office accepts the case) becomes the Office of Inquiry, and the originating IG can only close the case once the Office of Inquiry has reported their fact-finding results. IGARS allows the Office of Record to close the case only after the Office of Inquiry case has been closed. Referred IGARS must be complete and fully document the work the referring IG completed. It should include case notes up to the referral action and at least the first two paragraphs of the synopsis. Case notes will include contact information for anyone consulted and any information that will assist the receiving IG and reduce duplication of effort, especially for cases referred to a deployed IG.

b. When IGs receive an IGAR from complainants that another IG must address due to jurisdictional or other reasons (such as non-support cases), they will take the IGAR as part of their area of responsibility and refer the case to the appropriate IG office. In this type of referral, the issues (along with Office of Record status) are

transferred to the appropriate IG office, and the originating office can close the case upon receiving acceptance from the gaining office.

c. IGs referring issues to other IG offices will use the referral function in the IGARS database. Referrals will include a thorough synopsis and case notes of all actions taken to document the historical record of the case for the receiving IG office. Any supporting documents will be sent via IGNET e-mail after coordination has taken place. Although these electronic referrals ease the referring of cases, IGs must still communicate via IGNET e-mail and / or telephone with each other before completing the referral. The IGARS electronic referral process was not created as a fire-and-forget system that allows an IG to manage his or her caseload by referring all work to other IGs. Remember that the referral to other IGs is an extension of IG technical channels and that the receiving IG office must agree to accept the referred case. Only DAIG may directly task another IG office to work an issue or conduct an investigation. This tasking authority does not exist among IGs, regardless of echelon, below DAIG level. If a disagreement between two IG offices occurs with regard to a referral, DAIG Assistance Division will adjudicate **(prescriptive provision in AR 20-1, paragraph 6-1d (3)(d)).**

Section 2-4-2

Make Initial Notifications

1. **Purpose**: This section explains the process of making initial notifications.

2. **Making Initial Notifications**: If Inspectors General initiate an investigative inquiry or recommend an investigation, they will verbally notify the appropriate commanders or supervisors and the subjects or suspects of the inquiry / investigation and inform them of the nature of the allegation(s) (See Part Two, Section 3-2). The IG will document these notifications and enclose them in the Report of Investigation (ROI) or Report of Investigative Inquiry (ROII) (See Part Two, Section 4-14) and make the appropriate entry in the IGARS database.

Section 2-5

Step Four, Conduct Inspector General Fact-Finding

Section 2-5-1 - Conduct Inspector General Fact-Finding

Section 2-5-2 - Inspections

Section 2-5-3 - Assistance Inquiry

Section 2-5-4 - Investigative Inquiry

Section 2-5-5 - Investigations

Section 2-5-1

Conduct Inspector General Fact-Finding

1. **Purpose**: This section explains the process of conducting Inspector General Fact-Finding.

2. **Conduct Inspector General Fact-Finding**: Fact-finding involves the process of obtaining factual information in the conduct of an Inspector General Inspection, Assistance Inquiry, Investigative Inquiry, and Investigation. In order to resolve the issues and allegations gleaned from an IGAR (no matter whether the IGAR is from a complainant or a request from a commander), the Inspector General must obtain facts that will support the Inspector General's eventual decision. The Inspector General needs no additional authority to conduct an Assistance Inquiry and Investigative Inquiry. When an Inspector General determines that an Inspector General Inspection or Investigation is needed, he or she must first obtain authority from the Inspector General's Directing Authority (usually the Commanding General). The Inspector General will use the Assistance Inquiry as the fact-finding process to gather the information needed to resolve IGAR Assistance issues. Each of the four elements of Inspector General Fact-Finding is discussed on subsequent pages.

No matter which IG fact-finding process is used, the IG will enter each action taken along the way into the IGARS database in the case notes to complete a detailed, chronological listing of all actions taken in resolving the complaint.

Section 2-5-2

Inspections

1. **Purpose**: This section explains how assistance trends are best addressed through Inspections.

2. **Inspections**: An Inspection may be necessary if the Inspector General learns of a trend or sees a pattern of individual complaints. When requests for assistance come to the Inspector General, they are recorded in the IGARs database and analyzed for any developing trends or systemic issues. These trends may result in an Inspector General Inspection. On the other hand, Inspections can assist the command in identifying local issues that are unique to that area. Members from the Inspection team sometimes bring back IGARs received during their Inspections fact-finding. Inspections complement the Assistance function by allowing Inspectors General to identify potential problem areas and acting on them proactively. See The Inspections Guide for further information about Inspector General Inspections.

Section 2-5-3

Assistance Inquiry

1. **Purpose**: This section explains the process of conducting an Assistance Inquiry.

2. **Assistance Inquiry**: The Assistance Inquiry is an informal fact-finding process used to address or respond to a complaint involving a request for help, information, or issues but not allegations of impropriety or wrongdoing.

Depending on the nature of the IGAR, the Inspector General may complete the Assistance Inquiry or refer the issues to another agency to resolve and return to the Inspector General. The Inspector General must evaluate the facts and evidence received to ensure that all issues were addressed before responding to the complainant. The information provided to the Inspector General must lead to a reasonable conclusion or recommendation. If there is a proponent available regarding the information requested, the proponent should verify the information provided to the Inspector General when appropriate. However, the Inspector General is responsible for ensuring that all issues have been addressed and / or resolved prior to notifying the complainant and closing the case.

The Inspector General should obtain an opinion from the local supporting Staff Judge Advocate (SJA) on the legal sufficiency of the Assistance Inquiry. If the local SJA is not capable of supporting the Inspector General, contact the DAIG Legal Office for assistance. The inquiry findings will be the basis for the notification to the complainant as well as the final reply.

Section 2-5-4

Investigative Inquiry

1. **Purpose**: This section explains the process of conducting an Investigative Inquiry.

2. **Investigative Inquiry**: An Investigative Inquiry is an informal fact-finding examination by an Inspector General into allegations, issues, or adverse conditions that are not significant in nature -- as deemed by the command IG or Directing Authority -- and when the potential for serious consequences (such as potential harm to a Soldier or negative impact on the Army's image) are not foreseen. IG investigative inquiries involve the collection and examination of evidence that consists of testimony or written statements; documents; and, in some cases, physical evidence. This process does not require the Inspector General to obtain additional authority from his or her Directing Authority (Commanding General). The process for an Investigative Inquiry is addressed in Part II of this guide.

Section 2-5-5

Investigations

1. **Purpose**: This section explains the process of conducting an Investigation.

2. **Investigation**: The Investigation is a formal fact-finding examination led by a detailed Inspector General into allegations, issues, or adverse conditions that provides the Directing Authority a sound basis for making decisions and taking action. Inspector General Investigations normally address allegations of wrongdoing by an individual and require a written directive from the Directing Authority. The conduct of Inspector General Investigations involves the systematic collection and examination of testimony and documents but may also include physical evidence. The results are reported using the Report of Investigation (ROI) format addressed in Part Two of this guide.

Section 2-6

Step Five, Make Notification of Results

Section 2-6-1 - Make Notification of Results for an Assistance Inquiry

Section 2-6-2 - Make Notification of Results for an Investigative Inquiry and Investigation

Section 2-6-1

Make Notification of Results for an Assistance Inquiry

1. **Purpose**: This section explains the process of making notification of results for an Assistance inquiry.

2. **Make Notifications of Results for an Assistance Inquiry**: At the completion of the Assistance Inquiry, the complainant will be notified and informed of the results. Only information directly pertaining to the complainant regarding actions taken will be provided to the complainant. Remember: The person presenting the complaint may in some cases be a third party and is only authorized by law to receive information directly pertaining to him or her without prior consent from the complainant (unless a Privacy Act exception applies). All notifications made will be recorded in the IGARS database and annotated in the case file using case notes **(prescriptive provision in AR 20-1, paragraph 6-1d (4)).**

Section 2-6-2

Make Notification of Results for an Investigative Inquiry and Investigation

1. **Purpose**: This section explains the process of making notifications of results for an Investigative Inquiry and Investigation.

2. **Making Notification of Results for an Investigative Inquiry and Investigation**: Investigations or Investigative Inquiries notifications during Step 5 include the subject(s) / suspect(s), the supervisor / commander, and the complainant. See Part Two, Chapter 10, of this guide for more details. IGs must record all notifications in the IGARS database and annotate the action in the case file using case notes.

Section 2-7

Step Six, Conduct Follow-up

Section 2-7-1 - The Inspector General's Responsibilities in Conducting Follow-up

Section 2-7-1

The Inspector General's Responsibility in Conducting Follow-up

1. **Purpose**: This section explains the Inspector General's responsibilities in conducting follow-up.

2. **The Inspector General's Responsibilities in Conducting Follow-up**: Follow-up ensures that all issues and / or allegations have been thoroughly addressed and the Inspector General's responsibilities have been fulfilled. This responsibility includes follow-up on any needed corrective actions. Although the corrective actions may not satisfy the complainant, an Inspector General's primary concern is with ensuring that all Inspector General actions, command decisions, or proponent actions occurred as necessary. Follow-up should include a review of issues and / or allegations previously addressed to determine if further appeal procedures are available or if the Inspector General should examine due process for the complainant. Inspectors General may personally conduct follow-up or address the issues and / or allegations during a Staff Assistance Visit (SAV) or during future Inspector General Inspections **(prescriptive provision in AR 20-1, paragraphs 6-1d (5)(a) and (b)).**

If the Inspector General refers a complainant to another agency (such as the Finance office) for problem resolution, the Inspector General should check back with the complainant to ensure that he or she received assistance from that agency. Remember: Inspectors General assist in resolving problems. Do not close a case until the complainant's problem is resolved or until you are satisfied that the complainant has received fair and just treatment or consideration.

If the problem is not resolved, the Inspector General must determine the reason for the failure to resolve the issue. Some problems cannot be resolved until standards, such as laws, regulations, or policies, are changed. An Inspector General's case is not closed until all appropriate actions are completed **(prescriptive provision in AR 20-1, paragraph 6-1d (5)(c)).**

Section 2-8

Step Seven, Close the IGAR

Section 2-8-1 - Send a Final Reply

Section 2-8-2 - Close the IGAR in the Database

Section 2-8-3 - Make Appropriate Reports

Section 2-8-4 - Analyze for Developing Trends

Section 2-8-1

Send a Final Reply

1. **Purpose**: This section explains the process of sending the complainant a final reply.

2. **Sending a Final Reply**: Closing an IGAR includes providing the complainant a final reply. The response should be helpful, reflect established policies, and state corrective action as appropriate. The response will not contain classified information, information from agencies outside the Department of the Army (DA), private information about third parties, unconfirmed or speculative information, information pertaining to the loyalty of an individual, or information that could involve a breach of faith or violate a moral obligation to keep information confidential. The Inspector General will annotate this action in the case file.

The complainant will only get the information pertaining directly to him or her. If the complainant wishes to have more information, he or she must complete a Freedom of Information Act (FOIA) request for unofficial use of Inspector General records. At no time will the Inspector General provide any documents from Inspector General records directly to the requestor.

The final reply provides the Inspector General with an excellent opportunity to teach and train. The complainant may not like the reply provided by the Inspector General. In this case, the Inspector General must be prepared to attempt to resolve the questionable issues with the complainant. If it becomes apparent that resolution in the complainant's favor is not possible, advise the individual that he or she can request the assistance of an Inspector General at a higher headquarters **(prescriptive provision in AR 20-1, paragraph 6-1d (6)(d)).**

If the final reply is for White House or Congressional Correspondence, DAIG Assistance Division makes the final response except for cases received directly by Army National Guard (ARNG) Inspectors General (see paragraph 6-6, Army Regulation 20-1). The Inspector General should be thorough and accurate, even if it requires more time. Request suspense-date extensions through the appropriate ACOM, ASCC, or DRU to DAIG Assistance Division -- the Office of Record -- who will in turn send an interim reply to the complainant if the extended suspense date is beyond the original expected date of the DAIG reply. For DAIG referrals, always interview the complainant; if not available, consult with the point of contact at DAIG Assistance Division.

The final response for an Assistance Inquiry to the complainant may be verbal or written. For Investigative Inquiries or Investigations, the final response to the complainant must be in writing. For more information on responses to subjects or suspects and their supervisors, see Part Two, Chapter 10, of this guide. Inspectors General may use the example memorandums below when providing a written final response to the complainant as either the affected party or as a third party.

A Sample Final Response Letter to a Complainant Who is the Affected Party

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION
FORT VON STEUBEN, VIRGINIA 22605

December 22, 20XX

Office of the Inspector General

Captain John Doe
3030 Anywhere Lane
Anywhere, VA 22060

Dear Captain Doe:

This letter is in response to your letter dated December 1, 20XX, to the Inspector General concerning your pay problem.

We conducted a thorough inquiry into your request for assistance. Our inquiry determined that the Finance Office was missing the promotion orders they needed to pay you your base pay for the rank of captain. (If more than one issue or complaint was provided, address each one in the same order that the complainant listed them in the initial letter or phone call).

We trust this information responds to your concerns.

Sincerely,

Richard Britton
Richard Britton
Major, US Army
Inspector General

A Sample Final Response Letter to a Complainant Who is a Third Party

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION
FORT VON STEUBEN, VIRGINIA 22605

December 22, 20XX

Office of the Inspector General

Sergeant John Smith
22 Stone Road
Whistle, Virginia 22222

Dear Sergeant Smith:

This is a final response to your September 19, 20XX, letter containing potential allegations against CPT Joe Davis.

We conducted a thorough inquiry into your complaint. Legislation regarding an individual's right to privacy, however, restricts us from releasing information on an individual's personal affairs to those the Privacy Act classifies as third parties. You are classified as a third party under the act. Therefore, we are precluded from providing a further response to you.

We trust this information responds to your concerns. When contacting this office, please refer to case number OTR 10-0123. Our office will take no further action pertaining to these allegations at this time.

Sincerely,

Richard Britton
Richard Britton
Major, US Army
Inspector General

Section 2-8-2

Close the IGAR in the Database

1. **Purpose**: This section explains the process of closing the IGAR in the IGARS database.

2. **Close the IGAR in the IGARS Database**: In closing the file, ensure that all relevant documents, including memorandums and collected evidence, are present and included in the file. Review completed actions to ensure that all issues and allegations have been appropriately addressed. The file is complete if another Inspector General, unfamiliar with the case, can determine the extent of the examination conducted and understand the factual content on which the conclusions were based and agree that the inquiry was complete and accurate. Following the review, file the case in accordance with Army Regulation 25-400-2 and Army Regulation 20-1. Closed Inspector General case files are subject to quality-assurance reviews by The Office of The Inspector General. DAIG looks for objectivity, completeness, thoroughness, and timeliness.

The next step in closing the IGAR is to code the case. Give special attention to deciding which codes are appropriate for the request for assistance or the allegation. The IGARS database must be useful to all Inspectors General in the office. The data must also have meaning since ACOMs, ASCCs, DRUs, and DAIG often run reports from the database to identify broader emerging trends and issues. The function code selected identifies the areas where the Inspector General has received complaints, allegations, and requests for help (assistance). Remember: each allegation or request for assistance requires a separate function code. Likewise, the determination codes are also important to understanding what the data is showing. The determination codes are referred to as "SNA" codes.

a. An allegation is substantiated (S) when the preponderance of the credible evidence establishes that the impropriety is true.

b. An allegation is not substantiated (N) when the preponderance of the credible evidence establishes that the impropriety is untrue.

c. Assistance (A) is used when advice or guidance is provided, the request for assistance is resolved by the Inspector General, or when the complainant is referred to an agency other than the Inspector General to resolve the problem.

When a case is referred to a Commander to conduct an inquiry or investigation, the Inspector General will use the Commander's findings as part of the IG's ROI, ROII, or HCR when coding the determination for the case. For example, the commander substantiates an Army Regulation 15-6 investigation, which in turn becomes a substantiation in the IGARS database with the ROI / ROII / HCR and the synopsis explaining that the Commander did the investigation and that the results were from the Army Regulation 15-6 investigation. On the other hand, if the Inspector General does not agree with the results of the Commander's investigation, then the Inspector General may simply consider the Commander's results as evidence in the IG's ROI / ROII and make an independent determination based upon the preponderance of credible

evidence. For detailed information how an IG incorporates a command product into an IG report, see Part Two, Section 9-5.

Upon updating the case notes, the synopsis is the final item entered into the IGARS database. As a concise summary of everything pertaining to the case, the synopsis describes the request for assistance as well as actions taken to resolve any issues. The entries create a stand-alone document that can be pulled up from the IGARS database anytime in the future and understood by the Inspector General reading it. The synopsis will not state "See inquiry" because the file copy of the inquiry will ultimately be destroyed and therefore unavailable. If the allegation is substantiated, this synopsis will be part of the IGARS Electronic 1559 retained in the DAIG IGARS database for up to 30 years. An example format for the synopsis is as follows **(prescriptive provision in AR 20-1, paragraph 6-1d (6)(a)):**

First Part
"The complainant / initiator (name, rank / grade) assigned to (unit, agency, command, location, etc.), status (AC, USAR, NG, mobilized, civilian, contractor, DAC, etc.).

or:

the spouse / parent (or whatever the relationship) of (name, rank / grade) assigned to (unit, agency, command, location, etc.), status (AC, USAR, NG, mobilized, civilian, contractor, DAC, etc.).

and:

contacted / wrote / faxed (whoever DAIG, USARC, congressman XXX, etc.) alleging someone acted improperly by (whatever) or complaining of (what) or requesting (what).

Second Part
Assistance / investigation / inquiry was completed by (whom). Include if the IG used any Command Products (AR 15-6, MP / CID Reports, EO Inquiries, etc.) and if those products sufficiently answered all issues / allegations, or if the IG used other additional resources / findings.

Third Part (Summary of IG Conclusion)
The allegation that (name, rank / grade) improperly did / did not do something in violation of a standard was / was not substantiated.

Summarize the complaint and key evidence that led to your conclusion.

Issue of (what) was resolved by coordinating with / processing paperwork / documents through (command, staff, agency, etc.).

Fourth Part
Case was closed by (describe method of case closure and final assistance provided). Annotate legal review (if conducted) and final notifications, including addresses of subject, complainant, and commander.

Section 2-8-3

Making Appropriate Reports

1. **Purpose**: This section explains the process of making appropriate reports.

2. **Making Appropriate Reports**: Appropriate reports are based upon the local Inspector General Standing Operating Procedures (SOP). These reports may vary from command to command.

Section 2-8-4

Analyze for Developing Trends

1. **Purpose**: This section explains the process of analyzing for developing trends.

2. **Analyze for Developing Trends**: The final process in closing an IGAR is analyzing trends that may be developing. The Inspector General's objectives are to identify trends that affect the command and to identify and correct systemic problems or potential problem areas. The IG may also provide the Commander and staff with information and insight for their use in improving the command **(prescriptive provision in AR 20-1, paragraph 6-1d (6)(b)).**

a. The following are some items that an Inspector General should identify:

(1) Most frequent categories or function codes.

(2) Most substantiated categories or function codes.

(3) Most frequent assistance categories or function codes.

(4) Total numbers.

(5) Sources of IGARs.

b. The Inspector General should always ask. Is there anything that suggests the need for an Inspector General Inspection or other command or staff action? How frequently should an Inspector General conduct an analysis? Monthly? Quarterly? By major category or sub-category? Comparing one quarter to the next or the fiscal year to a quarter?

c. Here are a few guidelines:

(1) Do not compare units (outside of the Inspector General office). Start your analysis with major categories and work down to sub-categories. Look for good news as well as bad. Be observant for seasonal aberrations.

(2) A high level of not-substantiated allegations may indicate areas that require more information and / or training.

(3) Consult closely with the other Inspectors General in the office on a regular basis to ensure that similar cases are coded (determination and function codes) in a like manner.

(4) Look first at the coding process to explain wide variations in data.

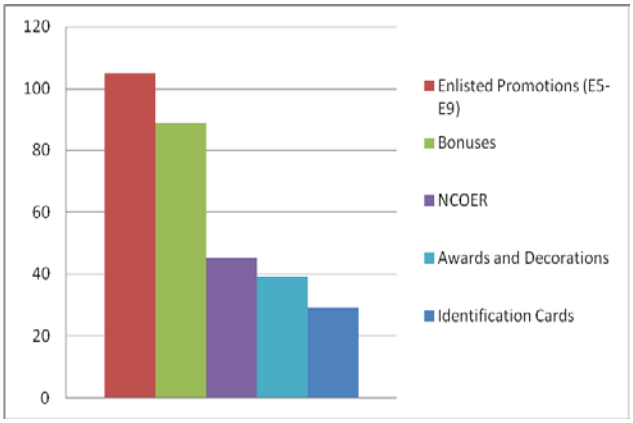
(5) Look at allegations most frequently substantiated in addition to allegations most frequently made.

3. **Providing Trends to the Command**: One way the IG can be proactive is to inform the command of current trends and provide recommendations to address recurring or potential problems. IGARS provides various reports to assist the IG in this endeavor. However, IGs must use caution when presenting trends to the commanders to ensure that these reports are not used improperly, i.e. not used to compare subordinate commanders on their evaluations. Information gleaned from trends analysis can provide the command insight into certain areas and allow them to exercise more command emphasis; coordinate for additional training; or develop, establish, and implement SOPs.

One such report found in the IGARS report menu is the "statistics of closed allegations / issues (250, 275, 280)." This report provides number of IGARS sorted by the most common function codes. Below is a sample snapshot of the top five issues from such a report in an Excel-data-only format.

FC	Description	Total
NE3	Enlisted Promotions (E5-E9)	105
KAE	Bonuses	89
NE1	NCOER	45
NM	Awards and Decorations	39
NI	Identification Cards	29

Sample bar graph created from the above data.



The IG may summarize the case files to provide commanders with some possible reasons for these issues and then offer recommendations to address them. See the chart on the next page for an example.

Issue	Observation / Underlying Causes	Way Ahead
Enlisted Promotions (E5-E9)	Incomplete packets	Establish training session with Soldiers and supervisors to explain what a complete package entails; provide checklist; set up a review board to ensure completeness of packages before submitting to board
Bonuses	Not paid on time due to incorrect paperwork and missing signatures	Teach and train on proper procedures
NCOER	Late submission	Unit establishes timeline and tracking system
Awards and Decorations	Unfair distribution / awarding	Review awards policies to ensure proper awards are issued; post requirements for awards so Soldiers understand who is eligible
Identification Cards	Primarily dependents having difficulty obtaining a card due to limited operating hours	Extend hours of operation at the DEERS sections to better assist Family members

Chapter 3

Request for Assistance and / or Complaints that are Generally Not Appropriate for an Inspector General

Section 3-1 - Non-Related Army Matters

Section 3-2 - Equal Opportunity Complaints

Section 3-3 - Hazardous Work Conditions

Section 3-4 - Issues with Other Forms of Redress

Section 3-5 - Criminal Allegations

Section 3-6 - Allegations Against Senior Officials

Section 3-7 - Allegations Against Members of SAPs and SAs

Section 3-8 - Allegations of Misconduct for a Specific Profession

Section 3-9 - Complaints Involving Suicide

Section 3-10 - Non-Support of Family Members

Section 3-10-1 - Paternity Cases

Section 3-10-2 - Child Custody

Section 3-1

Non-Related Army Matters

1. **Purpose**: This section explains the process for working non-related Army matters presented to an Inspector General.

2. **Non-related Army Matters**: In cases where the issues are clearly not Army related, the Inspector General will advise the complainant to present the complaint to the appropriate agency. The Inspector General will still complete a DA Form 1559 to capture the request for assistance, thoroughly analyze the complaint for all issues and allegations to ensure that the entire matter is not appropriate for the Inspector General, open a case in the IGARS database, and annotate any action taken. In cases where the issues are not appropriate for the Inspector General, the IG will provide as much teaching and training as possible. When the Inspector General refers a case that is not appropriate for action, he or she must refer, and then close, the case. The Inspector General must acknowledge receipt to the complainant explaining what actions he or she took and what agency should process the complaint.

Listed on the next page is a sample letter of acknowledgment to the complainant in response to a complaint that is not appropriate for an Inspector General.

Acknowledgment to Complainant, Case Referred with Direct Reply Authorized

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION
FORT VON STEUBEN, VIRGINIA 22605

December 2, 20XX

Office of the Inspector General

Major Jane Doe
3030 Anywhere Lane
Anywhere, VA 22060

Dear Major Doe:

We received your letter to the Inspector General dated November 29, 20XX, concerning sexual misconduct.

The matter you present is under the jurisdiction of Criminal Investigation Division (CID). We referred your correspondence to CID for appropriate action and direct reply to you.

Sincerely,

Richard Britton
Richard Britton
Major, US Army
Inspector General

Section 3-2

Equal Opportunity (EO) Complaints

1. **Purpose**: This section explains the process for working or referring Equal Opportunity complaints.

2. **Equal Opportunity Complaints**: The Equal Opportunity Office normally works these complaints, but an Inspector General may also work an EO complaint. If so, the Inspector General must follow the Inspector General Action Process rather than the Equal Opportunity process to resolve the case. When the complainant seeks redress for past alleged discriminatory practices that have become part of official Army records, the Inspector General should advise the complainant to seek redress through appeals procedures provided by law or Army regulations pertaining to the particular adverse action **(prescriptive provision in AR 20-1, paragraph 6-3i).**

The Inspector General will still complete a DA Form 1559 to capture the request for assistance, thoroughly analyze the complaint for all issues and allegations to ensure that the entire matter is not appropriate for the Inspector General, open a case in the IGARS database, and annotate any action taken such as teach and train or referral to the appropriate agency.

Section 3-3

Hazardous Work Conditions

1. **Purpose**: This section explains the process for working or referring complaints involving Hazardous Work Conditions.

2. **Hazardous Work Conditions**: The Inspector General will advise individuals presenting complaints of hazardous, unsafe, or unhealthy work conditions to follow the procedures outlined in Army Regulation 385-10, Army Safety Program. The Inspector General will not work cases involving hazardous work conditions **(prescriptive provision in AR 20-1, paragraph 6-3f).**

The Inspector General will still complete a DA Form 1559 to capture the request for assistance, thoroughly analyze the complaint for all issues and allegations to ensure that the entire matter is not appropriate for the Inspector General, open a case in the IGARS database, and annotate any action taken such as teach and train or referral to the appropriate agency.

Section 3-4

Issues With Other Forms of Redress

1. **Purpose**: This section explains the process for working issues where another form of redress exists.

2. **Issues with other forms of redress**: There are many situations for which law or regulation provide Soldiers a remedy or means of redress. Soldiers must seek the prescribed redress or remedy before an Inspector General can provide assistance. Once the Soldier has used the available redress procedures, the Inspector General action is limited to a due-process review of the situation to determine if the Soldier was afforded an opportunity for redress as provided by law or regulation **(prescriptive provision in AR 20-1, paragraph 6-3g).**

Some common situations where specific redress, remedy, or appeals procedures are applicable include, but are not limited to, the following:

a. Courts-martial actions (10 USC, Chapter 47, United States Code of Military Justice).
b. Nonjudicial punishment (Manual for Courts-Martial, Part V, paragraph seven).
c. Officer evaluation reports (AR 623-3, Evaluation Reporting System).
d. Non-Commissioned Officer evaluation reports (AR 623-3, Evaluation Reporting System).
e. Enlisted reductions (AR 600-8-19, Enlisted Promotions and Reductions).
f. Type of discharge received (AR 635-200, Active Duty Enlisted Administrative Separations).
g. Pending or requested discharge (AR 635-200, Active Duty Enlisted Administrative Separations, and AR 600-8-24, Officer Transfers and Discharges).
h. Complaint that a Soldier has been wronged by the commanding officer (AR 600-20, Army Command Policy, and AR 600-100 Army Leadership).
i. Financial Liability Investigations of Property Loss (AR 735-5, Policies and Procedures for Property Accountability).
j. Relief for cause (AR 600-20, Army Command Policy).
k. Adverse information filed in personnel records (AR 600-8-2, Suspension of Favorable Personnel Actions (FLAGS), and AR 600-37, Unfavorable Information).
l. Claims (AR 27-20, Claims).
m. Security clearances (AR 380-67, Personnel Security Program)

The Inspector General does not need to be the subject-matter expert on what redress, remedy, or appeals procedures the Soldier must take, but he or she must recognize if the Soldier's request has a formally established redress process in place before taking action.

As a matter of policy, the Inspector General does not normally become involved in complaints where an established avenue of redress is available to resolve a problem. The Inspector General's primary concern is that the complainant is afforded an opportunity for redress and that the redress was conducted by the applicable standard. If the complainant, after pursuing the established avenues of redress, still feels an

injustice has occurred, the Inspector General system could address the individual's concerns. However, the involvement would be limited to ensuring the complainant's rights were protected and he or she received due process.

The Inspector General will still complete a DA Form 1559 to capture the request for assistance, thoroughly analyze the complaint for all issues and allegations to ensure that the entire matter is not appropriate for the Inspector General, open a case in the IGARS database, and annotate any action taken such as teach and train or referral to the appropriate agency or regulation governing the redress.

Section 3-5

Criminal Allegations

1. **Purpose**: This section explains the process for working criminal allegations.

2. **Criminal Allegation**: Allegations of a criminal nature are normally not appropriate for Inspector General action. However, the Inspector General's directing authority may still direct the Inspector General to conduct an Investigation or Investigative Inquiry into allegations of criminal conduct. Coordination or consultation with the appropriate legal advisor is essential in such cases, to include coordination with Criminal Investigations Division Command (CIDC) officials if appropriate. See The Assistance and Investigations Guide, Part Two, for more information **(prescriptive provision in AR 20-1, paragraph 6-1d (2)(j)).**

3. **Confidentiality Considerations:** Army IG confidentiality rules exist to encourage Soldiers, Family members, and civilians to be candid with IGs. The more that complainants and witnesses tell IGs, the more we can improve the Army's efficiency. These rules do not apply, however, when the IG has a reasonable belief that he or she needs to "prevent the client from committing a criminal act that . . . is likely to result in imminent death or substantial bodily harm, or significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system." This quotation is not from AR 20-1 but from the Army's *Rules of Professional Conduct for Lawyers,* AR 27-26. This rule for attorney professional conduct fits perfectly with IG practice as well.

When a complainant says something that makes an IG believe he or she is going to kill or hurt someone or damage an Army system, first try to talk the complainant out of this potential behavior. The IG should try and write down or memorize the complainant's exact threat. The IG should attempt to draw another IG into the discussion with the complainant to get that person's perspective. Continue the interview and attempt to capture as much information about the complainant and his or her plans as possible. If the complainant is physically in the IG's office, try to break away and have someone call law enforcement. Try to do the same thing if the complainant is on the phone, or contact law enforcement immediately after hanging up. IGs should not contact the person whom the complainant intends to kill or hurt, as that approach could escalate matters and possibly result in a double homicide. If one law enforcement agency declines to handle the case, the IG should keep trying until one is found that will help. IGs do not need to worry about contacting DAIG's Records Release Office or OTIG in this instance – quick action is essential to preventing a potential catastrophe.

The Inspector General will still complete a DA Form 1559 to capture the request for assistance, thoroughly analyze the complaint for all issues and allegations to ensure that the entire matter is not appropriate for the Inspector General, open a case in the IGARS database, and annotate any action taken such as coordinating with the Staff Judge Advocate or referral to CIDC.

Section 3-6

Allegations Against Senior Officials

1. **Purpose**: This section explains the process for handling allegations against senior officials that are not appropriate for Inspectors General below the DAIG level.

2. **Allegations Against Senior Officials**: Inspectors General will forward all allegations against Senior Executive Service (SES) civilians, promotable Colonels, and General Officers to DAIG Investigations Division within two working days via telephone (commercial (703) 545-4556, DSN 865-4556) or fax (commercial (703) 545-4537, DSN 865-4537). The local Inspector General will not conduct any fact-finding beyond Step 1, Receive the IGAR, but will only receive the IGAR and immediately pass it to DAIG Investigations Division for action as required **(prescriptive provision in AR 20-1, paragraph 7-1l).**

The local IG will document this referral action by entering a One-Minute IGAR. Furthermore, the local IG will not include the senior official's name, position, or the nature of the allegation in the IGARS entry. Since the allegation will not be referred in IGARS to DAIG Investigations Division, the local IG will explain that the IG received an allegation against a senior official (no name); the date of that allegation; the method of delivery of the allegation to DAIG Investigations Division (phone or fax); the date and time of that delivery; and, if applicable, with whom the IG spoke at Investigations Division within the body of the One-Minute IGAR. Once Investigations Division acknowledges receipt of the allegation, the local IG will save the One-Minute IGAR, thus closing the case in IGARS. See AR 20-1, Inspector General Activities and Procedures, paragraph 7-1l and Appendix D, Table D-1, for more information.

Section 3-7

Allegations Against Members of SAPs and SAs

1. **Purpose**: This section explains the process for handling allegations against members serving in -- or working with -- Army special-access programs (SAPs) and sensitive activities (SAs).

2. **Allegations Against Soldiers and Civilians assigned to -- or working with -- Army Special-Access Programs (SAPs) and Sensitive Activities (SAs)**: Inspectors General will forward all IGARS containing an allegation against any person assigned to a SAP or SA as defined in AR 380-381 within two working days by secure means to DAIG Intelligence Oversight Division **(prescriptive provision in AR 20-1, paragraph 1-4b (5)(e)).**

Section 3-8

Allegations of Misconduct for a Specific Profession

1. **Purpose**: This section explains the process for handling allegations of misconduct in a specific professional area.

2. **Allegations of misconduct in a specific profession**: During Step Two, Conduct IG Preliminary Analysis, the IG identifies issues and allegations and decides on a course of action on how best to resolve them. Some allegations will not be easily decipherable, and the IG might have difficulty deciding what standard to use. For example, when a complainant alleges misconduct by someone of a specific profession -- such as a doctor making a wrong medical decision, a lawyer's improper representation in a legal matter, or a recruiter fraudulently processing the initial enlistment contract -- the local IG, if he or she is not of this particular profession, might not necessarily know what would be a right or wrong action. Since the IG is not a subject-matter expert in all topics of special interest, some issues or allegations presented to the IG might need special consideration and the assistance of subject-matter experts. In fact, for many of these professional misconduct cases, the IG will refer the case to the subject-matter experts. The following examples, though not all-inclusive, provide references and / or points of contact that will help the IG gather more information.

3. **Lawyers and Legal Counsel**: IGs will refer allegations involving professional misconduct by an Army lawyer, military or civilian, through the DAIG Legal Advisor to the senior counsel having jurisdiction over the subject lawyer for disposition. See Army Regulation (AR) 20-1, Inspector General Activities and Procedures, paragraph 7-1i (4). Allegations of mismanagement by a member of the Judge Advocate Legal service serving in a supervisory capacity at the time of the alleged mismanagement will be referred through the DAIG Legal Advisor to the Professional Responsibility Branch, OTJAG, for disposition. See AR 20-1, Inspector General Activities and Procedures, paragraph 7-1i (5). Once the DAIG Legal Advisor confirms the referral, the IG will treat the case as an assistance request and close the case in IGARS. The IG will then notify the complainant that the IG has referred the case to legal channels. The local IG will not monitor the case any further. Contact the DAIG Legal Division (SAIG-ZXL) at (703) 601-1093 for more information or assistance. A sample letter acknowledging receipt and informing the complainant of the referral of such a complaint follows.

Sample Acknowledgment to Complainant for a Case Referred to OTJAG

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION
FORT VON STEUBEN, VIRGINIA 22605

December 2, 20XX

Office of the Inspector General

Major Jane Doe
3030 Anywhere Lane
Anywhere, VA 22060

Dear Major Doe:

This is in response to your complaint to the Inspector General concerning harassment and reprisal by XXXXXXXXXXXXX.

We referred your correspondence on November 20, 20XX, to the Office of The Judge Advocate General of the Army (OTJAG) for appropriate adjudication in accordance with Army Regulation 20-1, Inspector General Activities and Procedures, paragraph 7-1i (4). Army Inspectors General have no authority to investigate allegations of professional misconduct made against attorneys. The OTJAG is investigating your allegations against the attorneys of XXXXXXXXXXX. We recommend you contact them at the address listed below.

OTJAG
ATTN: DAJA-PR
1777 North Kent Street
10th Floor
Rosslyn, VA 22209-2194
mark.rivest@conus.army.mil or Kathryn.stone@conus.army.mil

We trust this information responds to your concerns.

Sincerely,

Richard Britton
Richard Britton
Major, US Army
Inspector General

4. **Inspectors General**: Complaints which involve the actions of an Inspector General while performing IG-specific duties, such as not resolving an Assistance Inquiry or not responding to the complainant, will be resolved in accordance with AR 20-1, Inspector General Activities and Procedures, paragraph 7-1j. This regulation requires reporting allegations against IGs, uniformed and civilian, to the next higher vertical echelon command IG for appropriate action within two working days after receipt. The ACOM, ASC, or DRU IG will consult with DAIG Assistance Division concerning what actions to take. If the allegation involves other matters besides IG-specific duties, the commander may resolve them. Contact SAIG-AC at (703) 601-1060 for more information or assistance.

5. **Chaplains / spiritual guidance**: When a complainant presents issues involving the nature and quality of spiritual or religious counseling or advice from a chaplain, the IG should recommend that the complainant take this issue to the next higher supervisory chaplain, i.e. battalion to brigade. If there is no clear higher headquarters, the complainant should check with the local installation chaplain's office. Due to the sensitive nature and the complexity of the many various religious beliefs, the IG should consider these types of complaints as not appropriate for the IG; and, once the IG advises the complainant to seek another chaplain's advice, the IG should close the case. The main references for understanding what a chaplain should do are Chapters 1 and 5 of AR 165-1, Chaplain Activities in the United States Army, and Chapter 1 of FM 1-05, Religious Support.

6. **Army Recruiters**: US Army Recruiting Command (USAREC) has two primary regulations (USAREC Regulation 600-25, Prohibited and Regulated Activities, and USAREC Regulation 601-45, Recruiting Improprieties and Procedures) under which most IGARs fall. Examples of recruiter misconduct or impropriety include, but are not limited to, prohibited relationships (social, business, or personal employment with subjects of recruiting efforts), criminal involvement, false documents, misrepresentation, and coercion. The local IG should refer cases with allegations against a Regular Army or Army Reserve recruiter, to include contract recruiters, to the USAREC Assistance and Investigations IG. Cases with allegations against an Army NG recruiter should be referred to the State IG owning that recruiter. Bottom line: if it has anything to do with a recruiter or the initial enlistment contract, contact the USAREC IG at 1-800-223-3735, extension 60392.

7. **Medical**: Complaints involving medical issues or allegations should be referred to the regional medical command (RMC) IG; the MEDCOM IG; or, depending on the issue, to Army Medical Department (AMEDD) Center and School, Center for Health Promotion and Preventive Medicine (CHPPM), or Medical Research and Materiel Command (MRMC). The Military Treatment Facilities (MTF) typically have Acting IGs. The RMC IG also provides coverage for any dental or veterinary activity in the area. The primary references include AR 40-3, Medical, Dental, and Veterinary Care, and AR 40-68, Clinical Quality Management. For more information, including POCs, see the MEDCOM Web page in AKO (AKO Home, Site Maps, DoD Organizations, Army, Army Direct Reporting Units, MEDCOM, MEDCOM IG); or, for TRICARE-specific questions, use http://www.tricare.mil.

8. **CID Agents**: Any allegations and issues involving a CID Special Agent as the subject or suspect should be referred to the US Army Criminal Investigation Division Command (USACIDC) Inspector General. Examples of CID agent misconduct include

treating a victim, witness, or suspect without dignity or respect; threatening the victim or suspect; conducting an unauthorized or illegal search of a person or premises; or violations of the Privacy Act by disclosing the victim's identity to unauthorized personnel. However, if the complainant believes that a detective in civilian clothing, who was rude to a witness or tried to ask a victim out on a date, was a CID Agent but, once identified, was actually a Military Police Investigator, then refer the allegation to the appropriate commander of the Military Police Investigator in question. The main references are AR 195-2, Criminal Investigation Activities, and CID Regulation 195-1, Criminal Investigation Operational Procedures. The local IG may coordinate the referral of the allegation or issue via IGNET e-mail, FAX, or telephonically (depending on the circumstances) with USACIDC IG at (571) 305-4012. Keep in mind that the sooner the CID IG has visibility on agent misconduct, the better.

9. **Other Considerations**: Even though a complaint might involve someone of a special profession, the issue or allegation might fall outside the specific professional conduct area as discussed previously. For example, a complaint that the doctor, chaplain, and IG used a military vehicle to move personal household goods from one off-post apartment to another is clearly a violation of the Joint Ethics Regulation and is not directly related to the medical, religious, or IG professions. Allegations and issues of these types are still best resolved at that local IG's office -- either by the IG or through the appropriate command.

10. **Documentation**: No matter how these allegations are resolved, the IG will document them by completing a DA Form 1559 to capture the request for assistance, thoroughly analyze the complaint for all issues and allegations to ensure the entire matter is not appropriate for the Inspector General, open a case in the IGARS database, and annotate any action taken such as referral to the appropriate agency.

Section 3-9

Complaints Involving Suicide

1. **Purpose**: This section explains the process for responding to complaints involving suicide.

2. **Complaints involving suicide**: An IG might face situations that involve possible suicide either by the complainant or someone else. Such situations involve a potential conflict between protecting IG confidentiality and taking immediate action to protect individual(s) by releasing IG information to third parties. If, while conducting an IG interview, an IG determines that a witness, suspect, or complainant may be a suicide risk, the IG should first advise the individual of the places he or she can seek treatment or help as mentioned below and then strongly urge the individual to seek such professional assistance. If the individual declines this advice or if the IG is not confident the individual will indeed seek appropriate treatment or help, AND, if time permits, the IG should then coordinate with the Command IG and DAIG Legal / Records Release Office for further guidance on how to proceed. This coordination is intended as a sanity check so the IG does not inadvertently release too much information and allows DAIG to approve the release if time permits. To protect the individual or the safety of others, the IG may in certain instances reveal some IG protected communications to the individual's chain of command or to appropriate medical personnel without first coordinating with the Command IG or DAIG. This release would be done on a "FOUO" (for official use only) basis to give the commander the information necessary to consider and process an emergency mental-health referral (see DoDD 6490.1, Mental Health Evaluations of Members of the Armed Forces). For extreme emergencies, especially when others are possibly in harm's way, the police (either military or local) might also provide assistance, especially if the incident is developing in a housing area. Your command surgeon or the local medical facility's doctor-on-call might also be able to assist in extreme emergencies, especially when civilians are involved. Bottom line: Never place IG confidentiality over an individual's safety. IGs should not allow suicidal complainants to depart the office until a chaplain, mental health professional, or member of the chain of command is present. If the suicidal complainant is on the phone, the IG should attempt to contact the nearest chaplain, mental health professional, or member of the chain of command, if possible, or contact the Suicide Prevention Hotline at 1-800-273-TALK (8255). You may reveal protected IG communications to the appropriate chain of command or medical authorities to the limited extent necessary to protect the safety of others (see Section 3-5 for additional guidance for situations when a complainant makes a threat of bodily harm or indicates that someone else intends to do so).

3. **Resources for professional assistance**: Many organizations are available to care for people either under emergency conditions or regular preventative assistance by providing various services such as counseling, anger-management classes, awareness training, and immediate intervention. These resources include the local command or post Chaplain’s Office, unit training requirements, some Family Readiness Group members trained in intervention techniques, Army Community Service (ACS), medical care facilities, Family Advocacy, Red Cross, Military One Source, various hotlines, etc.

4. **Training**: The IG can help promote awareness and training by reminding commanders to ensure that unit training -- such as suicide awareness and prevention, post-traumatic stress disorder, brain injuries, and stress training -- is being conducted and that everyone is aware of counseling locations, hotlines, and support groups. Also, this awareness can help reduce the stigma associated with seeking mental-health care.

5. **Documentation**: The IG will record these cases and actions in the Inspector General Action Request System (IGARS).

Section 3-10

Non-Support of Family Members

Section 3-10-1 - Paternity Cases

Section 3-10-2 - Child Custody

Section 3-10

Non-Support of Family Members

1. **Purpose**: This section explains how to process an IGAR concerning non-support of Family members.

2. **Non-Support of Family Members**: The request for support to Family members is and has been the top IGAR in the Army IG system. Soldiers have a responsibility to provide adequate financial support to Family members. AR 608-99, Family Support, Child Custody, and Paternity, primarily Chapter 2, outlines these responsibilities and provides interim guidance when Family members do not have an oral agreement in limited circumstances, written support agreement, or court order. This regulation also explains that for the commander to become involved in resolving this matter, a Family member or an authorized representative of the Family member must complain to the command that the Soldier is failing to provide proper support. In other words, the complainant has the responsibility of communicating non-support problems to the Soldier's commander **(prescriptive provision in AR 20-1, paragraph 6-3a).**

3. **Commander's Responsibilities**: Army Regulation 608-99 prescribes the commander's responsibilities in detail, primarily in Chapters 1 and 3. The commander's actions when presented with a request for Family support include, but are not limited to, reviewing the inquiry, counseling the Soldier, and responding to the complainant within 14 days in writing. Since The Judge Advocate General (TJAG) is the proponent for this regulation, the commander should consult with the SJA prior to responding to ensure that no violations of privacy occur and all obligations per this regulation have been met.

If the complainant provided insufficient information, the commander will still review the complaint, acknowledge receipt, and explain that the information provided is insufficient to take action on the complaint and what information is needed before the commander can provide a complete reply.

4. **Inspector General's Responsibilities**: AR 608-99 specifies the commander as the responsible entity to resolve requests for Family support. Hence, this type of IGAR is not IG appropriate, and the IG will promptly refer this complaint to the commander. IGs sometimes overstep their boundaries by providing advice or guidance beyond the referral actions; and, as a result, they often cross into legal areas. To prevent such incidents, paragraph 5 of this section discusses restrictions for IGs handling Family non-support cases. Upon receipt of a Family-support request, the IG will:

a. Determine if the complainant -- usually the Soldier's spouse or former spouse on behalf of the child(ren) -- has forwarded a complaint through command channels informing the Soldier's commander of the problem. If yes, the IG continues providing assistance only if the commander has failed to respond in accordance with AR 608-99, in which case the IG will route the support request and the allegation that the commander failed to respond to the next higher commander. If not, the IG may offer assistance in formulating and properly routing the complaint.

(1) If the Soldier involved is assigned within the IG's command area, the IG will refer the complaint -- but not the complainant -- to the lowest appropriate level of command responsible for the Soldier, usually the company commander, and monitor the situation only to ensure that the commander responded to the complainant within the 14 days prescribed by AR 608-99. In other words, the IG will receive a copy of the commander's response to the complainant but not challenge the outcome or calculations. The IG will then close the case in IGARS as an assistance case with no allegations.

(2) If the Soldier involved is assigned to a command outside the IG's area, the IG will refer this request to the appropriate command IG owning the Soldier. The IG who initially received the request will refer the IGAR as Office of Record in IGARS electronically as well as coordinating personally via telephone (voice or fax), e-mail, or surface mail. Once the other IG accepts the case in IGARS, the initial IG can close the case as assistance with no allegations.

b. Ensure that the immediate needs of the Family are met (shelter, food, medical care, etc.) by referring the complainant to agencies such as the Family Readiness Group (FRG), the command, the Red Cross, Army Emergency Relief (AER), Army Community Services (ACS), or other local agencies that might provide interim support to Family members in need.

c. If the complainant tells the IG that this is the third time in the past year that he / she has had to request help to obtain support payments from the military spouse, a possible allegation of a failure to obey the commander's order the first time (a UCMJ violation) exists. In these cases, the IG will also refer these additional matters to the next higher command, usually the battalion commander, for inquiry or investigation of allegations against the Soldier.

5. **The IG will <u>not</u>**:

a. Offer opinions or be judgmental in the complainant's or the Soldier's presence, become personally involved, or take sides against another Family member.

b. Become advocates for either the complainant or the Soldier.

c. Determine how much the Soldier "owes" the Family. That matter is strictly for the commander, the legal office, the Soldier, and the Family to resolve. The SJA is the local proponent and the only one authorized to provide definitive interpretations of the regulation.

d. Deal or correspond directly with the Soldier to keep the commander out of the loop.

e. Require commanders to provide a copy of their inquiries.

f. Gather banking information such as routing and account numbers. Only if the accepting IG office requests assistance with gathering this information on behalf of the deployed Soldier will the IG assist in gathering and forwarding this information. After confirming that the receiving IG office has the information, the IG must delete or destroy

the personal account information prior to closing the case. The IG must never retain personal account information in any IG record or enter it into the IGARS database.

6. **Sample Memorandum and Letter**:

a. A sample referral memorandum used to refer this matter to the appropriate commander when the complainant does not know the commander's name or does not initially wish to contact the commander appears on the next page.

b. A sample letter that Inspectors General may use to acknowledge receipt of a Family support request to the complainant follows the sample memorandum.

Sample Referral Memorandum of a Non-Support Case to a Commander

(OFFICE SYMBOL) 2 December 20XX

MEMORANDUM FOR Commander (UNIT ADDRESS)

SUBJECT: Request for Family Support (AR 608-99)

1. Reference our telephonic coordination on 2 December 20XX, (Name) is requesting support for Family members for (himself / herself, son, daughter) and can be reached at (phone) and (address). (Name) is requesting support from (Soldier's information).

2. Under the provisions of Army Regulation 608-99, Family Support, Child Custody, and Paternity, please review the request for support, determine all relevant facts and evidence (e.g. allotment forms, canceled checks, court orders), and provide the complainant a response (with a copy to this office) in writing within 14 days of receipt of this letter. You should consult with your SJA legal advisor concerning the amount of financial obligation and necessary proof of payment and ensure that all legal requirements are met, to include protection under the Privacy Act.

3. This memorandum is an Inspector General record and contains privileged and confidential information. (Name) consented to the release of his or her name in the interest of resolving this issue. However, as an individual requesting Inspector General assistance, (Name) is entitled to confidentiality and certain safeguards; among these safeguards is the right to register complaints with the Inspector General free from restraint, coercion, discrimination, harassment, or reprimand.

4. The use or attachment of this memorandum as an exhibit to the records of other offices or agencies within the Department of the Army is not authorized without the written approval of The Inspector General. UNAUTHORIZED REPRODUCTION OR RETENTION OF INSPECTOR GENERAL DOCUMENTS IS STRICTLY PROHIBITED. Please return this document to this office with a copy of your written response to the complainant.

5. When contacting this office, please refer to case number (Local Case #). If you need additional information, please contact (Name) at (DSN / COM XXX-XXXX).

Richard Britton

Encl RICHARD BRITTON
MAJ, US Army
Inspector General

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Dissemination is prohibited except as authorized by AR 20-1

Sample of Acknowledgment to a Complainant for Non-Support

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION
FORT VON STEUBEN, VIRGINIA 22605

December 2, 20XX

Office of the Inspector General

Mrs. Jane Doe
1515 Anywhere Road
Anywhere, Virginia 22222

Dear Mrs. Doe:

This letter is in reply to your inquiry concerning the support obligations of Major John Doe.

The Army expects Soldiers to provide support to their legal dependents. However, the determination of what is adequate or reasonably sufficient support is a highly complex and individual matter. In the absence of a court order, the Department of the Army has established a minimum-support policy as an interim measure until the parties involved resolve their differences by mutual written agreement or the matter is resolved by court action.

Army officials must assume that adequate support is provided to Family members unless a complaint is received. When a complaint arises regarding support, Army Regulation 608-99 requires a commander to take action. Be advised, however, that while the Soldier will be counseled to provide the required amount of support, and certain adverse personnel or disciplinary actions may be taken against him or her for noncompliance, the Army cannot actually force a Soldier to make payment. Only civil court or state child support enforcement agency action can require such payment.

Your correspondence has been sent to the Soldier's commander. The commander will reply directly to you. If you are not satisfied with the commander's answer, you should pursue the matter through the civil courts.

Sincerely,

Richard Britton
Richard Britton
Major, US Army
Inspector General

7. **Additional Resources for Complainants:** The following agencies might be of assistance to certain Family members in resolving support and custody issues.

a. **State Offices of Child Support Enforcement**: A civilian support structure specifically created by Congress to enforce Family support issues. Each of the 50 States has such an office, with branch offices located in all large cities and also at most county seats. These offices are normally found in the county court house or the local county or State office building -- often collocated with the welfare office. While State laws vary in detail and specific procedures, every State provides child-support collection assistance, normally at no cost to the requesting spouse. Many States also provide assistance for spousal support and alimony. An excellent source of contact information for State Child Support Enforcement Agencies is found at www.acf.hhs.gov/programs/cse/extinf.htm.

b. **Uniform Interstate Family Support Act (UIFSA)**: Allows transfer of enforcement authority of court-ordered support from the State in which the supported spouse resides to the State of the Soldier's duty station by registry of the court decree in the local court of the duty station State. Child Support Enforcement Agencies can assist.

c. **State's Welfare Authorities**: In cases where the supported spouse is destitute, the State's welfare authorities can, in some cases, also provide for subsidized housing and child care, food stamps, job training, and State monetary aid (paid in large part from Health and Human Services Federal grant money). The State Office of Child Support Enforcement will refer qualifying cases to the State's welfare authorities while still pursuing support from the Soldier.

d. For information regarding garnishment and involuntary allotments, see the DFAS Web site at http://www.DFAS.mil.

e. Locator Services:

(1) **Army World Wide Locator**: The request to ascertain the current duty station and unit assignment of an active-duty Soldier needs to include full name and SSN or date of birth (numerous Soldiers with the same name are often listed). Check for current fees associated for this service. Mail the request to:

Army World Wide Locator
U.S. Army Enlisted Records and Evaluation Center
8899 E. 56th St.
Indianapolis, IN 46249-5301

(2) **Parent Locator Service of the U.S. Department of Health and Human Services**: Available to former Soldiers by going through the main State Office of Child Support Enforcement. The Parent Locator Service can access the database of the Internal Revenue Service, Social Security Administration, Department of Veteran's Affairs, and States such as driver's license records and motor vehicle registries.

(3) **Human Resource Command -- St . Louis**: Address Army Reserve or Retired Personnel inquiries to:

Commander
Human Resource Command – St. Louis
Attention: DARP-IMG-F
9700 Page Boulevard
St. Louis, MO 63132-5200

(4) **National Personnel Records Center (NPRC)**: NPRC is part of the National Archives and Records Administration. Address former Army personnel (those who have been discharged and have no further Army service obligation or status) inquiries to:

Director
National Personnel Records Center (NPRC)
Attention: NRP-MA-S
9700 Page Boulevard
St. Louis, MO 63132

(5) **State Adjutant General**: Address Army National Guard personnel inquiries to the appropriate State Adjutant General.

Section 3-10-1

Paternity Cases

1. **Purpose**: This section explains the process for working Paternity Cases.

2. **Paternity Cases**: The Company or Battalion Commander, as appropriate, will fully investigate every inquiry alleging paternity on the part of a Soldier and provide complete, accurate, and timely information to the individual making the inquiry. The commander should seek legal advice from the servicing SJA office if in doubt as to the requirements or application of his or her requirement under Army Regulation 608-99, Family Support, Child Custody, and Paternity. This advice should not come from a legal assistance attorney who advocates the client's interest.

The Inspector General will refer the complaint to the commander for action. The commander should respond in writing within 14 days of receiving the complainant's request. If the commander fails to respond within the 14 allotted days, the Inspector General can conduct an Investigative Inquiry or Investigation or refer this matter to the next higher level of command.

Section 3-10-2

Child Custody

1. **Purpose**: This section explains the process for working Child Custody Complaints.

2. **Child Custody**: The Company or Battalion Commander, as appropriate, will fully investigate every inquiry alleging child custody, visitation, or related matters and provide complete, accurate, and timely information to the individual making the Inquiry. The commander should seek legal advice from the servicing SJA office if in doubt regarding the requirements or application of this regulation in a particular case. This advice should not come from a legal assistance attorney who advocates the client's interests.

The Inspector General will refer the complaint to the commander for action. The commander should respond in writing within 14 days of receiving the complainant's request. If the commander fails to respond within the 14 allotted days, the Inspector General can conduct an Investigative Inquiry or Investigation or refer this matter to the next higher level of command.

Chapter 4

Considerations

Section 4-1 - Withdrawn Complaints

Section 4-2 - Complaints Not Received in a Timely Manner

Section 4-3 - Habitual Complainants

Section 4-4 - Abusers of the IG System

Section 4-1

Withdrawn Complaints

1. **Purpose**: This section explains the procedures for processing a complainant's request to withdraw a complaint.

2. **Withdrawn Complaints**: At any point following receipt of a complaint, the complainant or the initiator may ask to withdraw the IGAR. The Inspector General decides whether or not to continue based on the best interests of the Army or the command. If the Inspector General decides to continue the case, he or she does not require the complainant's permission. If the IG accepts the request to withdraw the complaint but keeps the case open, he or she will ensure that the case name is a generic title and not the complainant's name; in addition, the Inspector General is no longer required to provide a final response **(prescriptive provision in AR 20-1, paragraph 6-2e).**

The Inspector General will ask the complainant why he or she wants to withdraw the complaint. Possible reprisal, coercion, or duress are issues of concern for Inspectors General. Inspectors General will not suggest that a complainant withdraw a complaint; however, if the complainant desires to do so, Inspectors General will require a written request to document properly the withdrawal.

In some instances, complainants have requested confidentiality. When a person who withdraws a complaint provides information about an impropriety or wrongdoing, the Inspector General may disclose the complainant's identity to detailed Inspectors General, the supporting legal advisor, and to the Directing Authority without the complainant's consent unless the Inspector General determines that such disclosure is unnecessary or prohibited during the course of an inquiry or investigation.

Section 4-2

Complaints Not Received in a Timely Manner

1. **Purpose**: This section explains the procedures for processing an IGAR not received in a timely manner.

2. **Complaints not received in a timely manner**: Complaints must be presented to an IG in a timely manner in order to be resolved effectively. An IG is not required to look into a complaint if the complainant has failed to present the matter to an IG within one year of learning -- or becoming aware -- of an alleged problem or wrongdoing or if more than three years have elapsed since the date of the problem or wrongdoing. The IG will thoroughly analyze the complaint for all issues and allegations, open a case in the IGARS database, and inform the complainant that the request is not timely.

a. ACOM, ASCC, or DRU IGs and DAIG may accept and refer complaints submitted between three and five years after the alleged wrongdoing where extraordinary circumstances justify the complainant's delay in reporting the allegation or issue -- or in cases of special Army interest. ACOM, ASCC, or DRU IGs may also approve for action complaints received by subordinate IG offices that occurred between three and five years after the alleged wrongdoing and where extraordinary circumstances exist. ACOM, ASCC, or DRU IGs -- and DAIG -- will serve as the Office of Record when referring such cases to a lower-level IG.

b. TIG must give a local Inspector General approval to work any IGAR presented more than five years after an event occurred. The complainant always has the freedom to send the IGAR to TIG for final disposition. TIG is the final authority in the event the complainant is not satisfied with the local Inspector General's decision.

c. This time limit does not invest IGs with the authority to decline a referral from IG, DoD, or a Member of Congress (MC); in addition, the time limit does not apply to the requirement to report allegations against senior officials in accordance with paragraph~~s~~ 1–4b (5)(d) of Army Regulation 20-1.

Example: A complainant submits an IGAR to a local Inspector General that is four years old. The Inspector General will thoroughly analyze the entire complaint for issues and allegations; and, if the IG does not see any documents or other evidence available, the Inspector General will inform the complainant that the IGAR is untimely. If the IG thinks there is enough evidence to work the case, he or she must obtain approval from the ACOM, ASCC, or DRU IG before proceeding.

Section 4-3

Habitual Complainants

1. **Purpose**: This section explains the process of receiving an IGAR from a habitual complainant.

2. **Habitual Complainants**: Some complainants will repeatedly bring complaints to an Inspector General. Some complaints will be new and others will be issues previously handled by the Inspector General. The Inspector General must thoroughly analyze all issues and allegations to ensure that no new information is present. If the Inspector General has worked the case before, he or she may choose not to reopen the case unless the complainant has presented new and relevant information to the case. However, the Inspector General will at a minimum update the case notes. If there is new information, the Inspector General must either reopen the case or initiate a new case **(prescriptive provision in AR 20-1, paragraph 6-2b).**

If the Inspector General reopens the case and wishes to amend an opinion, judgment, or conclusion, the Inspector General must get TIG approval prior to doing so. The Inspector General forwards requests to the DAIG Assistance Division for review and staffing prior to submission to TIG. The file includes one copy of the requested amendment, the original report, recommendations to grant or refuse the amendment, and any supporting rationale or evidence.

If the Inspector General reopens a case and, upon review of the new information finds nothing new, the Inspector General may close the case without TIG approval. Do not reject out of hand the complainant's communication without first analyzing the correspondence for new matters.

Section 4-4

Abusers of the IG System

1. **Purpose**: This section explains the process of receiving an IGAR from abusers of the IG system.

2. **Abusers of the IG System IGAR**: Since complainants have the responsibility to present truthful information concerning allegations or other information, the IG must assume that each complaint received is legitimate and worthy of further inquiry. If a complainant has a documented history of submitting baseless and unfounded issues and allegations, or has presented a pattern of complaints that are false, malicious, deceptive, and defamatory, the principal IG may require the complainant to present any and all subsequent matters in writing only. The IG must obtain the Directing Authority's approval and inform DAIG's Assistance Division prior to imposing this requirement via written notification to the complainant **(prescriptive provision in AR 20-1, paragraph 6-2f).**

Chapter 5

Civilian Employee Categories

Section 5-1 - Appropriated Fund Employees

Section 5-2 - Non-Appropriated Fund Employees

Section 5-3 - Local Nationals

Section 5-4 - Contractors

Section 5-1

Appropriated Fund Employees

1. **Purpose**: This section explains how IGs handle requests for assistance from Appropriated Fund Employees.

2. **Appropriated Fund Employees**: Appropriated Fund (APF) employees are U.S. citizens paid from funds appropriated by Congress and governed by Federal civil service laws. The Office of Personnel Management (OPM) administers the laws governing APF employees. APF employees include General Schedule (GS) civilians and civilians under the National Security Personnel System (NSPS) working in DoD or in specific services such as the Army and Navy.

As in all cases, the IG receiving the request for assistance must determine if the request is appropriate for the IG. If the issues are IG appropriate, the IG will provide the necessary assistance. If not, the IG will refer the matter to the appropriate agency. The IG needs to be careful when addressing civilian matters as the IG may inadvertently deprive an employee of his or her right to due process. If there is a procedure or system in place with the Civilian Personnel Office (CPO), Equal Employment Opportunity (EEO) Office, or a labor union, the Inspector General must know the applicable procedure or system (e.g., written policy, negotiated agreement, etc.) as it relates to the grievance procedures.

Section 5-2

Non-Appropriated Fund Employees

1. **Purpose**: This section explains how Inspectors General handle requests for assistance from Non-Appropriated Fund Employees.

2. **Non-Appropriated Fund Employees**: Non-Appropriated Fund (NAF) employees are paid from funds generated through the sale of goods and services. They are civilians, usually from the local labor market, or off-duty U.S. military personnel who compete for employment on the basis of merit.

NAF employees play an important role in providing morale and recreation services to military personnel and their Family members. Army clubs, guest houses, child-care centers, craft shops, bowling centers, swimming pools, gymnasiums, and many other NAF activities employ a considerable number of employees at most Army installations.

Army Regulation 215-3, NAF-Personnel Policies and Procedures, establishes policies and procedures applicable to Department of the Army NAF employees. These policies are designed to maintain uniform, fair, and equitable employment practices in keeping with the Army's traditional concept of being a good employer. CPAC provides guidance and personnel support to NAF managers who are responsible for administering the NAF personnel program.

The Inspector General will treat requests for assistance from NAF employees in the same manner as Appropriated Fund employees. If the issues are IG appropriate, the IG will provide the necessary assistance. If not, the IG will refer the matter to the appropriate agency. The IG needs to be careful when addressing civilian matters as the IG may inadvertently deprive an employee of his or her right to due process. If there is a procedure or system in place with the Civilian Personnel Office (CPO), Equal Employment Opportunity (EEO) Office, or a labor union, the Inspector General must know the applicable procedure or system (e.g., written policy, negotiated agreement, etc.) as it relates to the grievance procedures.

Section 5-3

Local Nationals

1. **Purpose**: This section explains how Inspectors General handle requests for assistance from the Local Nationals.

2. **Local Nationals**: Local National employees are normally hired to work in overseas duty stations such as South Korea and Germany. Federal law and DoD policy are consistent with of the applicable Status of Forces Agreements that form the basis of these employment systems. Within this framework, administration must be consistent with host-country practices, with U.S. law, and the management needs of the Army based upon Department of the Army requirements.

3. **Civilian Personnel Agencies or Activities**: Office of Personnel Management (OPM) is the central personnel agency of the Executive Branch with delegation of authority from the President to administer most Federal laws and executive orders dealing with all aspects of personnel administration and related subjects. Some laws and executive orders place certain personnel management responsibilities directly on agency or department heads subject to OPM policy and review.

In other cases, OPM has authority by statute and delegation to establish specific program standards and regulate and control the means of carrying out major aspects of agency / department personnel management.

The Inspector General will treat requests for assistance from Local National employees in the same manner as Appropriated Fund employees. If the issues are IG appropriate, the IG will provide the necessary assistance. If not, the IG will refer the matter to the appropriate agency. The IG needs to be careful when addressing civilian matters as the IG may inadvertently deprive an employee of his or her right to due process. If there is a procedure or system in place with the Civilian Personnel Office (CPO), Equal Employment Opportunity (EEO) office, or a labor union, the Inspector General must know the applicable procedure or system (e.g., written policy, negotiated agreement, etc.) as it relates to the grievance procedures.

Section 5-4

Contractors

1. **Purpose**: This section explains how Inspectors General process requests for assistance from Contractors.

2. **Contractors**: The Inspector General must analyze the substance of complaints and requests for assistance from contractors involved in commercial activities, procurement activities, or contracting to determine if the complaints are proper for Inspector General action. Contract-related complaints could cover various topics: someone outside the contract complaining about the contract or contractors not fulfilling the requirements for which they are being paid; unfair awarding of the contract; unfair hiring practices by the contractor (nepotism); contractor complaints about the Army or government not fulfilling their requirements, not getting paid, or not getting paid in a timely manner; or individual complaints from people working for the contractor concerning promotions, pay, leave accountability, overtime, time cards, supervisors inactions, discrimination, harassment, etc.

The Inspector General may render general requests for assistance. This assistance may include referring contractors to the appropriate agency for a specific issue since most contract-related matters normally have their own avenues for redress outlined in the contract. Due to the unique aspects of contractor-related issues and to better assist the IG or agency to which the case may be referred, the IG receiving the complaint should ask the complainant the following five questions in <u>addition</u> to the five basic questions normally asked upon receipt of a complaint:

1. What is the contract number? (For example, W12345-P-09-1234)
2. What is the role of the Subject / Suspect (Contracting Officer [KO] Contracting Officer Representative [COR], Source Selection member, etc.)
3. Who is the KO, COR, or Government Representative?
4. What is the name of the Prime Contractor or Subcontractor?
5. Where did the event / issue occur?

The IG should check with the KO or COR for specific information and / or recommendations. Additionally, the IG should check with someone in the SJA office for assistance with contract-related questions. For complaints involving fraud, waste, or mismanagement, an audit (possibly by the Internal Review and Audit Division) might be able to identify the problem. Be cautious not to tell contractors to change certain procedures or practices since these changes might incur additional costs that the IG is not authorized to approve or obligate.

Chapter 6

Civilian IGARs Not Appropriate for an Inspector General

Section 6-1 - Civilian Grievances

Section 6-2 - Inspector General Decision Matrix for DoD Civilian Complaints

Section 6-1

Civilian Grievances

1. **Purpose**: This section explains how Inspectors General process civilian employee grievances.

2. **Grievances**: Code of Federal Regulations, Department of Defense Civilian Personnel Manual (CPM), Army Regulations, and local collective bargaining agreements include procedures for processing grievances, appeals, and Equal Employment Opportunity (EEO) complaints. These complaints pertain to all aspects of employment. As the Inspector General, your role in these cases usually involves determining the nature of the complaint and where the person should take the complaint for action. In most situations, these complaints are not appropriate for Inspector General action except to ensure due process unless they fall into the fifth category below. Army Regulation 20-1, Inspector General Activities and Procedures, paragraph 6-3h, provides guidance on how to handle the various categories of civilian complaints as follows:

a. Refer grievances within the purview of the DoD CPM and the local collective bargaining agreement to the Chief, Civilian Personnel Advisory Center (CPAC) for information and assistance.

b. Refer appeals of adverse action within the purview of 5 U.S.C., Sections 7701 through 7703 to the CPAC for information and assistance.

c. Refer Equal Employment Opportunity (EEO) complaints, including reprisals for protected EEO activity, within the purview of 29 Code of Federal Regulations (CFR), 1614, and Army Regulation 690-600 to the local EEO counselor for action and resolution.

d. Refer complaints of retaliation or reprisal (Whistleblower) within the purview of 5 U.S.C., 2301 and 2302 to the Office of Special Counsel (OSC). In the case on Non-Appropriated Fund employees, refer them to Inspector General, DoD.

e. Civilian complaints involving matters that do not directly affect the employment, situation, or well-being of the individual will be worked by the Inspector General. Examples include complaints or allegations against third parties and reports of alleged misconduct, mismanagement, or other matters requiring command attention.

3. **Inspector General Actions**: The Inspector General must analyze a complaint upon receipt to determine the category and Inspector General appropriateness. The Inspector General should consult the following individuals as necessary:

a. The Staff Judge Advocate (SJA).

b. The Chief, Civilian Personnel Advisory Center.

c. The Equal Employment Opportunity (EEO) Office.

d. Army Regulations and Public Laws.

4. **Appeal for Adverse Action**: If the IGAR is a grievance or appeal, the Inspector General will refer the employee to the CPAC for information and assistance. Also, the Inspector General will advise the employee of procedures and timelines provided by regulation.

If the complainant, while understanding due process and presenting valid reasons for not exercising the employee grievance channel, insists on Inspector General involvement, the Inspector General may, as an exception to policy, accept the IGAR and work it. The IGAR should be in writing. If a locally negotiated grievance procedure exists, it must be used. An Inspector General Inquiry or Investigation can only determine the facts of the case. Subsequent correction of the record or change of a personnel action may still require submission of a request by the civilian to the appropriate agency.

5. **Equal Employment Opportunity (EEO)**: If the IGAR pertains to a complaint based on discrimination or allegations of reprisal, harassment, or intimidation for filing such a complaint, the Inspector General should:

a. Advise the complainant to contact the EEO officer or counselor for information and assistance in processing the complaint.

b. Not accept EEO complaints per Army Regulation 20-1, Inspector General Activities and Procedures, paragraph 6-3h (3).

6. **IGPA and IGARS Database**: In all cases involving civilians, the IG will thoroughly analyze the entire complaint and look for systemic issues or trends that might be IG or command appropriate. Furthermore, the IG will enter a case into IGARS annotating the IG's referral of the complainant to the appropriate agency.

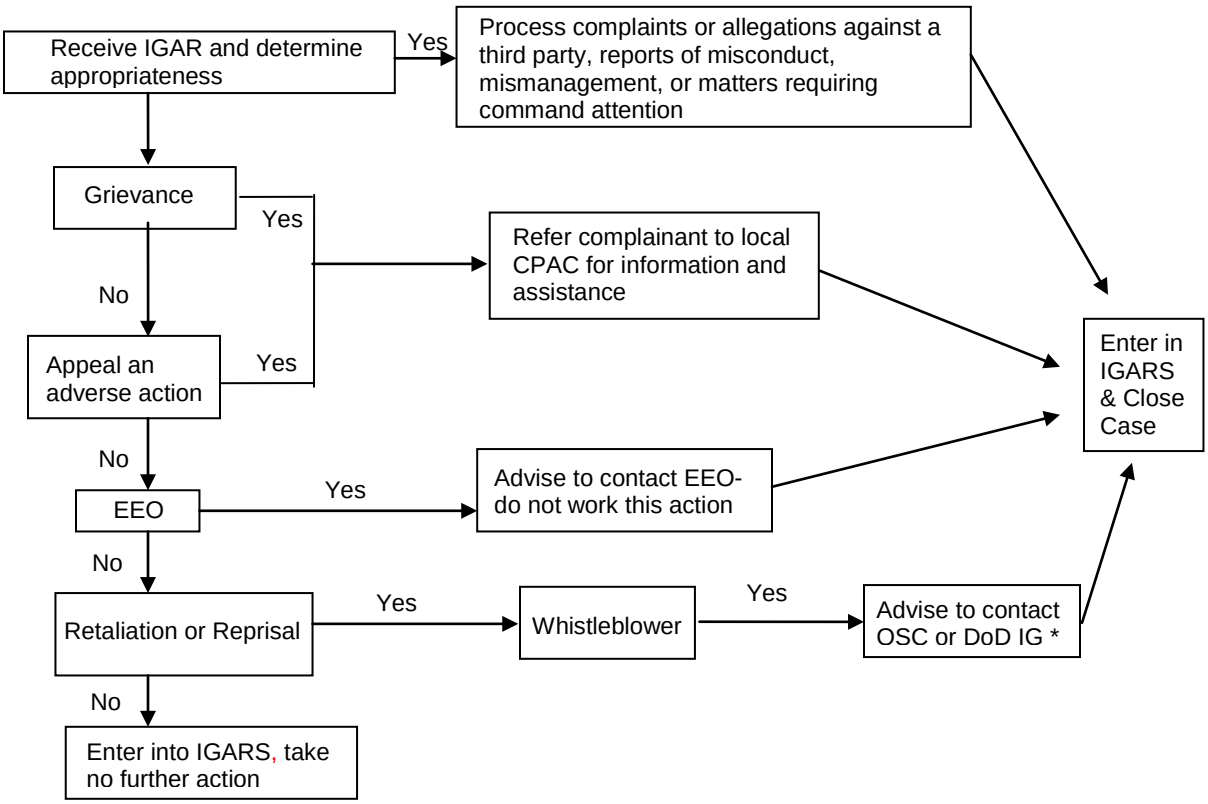
Section 6-2

Inspector General Decision Matrix for DoD Civilian Complaints

1. **Purpose**: This section explains the Inspector General Decision Matrix for DoD Civilian Complaints.

2. **Inspector General Decision Matrix for DoD Civilian Complaints**: This Inspector General Decision Matrix will assist the Inspector General in either working the case or referring it to the proper agency. The Inspector General will determine the appropriate course of action in step two of the seven-step IGAP.

Inspector General Matrix for DoD Civilian Complaints



* Appropriated Fund Employee: contact Office of Special Council (OSC); Non-Appropriated Fund Employee: contact DoD Inspector General.

Chapter 7

Congressional Inquiries

Section 7-1 - Congressional Inquiries in Command Channels

Section 7-2 - Congressional Inquiries in Inspector General Channels

Section 7-1

Congressional Inquiries in Command Channels

1. **Purpose**: This section explains how Inspectors General process Congressional Inquiries in Command Channels.

2. **Congressional Inquiries in Command Channels**: Sometimes referrals from a Member of Congress (MoC) on behalf of constituents who may be a Soldier, Family member, or private citizen will flow down through command channels. The Army Office of the Chief of Legislative Liaison (OCLL) receives cases from the MoC and refers them to either the Army Staff, the chain of command (Adjutant General [AG]), congressional channels, or to DAIG Assistance Division **(prescriptive provision in AR 20-1, paragraph 6-1f (1)).**

When the Inspector General receives a request directly from the MoC or from the installation or activity's congressional liaison office, the Inspector General will notify DAIG Assistance Division expeditiously. If the command or activity's congressional liaison office receives a case in which the Inspector General is currently working or has already completed an Inspector General Inquiry, the local Inspector General must inform the tasking official that the response will be forwarded through Inspector General channels to DAIG Assistance Division. These cases are handled as Inspector General cases. DAIG Assistance Division is the office of record for these cases and will contact the Office of the Chief, Legislative Liaison, to transfer the case to DAIG Assistance Division. Once the inquiry is complete, the local Inspector General will forward the Report of Investigation or Investigative Inquiry through the ACOM, ASCC, or DRU Inspector General to DAIG Assistance Division. DAIG Assistance Division, not the local IG, will prepare the final response to the complainant on behalf of the MoC and furnish copies to OCLL and the Inspector General office that processed the case.

National Guard Inspectors General process Congressional Inquiries in the following manner. If an inquiry is received directly from a MoC and there is no indication that the OCLL or DAIG Assistance Division has been contacted by that or any other MoC on the same issue, the National Guard Inspector General may respond directly to the MoC in accordance with that State's customs for handling congressional replies. The National Guard Inspector General will contact DAIG Assistance Division to confirm that a parallel complaint has not been received from OCLL. If a parallel complaint was received at DAIG Assistance Division, a copy of the response to the MoC will be provided to DAIG Assistance Division.

When there is an indication that OCLL or DAIG Assistance Division has been contacted, the completed Report of Investigation or Investigative Inquiry will be forwarded through the National Guard Bureau to DAIG Assistance Division.

Section 7-2

Congressional Inquiries in Inspector General Channels

1. **Purpose**: This section explains how Inspectors General process Congressional Inquiries in Inspector General Channels.

2. **Congressional Inquiries in Inspector General Channels**: DAIG Assistance Division -- the Office of Record for all Congressional Inquiries -- will refer the case in IGARS as Office of Inquiry through the ACOM, ASCC, or DRU Inspector General. The local Inspector General will then work the case as the Office of Inquiry and provide the completed case results to DAIG Assistance Division. For Congressional Inquiries, the local IG -- as the Office of Inquiry -- will **not** provide final responses to the complainant, subject, or suspect as ordinarily done during Step Five (Make Notifications) and Step Seven (Close the IGAR, Provide a Final Reply) of the IGAP. DAIG Assistance Division -- as the Office of Record -- provides a final response to the Member of Congress.

Chapter 8

White House Inquiries

1. **Purpose**: This section explains how Inspectors General process White House Inquiries.

2. **White House Inquiries**: White House inquiries may include requests from the President, the Vice President, or their spouses. DAIG Assistance Division is the Office of Record for White House Inquiries. DAIG Assistance Division may task an ACOM, ASCC, or DRU Inspector General office to inquire into a White House Inquiry by referring the case in IGARS to the appropriate IG office as Office of Inquiry. The ACOM, ASCC, or DRU Inspector General will then work the case as the Office of Inquiry by conducting Assistance Inquiry, Investigative Inquiry, or Investigation and then forwarding the ROI or ROII to DAIG Assistance Division. Assistance Division then provides a final reply to the complainant and furnishes a copy to the White House Liaison Office (WHLO). If the local Inspector General needs an extension to the suspense, the ACOM, ASCC, or DRU Inspector General must request that extension through DAIG Assistance Division. DAIG Assistance Division will send an interim reply to the complainant if the extended suspense date is beyond the original expected date of the Assistance Division's reply.

If there are any questions regarding the processing of White House Inquiries, call DAIG Assistance Division for guidance.

Chapter 9

DoD IG Hotline Cases

Section 9-1 - General

Section 9-2 - General Guidance for the Preparation of DoD IG Hotline Completion Reports

Section 9-3 - Criminal Investigation Division Command (CIDC) Cases

Section 9-4 - Documents Required for Forwarding with Completion Report

Section 9-5 - Subject / Suspect Notification

Section 9-6 - Quality Assurance Review and File Maintenance

Section 9-1

General

1. **Purpose**: This section describes the processing of DoD Hotline Referrals.

2. **General**: The DoD Inspector General forwards by email DoD IG Hotline cases to the Department of the Army Inspector General's (DAIG) Assistance Division, Hotline Branch. The DAIG Hotline Branch does not run a telephonic Hotline operation and does not accept cases submitted by a complainant directly to the Army. The DAIG Hotline Branch makes referrals to Army Commands (ACOM), Army Service Component Commands (ASCC), Direct Reporting Units (DRU), U.S. Forces - Iraq (USF-I), U.S Forces - Afghanistan (USF-A), and the Combined Joint Task Force headquarters in Afghanistan Inspectors General and Army Staff offices. The DoD IG does the initial acknowledgement to the complainant, not Assistance Division or the field Office of Inquiry. DoD IG advises the complainant that if he or she wishes to know the results of his or her case (or any case), he or she must submit a Freedom of Information Act (FOIA) request. <u>There is no final response to the complainant by any Army IG</u> **(prescriptive provision in AR 20-1, paragraph 6-1f (3) and paragraph 7-4a).**

3. **Timeline**: With the exception of Congressional DoD Hotline cases, DAIG Assistance Division has 120 days to respond to DoD IG with a Hotline Completion Report. Congressional cases have a 90-day suspense. The Office of Inquiry is given 90 days by Assistance Division to finish a non-Congressional case (includes mail and delivery time) and 60 days to finish a Congressional case. If the Office of Inquiry cannot meet Assistance Division's established suspense date, a DoD Inspector General Progress Report is required. Assistance Division forwards these Progress Reports to DoD IG.

4. **Types**: DoD IG determines if a case will be "Action" or "Information Only". Usually, "Information Only" cases have limited information provided in them. Assistance Division and those offices to which Assistance Division refers the cases can convert "Information Only" to "Action" but not vice versa. The DoD IG assigns the primary case number, which is a five-digit number.

a. Action Cases: Action cases are managed by the DAIG Hotline Branch and are assigned an IGARS number. Assistance Division remains the Office of Record and will refer these cases by both e-mail and IGARS to the appropriate Inspectors General. Assistance Division refers non-IG cases through the mail. All action cases must be addressed whether they are appropriate for the Army Inspector General or not.

b. Information-Only Cases: DAIG Hotline Branch manages information-only cases and assigns them an IGARS number. However, at the present time, Hotline Branch will not refer these cases in IGARS but only by e-mail to the appropriate Inspectors General. Non-IG cases are referred through the mail. If the local IG works this type of case and nothing is substantiated or founded, the local IG is responsible for final notification to the <u>subject(s) / suspect(s)</u>. If an allegation is substantiated or an issue founded, the local IG office working the case must forward a DoD Hotline Completion Report to Assistance Division. Assistance Division will then refer the case in IGARS (DAIG remains Office of Record) to the intermediate-level IG office who will then

refer it to the local IG who worked the case. He or she will link this referral to his or her current case, thus changing their status to Office of Inquiry.

5. **Sample Assistance Division Hotline Referral Memorandum and Progress Report**: Samples of an Assistance Division Hotline Referral Memorandum to an IG and a Progress Report appear on the next few pages.

Sample Assistance Division Hotline Referral Memorandum to an IG

S: 14 April 2010

SAIG-AC 14 January 2010

MEMORANDUM FOR

SUBJECT: Inspector General Hotline Action Case

1. The enclosed correspondence (Hotline XXXXX / DIH 10-8XXX) is forwarded for Inquiry or Investigation into the matters presented in accordance with The Assistance and Investigations Guide. If upon completing your preliminary analysis of this IGAR, you determine that this matter belongs to an agency outside of your IG area of responsibility, please contact the undersigned at Assistance Division immediately. Only DAIG Assistance Division will refer cases.

2. Your final response must be in the revised Hotline Completion Report format (Enclosure 2). Please refer to The Assistance and Investigations Guide or contact the Assistance Division Action Officer who referred the case to you if you need assistance in preparing this report. Forward the Hotline Completion Report with a copy of the completed Electronic IGARS Database 1559 to Assistance Division by the above suspense date. Please send the electrons for the Completion Report. DAIG Assistance Division will conduct the final notification of the subject / suspect and appropriate IG. Therefore, the Completion Report format has been revised (additional paragraph number 11) to obtain the necessary information for the final notification. The initial notification of the subject / suspect and command is still the responsibility of the office conducting the Investigation or Inquiry.

3. Assistance Division will notify you when Assistance Division approves the Hotline Completion Report (HCR) and forwards it to DoD for final approval. Do not start the countdown for file retention when you close the case in IGARS if you close it upon sending the HCR to Assistance Division. The date of the Assistance Division memo to the subject / suspect reflects the beginning of the countdown for file retention by the Office of Inquiry.

4. If you cannot meet the suspense date, submit a Progress Report to Assistance Division. Assistance Division cannot obtain an extension from DoD Inspector General without this Progress Report.

5. If any allegation is substantiated or an issue founded, address what corrective action if any (administrative, punitive, or management actions) was taken. If the command chose to take no action, please state that fact.

6. Assistance Division is the IGAR Office of Record. Assistance Division will refer the case to your office as Office of Inquiry in the IGARS database. Notify Assistance Division within two business days if any field-grade officer in the grade of O-4 or O-5 or enlisted Soldier in the grade of E-8 or above is identified as a subject / suspect. Report

immediately to DAIG Investigations Division and DAIG Assistance Division's Hotline Branch allegations against a Colonel, General Officer, and Senior Executive Service (SES) civilian. Complete identification (name, SSN, grade / rank, unit / agency) is required upon notification and at case closure.

7. The point of contact at this office is the undersigned at DSN 329-1060, commercial (703) 601-1060.

FOR THE INSPECTOR GENERAL:

ANNE CANDO
Assistant Inspector General

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Sample DoD Hotline Progress Report

DoD Hotline Progress Report
as of 14 April 2010

1. Applicable DoD Component: Army

2. Hotline Control No: XXXXX (DoD IG number) / DIH 10-8XXX / Office of Inquiry #

3. Date Referral Initially Received: (enter the date the case was received from the DoD Inspector General by Assistance Division)

4. Status:

a. Name of organization conducting examination:

b. Type of examination being conducted: Assistance Inquiry, Investigative Inquiry, or Investigation.

c. Results to date: If you have some definite results, then place them here. If not, just enter “None."

d. Reasons for delay: If more time is needed, then explain why (i.e., additional testimony is required; documentation is still being reviewed; inquiry is completed but more time is needed to write completion report, etc.)

5. Expected Date of Completion: Enter your best estimate of when the Hotline Completion Report is expected to reach DAIG Assistance Division.

6. Action Agency Point of Contact:

Rank, Name
Organization
DSN and Commercial phone

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Section 9-2

General Guidance for the Preparation of DoD IG Hotline Completion Reports

1. **Purpose**: This section describes the guidelines for preparing a DoD Hotline Completion Report.

2. **General Guidance for the Preparation of DoD Hotline Completion Reports (HCR)**: This section details the process for preparing a DoD Inspector General Hotline Completion Report. DoD IG dictates the Completion Report format, which appears at the end of this section. The DoD IG is the final approving authority to close a case, so the Office of Inquiry will not tell a complainant that a case is closed just because the Office of Inquiry believes it has completed its part. Substantiated allegations require a legal review. The legal representative must provide a written legal review in memorandum format (**prescriptive provision in AR 20-1, paragraph 7-2**).

The reason for the Hotline Completion Report is the same as for the Report of Investigation. The Completion Report presents the allegations and issues, evidence collected, analysis of the evidence, and the findings. The IG can use an Assistance Inquiry, Investigative Inquiry, Investigation, or command product as the basis for the report. If the command product or IG product resolved the allegations in the complaint and the Investigating Officer or IG properly notified the subject / suspect and provided the individual an opportunity to comment, the report can then be used as the basis for the HCR, and an additional subject / suspect interview is not required. The key thing to remember when writing the HCR is that the writer has to make a concise, detailed presentation that someone unfamiliar with the situation and the applicable guidelines can understand and be convinced that the findings are sound and based on a thorough Inquiry or Investigation conducted by an IG or the command. The IG must ensure that all allegations and issues in the complaint are addressed. Paragraph 6 of the HCR must contain the following information:

a. The first subparagraph will cover the background of the case: When was the complaint received? What is the complaint about? Was a command product used to write the HCR? Did the Inspector General use the command product and follow-up Inquiry to address all the allegations and issues? Each allegation must be written in the proper IG format. Always frame the allegation in the past tense. You must use names and not just position titles. Good sources for standards are the legal office, functional experts, and Inspector General technical channels. If the Inspector General does not have the necessary parts to form an allegation, it may only be an issue or a matter of concern. These issues or matters must also be addressed.

b. Another subparagraph will contain a list of the people (names, ranks, and positions) interviewed to obtain evidence about the allegation or issue. Specify if the Inspector General or the Investigating Officer of a command product did the interviewing. Specify whether testimony can be released outside official channels in accordance with FOIA.

c. Another subparagraph will contain a list of the documents reviewed to obtain evidence about the allegation or issue. Include the complainant's letter.

d. Presentation and discussion of the evidence will follow in one or more subparagraphs.

(1) The Inspector General will thoroughly present all the key evidence by witness(es) and document(s) that the Inspector General gathered (or which the Inspector General is extracting from a command product that answers the allegation adequately) and which led the Inspector General to a finding. Due to the volume of cases processed by the DoD Inspector General, no attachments are allowed. The DoD Inspector General requires that each HCR be a stand-alone document.

(2) After the evidence is presented, the Inspector General will analyze it in the Discussion Section. The Inspector General will explain why the allegation was substantiated or not substantiated, or why the issue was founded or unfounded.

e. Conclusion. The final subparagraph will repeat the allegation using the exact wording previously used. Copy and paste the same allegation and add whether that allegation was substantiated or not substantiated.

f. Disposition. The usual statement here is "Recommend that the case be closed." If any allegations were substantiated (or issues founded), the Inspector General will address the corrective action(s) taken by the command or that the command chose to take no action. (Recommendations by the Inspector General will not satisfy this requirement.) Hotline cases must remain open until all administrative and / or punitive actions, if any, taken by the command are completed. If the command conducts a follow-on Investigation, the Inspector General will wait for the results before writing the HCR. If the command determines that no corrective action will be taken, this decision must be stated in the HCR. If the case involves recoupment of funds from an individual by Defense Finance and Accounting Service (DFAS), the Inspector General must report that the command has initiated the paperwork for recoupment and the amount of money involved. The DoD Inspector General will follow through with DFAS to see if DFAS has actually recouped the money.

3. **Sample DoD Hotline Completion Report**: A sample DoD Hotline Completion Report to be written by an IG appears on the next page. Non-IGs are given a slightly different sample when the case is referred.

Sample of a DoD Hotline Completion Report

DoD Hotline Completion Report
(Date initially written; if revised, add final revision date)

1. Name of Examining Official: (Name of Inspector General who conducted the Inquiry or Investigation, or name of Inspector General who wrote the HCR based on information from a command product).

2. Rank / Grade of Examining Official:

3. Duty Position and Telephone of Examining Official:

4. Organization of Examining Official:

5. Hotline and DIH Control Numbers:

6. Scope of Examination, Findings, Conclusions, and Recommendations: This paragraph should go into sufficient detail concerning the allegation(s) or issue(s), evidence collected, discussion of the evidence, conclusion pertaining to each allegation and / or issue, and any corrective action.

a. Background: Specify what the complaint is about, when the complaint was received, if the Inspector General conducted the Inquiry upon which the HCR is based, if a command product was the only evidence used to write the HCR, and any additional follow-on Inquiry by the Inspector General.

b. The following people were interviewed by (select one: Inspector General or command product Investigation Officer) during this (select one: Investigative Inquiry / Assistance Inquiry / Investigation). Indicate if the interview was in person or by phone and whether release of testimony was authorized outside of official channels in accordance with FOIA.

(1) Complainant.

(2) Witness.

(3) Subject.

c. (Select one: Inspector General or command product Investigating Officer) reviewed the following documents during this (select one: Investigative Inquiry, Assistance Inquiry, or Investigation):

(1) Complainant's letter.

(2) Specify the document containing the standard.

(3) List additional documents

d. Allegation 1: That someone improperly did something in violation of a standard. (Replace someone, did something, and standard with the specific information.

Follow the Assistance and Investigations Guide, Chapter 2, for the proper format of an allegation.)

(1) Presentation of evidence: Present the key evidence provided by each of the interviewees and documents. Be sure to specify what the standard says.

(2) Discussion: Discussion paragraphs tie the items of evidence together. The Inspector General should discuss the lowest levels of evidence and build toward the combination of facts, which will support the Inspector General's decision. The last part of this section should be a statement explaining why the allegation was or was not substantiated.

(3) Conclusion: Repeat the allegation using the same wording as written earlier in paragraph 6d and add the finding (substantiated or not substantiated). If substantiated, address the corrective action (i.e. the command chose not to take any action, the Soldier received an Article 15, etc.).

e. Allegation 2: Follow the same process as the first allegation above.

7. Cite Criminal or Regulatory Violations Substantiated:

8. Disposition: Recommend that this case be closed with no further action necessary.

9. Security Classification of Information: This report is FOR OFFICIAL USE ONLY as an Inspector General report.

10. Location of Field Working Papers and Files: (e.g., ABC Command, 111 Street, City, ST 12345, ATTN: AAAA-AAA-IG).

11. Additional Notification Information:

a. All subject / suspect mailing addresses (whether or not allegations were substantiated).

b. Was Assistance Inquiry, Investigative Inquiry, or Investigation conducted? (specify which one)

c. Was the appropriate Commander notified of the initiation of an Inquiry or Investigation? (yes or no)

d. Name and mailing address of subject / suspect's Commander.
[4 spaces]

James Jones (Use name from paragraph 1)
LTC, US Army
Inspector General

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Section 9-3

Criminal Investigation Division Command Cases

1. **Purpose**: The purpose of this section is to describe the guidelines for referring a DoD Hotline case to the Criminal Investigation Division Command.

2. **Criminal Investigation Division Command (CIDC) Cases**: If the Office of Inquiry discovers during the Preliminary Analysis that the Inspector General should refer all or part of the case to the Criminal Investigation Division Command, the Inspector General must contact the DAIG Hotline Branch so the case can be returned to DoD IG for formal referral -- partially or completely -- to CIDC Operations, Fort Belvoir, Virginia. The Office of Inquiry will not refer a Hotline case to the local CIDC office.

If a case is split between an Inspector General and the Criminal Investigation Division Command, each agency must prepare a Hotline Completion Report on the portion worked by that office.

Section 9-4

Documents Required for Forwarding with Completion Report

1. **Purpose**: This section describes the documents needed when forwarding a DoD Hotline Completion Report (HCR) to Assistance Division.

2. **Documents Required for Forwarding with Completion Report**: The Office of Inquiry IG will forward the HCR, the Electronic IGARS Database 1559, and a legal review (a must for a substantiated allegation) through the ACOM, DRU, ASCC, USF-I, CJOA, or CJTF IG to Assistance Division. Since all cases in this referral are linked in IGARS, all intermediate review offices will also complete and forward an Electronic IGARS Database 1559 including their written concurrence with or without comments of the contents of the HCR and Electronic IGARS Database 1559 from the IG office that conducted the actual inquiry. The Office of Inquiry, intermediate review offices, and the Office of Record's Electronic IGARS Database 1559s must have the same exact function codes, subjects / suspects, and determinations. In instances where agreement cannot be reached, DAIG Assistance Division will make the final decision. HCRs prepared by non-IGs will be forwarded with a legal review (if there is a substantiated allegation) through the appropriate chain of command to Assistance Division.

Section 9-5

Subject / Suspect Notification

1. **Purpose**: This section describes the subject / suspect notification procedures for DoD Hotline Cases.

2. **Subject / Suspect Initial Notification**: Initial subject / suspect notification is the responsibility of the Inspector General conducting the Inquiry / Investigation, including the Office of Inquiry (OoI). Use the format for initial notifications found in Part Two of this guide.

3. **Subject / Suspect Notification**: DAIG Assistance Division, when it is the Office of Record, will do the final notification of the subject / suspect and notify the appropriate IG / Army Staff once DoD IG has approved a case for closure. Hence, mailing addresses for the subject / suspect must be included in paragraph 11 of the Completion Report.

A sample letter Assistance Division uses for final subject / suspect notification appears on the next page.

Sample Letter for Subject / Suspect Notifications at Assistance Division

DEPARTMENT OF THE ARMY
OFFICE OF THE INSPECTOR GENERAL
1700 ARMY PENTAGON
WASHINGTON DC 20310-1700

REPLY TO ATTENTION OF

January 16, 2010

Assistance Division

Name
Address

Dear xxxxx:

The (xxxxx) Inspector General has concluded an inquiry (Hotline xxxxx / DIH 1x-8xxx) into an allegation(s) against you. The allegation(s) and finding(s) below have been forwarded to DoD IG for final approval. If there is a change in the finding upon DoD's completion of their review, the Assistance Division of the US Army Inspector General Agency will notify you. FOIA requests for copies of the DoD Hotline Completion Report after DoD IG closes the case should be coordinated directly with DoD IG (703-604-9785). The results are as follows:

a. The allegation that you …

b. The allegation that you …

This office will take no further action pertaining to these allegations. A copy of this letter will be sent to the (xxxxx) Inspector General.

Sincerely,

Jack Jones
Colonel, US Army
Chief, Assistance Division

Section 9-6

Quality Assurance Review and File Maintenance

1. **Purpose**: This section describes the Quality Assurance Review and file maintenance process.

2. **General**: The DoD Inspector General conducts formal Quality Assurance Reviews (QAR) of selected Hotline cases completed by field Inspectors General (see DoDI 7050.01). A sample QAR is listed below.

Sample of a Quality Assurance Review (QAR)

Quality Assurance Review
(DoDI 7050.01)

1. The Inspector General, DoD, conducts formal QARs of selected completed Hotline cases and examines the areas listed below. Therefore, all Hotline Inquiries and Investigations should be conducted and Completion Reports written utilizing the following guidelines to ensure a quality product for possible inclusion in the QAR:

a. The timeliness of the Inquiry / Investigation. Adherence to the established Hotline suspense is essential. When an IG office cannot meet an established suspense, the office must submit an interim Progress Report to DAIG Assistance Division requesting a new suspense date and the reasons for the delay.

b. The independence and objectivity of the examining official. Independence is generally not a problem in cases conducted by Inspectors General. DoD is concerned that Inspectors General be objective and that there is no perception of intimidation by high-ranking officials of Inspectors General conducting Inquiries / Investigations.

c. The adequacy of the documentation in the file to support the conclusions. Maintain adequate documentation in the file to support the findings and conclusions. The official examination file should contain the following:

(1) The names of those interviewed; the date, time, and place of the interviews; and notes or summary of the discussion.

(2) Identification of all records / documents reviewed, the findings, their location, and the person assisting the Inspector General. Maintain all documentation produced as a part of the file (use the Army rule: after DoD IG has declared the case closed, retain the file for 30 years if substantiated and three years if not substantiated).

(3) A copy of the DoD Hotline complaint (referral).

(4) A copy of the Completion Report.

(5) Investigator notes.

(6) Case-generated memoranda and correspondence.

(7) Description of all other evidence collected.

d. The overall adequacy of the Inquiry. Consider the following to determine if the completed report will be adequate when reviewed:

(1) Was the Examining Official independent and qualified?

(2) Were all the allegations and issues addressed?

(3) Was the examination timely?

(4) Were all the key individuals interviewed?

(5) Were all the relevant questions asked?

(6) Was all the relevant documentation collected and reviewed to support the conclusions?

(7) Was a legal or technical review requested when necessary?

(8) Did the Examining Official demonstrate common sense in the approach to answering the allegations?

(9) Are the findings and conclusions accurately reflected in the report?

(10) If appropriate, was corrective action taken and reported?

(11) Army Requirements: Was there an Electronic IGARS Database 1559, and did the appropriate higher echelon IG office concur prior to its arrival to Assistance Division?

Chapter 10

IGARs Regarding the Repeal of Don't Ask, Don't Tell

1. **Purpose**: The purpose of this section is to provide guidance to all IGs regarding IGARs associated with the repeal of Don't Ask, Don't Tell (DADT) within the Department of the Army.

2. **Background**: On 22 December 2010, President Barack Obama signed into law a provision eliminating the 17-year-old DADT policy banning homosexuals from serving openly in the U.S. armed forces. The Department of Defense responded by developing an education plan for all services that included a tiered chain-teaching approach. The Army initiated rapid revisions of numerous regulations to eliminate all provisions and language that addressed homosexual conduct policy. The Army then implemented the tiered chain-teaching approach, first training special staff and key individuals such as IGs, chaplains, personnel administrators, judge advocate general personnel, and law-enforcement personnel. Tier Two training involved commanders and supervisors followed by Tier Three training for Soldiers and Family members -- all with a completion date of 1 July 2011 for the Active Component and 1 August 2011 for the Reserve Component. On 21 September 2011, the repeal of Don't Ask, Don't Tell went into effect.

3. **IG Appropriateness:** IGARs regarding DADT matters are **IG appropriate**. However, these issues are not Equal Opportunity (EO) appropriate. EO derives its authority from, among other laws, Title VII of the Civil Rights Act of 1964, codified as 42 USC 2000e. The law, and the Army's implementing regulation, AR 600-20, Chapter 6, only authorizes EO to deal with discrimination matters involving race, color, religion, gender, and national origin. The Military Equal Opportunity (MEO) program therefore cannot legally address sexual orientation issues. **All Soldiers, regardless of sexual orientation, are entitled to an environment free from personal, social, or institutional barriers that prevent Soldiers from rising to the highest level of responsibility possible. Harassment or abuse of any kind, including that based on sexual orientation, is unacceptable and will be addressed through command or IG channels, not the EO system.**

4. **New Policy and Terminology:** "Gay, lesbian, or bisexual" (GLB) will now be used as more correct terminology in place of the term "homosexual." Soldiers will not be involuntarily separated for engaging in lawful GLB conduct. Sexual orientation remains a personal and private matter. Soldiers may inform others of their sexual orientation at their own discretion. The Army will not ask a Soldier to identify his or her sexual orientation and **will not collect or maintain data** on an individual's sexual orientation. Transgender and transsexual individuals are still not permitted to join the armed forces. Guidance on coding issues or allegations in the IGARS database related to DADT will be forthcoming from DAIG's Assistance Division (SAIG-AC).

5. **General Guidance Regarding DADT-Related IGARs:** Current Army policy guidance is contained in the DADT chain-teaching materials and Army Directive 2011-01, Repeal of "Don't Ask, Don't Tell." The following guidance provides a starting point for IGs to address DADT-related issues and allegations brought to an IG for action. This guidance provides a general situation, how the IG should respond, and Army policy bearing directly on that particular matter. This guidance is not all-inclusive and does not account for every situation an IG may encounter. The first priority is for IGs to know the change in policy and, above all, not to "shoot from the

hip" as a response. To address a policy-related issue, contact the Assistance instructor at The Inspector General School (TIGS) (703-805-3897 / DSN 655-3897). For operational matters regarding specific cases, contact DAIG's Assistance Division (703-545-1845 / DSN 865-1845). For legal matters related to DADT, contact the local Staff Judge Advocate (SJA).

a. Discrimination:

(1) General situation: In accordance with current DoD and DA policies on EO, Service members are entitled to be evaluated on individual merit. However, sexual orientation will not be placed alongside race, color, religion, gender, and national origin as a class under the MEO Program. As such, complaints of discrimination based on sexual orientation will not be addressed through the MEO complaint process but through IG and command channels

(2) IG response: Conduct an investigative inquiry or, if directed by the Directing Authority, an investigation into any allegations of discrimination.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); local command policy on dignity and respect; and AR 600-100, *Army Leadership*, paragraph 2-1k: "Treat subordinates with dignity, respect, fairness, and consistency."

b. Accessions, Re-entry, and Recruiting Policy:

(1) General situation: GLB conduct will not be a bar to military service, admission to Service academies, enrollment in ROTC, or any other accession program. All applicants, regardless of any statements with regard to sexual orientation or lawful conduct, will be treated equally with professionalism and respect. Similarly, prior-service members who were discharged solely for homosexual conduct may apply to re-enter the Armed Services and will be evaluated according to the same criteria and Service requirements applicable to all prior-service members seeking re-entry into the military.

(2) IG response: Conduct Inspector General Preliminary Analysis (IGPA) to determine the factual basis for denial of accession / re-entry. Was the individual evaluated equally according to applicable Service criteria and requirements without regard to sexual orientation? If not, refer the issue to the United States Army Recruiting Command (USAREC) IG for further inquiry or teach and train the individual on how to contact USAREC for further guidance.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); AR 600-100, *Army Leadership*, paragraph 2-1k: "Treat subordinates with dignity, respect, fairness, and consistency"; AR 601-210, *Active and Reserve Components Enlistment Program*; AR 601-270, *Military Entrance Processing Station (MEPS)*; AR 601-280, *Army Retention Program*; and AR 612-201, *Initial Entry / Prior Service Trainee Support*.

c. Moral or Religious Concerns:

(1) General situation: The Army will not make changes to current policies regarding Service members' individual expression and free exercise of religion. As such, Soldiers will not be expected to change their personal views and religious beliefs. However, they must continue to treat all Soldiers with dignity and respect. Similarly, policies concerning the Chaplain Corps of the Military Departments and their duties will not change. Chaplains have both the right to serve and conduct religious services according to their faith and a duty to perform or provide

religious support. Commanders should make every effort to approve requests for religious accommodation in accordance with governing policies as long as those requests will not have an adverse impact on unit readiness, individual readiness, unit cohesion, morale, discipline, safety, and / or health -- defined collectively as "military efficiency" (see AR 600-20, paragraph 5-6).

(2) IG response: Refer the matter to the chain of command for resolution. Teach and train the chain of command on the current policies as necessary.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); AR 600-20, *Army Command Policy*, paragraph 5-6, states that: "The Army will approve requests for accommodation of religious practices unless accommodation will have an adverse impact on unit readiness, individual readiness, unit cohesion, morale, discipline, safety, and / or health." And AR 165-1, *Army Chaplain Corps Activities*, paragraph 1-9c: "Accommodate special religious practices of personnel in their commands, consistent with DODD 1300.17 and AR 600–20" or paragraph 3-2b (3): "Chaplains will perform their professional military religious leader ministrations in accordance with the tenets or faith requirements of the religious organization that certifies and endorses them."

d. Assignments:

(1) General situation: Assignment policies will not change. All Service members will continue to be eligible for world-wide assignment without consideration of sexual orientation. Service members assigned to duty, or otherwise serving in countries in which homosexual conduct is prohibited or restricted, will abide by the guidance provided to them by their local commanders. The Defense of Marriage Act (DOMA) limits Federal recognition of marriage to opposite-sex married couples. Therefore, dual-military spouse assignment consideration does not apply to same-sex married couples. GLB Service members in a committed same-sex relationship can, like their unmarried heterosexual counterparts, make an individualized, hardship-based request for accommodation in assignment. Additionally, DOMA prevents DoD from funding PCS travel expenses for a Service member's civilian same-sex partner.

(2) IG Response: Conduct IGPA to determine the factual basis for denying the assignment. If it appears that discrimination may be the basis for the denied assignment, then conduct an investigative inquiry. Teach and train the complainant, as necessary, about current laws and policies regarding the recognition of same-sex marriages.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); AR 600-100, *Army Leadership*, paragraph 2-1k: "Treat subordinates with dignity, respect, fairness, and consistency"; Department of Defense Directive (DoDD) 1315.07, *Military Personnel Assignments*; and DoDI 1315.18, *Procedures for Military Personnel Assignments*.

e. Benefits:

(1) General situation: Eligibility standards for military benefits will not change. DOMA, 1 U.S.C. and 7, and the existing definition of "dependent" in some laws, prohibit extension of many military benefits to a Service member's same-sex spouse or any children not considered bona fide dependents. Service members will continue to have various benefits for which they may designate beneficiaries in accordance with the rules governing each program.

(a) Benefits for which same-sex partners are eligible include designated beneficiary for Thrift-Savings Plan, Service Members Group Life Insurance, Death Gratuity, and any unpaid pay and allowances.

(b) Benefits for which same-sex partners and non-dependent children are NOT eligible include Family Separation Allowance, medical care, travel and housing allowances, Family Support / Advocacy Services (physical abuse, child care, youth programs, etc.), and Survivor Benefit Plan payments.

(2) IG response: Teach and train the complainant regarding beneficiary designation eligibility and the prohibition of benefits extension based on current laws and policies.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); 5 C.F.R. 1651.3 (TSP); 38 U.S.C. 1967 and DoDFMR, Volume 7A, Chapter 47 (SGLI); 10 U.S.C. 1477 and DoDFMR, Volume 7A, Chapter 36, section 3601 (Death Gratuity); 10 U.S.C. 2771 and DoDFMR, Volume 7A, Chapter 36, section 3602 (Unpaid Pay and Allowances); 37 U.S.C. 427 and 401(a) (Family Separation Allowance); 10 U.S.C. 1447(9) (SBP); and AR 621-202, *Army Educational Incentives and Entitlements*.

f. Separations:

(1) General situation: Sexual orientation or lawful GLB conduct is no longer a basis for separation. However, all Soldiers will be held to the same standard of conduct. Therefore, disciplinary action, to include separation from military service, may be taken for sexual misconduct that is prohibited by the UCMJ. Additionally, there will be no new policy to allow for release from service commitments for Service members who object to serving with openly GLB Service members. Such Service members may request to be voluntarily discharged under the plenary authority of the Military Department Secretary concerned, and such a discharge will be granted only when the respective Military Department Secretary has determined that early separation would be in the best interest of the Service.

(2) IG response: For complaints regarding the initiation of a wrongful separation action, teach and train the command to ensure awareness of the new policy and correct due-process procedures. For complaints from Soldiers who object to serving with openly GLB Service members, teach and train the complainant that such an objection does not warrant an early discharge and release from his or her Service commitment.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); AR 635-5-1, *Separation Program Designator* (SPD) *Codes*; AR 635-10, *Processing Personnel for Separation*; AR 635-200, *Active Duty Enlisted Administrative Separations*; and DA Pam 600-8-11, *Military Personnel Office Separation Processing Procedures*.

g. Article 125, UCMJ (Consensual Sodomy):

(1) General situation: Unrelated to DADT, the U.S. Supreme Court and the Court of Appeals for the Armed Forces found that private, consensual sexual activity, to include consensual sodomy regardless of sexual orientation, is a protected liberty under the Fourteenth Amendment. Consensual sodomy can only be punished if it is prejudicial to good order and discipline, Service discrediting, or if there are other factors involved in the commission of the act such as force, coercion, or involvement of a minor.

(2) IG response: If the complainant alleges force or coercion, then the complaint should be treated the same as a sexual assault. As such, notify or refer the matter to the Sexual Assault Response Coordinator (SARC) and notify the chain of command if the SARC does not do so.

(3) Applicable standard: Article 125, UCMJ.

h. Co-habitation Issues:

(1) General Situation: Service in the armed forces makes it necessary at times for Service members to accept living and working conditions characterized by little or no privacy. Examples of areas with limited privacy may include showers, dressing areas, and berthing / billeting assignments. The Services will not establish quarters or berthing assignment regulations or policies that segregate Service members according to sexual orientation. Commanders retain the authority to alter berthing / billeting assignments on an individualized, case-by-case basis in the interest of maintaining morale, good order, and discipline. Compliance with professional standards of conduct will be essential to fostering respect among fellow Service members and resolving concerns about privacy.

(2) IG response: Refer to the chain of command for resolution. Conduct teaching and training to ensure commanders are not establishing segregation practices that could be considered and / or perceived as discriminatory.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); Local command policies on dignity and respect.

i. Harassment:

(1) General situation: The repeal of DADT does not change the Army's current policy on sexual harassment, which is a form of gender discrimination of a sexual nature between the same or opposite genders. As such, the policy has always been sexual-orientation neutral. All Service members are entitled to a work environment free from hostility, unwelcome behavior of a sexual nature, and *quid pro quo* situations.

(2) IG response: Refer complaints of sexual harassment to EO.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); AR 600-20, *Army Command Policy*, paragraph 7-3a: "The policy of the Army is that sexual harassment is unacceptable conduct and will not be tolerated. Army leadership at all levels will be committed to creating and maintaining an environment conducive to maximum productivity and respect for human dignity."

j. Standards of Conduct:

(1) General situation: Standards for personal and professional conduct (to include public displays of affection, dress and appearance, and unprofessional relationships) apply uniformly without regard to sexual orientation. Service members will continue to conduct themselves consistent with Army Values, customs, traditions, local policy, and the law according

to UCMJ. Leaders at all levels are expected to set the example and enforce the high standards expected of those in military service.

(2) IG response: Conduct an investigative inquiry or, if directed by the Directing Authority, an investigation into any allegation of conduct unbecoming an officer or NCO.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); local Command policy on professional and personal conduct and Article 92, 133, or 134, UCMJ.

k. Participation in Politically Oriented GLB Events:

(1) General situation: The repeal of DADT does not change the Army's policy on participation in GLB events or frequenting establishments that cater to GLB clientele. Participation in GLB events is within a Service member's right of expression, as long as the Service member's actions are not otherwise prohibited or would discredit the Armed Forces and is consistent with good order and discipline. However, this policy is likely to change in the near future to permit greater freedom of expression and association.

(2) IG response: Conduct IGPA to determine the facts of the Soldier's actions and if those actions violated any regulation or policy. If the Soldier was in violation of a regulation or policy, conduct an investigative inquiry or, if directed by the Directing Authority, an investigation.

(3) Applicable standards: Secretary of the Army Directive 2011-01 (dated 23 February 2011); local command policy on Standards of Conduct; AR 600-20, *Army Command* Policy, paragraph 4-2: "All persons in the military service are required to strictly obey and promptly execute the legal orders of their lawful seniors"; and the First Amendment to the U.S. Constitution.

Chapter 11

Morale Assessments

1. **Purpose**: The purpose of this section is to provide guidance to IGs on how to plan and conduct morale assessments within the command or organization.

2. **Morale Assessments**: Army Regulation 20-1, Inspector General Activities and Procedures, paragraph 1-4a (1), charges The Inspector General with "[i]nquir[ing] into, and periodically report[ing] on, the discipline, efficiency, economy, **morale**, training, and readiness of the Army to the Secretary of the Army (SA) and the Chief of Staff, Army (CSA), in accordance with Section 3020,Title 10, United States Code (10 USC 3020). These requirements apply to all IGs in the Army IG system; but, in particular, **assessing morale** is a key aspect of an IG's charter and a critical barometer for helping commanders determine the overall mission readiness of their organizations. More importantly, assessing morale is a **proactive effort** that not only IGs can employ on behalf of commanders but that commanders can conduct for themselves as a way to identify issues within the organization before they become readiness-hindering problems. In most cases, the IG's Directing Authority will direct a broad morale assessment of the over command (division, corps, etc.), but subordinate Commanders (brigade, battalion, etc.) may request them from the IG as well.

3. **Morale versus Command Climate:** Assessing morale differs from assessing command climate because **command climate** focuses primarily on leaders while **morale** focuses primarily on the led -- although both concepts are inextricably linked in numerous ways. In a sense, morale is a *subset* of command climate because command climate is the principal driver behind morale. Paragraph 6-3j of Army Regulation 20-1 cautions IGs against conducting command-climate sensing sessions because, as the regulation states, "the IG must act on every issue or allegation that surfaces during the session." Keep in mind that command-climate assessments are focused on a particular commander's organization, which provides an IG with an automatic "who" for any alleged improprieties that surface. IG investigations are not the intended goal of command-climate sensing sessions, which is why Equal Opportunity (EO) personnel should perform them. EO personnel are trained specifically to conduct these command-climate sensing sessions and know how to craft the appropriate questions. In particular, EO records are less restrictive than IG records and can be shared more freely without potential investigatory implications. However, Army Regulation 20-1 allows Directing Authorities to have their IGs conduct command-climate sensing sessions only if specifically directed to do so, and certain situations may warrant IG involvement in these assessments. If charged with conducting a command-climate sensing session, the IG should coordinate with the EO advisor for guidance on how to use and / or reshape the Defense Equal Opportunity Management Institute's (DEOMI's) Organizational Climate Survey to target the specific things the Directing Authority wants to know. But, ultimately, the IG's specific regulatory charter is to assess morale and not command climate. Army Regulation 600-20, Army Command Policy, clearly specifies in paragraph 6-3i that "Commanders at all levels are the EO officers for their commands"; but, more specifically, item (13) of that same paragraph requires company-level commanders to "conduct a unit climate assessment within 90 days (180 days for Army Reserve) of assuming command and annually thereafter." Such assessments should be part of the

new company-level commander's Initial Command Inspection as required by Army Regulation 1-201, Army Inspection Policy. Appendix E of Army Regulation 600-20 provides specific guidance for company-level commanders about how to obtain and administer command-climate surveys.

4. **Morale:** Morale generally focuses on the perceptions of the individual Soldier and, in many cases, civilians and Family members. But more specifically, morale refers to the way a Soldier feels about himself or herself, the level of individual faith a Soldier puts in his or her unit, the belief that the Soldier's unit is a good one, the faith a Soldier has in the unit's support of Family members, and the collective benefit gained by being a member of such a unit. In this context, morale is often used interchangeably with *esprit de corps*. Morale also includes matters that are beyond the unit itself and that apply to the Army as an institution. Title 10, United States Code, Section 3583, Requirement of Exemplary Conduct, charges all officers and others in authority with "promot[ing] and safeguard[ing] the **morale** [emphasis added], the physical well-being, and the general welfare of the officers and enlisted persons under their command or charge." IGs assist commanders in this statutory charter by assessing and then reporting on the morale of all troops within the commands or organizations they support. Morale is best defined as the state of a person's or group's spirits as exhibited by confidence, cheerfulness, discipline, and willingness to perform assigned tasks. Keeping this basic definition in mind, morale assessments can include many factors and approaches.

5. **Morale Assessments:** Morale assessments conducted by IGs consider many factors and are generally conducted by straightforward questionnaires or other non-intrusive approaches that safeguard the confidentiality of the respondents. Morale assessments are a dynamic process that can occur over time or at a specific point in time. Morale assessments are, in effect, Assistance Inquiries that can include:

a. **Sensing sessions:** These sessions will require questions and a read-in as outlined in Part 2 of The IG Reference Guide.

b. **Surveys or Questionnaires:** The questions should follow the format of command-climate surveys but will vary in content based on the factors the commander wants assessed. Sample questions in terms of style and format appear on the Web site for U.S. Army Research Institute for the Behavioral and Social Sciences at http://www.hqda.army.mil/ari/pdf/CCS-TDA-2.pdf. Although these questions will be tailored to command-climate surveys, they offer excellent ideas for ways to construct and organize morale-related surveys based on the factors discussed in paragraph seven of this chapter.

c. **Data analyses:** The data can cover a wide array of information, to include the nature and frequency of UCMJ actions, the unit's overall training performance as indicated in written after-action reports, the generic results of company-level climate assessments, the statistics surrounding unit re-enlistment rates, and other relevant information.

d. **Observation**: IGs will have numerous opportunities to observe units operationally and in training to determine how Soldiers interact with their leaders, how Soldiers perform and the vigor with which they perform, their perceived competency in their respective specialties, and so on.

IGs treat morale assessments as Assistance cases and enter each one into the IGARS database to capture workload and to maintain a record of the assessment and its results (use the function code for command-climate surveys, YA5). The IGs must be certain to indicate that the assessment was focused on morale and not command climate.

6. **Morale Assessment Reports:** The assessment itself will normally come in the form of a memorandum or other locally recognized format provided directly to the Commander / Directing Authority. Since morale assessments can apply to an entire command and do not target specific commanders, IGs can readily distribute the results (like trends) on an FOUO basis to subordinate commanders and staff members as specified by the Directing Authority. However, the Commander / Directing Authority (or any subordinate commander) may not use the results of an IG morale assessment in an evaluation or to compare leaders or commanders.

7. **Factors to Consider for Assessing Morale:** Developing a strategy for assessing morale depends strongly on the Commander's / Directing Authority's specific guidance regarding what he or she wants to know. In the broadest sense, morale concerns numerous factors that often serve as a general barometer for the feelings and well-being of the Soldiers and civilians comprising an organization. Therefore, IGs must carefully construct a methodology tailored to the needs of the organization and the requirement. Some factors to consider when determining that scope of the assessment and which techniques to use (sensing sessions, surveys, etc.) are as follows:

a. Quality of food, water, and shelter.
b. Quality of leadership (best assessed through EO-led, command-climate sensing sessions and then used in concert with morale assessments).
c. Quality of training.
d. Belief in the Army's values and what the Army represents.
e. Belief in (and loyalty to) the Nation and the American culture for which the Army fights.
f. Belief in the Army's capabilities to overcome an enemy on the battlefield.
g. The pride one feels in his or her unit and that unit's traditions.
h. Quality and nature of distinctive uniforms, badges, and insignia that contribute to *esprit de corps*.
i. The sense of camaraderie that troops feel with and for one another.
j. A clear understanding of the unit's mission, goals, objectives, and vision.
k. The sense of security and comfort a Soldier feels in being a part of his or her unit or the Army as a whole.
l. The perceived fairness or belief in Army personnel and other policies that affect a Soldier's well-being.
m. The belief that a Soldier can make a difference in the unit, in the Army, and on the battlefield.
n. The belief that the Army as an institution safeguards the Soldier's right to religious freedom.
o. The belief that the Army's benefits and compensation will adequately cover the needs of Soldiers and their Families.
p. Confidence in Family Readiness Groups and Army Family Action Plan conferences and the effectiveness of those entities.
q. The belief that the unit (or Army as a whole) treats Families well.
r. The belief that the unit (or Army as a whole) treats single Soldiers and supports programs like Better Opportunities for Single Soldiers (BOSS).

s. The perception that the unit's operational tempo is fair and manageable.

t. The belief that one's unit compares favorably (or better) with other units within the command or the Army at large.

8. **A Note on Using Surveys or Questionnaires:** Army Regulation 600-46, Attitude and Opinion Survey Program, governs the type and nature of surveys that can be employed to gather information about how Soldiers and others feel about the Army. The regulation is quite dated (1978), but the requirement to have questions approved for certain opinion-and-attitude surveys is still valid. The Army has charged the Army Research Institute (ARI) with this approval authority. All IGs who develop opinion-and-attitude surveys for use in morale assessments should go to the ARI Web site (U.S. Army Research Institute for the Behavioral and Social Sciences) at http://www.hqda.army.mil/ari/surveys/index.shtml to review the guidelines for all surveys and, if required, the survey-approval process. Survey approval by ARI is only necessary if the survey is conducted in two or more ACOMs, ASCCs, or DRUs. If the survey is conducted within a single command such as an ACOM, division, brigade, or battalion, then only the unit commander needs to approve it. If survey approval is necessary, ARI is generally very responsive and can often provide excellent feedback for shaping and crafting survey questions tailored specifically to meet the organization's needs.

9. **Using the Results:** The results of morale assessments assist Commanders / Directing Authorities in making an informed assessment of the organization's warfighting and readiness capability. Like the results obtained from inspections (part of the Organizational Inspection Program), command-climate sensing sessions (conducted by EO personnel), combat-training-center evaluations, APFT results, maintenance readiness rates, and other numerous factors, Commanders / Directing Authorities use morale assessments as part of their overall ***organizational assessment*** for determining mission readiness. FM 7-0, Training Units and Developing Leaders for Full Spectrum Operations, makes assessing training and readiness an integral part of the Army Training Management Model, and assessing morale is a critical component of all training assessments. But morale assessments are not simply applicable to the training environment and Army Force Generation (ARFORGEN); these assessments can occur in deployed or other operational environments as necessary and can prove particularly critical for organizations that have engaged in sustained, high-intensity combat operations. IGs should advise their Commanders / Directing Authorities on how best to integrate morale assessments into the larger organizational assessments so that those Commanders can form a clearer, more informed picture of their organization's strengths and weaknesses.

Part Two

Investigations

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Investigations

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Section 1-1

Introduction and Purpose

1. **Purpose:** The purpose of this section is to provide IGs with an overview of the recommended procedures and techniques for implementing the regulatory requirements relating to IG investigations and investigative inquiries in accordance with Army Regulation (AR) 20-1.

2. **Scope:** If, in the process of resolving Inspector General Action Requests (IGARs), preliminary analysis (step two) reveals possible wrongdoing by an individual and IG fact finding is appropriate, the fact-finding process (step four) will either be an investigative inquiry or an investigation. This section of the guide describes the principles and philosophies of IG investigative inquiries and investigations and the techniques used to conduct them. The techniques discussed are based on field experience and are effective. However, field IGs should remain flexible in how they apply them. All cases are unique, and the facts and circumstances will differ. Consequently, you must apply sound judgment based upon your training, experience, knowledge of the case at hand, and the commander's goals while ensuring adherence to the provisions of AR 20-1.

3. **Caution:** Before conducting an investigation or investigative inquiry, review Chapter 7, The Inspector General Investigations Function, of AR 20-1, to ensure familiarity with the requirements of an investigation and an investigative inquiry.

Section 1-2

Definitions

1. **AR 15-6 Investigation.** A formal or informal investigation conducted by an officer or board of officers under the authority of the commander conducted in accordance with (IAW) AR 15-6, Procedure for Investigating Officers or Boards of Officers. The findings of a formal AR 15-6 investigation are conveyed to the commander in a DA Form 1574, Report of Proceedings by Investigating Officer / Board of Officers. A commander is not bound or limited to the findings or recommendations of the investigation or board and may direct findings or take action other than that recommended by the investigation. Commanders can use the results of an AR 15-6 investigation for adverse action against the subject or suspect of the investigation.

2. **Article 32 Investigation.** The Fifth Amendment constitutional right to grand jury indictment is expressly inapplicable to the Armed Forces. In its absence, Article 32 of the Uniform Code of Military Justice (Section 832 of Title 10, United States Code) requires a thorough and impartial investigation into charges and specifications before they may be referred to general court-martial (the most serious level of courts-martial). The purpose of this pretrial investigation is to inquire into the truth of the matter set forth in the charges, to consider the form of the charges, and to secure information to determine what disposition should be made of the case in the interest of justice and discipline. The investigation also serves as a means of pretrial discovery for the accused and defense counsel in that copies of the criminal investigation and witness statements are provided and witnesses who testify may be cross-examined.

3. **Preliminary Inquiry.** In accordance with the Manual for Courts-Martial, Rule 303, commanders are required to inquire into allegations of misconduct by members of their command when informed of possible offenses that can be tried by courts-martial. These inquiries are normally informal, conducted by the commander or others appointed by the commander, and do not require a written report. The results of a commander's inquiry under this provision can be used for adverse action against the subject or suspect of the inquiry.

4. **Criminal Investigations (CID / MPI).** The Military Police and Army CID Command are required to investigate allegations of criminal activity in which the Army is, or may be, a party of interest as defined in AR 190-30 and AR 195-2. Army CID Special Agents conduct criminal investigations that range from death to fraud on and off military reservations and, when appropriate, with local, state, and other Federal investigative agencies. CID is responsible for investigating felonies, complex misdemeanors, and property-related offenses when the value is greater than $5,000.00 (see AR 195-2, paragraph 3-3). MPI normally investigates less serious offenses, including misdemeanors and property-related offenses when the value is less than $1,000.00. IAW AR 190-30 and AR 195-2, CIDC or MPI do not normally investigate allegations of adultery and fraternization unless the allegations are tied to greater offenses. The results of a CID or MP investigation can be used for adverse action against the subject or suspect of the investigation.

5. **Criminal Offense**. Any criminal act or omission as defined and prohibited by the Uniform Code of Military Justice (UCMJ), U.S. Code, State or local codes, foreign law, or international law or treaty.

6. **Directing Authority.** Any Army official who has the authority to direct an IG investigation or inspection is a Directing Authority. Directing Authorities can be the Secretary of the Army (SA); the Under Secretary of the Army (USofA); the Army Chief of Staff (CSA); the Army Vice Chief of Staff (VCSA); The Inspector General (TIG); or The Adjutant General (TAG) of any state, territory, or the District of Columbia. Commanders and Directors who are authorized detailed IGs on their staffs may direct IG investigations and inspections within their commands. The SA, USofA, CSA, VCSA, TIG, and TAG may direct IG investigations and inspections within subordinate commands as necessary. Although command IGs and State IGs may direct IG investigative inquiries, they are not Directing Authorities in the context of IG investigations.

7. **Felony.** A criminal offense punishable by death or confinement for more than one year.

8. **Investigation.**

a. An investigation is a formal fact-finding examination into allegations, issues, or adverse conditions of a serious nature that provides the Directing Authority a sound basis for making decisions and taking action. IG investigations involve the systematic collection and examination of evidence that consists of testimony (recorded and transcribed oral statements taken under oath); documents; and, in some cases, physical evidence. Only the Directing Authority can authorize IG investigations using a written and signed directive. IGs normally do not resolve allegations using this methodology but instead rely on the investigative inquiry. IGs report the conclusions of their investigations using a Report of Investigation (ROI). Occasionally, IG investigations may examine systemic issues, especially when the possibility of some wrongdoing exists. For example, an IG might investigate an allegation that the development of a weapon system is fraught with fraud, waste, and abuse.

b. IG investigations are characterized by:

(1) A written directive issued by the commander or other Directing Authority authorizing the IG to examine the allegations and issues as directed. The specific allegations or issues are presented to the Directing Authority using an action memorandum. The action memorandum, like a decision memorandum, provides background information and recommends that the Directing Authority signs the directive. It also serves to set the limits of the investigation.

(2) A mandatory process providing a road map of how to proceed. These steps standardize procedures, protect individual rights, ensure proper command notifications, and protect the confidentiality of individuals and the IG system.

(3) A required format for documenting the results in the form of a Report of Investigation (ROI). The detailed IG who led the investigation makes recommendations in the ROI to the Directing Authority. The Directing Authority cannot share the ROI with anyone.

9. **Investigative Inquiry.**

a. An investigative inquiry is an informal fact-finding examination into allegations, issues, or adverse conditions that are not significant in nature -- as deemed by the command IG or Directing Authority -- and when the potential for serious consequences (such as potential harm to a Soldier or negative impact on the Army's image) are not foreseen. IG investigative inquiries involve the collection and examination of evidence that consists of testimony or written statements; documents; and, in some cases, physical evidence. Command IGs direct investigative inquiries and provide recommendations to the Directing Authority or subordinate commanders as appropriate. The Directing Authority reserves the right to direct an investigative inquiry if he or she feels an investigation is not appropriate. IGs resolve most allegations using this methodology and report their conclusions using a Report of Investigative Inquiry (ROII).

b. IG investigative inquiries are characterized by:

(1) Command IGs verbally authorizing the IG to examine the allegations and issues as directed. There is no written directive.

(2) A less formal process with the same protection of individual rights, command notification, and confidentiality protection.

(3) Summarized testimony. Testimony taken under oath and transcribed is not required but is strongly encouraged because it produces more credible evidence and facilitates the IG's analysis of the evidence. IGs summarize unrecorded interviews and document them in a memorandum, or the witness may provide a written statement. IGs note the date, time, place, mode (face-to-face, telephonic, VTC), status (witness, subject, suspect), the individual's personal identifying information, and persons present; the allegations about which the IG asked questions; the key evidence obtained; the credibility of the individual interviewed; and the individual 's consent to FOIA.

(4) A required format for documenting the results in the form of a Report of Investigative Inquiry (ROII). The detailed IG who led the investigative inquiry makes recommendations in the ROII to the Directing Authority. The Directing Authority cannot share the ROI with anyone.

Section 1-3

Categories of Individuals

1. **Overview.** People involved in IG investigative inquiries or investigations are classified as witnesses, subjects, or suspects.

a. A **witness** is any person who provides information to an IG during the conduct of an investigation or investigative inquiry and who has some knowledge to support or refute an allegation. A witness can be a subject-matter expert or a person who saw, heard, or knows something relevant to the issues and allegations under investigation.

b. A **subject** is any person who is alleged to have violated a non-criminal standard (e.g., a non-punitive policy or regulation).

c. A **suspect** is any person who is alleged to have violated a criminal standard (e.g. punitive law, punitive regulation, or code such as the Uniform Code of Military Justice (UCMJ)).

2. **Caution.** Individuals, to include witnesses, may become subjects or suspects during an investigation based on evidence developed during the case (including information given by the individuals themselves). The rights individuals have in an IG investigative inquiry or investigation depend partially upon their category. For example, military suspects in IG investigations must be informed of their legal rights under Article 31, UCMJ.

3. **Criminal / Punitive Allegations.** IGs often use these two terms interchangeably. However, a violation of a regulation's punitive provisions can be criminal under Article 92, UCMJ. The bottom line is that criminal violations include violations of punitive regulations, violations of the UCMJ, and violations of other State and Federal laws. Consult with your staff judge advocate when in doubt about the criminal nature of an allegation.

a. For the most part, the Army's many technical instructions, administrative regulations, directives, and manuals serve to standardize Army operations. Failure to adhere to these publications usually carries few consequences aside from counseling. A portion of a regulation is "punitive," however, when a violation of that portion of the regulation subjects the violator to punishment under Article 92, UCMJ, "Violation of general orders or regulations," and sometimes also to punishment under similar statutory sanctions and regulations pertaining to Department of Army civilian personnel.

b. Punitive provisions must be more than mere policy statements or administrative guidelines. Such provisions must impose a specific duty on Soldiers to perform or refrain from certain acts. These provisions and regulations cannot require further implementation from subordinates. The President, Secretary of Defense, Secretary of a military department, a flag or general officer in command, or a general court-martial convening authority must also have promulgated the regulation before any portion of it becomes "punitive." This situation is never a problem with Army Regulations since all of them are promulgated by order of the Secretary of the Army.

c. The Army almost always delineates its punitive regulations, or the punitive portions of regulations, by stating this fact on the title page of the regulation and by indicating in the text that Soldiers who violate the subject provision will be subject to disciplinary action under the UCMJ (for an example, see Army Regulation 20-1, paragraph 1-13).

Section 1-4

Rights of Individuals Involved in IG Investigations

1. **Right to Counsel.**

a. Witnesses, subjects, and suspects should be afforded an opportunity to consult with a lawyer if they so desire before or after questioning. However, only the suspect has a right to have an attorney present during questioning. The right to legal counsel in IG investigations is related to the right to remain silent and not to incriminate oneself. If questioning someone who has a criminal allegation against him or whom the IG believes may have committed a criminal offense, the interviewer must advise the witness of his rights using a DA Form 3881, Rights Warning Procedure / Waiver Certificate, before questioning (see paragraph 7-1b (4)(d), Army Regulation 20-1). If during an interview, a witness or subject says something that causes the IG to suspect the witness may have committed a criminal offense, the IG must warn the witness of his rights using the DA Form 3881 before continuing questioning. Once advised, an individual has the right to seek the advice of a lawyer, to have a lawyer present during questioning, and to remain silent.

b. If a witness or subject requests that a lawyer be present during his interview, it is an individual judgment call whether to allow it or not allow it. Experienced IGs, comfortable with the IG investigations process and with conducting interviews, may allow a lawyer to be present. It usually makes the interviewee more comfortable and cooperative. A good consideration is whether the presence of the lawyer is more likely to result in a better interview. Remember that the lawyer's only function in an IG investigative inquiry or investigation is to advise the client. Do not allow the lawyer to answer questions for the interviewee or control the interview. Explain these ground rules to all participants at the beginning of the interview. If a lawyer attempts to control an interview or provide advice on the process, consider terminating the interview and seeking SJA advice. Exercise care in this situation to ensure that terminating the interview does not deny the subject or suspect the right to comment on the allegations and the subsequent requirement to notify the suspect / subject of unfavorable information that will be included in the ROI / ROII. Lawyers are rarely disruptive during interviews. If an IG has to deal with a confrontational or disruptive lawyer, simply advising the suspect that the interview is terminating and that a recall interview will be necessary usually results in a brief consultation between client and lawyer and the continuation of the interview.

2. **Right of Individuals to Confidentiality.**

a. Witnesses, subjects, and suspects have the right to confidentiality, but confidentiality is not guaranteed. IGs always strive to provide confidentiality to protect privacy, maintain confidence in the IG System, and minimize the risk of reprisal. Confidentiality is a key component of the IG System because it encourages voluntary cooperation and willingness to present complaints for resolution. Confidentiality is maintained by protecting the identities of all persons involved from unnecessary disclosure as well as protecting the nature of their contact with the IG. However, as an IG, you must ensure that people who seek your help understand that while protecting

confidentiality is a concern, it cannot be guaranteed. Identities of individuals and the information they provide may be disclosed if required by law or regulation or at the direction of The Inspector General. Confidentiality also cannot be guaranteed because the Freedom of Information Act (FOIA) allows members of the public to request government records for unofficial purposes. IGs should inform individuals of the provisions of the FOIA and ask if they consent to the release of their testimony and any and all documents provided to the IG for unofficial purposes. This request for consent applies to both investigative inquiries and investigations.

b. The primary threat to confidentiality is an individual's voluntary disclosure of the matters under investigation. Consequently, IGs should conclude each interview (during investigative inquiries and investigations as stated in the interview guides) by admonishing the individual not to discuss the matters under investigation with anyone without the permission of the investigating officers. The only exception is the individual's attorney, should he or she choose to consult one.

3. **Right to Review One's Own Testimony.** Witnesses, subjects, and suspects have the right to review their own testimony prior to completion of the investigation or inquiry, but they may not keep a copy. This review is limited to an accuracy review only. Any effort to change, add, or clarify the testimony requires a subsequent interview (or statement). After completion of the investigation or inquiry and approval of the report, individuals may request a copy of their own testimony through a standard FOIA request to DAIG Records Release Office.

4. **Right to Avoid Self-Incrimination.** Witnesses, subjects, and suspects have the right to avoid self-incrimination. Self-incrimination means that the witness may decline to answer a question when the answer might tend to incriminate the witness. Only suspects can remain silent, but subjects and witnesses can lawfully refuse to answer any question that will incriminate them.

5. **Right to Know and Comment.**

a. Administrative due process in Inspector General investigative inquiries and investigations (paragraph 7-1f, AR 20-1) notifies a suspect or subject of unfavorable information which will be included in the ROI / ROII. This administrative due process should not be confused with legal due process, which occurs during a criminal proceeding in which the accused has a right to face his accuser. The suspect in an Inspector General investigative inquiry or investigation does not have the right to know who made the allegation.

b. In an investigation or investigative inquiry, ensure that the suspect or subject is afforded the opportunity to know and comment on the allegations made against him or her (see paragraph 7-1b (3)(d), Army Regulation 20-1). Individuals have the right to know the allegations against them and to tell their story during an IG investigative inquiry or investigation.

c. There is a commonly held belief that individuals who have allegations made against them will not be willing to comment. Experience has shown the opposite to be true. The IG investigative process is often the subject's and suspect's only chance to rebut the allegations, and they are often willing to provide information. While there are exceptions, the subject or suspect is interviewed last so that he or she has an

opportunity to comment on the allegations and any unfavorable information the IG may be required to disclose.

6. **Suspect Rights.** Suspects are afforded Article 31 rights and are warned of those rights with a DA Form 3881, Rights Warning Procedure / Waiver Certificate. Article 31, as it relates to an IG suspect interview, requires that suspects be informed of the allegations against them and affords them the right to remain silent. It also prohibits compelling suspects to incriminate themselves, to produce testimonial or documentary evidence that is not subordinate to the allegations and may tend to be degrading, and to use evidence in a trial by court-martial obtained in violation of Article 31. Only suspects have the right to remain silent and have an attorney present during the interview. Suspects have all the rights afforded to subjects and witnesses.

7. **Right to Union Representation.**

a. The Civil Service Reform Act of 1978 (as a consequence of the 1975 case Weingarten vs. the National Labor Relations Board) created a right to union representation for Federal civilian employees whose term of employment is governed by a union contract. This right exists during interviews with a Federal employee in connection with IG investigative inquiries or investigations if the employee reasonably believes that disciplinary action will be taken against him or her as a result of the interview.

b. The Civil Service Reform Act does not require an IG to advise an employee of the right to union representation before an interview. The act merely requires management to inform its employees annually of this right. This advice is frequently communicated through an installation's daily bulletin. However, some local union contracts have been negotiated wherein the management of an installation has agreed to provide notice before each interview. Therefore, exercise caution when interviewing Federal (not just DA) employees to ensure compliance with the terms of a local contract. Ask the SJA what the local bargaining agreement specifies. Additionally, some installations have more than one collective bargaining agreement or union contract. Find out before the interview.

c. The basic rules that apply to legal counsel in an interview apply to union representatives as well. The representative may advise the employee but may not ask or answer questions. However, the representative can comment, speak, and make statements. An individual may have both a union representative and legal counsel present in an interview.

d. In some cases, the right to union representation has been extended to other IG activities such as sensing sessions. You should check with the SJA and the local labor relations representatives, Civilian Personnel Advisory Center (CPAC), or Civilian Personnel Operations Center (CPOC) before conducting interviews or sensing sessions with any Federal employees.

Section 1-5

Non-Rights of Individuals Involved in IG Investigations

AR 20-1, paragraph 7-1, specifies the administrative due process afforded during investigations. Frequently, persons involved with IG investigative inquiries or investigations have confused administrative due process with legal due process. These common misperceptions are called non-rights and consist of the following:

1. **To Know the Identity of Witnesses.** In an IG investigation or investigative inquiry, neither the suspect nor the subject have the right to know who made allegations against him or her or to know the names of witnesses or other individuals who provided information. When an IG record is used as a basis for adverse action, the subject or suspect may become entitled to the legal due process right to see the IG record, know who made the allegations, and know who provided evidence during the course of the investigation or investigative inquiry.

2. **To Question Witnesses.** In an IG investigation or investigative inquiry, subjects and suspects do not have the right to question other witnesses or be present for witness interviews. Individuals being interviewed do not have the right to know the names of other witnesses, specific allegations, the identity of subjects or suspects, or the results of the investigative inquiry or investigation.

3. **To Review Evidence.** In an IG investigation or investigative inquiry, subjects and suspects do not have the right to review evidence. Discovery is a right afforded in a criminal process, not administrative processes such as IG investigations and investigative inquiries. Subjects and suspects have a right to know and comment on unfavorable information that will be included in the ROI / ROII, and you might want to show a piece of evidence during the interview to elicit comment. Be careful! The subject or suspect has no right to see the evidence and certainly has no right to a copy of any evidence. He or she can make a Freedom of Information Request, but an IG who provides a copy would be violating AR 20-1 for improper records release. If you feel the need to show a piece of evidence, be sure that you are protecting confidentiality and don't divulge what you have until you see if the subject or suspect fails to recall an incident, omits part of a story, or otherwise tries to hide something. How else will you be able to evaluate the subject or suspect's credibility? Subjects and suspects have the right to know and comment on unfavorable information, but we have to protect witnesses from reprisal, too. Craft good questions, and think twice before you disclose!

4. **To Have a Friend or Family Member Present.** No one has the right to have friends or family members present during interviews. Should someone make such a request, you may grant permission based upon your assessment of the benefit gained (a more relaxed individual). If you accede to the request, do not permit the friend or family member to advise the witness or otherwise participate in the interview. You must counsel the friend or family member regarding confidentiality and the importance of not disclosing the matters under investigation.

5. **IG's Dual Role.** Whether conducting an investigative inquiry or an investigation, the dual role of the IG is to protect the best interests of the U.S. Army and the rights and confidentiality of all individuals involved.

6. **To Tape Record or Take Notes.** In an investigative inquiry or investigation, individuals, to include lawyers, do not have the right to take notes during an interview or to record their testimony **(prescriptive provision in AR 20-1, paragraph 7-1b (4)(f))**. Should an individual request to take notes or record the interview, stress the importance of confidentiality. Offer the individual the opportunity to review his testimony in your presence and receive a copy of it once the case is complete.

Section 1-6

Requirement to Cooperate and Flagging Actions

1. **Active Duty Military Personnel and DA Civilians.** Soldiers and DA civilians are required by AR 20-1 to cooperate in IG investigations and inquiries. Witnesses, suspects, and subjects with a duty to cooperate cannot lawfully refuse to answer questions unless the answers are incriminating or privileged. If a witness is reluctant to cooperate in either an investigation or an investigative inquiry, the best course of action is to persuade that person that cooperating is in his or her (and the organization's) best interest. The interview is often the suspect's only opportunity to present evidence. The commander or supervisor can order those who refuse to cooperate to do so.

2. **Reserve Component Personnel.** Members of the Reserve Components, both Army Reserve (USAR) and Army National Guard (ARNG), are not required to cooperate with an IG if not in a duty status (e.g. while at their civilian job). AR 20-1 governs members of the National Guard when they are performing Federal duties or engaging in any activity directly related to the performance of a Federal duty or function (Federal interest). However, if a member of the National Guard is strictly on State status (e.g. State Active Duty), AR 20-1 does not apply to that person since he or she is governed by State regulations. In those cases, the IG should coordinate with the ARNG chain of command. Members of the Army Reserve only have a federal mission, so AR 20-1 governs them in any duty status. USAR and National Guard Soldiers can be ordered to a duty status (Title 10, USC) to provide testimony to an IG. Review the attached matrix below prior to interviewing Reserve Component personnel. Most members of the Reserve Components, as well as Active Component personnel, are fully willing to cooperate with an IG regardless of their status at the time of the interview. Requesting assistance from the chain of command is an infrequent and extreme remedy for dealing with uncooperative witnesses.

3. **Civilians.**

a. Civilians not connected with the Federal government (commonly known as civilian-civilians) have no requirement to cooperate with Army IGs. Civilians not connected with the government cannot be compelled to cooperate with an IG conducting an investigation or investigative inquiry. IGs have no authority to investigate allegations against individuals who were in a civilian-civilian status at the time of the alleged impropriety. Family members are civilian-civilians unless DoD employs them in some capacity. Individuals employed by companies under contract to DoD are also civilian-civilians.

b. If a witness is not in military service or is not a government employee, AR 20-1 does not require IGs to provide him (or her) with procedural due-process protections, e.g. advising him of rights or allowing him to know and comment on unfavorable information. However, you may choose to treat the individual as a suspect and advise him of his rights if you believe it is the best and fairest course of action. For example, an IG receives allegations that a civilian contractor may have given a bribe to a military contracting officer. This act is considered a gratuity for the military officer (violation of the JER) and might be a violation of Federal law, Title 10 US Code, Section 2207, by the

civilian. While we would not investigate the civilian, we would interview the individual to gain information about the allegations against the military officer. During this interview, the IGs in the case decide whether or not to provide the individual with a rights warning. Consulting a legal advisor prior to the interview should reduce any doubt concerning the correct course of action. When advising the civilian of his rights, execute a rights warning by using the DA Form 3881 as you would with military personnel or with DA civilians.

c. Remember: IGs do not investigate civilian-civilians. If a criminal allegation against a civilian emerges, turn these allegations over to your SJA, local CIDC, or MPI. In the contracting example used above, if the allegation was substantiated, the matter would be reported to procurement officials. The civilian contractor might be barred or suspended from further government contracts as well as face possible civilian court action.

d. Since non-governmental civilians (civilian-civilians) have no requirement to cooperate, you have limited recourse should they request to take notes, record interviews, or have friends present. As with military personnel, your best approach is to convince them of the need for confidentiality. As with military personnel and DA civilians, you may offer civilian-civilians the opportunity to read their testimony while the case is ongoing or receive a copy of their testimony after the case is complete. Some IGs have convinced interviewees to allow them (the IGs) to hold an interviewee's tapes until the case was completed. If a civilian refuses to interview without taping or having a friend present, then you must decide whether the individual's testimony is crucial enough to warrant conducting the interview under those conditions. Even though civilians are not required to cooperate with you, it is a violation of Federal law under Title 18, US Code, Section 1001, for them knowingly to give you false testimony under oath.

4. **Department of Defense Contractor Witnesses.** DoD Contractor personnel are considered to be civilian-civilians under the provisions of AR 20-1. However, they can be made to cooperate with IG investigations and investigative inquires if the contract employing them with the Government requires them to cooperate. In these situations, contact your contracting office and work through the Contracting Officer's Representative (COR) to obtain witness cooperation. Do not reveal the allegations or provide any IG records to the COR.

5. **Other DoD Personnel.** Non-DA military and civilian personnel are not bound by AR 20-1, and an Army IG cannot compel them to cooperate. However, DoD civilians, other Federal civilian employees, and military personnel from other services may have a duty to cooperate. Before interviewing anyone from outside the Army, make sure you coordinate with the individual's Service or department supervisory chain if there are any doubts about the individual's obligation to cooperate. Do not order individuals to cooperate. To do so is to put yourself in an adversarial position with the individual whom you desire to interview. Seek assistance from the individual's supervisor or commander and your SJA when necessary.

6. **Control of Witnesses.** Conducting an investigation is difficult if the witnesses talk to each other about the case. Ensure you inform each witness of the requirement not to reveal to anyone the questions or topics discussed during the interview **(prescriptive provision in AR 20-1, paragraph 7-1b (4)(g))**. Appendix A details specific language you must use to enhance IG confidentiality during interviews.

7. **Flagging Actions.** Commanders will not initiate flagging actions for individuals under IG investigation. Also, IGs will not advise the commander to initiate a flagging action in accordance with AR 600-8-2 because such action could be construed as adverse action. IG fact-finding must be conducted independently of command actions to support the IG's duty to be a fair and impartial fact-finder for the commander but in service to the U.S. Army. For more specific guidance, review AR 20-1, paragraph 3-3c.

8. The chart below details rights and witness cooperation requirements for all IG investigations and investigative inquiries.

Witness Interview Status, Rights, and Non-Rights

MILITARY STATUS AT TIME OF INTERVIEW	ROLE IN INVESTIGATION	SUBJECT TO UCMJ	REQUIRED TO TESTIFY	LAWYER PRESENT	UNION REPRESENTATION
ACTIVE ARMY	WITNESS SUBJECT SUSPECT	YES YES YES	YES YES NO (1)	NO NO YES	NA NA NA
USAR ON ANY OFFICIAL STATUS	WITNESS SUBJECT SUSPECT	YES YES YES	YES YES NO (1)	NO NO YES	NA NA NA
ARNG TITLE 10 (IADT, OCONUS, AGR) (2)	WITNESS SUBJECT SUSPECT	YES YES YES	YES YES NO (1)	NO NO YES	NA NA NA
ARNG TITLE 32 (IDT, AT, AGR) (2)	WITNESS SUBJECT SUSPECT	NO NO NO	YES YES NO (1)	NO NO YES	NA NA NA
USAR & ARNG WHEN NOT ON DUTY	WITNESS SUBJECT SUSPECT	NO NO NO	NO NO NO	NO NO YES (3)	NA NA NA
DA CIVILIAN EMPLOYEES	WITNESS SUBJECT SUSPECT	NO NO NO	YES YES NO (1)	NO NO YES (3)	YES (4) YES (4) YES (4)
CIVILIANS, INCLUDING STATE NG EMPLOYEES AND FAMILY MEMBERS	WITNESS SUBJECT (5) SUSPECT (5)	NO NO NO	NO NO NO	NO NO YES (3)	NO (4 & 5) NO (4 & 5) NO (4 & 5)

NOTES:

(1) The duty of a suspect to cooperate is offset by his right to remain silent on all matters that may incriminate him.

(2) IG should check the guardsman's orders to determine status. ADT / ADSW / AGR can be either Title 10 or Title 32.

(3) Must be civilian lawyer at own expense or as appointed by law.

(4) Only applicable if the civilian employee's position is covered by a collective-bargaining agreement. The employee does not have to be a member of a union.

(5) Normally a civilian-civilian will not be either a subject or a suspect in an IG investigation. Consult with your SJA.

Section 1-7

Overview of Evidence

Investigative inquiries and investigations are both focused searches for evidence in order to substantiate or refute allegations. The bottom line of an investigative inquiry or investigation is the conclusion you draw from evaluating the preponderance of credible evidence gathered in your proceeding. Consequently, it is essential that you have a good understanding of the nature and characteristics of evidence. Evidence is identified by its source and its comparative value. Therefore, we identify evidence in categories and in levels.

Section 1-8

Categories of Evidence

1. **Evidence Categories.** Evidence is first described by its source category. Evidence generally falls into one of five major categories: standards, documentary, physical, oral statements / testimonies, and the IG's personal observation. Some investigations rely mostly upon the testimony of witnesses while other investigations require extensive use of documentary evidence and, sometimes, physical evidence.

2. **Standards.** Standards are the laws, regulations, or policies that prescribe conduct. The IG will compare the subject / suspect's actions against the standard to determine whether the allegation will be substantiated or not substantiated. When choosing a standard, ensure that the standard was in effect at the time of the alleged actions. The standard provides the IG with the elements of proof that must be fulfilled if the allegation is to be substantiated.

3. **Documentary Evidence.** Documentary evidence includes written items (including DA Forms 2823, Sworn Statement, from witnesses, if used), photographs, maps, sketches, records (travel vouchers, evaluation reports, medical records), other investigation reports (AR 15-6, MP, etc.), and other types of written material. Nearly all investigative inquiries or investigations include some documentary evidence. IGs should gather documents early in the investigative inquiry or investigation and identify them by showing the date obtained, indicating whether they were an original or a copy, specifying the location of the original, and identifying the custodian and signature of the investigating officer. When practical, use copies of the documents and leave the originals with their proper custodians.

4. **Physical Evidence.** Physical evidence consists of objects or conditions that establish facts. It is the least common category of evidence found in investigative inquiries or investigations. Physical evidence may or may not accompany the ROI / ROII.

a. An object is normally not required to accompany an ROI / ROII. When forwarding an object, securely attach it to the ROI / ROII and identify it by showing:

(1) The name of the object.
(2) Where and when the object was obtained.
(3) Custodian (or from whom obtained).
(4) Its function, if applicable.
(5) Serial number, size, make, brand name, or other identifying information.
(6) Monetary value, if applicable.
(7) Description of container, if appropriate.
(8) State of serviceability.

b. Most physical evidence will not be included with the ROI / ROII because of size, perishability, monetary value, or other reasons. Photograph, sketch, or describe

these objects in a memorandum for record (MFR) that contains the information and attach it as an exhibit to the ROI / ROII.

5. **Oral Evidence.** An oral statement is evidence given orally by a competent witness. Interviews are a primary means of gathering oral evidence in an IG investigative inquiry or investigation. Oral statements fall into two categories: testimony and statements.

a. **Testimony.**

(1) Testimony is defined as a recorded and transcribed oral statement taken under oath. Individuals who do not wish to swear an oath may affirm that their testimony is truthful. Testimony is the primary means of gathering evidence in investigations and may be used in inquiries. *Recorded testimony is normally transcribed verbatim*. Verbatim transcripts can be prepared by court reporters (sometimes available from the SJA), contract transcriptionists, or typed by an IG. Verbatim transcripts are time consuming and can be expensive to prepare and review but provide the most accurate record of the testimony. The IG who conducted the interview normally must certify the accuracy of the transcript by reading it and making corrections as he or she reviews the recording.

(2) Verbatim testimony may not always be practical. If assets or time are limited, take sworn and recorded testimony and initially prepare a summary in Memorandum for Record (MFR) format. If you turn the case over to a follow-on investigator, a transcript may not be necessary. Should you determine a transcript is necessary as the case proceeds, you can prepare it at that time. Another alternative is to transcribe only the testimony of key witnesses (complainant and subject or suspect, for example). You can summarize evidence from other witnesses using the MFR format. When recording interviews, use two recorders or a court reporter and a backup system (many court reporters have their own backup). Keep in mind that the purpose for recording is to make an accurate record of the interview. For accuracy, you may record interviews even if you do not intend to prepare a verbatim transcript. When in doubt, record!

b. **Statements.**

(1) Statements are defined as information gathered during an interview that is not recorded and transcribed oral statement taken under oath. The interview may be conducted as part of either an investigative inquiry or an investigation and may or may not be recorded. The IG who conducted the interview can document the statement in summarized form in a MFR. When you prepare the summary, you must be extremely careful to write what the witness actually said and not what you think the witness said. Claims by witnesses that they were misquoted by IGs sometimes occur. Draft the summary immediately following the interview to avoid having to rely upon your memory several hours or days later. You may also ask the interviewee to verify your summary of the interview. For accuracy, you may tape verbal statements even if they are not taken under oath. This technique is particularly important if the issues or allegations are serious, complex, or conflicts in the evidence exist. When taping a telephonic interview, ensure you inform the interviewee that you are recording.

(2) If you are unable to obtain an oath, you must evaluate whether administering the oath is necessary or appropriate. Some considerations are the nature

of the allegations or issues and the expected evidence the witness might provide. Swearing the witness adds formality to the interview and may enhance the accuracy of the information presented by the interviewee. The oath creates the belief and expectation in the witness's mind that he or she must be truthful or suffer the consequences. For military personnel, a false official statement (sworn or not sworn) is a criminal offense. For non-government civilians, false sworn statements are a violation of Federal law. When evaluating evidence, sworn statements are generally given more weight than unsworn statements.

(3) Individuals may present written statements to you. Examples include e-mails and written material dated and signed by the person making the statement. In certain situations this form of evidence is acceptable for inclusion in an ROI / ROII. Examples include statements from subject-matter experts that are used to establish standards or accepted SOP practices that have bearing on the allegation. Testimony is a better form of oral evidence than a statement. Always strive to obtain the highest quality of oral evidence.

6. **Personal Observation.**

(1) You can document physical conditions you observe in a MFR. These observations may include vehicle damage, unsanitary dining facilities, overcrowded troop quarters, the state of building maintenance, etc. Your observations or measurements in a MFR can supplement or provide background for reports or testimony by technicians or authorities whose expertise may be better evidence than your non-expert observation. Certain observations or events that occur during an interview (witness comments while off-tape, for example) may be worthy of a MFR.

(2) Investigating officers should minimize the use of personal observation. By introducing personal observations as evidence, you make yourself a witness in the case (perhaps opening yourself to allegations of bias). As an alternative, you might have another individual observe the conditions in question and then interview the other individual as a witness.

Section 1-9

Levels of Evidence

1. **Overview.** Evidence is also characterized by its quality. Evidence generally falls into one of four major levels that are rank-ordered in value from highest to lowest: direct, circumstantial, hearsay, and opinion. A credibility assessment is applied to each category of evidence to establish its relative merit. Together, these characterizations enable the IG to weigh the evidence collected and reach a conclusion in the investigation.

2. **Direct Evidence.** Direct evidence is first-hand knowledge or observation that tends directly to prove or disprove a fact. For example, if a witness states, "I saw the subject's car at the headquarters on day x at time y," you have direct evidence that the subject's car was at the headquarters at that date and time. Direct evidence should be verified (corroborated) by other evidence, if possible.

3. **Circumstantial Evidence.** Circumstantial evidence tends to prove or disprove facts by inference. The statement, "I saw the subject's car parked in front of the headquarters on day x at time y," is circumstantial evidence that the subject was inside the headquarters at that time. Circumstantial evidence is given less weight than direct evidence and is often used when there is little or no direct evidence. It may not have the weight of direct evidence, but it is still valid evidence. It can be used with direct evidence to establish a fact. Some issues such as command climate and unit morale are seldom established by direct evidence. Frequently, they are established by circumstantial evidence alone.

4. **Hearsay.** Hearsay is what one individual says another person said. It is an acceptable source of information in IG investigative inquiries and investigations. However, you should attempt to verify hearsay by contacting the person having direct knowledge of the information (the person who said whatever the witness heard).

5. **Opinion.** An opinion, a person's belief or judgment, may be used as evidence. Opinions of qualified experts are commonly used as evidence in IG investigations. You may ask witnesses for their opinions, but you need to develop the reasons why they reached their opinions. Some investigative inquiries or investigations, especially those concerning unit morale, esprit de corps, and command climate, must rely heavily on witnesses' opinions. Clearly identify such oral statements as opinion. Complainants frequently express opinions during initial interviews. Statements such as “CPT Jones is a jerk!” taken without specific examples of CPT Jones’s past behavior should be considered as opinion.

Section 1-10

Facts

IG investigations and investigative inquiries constitute fact-finding. Facts include events that are known to have happened and things that are known to be true. Some matters are easily established as facts while others are difficult. In solving a disputed issue, use judgment, common sense, and your own experience to weigh the evidence. Consider its probability, and base your conclusions on what is the most credible. A general guide in establishing facts is to obtain the testimony (recorded and transcribed oral statements taken under oath) of two or more competent witnesses who independently agree on a single point. A fact is also established by a combination of testimony, documentary evidence, and physical evidence that all agree on a single point. Use common sense. The testimony of two witnesses that agrees on a single point is not a fact if the witnesses were not credible, if what they said was purely opinion and not based in any knowledge of the issues or allegations, or if there is unresolved conflicting testimony. Ultimately, the IG determines what constitutes a fact after a careful examination of the evidence.

Section 1-11

Evaluating Evidence

1. The critical analytical task performed by the IG in each inquiry or investigation is the evaluation of the evidence. To draw a conclusion, the IG must determine if there is a preponderance of credible evidence as viewed by a reasonable person. Preponderance is defined as "superiority of weight." In layman's terms, preponderance means "more likely than not." The preponderance of credible evidence is a lesser standard than "beyond a reasonable doubt," which is used in criminal proceedings. *A preponderance of credible evidence is the standard IGs use to reach a conclusion and resolve an allegation.* AR 15-6, Procedure for Investigating Officers and Boards of Officers, defined the term preponderance of evidence as follows: *"The weight of the evidence is not determined by the number of witnesses or volume of the exhibits, but by considering all the evidence and evaluating such factors as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity."*

2. To evaluate the evidence, you must first determine the facts that must be supported or refuted to indicate whether or not the impropriety occurred. You must then collate the evidence pertaining to each fact and determine the credibility of each item of evidence -- often a difficult task. Some witnesses provide inaccurate information, others fail to provide the whole truth or slant the truth to their advantage, and a few deliberately lie. You must look for and address voids and conflicts in the evidence. You must seek corroboration. You must assign a relative value to each item of evidence -- some evidence is more important than other evidence. Finally, you must determine if a preponderance of the credible evidence substantiates or not substantiates the allegation, which is a highly subjective process. Remember: the more thorough you are in gathering pertinent evidence, the more likely you are to be objective in evaluating the facts.

3. You repeat this evaluation process for each of the facts essential to the allegation. Finally, given a set of supported or refuted facts, you must determine whether a preponderance of credible evidence exists regarding the allegation as a whole. If a preponderance indicates that the impropriety occurred, the allegation is substantiated. If a preponderance indicates that the impropriety did not occur, the allegation is not substantiated. If you are unable to establish a preponderance of credible evidence, you should re-evaluate your process and attempt to gather additional evidence that will substantiate or refute the allegation. If an equal balance still exists after searching for more evidence, then the allegation is not substantiated because you don't have greater than 50 percent.

4. An IG is not bound by the rules of evidence that apply in a court of law. Nor must an IG prove an allegation beyond a reasonable doubt. But the process of evaluating evidence is not easy. Few cases are black and white; most are gray. Thoroughness, objectivity, and good judgment are critical aspects of an IG's evaluation process in every investigation or investigative inquiry.

5. **Force-Field Diagram.** A force-field diagram (shown below) is an invaluable tool for graphically depicting the assigned weight of evidence, determining facts, and assessing the preponderance of evidence in any investigation or investigative inquiry. Begin by first writing your allegation and elements of proof at the top of the chart. Next, divide your evidence into two groups – (1) evidence that tends to support substantiating the allegation or (2) not substantiating the allegation and write it on the chart. Indicate the level of each piece of evidence (direct, circumstantial, hearsay, opinion). Similarly, make a notation if a statement not under oath is provided versus recorded testimony taken under oath. Look for multiple citations in the evidence to establish any facts, and enter the facts as a separate line in either or both of the columns. The resulting columns of evidence are then weighed to determine a preponderance of evidence. Three entries of direct evidence weigh greater than three entries of hearsay evidence. Finally, assess the evidence as a whole and make a determination of substantiated or not substantiated.

Force-Field Diagram

COL Smith improperly participated in an adulterous affair in violation of Article 134, UCMJ.
One or more parties were married. Wrongful sexual intercourse transpired.
Conduct was detrimental to good order and discipline.

Substantiate	Not Substantiate
• (O) MAJ Jones stated COL Smith was having an affair. • (D) COL Smith DD 1172 - was married to Diane Smith as of 4 June 1980. • (C) Mrs. Smith, wife of COL Smith, provided 7 love letters from unknown woman addressed to COL Smith expressing love for him. • (H/S) CPT Baker heard rumors that COL Smith was having an affair with Ms Anderson. Lost respect for COL Smith. • (D) Ms Anderson stated she had sexual intercourse with COL Smith on 4 January 2003. • **Fact – COL Anderson had wrongful sexual intercourse, was married, and conduct was detrimental to good order and discipline.**	• (O) COL Smith stated his relationship with Ms Anderson was "platonic." • (D) COL Smith refused to comment when asked about having sexual intercourse with Ms Anderson on 4 January 2003.

Key – (O) Opinion; (H/S) Hearsay; (C) Circumstantial; (D) Direct

Figure II-4

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Section 1-12

Military Rules of Evidence

IGs will not consider evidence that is privileged under the Manual for Courts Martial, Military Rules of Evidence (MRE), as follows: communications between a lawyer and client, (MRE 502), privileged communications with clergy (MRE 503), the husband-wife privilege (MRE 504), the political vote privilege (MRE 508), deliberations of courts and juries (MRE 509), and the psychotherapist-patient privilege (MRE 513). In addition, IGs will not use evidence derived from the illegal monitoring of electronic communications in violation of 18 USC 2511. Furthermore, IGs may not use in any IG inquiry or investigation evidence derived from other evidence procured in violation of 18 USC 2511 pursuant to 18 USC 2515.

Section 1-13

Inspector General Action Process (IGAP) Chart

Investigations and investigative inquiries are conducted in accordance with the IGAP. The IGAP facilitates a systematic, fact-finding approach to IG problem solving. Specific actions or components of the IGAP are intregral to the entire process and are not intended to be a group of isolated steps that are accomplished independent of the process. The process does not require a dogmatic, sequential application of each step for every case. The IGAP allows the IG to accomplish all critical tasks in resolving complaints. Part One of this guide details each step of the IGAP. A chart of the IGAP that outlines the steps used is shown below at Figure II-1. Refer to this chart throughout this part of The Assistance and Investigations Guide.

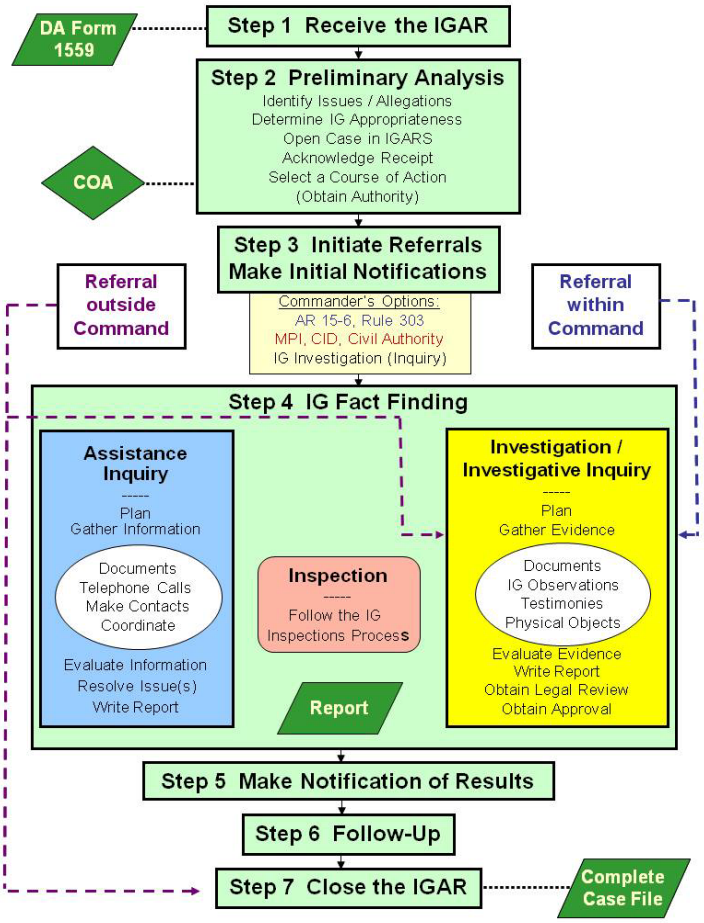

Figure II-1

Section 1-14

Step One, Receive IGAR

In the Investigations function, IGs receive the IGAR a few different ways. Complainants make allegations directly to the IG; DoD IG; or a Member of Congress. The latter two ways can result in a referral to the IG from DoD IG or the Office, Chief of Legislative Liasion, through DAIG. Regardless of the method of receipt, IGs treat each complaint with equal vigor and attention to detail. The IG or complainant will complete DA Form 1559 (Inspector General Action Request) as a base-control document and to capture the workload for complaints containing allegations presented to an IG **(prescriptive provision in AR 20-1, paragraph 6-1d (1)(a))**. IGs will explain to all complainants the IG tenet of confidentiality, the Privacy Act, and the false-charge statement and then document the discussion in the case notes contained in the IGARS database **(prescriptive provision in AR 20-1, paragraph 6-1d (1)(b))**. IGs will not make promises or commitments to complainants except that the IG will look into the matter **(prescriptive provision in AR 20-1, paragraph 6-1d (1)(c))**. See Part One of this guide for more details regarding Step One of the IGAP.

Chapter 2

Step Two, Preliminary Analysis

Section 2-1 - Introduction

Section 2-2 - Issues

Section 2-3 - Allegations

Section 2-4 - Identify Issues / Allegations

Section 2-5 - Examples of Violations of Standards

Section 2-6 - Determine IG Appropriateness

Section 2-7 - Select a Course of Action

Section 2-8 - Allegations Often Resolved by an IG Investigative Inquiry or Investigation

Section 2-9 - Comparison of Investigative Inquiries and Investigations

Section 2-10 - Obtain Authority

Section 2-11 - Common Pitfalls

Section 2-1

Introduction

In step two, Preliminary Analysis, of the seven-step IG Action Process (IGAP), the IG must identify and develop the issues and allegations. If step two of the IGAP revealed an impropriety and IG fact-finding is appropriate, then fact-finding (step four of the seven-step process) is either an investigative inquiry or an investigation. Before initiating fact-finding -- or if at any time during fact-finding substantiation appears certain and adverse action is likely -- refer the allegation to the command. Await the command product and then use it as evidence to resolve the allegation in the IG system (see Section 3-3). Good Preliminary Analysis ensures successful completion of the IGAP. Failing to identify properly the issues and allegations is the primary problem encountered by IGs when conducting investigative inquiries and investigations.

Section 2-2

Issues

1. **Definition.** An issue is a complaint, request for information, or request for assistance to the IG that does not list a "who" as the violator of a standard or policy. The IG determines the issues and allegations, not the complainant. An issue is either founded or unfounded.

a. Issues can become allegations. The complainant could point out wrongdoing as a general issue; but, after clarification, the IG may learn who allegedly committed the wrongdoing. Generally, if the complainant wants something fixed, it is an issue and will not likely become an allegation. In other words, the complainant can point out a problem area in the command and only request that the problem be fixed, but the IG could determine wrongdoing serious enough to frame as an allegation and resolve with an investigation. The IG or the command could conduct the investigation. If it is not serious, the IG could teach and train or the commander could counsel the responsible individual. These are both good options since the complainant did not affix blame, and there is no expectation of an investigation. Conversely, the complainant could allege wrongdoing (affix blame), but the IG counts it as an issue because an individual allegedly responsible for the wrongdoing is not identified or the alleged wrongdoing does not violate a standard.

b. Issues are founded or unfounded but only when the issue requires fact-finding to determine if something was done or is being done improperly. The IGARS database does not record findings on issues. If appropriate, the finding would be recorded in the synopsis of the IGARS case and reported in the final notifications.

c. An issue presented to an IG could be appropriate for the IG, the command, or other Army organizations such as EO, Army Audit Agency, MP, CID, etc.; other Services such as the Air Force Audit Agency, Naval Criminal Investigative Service, Defense Criminal Investigative Service, etc.; or civilian law enforcement agencies such as the local police department, FBI, etc.

2. **Complete Identification of Issues.** Issue identification is critical to preliminary analysis. IGs must address a complainant's issues during the investigation or investigative inquiry in order to resolve the complaint. Failure to do so frequently results in an IG investigation or investigative inquiry being returned as incomplete or a follow-on complaint from the dissatisfied complainant alleging that the IG improperly 'white-washed' or 'covered up' the matter. The root cause is usually that the IG failed to identify all of the issues. Another definition for issue is "anything bothering the complainant." Identify all issues, no matter how trivial they appear. Remember, the complainant might not like the answer, but the important point is that you answered him or her.

Section 2-3

Allegations

1. **Overview.** Complainants do not normally write allegations in a manner that is useful for fact-finding purposes; this responsibility falls to the IG. The IG must take the information from the complainant, research the standards for each matter raised by the complainant, and write a concise allegation that contains four elements: (1) who, (2) the word “improperly” (unless wrongdoing is clearly inherent in the language), (3) the acts that allegedly occurred or failed to occur, and (4) the standard violated. The IG must consider each of the four elements of an allegation.

a. Identify the “**WHO.**” The “who” becomes the subject or suspect in the inquiry or investigation. A “who” must be identified by name and not as a position or job title. For example, you receive a complaint alleging the commander of Company B, 4-4th Armor, improperly used a Government vehicle. You must identify who the company commander was at the time of the alleged impropriety to identify the subject or suspect. He or she should be a military member or DA civilian in your command. If he or she is not in your command, coordinate a referral of the case through IG tech channels to another IG. If he or she is a civilian-civilian, consult with your SJA. For example, you receive a complaint that the garrison commander's wife was using a Government vehicle to visit the commissary. If she was not a DoD employee, you have no jurisdiction over her. Her husband could be the suspect or subject in this case since he may have permitted her to use the vehicle.

b. In most cases IGs will insert the word "**IMPROPERLY**" in each allegation to ensure that the focus is on an impropriety. Although the word improperly may appear redundant and misplaced, improper behavior is an essential element of a correctly worded allegation. Some standards include language that indicates the inherent wrongfulness of the action. For example, "dereliction of duty" already describes wrongful behavior without the addition of the word "improperly." In these cases, IGs should not include the word "improperly" in the allegation. For clarification, contact your local SJA or DAIG's Legal Advisor.

c. Describe the “**ALLEGED ACTS”** that constitute the impropriety. This information is extracted from information provided by the complainant through an interview, complaint letter, request for assistance, etc. The language in an allegation should be simple and worded in such a way that substantiation represents impropriety. In some cases, the alleged act could be a commander failing to take action when informed of misconduct by a subordinate. You must also ensure that the focus is correct. In this regard you need to balance specificity and confidentiality. For example, you receive a complaint that a supervisor sexually harassed his secretary during the month of May. You might write the allegation that the supervisor "sexually harassed a female subordinate assigned to Fort Von Steuben." Avoid including dates. Stating the date would unnecessarily limit your fact-finding. Plus, the complainant may not know the correct date or all of the dates of alleged impropriety. Do not name the victim of the improper action in the allegation. You have a responsibility to protect confidentiality, to the maximum extent possible, of all individuals involved in an IG investigative inquiry or investigation.

d. Research the "**STANDARD**." Researching the standard is often the most difficult and important step in properly framing allegations. You, not the complainant, determine which standard to use. Often complainants will observe something they believe to be wrong that actually did not violate any standard. The question you must inevitably answer is: "Do the alleged acts violate law, regulation, or policy?" If there is no applicable standard, it remains an issue, and the IG can make a finding of "unfounded" or "founded" if resolution requires a formal written response.

e. The complainant is often emotional and does not clearly communicate whether he or she is presenting an issue or an allegation. The IG must determine if the complainant is requesting that something be fixed or is affixing blame. The former is an issue that could become an allegation. The latter is an allegation that could become an issue. Normally, issues remain as issues and allegations remain as allegations.

(1) The complainant might only request that something 'be fixed.' Either initially or later in fact-finding, the IG might discover that someone possibly violated a standard. The IG must determine whether it is serious enough to warrant informing the directing authority so he or she can determine the appropriate corrective action. The IG could conduct teaching and training, the Directing Authority can counsel or direct counseling, or an investigation can be done. The complainant would not be notified that an investigation arose out of his or her complaint.

(2) The complainant might allege wrongdoing, but the IG knows that there is no wrongdoing without conducting any fact-finding. An example would be an allegation that someone used frequent-flyer miles for personal use. The IG knows that the Joint Travel Regulation was changed in 2002 to permit the use of frequent-flyer miles for personal use and that the change is retroactive. In this case the IG would teach and train the complainant on the standard.

(3) If the complainant clearly communicates an expectation that someone, as opposed to something, be investigated; the IG has the four parts of an allegation; and there is no *prima facie* evidence that clears the alleged subject or suspect (i.e., it is known that the person did not do or fail to do what is alleged to have happened), then the IG is obligated to identify it as an allegation. Regardless of the scenario, the IG must get an answer to the complainant on all issues and allegation but only information that pertains to him or her.

f. If you cannot identify a violation of a standard, you may not have an impropriety, hence no need to investigate or inquire. Be cautious, however. Actions may violate one of the seven Army values contained in AR 600-100, Army Leadership: Loyalty, Duty, Respect, Selfless Service, Honor, Integrity, and Personal Courage, or the 14 general ethical principles contained in DoD Directive 5500.7-R, The Joint Ethics Regulation (JER). Other acts might violate common sense or indicate negligence to a degree that allows you to use the provisions of dereliction of duty as a standard. Sometimes there may not be an applicable standard. You cannot substantiate an impropriety for an action that does not violate an established standard. In such cases, it might be appropriate for you to resolve the issue with teaching and training. If in doubt, consult with your SJA.

g. Some acts violate more than one standard. Sexual harassment, for example, violates AR 600-20, Army Command Policy; the JER; and the UCMJ. In selecting the appropriate standard, consult your SJA and discuss the situation surrounding the allegation and determine the applicable standard. Ensure that you apply the standard in effect at the time the alleged impropriety occurred.

h. You may encounter a situation where you are unable to determine a standard, but systemic problems are evident. In such cases, you may elect to inspect, teach and train, or recommend corrective action rather than inquire or investigate.

i. There are situations when you identify systemic problems during your inquiry or investigation that violate a standard but do not indicate misconduct (an allegation) on the part of any individual. You may address the systemic issue in the "other matters" paragraph of the ROI / ROII.

j. It may be necessary for you to interview experts to determine the applicable standards. For example, should you receive allegations of wasteful official travel, you might interview personnel from your servicing finance office to gather information on the provisions of the Joint Federal Travel Regulation (JFTR). When discussing standards with experts other than your SJA, always be aware of the need to maintain confidentiality. Protect the identity of your complainant as well as the identity of the subject or suspect. Describe to the expert the general nature of the allegation, and allow the expert to describe how regulations apply. Record the results of the interview as summarized testimony and continue with your own research of the cited regulations.

k. The United States Army Publishing Directorate (USAPD) Web site (www.apd.army.mil) is an excellent source for current regulatory and other standards.

2. When writing the allegation, be concise, focusing on a specific type of impropriety. Combining two or more improprieties compounds the elements of proof necessary to substantiate or refute the allegation and inhibits your ability to provide a clearly stated conclusion. For example, combining the improprieties of conducting civilian commercial business using a government computer during duty hours and the improper solicitation of gifts from subordinates will entail the use of different standards and consequent elements of proof. Should sufficient credible evidence exist to substantiate one impropriety but not the other, what would be your conclusion? “Partially substantiated” is not an acceptable IG conclusion. Write a separate allegation for each act of impropriety.

3. Review the allegation and consult with your SJA. If you intend to recommend that your commander direct an investigation, ***ensure you coordinate with the SJA***. Asking the SJA what facts you need to substantiate a violation of a standard is often very helpful. Talking to your SJA is particularly vital when dealing with criminal standards. You must establish whether any of the allegations violated a criminal standard. If they did, you must treat the individual as a suspect rather than a subject.

4. When you formulate the allegations, do not be afraid to tackle complex, technical cases simply because you have no previous experience in that area. Remember: you can call experts as witnesses or make experts temporary assistant IGs for your case. Gather the facts and compare them against the information gleaned from the experts and regulations. IGs without previous technical experience in a specific functional area often conduct excellent inquiries and investigations. You will find that by carefully

studying and becoming "smart" in the area you are investigating, you will become extremely knowledgeable.

5. Writing accurate allegations takes practice. Do not hesitate to ask for help from other IGs in your office or through tech channels. ***When in doubt, don't punt – huddle!***

Section 2-4

Identify Issues / Allegations

1. **Identify All of the Issues and Allegations.** Identifying the issues and allegations in a complaint sounds easy. Just identify all of them. The challenge is that complaints come in many formats and degrees of organization and readability. Conventional wisdom is to make a copy of the complaint and preserve the original. Thoroughly highlight everything that looks like an issue or allegation. Make a second pass and eliminate any redundancies. Pass the complaint to another IG for a peer review to see if you missed anything. A lot is at stake if the IG does not identify all issues and allegations. The complainant could lose confidence in us, make a complaint against us, or complain to a Member of Congress. We must always be receptive and responsive to complainants.

2. **Extension of the Directing Authority's Eyes and Ears.** IGs will promptly notify the next higher IG and the directing authority of any allegation that, if substantiated, would adversely affect public perception of the command such as matters of media interest; complaints of sexual harassment; and reports of fraud, waste, and abuse **(prescriptive provision in AR 20-1, paragraph 7-1b (2)(a))**.

3. **Complaint Clarification.** IGs must interview the complainant during Step 2 or Step 4 if the complainant is known **(prescriptive provision in AR 20-1, paragraph 7-1b (2)(b))**. Interviewing the complainant will not only produce more evidence, but it will serve to further clarify the issues and allegations.

4. **Teaching and Training.** IGs will inform complainants that the IG may refer any issues and allegations to the chain of command or other non-IG entity for resolution. If the complainant objects to a referral, the IG will consider the complainant's reasons for objecting when deciding whether to refer the case **(prescriptive provision in AR 20-1, paragraph 7-1b (3)(a))**.

Section 2-5

Examples of Violations of Standards

1. The following are examples of alleged wrongdoing from recent cases. The bulk of allegations are violations of DoD Directive 5500.7-R, The Joint Ethics Regulation (JER); AR 600-20, Army Command Policy; AR 600-100, Army Leadership; or personal conduct in violation of the UCMJ (for military personnel). **[Note: The subparagraph headers are not intended for use in crafting allegations; they simply organize the example violations into general categories.]**

a. Accepting gifts and gratuities in violation of the JER.

- Expensive meals from contractors.
- Expensive departure and retirement gifts.

b. Misuse of government equipment and employees in violation of the JER.

- Requiring dining facility personnel to cater social functions.
- Using government property or personnel to support private organizations.
- Using dining facility food for change of command receptions or award ceremonies.
- Requiring a secretary to make personal vacation travel arrangements.
- Using a driver for personal errands.

c. Personal conduct in violation of AR 600-20, AR 600-100, UCMJ, and the JER.

- Adultery.
- Improper relationship.
- Sexual harassment.
- Public drunkenness.
- Fraternization with subordinates.
- Verbal abuse of civilians or soldiers.

d. Procurement activities in violation of the JER.

- Committing the government to an acquisition without contract authority.
- Improperly influencing the acquisition process.
- Giving "inside information" to selected contractors.

e. Misuse of aircraft or vehicles in violation of the JER.

- Domicile-to-duty transportation.
- Unauthorized use by spouses.
- Use of sedan or aircraft for personal errands.
- Transporting personal items on military aircraft.
- Supporting private organizations without authority.

f. Misuse of government funds in violation of the U.S. Code or the UCMJ (coordinate with CID prior to looking at these allegations).

- Using appropriated funds for unauthorized purposes.
- Diverting government funds for personal use.
- Claiming pay for duty not performed (drill).
- Going TDY principally to conduct personal business or private association business.
- Claiming POV mileage when transported by government sedan.
- Claiming *per diem* when not in TDY status.

g. Abuse of position or authority in violation of the AR 600-20, AR 600-100, Title 5 USC 2302, and Title 10 USC 3583.

- Inadequate or improper response to a subordinate's impropriety, i.e., cover-up or whitewash (failure to take action).
- Coercion (or the perception of coercion) to join a private organization.
- Disregarding regulatory requirements for hiring, assigning, and firing subordinates.
- Using inappropriate language (cursing) at, or in the presence of, subordinates.

2. **Special Category Allegations.** AR 20-1 requires all allegations against General Officers (GOs), members of the Senior Executive Service (SES), and promotable Colonels to be reported directly to DAIG Investigations Division. This requirement includes allegations made to the chain of command, reports of derogatory information about GO or SES personnel from MPI, CIDC, EEO, EO, etc. as well as the IG. DAIG Investigations Division will determine the method of investigation. Also, allegations against field-grade officers or senior NCOs and allegations of post-employment violations have additional reporting requirements as noted below.

a. **Allegations Against GOs and SESs.** You must refer all allegations against GOs, SESs, and promotable Colonels, including allegations against retired GOs, to DAIG Investigations Division through IG communications channels within **two working days** in accordance with paragraph 7-1l, AR 20-1. As you continue to gather facts and evidence in an investigative inquiry, you must continually evaluate whether the new allegations or issues are appropriate for your continued involvement. As an example, if you developed allegations against GOs (or SESs) during an investigative inquiry or investigation, you are required to notify DAIG Investigations Division. When in doubt, call DAIG Investigations Division for guidance. If the GO is your boss, you may be concerned about confidentiality and the possible damage that could occur to your relationship with your commander. Make DAIG aware of your concerns. DAIG will take every reasonable step to protect the relationship between you and your boss. ***You are not authorized to do any preliminary analysis into allegations against GO or SES personnel***.

(1) You may inform your commander of the general nature of the allegations against other GOs in the command. Paragraph 7-1l, AR 20-1, provides specific guidance concerning allegations against GOs. Should you receive an allegation against your GO commander, contact DAIG Investigations Division for guidance prior to

informing your commander. Past experience has shown that IGs who have attempted to "protect" their bosses by informing them of the allegations and / or conducting their own "preliminary analysis" or "preliminary inquiry" have actually exposed the GO and themselves to allegations of reprisal and regulatory violations. The best method of protecting your boss is to report immediately the allegation in accordance with AR 20-1. DAIG Investigations Division will provide you information on what, if anything, to tell your boss.

(2) If DAIG is conducting an investigation within your command, the agency will normally inform your commander. DAIG may not inform you of the investigation, however. Even if you are aware of an investigation, you will not be informed of the specific allegations unless DAIG Investigations Division deems that you have a need to know.

b. **Allegations Against Field-Grade Officers and Senior NCOs.** If an Army IG receives an allegation against an Army officer, NCO, or enlisted Soldier that has resulted in the initiation of an IG investigation, investigative inquiry, or a command-directed action (e.g., AR 15-6 investigation, preliminary inquiry, UCMJ action, etc.), then the IG will enter the allegation(s) into the IGARS database within **two** working days after receipt in accordance with paragraphs 7-1k (1) of AR 20-1. If the allegation is against a colonel, then the IG will also notify DAIG Investigations Division (SAIG-IN) within two working days Unlike an allegation against a GO, SES, or COL (P), however, you may work an allegation against a COL at your level.

c. **Post-Employment Violations.** Should you receive allegations of post-employment violations (18 USC 207(a), (b), or (c); 5 USC 3326; 37 USC 908; or 41 USC 423 (d)), coordinate with your command Ethics Counselor (SJA). You will report these types of allegations to the DAIG Legal Advisor for action. If an investigation is required, usually the higher command of the activity involved will be asked by DAIG to conduct the investigation and will be furnished specific guidance by DAIG.

Section 2-6

Determine IG Appropriateness

1. **Overview.** AR 20-1, paragraph 7-1i, addresses areas where IG involvement is not appropriate. As a general rule, the following issues and allegations are not appropriate for IG involvement:

a. Allegations of **serious criminal misconduct** such as murder, rape, and grand theft are normally outside the purview of the IG. Furthermore, allegations constituting a felony offense are not appropriate for an IG. However, certain allegations pertaining to acts or omissions that could constitute dereliction of duty, violations of regulations, or conduct unbecoming an officer ***are not precluded from IG involvement***. IGs frequently inquire into and investigate these types of allegations. Consult your SJA or DAIG Legal Division for advice if you are uncertain in this area.

b. When **other means of redress** are available, IGs will advise complainants to exhaust the prescribed redress or remedy first. IG involvement will include a review of the situation to determine if the complainant was afforded the due process provided by the applicable law or regulation. For example, if a civilian contractor alleged to an IG that a government contract was improperly awarded, the IG would ask the complainant if he or she had appealed the contract in accordance with the Federal Acquisition Regulation (FAR). If the complainant had not made the appeal, you would advise him or her as to the procedure for redress and deem the complaint to be not IG appropriate.

c. Your Directing Authority may require you to conduct an investigation or investigative inquiry into matters that would normally not be IG appropriate. When this situation arises, advise your Directing Authority of the provisions of AR 20-1 and, if still directed to proceed, contact your SJA and your local CIDC office as appropriate.

2. **Referral to another form of investigation.** If you determine that substantiation of an allegation appears likely during IGPA and that adverse actions against the person involved in the misconduct may be appropriate, you should refer the allegation to your Directing Authority for another form of investigation. For example, if a complainant alleges adultery and provides you with photographs showing the suspect having sexual intercourse with someone other than a spouse, you may conclude that the allegation would be substantiated and that adverse action may result. You should refer the allegation for another form of investigation and use the final command product to resolve the allegation in the IG system (see Section 3-3).

3. **Chain of command action.** If the chain of command decides to address the issues and allegations made by a complainant, you should afford subordinate commanders the opportunity to conduct a preliminary inquiry. ***IGs try to give the command an opportunity to address problems first.***

4. **Misconduct by Army Lawyers.** Allegations involving professional misconduct by Army lawyers are not IG appropriate. Refer these allegations through DAIG Legal Division to the senior counsel for disposition. See AR 20-1, paragraph 7-1i (4), for further details.

5. **Mismanagement by Judge Advocate Legal Service members.** Allegations involving mismanagement by members of the Judge Advocate Legal Service serving in a supervisory capacity are not IG appropriate. Refer these allegations through DAIG Legal Division to The Judge Advocate General (TJAG) for disposition. See AR 20-1, paragraph 7-1i (5), for further details.

6. **Professional Misconduct by an Army Chaplain.** Allegations involving the quality of spiritual or religious counseling from Army chaplains are not IG appropriate. Refer these allegations to the next higher supervisory chaplain and then close the case in IGARS. If no clear higher headquarters for the chaplain is apparent, consult with the commander's chaplain's office. See AR 20-1, paragraph 7-1i (6), for further details.

7. **Professional Misconduct by Army Medical Members.** Allegations involving the quality of medical treatment from Army medical treatment personnel are not IG appropriate. If an IG encounters a case of medical malpractice or professional misconduct by a military medical treatment provider, then the IG refers the allegations to the servicing Regional Medical Command IG or the U.S. Army Medical Command IG and then closes the case in IGARS. See AR 20-1, paragraph 7-1i (2), for further details.

8. **Professional Misconduct by Army CID Agents.** If an IG encounters a case of professional misconduct by an Army CID Agent, then the IG needs to consult CID IG for guidance regarding an appropriate course of action and to resolve potential jurisdictional issues.

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Section 2-7

Select a Course of Action

1. **Commander's / Directing Authority's Options.**

a. Commanders have several options available to resolve allegations of wrongdoing. They may elect to take no further action, pass the allegations to a subordinate commander, refer the case to another investigator (AR 15-6, UCMJ Rule 303, MPI / CID, civil authorities), or conduct either an IG investigative inquiry or investigation. The least desirable option is to do nothing. Avoid recommending this option to your commander as it could result in an allegation being made against both you and your commander for failing to take appropriate action.

b. The decision whether to conduct IG fact-finding or to conduct a non-IG investigation rests with the commander and is usually based on the recommendations of the IG and the SJA. Remember: IGs **do not** recommend a specific type of investigation – only that the allegations be investigated by another form of investigation. Ensure you coordinate your recommendations with the SJA before you bring allegations to your commander for a decision. IGs are trained to investigate and are a logical choice when factual information surrounding the allegation is lacking, the identity of the subjects or suspects will be more difficult to protect, the allegations are very sensitive in nature, protecting reputations will be critical, and protecting confidentiality will be more challenging. If the allegation starts with the IG, it has to finish with the IG. Therefore, referring allegations to the command does not relieve the IG from resolving the allegations in the IG system. Most allegations are not substantiated and don't require adverse action. Substantiated allegations normally don't require adverse action when the impropriety is not of a significant nature. An IG investigation (or investigative inquiry) serves to clear someone's name or determine wrongdoing; and, if it is not referred, it allows the command to maintain focus on readiness and warfighting capability. At any point during an IG investigation or investigative inquiry when substantiation appears certain and adverse action is likely, the IG should refer the allegations to the command to avoid the need to request IG records for adverse action. The IG would then treat the command product as another piece of evidence and resolve the allegations in the IG system.

c. In some cases your fact-finding may begin as an assistance inquiry, which is often the case when the subject / suspect is not known, or the complaint made is so fragmentary that the IG must inquire just to determine if there is an actual allegation. It is important that you understand your commander. There are certain types of allegations that your commander will want to know about immediately. Also, your commander will probably want to be informed immediately when allegations are made against key individuals in the command. On the other hand, your commander may permit you to inquire into some allegations without informing him or her in advance. Many commanders provide either verbal or written guidance to their IGs concerning those topics on which the IG can initiate investigative inquiries without prior approval. As your relationship with your commander evolves, you will gain a better understanding of those issues important to him or her. The key point here is to avoid “blind-siding” your commander.

2. **Select a Fact-Finding Process.**

a. After you formulate the allegations and determine IG appropriateness, you must determine whether you will conduct an investigative inquiry or recommend that your commander direct an investigation. There are no hard and fast rules to guide you in making this determination. Every case is different. You must evaluate the circumstances at hand and make a decision with which both you and your commander can be comfortable. Deciding which cases to bring to him or her may appear to be a high-risk venture, but as your relationship with your commander develops, you will gain an appreciation for the types of issues of personal interest to him or her. During your initial in-brief with your commander, you should ask for his or her guidance on this subject. Factors to consider when deciding whether to recommend an investigation or an inquiry are:

(1) **Seriousness of the Allegations.** The allegations are serious and, if substantiated, could result in adverse personnel action or criminal charges against the suspect.

(2) **Appropriate Level for Command Decision.** Determine which command level the allegations involve for adjudication. Determine to which commander you should make your recommendations. If your recommendation to investigate is appropriate for your commander, then an IG investigation may be appropriate.

(3) **Image of Army.** Are the issues so sensitive that the image of the Army or the command could be needlessly damaged if confidentiality is not maintained? Confidentiality is a tenet of IG investigations.

(4) **Impact on Command.** If known, could the allegations impact on the command's ability to function or on the ability of key members of the command to function effectively? Confidentiality is a tenet of IG investigations.

(5) **Need to Document.** Have the allegations surfaced at a higher level or might surface at a higher level (to include Members of Congress, for example), and is there a requirement for a formal report? IGs document all investigations and investigative inquiries in the ROI / ROII format.

(6) **Media Interest.** Do the issues have potential media interest (or already have media interest)?

(7) **Harm to Soldier.** Do the issues have the potential to cause real or perceived harm to a Soldier's career or personal life?

(8) **Civilian Involvement.** Do the allegations involve civilian-civilians or members of another command not under your Directing Authority's control?

(9) **Protection of Confidentiality and Rights.** Are the issues and their potential impact such that there is an increased concern for protection of an individual's confidentiality and administrative due process? IG investigations protect the rights of all persons involved.

(10) **"Glass House" Allegations.** Does the level of responsibility and visibility of individuals against whom allegations are made put them in the "glass house?" These are individuals who may have allegations made against them because of their position rather than because of wrongdoing.

b. Note: These issues are not listed in order of importance. Depending on the situation, any combination of these issues might cause you or your commander to resolve the issues with an IG investigation or investigative inquiry. Remember, the primary factor in your decision should be: Do you feel comfortable that your decision to conduct either an investigative inquiry or investigation will satisfy your commander's needs, be thorough, and protect the rights of everyone involved?

3. **Nature of IG Investigative Inquiries and Investigations.**

a. **Fair and Impartial.** Your commander will base decisions on the facts you present. Therefore, you must thoroughly investigate and make an accurate, timely, impartial, and complete report. As an impartial fact-finder, you must also report both sides of the story, not just the evidence that supports your conclusion. Additionally, IG investigations and investigative inquiries are always conducted in an overt manner; covert methods are not appropriate for IGs. However, IGs conducting investigative inquiries or investigations are always concerned with confidentiality and must be discreet in the conduct of investigative inquiries and investigations.

b. **Limited Distribution of Information.** Many allegations by their very existence, whether substantiated or not, have the potential of being disruptive and having a traumatic effect upon the individuals or units concerned. You can minimize these effects by maximizing your protection of confidentiality and limiting distribution of information about the investigation to only those who need to know. See Chapter 3, AR 20-1, for procedures for the release of IG records.

c. **Confidentiality.** All Department of the Army personnel have a duty to cooperate with IGs. Individuals who provide you information have a reasonable expectation that you will safeguard their identity and the nature of their testimony to the maximum extent possible. Successfully protecting the confidentiality of those with whom you interact is a key component of the IG system as it protects individual privacy and precludes reprisal. This approach also maintains confidence in the IG system and encourages voluntary cooperation and willingness to ask for help or to present a complaint for resolution. ***However, you must not state or imply a "guarantee" of confidentiality.*** Information and testimony provided to IGs is used within the Army for official purposes and may be released outside the Army if required by law or regulation.

d. **Non-adversarial.** IGs conduct investigations in a non-adversarial manner. IGs must conduct themselves professionally, tactfully, and in a non-judgmental manner. IGs must conscientiously avoid becoming biased during the course of an investigation or investigative inquiry. An IG conducting an investigative inquiry or an investigation ***is not*** a prosecutor conducting a trial. Remember: the IG's role is to protect the best interests of the government as well as the rights and confidentiality of all involved individuals. This role is accomplished through a dogged pursuit of the truth in a given matter.

e. **No Recommendations for Adverse Action.**

(1) IGs do not recommend adverse action in the ROI / ROII. Should you determine during the course of an investigative inquiry or investigation that allegations will be substantiated, and that adverse action might be appropriate, you will normally recommend referring the case for another form of investigation or to another agency (e.g. AR 15-6, MPI, CID).

(2) IGs assess facts, draw conclusions, and make recommendations. As stated above, should you conclude that allegations of wrongdoing are substantiated, you might recommend that the commander refer the case to a follow-on investigator. Prior to rendering a report to the commander, you should request the SJA review the ROI and, in some cases, an ROII for legal sufficiency. Accordingly, the SJA may then provide specific recommendations to the commander regarding subsequent action.

(3) IG records may be used as the basis for adverse action only with approval of the Secretary of the Army; Under Secretary of the Army; Chief of Staff, Army; Vice Chief of Staff, Army, or The Inspector General (see paragraph 3-3, AR 20-1). IGs should advise the commander on the possible consequences such action may have on the perceived confidentiality of the IG System. Should IG records be approved for use in adverse action, the records may have to be released to the individual against whom the action is taken. The confidentiality normally afforded to witnesses may be reduced or eliminated.

(4) A Suspension of Favorable Personnel Action (flag) is not initiated during IG investigations. Subjects and suspects of IG investigations do not have favorable personnel actions suspended as this could compromise confidentiality. A flag is initiated by the unit commander and would identify, in a non-confidential environment, the individual as the object of an IG action. If personnel actions are pending, the IG should inform the commander of the allegations and status of the investigation so the commander can make an appropriate decision regarding the personnel action. When an investigation is turned over to another investigator (non-IG), and adverse action is being considered, then a flag may be appropriate.

f. **IGs Identify Problems.** If during an investigative inquiry or investigation you discover issues or problems not specifically related to the allegation, you can initiate corrective action by bringing the issues to the attention of the commander or the appropriate staff agency. This communication should not compromise confidentiality. An acceptable method would be an extract of pertinent data without revealing protected information. As an example, after investigating allegations of travel-claim fraud, the IG determined that travel claims are not properly processed within the command. The IG could alert the commander and provide the local Finance and Accounting Officer an extract of the pertinent information without revealing confidential information.

Section 2-8

Allegations Often Resolved by an IG Investigative Inquiry or Investigation

1. **Overview.** Experience has shown that IGs normally look at three classes of allegations: violations of established policy, Standing Operating Procedures (SOPs), and standards; violations of regulatory guidance (non-punitive); and violations of law (UCMJ / USC) or of punitive standards within regulations.

2. **Criminal Allegations.** IGs normally do not investigate serious criminal offenses (defined as offenses punishable by fine or imprisonment) that traditionally fall in the category of felonies. However, there are certain violations of criminal law that typically are not investigated by criminal investigators but do reflect on the credibility of the command. Therefore, you may find that your commander directs you to investigate these allegations.

3. **Administrative and Standards of Conduct Violations.** Violations of Standards of Conduct are among the most typical allegations investigated by IGs. The JER is our standard for ethical conduct. The JER specifically charges DoD component IGs with investigating ethics matters within their respective components. All violations of punitive regulations are normally treated as criminal although they are frequently investigated by IGs.

4. **Exceptions.** IGs routinely investigate some UCMJ violations. Adultery and dereliction of duty are typical examples of allegations not normally investigated by MPI or CIDC even though they are criminal violations of the UCMJ. You should coordinate with law enforcement officials and the SJA in cases where you receive allegations that are criminal in nature.

Section 2-9

Comparison of Investigative Inquiries and Investigations

1. **Overview.** While investigative inquiries are an informal fact-finding process and investigations are formal, the two are actually very similar. In both, the IG must analyze the situation at hand, decide if standards have been violated, determine what evidence must be gathered, gather the evidence, analyze the evidence, draw conclusions, and recommend appropriate action. The differences between the two processes rest chiefly in the requirement for a signed directive and transcribed verbatim testimony as required by formal investigations. IGs frequently begin fact-finding using an investigative inquiry and transition to an investigation if the situation warrants it.

a. **Purpose**. Assistance inquiries are frequently conducted as part of the process of resolving IGARs. IG investigative inquiries and investigations are processes designed specifically to look at allegations of wrongdoing on the part of a specific person. All three provide a sound, factual basis for decision-making.

b. **Thoroughness**. Investigative inquiries and investigations are equally thorough and correct. A common misperception is that investigations are more thorough than investigative inquiries. The detail with which you gather and evaluate evidence is determined by the nature of the case, not the fact-finding process you select. If you conduct each investigative inquiry and investigation in accordance with AR 20-1 and the procedures in this guide, you will ensure that you are thorough as well as fair and impartial.

c. **Difficulty**. Some IGs believe that conducting investigations is inherently more difficult. It is true that an investigation entails more administrative details, e.g., one must prepare an action memorandum with a directive and arrange for the verbatim transcription of testimonies. However, the documentation required for an investigative inquiry might be equally voluminous. In some cases, conducting an investigation is actually easier. The commander's authority, as evidenced by the signed directive, "energizes" the command and can protect you from civil liability as long as you have not violated policy.

d. **Directing Authority**. A command IG or State IG may initiate an investigative inquiry. Many IG offices have a local policy (i.e., commander's guidance) that outlines who may inquire into what types of allegations. Only the directing authority may ***direct*** an IG investigation, usually upon the recommendation of the IG.

2. **Personnel who can conduct an Investigation or Investigative Inquiry.**

a. Only a detailed IG may lead an investigation or investigative inquiry. Assistant IGs routinely assist detailed IGs in all phases of investigations (normally two IGs are assigned to an investigation). An Acting IG may not conduct or assist in the conduct of interviews, administer oaths, or write reports. An Acting IG is limited to providing administrative support only for investigative inquiries and investigations.

b. Outside experts such as medical doctors, psychologists, military or DA civilian lawyers, Equal Opportunity staff officers, auditors, or contracting specialists may also be required to assist in investigations or investigative inquiries. Normally, these types of individuals are called upon as expert witnesses or subject-matter experts. If they are needed to assist throughout the investigative inquiry or investigation, they may be made Temporary Assistant IGs. Administer Temporary Assistant IGs the IG oath in accordance with paragraph 2-6, AR 20-1, and limit their duties to their areas of expertise.

3. **Evidence**. The same five categories of evidence used in investigations apply to investigative inquiries. The major difference is in the category of oral evidence. During investigations interviews must contain transcribed and recorded testimony taken under oath. An Investigative inquiry interview need not be transcribed, recorded or taken under oath. There is nothing to prohibit an investigator from receiving statements that meet the requirements of testimony during an investigative inquiry. Investigators should strive for that level of reliability even during inquiries, but formal testimony is not required during an investigative inquiry.

4. **Protections**. Investigative inquiries and investigations provide protection for suspects, witnesses, IGs, and the Army. These protections include administrative due process, individual rights, confidentiality, the Freedom of Information Act (FOIA), the Privacy Act (PA), and immunity from civil liability. For IGs to be immune from civil liability, they must conduct investigations in accordance with AR 20-1, remain within the scope and limits of their directive, and provide individuals the administrative due process and rights to which they are entitled. A written directive helps establish an IG's authority for conducting an investigation and, therefore, additional protection from civil suit. IGs are provided protection by the Government, who will assume liability for an IG's actions as long as the IG was acting within the scope of his or her employment and directive.

Section 2-10

Obtain Authority

1. **Overview.** Gaining authority for an IG investigation or investigative inquiry is a simple but sometimes misunderstood process. IGs do not conduct investigations or investigative inquiries without obtaining the authority to do so.

2. **Investigative Inquiries**. If you determine that an investigative inquiry is the appropriate fact-finding process, a written directive is not required. This lack of requiring a directive does not, however, relieve you of your responsibility to keep your boss informed. Local IG office procedures will provide guidance on the conduct of your investigative inquiries. The principal detailed IG will direct an investigative inquiry. IGs should not begin an investigative inquiry without a directive from the command or State IG. The command or State IG may provide either a written or oral directive.

3. **Investigations**. Should you recommend that an investigation is appropriate, there are formal steps required to obtain the authority to begin. Your commander is the only individual who is authorized to "direct" you to conduct an investigation. Your tool to obtain a Directive is the Action Memorandum. The IG assigned to conduct the investigation will obtain the written Directive from the directing authority **(prescriptive provision in AR 20-1, paragraph 7-1b (4)(a))**.

a. **Action Memorandum**. After you determine an IG investigation should be conducted, prepare an Action Memorandum (an example is shown below or use another locally acceptable format) for your commander. The Action Memorandum is an internal administrative document. It should be included in the final ROI (ROII if appropriate). It defines the scope and limits of what you and your commander decided to investigate. As a document prepared in conjunction with an IG investigation, the Action Memorandum is FOUO and must be marked accordingly. It is also protected from release under FOIA. The Action Memorandum:

- Forwards a Directive for the commander's signature.
- Gives a brief background of how the allegations were received, who made the allegations, and against whom they are made (since this memorandum is prepared for the commander, it contains names and specific details.)
- Outlines the allegations that need to be investigated.
- Contains a summary of your inquiry / PA if appropriate.
- Summarizes the SJA's legal opinion for the commander.
- Recommends that the Directive for Investigation be signed.

b. The **Directive for Investigation** is your authority to investigate the specific allegations outlined in the Action Memorandum. While the Action Memorandum is very specific, the directive is very general. ***Do not disclose the names of individuals involved or the precise nature of the allegations in the <u>Directive</u>***. This lack of disclosure helps maintain confidentiality. The Directive is prepared by you, signed by your directing authority, and addressed to the directing authority's IG (you). If the initial Directive is issued orally, write a Memorandum For Record (MFR) that outlines your instructions and secure a <u>signed</u> Directive

as soon as practicable. Ensure that the SJA concurs with your approach and recommendation for an IG investigation.

c. The example Directive shown below (also found in Appendix A, Interview Prep Book):

- May protect you from civil liability by providing a historical record of authority to investigate (it becomes part of the ROI).
- Is used as the basis for notifications.
- Is shown to witnesses to establish your investigative authority.
- Is quoted in the formal read-in of witnesses.
- Gives you the authority to require the presence of military and DA civilians at interviews and the authority to secure documents and other pertinent evidence.

4. The Directive and the Action Memorandum together define the scope and limits of the investigation. The IG may not initiate, expand, or terminate an investigation on his own volition. The Directive and Action Memorandum ensure that there is a clear, mutual understanding between the IG and directing authority concerning what should be investigated.

5. Any commander who is authorized a detailed IG may direct an investigation. An investigation pertaining to General Officers -- including ARNG, USAR, and retired General Officers -- or SESs may only be directed by the Secretary of the Army; the Under Secretary of the Army; the Chief of Staff, Army; the Vice Chief of Staff, Army; or TIG. The State Adjutant General (TAG) may direct his active-duty IG to investigate items of Federal interest not pertaining to General Officers. You must report allegations of misconduct on the part of promotable Colonels, General Officers, and SESs to DAIG Investigations Division, within **two working days**, through IG communications channels after receipt of the complaint.

6. You should hand-carry the Action Memorandum and Directive to the commander. Schedule time to provide the commander a desk-side briefing on the allegations and issues and ask the SJA to be present. Do not send an Action Memorandum and Directive through normal distribution, and do not assume that the Secretary of the General Staff (SGS), Chief of Staff, or other members of the staff should be made aware of the investigation unless your commander so desires.

EXAMPLE ACTION MEMORANDUM

MEMORANDUM FOR COMMANDER

SUBJECT: Action Memorandum

1. Purpose. To obtain a directive to conduct an Inspector General investigation.

2. Background. (Briefly describe what you plan to investigate. Include the source of the allegation(s), from whom you received it, and the full names and organizations of the subjects or suspects.)

3. Allegation(s). (State the allegation(s) you intend to investigate.)

4. Proposed Scope of the Investigation. (Outline the specific issues you intend to investigate.)

5. Discussion. (Provide other information such as the SJA's opinion.)

6. Recommendation. That you sign the directive at Tab A.

Encl

ALBERT R. RIGHTWAY
LTC, IG
Inspector General

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EXAMPLE DIRECTIVE

MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: Directive for Investigation

1. Investigate alleged improprieties by an Army official assigned to (Installation / Organization).

2. Submit your report to me as soon as possible, but protect the rights of all persons involved and ensure the investigation is complete and accurate.

MOTTIN DE LA BLAME
Major General, U.S. Army
Commanding

NOTE: Do not use the name(s) of subjects or suspects in the Directive. Remember: this is the document you will show the witness. PROTECT CONFIDENTIALITY.

Section 2-11

Common Pitfalls

1. **Overview.** The greatest problem with IGPA is improperly developing allegations. Poorly worded allegations that do not address the complaint are frequently observed. Allegations are sometimes too broad in scope, combining two or more allegations. Standards used are frequently either the wrong standards or not dated commensurate with the time of the alleged impropriety.

2. Another common failing is to use the wrong form of investigation for the nature of the allegations presented by the complainant. Specifically, ***when allegations are presented that are criminal (or punitive) in nature, IGs should use formal proceedings (investigation) in order to ensure that the suspect's rights are fully protected.***

3. IGs are sometimes reticent to ask for a Directive from the Directing Authority to conduct an investigation, which leads to an investigative inquiry when an investigation is the best proceeding. Likewise, IGs sometimes fail to follow up on other information or allegations that surface unexpectedly during an investigation.

4. Frequently, IGs will receive complaints that generate multiple allegations against multiple individuals. The sheer volume of analysis can overwhelm you. In such situations, your best course of action is to break the allegations into small groups based upon the identity of the individual suspected of the misconduct and investigate each one separately.

5. Lastly, ***never work cases on GOs, SES personnel, or promotable Colonels***. Refer these cases to DAIG Investigations Division within **two working days** via the most secure and confidential means possible. Any time someone with whom you are talking (in person or telephonically) makes an allegation or provides unfavorable information against a senior official, immediately clarify the allegation or unfavorable information and the identity of the senior official prior to notifying DAIG Investigations Division. ***Open a one-minute IGAR to document the referral to DAIG Investigations Division, but do not name the senior official in the one-minute IGAR and do not conduct IGPA!***

Chapter 3

Step Three, Initiate Referrals Make Initial Notifications

Section 3-1 - Referring Allegations

Section 3-2 - Initial Notifications

Section 3-3 - Use of Command Products

Section 3-1

Referring Allegations

1. **Referral to Another IG.** If, after preliminary analysis, you determine that the case is not appropriate for your IG office but is appropriate for a higher, lower, or adjacent-level IG, refer the case to that office using IGARS and / or IGNET. Once the case is accepted on the other end, you can close out the referral in IGARS. If the local IG is maintaining office-of-record status, keep the case open until the office of inquiry completes the report and forwards it to you for review, approval, and close-out.

2. **Referral to the Chain of Command**. The chain of command has the responsibility and the authority to address complaints. Where appropriate, you should refer matters to the chain of command, monitor the case to ensure the chain of command takes appropriate action, write your report using the command product as a piece of evidence, and then complete steps five through seven of the IGAP to close out the case. (See Section 3-3 regarding the use of command products.) Coordinate your Subject / Suspect Notification of Referral of Allegations to a Commander (see page II-3-12) with the commander's notification to the subject / suspect.

a. If you refer / recommend a case to a commander for the commander to conduct an inquiry or investigation, you will keep the case open. All referral documents sent to commanders requesting that an inquiry or investigation be conducted will include all allegations written in the correct four-part format (i.e. **who improperly** [unless the language from the standard indicates an inherent wrongful action] **did or did not do something in violation of a standard**). The referral document must also inform the commander that the IG requires a copy of the inquiry or investigation. Additionally, advise the commander that the subject / suspect of the inquiry or investigation will be notified by the IG of the results being posted in the IGARS database. (See the example referral memorandum below.) Upon reviewing the command product and determining that information is missing or that all issues were not addressed, you will discuss the discrepancies with the commander and ask that the corrections be made. If the commander refuses to address the missing issues or add the missing information, you will inform the commander that the IG will conduct an inquiry on only those areas the commander refuses to address. If you disagree with procedures followed for the conduct of the investigation, attempt to resolve the issues with the command. If you cannot resolve the issues, contact DAIG Assistance Division for guidance before proceeding.

b. AR 20-1, paragraph 7-1 *b*(3)(c), requires the IG to ensure that the IO (investigating officer) properly notified the subject / suspect of his status and that the IO afforded the subject / suspect the opportunity to know and comment on any unfavorable information. AR 15-6 does not require IOs to notify subject / suspects. A useful approach is for IGs to carefully coordinate the investigation plan and execution with the IO, to include notifications since AR 15-6 provides no guidance to the IO for subject / suspect notification. The IG and the IO should coordinate the timing of the required notifications to ensure fair and effective fact-finding.

c. If the commander refuses to give you a copy of his or her inquiry or investigation, explain to the commander that in accordance with AR 20-1, paragraph 1-7a, the IG is authorized a copy of the inquiry or investigation. If you request that the Directing Authority intervene, and the Directing Authority refuses, contact DAIG Assistance Division for guidance before proceeding. If you are conducting an inquiry or investigation and then discover that a commander is conducting an inquiry or investigation on the same case, contact the commander and request a copy of the command product. If the commander complies, complete the case in the same manner stated above. If the commander does not comply, contact DAIG Assistance Division for guidance before proceeding.

3. **Referral to other agencies.** You may elect to refer allegations to the appropriate agency on behalf of the complainant, but be mindful of confidentiality concerns. Provide the necessary information to the agency and determine whether to monitor the action until completion. For example, if an individual alleges criminal activity, you should refer the information to the local CIDC field office and request that that office follow up with the individual and advise you of the results. The IG should retain a copy of the complaint. CIDC may not accept it, and you may need to refer the allegation to MPI or to the chain of command for inquiry or investigation. If you refer the allegation to civil authorities, be mindful that they may choose not to comply with your request for action or for a copy of their investigation.

4. An example referral memorandum and notification letter used to refer allegations as described above is as follows:

Memorandum Format: IGAR Referral for Investigation to a Commander

Office Symbol 2 February 2005

MEMORANDUM FOR Commander (unit referred for action)

SUBJECT: Inspector General Action Request (Case Name / Case Number)

1. The Office of the Inspector General received complaints alleging misconduct by members of your command. In accordance with AR 20-1, Inspector General Activities and Procedures, we are referring the matters to your command for appropriate action.

2. Request that you provide a complete copy of your investigation / inquiry to this office when completed. The results of your action will be used as the basis for our response and notification to the subject(s) of the investigation / inquiry. Please read AR 600-20, Army Command Policy, paragraph 5-8 as part of your inquiry.

3. If an Investigating Officer is appointed, contact your local SJA office prior to beginning the investigation / inquiry to exchange relevant information and discuss / clarify the allegations of concern.

4. Request that your investigation / inquiry address, at a minimum, the following allegations and issues: (MAKE SURE YOU IDENTIFY ALL ALLEGATIONS AND ISSUES / CONCERNS OF THE COMPLAINANT IAW AR 20-1 STANDARDS.)

a. Allegation 1: SFC Name (specify the NAME of the alleged subject) improperly made false statements against another NCO concerning APFT cards in violation of Article 107, False Official Statements, UCMJ.

b. Allegation 2: SFC Name (specify the NAME of the alleged subject) improperly restricted subordinates from talking to an IG by using influence and intimidation to obstruct an IG inquiry in violation of DODD 7050.06**.**

5. This Inspector General document contains privileged information and will be protected IAW paragraphs 3-2 through 3-5 of AR 20-1. Dissemination of the document will be restricted to the absolute minimum consistent with your requirement to provide a reply and will be returned to this office when your action is complete. Unauthorized retention or reproduction of IG documents is strictly prohibited.

6. Your point of contact is (IG's name) at DSN (IG's phone #) or CML (IG's phone #) .

IG Signature Block

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Section 3-2

Initial Notifications

1. Notifications are required when conducting an investigative inquiry or an investigation. IGs normally make notifications by telephone and document them using the formats at the end of this section. IGs will record these notifications in the IGARS case notes **(prescriptive provision in AR 20-1, paragraph 7-1b (3)(d)).** Subjects / suspects have the right to know all allegations far enough in advance to exercise their right to consult with an attorney. Failure to do so could allow subjects / suspects to allege that the IG did not afford them their due-process rights. Attach a copy of the record of notification to the ROI / ROII and document actions taken in IGARS case notes.

2. After obtaining authority for the investigation or inquiry, notify the subject / suspect's commander / supervisor before contacting any other witnesses or gather further evidence **(prescriptive provision in AR 20-1, paragraph 7-1b (3)(b))**. Notification of the commander involved ensures his or her cooperation and understanding. Normally, subjects or suspects are notified of the nature of the allegations prior to conducting interviews or taking statements. This notification provides for their due-process right to know allegations against them and allows them to seek legal counsel. Under rare circumstances, such as potential for reprisal or obstruction of witnesses, the subject or suspect can be notified later but always in sufficient time for the subject / suspect to exercise his or her right to consult with an attorney. Notification is also appropriate as IGs do not operate covertly.

a. Command Notifications:

(1) **Chain of Command.** Normally, at least the first commander or supervisor in the chain of command of the individual being investigated should be notified. Use the notification formats at the end of this chapter to make these notifications. The IG, the directing authority, or someone designated by the Directing Authority may make these notifications. How much information to provide, how deep in the chain of command to notify, and whether to give the notified commander the option to inform other members of the chain of command will vary. Consider the nature of the allegations, the commander's guidance, and the personalities of the commanders or supervisors involved. In sensitive cases it may be appropriate to provide very little detail except that there is an ongoing investigation. At other times, it may be appropriate to provide the names of subjects or suspects and specific allegations or some combination thereof. Also, consider the possibility of commander involvement in the allegations or that the commander has condoned the actions. For example, the Directing Authority directs the IG to investigate sensitive allegations against a battalion commander in 2nd Brigade. The Directing Authority believes the brigade commander should be informed of the investigation, but he is concerned that this notification may needlessly damage the battalion commander's reputation in the eyes of the brigade commander. Consider only providing the brigade commander with the general information contained in the directive. Should the facts indicate that the allegations will be substantiated and that the brigade commander was knowledgeable and condoned the misconduct, the brigade commander may become a subject or a suspect.

(2) **Visited Commands.** IGs may have to visit organizations or staff sections to obtain information and interview witnesses when there are no individuals in that organization who have allegations against them. The IG must decide whether or not to notify the commanders of those organizations. Normally, ~~you~~ the IG only needs to provide other commands with the general information contained in the directive.

(3) **Higher Commands.** Higher commands are not automatically notified of subordinate unit IG investigations. Notify higher commands of an investigation based on the nature of the investigation, the rank or grade of the person under investigation, or as requested by higher headquarters or directed by the Directing Authority. Use your judgment and your commander's guidance to determine when to notify higher commanders.

b. **Subject / Suspect Notification**

(1) Always notify the individuals against whom the allegations are made **(prescriptive provision in AR 20-1, paragraph 7-1b (3)(b))**. Failure to do so may jeopardize their due-process rights. The person should be notified as either the subject or suspect. Determining their status in the case is your responsibility. Seek the assistance of your SJA and, if necessary, DAIG Legal Division. It is important that ~~you~~ the IG make the proper distinction since the rights afforded vary with the individual's status. Suspects are afforded more rights than subjects. If the standard allegedly violated is criminal in nature, then the person is a suspect. To interview someone about criminal allegations without first informing that person of his or her rights is a violation of the individual's rights. This fact is true even if you decide to question the individual concerning only non-criminal matters. See the explanation of rights earlier in this guide and in Chapter 7, AR 20-1. Remember, military personnel who have criminal or punitive allegations leveled against them must be treated as suspects.

(2) **What do you tell the subject or suspect?** An IG investigation is not an adversarial proceeding, but that fact doesn't mean the subject or suspect will not be adversarial or less than cooperative. Therefore, the IG does not have to notify the subject or suspect of the specific allegations at the time of notification. The IG can notify the subject or suspect that the commander has directed the IG to investigate him or her for alleged improprieties and that you will notify him or her later with the specific allegations. However, under most circumstances, IGs will inform the subject or suspect of the specific allegations at the time of notification. This approach is especially important for suspects since they are more likely to seek the advice of a lawyer. Before deciding, consider whether or not informing the subject or suspect of the specific allegations would reveal the source of the complaint. You must avoid any act that may jeopardize confidentiality. You must be concerned with the possibility of retribution and a cover-up. The subject or suspect might talk to, or influence, the complainant or potential witnesses and thereby hamper your investigation. ***Do not tell the subject / suspect with whom you have talked (other than commander / supervisor, if notified) or with whom you plan to talk.***

(3) **How do you notify subjects or suspects when the case has been referred to the command?** When the case is referred to the command, and the command initiates an AR 15-6 investigation or another form of fact-finding inquiry, the IG must comply with AR 20-1, paragraph 7-1 *b*(3)(c), which requires the IG to ensure that the IO properly notified the subject / suspect of his status, and that the IO afforded the

subject / suspect the opportunity to know and comment on any unfavorable information. The command IO may be unaware of this requirement to notify subject/ suspects. A useful approach is for IGs to carefully coordinate the investigation plan and execution with the IO to include notifications.

The IG and IO should coordinate the timing of subject / suspect notifications to ensure effective fact-finding. In some instances IGs and IOs may want to notify subject/ suspects almost simultaneously ensuring the individual is aware that the matter began with the IG but is going to the command for resolution. Early notification in this manner informs the subject / suspect that the final result, although resolved by the command, will still end up in the IG database. However, the command and the IG may opt to stagger these notifications if early IG notification might hinder the command's investigatory efforts. AR 20-1, paragraph 7-1b (3), lists these notifications in Step 3, but IGs may have the latitude to alter the timing if a later notification supports the command's efforts to resolve the matter effectively, fairly, and efficiently. Ultimately, at some point before or after the command investigation is completed, the IG must notify the subject / suspect that the matter began with the IG and, even though the command resolved the allegation, the results will still go into the IG database.

c**. Who makes the Notifications?** Who makes the notifications will be based on unit SOP and will vary with the rank of the person against whom the allegations are made. There are several advantages for the investigating officer making the subject or suspect notification. It provides the opportunity to begin to develop a rapport with the individual. Based on this conversation, the IG can anticipate whether that person will be cooperative and can prepare accordingly. Sometimes subjects or suspects ask questions of the IG when notifications are made. Remember the purpose of the notification is to inform the subject or the suspect of the allegations and nothing more. If the subject or the suspect continues to inquire, then remind the subject or suspect of the purpose and the confidentiality requirements of AR 20-1.

d. **How do you make Notifications?** Experience has shown that telephonic notifications are best. Chain-of-command notifications made over the telephone are discreet and minimize disruption to the unit. Face-to-face notifications with a subject or suspect can be very difficult to control and will eliminate non-verbal communications that can hinder a proper notification. Other than restating the allegations, when notifying a suspect, you should avoid discussing the facts surroundings the allegations. The rights warning contained in the suspect notification format is not considered legally sufficient for questioning an individual suspected of a criminal offense. IGs may provide the allegations to the suspect's attorney. Remember that experience has shown that the best course of action is to interview the subject or suspect last -- after conducting most of your investigation and know the facts. The notification memorandums are for your files and must be included in the ROI / ROII. Do not send the memorandum or give it to the individuals you notify. Avoid making notifications on a Friday afternoon. Burdening the subject or suspect with bad news just before the weekend is not a good way to build rapport.

e. **New Allegations / New Subjects / New Suspects.** During the investigation, you may develop new allegations unrelated to the original allegations or unrelated to the subjects or suspects. Brief or send a memorandum to your Directing Authority to expand the investigation by explaining the additional allegations and / or new subjects or suspects. Prior to completing the investigation, the subject or suspect must be informed

and given the opportunity to present his side of the story. If the allegations are against someone not originally defined as a subject or suspect, then that person should be notified and interviewed. Remember: Subjects / suspects have the right to know and comment on the allegations against them. Also, notify the subject / suspect of any unfavorable information that will be included in the ROI / ROII, and the subject / suspect must be afforded the opportunity to comment.

COMMANDER / SUPERVISOR NOTIFICATION FORMAT

To: (Rank and Name)_____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the _____ IG office. I am calling to inform you that (Directing Authority) _____ has directed this office to investigate / inquire into allegations that: (as stated in Action Memorandum)*
_____
_____
_____

*Note: Generally, commanders need to know exactly what you are investigating, and you should state the allegations as written in the Action Memorandum. If you believe you should be less specific, use the more general language in the Directive.

2. ( ) It may be necessary to interview members of your organization regarding these matters. _____(Investigating Officer) from my office will arrange witness interviews.

3. ( ) (You may / may not) (I will / will not) notify intermediate commander(s) / supervisor(s).

4. ( ) To help protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them, we ask that you not discuss this matter with anyone.

5. ( ) _____ was (telephonically / personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

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SUBJECT NOTIFICATION FORMAT
(For Non-Punitive / Non-Criminal Allegations)

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the_____ IG Office. We have been directed by _____ (Directing Authority) to investigate / inquire into allegations that you: (as stated in Action Memorandum)
_____
_____
_____

2. ( ) It will be necessary to interview you regarding these matters. (Choose a or b)

a. You will be contacted by (Investigating Officer(s)) _____ or _____ to make necessary arrangements; or
b. We want to interview you at (time) _____ on (date) ____ at (location) _____. Our telephone number is _____.

3. ( ) You are a subject in this investigation / inquiry. Although the allegation(s) against you is / are non-criminal / non-punitive, you do not have to answer any questions that may potentially incriminate you. The investigators will give you an opportunity to respond to the allegation(s). You have the right to consult with an attorney before questioning, but you do not have the right to have an attorney present during the interview.

4. ( ) _____ has been notified of this investigation.

5. ( ) We are required to protect the confidentiality of IG investigations / inquiries and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation / inquiry. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney, if you choose to consult one.

6. ( ) _____ was (telephonically / personally) notified of the above at _____(time) on _____ (date).

_____
(Signature of Notifying Official)

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SUSPECT NOTIFICATION FORMAT
(Punitive / Criminal Allegations)

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the _____ IG Office. We have been directed by _____ (Directing Authority) to investigate / inquire into allegations that you: (as stated in Action Memorandum)
_____
_____

2. ( ) It will be necessary to interview you regarding these matters. (Choose a or b)

a. You will be contacted by (Investigating Officers) _____ or _____ to make necessary arrangements; or
b. We want to interview you at (time) _____ on (date) ____ at (location) _____. Our telephone number is _____.

3. ( ) You are a suspect in this matter. Therefore, you do not have to answer any questions or say anything. Anything you say or do can be used as evidence against you in a criminal trial. You have the right to talk to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. The lawyer can be a civilian you arrange at no expense to the Government. (If suspect is subject to UCMJ, add the following): or a military lawyer detailed for you at no expense to you, or both.

4. ( ) _____ has been notified of this investigation.

5. ( ) We are required to protect the confidentiality of IG investigations / inquiries and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation / inquiry. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney, if you choose to consult one.

6. ( ) _____ was (telephonically / personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

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SUBJECT / SUSPECT NOTIFICATION FOR REFERRAL OF ALLEGATIONS TO A COMMANDER

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the _____ IG Office. We have received unfavorable information about you, and we are referring allegations to the command, _____ (Directing Authority) that you: (as stated in Action Memorandum) _____
_____.

2. ( ) Upon completion of the command's investigation, it may be necessary to interview you regarding these allegations. Regardless, we will notify you of the results after the chain of command has completed its action, and we have completed our report.

3. Rights. Use subparagraph 'a' for subjects and 'b' for suspects.

a. ( ) You are a subject in this investigation / inquiry. Although the allegation(s) against you is / are non-criminal / non-punitive, you do not have to answer any questions that may potentially incriminate you. The investigators will give you an opportunity to respond to the allegation(s). You have the right to consult with an attorney before questioning, but you do not have the right to have an attorney present during the interview.

b. ( ) You are a suspect in this matter. Therefore, you do not have to answer any questions or say anything. Anything you say or do can be used as evidence against you in a criminal trial. You have the right to talk to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. The lawyer can be a civilian you arrange at no expense to the Government. (If the suspect is subject to UCMJ, add the following): or a military lawyer detailed for you at no expense to you, or both.

4. ( ) We are required to protect the confidentiality of IG investigations / inquiries and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation / inquiry. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney, if you choose to consult one.

5. ( ) _____ was (telephonically / personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

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Section 3-3

Use of Command Products

1. **Overview.** Command products can be used by IGs conducting IG inquiries and investigations. Existing policy is contained in AR 20-1, paragraph 1-7a, which allows IGs access to all documents and other evidentiary materials needed to discharge their duties.

2. **Definition.** Command products include, but are not limited to, preliminary inquiries and formal and informal investigations conducted under the provisions of Army Regulation 15-6. Most commonly, questions arise pertaining to an IG's use of AR 15-6 investigative reports, particularly when the report is already completed before the IG receives a related IG Action Request (IGAR).

3. **Why use Command Products in an IG Investigation or Investigative Inquiry?** The use of command products avoids duplication of investigative effort. Additionally, it is more appropriate for commanders to investigate some command matters, notably when disciplinary action is a likely outcome of the investigation. By regulation, command products used or considered by IGs to support IG findings, conclusions, recommendations, or resolution actions become part of the IG's record. In the case of AR 15-6 findings and reports, the commander that initiated the investigation makes the determination whether it should be released for FOIA.

4. **Cautionary Note.** Inspectors General should use caution when using command products to support their inquiries and investigations. Command products are simply administrative tools used by commanders to assemble facts. They are not binding upon, nor do they limit, a commander's actions. The directing commander may use or reject the findings and recommendations of the product in part or in full. Command products are not subject to appeal and have no remedy or redress -- though the commander may use the product as a basis for action that is subject to appeal with remedy or redress. Because a command product does not afford due process, IG review of a command product simply determines the extent to which the product addressed the issues and whether the product and process were fair and impartial.

5. **IGs Do Not Use Command Products Alone to Resolve Allegations.** While command products can be vital to the Inspector General Action Process (IGAP), they never take the place of an investigative inquiry or investigation by an IG. The IG is responsible for conducting all seven steps of IGAP. The IG must write a report and have it approved before entering a finding in the IGARS database. The IG will never ignore the command product but always considers it as another piece of evidence as part of Step 4 of the IGAP, IG Fact Finding.

6. **Analysis of Command Products by an IG.** It is a misconception that when an IG accepts an IGAR and determines that a related command product has already been completed, the IG's role is simply to conduct a "due-process review" of the product and to handle the IGAR as an assistance case. This approach is the proper course of action when the complaint is against the command product or the investigative process (e.g., a complaint that an AR 15-6 investigation was not conducted properly). In this instance,

the "due-process review" is handled and reported as *assistance*. However, this approach does not preclude the IG from conducting a "due-process review" as part of the analysis of a referral that led to a command product via an IG investigation or investigative inquiry. As a matter of prudence and thoroughness, the IG should conduct a "due-process review" of all command products. The IG must be prepared to branch into other issues or allegations that may warrant inquiry or investigation, and these issues or allegations may be beyond the scope of the command product. Inspectors General must follow the Inspector General Action Process (IGAP) with each IGAR received, beginning with *preliminary analysis* to determine IG appropriateness and the course of action. Command products are appropriately used by IGs in the *fact-finding* phase of the IGAP -- *after* the IG has decided whether a matter is IG appropriate, what the allegations or issues are, and the appropriate course of action (inquiry or investigation) to take. The pre-existence of a command product does not "lock-in" an IG course of action (assistance, inquiry, or investigation) -- and certainly not the outcome. The command product is simply a piece of evidence available to the IG during fact-finding. The IG will review the command product to ensure that the command's investigating officer formally notified the subject / suspect of his or her status, that the subject / suspect had unfavorable information about him or her, and that the subject / suspect had an opportunity to comment **(prescriptive provision in AR 20-1, paragraph 7-1b (3)(c)).** If the notification did not occur, the IG will have to notify the subject / suspect and interview him or her. A modified ROI / ROII can't be done if the command's investigating officer didn't make the notification.

7. **SJA Coordination and Command Products.** When an IG receives an IGAR and a preliminary inquiry -- or AR 15-6 investigation is either already underway or not yet initiated, the IG should coordinate with the Staff Judge Advocate and the appropriate command to ensure the command product properly addresses the IG issues and allegations. Without some coordination between the IG and the SJA / command, it is unlikely the final product will fully address the issues and allegations presented to the IG by the complainant.

8. **Sample ROI / ROII.** Section 9-5 of this guide contains a description and an example of a modified Report of Investigation / Report of Investigative Inquiry (ROI / ROII) using a Command Product.

9. **Summary.** Command products do not provide an alternative to an IG investigation / investigative inquiry, and the pre-existence of a command product does not pre-determine how an IG must handle an IGAR. If an allegation starts with the IG, it must (if IG appropriate) end with the IG. Even though the IG may refer the allegation to the command for action, the IG must still make a final determination of the matter using the ROI / ROII. The command product becomes a major piece of evidence in this final determination. In addition, the IG must ensure that each issue and allegation presented in an IGAR is addressed in a fair and impartial manner while retaining flexibility to delve into new issues and allegations that may emerge during fact-finding. As the eyes, ears, voice, and conscience of the commander, the IG must be prepared to question the adequacy of the command product and to look beyond its bounds.

Chapter 4

Step Four, IG Fact Finding

Section 4-1 - Overview

Section 4-2 - Comparison of IG Fact-Finding Methodologies

Section 4-3 - Plan

Section 4-4 - Gather Evidence

Section 4-5 - Preparation for Interviews

Section 4-6 - Interview Types and Modes

Section 4-7 - Other Participants in Interviews

Section 4-8 - Status of Individuals Chart

Section 4-9 - Four-Part Interview and Interview Documents

Section 4-10 - Self-Incrimination and Rights Warning Procedure / Waiver Certificate

Section 4-11 - Break Procedures

Section 4-12 - Standard of Proof

Section 4-13 - Investigatory Tools

Section 4-14 - Report of Investigation and Report of Investigative Inquiry

Section 4-15 - Modified ROI / ROII with Command Product

Section 4-16 - Obtain Approval

Section 4-17 - Actions if Directing Authority Disapproves ROI / ROII

Section 4-18 - Common Pitfalls

Section 4-1

Overview

1. **Plan.** As with all forms of intellectual endeavor, an IG investigative inquiry or investigation requires significant forethought in order to resolve the issues and allegations brought forward by the complainant. Rarely can an IG jump into an investigation without investing a significant amount of time and effort into planning. All investigations, even the simplest investigative inquiries, should proceed from a written plan. Planning will maximize the likelihood of successfully completing the investigation while concurrently minimizing the resources (time, materiel, labor) consumed in the process.

2. **Gather Evidence.** Once the Command IG approves the plan, the IG can begin to gather evidence. Most evidence is testimonial or documentary. For documentary evidence, the IG needs to protect confidentiality when requesting documents. Ideally, the IG has access to personnel databases and doesn't have to request the documents. Interviewing is both an art and a science, and one will have to determine the techniques that work best for his or her personality. The rest is methodology and will be covered in detail later in this chapter.

3. **Evaluate Evidence.** As you gather evidence in your case, you must evaluate it and determine if you have obtained a preponderance of credible evidence that is sufficient to allow you to draw a conclusion. This is a complex, intellectual process. Your effectiveness depends upon your skill and experience, your knowledge of the categories and levels of evidence, the quantity of evidence you gathered, and your assessment of the credibility of each item of evidence. **After you evaluate the evidence, you must decide whether the allegations are substantiated or not substantiated.** You then document your findings, conclusions, and recommendations for your Directing Authority in a ROI or ROII. An ROI or ROII must be completed and approved to resolve an allegation.

Section 4-2

Comparison of IG Fact-Finding Methodologies

1. **Overview.** Investigative fact finding is the process of obtaining information and deriving facts throughout the conduct of an investigative inquiry or investigation. The process is broken down into a series of sequential and interrelated steps to gather and assess logically information pertaining to the issues and allegations presented for investigation. Note that for investigations IGs must take recorded testimony under oath for all interviews **(prescriptive provision in AR 20-1, paragraph 7-1b (4)(d)).** IGs must transcribe the testimony into written form, and the investigating officer will verify the accuracy of the transcription **(prescriptive provision in AR 20-1, paragraph 7-1b (4)(e)).**

2. Figure II-2 below depicts the steps used in the IG investigative fact-finding process (within the seven-step IGAP). Refer to this chart throughout this section.

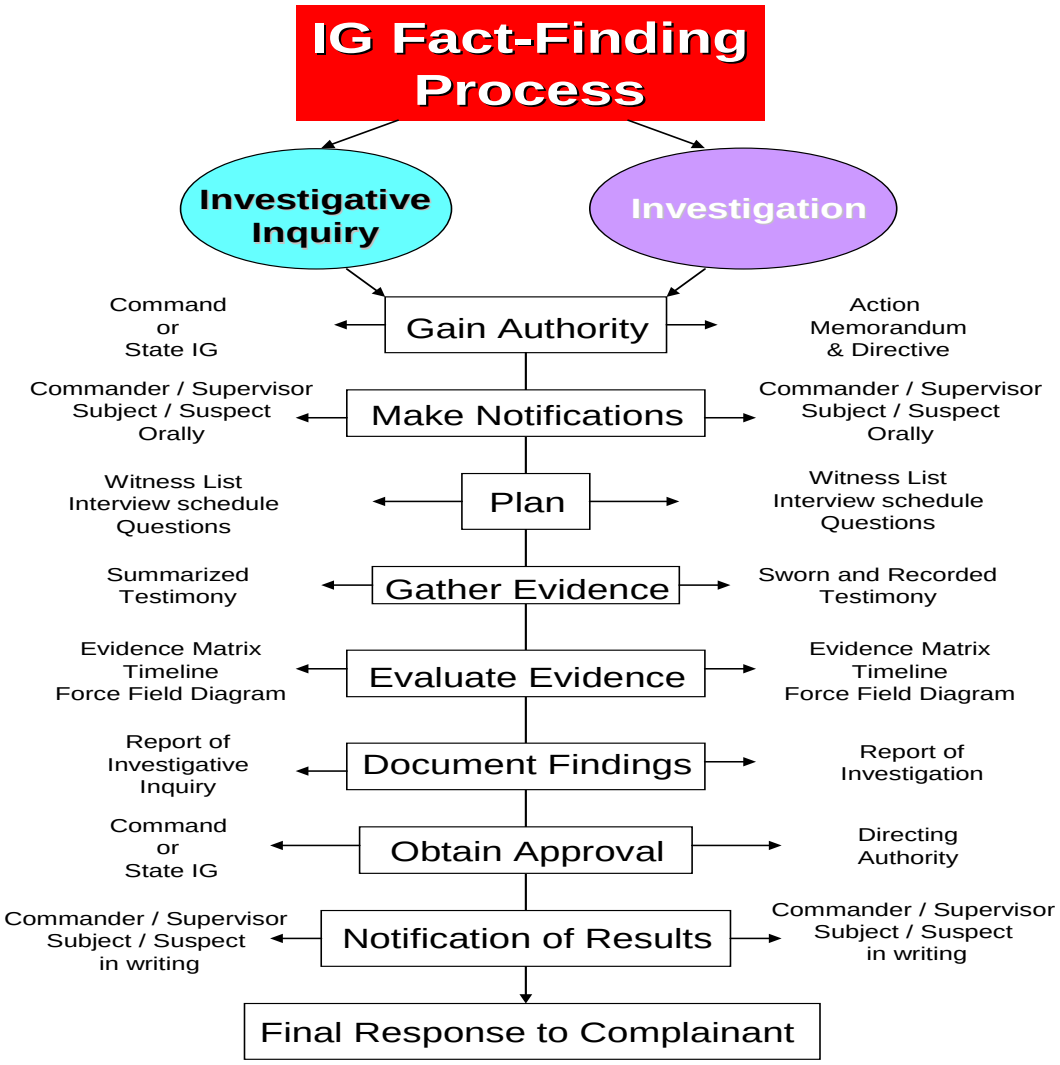
IG Fact-Finding Process
Investigative Inquiry
Investigation
Gain Authority
Command or State IG
Action Memorandum & Directive
Make Notifications
Commander / Supervisor Subject / Suspect Orally
Commander / Supervisor Subject / Suspect Orally
Plan
Witness List Interview schedule Questions
Witness List Interview schedule Questions
Gather Evidence
Summarized Testimony
Sworn and Recorded Testimony
Evaluate Evidence
Evidence Matrix Timeline Force Field Diagram
Evidence Matrix Timeline Force Field Diagram
Document Findings
Report of Investigative Inquiry
Report of Investigation
Obtain Approval
Command or State IG
Directing Authority
Notification of Results
Commander / Supervisor Subject / Suspect in writing
Commander / Supervisor Subject / Suspect in writing
Final Response to Complainant

Figure II-2

Section 4-3

Plan

1. As in any military operation, planning is a critical element leading to the successful achievement of the objective. You formulate a plan of how you will obtain facts and information pertinent to the allegations you have received. The planning process for investigative inquiries and investigations is the same. You must develop a written investigative plan **(prescriptive provision in AR 20-1, paragraph 7-1b (4)(c)).**

2. The planning process begins with your assessment of the facts you must gather to substantiate or refute the fact that a violation of a standard occurred as alleged. This assessment occurs through a careful examination of the standard violated and the essential elements of that standard (e.g., the elements of proof). Next, you must determine where you go to gather those facts. Generally, this step involves deciding whom (witnesses) you must interview to gather and corroborate those facts and the questions you must ask to elicit the required information. You then develop a logical sequence for conducting the interviews. At this point, you also assess what documentary or physical evidence might be available that would contribute to your investigation.

3. It is also necessary for you to conduct a certain amount of logistical planning – court-reporter availability, travel orders, hotel arrangements, etc.

4. A suggested format for a plan is shown below. ***The plan should include a list of the witnesses (also complainant, subjects, and suspects) in the order you want to interview them, where you will interview them, and for how long.*** List the witnesses and documents needed for each allegation separately. This technique will prevent you from unexpectedly coming up short on evidence for a particular allegation. Often, this information appears in the form of an Evidence Matrix. An example is shown at Figure II-3. Items usually found in a good plan are:

a. **Background.** Keep a record of how the allegations were received, who has been informed of them or otherwise has knowledge of them, and who should be informed. This record may include a list of individuals, commands, or commanders and supervisors. This list will help when writing a final report. Experienced IGs have found it helpful to develop and maintain a chronology of events.

b. **Specific Allegations / Issues.** List the specific allegations that you have developed to this point (from your Action Memorandum).

c. **Evidence Required.** In order to plan an investigative inquiry or investigation properly, you must have an understanding of the evidence required to establish the facts that will either substantiate or refute the allegation. For example, if you are investigating allegations of adultery, you must establish that the suspect had wrongful sexual intercourse, that either the subject or the other party was married to someone else, and that the conduct was either prejudicial to good order or discipline or discreditable. Under the Manual for Courts-Martial, these items address the elements of proof for the standard.

5. You should also have a feel for the evidence that you will realistically be able to gather in your case (as you see it at that point in time). For example, in the adultery case, documentary evidence might establish that one of the parties was married, but verbal statements would probably provide the bulk of the evidence regarding intercourse (and most might be circumstantial). It is not premature during planning to develop a sense of what your standard of proof in the case will be (how much evidence will you need to establish a preponderance of evidence).

6. **Develop a Witness List** (includes complainants, subjects, and suspects). There are three areas on which you should focus: Whom are you going to interview? In what sequence are you going to conduct the interviews? What type of interview are you going to use?

a. **Whom are you going to interview?** Selecting whom you should interview can seem very difficult until you have had some practice. Plan to interview the minimum number of witnesses necessary to ascertain the facts in the case -- IGs are always concerned with confidentiality. There is no set rule for establishing the minimum number required -- use your judgment to determine when you have reached a preponderance of evidence. Keep in mind that you want to verify all important facts and that you do not accept something as factual or true just because someone of a higher rank says it is so. As a minimum, you should have at least one person or document that verifies or corroborates a fact. You must always appreciate the effect of talking to someone about allegations against someone else, especially someone in the same unit (i.e., the effect on confidentiality, unit cohesion, and morale). People often assume the worst when an IG is asking questions. Where possible, you may want to gather information from agencies outside the subject's or suspect's workplace. As an example, the local finance office may be able to give you information concerning whether an individual was on leave or temporary duty (TDY) for a certain period. This information may have less negative impact than going directly to the unit to find out. Where possible, use IG tech channels to get information. Often the complainant (if known) may be able to provide you names of witnesses, but do not limit yourself to what complainants provide. You will also need to develop your own witness list since the complainant is not likely to give you names of people who could provide another side of the story.

b. **In what sequence are you going to conduct your interviews?** You will normally interview the complainant first followed by any expert witnesses, the witnesses, and the subject or suspect last. Under some rare circumstances, such as a vague or anonymous allegation, you might elect to interview the subject or suspect first.

c. **What type of interview format will you use?** Most interviews conducted in an investigative inquiry will be statements while those conducted during an investigation will be testimonies. However, you may choose the type of interview you plan to conduct based upon the nature of the case. If you believe the sensitivity of the interviews require the taking of testimony during an investigative inquiry, then do so. You can always summarize the testimony from the tape recordings to statements.

7. **Additional Items.** Additional items that you must include in your plan are the elements of proof from the standard. Consult your SJA to ensure you have the correct focus and interpretation of the standard. Also, list those areas requiring discussion with proponents or subject-matter experts. List the regulations and other publications

necessary for the conduct of the investigation and make extracts for your report. Detail any other requirements such as travel arrangements and coordination required with external agencies. If you use an evidence matrix as an information-management tool, you can also use it as a planning tool to assist describing the information each witness or document may contribute to your investigation of the allegations. The Evidence Matrix is discussed in more detail later in this chapter.

8. **Schedule Witnesses.** Schedule and interview the minimum number of witnesses consistent with thoroughness (i.e. to reach a preponderance of evidence). This minimum number of witnesses will protect the integrity of your investigation. Additionally, ensure you interview all the witnesses provided by the complainant and the suspect / subject that have material evidence concerning the allegations. Consider these points when scheduling witnesses:

a. Provide the witness only with the information contained in the Directive. Avoid revealing the details of the allegations. Occasionally, you may need to provide a witness with additional information so that that person can prepare for the interview. For example, if you need a witness to bring documents related to a case to the interview, you will need to provide them enough information to identify the documents. Use caution. At times, you may be able to ask for several documents of the same type to protect the identity of the individuals involved in the investigation.

b. Protect the confidentiality of the witness and the confidentiality of others. Do not reveal the names of other witnesses, complainant, or subjects and suspects.

c. Follow the scheduling format except for answering administrative questions (like location and direction to interview location). During the scheduling call, the witness may begin to provide information concerning the case. Avoid this discussion until you are prepared to conduct the interview. However, on occasion you may decide to question a witness during the scheduling process to determine if that person is the correct witness. Again, you should be concerned about confidentiality. Be careful if a witness whom you believe to have information important to your case attempts to convince you otherwise. It is often difficult to judge over the telephone whether a witness is misleading you to avoid being involved.

d. Ask the witness not to discuss the investigation with anyone and explain the IG concept of confidentiality.

e. As the investigating officer, you will benefit from personally making the scheduling calls rather than having someone else make them for you. You are the most knowledgeable person concerning the case and why the witness is important to the fact-finding process. Should a witness prove reluctant to participate, you are the most likely person to persuade him or her to cooperate. Do not attempt to compel (order) a witness (Soldier or Government employee) to participate. If a witness is refusing to cooperate, contact the witness’s supervisor or commander. The witness’s supervisor or commander should compel the individual to cooperate, not the IG. This approach will maintain your IG impartiality. Remember: regardless of whether a person is required to cooperate or not, willing cooperation will yield the greatest benefit. On occasion, other IGs in tech channels or members of the witness's chain of command can schedule the person for you. Ensure that you give them specific instructions concerning confidentiality, location, and time of interview. If a witness is from another command,

consider contacting that command's IG before you contact the witness or the witness's commander.

Investigative Inquiry and Investigation Plan Format Outline

MEMORANDUM FOR RECORD

SUBJECT: Inquiry (or Investigation) Plan - (Case Name)

1. Mission. (Information should be similar to that stipulated in the first paragraph of your investigation Directive.)

2. Facts bearing on mission.

a. Background and Allegations. (Information should be similar to that contained in the second paragraph of the Action Memorandum. However, the allegations should be specific enough to describe adequately the scope of the investigation. Note when the Directive was signed, by whom, and refer to any relevant correspondence to or from VIPs.)

b. Applicable Regulations and Reference Publications. (List those applicable regulations / publications that apply to the allegation(s). For example, if the allegations pertained to procurement irregularities, the Federal Acquisition Regulation (FAR) would probably be a reference. Ensure the referenced regulation was in effect at the time of the alleged incident.)

c. Commands involved. (List the various commands that might be involved. For example, if the allegation pertained to an incident in a unit in Europe, the commands could include the specific division; corps; and, possibly, HQ USAREUR.)

d. Staff Agencies Having Knowledge of Case. (Include any staff agencies made aware of the allegation(s) and how they were informed. Identify any staff agency that may be a proponent for regulations or guidelines that could be related to the allegation(s).)

3. Evidence and Data Required.

a. Witnesses. (From information available to you, list the names of witnesses that you want to interview for each allegation. Remember: the number of witnesses and, possibly, the allegations within the scope of the directive may change. You may not need to question all witnesses about every allegation.)

(1) Allegation 1: (State the specific allegation)

(a) Witness #1

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(b) ....

(2) Allegation 2: (State the specific allegation)

(a) Witness #1

(b) ....

b. Documents. (List documents and records you need to substantiate or refute the allegation. These documents and records may include SOPs, training records, contracts, and more.)

c. Physical evidence. (List any required physical evidence).

4. Administrative Matters.

a. Itinerary: (When, where, and how you plan to conduct the investigation. The list should include: courtesy calls, transportation requirements, lodging requirements, interview locations, and witness interview sequence.)

b. Notifications. (Identify commanders and Subject(s) / Suspect(s) who should be notified IAW this guide and the Directing Authority's guidance.)

(1) Command(s).

(2) Subject(s) / suspect(s).

c. Travel Requirements. (TDY orders, passports, car rentals.)

List of Enclosures
that may be relevant

INVESTIGATOR'S SIGNATURE

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Witness Notification Format

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____
(CHECK WHEN DONE)

1. ( ) _____, this is _____ from _____ IG Office. We have been directed by the _____ to investigate the following allegations: (as stated in Directive)*
_____
_____

*NOTE: Use the general wording from the Directive. If you need to be more specific, use the wording from the Action Memorandum, but don't tell the witness more than he or she needs to know!

2. ( ) We do not suspect you of wrongdoing but believe you have information relevant to the investigation and need to interview you as a witness. We would like to interview you at (time) _____ on (date) _____ at (location) _____. The investigators are _____ and _____. Our telephone number is _____.

3. ( ) _____ has been notified of the investigation. (Can omit for non-DoD civilians.)

4. ( ) We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney, if you choose to consult one.

5. ( ) _____ was (telephonically / personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

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9. **Planning Tools.** Aside from the use of the Investigation Plan format, there are several tools that can aid you in both planning and resolving the investigation. A matrix can be used to help organize your planning efforts. You can use a Force-Field diagram to assist you in concluding your findings. The Force-Field Diagram is explained in detail in Section 4-13. Shown below are examples of both tools.

Evidence Matrix

Witness	Allegation #1	Allegation #2	Allegation #3	Other	Due Outs
Mr. Smith (Complainant)	X	X	X	How did she become aware of the allegations? W5H2	
CPT Jones (Cdr, Co A)	X	~	_		
MAJ Brown (Asst G-1)	_	X	X		
Documents	Hotel Receipts Vehicle Dispatch Log	DD Form 4072 for COL Andrews	Any Government Contracts?		
COL Andrews (Suspect)	X	X	X		

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1.

Timeline

Complaint Received

X – Primary witness ~ – Discuss if knowledgeable - – Do not discuss

Figure II-3

Force-Field Diagram

COL Smith improperly participated in an adulterous affair in violation of Article 134, UCMJ.
One or more parties were married. Wrongful sexual intercourse transpired
Conduct was detrimental to good order and discipline.

Substantiate	Not Substantiate
• Enter evidence here that would indicate the subject / suspect did perform the alleged impropriety • Summarize the evidence and indicate its category and level (see Chapter 6)	• Enter evidence here that would indicate the subject / suspect did not perform the alleged impropriety • Summarize the evidence and indicate it's category and level (see Chapter 6)

Key – (O) Opinion; (H/S) Hearsay; (C) Circumstantial; (D) Direct

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Section 4-4

Gather Evidence

The predominant category of evidence gathered by IGs is testimony obtained through oral statements. Interviews are the method used to gather oral evidence. In every interview, the IG has three major concerns: the rights of the individual being questioned, maintaining confidentiality, and obtaining the evidence needed. The process used by IGs to conduct interviews is designed to protect rights and enhance confidentiality. The IG's preparations and skills as an interviewer affect the quantity and quality of the evidence gathered. In investigations, the IG usually gathers transcribed and recorded testimony taken under oath by conducting formal interviews. In investigative inquiries, statements, gathered via informal interviews, are the norm.

Section 4-5

Preparation for Interviews

1. **Overview.** As with most activities, interview preparation is vital to success. Interview preparation falls into three areas: witness scheduling, administrative considerations, and substantive issues. Determining the sequence in which you will conduct interviews is a key step in the planning process.

a. **Witness Scheduling.** Experience has shown that the best sequence is to interview the complainant first; then the subject-matter experts followed by other witnesses; and, finally, suspects or subjects. Naturally, the sequence of interviews will vary based on the nature of the allegations and on the availability of the witnesses, subjects, or suspects. Many inexperienced investigators are inclined to resolve cases quickly by talking to subjects or suspects first. Avoid that pitfall by following the recommended sequence that will:

- Give you information needed to ask the right questions of the subject or suspect.
- Enhance truth telling (i.e., people are more likely to be truthful if they know you have done your homework).
- Enable you to challenge immediately statements that are inconsistent with other evidence or that appear untrue.
- Allow you to advise subjects or suspects of all unfavorable information against them and allows them an opportunity to comment. You may have more unfavorable information at the end of an investigation than at the beginning. Remember: you must allow the subject or suspect to comment on all unfavorable information that you intend to use in your report!
- Decrease the likelihood for a recall interview. An interview conducted too early in the investigative inquiry process increases the likelihood of the need for a recall interview and may unnecessarily consume more of your time.
- Protect the legal rights of all persons involved -- witnesses, subjects, and suspects. For example, as you become more knowledgeable about the case, you are less likely to interview someone as a witness when they should have been treated as a subject or suspect.

You should also consider the order in which you will interview similar witnesses. Frequently, investigators will group witnesses by the evidence they are expected to provide. For example, all witnesses who observed a specific event might be interviewed sequentially.

b. **Out-of-Sequence Interviews.** There are circumstances that may cause you to interview the subject or suspect early in the investigation or inquiry. Examples of these circumstances are as follows:

- You have anonymous allegations and cannot readily identify any witnesses.
- You have vague or anonymous allegations that the subject may be able to clarify. The subject or suspect may provide you the names of witnesses.
- The subject or suspect has information not readily available elsewhere that you need early in the inquiry.
- The subject or suspect is about to retire or depart via permanent change of station (PCS) to a distant location and flagging is not appropriate.
- You believe this is one of those rare occasions when the need for speed justifies the risk.

c. **Administrative Preparation.** Ensure that you have the proper administrative details completed prior to the interview. These details include selecting the right interview guide from Appendix A and filling in the blank spaces with information from the Action Memorandum and Directive. If you are going to request a social security number, have a copy of the Privacy Act Statement available. If you are interviewing a suspect, complete the front side of a DA Form 3881. If taping, have a Transcript Information Sheet available. Set up and test your tape recorders; have extra batteries and a sufficient number of blank tapes on hand. Use AC power whenever possible; use batteries only as a back up power source. (As a matter of routine, once you complete a case, erase your tapes, remove the old labels, and affix new blank labels.)

(1) **Time Factors.** Another key planning consideration is the time it will take to conduct each interview. There are no hard and fast rules -- some interviews move along quickly, others become lengthy. At a minimum, you should plan time for the following:

(a) Rapport Building. Set aside a minute or two to put the witness at ease before you begin your interview.

(b) Pre-tape or Introduction. Plan to spend 5-15 minutes covering the points of your pre-tape. More time is required if you must execute a rights warning certificate.

(c) Questions and Answers. Always consider the possibility of unexpected issues or allegations arising during the interviews and allow a few extra minutes.

(d) Protect Confidentiality. Provide adequate time to allow one witness to leave and another to arrive without violating confidentiality. As a contingency, you should plan on what to do when you have a witness in your interview room and another waiting outside to be interviewed. Many IGs take a break and leave their interviewee in the interview room while they move the person waiting outside to another location.

(e) Administration. Plan time for you and your partner to compare notes, prepare for the next interview, and take care of personal needs. Experience has shown that an interview that turns out being shorter than planned is far better than an interview that takes more time than scheduled.

(2) **Location Considerations.** You can conduct interviews almost anywhere. The major consideration in choosing a location is privacy. Some locations, however, offer other advantages as well.

(a) **Your IG office.** Experience has proven that an IG office is often the best place to conduct interviews. You control the environment. You can avoid interruptions such as ringing telephones and people entering unannounced. Your office personnel can control other witnesses who may come early for an interview. Should you sense that a witness is going to be difficult, you may be able to ask for assistance from a more experienced IG or an IG of a higher rank. Your office is probably located away from the subject or suspect's workplace. Witnesses can discreetly visit your office. Conducting interviews at your office maximizes your efficiency. You do not have to spend time traveling, and you have your administrative support immediately available.

(b) **Witness's Workplace.** Another choice is to conduct the interview at the suspect's, subject's, or witness's office. The advantages are that the interviewee may be more at ease, more willing to cooperate, and more willing to share information. Often, your

willingness to come to the witness's location for the interview can help establish rapport with a reluctant or defensive witness. The witness may also have ready access to information, records, or documents. The disadvantages are that many people at that office may find out that you are there, and rumors could result. Additionally, you have little control over privacy and probably cannot prevent unwanted interruptions. Subjects or suspects may want you to conduct the interview in their office because they feel more in control. If you have interviewed the proper witnesses, gathered the facts, and prepared for the interview, it will make little difference.

(c) **Hotel or Motel.** There will be times when you may need to travel, and your interviews may have to be conducted at a motel or hotel. These interviews can be done effectively if you plan ahead. When possible, arrange for a neutral interview location (have your orders cut to allow you to rent a conference room, extra room, or business suite). When notifying someone that you will interview him or her at a motel, set up an initial meeting in a public place such as the lobby. There you can properly identify yourself and make the interviewee more at ease. While you are not prohibited from interviewing one-on-one, even if the interviewee is of the opposite sex, having a partner while interviewing may make the interviewee more comfortable and provide everyone involved with a measure of protection from possible allegations of misconduct.

(d) **Other Installations.** If you must travel to another installation, you can request that the local IG provide you an interview room. You need to ensure that the local IG is aware of your needs and requirements. Additionally, consider asking the local IG to make witness notifications for you. The local IG is known in the command, knows the local environment, and can possibly enhance the confidentiality of your inquiry or investigation. Consider using a Reserve Center or National Guard Armory as an interview location if there is no installation nearby. Coordinate with the local IG.

(e) **Witness's Home.** At times you may have to interview a witness (usually a civilian) at his or her home. This situation can be undesirable because you lack control. Interviews conducted in a home are fraught with distractions. Additionally, the physical characteristics of the site may not be good. In all cases you want to ensure that your interview location is private enough to ensure that you can protect confidentiality of witnesses and preclude unnecessary disclosure of the details of the case.

d. **Substantive Issues.** Prepare an interrogatory (list of questions) for the interview. The process of building an interrogatory begins with the standards / elements of proof and your assessment of the evidence you believe the witness possesses. You then write questions to gather that evidence. War-game possible answers the interviewee might provide. The interrogatory provides you a road map for the interview and helps ensure that you do not forget to ask questions on all key points. If you plan to have the interviewee comment on documentary evidence, ensure that you have the documents at hand in the order that you plan to introduce them during the course of the interview. (See Interviewing Techniques in Appendix B in this guide for additional information.)

2. **Pre-Interview Rehearsal**. You should also consider rehearsals during your interview preparation. Set up all of your required materials in the location you plan to use for the interview. Ask for other IGs in your office to role-play the part of the witness you plan to interview. Test your recorders and telephone (if required) for sound quality while practicing your read-in and read-out procedures. Ask your role-playing witness the draft questions and refine your interrogatory. Good IG interviews don’t just happen through wishful thinking. Just like any other military operation, rehearsals are a key to success. Some experienced IGs also find it

helpful to develop a pre-interview checklist to ensure that they have the scripts, documents, and tools necessary to conduct the interview. Remember the old adage -- practice, practice, practice!

Section 4-6

Interview Types and Modes

1. **Interview Types.** There are three types of IG interviews: Witness Interviews, Subject Interviews, and Suspect Interviews. Each interview type has its own unique set of considerations for planning and conduct and are addressed in this section and in Appendix B.

2**. Interview Modes.**

a. **Face-to-Face.** This is the most efficient method of communication and is the ideal method for conducting IG interviews during both investigative inquiries and investigations. Face-to-face interviewing allows you to observe the non-verbal reactions of the individual, enhancing your ability to establish and maintain rapport and ask effective follow-up questions. You should always attempt to interview your key witnesses and the subject or suspect face to face. Appendix B describes the non-verbal aspects of face-to-face interviews.

b. **Telephonic Interviews.**

(1) You may obtain both a statement and testimony over the telephone. A telephonic interview is an excellent time and money-saving method for interviewing witnesses who reside or work at a distant location. While you cannot observe the witness's non-verbal communications, you can often gain insights from the witness's inflection or tone of voice.

(2) Normally, you must contact witnesses in advance to schedule telephonic interviews. Many witnesses are not prepared to devote the required time to you when you first contact them. Also, you must be concerned about confidentiality. If you call them at work, they may not have the desired degree of privacy in their office. Always ask a telephone interview witness if he or she is in a location where he or she can speak freely and privately before conducting the interview. You should always strive to interview the witness in a location that provides a confidential setting in which the witness feels free to speak openly during the interview.

(3) Consider having a local IG at the witness's location and set a time for the interview. This approach may help put the witness at ease and establish your identity. The local IG may also provide a private location in his office for the witness to speak with you during the telephonic interview.

(4) If you are conducting a formal interview, just prior to calling, have the IG at the witness's location conduct a read-in on tape using the appropriate interview guide from Appendix A. Once the call is placed, the IG who administered the read-in script can verify the witness's identification and the fact that the witness has been properly placed under oath and advised of his or her rights. If you do not have an IG present at the witness's location, you may administer the oath and read-in over the telephone. Close the interview using the script in the appropriate interview guide (witness / subject / suspect). Either IG can conduct the read-out.

(5) In some cases, you may want the local IG at the witness's location to remain in the room or even on the telephone with the witness. The IG can later provide you feedback

on the non-verbal reaction of the witness to your questions. In other sensitive cases, you may want the IG to give the witness complete privacy for the interview.

(6) A detailed list of questions prepared in advance is essential for a successful telephone interview. Try to anticipate the witness's answers and have follow-on questions prepared. It helps to have another IG participate in the interview using an extension telephone. Make sure you inform the witness of all parties on the telephone at your location.

(7) If you record a telephonic interview, you must inform all parties that the call is being recorded. Taping telephone conversations without the knowledge of all parties can violate Federal and / or State law. You can purchase simple devices through the supply system that allow your tape recorder to adapt to a telephone. You may also use a speaker telephone if available. This technology allows you to record the conversation and aids in the process when another IG is present. You are not required to ask whether someone consents to a recorded telephone interview. If the individual seems uncomfortable with the telephonic interview process, regardless of whether that person is required to cooperate, you have a problem you must overcome. When tape recording a telephonic interview using a speaker telephone, ensure the microphone is not voice-activated. Voice-activated microphones will cause the first one or two words in a sentence not to be recorded, which could change the entire meaning of someone’s testimony.

c. **Interviews by Others.** In some cases you may coordinate via tech channels for another IG to interview witnesses for you. You must provide the interrogatories and enough background information so that the IG can conduct informed interviews. It is helpful to provide the IG with anticipated answers that you might expect from each witness. Also provide the IG a copy of your Directive as well as copies of any documentary evidence he or she may need during the interview. After the interviews are completed, the assisting IG sends you the tapes or copies of the transcripts. After you have acknowledged receipt of the testimony, the assisting IG destroys all file material.

Section 4-7

Other Participants in Interviews

1. **Court Reporters.** If a court reporter not assigned to your IG office is used to record testimony, you must instruct the reporter on his duties and responsibilities. Caution the reporter about the privileged nature of the investigation. Provide instruction for taking the testimony, and direct the reporter to make a verbatim record of the testimony. Have the court reporter set up the equipment neatly but inconspicuously. The court reporter should test any recording devices before you begin interviewing. Require the reporter to save notes and give them to you with the verbatim transcripts. At the beginning of the investigation, administer the following oath to the reporter:

> OATH*: "Do you, _____, solemnly swear (or affirm) that the testimony taken in the case under investigation will be truly taken and correctly transcribed to the best of your ability; and that all knowledge of the case coming to you will be held in confidence; that all stenographic notes, carbon paper, spoiled sheets of testimony, or other papers, and all transcriptions thereof, will be carefully safeguarded and delivered into my hands, or otherwise disposed of as I may direct, so help you God?"*

2**. Interpreters.** If an interpreter is required, caution him on the privileged nature of the investigation. You may administer to the interpreter the IG oath for a Temporary Assistant IG (see paragraph 2-6, AR 20-1). Immediately prior to the interpretation, administer the following oath at the beginning of the investigation but do not repeat it for each witness:

> OATH: *"Do you, _____, solemnly swear (or affirm) that you will interpret truly the testimony you are called upon to interpret, so help you God?"*

3. **Attorneys.**

a. Suspects have a right to have an attorney present during their interview. You may choose to allow witnesses or subjects who request the presence of a lawyer during an interview to do so; however, they have no right to demand the presence of a lawyer. Remember: the purpose of a lawyer in an IG interview is only to advise the witness, subject, or suspect. You must prohibit a lawyer from answering questions for the suspect or from advising you on the conduct of the interview. We do not allow anyone other than transcribers to record or take notes during IG interviews. If you encounter difficulties with an attorney during an interview, take a break and contact SJA for advice. It is always best to explain the ground rules to both the suspect and the attorney during the pre-tape. This approach often precludes problems later during the interview.

b. If a witness or subject demands his right to have a lawyer present during the interview, what should you do? Explain that an IG interview is not a court of law and the proceedings are administrative in nature. Additionally, they do not have a right to have a lawyer present because they are not a suspect and do not have criminal allegations against them. You may allow the individual to have a lawyer present during the interview. Should a witness or subject request to see a lawyer during an interview, it is again your choice. In most cases it is best to allow them to do so. To not allow them to do so might make them defensive and reluctant to answer questions.

4. **Friends.** Persons being interviewed may request to have friends present. No one has a right to have a friend present. If you choose to allow a friend to be present, you must advise the friend about IG interview procedures. The friend is there for the moral support of the witness only and must remain silent. Inform the friend of confidentiality, and ask that he or she not reveal any information discussed during the interview.

5. **Union Representatives.** Some DA civilian employees may have the right to have a union representative from your installation present during their interviews. Others may request a union representative even if it is not their right if they are considered a member of the collective-bargaining agreement established between the union and the government. It is your responsibility to control a union representative at your interview whether that person is there by right or with your permission. In most cases, the role of the union representative is to observe and advise the witness. Union representatives do have the right to comment on the record but may not speak for their represented employee. Check with SJA regarding the collective-bargaining agreement at your installation.

Section 4-8

Status of Individuals Chart

The chart below summarizes the status, rights, non-rights, and interview guide formats to use during IG interviews.

Witness Interview Status, Rights, and Non-Rights

Military Status at the Time of Interview	Role in Investigation	Subject to UCMJ	Required to Testify	Lawyer Present	Union Representation	Version of Read-In / Out (page)
Active Army	Witness Subject Suspect	Yes Yes Yes	Yes Yes No (1)	No No Yes	NA NA NA	A-2 A-9 A-16
USAR on any Official Status	Witness Subject Suspect	Yes Yes Yes	Yes Yes No (1)	No No Yes	NA NA NA	A-2 A-9 A-16
ARNG Title 10 (IADT, OCONUS, AGR) (2)	Witness Subject Suspect	Yes Yes Yes	Yes Yes No (1)	No No Yes	NA NA NA	A-2 A-9 A-16
ARNG Title 32 (IDT, AT, AGR) (2)	Witness Subject Suspect	No No No	Yes Yes No (1)	No No Yes	NA NA NA	A-2 A-9 A-16
USAR & ARNG when not on duty	Witness Subject Suspect	No No No	No No No	No No Yes (3)	NA NA NA	A-2 A-9 A-16
DA Civilian Employees	Witness Subject Suspect	No No No	Yes Yes No (1)	No No Yes (3)	Yes (4) Yes (4) Yes (4)	A-2 A-9 A-16
Civilians, including State NG Employees and Family Members	Witness Subject (5) Suspect (5)	No No No	No No No	No No Yes (3)	No (4 & 5) No (4 & 5) No (4 & 5)	A-2 A-9 A-16

NOTES:

(1) The duty of a suspect to cooperate is offset by his right to remain silent on all matters that may incriminate him.

(2) IG should check the guardsman's orders to determine status. ADT / ADSW / AGR can be either Title 10 or Title 32.

(3) Must be civilian lawyer at own expense or as appointed by law.

(4) Only applicable if the civilian employee's position is covered by a collective-bargaining agreement. The employee does not have to be a member of a union.

(5) Normally a civilian-civilian will not be either a subject or a suspect in an IG investigation. Consult with your SJA.

Section 4-9

Four-Part Interview and Interview Documents

1. Depending on the nature of the allegations, sensitivity of the case, and location of witnesses, your interview may be anything from a very brief, informal telephone call (documented in a MFR summary) to a formal, recorded session lasting several hours.

a. **Investigative Inquiry versus Investigation.** Most of your interviews in an investigative inquiry will be informal. Generally, the more serious the issue, the more formality is appropriate. Interviews given under oath are also useful in situations when you have conflicting evidence from different sources or when the allegations and issues are complicated. The verbatim transcript of testimony under oath will provide an accurate record of what was said. During investigations IGs take recorded testimony under oath that is later transcribed. There are circumstances, however, when tape-recorded testimonies under oath are not required such as interviews with reluctant civilian-civilian witnesses or with subject-matter experts.

b**. Testimony.** Formal interviews are conducted in four parts consisting of a Pre-tape briefing; a recorded Read-in; recorded Questioning; and a recorded Read-out. Interview guides, the pre-tape briefing, and all other documents necessary for the interview can be found in Appendix A, Interview Prep Book.

2. **Pre-Tape Concept.** The pre-tape briefing shown below (also found in Appendix A) is an informal briefing given by you to the interviewee. It serves several purposes. It familiarizes the witness with the interview process and helps to put him or her at ease (most witnesses have never been involved in an investigation or investigative inquiry). It provides you an opportunity to establish a dialogue with the witness. A skillful interviewer uses the pre-tape briefing to assess demeanor and to condition the witness to respond to questions. Most importantly, the pre-tape briefly explains key information, outlines administrative details, and answers any questions the interviewee may have concerning the interview process off tape, thus saving transcription time and expense. The pre-tape briefing includes:

- Advising the witness of the Privacy Act. (Required when you ask for personal identifying information such as the witness's social security number, home address, or home telephone number.)

- Advising the witness of the FOIA and that his testimony may be requested for unofficial purposes.

- Emphasizing confidentiality but not guaranteeing it. Witnesses must understand that their testimony can be used for official purposes.

- Advising suspects of their rights.

3. **Pre-tape Briefing Outline.** Use the pre-tape outline as a guide, become familiar with the contents, and brief the witness in your own words. Ensure that you can explain the

reasons for each item. This briefing comes easily with experience and provides you the opportunity to establish rapport with the witness and condition him or her to respond to your questions. The following paragraphs amplify the outline contained below.

a. Introduce yourself and show your credentials. Your credentials include a Letter of Identification and your ID card. An example of an IG Letter of Identification is at the end of this section. Many IGs reduce this letter to ID card size and laminate it.

b. Explain that the interview will be conducted in four parts (Pre-tape briefing, Read-in, Interrogatory, and Read-out), and explain that the procedures are standard for IG investigations.

c. Explain your role as a confidential fact-finder and that both “hearsay” and “opinion” evidence can be accepted in testimony. You may have to define those terms for the person whom you are interviewing.

d. Explain how the IG System protects the confidentiality of the witness but that law or regulation may in some instances result in the release of the testimony. For example, a court may order the release of an IG record, or the commander may want to use the case file for adverse action that would result in the release of the testimony to the suspect and the chain of command.

e. State that the interview will be conducted while the witness is under oath or affirmation and that it will be recorded. Do not ask the witness whether he or she wants to be recorded or take the oath. If the witness raises the question, explain the importance of taking recorded testimony under oath and transcribed.

f. Explain that a prepared script is used during the Read-in and Read-out portions of the interview to ensure that the witness's rights are explained as required by law and regulation. These scripts are contained in the Interview Guides at Appendix A.

g. Explain that you will ask questions and give the witness time to respond.

h. Explain that at the end of the interview, you will again read from a prepared script, and the witness will be given an opportunity to present additional material that pertains to the investigation.

i. Tell the witness that because the interview is recorded, all responses must be verbal; not to speak while anyone else is speaking; and to avoid actions such as tapping on the table, which might obscure words in the recording.

j. Caution the witness to discuss classified information only if necessary and to identify any classified information given. Instruct the witness to ask you to turn off the tape recorder prior to discussing classified information so that you can determine whether the information is necessary to the case and for the transcript. If any portion of the tape contains classified information, then the tape must be classified. Likewise, if any classified information is used in your report, the report also must be classified and protected as appropriate. If you use court reporters, make sure they have appropriate clearances and have taken the IG oath as a Temporary Assistant IG.

k. Explain that the final product of the investigation will be a report to the directing authority.

l. Explain that FOIA allows members of the public (anyone) to request any government record. These requests include IG records such as the transcript of the interview or the report of this investigation. Explain that IG records (testimony and any information extracted from testimony and included in the ROI / ROII) can be protected from a FOIA release if the witness wants it protected. Explain that at the end of the interview, as part of the Read-out script, you will ask the witness whether or not he or she consents to release. A "yes" will mean the witness consents to release and a "no" means they do not consent to release. Should there be such a request, you will forward the entire record to DAIG because The Inspector General of the Army is the lowest level release authority for IG records for unofficial purposes (FOIA requests are unofficial). You should explain that while IG records are protected from unnecessary release, the records could be used for official purposes as necessary throughout the Federal government and that FOIA consent has nothing to do with that use.

m. Be sensitive to the fact that many witnesses misunderstand the FOIA release question. Some witnesses believe you will think they are trying to hide something if they do not consent to release. Do not advise the witnesses how to answer this question, but do make them aware of what it means. Additionally, you should tell them that you draw no inference about whether they are truthful or not from their answer regarding FOIA. This issue is strictly an administrative matter for you.

n. Provide the witness a copy of the Privacy Act Statement summary (attached at the end of this section) and allow the witness to read it. Ask if the witness has any questions. This procedure will save time after you start the interview. If there are questions, tell the witness that the purpose of providing the summary is to explain our authority to request personal information and that the release of his or her social security number is voluntary. This statement is not a consent to release to a third party and does not have to be signed. You will refer to it in the Read-in.

o. Have the witness complete the applicable information on a Testimony Information Sheet (header sheet) (attached below). Explain that the header sheet is designed to assist whomever does the transcribing. During the interview, correct spellings of proper names and acronyms will be recorded on this sheet. The person transcribing often has difficulty with those items. After the interview, fold the header sheet and secure it around the interview tapes with a rubber band. This technique organizes your tapes and ensures the transcription is not attributed to the wrong witness’s testimony.

p. Explain that you can turn off the recording devices and discuss points off tape but that everything said is considered on the record and may be used in the investigation regardless of whether the tape recorder is on. Explain that you can turn the tape recorders off for any breaks as required, but anything said off tape is still on the record and may be introduced later on tape.

q. Verify the status of the witness (Active Army, USAR, ARNG, AGR, Federal technician, State technician, civilian, etc) to determine his or her rights and whether he or she is subject to the UCMJ (see above).

r. While not required, you may explain to civilian Federal employees their right to have a union representative present as described previously in Section 7-5.

s. If you are interviewing a suspect, execute the DA Form 3881, Rights Warning Procedure / Waiver Certificate, during the Pre-tape briefing. You will refer to it during the Read-in. If possible, ensure the SJA reviews the DA Form 3881 for legal correctness. (See also Section 7-8.)

(1) Use the DA Form 3881, Rights Warning Procedure / Waiver Certificate, to advise suspects and witnesses who incriminate themselves of their rights. Consult your SJA concerning its proper use. The general procedures are to have the suspect read the front side, Part I, which you will have completed in advance. Then read the backside, Part II, aloud while the suspect reads a copy. Ask the suspect the four waiver questions. If the suspect chooses to waive his rights, have the suspect sign the waiver in Section B. You must also sign the appropriate block in Section B. Ensure that the name of any witness of the execution of the waiver appears in the appropriate block in Section B. When a witness self-incriminates, stop the interview and execute the Rights Warning Procedure / Waiver Certificate as described above. If the witness, now a suspect, waives his or her rights, continue the interview. If he or she invokes those rights, ask if he or she consents to release under FOIA, record the time, and end the interview. Do not ask any other questions except for consent to FOIA.

(2) Should you have to execute a DA Form 3881 during an interview and you are not sure what to enter for allegations, take a break and call your SJA. If the SJA is unavailable, a general description of the allegations in your own words (i.e., failure to follow a regulation, misuse of government equipment, etc.) will suffice. If you question a suspect a second time on the same allegation(s) for which you already completed a DA Form 3881 (and that person waived his or her rights), you do not have to complete a new DA Form 3881. However, if you are questioning the suspect concerning new allegations, you must complete a new DA Form 3881 that includes any new allegations or suspected violations. The original copy of the DA Form 3881 should be included with the suspect's testimony in the ROI / ROII.

4. **Read-in Script.** The Read-in is a formal script used to begin the interview. Appendix A contains initial and recall interview guides for witnesses, subjects, and suspects. Before an interview, select the correct interview guide and fill in the blank spaces with the correct personal data from the investigation's Action Memorandum and Directive. If you are conducting an investigative inquiry and have no Action Memorandum or Directive, fill in the allegations about which you are inquiring. During the interview, complete the Pre-tape briefing, turn on the tape recorder, and read the Read-in script verbatim. This technique ensures -- as a matter of record -- that you fully and correctly advised the witness, subject, or suspect of the process and his or her rights. The Read-in and Read-out scripts were carefully prepared to ensure that they are technically correct. Do not paraphrase the material in them. The only modifications you should make are if an individual advises you that he will neither swear nor affirm (you indicate that the testimony is not under oath) or if you are conducting a recall interview and the previous testimony was not sworn (add the oath to the recall Read-in).

5. **Questioning.** The questions are the meat of an interview. During preparation, develop an interrogatory (a set of questions) to elicit the anticipated evidence from the witness. Once the interview begins, be flexible. You may have to alter the questions or the order in which you ask them based upon the topics introduced by the witness, the mood of the witness, and variances in the information actually presented. A detailed list

of questions is essential for a good interview. Try to anticipate the witness's answers and have follow-on questions prepared. It helps to have another IG participate in the interview. Your partner should ensure the questions are answered clearly and completely. You must be prepared to ask difficult or embarrassing questions in a calm, forthright, and professional manner. The elements of proof from your standards will guide your question development. When interviewing a subject or suspect, you must ask questions that allow the subject or suspect to comment on the allegations and all adverse information that will appear in the report -- even if only to deny the allegations.

6. **Read-out Script.** The Read-out is a formal script that closes the interview. Read-outs follow Read-ins in the interview guides at Appendix A. A key portion of the Read-out is advising the witness of the FOIA and having that person respond "yes" or "no" on tape to indicate whether or not he or she consents to release of his or her testimony. Another key item is the admonition to the witness regarding confidentiality.

7. **Statements**. Informal interviews consist of three phases: an introduction, questioning, and a closing.

a. **Introduction**. The introduction is very similar to the Pre-tape briefing for taking testimony. In fact, you may wish to use all or part of the outline at Appendix A to guide your introduction when obtaining a statement. Using the standard outline helps to ensure that each witness gets the same information, that you cover all essential topics, and that your presentation is smooth and confident. At a minimum, you should discuss the investigation / investigative inquiry process, the IG role, Privacy Act, FOIA, and rights warning (if required).

b. **Questions.** There is <u>no difference</u> between questioning when taking a statement and questioning when taking testimony. The evidence that you expect to gather affects the questions you draft in your interrogatory. The information you receive and the demeanor of the witness affects how you actually ask the questions. These factors are independent of the type of interview you conduct. Remember: both are equally as thorough.

c. **Closing.** Once you complete your questioning, you must close out the interview. You should close out with some type of statement that allows the individual to know what to expect. Be candid. If you don't think you will ever contact the witness again, say so. If you sense that the witness fears retribution for cooperating with the IG, tell the witness to contact you or your office if he or she becomes the target of reprisal (IGs would treat that situation like any allegation we receive). When conducting an interview, do not speculate on the outcome of a case or commit yourself to a milestone for its completion. Ask the witness whether he consents to release his testimony in response to unofficial requests under the FOIA (see the READ-OUT portion of the investigations interview guide.). If you do not ask the question, and there is a request for the record, the information he provided must be treated as releasable. Finally, you should request that the individual not discuss the case with anyone except an attorney should he or she choose to consult one.

PRE-TAPE BRIEFING OUTLINE

See the discussion paragraph 3 of this section, of the guide.
Use your own words, but address each item listed below.

1. **Introduction**

1a. **Telephonic**

- Are you still available? Can you speak freely and privately?
- Introduce the IGs present
- We're on a speaker phone so we can record and take notes. We'll tell you when we go on tape. We will be using standardized scripts.

1b. **Face-to-face.**

- Identify yourself as the Investigator(s) -- Show military ID and IG credentials / detail card
- Show the Directive

2. **Explain the Investigative Procedure** - “This is a four-part interview...”

1. PRE-TAPE briefing (we are doing this now).
2. Formal READ-IN. (a formality designed to ensure that the rights of the individual are fully explained, legal requirements are met, and the oath is administered to obtain your pledge to provide truthful testimony. Unless you prefer the word "affirm," we will use the word "swear." Do you have a preference? Do you have an objection to the phrase "so help me God?")
3. Questioning.
4. Formal READ-OUT.

3. **Explain IG investigator's role** - “IGs are...” or “We are...”

- Confidential fact-finders for the Directing Authority.
- Collect and examine all pertinent evidence.
- Make complete and impartial representation of all evidence in the form of a written report.
- No authority to make legal findings, impose punishment, or direct corrective action.
- Dual Role of IG:
  - Protect best interests of U.S. Army.
  - Establish the truth of the allegations or that the allegations are not true and clear a person's good name. Anyone can make allegations.
- IG confidentiality:
  - Protect the confidentiality of everyone involved but do not guarantee that protection.
  - Will not reveal sources of information.
  - Will not tell you with whom we have talked.
  - Will not tell you specific allegations being investigated (except for subjects and suspects).

4**. Explain the Interview ground rules**

- We normally take recorded testimony under oath and later transcribed. Recorders improve accuracy. (Ask if the witness objects to swearing; some people would prefer to affirm.)
- All answers must be spoken. Tape recorder cannot pick up nods or gestures.
- Classified information: If classified information comes up, we will discuss that information off tape first.
- Break procedures: We can go off tape at any time, but…
- We never go off the record.

5. **Release of your testimony**

- The last question we ask you during the READ-OUT is whether you consent to release your testimony and any and all documents provided to the IG to members of the public under the FOIA.
- FOIA allows members of the public to request government records for unofficial purposes. It is your choice whether you want to protect your testimony from release outside the Federal government.
- You will be asked to decide at the end of the interview if you consent to the release of your testimony (we do not infer anything from your answer).
- "NO" = Do not consent. "YES" = Do consent.
- Our report, including your testimony, will be used as necessary for official government purposes.

6. ***Privacy Act of 1974 (**Privacy Act pertains to U.S. citizens only unlike FOIA, which applies to the world.)

- Disclosure of SSN is voluntary.
- Describes authority to ask for personal information.
- Please read the Privacy Act. Will refer to it during the formal read-in.

7. ***Testimony Information Sheet (Header Sheet)**

- Individual fills out first four (4) lines (name, rank, address, phone, SSN).
  Note: SSN is voluntary per the Privacy Act of 1974.
- Used by investigators for notes, acronyms, proper names, etc.
- Aids in preparing an accurate transcript.

8**. Confirm Current Status (AC, RC, NG, AGR, MILTECH, etc.)**

9**. *Rights warning / waiver.** Execute DA FORM 3881 (when appropriate, such as during a suspect interview). (See also Section 7-8.)

10. **Transitioning to the Taped Read-in**

- This is an administrative procedure; not a court of law.
- We can accept and use hearsay and opinion.
- We protect everyone's confidentiality but *do not guarantee* confidentiality.
- To keep this case as confidential as possible, you will be asked not to discuss your testimony with anyone except your attorney, if you choose to consult with one, without our permission.

* Provide interviewee with appropriate document.

IG CREDENTIAL / DETAIL LETTER - EXAMPLE

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION (M)
FORT VON STEUBEN, VIRGINIA 22605

(DATE)

TO WHOM IT MAY CONCERN:

The officer whose signature is here presented, LTC Albert R. Rightway, is representing the Inspector General, 66th Infantry Division, Fort Von Steuben, United States Army, on duty with the Inspector General office at Fort Von Steuben, Virginia. His responsibilities include conducting investigations and inquiries into matters for the Commanding General.

LTC Rightway is entitled unlimited access to all information and assistance, consistent with his security clearance, in the execution of his mission.

/s/
MOTTIN DE LA BLAME
MG, USA
Commanding General

/s/
ALBERT R. RIGHTWAY
LTC, IG

NOTE: IG credentials are locally produced with specifications determined by the Directing Authority.

PRIVACY ACT INFORMATION

DATA REQUIRED BY THE PRIVACY ACT OF 1974
PRIVACY ACT STATEMENT
FOR PERSONAL INFORMATION TAKEN DURING
INSPECTOR GENERAL WITNESS TESTIMONY

AUTHORITY: Title 10 US Code, Section 3020.

PRINCIPAL PURPOSE(S): Information is collected during an investigation to aid in determining facts and circumstances surrounding allegations / problems. The information is assembled in report format and presented to the official directing the inquiry / investigation as a basis for Department of Defense / Department of the Army decision-making. The information may be used as evidence in judicial or administrative proceedings or for other official purposes within the Department of Defense. Disclosure of Social Security Number, if requested, is used to further identify the individual providing the testimony.

ROUTINE USES:

a. The information may be forwarded to Federal, State, or local law-enforcement agencies for their use.

b. May be used as a basis for summaries, briefings, or responses to Members of Congress or other agencies in the Executive Branch of the Federal Government.

c. May be provided to Congress or other Federal, State, and local agencies when determined necessary by The Inspector General (DAIG).

MANDATORY OR VOLUNTARY DISCLOSURE AND THE EFFECT ON INDIVIDUALS FOR NOT PROVIDING THE INFORMATION:

For Military Personnel: The disclosure of Social Security Number is voluntary where requested. Disclosure of other personal information is mandatory, and failure to do so may subject the individual to disciplinary action.

For Department of the Army Civilians: The disclosure of Social Security Number is voluntary. However, failure to disclose other personal information in relation to your position or responsibilities may subject you to adverse personnel action.

For All Other Personnel: The disclosure of Social Security Number, where requested, and other personal information is voluntary and no adverse action can be taken against you for refusing to provide information about yourself.

TESTIMONY INFORMATION SHEET

INFORMATION FOR HEADING OF TESTIMONY TRANSCRIPT

To be completed in each interview, including recall witnesses.

Testimony of (Full Name):_____
(FIRST) (MI) (LAST)
SSN (voluntary):_____ Rank/Grade:_____
Position/Title:_____ Organization: _____
Address:_____ ZIP:_____ Phone: _____

XXXX

Section 4-10

Self-Incrimination and Rights Warning Procedure / Waiver Certificate

1. **Overview.** You must always be alert for the witness or subject who, while testifying, implicates himself or herself as a suspect. The admission of possible criminal wrongdoing need not be related to the case you are investigating. This point also applies to suspects who may implicate themselves in an area outside the scope of your investigation. If an individual implicates himself or herself in criminal activity: **stop, read, and execute the rights warning procedure and waiver on DA Form 3881, and continue the interview only if the individual waives his or her rights.**

2. **Procedures.** DA Form 3881 procedures are shown below (also found in Appendix A, Interview Prep Book). If you have any questions regarding the DA Form 3881 or encounter any difficulty when preparing or executing the warning / waiver, consult with SJA. The following steps allow the IG to complete the form in the correct sequence.

Step 1. Complete the administrative data on the front side at the top of the DA Form 3881 prior to the interview. List the allegations contained in the Action Memorandum in Part I of the form on the line at the top of Section A. If more room is needed, continue the allegations in Block 5 of Section A and, if needed, in the comments section at the bottom on the reverse side of the form. Ask the suspect to review the personal data and other information. Advise the suspect that you will formally advise him of his rights, explain his options, and then ask him if he is willing to waive his rights by signing the DA Form 3881. Also, inform the suspect that you will refer again to the rights warning / waiver when you conduct the Read-in (if you are taking testimony while interviewing a suspect).

Step 2. Read the appropriate paragraphs in Part II on the back of the DA Form 3881 (THE WARNING) to the suspect verbatim (**this reading includes advising the suspect of the specific allegations**). Ensure that the suspect understands what you have read. Note that different paragraphs are applicable for military and civilian personnel.

Step 3. Ask the suspect the first, third, and fourth questions in the second part of Part II on the back of the DA Form 3881 (THE WAIVER) verbatim. Ensure the suspect answers "yes" or "no" to the questions. Do not accept "I guess so" as an answer. The second question, "Have you ever requested a lawyer after being read your rights?" is not germane to IG inquiries / investigations. (Note: if the interviewee has a lawyer with him, you may have to adjust the verbiage of the fourth question to fit the situation.)

Step 4. If the suspect waives his rights, ask him to sign the front of the DA Form 3881 in Block 3 of Section B (SIGNATURE OF INTERVIEWEE). If the suspect does not agree to waive his rights, have him check the appropriate block(s) and sign in Section C (NON-WAIVER). If the suspect brings an attorney, have him check the "I want a lawyer" block on line 1 of Section C and sign on line 2.

Do not recall a suspect who previously invoked his rights unless the suspect agrees to such a recall and has coordinated the interview with an attorney. He will be notified of unfavorable information in writing and advised that he has the right to comment on the information if he chooses.

3. See notes in the Suspect Read-In Script in dealing with a witness who becomes suspected of knowingly making a false statement under oath or of having committed another criminal offense.

RIGHTS WARNING / WAIVER CERTIFICATE

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30, the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION	2. DATE	3. TIME	4. FILE NO
5. NAME *(Last, First, MI)*	8. ORGANIZATION OR ADDRESS		
6. SSN / 7. GRADE/STATUS			

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused. _____

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. *(For personnel subject to the UCMJ)* I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

   - or -

   (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense; or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS *(Continue on reverse side)*

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES *(If available)*	3. SIGNATURE OF INTERVIEWEE
1a. NAME *(Type or Print)*	
b. ORGANIZATION OR ADDRESS AND PHONE	4. SIGNATURE OF INVESTIGATOR
2a. NAME *(Type or Print)*	5. TYPED NAME OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR

Section C. Non-waiver

1. I do not want to give up my rights:
   ☐ I want a lawyer. ☐ I do not want to be questioned or say anything.
2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT *(DA FORM 2823)* SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. WARNING - Inform the suspect/accused of:
   a. Your official position.
   b. Nature of offense(s).
   c. The fact that he/she is a suspect/accused.
2. RIGHTS - Advise the suspect/accused of his/her rights as follows:
   "Before I ask you any questions, you must understand your rights."
   a. "You do not have to answer my questions or say anything."
   b. "Anything you say or do can be used as evidence against you in a criminal trial."
   c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

   - or -

   (For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."
   d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"
(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"
(If the suspect/accused says "yes," find out when and where. If the request was recent *(i.e., fewer than 30 days ago)*, obtain legal advice on whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"
(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" *(If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)*

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.
2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS *(Continued)*

REVERSE OF DA FORM 3881

* U.S Government Printing Office1992- 311-830/60267

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

Step 1

1. LOCATION	2. DATE	3. TIME	4. FILE NO.
Inspector General, Fort von Steuben, VA 22605			OTR 05-009

5. NAME *(Last, First, MI)*	8. ORGANIZATION OR ADDRESS
Brown, Robert E.	Director of Personnel and Community Activities
6. SSN / 7. GRADE/STATUS: COL / AD	Fort von Steuben, VA 22605

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Inspector General, 66th Infantry Division and Fort von Steuben and wanted to question me about the following offense(s) of which I am suspected/accused: COL Brown conducted an adulterous affair in violation of article 134, UCMJ; and (see comments below)

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any question or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. *(For personnel subject othe UCMJ* I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS *(Continue on reverse side)*
Sexually harassed female employees in violation of AR 600-20.//

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

Step 4

WITNESSES *(If available)*	3. SIGNATURE OF INTERVIEWEE
1a. NAME *(Type or Print)* Sonny Competent, MSG, IG	
b. ORGANIZATION OR ADDRESS AND PHONE: Office of the Inspector General, 66th Infantry Division, Fort von Steuben, VA 22605 (540)802-0601	4. SIGNATURE OF INVESTIGATOR
2a. NAME *(Type or Print)*	5. TYPED NAME OF INVESTIGATOR: Albert R. Rightway, LTC, IG
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR: Office of the Inspector General, 66th Infantry Division

Section C. Non-waiver

1. I do not want to give up my rights
   ☐ I want a lawyer ☐ I do not want to be questioned or say anything
2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT *(DA FORM 2823)* SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE USAPA 2.01

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

Step 2

1. WARNING - Inform the suspect/accused of:
   a. Your official position.
   b. Nature of offense(s).
   c. The fact that he/she is a suspect/accused.
2. RIGHTS - Advise the suspect/accused of his/her rights as follows:
   "Before I ask you any questions, you must understand your rights."
   a. "You do not have to answer my questions or say anything."
   b. "Anything you say or do can be used as evidence against you in a criminal trial."
   c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

   - or -

   (For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."
   d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

Step 3

"Do you understand your rights?"
(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"~~Have you ever requested a lawyer after being read your rights?~~"
(If the suspect/accused says "yes," find out when and where. If the request was recent *(i.e., fewer than 30 days ago)*, obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"
(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" *(If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)*

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the supsect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.
2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS *(Continued)*

REVERSE OF DA FORM 3881 USAPA V2.01

Section 4-11

Break Procedures

Taking Breaks. Should you or the witness need to take a break for any reason while recording testimony, state for the record (on tape) the circumstances and time before shutting off the recorders. When ready to resume the interview, turn on the recorders and state the time and whether or not the people in attendance are the same. If someone has departed or someone new is present, give his or her name and briefly explain the reason for the change. Remember: during the Pre-tape portion, you advised the witness that anything said during a break can and will be introduced on tape. You must be mindful of off-tape conversations.

Section 4-12

Standard of Proof

IG investigations and investigative inquiries make conclusions based on the **preponderance of the credible evidence available and *not* on proof beyond a reasonable doubt**. Consult with other IGs or with your SJA if you have questions when you evaluate evidence. You will use a finding statement of "**substantiated**" or "**not substantiated**" for each allegation addressed in your ROI / ROII.

Section 4-13

Investigatory Tools

1. **Overview.** When you are conducting an investigative inquiry, your evaluation of evidence may be a mental process -- particularly if the case is simple. For more complex investigations, useful tools for evaluating evidence such as an evidence matrix and force-field diagram (discussed during the planning step) will help you perform a mental evaluation of the evidence and reach a conclusion.

2. **Evidence Matrix.** The matrix lays out the evidence spatially and helps you see whether you have enough evidence to support a conclusion. Once you have enough evidence to conclude that an allegation is substantiated or not substantiated, you should interview the subject / suspect. The subject / suspect may introduce new evidence that you need. Once you have collected all the evidence necessary to draw your conclusions, write your report, coordinate your evaluation with the SJA, and close out your case. If, however, you cannot get a preponderance of credible evidence, you may have to conclude that the allegation was not substantiated. In complex investigations, the evidence matrix is a critical tool for navigating through Step Four, IG Fact Finding. It controls the order and membership on your witness list. The matrix captures only the key evidence -- evidence tied directly to the elements of proof. It captures the value or weight of that key evidence and facilitates preparation of interrogatories and writing the ROI / ROII.

3. **Timeline.** A timeline graphically depicts the relationship of events over a given period of time. The timeline summarizes evidence over a period of time and can be used to establish a frequency of occurrence, probable cause-and-effect relationships that demonstrate motive, or an inability to be at a specific place in time or perpetrate an improper act. It could be as simple as plotting a few dates so the IG can quickly internalize the key events in the case and the degree to which they are linked. The timeline could also be a complex chronology of protected communications and unfavorable personnel actions for a reprisal case.

4. **Force-Field Diagram.** A force-field diagram (shown on the next page in completed form) is an invaluable tool for graphically depicting the weight of evidence, determining the facts, and measuring the preponderance of credible evidence. Begin by first writing your allegation and elements of proof at the top of the chart. Next, divide your evidence into two groups – evidence that tends to support substantiating the allegation or evidence that tends to support not substantiating the allegation. Write this information on the chart. Indicate your value assessment levels of each piece of evidence (direct, circumstantial, hearsay, opinion). Make a note that specifies if the oral evidence is a statement or testimony. Look for multiple citations in the evidence to establish any facts and enter the facts as a separate line in either or both of the columns. You then weigh the resulting columns of evidence to determine a preponderance of credible evidence. Three entries of direct evidence weigh greater than three entries of hearsay evidence. Finally, assess the evidence as a whole and make a determination of substantiated or not substantiated.

5. **Translating the Force-Field Diagram into the ROI.** The evidence entered into the force-field diagram can be directly written into your ROI / ROII discussion paragraph by formatting specific subparagraphs that address evidence "supporting substantiation" and "not supporting substantiation." Formatting your discussion of the evidence in this manner clearly details a preponderance of evidence to your reader (Command IG or Directing Authority).

Force-Field Diagram

COL Smith participated in an adulterous affair in violation of Article 134, UCMJ.
One or more parties were married. Wrongful sexual intercourse transpired.
Conduct was prejudicial to good order and discipline.

Substantiate	Not Substantiate
• (O) MAJ Jones stated COL Smith was having an affair. • (D) COL Smith DD 1172 - was married to Diane Smith as of 4 June 1980. • (C) Mrs. Smith, wife of COL Smith, provided 7 love letters from unknown woman addressed to COL Smith expressing love for him. • (H/S) CPT Baker heard rumors that COL Smith was having an affair with Ms Anderson. Lost respect for COL Smith. • (D) Ms Anderson stated she had sexual intercourse with COL Smith on 4 January 2003. • **Fact - COL Anderson had wrongful sexual intercourse and was married. His conduct was prejudicial to good order and discipline.**	• (O) COL Smith stated his relationship with Ms Anderson was “Platonic.” • (D) COL Smith refused to comment when asked about having sexual intercourse with Ms Anderson on 4 January 2003.

Key – (O) Opinion; (H/S) Hearsay; (C) Circumstantial; (D) Direct

Figure II-3

FOR OFFICIAL USE ONLY. DISSEMINATION IS PROHIBITED EXCEPT AS AUTHORIZED BY AR 20-1.

Section 4-14

Report of Investigation and Report of Investigative Inquiry

1. **Documenting the Findings.** Once you have completed your investigative inquiry or investigation, you must document the findings (substantiated and not substantiated) in an ROI / ROII. The ROI can contain multiple subjects / suspects if the allegations originated from the same complainant. The ROI / ROII format (found later in this section) provides a logical, disciplined approach for presenting the case to an uninformed reader such as the Directing Authority, the SJA, or another IG. Exceptions to using the standard ROI format exist for the following: the Hotline Completion Report (HCR) format is used for DoD Hotline complaints, the modified ROI / ROII format is used when using a command product as the primary piece of evidence, and the Military Reprisal Investigation format in Chapter 9 is used to resolve allegations of Whistleblower Reprisal because that format incorporates the "acid test."

a**. Investigation**. As part of the formal investigation process, you must document your case by preparing an ROI. This section contains instructions for writing and formatting ROIs. Before you prepare an ROI, you should review previously prepared reports so that you can get a feel for the style and level of detail required in your command.

b. **Investigative Inquiry**. Use the ROI format to document your investigative inquiry.

2. **Importance of ROI / ROII.** The ROI / ROII is a very important document. It gives the Directing Authority the facts, the conclusions you drew from analyzing the facts, and your recommendations. The report provides the basis for the Directing Authority's decision in the case. It may affect the future of the person under investigation or result in policy changes in your command. Your findings may also be used in the personnel screening process for centralized selection boards and can impact a Soldier’s career.

3. **The ROI / ROII as the Official Record of the Case.** The ROI / ROII is the official record of the case. It documents your authority to conduct the investigation and that the IG notified the subject or suspect of the allegations. The ROI / ROII also contains all pertinent testimony and evidence and makes provisions for the Directing Authority to approve the report. Keep the approved report with its exhibits on file in accordance with records disposition instructions. The summary transcribed into the IGARS database must be concise, complete, and able to stand alone long after the paper file is destroyed.

4. **Title.** The ROI / ROII is identified at the top of the first page by centering the title "REPORT OF INVESTIGATION" or "REPORT OF INVESTIGATIVE INQUIRY" with the case number centered below on the next line.

5. **Administrative Section.** The Administrative Section starts with the name and position of the subjects and suspects followed by the authority and the background. The background section is only necessary when an introduction is not used. Begin this section directly after the header for the Executive Summary.

6. **Executive Summary.** The Executive Summary (EXSUM) is a separate, stand-alone document that incorporates the administrative section and provides a synopsis and finding for each allegation. The EXSUM offers the Directing Authority an alternative to reading the full report. The Directing Authority may not have time to read the entire report. A well-written EXSUM provides an abbreviated alternative that allows him or her the opportunity to become informed as to the results of your investigation and why you are making the recommendations that you are making. The EXSUM contains administrative data such as the name and duty position of the subject / suspect; the authority for the investigation; the background; and an abbreviated, but fully developed, synopsis detailing the substantiated and the not-substantiated allegations. After listing the name and duty position of the subject / suspect, the authority for the investigation, and the background, begin presenting the allegations. Present substantiated allegations with their synopsis followed by any not-substantiated allegations and their synopsis. The synopsis consists of a reference to the standard, a summary of the elements of proof from the standard, the key evidence that led to the conclusion, the analysis that shows how the evidence either met or did not meet the elements of proof from the standard, and the concluding statement. Mitigating evidence should be included here as well. Failure to address evidence that supports an alternate position to your conclusion leads to the appearance that the IG was not impartial. The synopsis resembles the discussion paragraph for the corresponding allegation in the body of the ROI but does not usually contain the same level of detail.

7. **Introduction.** The Introduction is optional. Use it when the case is complex enough that the report would be difficult to digest without introductory information. The introduction can provide an overview of interrelated events; lay out a chronology; explain the history of fact-finding on a case conflicted by time, multiple agency involvement, personnel turnover, or other operational demands; or provide any other information needed to facilitate understanding in a single, rapid reading. Omit the Background paragraph in the Administrative Section if using an Introduction, and capture the Background information in the Introduction. If using an EXSUM, the Introduction will start on a new page.

8. **Evidence.**

a. Because each allegation is addressed separately, an IO (investigating officer) should only present evidence that directly pertains to the allegation being discussed. Evidence concerning other allegations should be addressed separately in their respective sections. Key evidence forms the facts from which the conclusion is derived. It is evidence tied directly to the elements of proof listed for, or derived from, the standard. Present each piece of evidence clearly and concisely. Present redundant evidence only to the extent necessary to establish a fact or corroborate other key evidence, but keep it to a minimum. Include evidence that clarifies the gravity or egregiousness of the offense as well as mitigating information so decision-makers can make informed decisions. Key evidence may be two or three statements made by a witness during a 90-minute interview. Refrain from including additional, unnecessary information from the testimony that could confuse a reader. The transcript or the summarized testimony is attached to the ROI / ROII for the reader's perusal if he or she wants to examine the testimony in its entirety.

b. Testimony is difficult evidence to analyze and should not be analyzed in the evidence section. Reserve that analysis for the discussion paragraph. Witnesses' opinions are not facts, and usually only a few witnesses provide key evidentiary testimony. An IO should validate testimony with other information. You might have to piece together fragments of information from various witnesses to present a picture of what took place and then explain this synthesis as analysis in the discussion paragraph. You may summarize witness testimony, but be careful not to omit important points. Use care in summarizing the testimony of a witness who lacks knowledge of certain events; the lack of knowledge may be genuine, but it may also indicate that the witness was not candid. If the lack of knowledge is relevant, include it in the evidence section and then include it in the discussion. In complex cases (or those with many witnesses), it helps to develop a system for identifying what each witness said about each allegation. A matrix, an outline, or file cards may be helpful. Whatever system you use, reference the testimony so you can quickly find it in the transcript to recall the context. This technique also helps eliminate unneeded testimony. A sample of an evidence matrix is on page II-4-12.

9. **Discussion**.

a. The Discussion section is the most critical part of the ROI. In this section, the IO brings together all of the evidence (standards, documents, and testimony) that supports substantiation and all of the evidence that supports not substantiation and analyzes it in relation to the elements of proof. The IO should not depend on the reader to "connect the dots" to determine whether an allegation is substantiated or not. The analysis in the Discussion section should lead an uninformed reader logically through the presented evidence to obvious conclusions by weighing the evidence on both sides in relation to the standard. If the facts and evidence lead to obvious conclusions, the analysis in the discussion comparing the evidence to the elements of proof may be brief. Your Directing Authority will use your Discussion subparagraphs to understand why the evidence is important. In the past, some IGs have found it useful and effective to organize the discussion with a restated allegation and a summary of the standard. After addressing these two items, those IGs then discussed the evidence that tends to support substantiation in one section or paragraph and in another they detailed the evidence supporting not substantiation. From there they analyzed the various pieces of evidence and discussed their credibility before reaching a conclusion.

b. This section should start with a restatement of the allegation. ROIs are frequently lengthy documents, and they may contain many allegations. In many cases a subparagraph dedicated to restating the allegation helps focus the reader on exactly what the IG is focusing on during his or her discussion.

c. After restating the allegation, it usually helps to remind the reader of the standard and its elements of proof. This point is especially true in cases with multiple allegations.

d. Readers frequently find it helpful if the evidence is presented in two subparagraphs -- one subparagraph that recites the evidence supporting substantiation, and another that supports not-substantiation. Separating the evidence in this way helps the reader understand where the IG is going and aids in writing the Analysis subsection. Remember, all of the evidence presented in the ROI must be addressed in the Analysis subsection of the Discussion section; if evidence is not needed for analysis, do not present it in Evidence. IOs often improperly introduce information in the Discussion

section that they failed to present in Evidence. If an IO knows something, the source of that information should be included in Evidence.

e. Analysis should address any conflicts within the evidence. An IO can identify witnesses who are not credible or who appear to be untruthful since the standard is the preponderance of *credible* evidence. An IO must balance conflicting opinions of multiple witnesses by considering what evidence supports the offered opinions. Do not make an entire case based on opinions without facts. Be alert for witnesses presenting opinions (conjecture) as fact. Opinions without verification remain the weakest form of evidence. An analysis of the evidence requires the IG to consider carefully evidence that not only supports his or her conclusion but also to evaluate evidence that contradicts that conclusion.

f. An IO who thinks the evidence is irrefutable and does not present the opposite position puts his or her objectivity at risk. The goal of an investigation is to develop and report sufficient evidence to conclude that the allegations are either substantiated or not substantiated, so an IO must gather evidence to support or refute the allegations with equal vigor. Experience has shown that an IO's opinion weakens a report because he or she loses impartiality. In general, an IO should avoid adjectives and adverbs when writing an ROI because they often indicate the IO's opinions. Always avoid the tone of righteous indignation since it decreases credibility and may anger the reader.

10. **Conclusion**.

a. The Conclusion must be consistent with the allegations, standards, evidence, and discussion. If the analysis is solid in the Discussion, the Conclusion logically follows and needs no further explanation. A substantiated allegation always indicates an impropriety. Most often, the Conclusion is one sentence that includes a verbatim restatement of the allegation.

b. **The only conclusions for allegations in an IG investigative inquiry or investigation are "substantiated" and "not substantiated."** Do not use “partially substantiated” or “substantiated without impropriety.” If only part of the allegation is substantiated, the allegation is improperly framed and should be divided into several parts for separate analysis and discussion. An IO's authority does not extend to determining the gravity of the violation of a standard. That opinion should not be presented in the conclusion.

c. IGs will use the conclusion of "closed without findings" only when the inquiry or investigation is terminated prior to conclusion under the following special circumstances:

(1) A legal process such as a court order or a settlement between the U.S. Government and a subject and / or complainant includes a requirement to terminate all ongoing inquiries or investigations. The IG will obtain a copy of the order or settlement, include it in the case file, and record the matter as "closed without findings."

(2) Directing authorities may, at any time, request approval from TIG to terminate an IG inquiry or investigation that they directed. Upon TIG approval, process the IGAR in accordance with procedural guidance from DAIG Assistance Division (SAIG-AC).

d. Conclusions must be complete. Sometimes they are more than one sentence pertaining directly to the allegation. Perhaps an individual's behavior did not violate a regulation, but extenuating or mitigating circumstances existed that the Directing Authority may want to know. Include evidence indicating these circumstances in the Evidence and Discussion sections, and address the circumstances in the conclusion as follows: "However, the evidence indicated that the suspect's actions were motivated by concern for the subordinates and not by self-interest" or "However, the suspect's actions led many in the unit to believe that the suspect was involved in an impropriety."

11. **Other Matters**.

a. Use this paragraph to present information about matters beyond the scope of the Directive that were determined during an investigation. This paragraph is not a license to go beyond the scope of your Directive, so use it carefully. If unsure, seek guidance from your Command IG or Directing Authority.

b. An example of an Other Matter could be when an IG investigates allegations of improper command influence and becomes aware of poor vehicle maintenance, he or she discusses that fact in the "Other Matters" section of the ROI / ROII. Since vehicle maintenance is outside the scope of the original directive, the IO presents this issue and might recommend an IG Inspection or an examination by another staff agency. However, if the investigation into improper command influence developed information about low unit morale because of this improper influence, then that issue / situation would be a related matter for investigation within the scope of your Directive. You would then present the evidence and analysis leading to the conclusion of low morale in the body of the ROI / ROII.

12. **Recommendations**.

a. An IO must close the ROI with recommendations for action by the Directing Authority, i.e., that the report be approved and that the case be closed. **Do not make recommendations of any punitive, adverse administrative, or disciplinary action concerning the subject or suspect.** IGs do not recommend a specific type of command investigation such as a preliminary inquiry, an AR 15-6 investigation, or Article 32 investigation. To do so compromises an IO's impartiality. However, administrative action to correct a mistake (for example, recovery of an improper TDY payment) may be part of an IG investigation recommendation. An IO may also recommend that allegations be turned over for investigation by another investigating officer or another criminal investigative agency (MPI / CIDC).

b. The commander, by approving the recommendation to close a case, implicitly directs the monitoring of any required actions taken such as implementing letters, forwarding the ROI / ROII to a higher headquarters, and closing the file without further referral to the Directing Authority. However, if the follow-up action appears inappropriate, you should advise the Directing Authority.

c. The IO must make recommendations that directly correct all systemic problems identified and noted in Other Matters. Identify what agency or individual is tasked with executing the necessary action.

13. **Addressing Issues in a ROI / ROII.** Issues brought forth by the complainant in conjunction with allegations can be separately addressed in the ROI / ROII. Address these issues in the same format used for allegations. Issues are either "**Founded"** or "**Unfounded**." The IO will describe the issue, state the standard and the elements of proof, present the evidence, compare the evidence to the standard, and make a conclusion.

Report Format: Report of Investigation / Investigative Inquiry

REPORT OF INVESTIGATION / INVESTIGATIVE INQUIRY

(Case #)

EXECUTIVE SUMMARY

The executive summary must be written as a stand-alone document. It should be concise and, when possible, limited to one or two pages. Do not assume the Directing Authority has any knowledge of the case. When used, the header for the executive summary will precede the header for the name and position.

NAME / POSITION: Provide the name, grade, and duty positions of all subjects or suspects as of the date the improprieties allegedly occurred. NAME / POSITION is the first section in the report, regardless of whether an executive summary is used.

AUTHORITY: Cite the authority for the investigation (usually the Directive). Include the date of the Directive and the names and organizations of the investigating officers. Cite any changes in the scope of the investigation (e.g., new allegations) that may have occurred after the Directive was signed. Include a copy of your Directive and any changes to it as EXHIBIT A-1 of your ROI. For investigative inquiries, cite the command IG and briefly describe the scope. AUTHORITY is the second section in the report, regardless of whether an executive summary is used.

BACKGROUND: Briefly describe how the allegations were received. Identify the complainant if known, unless the complainant explicitly requested anonymity. The complaint is summarized here and presented as evidence in the "Consideration of Allegations" section. Add any other information needed to understand the case. The Background is omitted if an Introduction is used. If an Executive Summary is included, it follows as shown. Otherwise, continue with the Consideration of Allegations (the body of the report).

SUBSTANTIATED ALLEGATION: State the first substantiated allegation. It should be worded exactly the same as in the Action Memorandum unless the IO received approval to modify it during the course of the investigation.

SYNOPSIS: The synopsis should include a concise summary of the elements of proof from the standard, the key evidence on both sides, and a comparison of the evidence leading to the conclusion that the allegation was substantiated. Do not include all the details; these details are available in the ROI itself. Conclude the synopsis with a finding statement that states, "The preponderance of credible evidence indicated that (name) (improperly -- unless wrongdoing is clearly inherent in the language) (did) or (failed to do) (something)."

(In succeeding paragraphs list other substantiated allegations followed by synopses in the same format as above)

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NOT SUBSTANTIATED ALLEGATION: State the first not-substantiated allegation. It should be worded exactly the same as in the Action Memorandum unless modified.

SYNOPSIS: Summarize the discussion of the elements of proof from the standard, the key evidence, and the comparison of the evidence that led to the conclusion that the allegation was not substantiated.

(In succeeding paragraphs list the remaining allegations that you did not substantiate each followed by its synopsis).

(Each page of the executive summary and the ROI must have as a footer "For Official Use Only (FOUO)" and "Dissemination is prohibited except as authorized by AR 20-1." Number the pages beginning with page two. See AR 20-1, paragraph 3-2, for further guidance.)

INTRODUCTION

1. The introduction is optional. Begin the main body of the ROI on a new page. If used, include the Background as part of the Introduction instead of a separate Background in the Administrative Section. Use it to present extensive background or introductory material that is necessary for a reader to understand the case. Do not include evidence in the introduction, except as necessary to 'connect the dots' for the reader.

CONSIDERATION OF ALLEGATIONS

2. **Allegation 1:** Restate the allegation exactly as written in the executive summary. Should you have more than one allegation, the first allegation that you address in the body of your ROI / ROII need not be the first allegation in your Action Memorandum or the first allegation listed in you executive summary, but it makes your ROI / ROII more understandable if you do so.

(Note: If you omit the introduction, the first allegation becomes paragraph one of the body of the ROI).)

a. **Evidence.** In the Evidence subparagraph for an allegation, introduce all the evidence pertaining to that single allegation. Normally, you will use succeeding subparagraphs for each item of evidence beginning with the allegation and followed by the standard or standards, documentary evidence, testimony, and statements (with the complainant's testimony first and the subject's or suspect's testimony last). Do not include evidence that does not pertain to the allegation considered, and do not analyze evidence in this section. The ultimate purpose of this section is to present everything the IG considered in determining the preponderance of credible evidence.

(1) **Standard.** In this and succeeding subparagraphs, cite and describe the standards. Summarize (if the standard is longer than a paragraph) or quote verbatim the guidance contained in regulations, policies, or the UCMJ. The IO must cite the elements of proof contained in, or derived from, the standard. The extracts of the regulations, policies, or UCMJ must be attached to the report as exhibits. Ensure that the standards used in the ROI were in effect at the time the misconduct allegedly occurred, and indicate the standard's date. Personnel and travel regulations change frequently.

(2) **Documentary Evidence.** In succeeding subparagraphs, introduce each item of documentary evidence. The first item of documentary evidence is a description of the allegation initially made by the complainant. It can be the IGAR or letter signed by the complainant. Identify each item of documentary evidence by identifying the document and describe the evidence it contains. Example: "(n) DA 1351-2, Travel Voucher or Subvoucher, Control # XXXXXXXX, dated 4 January 20XX, showed that COL Smith claimed reimbursement for 400 POC miles pursuant to official travel from XXXXX to XXXXX on 5 through 8 June 20XX." Append all documents to your ROI as exhibits.

(3) **Testimonial Evidence**. Conduct the complainant's interview early in the investigation. Your complainant is often a primary source of evidence against the suspect. More importantly, the complainant is frequently able to identify other witnesses. The ROI will flow more easily if you introduce your complainant's evidence first. Introduce evidence provided by all witnesses for this allegation in separate subparagraphs -- one for each witness. There is no prescribed order for the witnesses or for the detail you must provide unless you interviewed a witness who is a subject-matter expert (SME). List the SME witness first because the SME often explains the policy, process, procedure, or standard involved in the case. Introduce the evidence in a manner that is logical and understandable for a reader who is not familiar with the details of the case. Normally, you paraphrase and summarize witnesses' testimony rather than quoting them directly. Quoting is recommended when it would be difficult and laborious to capture the substance and sentiment of that piece of key testimony. Quote sparingly, or it becomes a distracter. Append the transcripts or summarized testimony to the ROI / ROII as exhibits. When you interview the suspect or subject, you must provide him or her the opportunity to comment on all unfavorable information used in the ROI / ROII, which leads you to interview the subject or suspect after all witnesses or risk having to do a recall interview.

NOTE: As an exception to providing separate subparagraphs for each witness, and in the event that you have several witnesses who provided the same evidence, you may combine that evidence into a single subparagraph (e.g.; "(n) SSG Jones, SSG Smith, and SSG Taylor, squad leaders in 3rd Platoon, Company B, all testified..."). This approach is not frequently used.

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(4) **Other Evidence**. Describe and / or enter physical evidence in this paragraph. Attach renderings (photographs, sketches, etc.) of physical objects if necessary when inclusion of an actual object into the ROI / ROII is impractical. Enter any IG observations here in memorandum for record format. Address physical evidence like documentary evidence. Identify the object and describe its relevance. Since you will usually not maintain the object with the ROI / ROII, explain where it is stored. Frequently, you may have documentary evidence in lieu of physical evidence (e.g., an accident report instead of a damaged vehicle).

b. **Discussion:**

(1) In the discussion paragraphs, begin with the restated allegation and the applicable standard. Make sure evidence supports all analysis and all conclusions flow logically from the discussion. In this paragraph, concisely evaluate the evidence supporting substantiation and the evidence supporting not substantiation. Make judgments regarding the credibility of the evidence. You must determine if the evidence satisfies or fails each element of proof. You must resolve discrepancies and contradictions (witnesses' recollections of events will rarely be the same). Finally, you must determine if the preponderance of credible evidence either substantiates or refutes the allegation.

(2) The discussion paragraphs must clearly explain your finding for an allegation. The burden is upon the IO to lay out logically and clearly the evidence he or she gathered so that the Directing Authority will understand the case and draw the same conclusions . The IO must explain how the evidence supported or did not support the elements of proof leading to a conclusion in a logical, step-by-step method. Reasoning and writing skills are crucial. The IO must remain impartial and tell all sides of the story. Begin the paragraph by restating the allegation and then summarize the elements of proof for the standard(s) used. Next, summarize the key evidence that tended to substantiate the allegation. Follow with a similar discussion of key evidence that tended to not substantiate the allegation. Then focus the reader on the facts that the evidence revealed. Conclude your discussion with a finding statement that states, "The preponderance of credible evidence indicated (name) (did) or (did not) violate (the standard)."

c. **Conclusion:** The allegation that (name) improperly (unless wrongdoing is clearly inherent in the language) (did or failed to do something) in violation of (standard) (was / was not) substantiated. The conclusion is a concise statement of your determination that it is more likely than not that the allegation did or did not occur. State the allegation exactly as written in the beginning of the paragraph and the executive summary (who, improperly, the alleged misconduct, and the standard) followed by ". . . was substantiated "or ". . . was not substantiated." Neither / nor conclusions are not used and indicate a failure in investigative analysis.

3. **Allegation 2:** State the next allegation followed by its evidence, discussion, and conclusion.

a**. Evidence:** Frequently, witnesses provide evidence on more than one

allegation. You must sort through their testimony and enter the evidence where appropriate in the ROI / ROII. For clarity, you may cite specific pages where the evidence can be found. Example: "(n) SPC Jones testified that he and PFC McSpivit. . . . (EXHIBIT B-7, p. 5-6, 11)." If evidence entered for a previous allegation is pertinent to this allegation, refer to it again in summary. Example: "(n) CPT Smith, as previously indicated, testified that . . . . (EXHIBIT B-9, p. 7)"

b. **Discussion:** Discuss evidence entered for this allegation only.

c. **Conclusion:** The allegation that (name) improperly (unless wrongdoing is clearly inherent in the language) (did or failed to do something) in violation of (standard) (was / was not) substantiated.

4. **Issue 1:** If there are issues as well as allegations, address them after you address the allegations. State the issue as presented by the complainant.

a. **Evidence:**. . .

b. **Discussion:** . . .

c. **Conclusion:** The issue that _____ was (Founded / Unfounded).

OTHER MATTERS

5. During the course of investigations, you will often uncover situations that, while not pertinent to the allegations, require your commander's attention. These situations may be systemic problems that require correction by a staff agency or perhaps an inspection by your own office. Document these situations in separate paragraphs in the “Other Matters” paragraphs (one paragraph for each issue). For example, an “Other Matters” might read: “During the course of the investigation, we determined that the procedures for verifying travel vouchers outlined in DA message XXXX were not being followed in XX Brigade. This situation was evident in the documents examined (EXHIBITS E-1 through E-17) and the testimony of LTC Smith and MAJ Doe (EXHIBITS B-7 and B-3)."

RECOMMENDATIONS

6. The first recommendation for an ROI / ROII is as follows: "This report be approved and the case closed."

7. Never recommend adverse action.

8. If you have documented other matters, **you must include** a recommendation for each of them. Do not make recommendations for matters not mentioned in the body of the paper, to include Other Matters. Ensure that your recommendations are appropriate for the issues that you raise. These recommendations are normally written like an IG inspection report recommendation (who will fix it and how to fix it) found in The Inspections Guide.

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Coordinate in advance with the agencies you specify in the recommendations (the proponents) as the ones you think should fix the problem as a professional courtesy. Remember, you may not release any part of the ROI / ROII for these purposes, and you must still protect confidentiality.

Investigator's
signature block

Investigator's
signature block

CONCUR:

Inspector General's
signature block

APPROVED:

Directing Authority's
signature block

_____
Date

Encl
Exhibit List

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EXHIBITS

1. Attach exhibits to your ROI / ROII or include them in separate volumes if you have several exhibits. Identify exhibits by letter and arrange them in the order they appear in the report. The Directive for investigation is normally EXHIBIT A-1, testimony is normally EXHIBIT B (with sub-numbers such as B-1, B-2, etc. for each witness), standards are EXHIBIT C, and documents are EXHIBIT D (with sub-numbers such as D-1, D-2, etc. for each document.) Other exhibits are marked alphabetically continuing into double and triple letters as necessary (e.g. AA, AB, AC). If an exhibit is several pages long, but only one page pertains to the investigation, consider including only that one properly identified page with the ROI / ROII. An exhibit list precedes EXHIBIT A. This list identifies each exhibit and its letter designation.

2. The testimony list (normally EXHIBIT B) should give the last name and rank / title and indicate consent to (or denial of) release of testimony IAW FOIA. List all persons whose testimony is included in the ROI / ROII, including those whose testimony was summarized and those who provided statements.

STYLE NOTES

1. The first time you refer to an individual, include his grade, full name, and position. Thereafter, simply refer to him by grade and last name. If an individual has changed grade, name (marriage, for instance), or duty position, you should indicate it in your report. (e.g.: "MAJ Jane Smith, Executive Officer, 37th S&T Battalion (formerly CPT Jane Jones, Commander, Company B, 37th S&T Battalion), testified . . ."

2. Spell out all acronyms the first time they are used. Abbreviate after that.

3. Use the word "alleged" in your report when referring to the matters under investigation. Use the word "testified" for anyone interviewed who took an oath of truthfulness, regardless of whether the person swore, affirmed, or called on a deity as a witness. Use the word "stated" for anyone interviewed who did not take an oath. Because of the special meanings of these two words in the context of an investigation, the word "stated" will not be mixed with the word "testified."

4. Do not alter the text or verb tense of standards and elements of proof cited directly from the source text. Doing so increases the likelihood of unintentionally changing the meaning of the standard.

5. Write your report (and any summarized standards) in the **past tense**. The document is a "snapshot" of a particular time, and the situation may have changed.

CLASSIFICATION REQUIREMENTS

1. Classify and safeguard ROI / ROIIs that contain classified defense information IAW AR 380-5, Department of the Army Information Security Program.

2. Mark ROI / ROIIs containing classified defense information as follows: "Classified IAW AR 380-5. When Declassified, Document BECOME For Official Use Only (FOUO). Dissemination is prohibited except as authorized by AR 20-1."

3. Mark an ROI / ROII which does not contain classified defense information IAW AR 25-55, The Department of the Army Freedom of Information Act Program. Place "For Official Use Only (FOUO)" in letters 3/16 of an inch high on the bottom of the front cover and on the outside of the back cover. Do not use only the abbreviation "FOUO." Extracts of ROI / ROIIs must be similarly marked. (NOTE: Each page should have a footer marked "For Official Use Only (FOUO). Dissemination is prohibited except as authorized by AR 20-1.")

4. ROIs transmitted outside IG channels should be handled and marked in accordance with instructions contained in paragraph 3-2 of AR 20-1.

ROI / ROII REVIEWS

1. **Internal (Peer) Review**. While your ROI is in draft, have as many IGs as practical review the document to ensure that it is complete, correct, and understandable. You will find that when you work directly on a case and write the ROI, you become so close and familiar with the issues that you will make mental connections that are not apparent to your reader. Your peers can point out these problems, as well as grammatical errors, faulty logic, and gaps in evidence. Accept peer criticism in a positive manner, and do not be defensive. Evaluate all comments with an open mind.

2. **Command IG Approval.** Once the peer review process is complete and the ROI assembled, you and your partner IG should sign and submit the report through your command IG. The command IG can concur with your report and forward it or return it to you with recommended changes. The command IG will want to know the SJA's opinion prior to sending the report to the Directing Authority.

3. **SJA Review.** Ask the SJA to review your report while in draft form (after an internal peer review but before you send it to your command IG). This review allows you to correct any possible problems before you finalize the ROI. After the command IG approves your ROI, formally refer the document to the SJA for a written legal review to determine if there are any legal objections and that a preponderance of the credible evidence supports your conclusion. Attach a copy of the SJA's legal opinion to your ROI before presenting the ROI to the Directing Authority. You should also ask for your SJA's opinion concerning whether you have properly interpreted laws, regulations, and policy (this should have been done before you began and throughout the investigation). The SJA should have agreed with your initial analysis of how to handle the case and should be pre-briefed before each update or decision briefing to the Directing Authority. An excellent tool for keeping the SJA abreast of the case is to use your evidence matrix. Depending on the nature of the allegations and whom the allegations are against, the SJA may want to accompany you when you brief the Directing Authority.

ROI / ROII COPIES

The circumstances of each case and local SOP dictate the number of copies required.

Report Example: Report of Investigation / Investigative Inquiry

REPORT OF INVESTIGATION
(CASE OTR 05-0019)

EXECUTIVE SUMMARY

NAME/POSITION: Colonel (COL) Robert E. Brown, Director of Personnel and Community Activities (DPCA), Fort Von Steuben (FVS), Virginia (VA).

AUTHORITY: Commanding General, FVS, Directive, dated 15 December 2005. (EXHIBIT A-1)

BACKGROUND: An anonymous "concerned Employee" made allegations against COL Brown in a letter received by the Commanding General (CG) on 30 November 2005. (EXHIBIT A-2)

SUBSTANTIATED ALLEGATION: COL Brown conducted an adulterous relationship with his secretary in violation of Article 134, Uniform Code of Military Justice (UCMJ).

SYNOPSIS: An anonymous complainant alleged that COL Brown had an adulterous relationship with his secretary, Ms. Sallie Smith, Secretary, DPCA, FVS. Article 134, UCMJ, prohibited adultery. The elements of proof were [the incidence of] sexual intercourse, [one or both were] married, and the conduct [was prejudicial to] good order and discipline. Ms. Smith testified that she and COL Brown had an adulterous relationship during March and April 2005. Other witnesses testified they believed the two were having an adulterous relationship because they saw them kissing, because of their “unusually familiar” behavior and demeanor, and because they occasionally arrived at work together when COL Brown's wife was out of town. Motel receipts and registration slips indicated COL Brown registered for a double room at the Notel Motel in Lynchburg, VA, with "Mrs. Brown" on 21 March, 27 March, and 15 April 2005. A witness saw COL Brown with a woman in the motel lobby on those dates. COL Brown denied the allegation. COL Brown testified that his wife, Jenny Brown, was out of town during March and April 2005. COL Brown testified that he stayed in the motel occasionally to avoid the stress of being in his house by himself and that the registration slips with "Mrs. Brown" registered were a mistake. COL Brown testified that he had dinner with Ms. Smith on the occasions he stayed in the motel but no more. Ms. Smith’s testimony that she had sexual intercourse with COL Brown on multiple occasions, supported by documentary evidence and corroborated by witness testimony, was more credible than COL Brown’s denials. The preponderance of credible evidence indicated COL Brown violated Article 134, UCMJ.

NOT SUBSTANTIATED ALLEGATION: COL Brown sexually harassed female employees in violation of Army Regulation (AR) 600-20, Army Command Policy.

SYNOPSIS: An anonymous complainant alleged COL Brown sexually harassed female

employees within the DPCA, 66th ID. AR 600-20 prohibited sexual harassment. The elements of proof were "unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature," to include "telling sexual jokes," that threatened the individual's job or career. No witnesses testified that COL Brown harassed them. One witness testified that he saw COL Brown harassing others, but his testimony was not credible due to his personal grudge against COL Brown. Witnesses testified that COL Brown frequently used endearing terms ("Honey, Darling") to female employees but attributed this behavior to his age and background. Two female witnesses testified that they heard COL Brown tell a "mildly off-color" joke on one occasion, but they thought it was funny, appropriate for standing around the office coffee pot, and they were not offended. COL Brown admitted that he had a habit of referring to women as "Honey" and "Darling" and once told a "dirty" joke in the office, which he suggested was a lapse in judgment. He denied harassing anyone. None of the women in the office, or any credible witness, objected to either the use of terms of endearment or the joke or felt that their jobs or careers were threatened. The preponderance of credible evidence indicated COL Brown did not violate AR 600-20.

[Note: The introduction was omitted because the report is easily understood without one.]

CONSIDERATION OF ALLEGATIONS

1. Allegation #1: COL Brown conducted an adulterous relationship in violation of Article 134 UCMJ.

a. **Evidence**:

(1) An undated anonymous letter was received by the IG, 66th Infantry Division and FVS, on 30 November 2005, from a “Concerned Employee." In the letter, the anonymous complainant alleged misconduct on the part of COL Brown. The anonymous complainant alleged COL Brown conducted an adulterous relationship with Ms.. Smith, his secretary, during March and April 2005. (EXHIBIT A-2)

(2) Article 134, UCMJ, Manual for Courts-Martial 2003, prohibited adultery. The stated essential elements of adultery were: "That the accused wrongfully had sexual intercourse with a certain person; at the time the accused or the other person was married to someone else; and that, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.” (EXHIBIT C-1)

(3) COL Brown's Officer Record Brief (ORB), verified by him on 23 January 2005, indicated that he was married to Mrs. Jennifer Coggins Brown. (EXHIBIT D-1)

(4) Registration entries and receipts for the Notel Motel, Lynchburg, VA, indicated Mr. Robert E. Brown and his wife were registered at the property on 21 March, 27 March, and 15 April 2005. The receipts were on a Visa card in the name of Robert E. Brown. (EXHIBIT D-2)

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(5) SPC Jane A. Gray, Personnel Administrative Specialist, DPCA, testified on 4 January 2006 that she believed Ms. Smith and COL Brown were having an adulterous relationship because she saw COL Brown and Ms. Smith embracing and kissing in the coffee room in the spring of 2005. Ms. Smith confided in her that she (Ms. Smith) was having an "affair" with COL Brown and hoped to marry him once COL Brown divorced his present wife. COL Brown called her “Miss Smith” now. She lost respect for COL Brown after Ms. Smith confided in her, which made it hard for her to work for a while. Mr. Groom personally hated COL Brown and slandered him repeatedly. (EXHIBIT B-1)

(6) Mr. Thomas P. Groom, Budget Analyst, DPCA, testified on 8 January 2006 that he had believed COL Brown and Ms. Smith were currently having an adulterous relationship. They frequently went to lunch together in the spring of 2005 and seemed "unusually familiar,” although COL Brown called her “Miss Smith” now. On several occasions during the spring of 2005, he saw their cars pull into the parking lot at the same time. This series of events seemed unusual to him because COL Brown normally preceded Ms. Smith to work by approximately 45 minutes. Mr. Groom testified that he hated COL Brown because he had not promoted him (Groom), was a sexual predator, abused his power, and had affairs with all of the women in the office. (EXHIBIT B-2)

[IO NOTE: Mr. Groom's demeanor during his testimony indicated he was biased against COL Brown to the point of being irrational.]

(7) Mr. Harold H. Hanson, desk clerk at the Notel Motel, testified on 9 January 2006 that he registered a Mr. and Mrs. Brown at the motel on 21 March, 27 March, and 15 April 2005. The two did not register together, but he saw them walking through the lobby and eating in the restaurant together. (EXHIBIT B-3)

[IO NOTE: Mr. Hanson identified COL Brown and Ms. Smith as Mr. and Mrs. Brown from photographs provided by the investigating officers.]

(8) Ms. Smith testified on 28 January 2006 that she and COL Brown had an "affair" and that COL Brown had promised to marry her once his divorce from his present wife was finalized. They (Ms. Smith and COL Brown) had engaged in sexual intercourse on seven occasions -- four times in her apartment when her roommate was away and three times at the Notel Motel in Lynchburg during March and April 2005. The “affair” ended in mid-April when COL Brown told her that he and his wife had "patched things up" and were not going to get divorced. She asked him to not use terms of endearment after the relationship ended. She testified that her work suffered after the relationship ended. She testified that Mr. Groom recently accused her of having an on-going affair with COL Brown, and she further testified that Mr. Groom was a "dangerous lunatic" who would "say anything to anyone." (EXHIBIT B-4)

(9) Mrs. Tillie Ickes, Administrative Specialist, DPCA, testified on 24 January 2006 that Mr. Groom hated COL Brown because COL Brown did not promote him. Mr. Groom frequently said unpleasant things about COL Brown to the point that she was concerned about his well-being. (EXHIBIT B-5)

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(10) SGM Conrad Mack, Noncommissioned Officer in Charge (NCOIC), DPCA, testified on 25 January 2006 that Mr. Groom had made unfounded allegations against COL Brown in the past. Mr. Groom appeared to irrationally hate COL Brown because he did not promote him. (EXHIBIT B-6)

(11) COL Brown testified on 1 February 2006 that he did not have an adulterous relationship with any woman assigned to DPCA or anywhere else. His wife would leave him if she thought he had an adulterous relationship. He suggested that some people might think there was something between him and Ms. Smith since they were friends and had socialized earlier in the year. He acknowledged there had been problems in his relationship with his wife. He and his wife had undergone a trial separation in March and April, but they were now back together. On a few occasions during that time, he stayed in the Notel Motel to avoid the stress of being in his quarters by himself. He met Ms. Smith at the motel "once or twice" for dinner because she would cheer him up. He denied having spent any of those nights together with Ms. Smith. He denied ever having sexual intercourse with Ms. Smith. He believed he mistakenly registered at the motel as Mr. and Mrs. Brown out of habit. He recalled once giving Ms. Smith a "brotherly" hug in the coffee room, but he denied kissing her. He admitted referring to Ms. Smith as "Honey" and "Sweetie" but claimed he referred to all women in a similar manner; he called her "Miss Smith" at her request. He recalled no circumstances when he and Ms. Smith arrived to work at the same time; he normally preceded her by at least 30 minutes. (EXHIBIT B-7)

b. **Discussion**.

(1) (*Restated Allegation)* An anonymous complainant alleged COL Brown had an adulterous relationship with his secretary, in violation of Article 134, UCMJ.

(2) *(Summarized Standard)* Article 134, UCMJ, prohibited adultery. The elements of proof for this offense were [the incidence of] sexual intercourse, [one or both were] married, and the conduct [was prejudicial to] good order and discipline.

(3) (*Evidence Supporting Substantiation)* Ms. Smith testified that her relationship with COL Brown was adulterous and that they had sexual intercourse on multiple occasions. Other witnesses supported Ms. Smith's testimony. Mr. Groom noted that there was something between the two by their "unusually familiar" behavior and demeanor toward one another and that at some point, COL Brown began calling Ms. Smith "Miss Smith." SPC Gray testified seeing COL Brown and Ms. Smith kissing in the coffee room. Hotel receipts and witness testimony placed COL Brown and Ms. Smith meeting at a local motel, where COL Brown registered as a couple when his wife was out of town. COL Brown's testimony that he was separated from his wife in March and April verified that he was married at that time. SPC Gray testified that knowledge of the relationship between COL Brown and Ms. Smith negatively impacted her work performance; Ms. Smith testified that her work performance suffered when COL Brown ended the relationship.

(4) *(Evidence Supporting Not Substantiation)* COL Brown testified that he socialized with Ms. Smith but denied ever having sexual intercourse with her or anyone

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else other than his wife. He stayed in the Notel Motel to avoid the stress of being in his quarters by himself. He met Ms. Smith at the motel "once or twice" for dinner because she would cheer him up. He believed he mistakenly registered at the motel as Mr. and Mrs. Brown out of habit. Multiple witnesses testified that Mr. Groom irrationally hated COL Brown and regularly made negative comments and allegations against him.

(5) *(Analysis of All Evidence)* Mr. Groom made multiple unsupported allegations against COL Brown, but multiple witnesses' testimony indicated that Mr. Groom was not a credible witness regarding COL Brown. However, documentary evidence and witness testimony indicated that COL Brown's relationship with Ms. Smith went beyond the innocent social activity described by COL Brown. Ms. Smith's testimony that she and COL Brown had sexual intercourse and "an affair" from March to mid-April 2005 was supported by witness testimony that they kissed in the office, seemed unusually familiar, and were witnessed eating together at the Notel Motel on the nights COL Brown rented a hotel room for "Mr. and Mrs. Brown." COL Brown's testimony that he was separated from his wife during March- April 2005 verified that he was married at the time Ms. Smith testified they had a sexual relationship. SPC Gray's testimony that she lost respect for COL Brown as a direct result of his relationship with Ms. Smith, and Ms. Smith's testimony that she performed her duties improperly after the relationship ended, indicated that the relationship was detrimental to good order and discipline. The preponderance of credible evidence indicated that COL Brown had an adulterous relationship with Ms. Smith.

c. **Conclusion**: The allegation that COL Brown conducted an adulterous relationship in violation of Article 134 UCMJ was substantiated.

2. Allegation #2: COL Brown sexually harassed female employees in violation of AR 600-20.

a. **Evidence**.

(1) In the anonymous letter, the "Concerned Employee" alleged COL Brown created a hostile work environment for female employees in the DPCA by sexually harassing them. The anonymous letter writer stated that COL Brown used vulgar and abusive language; referred to women in demeaning and sexist terms; and, through innuendoes, solicited sexual favors from female subordinates. (EXHIBIT A-2)

(2) Paragraph 7, AR 600-20, dated 13 May 2002, Army Command Policy, referred to sexual harassment as a "form of gender discrimination. The elements of proof were unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" [linked to] "a term or condition of a person's job, pay, [or] career;" "career or employment decisions;" or "interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." It cited "telling sexual jokes" as an example of sexual harassment. (EXHIBIT C-2)

(3) Mr. Groom testified that COL Brown sexually harassed all of the women in the office both through his use of endearments like “Honey” and “Darling” and through physical sexual contact. (EXHIBIT B-2).

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(4) Mrs. Tillie Ickes, Administrative Specialist, DPCA, testified on 24 January 2006 that she did not know of COL Brown harassing anyone or if she had seen COL Brown harassing others. She once heard COL Brown tell a "mildly off-color" joke, laughed without reservation at the joke, and did not think anything of it later. She testified that Mr. Groom hated COL Brown personally and wanted to slander him. (EXHIBIT B-6)

(5) SGM Conrad Mack, Noncommissioned Officer in Charge (NCOIC), DPCA, testified on 25 January 2006 that COL Brown frequently used endearing terms with female employees but attributed this behavior to his age and background. Mr. Groom had made unfounded allegations against COL Brown in the past. (EXHIBIT B-7)

(6) CPT Megan O'Reilly, Chief, Officer Personnel Records, DPCA, testified on 26 January 2006 that she heard COL Brown tell a joke pertaining to male / female anatomy. She thought it was funny, appropriate for standing around the office coffee pot, and was not offended. She testified that Mr. Groom's personal feelings regarding COL Brown made his judgment suspect. (EXHIBIT B-8)

(7) Ms. Smith testified on 28 January 2006 that although she and COL Brown had an "affair," it was personal and kept separate from their working relationship. He never used his position as DPCA to influence her or coerce her. She always thought he was a "perfect gentleman" in the office. She never observed actions she considered to be sexual harassment. Mr. Groom was biased against COL Brown for personal reasons. (EXHIBIT B-4)

(8) COL Brown testified on 1 February 2006 that he admitted he had a habit of referring to women as "Honey" and "Darling" and once told a "dirty" joke in the office, which he suggested was as a lapse in judgment. He denied ever harassing anyone. (EXHIBIT B-5)

b. **Discussion**:

(1) *(Restated Allegation)* An anonymous complainant alleged COL Brown sexually harassed female employees within the DPCA, 66th ID in violation of AR 600-20.

(2) *(Summarized Standard)* AR 600-20, Army Command Policy, referred to Sexual harassment as a "form of gender discrimination. The elements of proof were unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature" linked to "a term or condition of a person's job, pay, [or] career;" "career or employment decisions;" or "interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment." It cited "telling sexual jokes" as an example of sexual harassment.

(3) *(Evidence Supporting Substantiation)* Mr. Groom testified that COL Brown sexually harassed all of the women in the office through his use of terms of endearment and through physical contact. COL Brown admitted that he had a habit of referring to women as "Honey" and "Darling" and once told a "dirty" joke in the office, which he opined was probably a mistake in judgment.

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(4) *(Evidence Supporting Not Substantiation)* No witnesses other than Mr. Groom testified that COL Brown harassed them or that they had seen COL Brown harassing others. Multiple witnesses testified that Mr. Groom was virulently biased against COL Brown for personal reasons. Witnesses testified that COL Brown frequently used endearing terms like "Honey" or "Darling" to female employees but attributed this practice to his age and background. Female witnesses testified they heard COL Brown tell a "mildly off-color" joke on one occasion, but they thought it was funny, appropriate for the setting, and were not offended. Ms. Smith testified that COL Brown did not pressure or coerce her into their sexual relationship. COL Brown denied ever harassing anyone.

(5) *(Analysis of All Evidence)* No credible witness testified that COL Brown sexually harassed any person. Mr. Groom's testimony was not credible based on his personal feelings against COL Brown. Female employees did not consider COL Brown's use of endearing personal pronouns and "mildly off-color" jokes as offensive. Credible, unbiased, witness testimony indicated COL Brown's alleged inappropriate behavior did not constitute sexual harassment because it did not interfere with their work performance, create an intimidating or hostile work environment, or link conduct of a sexual nature to work or pay. The preponderance of credible evidence indicated that COL Brown did not violate AR 600-20.

c. **Conclusion**: The allegation that COL Brown sexually harassed female employees in violation of AR 600-20 was **not substantiated**.

3. OTHER MATTERS:

a. There was a lack of understanding of the concept of sexual harassment and unfamiliarity with Army Policy on the subject. Several witnesses could not define the terms "sexual harassment," "sexual discrimination," or "gender discrimination" found in Army policies and regulations.

b. No witness could recall seeing or reading the CG's Policy Memorandum #3, Sexual Harassment.

c. In addition, witness testimony suggested a lack of knowledge among some civilian members of DPCA regarding the policies and procedures for civilian promotions and grade enhancements. This lack of awareness may have led to rumors within the workgroup that adversely affected morale.

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4. RECOMMENDATIONS:

a. Approve the report and close the case.

b. SJA brief sexual harassment policy as a topic of discussion in an upcoming commander's call, and redistribute the CG's policy memorandum on the subject.

c. Have CPAC conduct training with the civilian members of DPCA (and possibly the entire installation) regarding the proper policies and procedures for civilian promotions and grade enhancements.

BRUNO SHOULDER
MSG, IG
Investigator

RICHARD BRITTON
MAJ, IG
Investigator

CONCUR:

ALBERT R. RIGHTWAY
LTC, IG
Inspector General
APPROVED:

MOTTIN DE LA BLAME
MG, U.S. Army
Commander

_____
Date

Encl
Exhibit List

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LIST OF EXHIBITS

EXHIBIT	DESCRIPTION	FOIA RELEASE
A	**Directive and Complaint**	
A-1	Directive	
A-2	Complaint	
A-3	Legal review	
B	**Testimony**	
B-1	SPC Gray	NO
B-2	Mr. Groom	NO
B-3	Mr. Hanson	NO
B-4	Ms. Smith	NO
B-5	Mrs. Ickes	YES
B-6	SGM Mack	YES
B-7	COL Brown	NO
B-8	CPT O'Reilly	YES
C	**Standards**	
C-1	UCMJ, Article 134	
C-2	AR 600-20	
D	**Documents**	
D-1	DA Form 4037, ORB, COL Brown	
D-2	Notel Motel Receipts and Entries	

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EXHIBIT A-1
OTR 05-0019

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION (M)
FORT VON STEUBEN, VIRGINIA 22605

MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: Directive for Investigation

1. Investigate alleged improprieties by an Army official assigned to Personnel and Community Activities, Fort von Steuben.

2. Submit your report to me as soon as possible, but protect the rights of all persons involved and ensure the investigation is complete and accurate.

Mottin De La Blame
MOTTIN DE LA BLAME
Major General, U.S. Army
Commanding

Exhibit A-1 (page 1 of 1)
OTR 05-0019

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EXHIBIT A-2

OTR 05-0019

To the IG -

Why is COL Brown, as an officer + soldier, not standing by the Army's code of ethics? Why is he having an affair w/ his secretary! I have seen him do a lot of things, like touch, + kiss her in the office that are very unprofessional. Other people have seen this too and are too scared to say anything - but they know too!

COL Brown touches + sexually harrasses the women in the department. His bad language makes it worse. He is vulgar and uses sexist language. He is always talking down to the women in the department and tries to solicit sex from his female subordinates with his filthy jokes.

Help us! Aren't Army officers supposed to be better than this?

A Concerned Employee

Exhibit A-2 (page 1 of 1)
OTR 05-0019

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EXHIBIT A-3

OTR 05-0019

AFSV-JA (05-0019) 27 May 2005

MEMORANDUM FOR: Inspector General (AFSV-IG, LTC Rightway), Bldg T-1, Fort Von Steuben, VA 22605

SUBJECT: Legal Review of Report of Investigation, Case No. 05-0019

1. References.

a. U.S. DEP'T OF ARMY REG. 600-20, (18 March 20XX) [herein after AR 600-20]

b. U.S. DEP'T OF ARMY REGULATION AR 20-1, (January 20XX) [herein after AR 20-1]

c. MANUAL FOR COURTS-MARTIAL, UNITED STATES pt. IV, [paragraph] 134 (20XX) [hereinafter UCMJ art 134].

2. Purpose. We have received the Report of Investigation (ROI) from case No. 05-0019 concerning the actions of COL Robert E. Brown regarding allegations of adultery and sexual harassment.

3. Law. AR 20-1, paragraph 7-1*a,* establishes the basis for Inspector General Investigations to resolve an allegation as either Substantiated or Not Substantiated.

a. General. The ROI must make a clear and concise statement of the evidence reviewed, what the IG found credible, and an analysis of how the IG arrived at his or her conclusion (substantiated or not substantiated). Negative findings are often appropriate, such as evidence that fails to support the allegation, as are assessments of the credibility of specific pieces of evidence and the weight assigned thereto.

b. Standard of proof. AR 20-1, paragraph 7-*1a,* establishes the IG standard of proof required (preponderance of credible evidence). This means that after considering all of the evidence gathered, the IG must weigh the credible evidence and make a determination whether it is more likely than not that the subject or suspect has violated the standard. If it is more likely than not that the standard was violated, then the allegation is said to be substantiated. If it is more likely than not that the standard was not violated, then the allegation is said to be not substantiated. The weight of credible evidence is not determined by the number of witnesses or the volume of evidence presented but by considering all of the evidence and evaluating such factors as the

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witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.

4. Evidence relevant to Art 134 UCMJ.

a. COL Brown's DA form 4037 showing his marriage to Jennifer Coggins Brown.

b. Three receipts from the Notel Motel from March and April 2005.

c. Sallie Smith testified that she and COL Brown had sexual intercourse and "an affair" from March to mid-April 2005.

d. COL Brown testified that he and Ms. Smith had gone to dinner but that they had not had sexual intercourse

e. SPC Gray testified that she lost respect for COL Brown as a direct result of his relationship with Ms. Smith, and Ms. Smith's testimony indicated that she performed her duties improperly after the relationship ended. SPC Gray further indicated that the relationship was detrimental to the good order and discipline of the organization.

5. Evidence relevant to AR 600-20.

a. Mr. Groom testified that COL Brown had sexually harassed women.

b. The IG interviewed several other witnesses. Those witnesses testified that female employees did not consider COL Brown's use of endearing personal pronouns and "mildly off-color" jokes as offensive. Witnesses testified that COL Brown's behavior did not interfere with their work, create an intimidating or hostile work environment, or link conduct of a sexual nature to work or pay.

6. Discussion.

a. The IG found the preponderance of credible evidence supported substantiating the allegation that COL Brown had an adulterous relationship with his secretary, in violation of Article 134, UCMJ. The IG determined that in March and April 2005, COL Brown was married based on his DA Form 4037. Witness testimony from Ms. Smith and SPC Gray supported that COL Brown and Ms Smith had sexual intercourse in March and April 2005. SPC Gray further testified that as a consequence of COL Brown's and Ms Smith's relationship, the organization's good and order and discipline was adversely affected. The IG did not find COL Brown's denial credible.

b. The IG conducted numerous interviews inquiring into the allegation that COL Brown sexually harassed female employees within the DPCA, 66th ID, in violation of AR 600-20. After numerous interviews, the IG found no credible evidence of any incidence of sexual harassment. However, Mr. Groom did testify that COL Brown did sexually harass females in the workplace. The IG found his testimony not credible based on his personal feelings against COL Brown.

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7. Conclusion. The IG appropriately evaluated the documentary and witness testimony and reached a legally sufficient conclusion. COL Brown was married during March and April 2005; and, during that time, he had sexual intercourse with a woman other than his wife, affecting adversely the good order and discipline in the organization. During the same time, COL Brown told off-color jokes in the workplace. Numerous witnesses testified that the jokes did not offend them and that COL Brown's behavior did not interfere with their work, create an intimidating or hostile work environment, or link conduct of a sexual nature to work or pay.

8. POC for this action is MAJ John Bailiff, (540) 802-3401.

CONRAD E. BEAGLE
COL, JA
Staff Judge Advocate

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EXHIBIT B-1
OTR 05-0019

MSG Shoulder: The time is 1500. This tape recorded interview is being conducted on 4 January 2006, at the IG Conference Room, Fort Von Steuben, Va. Persons present are the witness, SPC Jane A. Gray, and the investigating officers, MAJ Richard Britton and MSG Bruno Shoulder. This investigation was directed by MG Mottin De La Blame, commander of Fort Von Steuben, and concerns allegations of impropriety by an Army official.

An Inspector General is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.

Since I will ask you to provide your personally identifying information to help identify you as the person testifying, I provided you a Privacy Act Statement. Do you understand it?

SPC Gray: Yes.

MSG Shoulder: You are not suspected of any criminal offense and are not the subject of any unfavorable information. Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin?

SPC Gray: No, Sergeant.

MSG Shoulder: Please raise your right hand so that I may administer the oath.
Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?"

SPC Gray: I do.

MSG Shoulder: You may lower your hand. Please state your name.

SPC Gray: Jane Ann Gray.

MSG Shoulder: Rank and status?

Exhibit B-1 (page 1 of 6) *Editorial note: Footers denoting Exhibit and case number should be on all subsequent exhibit pages.*
OTR 05-0019
Note: All pages of the testimony must include the following footer:

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SPC Gray: SPC, Active Army.

MSG Shoulder: Organization?

SPC Gray: Personnel Administrative Assistant, DPCA.

MSG Shoulder: Address? it can be home or office, but it should be an address where you would not mind receiving correspondence with a return address from the IG Office.

SPC Gray: My home address is 123 Admin Way, Fort Von Steuben, VA, 12345

MSG Shoulder: Telephone number? it can be home or office.

SPC Gray: My cell number is 555-098-9845.

MAJ Britton: This concludes the formal read-in. We'll start the questioning now, SPC Gray. How are you feeling? Any questions for us yet?

SPC Gray: No, sir. I'm still confused as to what this is about.

MAJ Britton: That's OK. As we said before we turned on the recorders, we can't be very specific, but as you answer questions, you will probably figure a lot of things out. But we are not able to confirm or deny any guesses you make. Are you ready?

SPC Gray: Yes, sir.

MAJ Britton: How long have you worked at DCPA?

SPC Gray: About a year. I got here December a year ago.

MAJ Britton: And how long have you worked for COL Brown?

SPC Gray: For the whole time.

MAJ Britton: Can you tell me about working in the office? What is it like to work there? Do you work with other people in the office? How is COL Brown as a boss? Just kind of an overview of the office, please.

SPC Gray: Sure. I'm not sure why you had to ask me about it, but I like coming to work. It's a good group of people there. Everyone had their faults, but people try to treat each other right. I work with COL Brown, Ms. Smith, his secretary -- she's really sweet, and there is a whole bunch of people. Do you want me to name them?

MAJ Britton: Yes, please.

SPC Gray: There is SGM Mack, CPT O'Reilly, Mrs. Ickes, Mr. Groom, as well as COL Brown's driver, PVT Speed.

MAJ Britton: COL Brown has a driver?

SPC Gray: Yes, sir. It was a “drug deal,” a rehabilitative transfer that did not work. PVT Speed is being chaptered for drug use now, so if you need to talk to him, you had better do it soon.

MAJ Britton: Thank you. Please keep going about the office. How is it to work there? Do people enjoy coming there? What kind of a boss is COL Brown?

SPC Gray: He's pretty good. Very professional and polite. Not what I expected when I learned I would be working for a COL. I thought he would be, you know, sort of scary.

MAJ Britton: Does he ever use improper terms to you or anyone else? Have you ever seen him touch anyone in a way that you thought was wrong?

SPC Gray: What do you mean by touch? He's never touched me improperly, and I've never seen him touch anyone who was unwilling, if you know what I mean. He's always acted totally professionally to me. Sometimes he calls the other ladies in the office "Honey" or "Dear," but they don’t mind. I'd be uncomfortable if he called me that, but he always addresses me properly. I like working for him. He's a good boss.

MAJ Britton: So he’s never touched you improperly?

SPC Gray: No -- and I’d like to know who is telling that story. SGM Mack asked me about that too, this summer, and it makes me mad! That’s the sort of rumor that can mess up my reputation.

MAJ Britton: Tell me about that "story." Did someone spread a rumor about you and COL Brown?

SPC Gray: This summer, someone told SGM Mack that they saw COL Brown and me kissing. It made me so mad when SGM Mack came into my office and asked if I was OK! I mean, I'm glad he checked on me and all, but that sort of a rumor could ruin my reputation and cause trouble for COL Brown. As if I'd be interested in a married man! I'd like to find out who said it, too. I'd let them have it!

MAJ Britton: SGM Mack told you about the rumor?

SPC Gray: No. He talked to me to be sure I was not being sexually harassed or assaulted. If COL Brown was really putting the moves on a SPC, it would be really wrong. SGM Mack wouldn't stand for it. Like I said, I'm glad SGM Mack checked out the rumor, but I get really angry when I think about it.

MAJ Britton: OK -- thank you. We'll go back to COL Brown touching the willing -- that might be important. But how do you know that the ladies don't mind?

SPC Gray: Mr. Groom brought it up in the coffee room once. He was telling the women in the office that they should not put up with him, and they all laughed at him. Boy, did he get mad! (laughs) They told him that COL Brown was an older gentleman and would never change, that he did not mean anything by it, and they certainly did not mind. Basically, they shut him down. He's been trying to pick at COL Brown since he did not promoted last summer, and we could tell he was looking for something.

MAJ Britton: Hmmm, and do you think if someone was uncomfortable with it, they could mention it to him?

SPC Gray: Oh, yes, sir. COL Brown is very approachable.

MAJ Britton: Even Mr. Groom could approach him?

SPC Gray: Oh, yes, sir. I don't think COL Brown knows how angry Mr. Groom is. He's seriously upset with COL Brown. But I don't think it's fair. The only person who thought he should be promoted was Mr. Groom. He says all sorts of mean things about COL Brown and has started being nasty about the other people in the office, too -- like the rumor about me kissing COL Brown. That's nasty, the COL is old and married, what sort of a stupid idiot would I be to be involved with my boss? Anyway, but Mr. Groom has been spreading gossip about Miss Smith and COL Brown, too, saying they used to eat lunch together so they must have been sleeping together. But then, he's also gone in to see SGM Mack about COL Brown supposedly having affairs with CPT O'Reilly and Mrs. Ickes, too. He doesn't know anything. He's just a jerk.

MAJ Britton: Can we go back to what you said earlier? Did you ever see COL Brown touching someone, even if they were a willing participant?

SPC Gray: Yes, sir.

MAJ Britton: Can you tell me about that?

SPC Gray: Do I have to?

MAJ Britton: Yes.

SPC Gray: Mmmmmm. (sigh) Ummmmm. (sigh) About six months ago, I walked in on COL Brown and Ms. Smith kissing in the coffee room. I shut the door immediately, but I saw them kissing.

MSG Shoulder: Can you describe the kiss? Was it on the cheek, a brotherly kiss?

SPC Gray: Yuck -- I wouldn't want my brother to kiss me like that.

MAJ Britton: If you know anything more about their relationship, please tell me what you know.

SPC Gray: Oh, sir, this is not my business.

MAJ Britton: Please answer the question. I know it's difficult.

SPC Gray: Ms. Smith talked to me that afternoon, the afternoon of the day I walked in on them. She told me that she and COL Brown had a relationship, that it was more than "an affair." He was going to marry her after his divorce went through. She said that they were in love.

MAJ Britton: Did she tell you if kissing was as far as it had gone?

SPC Gray: Yes, sir. She just wouldn't stop talking; it was like she'd been holding onto a secret for a long time and had to tell someone.

MAJ Britton: What did she tell you?

SPC Gray: She said they went to the Notel Motel. And I told her that she was too young for him and that she shouldn't be doing that because he was married and that both of them should know better, but she said that when you are in love, nothing seems wrong. But I heard that Mrs. Brown came back after a few months, and COL Brown is going to marriage counseling, and she was really sad.

MAJ Britton: Did COL Brown ever mention anything like this to you?

SPC Gray: Oh, no, sir! The morning I saw them kissing, he told me she was upset by something at home, so he gave her a hug -- but that was all he ever said.

MAJ Britton: Is there anything else, anything at all that showed there was a relationship going on between the two of them?

SPC Gray: No, um, they were always very business-like. Well, when he called her "Honey" or "Dear" it sounded like he meant it to me, and they went to lunch together a lot. I didn't think there was anything to it at the time. He and she talked to each other a lot at the time, but he hasn't been friends with anyone either before or since. Come to think of it, he calls her "Miss Smith" all of the time at work now. Maybe that's why she was crying.

MAJ Britton: Crying? When?

SPC Gray: Oh, off and on all through the summer. Less in the fall. She said it was allergies, but her eyes were red a lot.

MAJ Britton: So when did you see them kissing?

SPC Gray: Oh, I don't know … ummmm … springtime. Maybe after Easter? I remember there were Easter candies in the candy dish on my desk, and I put those out after the bunny bought too many for my kid's Easter basket…you know what I mean.

MAJ Britton: So would that be late March or April?

SPC Gray: Uh, maybe April.

MAJ Britton: Did anyone else know? Was this common office gossip?

SPC Gray: Not that I know of. I've never told anyone except you -- and that's not because I wanted to tell! I've tried to forget it! No one's ever mentioned it around me, and I think they would have. COL Brown told a joke once, and everyone talked about it for days. He doesn't seem like the sort of guy who would do something improper. I think he's very worried about what other people think of him. (sigh) He should have been more worried. After I found out, I was so disappointed in him that it took me an effort to treat him professionally. That lasted for a few weeks, but he is a good man, and after he

and his wife got back together I was relieved that he wanted to do the right thing. But for that few weeks, it was hard for me to care about doing a good job for him. It made me angry that he was an officer and a hypocrite. But, like I said, he did the right thing by getting back with Mrs. Brown.

MAJ Britton: Will you tell me about the joke he told? Was it crude or insulting?

SPC Gray: I can't remember jokes, sir, but it was pretty lame. I've heard worse on *Seinfeld* reruns. Maybe CPT O'Reilly remembers it. I remember her laughing at it.

MSG Shoulder: What about COL Brown's relationship with CPT O'Reilly? Has it been proper?

SPC Gray: As much as I know. He's never seemed to be close to anyone in the office except for Miss Smith -- and that ended last spring. He has what appears to be professional relationships with everyone in the office.

MAJ Britton: Can you think of anything else we should have asked you regarding the matters we've talked about?

SPC Gray: No, sir, but I do want to be clear that COL Brown is a decent boss. Maybe he and Ms. Smith did the wrong thing, but they did not flaunt it or make anyone uncomfortable, and he's back with his wife now. It seems to me that this investigation could hurt more than it could help.

MAJ Britton: Thank you, SPC Gray. MSG Shoulder will do the read-out now.

MSG Shoulder: Do you have anything else you wish to present?

SPC Gray: No, Sergeant.

MSG Shoulder: Who else do you think we should talk to and why?

SPC Gray: Maybe Miss Smith. And CPT O'Reilly, SGM Mack, Mrs. Ickes, and Mr. Groom, as well as PVT Speed.

MSG Shoulder: Thank you. We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.

Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony and documents. If there is such a request, do you consent to the release of your testimony and documents but not your personal identifying information such as name, social security account number, home address, or home phone number, outside official channels?

SPC Gray: No. I don't want anyone to think I was spreading rumors.

MSG Shoulder: Do you have any questions? The time is 1545, and the interview is concluded. Thank you.

EXHIBIT B-2
OTR 05-0019

MSG Shoulder: The time is 0830. This tape recorded interview is being conducted on 8 January 2006, at the IG Conference Room, Fort Von Steuben, VA. Persons present are the witness, Mr. Thomas P. Groom, and the investigating officers, MAJ Richard Britton and MSG Bruno Shoulder. This investigation was directed by MG Mottin De La Blame, commander of Fort Von Steuben, and concerns allegations of impropriety by an Army official.

An Inspector General is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.

Since I will ask you to provide your personally identifying information to help identify you as the person testifying, I provided you a Privacy Act Statement. Do you understand it?

Mr. Groom: Yes.

MSG Shoulder: You are not suspected of any criminal offense and are not the subject of any unfavorable information. Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin?

Mr. Groom: No.

MSG Shoulder: Please raise your right hand so that I may administer the oath. Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?"

Mr. Groom: I do.

MSG Shoulder: You may lower your hand. Please state your name.

Mr. Groom: Thomas Percival Groom

MSG Shoulder: Rank?

Exhibit B-2 (page 1 of 7) *Editorial note: Footers denoting Exhibit and case number should be on all subsequent exhibit pages.*
OTR 05-0019
Note: All pages of the testimony must include the following footer:

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Mr. Groom: GS-12

MSG Shoulder: Organization?

Mr. Groom: DPCA

MSG Shoulder: Address? It can be home or office, but it should be an address where you would not mind receiving correspondence with a return address from the IG Office.

Mr. Groom: Apartment 17B, 456 Livid Lane, Lynchburg, VA 12386

MSG Shoulder: Telephone number? It can be home or office.

Mr. Groom: 555-804-3961

MAJ Britton: This concludes the formal read-in. You mentioned that you have some information for us when we were conducting the pre-tape. Before we start our questions, why don't you go ahead and tell us what you said off tape?

Mr. Groom: I know you said you can't tell us who you are investigating or why, but I am willing to bet that you are here finally investigating COL Brown. He's the worst boss here on the post, and the worst officer I have ever seen. The way he acts in the office -- huh. It's like it is his own little palace, and all of the women in it are just there to make him happy. He's awful. Someone should do something about him.

MAJ Britton: You were more specific previously. What does he do that makes him so bad?

Mr. Groom: He's a tyrant, and everyone is afraid of him. He talks down to all the women, all of them, all the time. He doesn't call any of them by their names or by Mrs. or Miss, nothing but "Honey" this, and "Sweetheart" that. I tell you, it's demeaning! And when I tried to do something about it, the women are so afraid of him, they begged me to not challenge him or take it higher. He treats them like dirt, and they are living in a climate of fear!

MAJ Britton: So are you saying that the women in the office are so afraid of COL Brown that they have not told him to stop using terms of endearment?

Mr. Groom: That's exactly what I'm saying. Everyone's afraid of him. They saw what he did to me with my promotion, and they don't want him to do that to them either.

MAJ Britton: What did COL Brown have to do with your promotion?

Mr. Groom: I did not get promoted, that's what he did. I should have. I'm the senior budget analyst and always get my work in on time. I wanted that promotion. In fact I told COL Brown that I wanted to be promoted, but I wasn't! And when I asked him why I wasn't promoted this year, he told me that there wasn't a space in DPCA for a GS-13. He could have made my billet a GS-13 billet if he wanted to, he just didn't want to. I've always known he didn't like me because I'm not some woman enthralled by him, but this proved it.

MAJ Britton: Did COL Brown promote anyone else? Bring in a budget analyst GS-13? Had he told you that there was a plan to promote you or someone in DPCA? Had he done something previously that made you think he did not like you? Help me understand the problem.

Mr. Groom: Nothing like that. The problem, like I said, is that I did not get promoted, and I should have. COL Brown has always had it in for me. If I was a woman, he could sweet-talk and rub up on, I'd be promoted by now.

MAJ Britton: We'll get to his actions in the office in a second, but right now, please tell me how "he'd always had it in for you."

Mr. Groom: Well, he had to have because he did not promote me.

MAJ Britton: But before that?

Mr. Groom: He hates me. You don't need any other proof other than I did not get promoted.

MAJ Britton: Did he counsel you about your promotion?

Mr. Groom: No, it's like he's oblivious to the fact that I should have been promoted.

MSG Shoulder: Does COL Brown inappropriately touch anyone in the office?

Mr. Groom: You bet he does.

MSG Shoulder: Can you please tell me about it?

Mr. Groom: Who knows exactly what COL Brown does, he's such a predator, but I know he does something.

MAJ Britton: When the recorder was off, you said you saw him touching someone. Please tell us about it.

Mr. Groom: I walked into the office a few weeks ago, and he had his arm around CPT O'Reilly. She was crying, probably because of him. He was embarrassed when I came in and then he had the gall to ask me to get a box of Kleenex. I was so angry that he was carrying on in the office, I did not know what to do, so I got him the Kleenex and got out before I punched him in the nose. CPT O'Reilly gave me some lame story later about her marriage having problems and her falling apart in the office and asked me not to mention it to anyone, but whatever. It was COL Brown's chance to 'cop a feel,' and she was trying to protect him. And he tells inappropriate stories to the women in the office. They all laugh about it, but he knows better than to use that language around me. I won't stand for it.

MAJ Britton: We'll get to the jokes in a second. Where exactly was he touching CPT O'Reilly?

Mr. Groom: They were sitting at the table in the coffee room, side by side, and he had his arm around her shoulders, and she had her hands over her face, like this. She was boo-hooing. He'd probably just threatened or propositioned her.

MAJ Britton: What makes you say that?

Mr. Groom: What else could it be? I'm telling you, the man's a predator.

MAJ Britton: Did you ever see him kiss anyone at the office?

Mr. Groom: Yes, once. I saw him kiss SPC Gray. Well, I saw them reflected in the window, but I saw him kiss her. With my own eyes. This summer.

MAJ Britton: When this summer?

Mr. Groom: July or August.

MAJ Britton: Can you be more specific about the date? Any details that you remember that jog your memory?

Mr. Groom: It was hot. I was walking outside and saw them kissing in the reflection of a car window in the parking lot.

MAJ Britton: So they were kissing in the parking lot? In a car?

Mr. Groom: No, in the office, but they were reflected in the car window.

MAJ Britton: I see. Please describe this kiss -- was it on the cheek or lips?

Mr. Groom: On the lips. Like he meant it. She was a willing participant too. You should talk to her about it. If I hadn't seen that with my own eyes, I would have never thought there was anything going on at all. SPC Gray is very professional -- I think he was making her because she'd never put up with that sort of thing. I tried to mention it to SGM Mack that afternoon but he said I'd need to have some other information before he'd do anything about it.

MAJ Britton: OK, let's talk about the jokes. Can you give me an example? Are these jokes racist or sexual or what?

Mr. Groom: I don't know. The women all thought it was funny that he told them an inappropriate joke, but it's a sick abuse of power.

MSG Shoulder: How often does he tell these sorts of jokes?

Mr. Groom: Well, I only can think of one time in particular, but I'm sure there are more. If he has the habit of telling dirty jokes, you know he'll tell more than one.

MJ Britton: Going back to his touching women in the office, are there any more examples that you can think of?

Mr. Groom: Ummmm, not at this moment, but I'll keep thinking about it. He recently went to lunch a few times with Mrs. Ickes. I warned her that she should keep her distance, that it looked bad, but she told me that he was helping her son work on his college applications. I've never heard such a lame excuse. Going to lunch with an employee is so inappropriate. And during the spring, he and Miss Smith arrived at work at the same time a few times. I noticed because they usually arrive about 45 minutes apart. I didn't think anything about it then, but recently I thought they might be having an affair. They went to lunch together a lot in the spring and seemed unusually familiar for a while, you know, really friendly. But I confronted Miss Smith with this lately, and she got really mad at me and told me I'd better not be spreading stories about her or she would go to EEO and the union about me, so I might have been mistaken.

MAJ Britton: Did you see anything else that supported this conclusion? What do you mean by 'unusually familiar?'

Mr. Groom: There wasn't much, but once he gave her a Kleenex and told her that her mascara was smudged. Nothing obvious, just a "vibe." No, but like I said, I did not think anything of it until a lot later. Since then, I've been watching, but I haven't seen anything. SGM Mack says Miss Smith is seeing his cousin, but that may be a cover up, too. I think they are all so afraid of COL Brown that they'll say anything to stay OK with him.

MAJ Britton: Has anyone from the office ever told you that they are afraid of COL Brown?

Mr. Groom: No, but I can tell. When I mention COL Brown, they tell me, "They don't want to talk about it anymore." Don't they know that I'm here to help? By the way, does the IG have any GS-13 jobs coming open?

MAJ Britton: Not currently. Even SGM Mack is afraid of him?

Mr. Groom: He's his boss, right? I'm telling you, this office is terrified!

MAJ Britton: With whom do you think COL Brown is having an affair?

Mr. Groom: I thought he was having an affair with Ms. Smith, but now I'm not so sure. But it looked like he had something going on with Mrs. Ickes, too.

MSG Shoulder: And you've based this on …

Mr. Groom: He calls Ms. Smith by "Miss Smith" but sexually harasses all of the other women. And what I told you about them coming in together and going to lunch. And I think he's stalking Mrs. Ickes.

MSG Shoulder: Did she tell you this? How does she get along with him?

Mr. Groom: Like I said, she's too afraid of him to say anything against him or to say no to him when he takes her to lunch. She's stuck and has to do what he says.

MSG Shoulder: Has she ever said she is afraid of him or that he is stalking her?

Mr. Groom: Not in so many words. But I can tell. Last month she told me that either I should go to EEO or that she would.

MSG Shoulder: Did you?

Mr. Groom: No….uuummmmm, I forgot the exact situation that I was going to discuss with them, so I did not.

MSG Shoulder: OK, how can you tell she is afraid of him or that he's stalking her?

Mr. Groom: Why else would she go out to lunch with him? If she wanted to go, she sure wouldn't use the lame excuse that he was helping her kid.

MAJ Britton: Can you tell us of any examples where COL Brown sexually harassed anyone? Beyond what you've just told us, I mean.

Mr. Groom: Isn't that enough? I go to EEO classes -- I know that use of terms of endearment and unwanted touching creates a hostile work environment. You don't need anything else. You should fire him.

MAJ Britton: Just so you know, sir, IGs do not have the authority to punish or recommend corrective actions. We simply gather the facts and present them to the Directing Authority. Can you define the terms "sexual harassment," "sexual discrimination," or "gender discrimination" as they are defined in Army policies and regulations?

Mr. Groom: Sure I can. Just like everyone else can. I go to all of those classes.

MAJ Britton: Let's go over the definitions off tape, just to be sure, Mr. Groom. Also, have you read the CG's policy memorandum #3 on sexual harassment?

Mr. Groom: I didn't know there was one!

MAJ Britton: I'll give you a copy before you leave today, sir. Do you have any further information that you would like to share with us regarding your claim that COL Brown is having an affair with Ms. Smith or anyone else?

Mr. Groom: Nothing that I remember right off of the top of my head. Do you want me to ask around for you? See if I can find out anything else?

MAJ Britton: Thank you for the offer, Mr. Groom, but that won't be necessary. Are there any other questions that we should have asked you?

Mr. Groom: Nothing that I can think of yet.

MAJ Britton: Who else should we talk to and why?

Mr. Groom: Maybe CPT O'Reilly, since I saw him with his grubby paws on her. Mrs. Ickes because he was stalking her. Ms Smith probably won't talk to you -- she'll try to protect him. You could talk to SPC Gray too or PVT Speed, but they are too in awe of COL Brown to say anything. SGM Mack might tell you the truth if you asked him, but he

seems pretty loyal to COL Brown. Mrs. Brown might be able to tell you more about her husband's philandering.

MAJ Britton: I see. OK, MSG Shoulder will do the formal read-out now.

MSG Shoulder: Do you have anything else you wish to present?

Mr. Groom: No.

MSG Shoulder: Who else do you think we should talk to and why?

Mr. Groom: Only the people I already told you about.

MSG Shoulder: Thank you. We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.

Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony and documents. If there is such a request, do you consent to the release of your testimony and documents but not your personal identifying information such as name, social security account number, home address, or home phone number, outside official channels?

Mr. Groom: No. I don't want COL Brown to see this -- he'd ruin me for sure!

MSG Shoulder: Do you have any questions? The time is 1000, and the interview is concluded. Thank you.

EXHIBIT B-3
OTR 05-0019

MSG Shoulder: The time is 1000. This tape recorded interview is being conducted on 9 January 2006 at the Motel Office of the Notel Motel, Lynchburg, Va. Persons present are the witness, Mr. Harold H. Hanson, and the investigating officers, MAJ Richard Britton and MSG Bruno Shoulder. This investigation was directed by MG Mottin De La Blame, commander of Fort Von Steuben, and concerns allegations of impropriety by an Army official.

An Inspector General is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.

Since I will ask you to provide your personally identifying information to help identify you as the person testifying, I provided you a Privacy Act Statement. Do you understand it?

Mr. Hanson: Yes.

MSG Shoulder: You are not suspected of any criminal offense and are not the subject of any unfavorable information.

Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin?

Mr. Hanson. Nope.

MSG Shoulder: Please raise your right hand so that I may administer the oath.
Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?"

Mr. Hanson: I do.

MSG Shoulder: You may lower your hand. Please state your name.

Exhibit B-3 (page 1 of 5) *Editorial note: Footers denoting Exhibit and case number should be on all subsequent exhibit pages.*
OTR 05-0019
Note: All pages of the testimony must include the following footer:

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Mr. Hanson: Harold Harry Hanson.

MSG Shoulder: Rank?

Mr. Hanson: I am not affiliated with the military.

MSG Shoulder: Organization and position?

Mr. Hanson: Notel Motel owner, desk clerk, and chief cook and bottle washer

MSG Shoulder: An address where we can mail you something if necessary, understanding that whatever we send you will have the return address of the Fort von Steuben IG Office.

Mr. Hanson: Here is fine. Care of the Notel Motel, Highway 1, Lynchburg, VA.
MSG Shoulder: And a phone number?

Mr. Hanson: 555-312-0035

MSG Shoulder: This concludes the questions. MAJ Britton will begin the questioning now.

MAJ Britton: Mr. Hanson, are you ready?

Mr. Hanson: Sure am.

MAJ Britton: We're trying to determine if two people stayed here this springtime, around April-ish. You said you were willing to see if they had registered here during that time.

Mr. Hanson: I am indeed. Let me know who it is.

MAJ Britton: I'm looking for a man named Brown and a woman named Smith.

Mr. Hanson: Major, do you have any idea how many Mr. and Mrs. Browns and Mr. and Mrs. Smiths check into this place? If it wasn't for people doing what they shouldn't, we wouldn't have half of our business. (pause) Let's see. Yep, we have at least one of each every day in March and every day in April. (pause) And most of them were not the same couples every night…although some of the people might have been the same. I'm just saying…

MAJ Britton: Oh. Do you have anything for those months where they had to sign in or sign for a key?

Mr. Hanson: No, we're computerized now. But -- do you have pictures of the people in question?

MSG Shoulder: That was last spring. You probably wouldn't remember.

Mr. Hanson: Don't be so sure. I have a photographic memory for people. If I see someone, I can remember them for the rest of my life. Doubt it if you want to, but you two are not the first law enforcement officers or detectives I've talked to, if you get my

drift. The name of the motel may be The Notel Motel, but I don't withhold information from the law.

MAJ Britton: If we can find their photos online, can you identify them?
Mr. Hanson: I can try.

MSG Shoulder: Let's give it a shot.

MAJ Britton: OK, let's take a pause and go off-tape.

MSG Shoulder: The time is 1015. We will resume in a moment.

MSG Shoulder: The time is 1100. This interview is a continuation of the interview with Mr. Hanson and MAJ Britton and MSG Shoulder on 9 January 2006. Persons present are Mr. Hanson, MAJ Britton, and MSG Shoulder at the Notel Motel office, Lynchburg VA.

MAJ Britton: Mr. Hansen, we've pulled up a photograph of a unit picnic on the Fort Von Steuben Web site. There are seven people in the photo. Can you please tell me if you recognize any of the people in the photograph?

Mr. Hanson: Yes, I have seen two of these people here at the Notel Motel. I also recognize one of the people as a member of my church, but he's never been to this motel before.

MAJ Britton: Hmmm, would you please indicate the two people you recognize as having been at the Notel Motel and tell me what their names are?

Mr. Hanson: This man and this woman. They were here a few times in March and April. Didn't see them before then and haven't seen them since. They signed in as Mr. and Mrs. Brown. Or, rather, he signed them in as Mr. and Mrs. Brown. She never came to the desk, but I saw her with him walking through the lobby and in the restaurant.

MAJ Britton: Let the record show that he indicated COL Brown and Ms. Smith.

Mr. Hanson: So they really are named Brown and Smith? That's not very common!

MAJ Britton: So can you remember well enough to determine which days they were here?

Mr. Hanson: Yes, and I can pull up his electronic signatures. You know, when you sign that little pad thingee.

MSG Shoulder: I thought you said you didn't have any signatures.
Mr. Hanson: It's not very good. At best it's an approximation.

MAJ Britton: I'll take it anyway. Maybe it'll be close enough that it can corroborate the dates. Can you match the credit card instead?

Mr. Hanson: Sure. Hang on. (pause) OK -- I think Mr. and "Mrs." Brown were here on the 21st and 27th of March and then later on, ummmm, 16 April?

(pause) Oops, I was wrong. According to the credit card number, a Visa, issued to Mr. Robert E. Brown, expiration date 12 06, they were here on March 21st, the 27th, and April 15th. I was off by a day in April. Must be getting old.

MSG Shoulder: That's amazing.

MAJ Britton: Is there anything else that you would like to tell us?

Mr. Hanson: Anything else you would like to know?

MAJ Britton: Did they stay the whole night?

Mr. Hanson: It appears so. He checked them out at 0700 the next morning every time.

MAJ Britton: When you saw them, what was their demeanor?

Mr. Hanson: They were enjoying each other's company, but they weren't like newlyweds. They weren't touching or crawling all over each other, but they were talking and laughing a lot. He was a little jumpy when he signed in, though.

MAJ Britton: Do you clean the rooms, or do you have a housekeeping staff?

Mr. Hanson: Maria and Noreen clean the rooms. Do you need to talk to them?

MAJ Britton: No, they won't remember, will they?

Mr. Hanson: No, but if your question is about beds, the "Browns" only stayed in single rooms with king-sized beds.

MAJ Britton: Thank you for that information. MSG Shoulder, is there anything that you would like to ask?

MSG Shoulder: Is there anything else that you think we should ask you?
Mr. Hanson: Not that I can think of.

MSG Shoulder: Is there anyone with whom you think we should speak?
Mr. Hanson: Only Mr. and "Mrs." Brown.

MSG Shoulder: Thank you. We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.

Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony and documents. If there is such a request, do you

consent to the release of your testimony and documents but not your personal identifying information such as name, social security account number, home address, or home phone number, outside official channels?

Mr. Hanson: No.

MSG Shoulder: The time is 1130, and the interview is concluded. Thank you.

EXHIBIT B-4
OTR 05-0019

MSG Shoulder: The time is 1007. This tape recorded interview is being conducted on 28 January 2006 at the IG Conference Room, Fort Von Steuben, Va. Persons present are the witness, Ms. Sallie Smith, and the investigating officers, MAJ Richard Britton and MSG Bruno Shoulder. This investigation was directed by MG Mottin De La Blame, commander of Fort Von Steuben, and concerns allegations of impropriety by an Army official.

An Inspector General is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.
Since I will ask you to provide your personally identifying information to help identify you as the person testifying, I provided you a Privacy Act Statement. Do you understand it?

Ms. Smith: Yes.

MSG Shoulder: You are not suspected of any criminal offense and are not the subject of any unfavorable information.

Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin?

Ms. Smith: No.

MSG Shoulder: Please raise your right hand so that I may administer the oath.
Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?"

Ms. Smith: I do.

MSG Shoulder: You may lower your hand. Please state your name.

Ms. Smith: Sallie Lunn Smith

Exhibit B-4 (page 1 of 8) *Editorial note: Footers denoting Exhibit and case number should be on all subsequent exhibit pages.*
OTR 05-0019
Note: All pages of the testimony must include the following footer:

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MSG Shoulder: Rank and duty position?

Ms. Smith: GS-9, Secretary

MSG Shoulder: Organization?

Ms. Smith: DPCA

MSG Shoulder: Address? It can be home or office, but it should be an address where you would not mind receiving correspondence with a return address from the IG Office.

Ms. Smith: Apartment C, Lonely St, Lynchburg, VA 12388

MSG Shoulder: Telephone number? It can be home or office.

Mr. Groom: 555-804-3232.

MAJ Britton: This concludes the formal read-in. You look nervous. Are you nervous?

Ms. Smith: Yes. But can we hurry? I want to go back to work.

MAJ Britton: OK, we just have a few questions. Can you define the terms “sexual harassment,” “sexual discrimination,” or “gender discrimination” like they are defined in Army policies and regulations?

Ms. Smith: Wow. Is this a test? Probably not perfectly, but I think I can get a pretty good guess.

MAJ Britton: Don’t worry about it -- we can go over the definitions quickly after the interview is over. Have you read the CG’s policy memorandum #3 about sexual harassment?

Ms. Smith: I didn’t know he had one. I guess I should have read it, huh?

MAJ Britton: I’ll get you a copy before you leave today. Not a problem. So let’s talk about where you work. What's it like to work at DPCA?

Ms. Smith: It's a good place to work. People, most people, are nice. I usually like going to work.

MAJ Britton: How's COL Brown as a boss?

Ms. Smith: He's a good boss. I mean, people like him. He gets the job done. He treats people fairly.

MAJ Britton: Have you heard him use vulgar language. Does he sexually harass women who work for him?

Ms. Smith: Oh, no. That's not him at all. He really likes the people in the office, all of them, and has nothing but the utmost respect for all of them.

MAJ Britton: Can you tell me about him using terms of endearment with the people in the office?

Ms. Smith: He calls all of the ladies "darling" and "sweetheart", except SPC Gray. He told me once that she shouldn't have to have a COL call her names because she might not be willing to tell him to stop.

MAJ Britton: Why doesn't he call you these names?

Ms. Smith: Because I asked him to stop. It made me uncomfortable. He said he understood and has called me "Miss Smith" ever since.

MAJ Britton: Why did it make you uncomfortable?

Ms. Smith: I wasn't his 'honey' or his 'darling,' so he shouldn't use those names for me. Everyone else is OK with it, and that's their business.

MAJ Britton: Can you tell me if he has ever, since you've worked for him, used his rank or his authority to force anyone in the office to have sex with him?

Ms. Smith: I can't imagine him doing that. He's not that sort of a person at all. Whoever is making these claims does not know him very well.

MAJ Britton: And you've never heard him be vulgar or even tell a raunchy joke?

Ms. Smith: No. I imagine he would be pretty bad at telling a "raunchy" joke. He's pretty straight-laced. In fact, he’s a perfect gentleman. I’ve never seen him do anything that anyone could consider sexual harassment.

MAJ Britton: Describe for me your relationship with him.

Ms. Smith: We are strictly business. He's my boss. I'm his secretary. We don't mingle after work. He's a good boss.

MAJ Britton: Do you go to lunch together?

Ms. Smith: No, we don't. We did in the past, but not lately.

MAJ Britton: About when was this?

Ms. Smith: Earlier this year, late winter to spring? There's nothing wrong with going to lunch, is there?

MAJ Britton: Hmmmm … does COL Brown normally go to lunch with people from the office?

Ms. Smith: Not really. Every now and then, but usually he works through lunch. We have a lot going on.

MAJ Britton: So why did you two go to lunch before?

Ms. Smith: It made sense at the time. We weren't so busy. He needed someone to talk to. He was having a lot of trouble at home, and I was one of his confidants.

MAJ Britton: That doesn't sound like strictly business. Can you explain how you went from being a confidant to a "strictly business" relationship?

Ms. Smith: Things change, people change. You know…

MSG Shoulder: Ms. Smith, I am not sure you are being candid. I would like to remind you that you are under oath.

Ms. Smith: I haven't forgotten. So far I haven't told you anything that is not true.

MSG Shoulder: Please describe your relationship with COL Brown during the time when you two were going to lunch. During that time when he and his wife were having problems.

Ms. Smith: Ummmmm. Hmmmm. Who will find out about this investigation?

MAJ Britton: We encourage everyone who is part of it to not talk about it so we can maintain as much confidentiality as possible. We can't guarantee confidentiality, though. But as for the final product, MG De La Blame is the Directing Authority, so he will see it. Anyone who wants to read it after it is done has to submit a Freedom of Information Act request; and, at the end of this interview, I'll ask you if you want to release your testimony if someone requests it. Otherwise, it will be redacted. The suspect of the investigation will have access to the information against him or her but not your testimony per se.

Ms. Smith: I see. And can I be punished for what I say?

MAJ Britton: You are not suspected of a crime -- we are only talking to you as a witness. If you are going to confess to a crime, we'll read you your rights and then ask if you want to continue. Do you need me to read you your rights?

Ms. Smith: Noooo- I don’t think so. (pause) Do I have to talk to you, or can I talk to a lawyer first?

MAJ Britton: Ma'am, you have to talk to me. And you are under oath. I do want to remind you that the IG is a fact-finder only, and we do not have the authority to punish or recommend punishment. In fact, IG records can't be used for punishment without the approval of The Army Inspector General. I'd be lying if I said that he never gave that approval, but he does not give it very often.

Ms. Smith: Ummmmmmm. (pause…sniffs loudly…pause)

MAJ Britton: Is there something that you think you have to tell us? If it's going to be difficult, we can turn off the recorder. We'll get you a bottle of water and some Kleenex and talk about it off the recorder. However, we'll have to turn the recorder back on and go through it all over again since we are always on the record and you are still under oath, even if the recorder is off.

Ms. Smith: Could we do that please? I'd rather do that. (Loud sniffing)

MSG Shoulder: The time is now 1020 and the recorders are off.

MSG Shoulder: The time is now 1100 and the recorded interview with Ms. Sallie Smith on 28 January continues. Persons present are the witness, Ms. Smith, and the investigating officers, MAJ Britton and MSG Shoulder.

MAJ Britton: Ms. Smith, we discussed your previous relationship with COL Brown when the recorders were off. Please repeat what you said then.

Ms. Smith: All of it?

MAJ Britton: As much as you can remember. If you leave anything out, we'll remind you.

Ms. Smith: OK. When I came to work here two years ago, I was really happy. COL Brown was a good boss, and he still is. He asked my opinion on things, we talked about stuff other than work, and over about a year, I learned about how rough things were between Jenny and him. Their kids were off to college, and they'd realized they had nothing in common at all. Jenny was always nagging at him about stuff, and he felt like a failure because he did not know what would make her happy -- and because he did not make general. He'd been surprised to not make it and accepted this position because he was going to have to retire as a COL and was trying to get his head around not being a general, getting out of the Army, and was fighting with Jenny. I was a sounding board and, let's face it, I looked up to him, and I still believe that he should have been a general. Jenny was very open that she was glad that he was not going to be promoted any further, and he felt that she was being unfair and unsupportive. Anyway, it was hard for him -- he was run down, and I felt so sorry for him. I guess I fell in love with him over that first year, but I never said anything. He was a married man, and I knew from our conversations that he loved Jenny. And then she left him.

It was just a trial separation but he was devastated. When she left him in early March, he came to work the next day like a zombie. I felt really bad for him, but some part of me was hopeful, you know? I didn't want him to get a divorce. I did not want to be responsible for his marriage falling apart, but I thought if she went away, maybe he'd realize that I was there for him.

Anyway, things went pretty quickly after that. We went out to dinner one night and we went back to my place.

MAJ Britton: Who asked who out to dinner?

Ms. Smith: I can't remember. It was just supposed to be dinner. You know, to cheer him up, but he had a few drinks, and I had a few drinks, and then we went back to my apartment, and we made love.

MAJ Britton: I assume that means you had sexual intercourse?

Ms. Smith: Yes -- as of that moment, we went from being friends to committing adultery.

MSG Shoulder: Were you pressured into this? Did you feel that if you did not have sex with him, it would negatively impact your job? Did you feel that if you had sex with COL Brown, it would help your job?

Ms. Smith: Oh, no. It had nothing to do with work. It was completely mutual. And I thought he was happy about it, but he wasn't. Anyway, not to beat it to death, we had a relationship that lasted about two months. I was crazy in love; he'd said he would marry me next year after his divorce was final. Then, towards the middle of April, Jenny called him and said she wanted to try again, that she still loved him, that she was coming back. He told me that it was over. Just like that. He was very nice, very kind, but he said he had to patch things up with Jenny, that he owed her that. Just like that, the whole thing changed from something sweet and wonderful leading to a happy future to something wrong and bad. All of a sudden, she was back, and I wasn't going to marry the love of my life but was the 'Other Woman,' the dirty secret; it wasn't love -- it was an affair. I felt like I'd been hit with a bucket of cold water. Every day.

MAJ Britton: How did he treat you after it was over?

Ms. Smith: He was still as professional as always. We'd been careful to hide what we were doing because it is a small office; we didn't want to cause any drama. I cried a lot over the next few months -- every time I drove into the parking lot, I'd tear up. I told everyone it was allergies and just trusted things would get better. It has. I've met someone else and am starting to date again. COL Brown looks like he is happy with Mrs. Brown, and I guess we'd all live happily ever after except this got stirred up again.

MSG Shoulder: Is that why you told him to call you Miss Smith?

Ms. Smith: Yes. We agreed, that day when he told me Jenny was coming back, that he would always be COL Brown (I had called him Robert for two months), and I would be Miss Smith. We would put a wedge between us and never mention March and April again. We never did. That's not true -- I did tell someone once.

MAJ Britton: Who?

Ms. Smith: I went to confession. I'm a Baptist, and I went to confession. I had to tell someone. I had to have someone tell me that God didn't hate me for being an adulteress. (pause, sniffing)

MAJ Britton: So who else at your office knew about this?

Ms. Smith: No one. (pause) No, Jane knew.

MAJ Britton: Would that be SPC Gray? How would she know?

Ms. Smith: Yes. She walked in at one point when Ro -- COL Brown and I stole a kiss in the coffee room. It was the only time we'd done it; it was the only time, and she came walking in. I'll never forget the look on her face. COL Brown was so upset, he had to leave for the day, but I told him I'd talk to her and make up a story. I talked to her; I didn't make up a story but told her the truth. She told me I was crazy, but that was it. She keeps to herself anyway since she's a single mom and younger than anyone else in the office, so I didn't think she'd tell anyone. I don't think she did.

MAJ Britton: And she's the only one who knew? Has anyone ever said anything?

Ms. Smith: The only person who has ever said anything is Tom Groom, and last week he accused me of having an ongoing affair with COL Brown. I think he's crazy and would say anything to anyone. I'm willing to bet that you're here because he filed a complaint against COL Brown accusing him of anything from embezzlement to adultery to human trafficking. He's a dangerous lunatic. If Jenny, um, Mrs. Brown heard that COL Brown was having an affair, she'd have him for lunch. It would open all sorts of bad baggage that they're working through.

MAJ Britton: Do you think Mrs. Brown has heard anything?

Ms. Smith: I don't think so. She's always been nice to me. Talking to her, when she starts talking about counseling and growing closer, has been really painful, but she doesn't feel like she's being mean. She had a drinking problem that was a part of the problem, so part of her process is to talk about it. She's really trying to fix her marriage, and she talks about it with everyone.

MAJ Britton: Did any of this effect COL Brown's or your duty performance?

Ms. Smith: I should get an Oscar for how I've acted at work. But I think my overall job performance was pretty poor for a few months after that, maybe about 75% competent. COL Brown had to learn DTS since I messed it up, and I think he missed a few meetings because I mis-scheduled things. I wasn't being vindictive; I was just a mess. But I think he knew that, and he felt bad, I think, so he was never mad at me or angry, so we made it work. And now, as I said, it isn't an issue. I don't even think about it. Much. But until this investigation, it was all going to be OK.

MSG Shoulder: Miss Smith, you've said the relationship lasted for two months. How often was it physical?

Ms. Smith: Right -- we talked about that when you didn't have the recorders running. We had sex a few times, not as often as I wanted to, but he was TDY a lot, my roommate was in and out, and we were trying to be discreet. The first time, the time that started everything, was 6 March. We made love at my apartment a few more times, three more I think, and a few times at the Notel Motel. That was more because it was funny, the name was funny, and because he couldn't stand to be in his empty house. He'd call and ask me to meet him there. We'd have dinner, talk, and, yeah… (sniffing)

MAJ Britton: Do you remember dates?

Ms. Smith: Not really. Oh, I remember 15 April because Jenny called him on his cell phone early the next morning, the 16th, and we ended it. I called in sick that day -- allergies. And he came over to my place on 1 April because he showed up wearing one of those arrow-through- the-head things -- it was April Fools, and he was my April Fool. (sniffing)

MAJ Britton: Would you like another break?

Ms. Smith: No, let's get this over with. What else do you want to know?

MAJ Britton: Did the two of you arrive at work together?

Ms. Smith: No, never. Usually he gets to work before me. Maybe we arrived closer together when we stayed together..? It never mattered to me, so I guess I never noticed.

MAJ Britton: How do the people in the office deal with COL Brown using terms of endearment with the female employees?

Ms. Smith: I told you before; they think it's just part of where and when he is from. No one seems to have a problem with it. They could tell him if they did -- he's not standoffish or scary.

MAJ Britton: This may be painful, but has COL Brown ever been physical with anyone else in the office?

Ms. Smith: No, never. His relationship with me was a huge break in his character -- he said that once or twice.

MAJ Britton: MSG Shoulder, do you have any questions you would like to ask?

MSG Shoulder: No, sir.

MAJ Britton: Miss Smith, is there anyone else we should talk to?

Ms. Smith: No.

MAJ Britton: Are there any other questions we should have asked?

Ms. Smith: No.

MSG Shoulder: Thank you. We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.

Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony and documents. If there is such a request, do you consent to the release of your testimony and documents but not your personal identifying information such as name, social security account number, home address, or home phone number, outside official channels?

Ms. Smith: No.

MSG Shoulder: The time is 1120, and the interview is concluded. Thank you.

EXHIBIT B-5
OTR 05-0019

MSG Shoulder: The time is 1100. This tape recorded interview is being conducted on 24 January 2006, at the IG Conference Room, Fort Von Steuben, Va. Persons present are the witness, Mrs. Tillie Ickes, and the investigating officers, MAJ Richard Britton and MSG Bruno Shoulder. This investigation was directed by MG Mottin De La Blame, commander of Fort Von Steuben, and concerns allegations of impropriety by an Army official.

An Inspector General is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.
Since I will ask you to provide your personally identifying information to help identify you as the person testifying, I provided you a Privacy Act Statement. Do you understand it?

Mrs. Ickes: Yes.

MSG Shoulder: You are not suspected of any criminal offense and are not the subject of any unfavorable information.
Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin? Mrs. Ickes. No, not at all.

MSG Shoulder: Please raise your right hand so that I may administer the oath.
Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?"

Mrs. Ickes: I do.

MSG Shoulder: You may lower your hand. Please state your name.

Mrs. Ickes: Matilda “Tillie” Marie Ickes

MSG Shoulder: Rank and position?

Exhibit B-5 (page 1 of 7) *Editorial note: Footers denoting Exhibit and case number should be on all subsequent exhibit pages.*
OTR 05-0019
Note: All pages of the testimony must include the following footer:

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Dissemination is prohibited except as authorized by AR 20-1.

Mrs. Ickes: GS-9, Administrative Specialist

MSG Shoulder: Organization?

Mrs. Ickes: DPCA

MSG Shoulder: Address? it can be home or office, but it should be an address where you would not mind receiving correspondence with a return address from the IG Office.

Mrs. Ickes: My home address is 7207 Park Terrace, Lynchburg VA 12379

MSG Shoulder: Telephone number? it can be home or office.

Mrs. Ickes: My home number is 555-109-5341.

MAJ Britton: This concludes the formal read-in. Mrs. Ickes, we'll start the questions. You look a little nervous -- are you?

Mrs. Ickes: I am, a little. I've never done one of these before.

MAJ Britton: Well, remember that you're a witness and are not suspected of wrongdoing -- and we're grateful that you're helping us with this investigation. Can you describe what it's like to work at DPCA?

Mrs. Ickes: Really? Oh, oK. It's not bad. It can be a lot of fun sometimes -- we are pretty tight. Conrad, SGM Mack, is my cousin, and he makes me laugh all of the time. I love Megan, CPT O'Reilly, although she can be a right mess, and Missy, what we call Miss Smith, is a sweetheart. We're always carrying on. We can buckle down and get the work done, and we get it done pretty well, too. But we enjoy ourselves, too. Other than Megan's divorce, and I think that was mostly her fault -- always looking for something extra from her poor husband, we haven't had much drama in the office … well, at least among us, we haven't had much drama. So I usually like to go to work, and I like working at DPCA.

MAJ Britton: What do you mean by "at least among us?" Has someone been having "drama?" What do you mean?

Mrs. Ickes: Ugh. This is embarrassing since I don't like to talk bad about people. You know Tom Groom? He works with us, too?

MAJ Britton: Mmmmm?

Mrs. Ickes: Well, you aren't from around here, but he's part of the Grooms from up country. They get ideas and never let them go. He got it in his head that he should get a promotion -- I don't know where or why he thought that -- I tried to tell him that there wasn't anything to this idea of his, but he wouldn't listen. He saw COL Brown and told him about how much he wanted a promotion, and COL Brown tried to tell him that there wasn't a billet opening in DPCA. When he did not get promoted later, he got really nasty about COL Brown and DPCA. When he told COL Brown that he should have gotten a promotion, and was really upset, COL Brown told him again that it wasn't an option in DPCA and showed him on the computer how to apply for another job somewhere else

that was a GS-12 position or even for a GS-13 position. That wasn't good enough, and Tom went to the union rep, he was so mad. That's how I know all of this -- don't tell anyone I told you. The union rep is my sister-in-law, and she came and asked me if Tom is crazy. She came and talked to COL Brown, who told her everything he did, showed her the office line diagram, and showed her and Tom, again, where he could apply for GS-12 and 13 positions online. You know she had to support Tom in front of COL Brown, but she told me she wanted to smack him upside the head for wasting her time. Anyway, since this happened this summer, Tom's made the office a little less pleasant. He's always saying ugly things about COL Brown and talking about how he's been wronged. His work sort of dropped off, too, so that other budget analysts had to pick up the slack -- when I talked to him about that, since I've been here the longest, I'm sort of the de facto leader, he started to get ugly and say nasty things, so I had to take him down a peg. It really bothered me; if he went around saying things like he was saying, someone could get hurt. My husband is a jealous man, and if he heard that someone was following me around, he could get stupid. The Ickes family members are known for their bad tempers and willingness to fight about anything.

MAJ Britton: Can you please slow down? I'm sort of confused. What happened after you talked to Mr. Groom about his work?

Mrs. Ickes: It was stupid and untrue and does not bear repeating. He's so ugly about COL Brown that he sees him as the boogey man -- no matter what they situation is. I went so far as to call Tom’s wife, Charlotte, and ask if he was OK. She'd been worried about him, too, and she …

MAJ Britton: Ma'am, please just tell me what Mr. Groom said.

Mrs. Ickes: He said that COL Brown was trying to get fresh with me! It was so stupid! He only said it because I was telling him something he did not want to hear, but what I was saying to him was true. He really was getting lazy, and I was tired of seeing the other folks doing his work!

MAJ Britton: What made him think that COL Brown was "trying to get fresh with you?" What did he mean?

Mrs. Ickes: Who knows? At one point he was ranting about COL Brown calling me "honey" and "dear" and the next he was saying we were going on “dates.” He really upset me -- that's the sort of thing that can ruin a reputation around here faster than the blink of an eye. And I could tell that Tom meant it -- he wasn't just mad and slinging verbiage -- he meant it! He's full of it and is just getting madder and madder and thinking things are terrible. And that stuff made me feel bad and made me really uncomfortable around him, especially when he starts talking about COL Brown. He's always got something bad to say. Yesterday he was griping about how badly COL Brown was parked and was agitating that the Chief of DCPA shouldn't have a parking place. Anything to be ugly … How did I end up talking about him?

MSG Shoulder: We were talking about the work environment at DCPA.

Mrs. Ickes: Oh, yeah, sorry. It would be great if Tom could get a job somewhere else or just retire. He's the only fly in our ointment.

MAJ Britton: So you don't think COL Brown has ever behaved improperly towards you?

Mrs. Ickes: Oh no. He's a fine old southern gentleman. Everyone in the office was so happy when he and his wife got back together. They never should have been apart, and separating after so many years of marriage was so hard on him. You could look at him and see he was under a lot of stress. I swear he aged six years in those six months. He looks a lot happier now.

MAJ Britton: Are you friends with COL and Mrs. Brown?

Mrs. Ickes: Oh no. That would be awkward, to work for a friend. No, he's just our boss, but I care about people as human beings. That's Ok, isn't it?

MAJ Britton: Sure -- so why did Mr. Groom think you were meeting COL Brown for lunch?

Mrs. Ickes: Because he is not right in the head. He's looking for badness. I went to lunch with COL Brown and my son a few times this fall because COL Brown said he would help Ted, my son, with his college essays and college packets. Ted wants to be an engineer; he's got the brains for it -- my side of the family, thank you -- and wants to go to Virginia Tech. COL Brown is a Tech alumni and said he'd do what he could to help. I'm really glad -- neither Harry nor I have college degrees, and I was worried about helping Ted go through the process. I'm no dummy, and neither is Harry, but all of the forms and requests for grants and everything … poor Ted was almost on his own! But COL Brown's daughter just went through all of this a year or two ago, and he offered to help Ted. Most of the time, Ted came here after school and before he went to work at McDonald's, but there were a few times the three of us met at lunchtime. It worked, too -- we'll always be grateful. Ted just found out he got picked up early decision from VA Tech. COL Brown is almost as happy as we are.

MSG Shoulder: And that was it? Those were the only times you went to lunch with COL Brown?

Mrs. Ickes: Yup. He's not a friend of mine. In case it matters, I offered to pay for his lunch, but he wouldn't let me. But he did not pay for mine or Ted's.

MAJ Britton: Did he offer to help your son?

Mrs. Ickes: No, I asked him. It was Megan’s idea. She knew he was a Tech alumni.

MSG Shoulder: Did you say he calls you "Honey" and "Dear?"

Mrs. Ickes: Yes, but he calls all of us that, and "sweetheart" and "darling" -- except Tom. Maybe that's Tom's problem -- maybe he's jealous? I'm joking, but that really bothers Tom. He's told us, in the coffee room, that we should file an EEO complaint and that COL Brown is sexually harassing us, but we've told him that we really don't pay him no mind. We know COL Brown doesn't mean anything by it -- he's just that way. I wouldn't waste anyone's time with an EEO complaint. If it bothered me, I would ask him to stop. He's the sort of man who would stop if he knew it bothered you. I've been to the EEO training, and I know my first responsibility if I am feeling harassed is to tell the person to stop -- and I don't feel that is necessary in this case.

MAJ Britton: How about the rest of the ladies with whom you work?

Mrs. Ickes: They think Tom is crazy, too.

MAJ Britton: Ummm…about COL Brown using terms of endearment?

Mrs. Ickes: No one cares. Maybe Missy cares… he calls her "Miss Smith," but I don't know why.

MSG Shoulder: Does he treat her differently in any other ways?

Mrs. Ickes: No, not really. He is always respectful and polite. But he's respectful and polite to all of us.

MAJ Britton: Have you ever seen him touching any of the women in the office?

Mrs. Ickes: No.

MAJ Britton: What's his relationship with CPT O'Reilly?

Mrs. Ickes: It's professional. If you are going to ask if he's having an affair with CPT O'Reilly, the answer is no. He's not having an affair with anyone at the office.

MAJ Britton: Does anyone think DPCA is a bad place to work?

Mrs. Ickes: Tom. I wish that old rattlesnake would find a new job.

MAJ Britton: Does anyone else think COL Brown mistreats them? Is anyone afraid of COL Brown?

Mrs. Ickes: No, not really. He's our boss and a COL, but I'm not sure if anyone is afraid of him.

MAJ Britton: Do you like working at DCPA?

Mrs. Ickes: Yes, I do. There are a lot worse places to be.

MAJ Britton: Have you heard of anyone having an affair with a co-worker in your office?

Mrs. Ickes: No -- I think I made that clear. Oh, Tom accuses COL Brown of sleeping with everyone except Conrad, but we're small enough that I think I'd know if someone was. And none of us find any of the men in the office attractive. We've talked about it over the years, just girl talk, and neither of them are the right type. No, nothing that exciting happens in our little office, just Tom being angry sometimes and that's about it.

MAJ Britton: I think this is my last question. Is it possible that Ms. Smith could be seeing anyone in the office?

Mrs. Ickes: Again, no. Tom's gotten mean to her over the past few months, needling at her and insinuating she's having an affair with the COL ... wait a minute, I bet he called

you guys. Look, if that's what this is about, there is nothing going on in DPCA except a bitter, crazy old man who wants to make trouble for people. I don't pay any mind to Tom's ugly rumors, and I've told him that he can't go around talking badly about a woman like that, or she can go to EEO about him. Before Christmas I told him that if he didn't shut up, I was going to report him to EEO for creating a hostile work environment. He's got a crazy hate for COL Brown, and it's messing up our work environment.

MSG Shoulder: Ma'am, we cannot discuss what we are investigating or who made an allegation -- it's part of IG confidentiality. Did you ever hear COL Brown tell an offensive joke?

Mrs. Ickes: COL Brown? No. He told a mildly off-color joke once, but that was it. And I can't even remember the joke now. I laughed about it then and forgot it.

Is there anything else we should have asked you pertaining to the questions we've asked you?

Mrs. Ickes: No, nothing that I can think of?

MAJ Britton: Anyone else we should talk to and why?

Mrs. Ickes: About what? You guys were all over the place.

MAJ Britton: What it's like to work at DPCA? Inter-office politics?

Mrs. Ickes: Well, we're a small office. These interviews are really going to cause a lot of stress for us. I know you've said you try to protect confidentiality, but the best thing you could do is talk to all of us. That way no one will be singled out. I know you've talked to Tom because I saw him in the parking lot. Talk to Conrad, Megan, and Missy. SPC Gray too, but she does not hang out with anyone in the office. We're a little too old and settled for her. I don't know what she could add.

MAJ Britton: OK, ma'am. Oh, have you read the CG's policy letter on sexual harassment?

Mrs. Ickes: Nope.

MAJ Britton: We'll get you a copy before you leave the office today. Could you define the terms "sexual harassment," "sexual discrimination," or "gender discrimination?"

Mrs. Ickes: Not right here and now. I mean I could guess but they'd be a guess. Probably be pretty close, too.

MAJ Britton: OK, we'll go over that when we turn the recorders off so you can help keep people straight at the office, OK?

Mrs. Ickes: All right, I guess.

MAJ Britton: MSG Shoulder will conduct the read out now.

MSG Shoulder: We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.

Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony and documents. If there is such a request, do you consent to the release of your testimony and documents but not your personal identifying information such as name, social security account number, home address, or home phone number, outside official channels? Please say yes or no.

Mrs. Ickes: Yes. Why not?

MSG Shoulder: Do you have any questions?

Mrs. Ickes: No.

MSG Shoulder: The time is 1140, and the interview is concluded. Thank you.

EXHIBIT B-6
OTR 05-0019

MSG Shoulder: The time is 1300. This tape recorded interview is being conducted on 25 January 2006, at the IG Conference Room, Fort Von Steuben, Va. Persons present are the witness, SGM Conrad Mack, and the investigating officers, MAJ Richard Britton and MSG Bruno Shoulder. This investigation was directed by MG Mottin De La Blame, commander of Fort Von Steuben, and concerns allegations of impropriety by an Army official.

An Inspector General is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.
Since I will ask you to provide your personally identifying information to help identify you as the person testifying, I provided you a Privacy Act Statement. Do you understand it?

SGM Mack: Yes.

MSG Shoulder: You are not suspected of any criminal offense and are not the subject of any unfavorable information. Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin?

SGM Mack: No at all.

MSG Shoulder: Please raise your right hand so that I may administer the oath. Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?"

SGM Mack: I do.

MSG Shoulder: You may lower your hand. Please state your name.

SGM Mack: Conrad Leroy Mack

MSG Shoulder: Rank?

SGM Mack: SGM

Exhibit B-6 (page 1 of 4) *Editorial note: Footers denoting Exhibit and case number should be on all subsequent exhibit pages.*
OTR 05-0019
Note: All pages of the testimony must include the following footer:

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MSG Shoulder: Organization and status?

SGM Mack: DPCA and active Reserve

MSG Shoulder: Position?

SGM Mack: NCOIC DPCA

MSG Shoulder: Address? It can be home or office, but it should be an address where you would not mind receiving correspondence with a return address from the IG Office.

SGM Mack: 127 Cherry Blossom Rd, Lynchburg. VA 12347

MSG Shoulder: Telephone number? It can be home or office.

SGM Mack: 555-804-3900.

MAJ Britton: This concludes the formal read-in. Have you done this before SGM?

SGM Mack: Yeah. I'm good. Let's do this. I've got a good guess what this is about and who called you, but I'll keep my thoughts to myself.

MAJ Britton: Good- as we said in the pre-tape, you're a witness, and we appreciate your being here. So how long have you worked at DCPA?

SGM Mack: For about two years.

MAJ Britton: Have you been in this office the whole time?

SGM Mack: Yes.

MAJ Britton: Please tell me about what it's like to work in the office.

SGM Mack: It's fine, a good atmosphere. I like everyone I work with, excepting Mr. Groom. He's a basket case, always accusing people in the office of crazy things with COL Brown. That man needs to go because he is disrupting the office, but it is so hard to fire a civilian if they perform their duties -- and he does that. Yesterday he told me that COL Brown and Ms. Smith were having an affair, and I had to tell him to just stop it -- he's the problem in the office, not COL Brown.

MAJ Britton: So you did not believe him?

SGM Mack: No. Everyone knows COL Brown is working through problems with his wife, but he's not the sort to sneak around. Besides, I know Ms. Smith has a boyfriend, even though she hasn't talked about it in the office.

MAJ Britton: How do you know this?

SGM Mack: She's been dating my cousin, Ronnie, for the past two months. I introduced them at the Lynchburg High homecoming football game in October, and they've been dating since early November. I like her. She's very competent.

MSG Shoulder: SGM Mack, did you ever hear about COL Brown kissing SPC Gray or anyone else?

SGM Mack: Sure. And always from Mr. Groom. In August, he came to me with a story that he'd seen COL Brown and SPC Gray kissing each other. The problem is that the day he supposedly saw this, SPC Gray was on leave and wasn't at the office! I told him I needed more information that that, because I knew she wasn't there, and I just wanted the old coot to stop talking. Of course, I asked her about it later, you know, quietly and in private, if COL Brown was harassing her or if there was anything going on. She said there wasn't, so I chalked it up to Mr. Groom running his mouth again. He's going to destroy COL Brown's reputation with his constant lying.

MAJ Britton: OK -- changing subjects, what do you think about COL Brown as a boss?

SGM Mack: He's pretty good. The other people in the office, minus Mr. Groom, really like him. It takes me a while to warm up to people, so it took me a while, but he takes care of people and gets the mission done pretty well.

MAJ Britton: Does he demean anyone? Touch anyone improperly?

SGM Mack: Not him. I've never noticed anything.

MAJ Britton: How about his using terms of endearment for the women in the office?

SGM Mack: He calls them "honey" and "dear," but no one thinks anything about it. It's his age and background. It's not like he's calling me "honey" or "darling." I might have an issue with that, but none of the ladies do.

MAJ Britton: Can you talk to me about COL Brown telling off-color jokes?

SGM Mack: Never heard him cuss, much less tell an off color joke.

MAJ Britton: Can you tell me anything about COL Brown's marriage?

SGM Mack: I know he's married. I talk to her when she comes around looking for him to go to counseling. She told me they were rebuilding their marriage, but I didn't ask any questions, since I'm not interested in their drama. He's told me that he's really glad they are going to counseling. They were high-school sweethearts and got married when they were in college. When they separated last spring, he seemed to fall apart for a few months, but things got better when she came back.

MAJ Britton: Hmmmm, is there anything you would like to add?

SGM Mack: No.

MSG Shoulder: SGM, is COL Brown having an affair with anyone in the office?

SGM Mack: Ummm…No.

MSG Shoulder: Did he?

SGM Mack: At one point, during the spring, I started to think that there might be something between him and Ms. Smith, but that was when he was separated and was not doing well in general. There probably wasn't anything there; if something started, it ended before it got anywhere, just what you'd expect.

MAJ Britton: Hmmm. OK. When did that happen?

SGM Mack: This spring, March? April? April. It was after Easter.

MAJ Britton: OK. Anyone else with whom I should speak about these issues?

SGM Mack: Not really. This is all rumors started by Mr. Groom.

MAJ Britton: Thank you, SGM Mack. MSG Shoulder, will you do the read-out now?

MSG Shoulder: We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.

Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony and documents. If there is such a request, do you consent to the release of your testimony and documents but not your personal identifying information such as name, social security account number, home address, or home phone number, outside official channels? Please say yes or no.

SGM Mack: Yes.

MSG Shoulder: Do you have any questions?

SGM Mack: No.

MSG Shoulder: The time is 1320, and the interview is concluded. Thank you.

EXHIBIT B-7
OTR 05-0019

MSG Shoulder: The time is 1300. This tape recorded interview is being conducted on 1 February 2006, at the IG Conference Room, Fort Von Steuben, Va. Persons present are the witness, COL Robert Brown, and the investigating officers, MAJ Richard Britton and MSG Bruno Shoulder. This investigation was directed by MG Mottin De La Blame, commander of Fort Von Steuben, and concerns allegations of impropriety by an Army official.

An Inspector General is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.

Since I will ask you to provide your personally identifying information to help identify you as the person testifying, I provided you a Privacy Act Statement. Do you understand it?

COL Brown: Yes.

MSG Shoulder: You are advised that you are suspected of the following allegations, about which we want to question you:

1. COL Brown conducted an adulterous relationship in violation of Article 134 UCMJ.
2. COL Brown sexually harassed female employees in violation of AR 600-20.

I previously advised you of your rights, and you signed a DA Form 3881 waiver certificate. Do you understand your rights?

COL Brown: Yes

MSG Shoulder: Do you agree to waive your rights at this time?

COL Brown: Yes.

MSG Shoulder: Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin? Please raise your right hand so that I may administer the oath.

COL Brown: No to both questions.

MSG Shoulder: Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?"

COL Brown: I do.

MSG Shoulder: You may lower your hand. Please state your name.

COL Brown: Robert B. Brown

MSG Shoulder: Rank?

COL Brown: COL

MSG Shoulder: Organization and status?

COL Brown: DPCA and Active Army

MSG Shoulder: Position?

COL Brown: Director, DPCA

MSG Shoulder: Address? It can be home or office, but it should be an address where you would not mind receiving correspondence with a return address from the IG Office.

COL Brown: 624 Springwood, Lynchburg, VA 12593

MSG Shoulder: Telephone number? It can be home or office?

COL Brown: 555-804-3020.

MAJ Britton: This concludes the formal read-in. Sir, we'll begin with the questions.

COL Brown: OK guys, anything you want to ask me. Go ahead.

MAJ Britton: OK, sir. Can you talk to me about how you interact with women in your office?

COL Brown: Professionally? We're pretty lucky with the folks in DPCA -- we have a good group.

MAJ Britton: Do you use terms of endearment when you talk to them?

COL Brown: Is that what this is about? Yes, I guess I do. And yes, I guess that's passé. I don't think about it. I sure don't mean anything about it. If it bothers anyone, I'd hope they'd tell me, so I could stop. Miss Smith, my secretary, told me that she did not like it when I called her "Honey" and "Sweetie," so I stopped, but she wasn't special. It's something I do all of the time, and I'd hope that if someone else was bothered that they would say something. But I've never used a term of endearment with SPC Gray. As a SPC, she might be too afraid to tell an old gas-bag COL to stop.

MAJ Britton: Have you ever told jokes that were improper in the office?

COL Brown: Oh no -- yes, yes I have. That I'm afraid I have done, and I wish I had not. I told a dirty joke one day in the coffee room and immediately wished I had not. It was inappropriate and unprofessional, and I apologized to everyone there. They all told me it was no big deal. In fact a few of them really thought it was funny -- CPT O'Reilly really got a kick out of it -- but I knew it wasn't the right the thing to do as soon as I did it. I haven't told another one.

MAJ Britton: What was the joke?

COL Brown: I can't remember. I'd heard it on television the night before and thought it was funny.

MAJ Britton: Have you ever observed anyone sexually harassing someone in DPCA?

COL Brown: I think twice. I've fired one supervisor for it and gave a negative counseling letter to a SFC who was misbehaving in CPT O'Reilly's office. She did the right thing to bring it to me when she did.

MAJ Britton: I mean within your office?

COL Brown: No. I've not seen anyone sexually harassing anyone in our office. I don't stand for that sort of thing.

MAJ Britton: So you've never sexually harassed anyone?

COL Brown: Good Lord, no. And I hope that anyone who thinks I have would come to me immediately and clear that up.

MAJ Britton: OK, what can you tell me about relationships in your office?

COL Brown: You are going to have to be a little more specific for me. I'm not sure for what you are looking for.

MAJ Britton: Sir, have you had an adulterous affair with anyone in your office?

COL Brown: No. And I haven't had one with anyone not in the office, either.

MAJ Britton: Please describe your relationship with Ms. Smith.

COL Brown: Strictly professional. When my wife and I were having some problems, Miss Smith and I went to lunch a lot; she listened to an old man moaning about his

problems, so maybe some people might have come to the wrong conclusion and thought something was going on. In fact, I realized that it wasn't fair for her to have to listen to her boss's problems, so I brought that to a stop. But, no, never, I've never cheated on Jenny. If she thought I did, she'd leave me for good.

MAJ Britton: When did she leave before?

COL Brown: For two months in the spring. March and April. They were the worst months of my life. We've had our problems, but we are married and should be able to work through whatever problems we have.

MAJ Britton: During that time, did you ever meet Miss Smith at the Notel Motel? I have copies of the receipts for your room on 21 and 27 March and 15 April. You appear to have signed in as Mr.and Mrs. Robert E. Brown.

COL Brown: Yeah, that looks bad, but there is an explanation. During that horrible time when Jenny was gone, I hated to be at home, so sometimes when the house got too quiet and empty, I'd go stay at a motel. I was trying to save money. I didn't know what was going to happen next, and I have a kid in college. I was embarrassed by my marriage failing, so I did not want to stay in any place where someone might recognize me or that might cost too much. I think I stayed there a number of times, but I guess those were the times that I accidentally signed in as Mr. and Mrs. It's a habit, you know. Over 30 years of marriage and signing in as Mr. and Mrs. at motels and hotels around the world, and it's a habit. So I signed in as us.

MAJ Britton: Sir, we have a witness who says that you met Miss Smith at the Notel Motel on those dates. Can you explain that?

COL Brown: Of course I can. I called her once or twice and asked if she would join me for dinner. She came. We had dinner. She left. Stupid, but at that time I was not thinking very clearly.

MAJ Britton: Why would you ask her to dinner at the Notel Motel?

COL Brown: The times I went to stay at the Notel Motel were the worst days -- I could barely function I was so depressed. I called her and asked her to join me to cheer me up. Like I said, stupid, but I was so low that I could barely function. I kept telling her that she did not have to come, that I was not asking her to come as her boss; she felt sorry for me.

MAJ Britton: Did she spend the night with you?

COL Brown: No, never. I'd never ask her to do that.

MAJ Britton: How about if she volunteered?

COL Brown: No, never.

MAJ Britton: Have you ever had sexual intercourse with Ms. Smith?

COL Brown: No, never.

MAJ Britton: A witness says that you kissed Ms. Smith in the coffee room. Can you please explain that?

COL Brown: What's to explain? I gave her a brotherly hug once, in the coffee room, you know, where the copiers are, when she got a summons to appear in court over an unpaid traffic ticket. She was very upset.

MAJ Britton: Another witness says you were seen in the coffee room with CPT O'Reilly.

COL Brown: You are going to have to be more specific -- I've been in the coffee room with just about everyone at some time, to include SGM and Mr. Groom. What am I supposed to have been doing with CPT O'Reilly? Before we get any further, the answer is nothing. I've never done anything with, by, or to CPT O'Reilly.

MAJ Britton: So you never embraced CPT O'Reilly in the coffee room?

COL Brown: Not that I remember -- oh, yes. I sat with her one time while she cried after her husband sent her divorce papers. That was an ugly time for her. I had a hard time keeping my military composure because I certainly understood what she was going through. Someone came in during that episode and was kind enough to get her some Kleenex. I can't remember who. She had a hard time for a while -- I think she's still going through it.

MAJ Britton: Have you ever come to work with Ms. Smith?

COL Brown: Uh, no. We've never carpooled. I usually get to work about half an hour ahead of her.

MSG Shoulder: Did you help Mrs. Ickes's son with his college application? Can you talk to me about that?

COL Brown: Yes -- Ted got accepted at Tech, too. Mrs. Ickes is really proud of him. He's a fine young man. I met him a few times at lunch. Mrs. Ickes and I would meet him to work on his application, but he was pretty squared away without my help. What does this have to do with anything?

MSG Shoulder: Sir, it is part of the investigation we've been directed to perform. But that answers all of the questions I want to ask. Sir, do you have any more?

MAJ Britton: Just one. Sir, are you familiar with the CG's policy memorandum number three?

COL Brown: No, which one is that?

MAJ Britton: It's the policy memorandum regarding sexual harassment. We've got a copy for you, sir, to disseminate to your office since there may be some confusion regarding what is sexual harassment and what isn't.

COL Brown: Thanks.

MAJ Britton: That's all I have. MSG Shoulder, if you would like to do the read out now, that would be fine.

MSG Shoulder: Sir, do you have anything else you wish to present?

COL Brown: No.

MSG Shoulder: What other questions do you think we should have asked?

COL Brown: I have no idea.

MSG Shoulder: Who else do you think we should talk to and why?

COL Brown: No one. The fewer people who get brought into this, the better.

MSG Shoulder: OK, sir. We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.

Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony and documents. If there is such a request, do you consent to the release of your testimony and documents but not your personal identifying information such as name, social security account number, home address, or home phone number, outside official channels?

COL Brown: No.

MSG Shoulder: Do you have any questions?

COL Brown: No.

MSG Shoulder: The time is 1345, and the interview is concluded. Thank you.

EXHIBIT B-8
OTR 05-0019

MSG Shoulder: The time is 0900. This tape recorded interview is being conducted on 26 January 2006, at the IG Conference Room, Fort Von Steuben, Va. Persons present are the witness, CPT Megan O'Reilly, and the investigating officers, MAJ Richard Britton and MSG Bruno Shoulder. This investigation was directed by MG Mottin De La Blame, commander of Fort Von Steuben, and concerns allegations of impropriety by an Army official.

An Inspector General is an impartial fact finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act. Since I will ask you to provide your personally identifying information to help identify you as the person testifying, I provided you a Privacy Act Statement. Do you understand it?

CPT O'Reilly: Yes.

MSG Shoulder: You are not suspected of any criminal offense and are not the subject of any unfavorable information.
Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin? Please raise your right hand so that I may administer the oath.
Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?"

CPT O'Reilly: I do.

MSG Shoulder: You may lower your hand. Please state your name.

CPT O'Reilly: Megan Brigit O'Reilly

MSG Shoulder: Rank and status?

Exhibit B-7 (page 1 of 4) *Editorial note: Footers denoting Exhibit and case number should be on all subsequent exhibit pages.*
OTR 05-0019
Note: All pages of the testimony must include the following footer:

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CPT O'Reilly: CPT, Active Army

MSG Shoulder: Organization and position?

CPT O'Reilly: DPCA and Chief, Officer Personnel Records

MSG Shoulder: Address, it can be home or office, but it should be an address where you would not mind receiving correspondence with a return address from the IG Office.

CPT O'Reilly: My home address is 007 Martin Rd, Lynchburg, VA 12346

MSG Shoulder: Telephone number? It can be home or office.

CPT O'Reilly: My home number is 555-098-5431.

MAJ Britton: This concludes the formal read-in. CPT O'Reilly, we'll start the questions. Do you have questions for us yet?

CPT O'Reilly: I'm a little scared.

MAJ Britton: Don't be. You're a witness who might have some information that pertains to this case. How long have you worked at DCPA?

CPT O'Reilly: For about two years.

MAJ Britton: And how long have you worked for COL Brown?

CPT O'Reilly: About two years.

MAJ Britton: Please tell me about what it's like to work in the office.

CPT O'Reilly: It's a nice place to work. It's been good, usually fun. I've made some good friends there.

MAJ Britton: Do you ever feel uncomfortable or unhappy about going to work?

CPT O'Reilly: Who doesn't? That's why we all play the lottery. But usually I like going. Some days it's better than being home.

MAJ Britton: What do you think about COL Brown as a boss?

CPT O'Reilly: Oh, he's a good boss. He's not setting the world on fire. He seems like he's just marking time to retire, but he's supportive and encouraging. We like him.

MAJ Britton: Does he call you demeaning names or put anyone down?

CPT O'Reilly: COL Brown? No way! Not him. He's more like everyone's dad …wait a minute. I bet Mr. Groom made a complaint about how COL Brown calls the women in the office "honey" and "dear." I'm right, aren't it? I bet Mr. Groom filed a toxic-leadership complaint. He's such a jerk, and after everything COL Brown has done for him.

MAJ Britton: Ma'am, I cannot tell you with whom we have spoken or with whom we will speak. I really need you to not mention anything we discuss here outside of this interview.

CPT O'Reilly: OK, so let's not talk about Mr. Groom anymore. None of us mind when COL Brown calls us "honey" or "sweetheart." It's just the way he is, and he does not mean anything by it. He's as proper and nice as he can be and still be in charge. No one minds -- if we did, we would ask him to stop, and he probably would.

MAJ Britton: You think so?

CPT O'Reilly: Absolutely. He's very careful about making sure people treat each other right. Even PVT Speed. PVT Speed is getting chaptered for something, but COL Brown asked us to not mention it to him or gossip about it.

MAJ Britton: Can you talk to me about COL Brown telling off-color jokes?

CPT O'Reilly: I only know of one - and I only remember it because I needed a laugh that day. It struck me as funny at the time, but I wouldn't have remembered it otherwise. We were all standing around the coffee pot, waiting for the next pot to brew, so it didn't strike me as inappropriate for the time and place. It was something about how men and women were built differently, you know, below the waist, and I didn't think anything about it other than being glad to have a laugh.

MAJ Britton: Do you remember what the joke was?

CPT O'Reilly: No. It was that forgettable. But COL Brown apologized for telling it, even though no one was offended.

MAJ Britton: Are you aware of COL Brown acting in an improper way at the office? Has he ever improperly touched anyone in the office that you know of? How about you?

CPT O'Reilly: No. Absolutely not. The only improper action I know of is Mr. Groom's witch hunt against COL Brown because he didn't get promoted. The only person who thinks Mr. Groom deserved that promotion was Mr. Groom, but he's held it against COL Brown since last February when he didn't get it. He just needs to leave the office. He's the biggest problem there!

MAJ Britton: So COL Brown never put his arms around you?

CPT O'Reilly: Not that I remember.

MAJ Britton: Anyone else in the office? Miss Smith? Mrs. Ickes? SPC Gray?

CPT O'Reilly: No. I've never seen anything or hear anything?

MAJ Britton: Can you tell me anything about COL Brown's marriage?

CPT O'Reilly: Only what everyone knows. He and the Mrs. have their problems, but they are working through them. It looks like they'll pull it together. He seems happier

now than he's been in a long time. I wish my husband had been willing to go to counseling with me like COL Brown is going with his wife.

MAJ Britton: Well ma'am, you've heard the questions I'm asking. Is there anything you would like to add?

CPT O'Reilly: No. This is just all harassment by Mr. Groom. You should end the investigation now.

MAJ Britton: Anyone else with whom I should speak about these issues?

CPT O'Reilly: You mean about the office? COL Brown as a responsible leader? Maybe Ms. Smith. And SPC Gray, maybe MSG Conrad, Mrs. Ickes, and PVT Speed. You won't get any sense from Mr. Groom.

MAJ Britton: Thank you, CPT O'Reilly. MSG Shoulder will do the read-out now. If you think of anything over the next few days, please give us a call.

CPT O'Reilly: OK.

MAJ Britton: Oh, if I asked you, could you define "sexual harassment," "sexual discrimination," or "gender discrimination?"

CPT O'Reilly: I could take a swing at it. I guess it's more that I recognize them and know what they mean opposed to really knowing what the book says.

MAJ Britton: OK, thank you for your candor. We can take a look at those definitions after we go off tape. Now, MSG Shoulder will read you out.

MSG Shoulder: We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.

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CPT O'Reilly: Sure. Yes, I mean yes.

MSG Shoulder: Do you have any questions? The time is 0920, and the interview is concluded. Thank you.

EXHIBIT C-1
OTR 05-0019

62. Article 134—(Adultery)

a. *Text of statute. See* paragraph 60.

b. *Elements.*

(1) That the accused wrongfully had sexual intercourse with a certain person;

(2) That, at the time, the accused or the other person was married to someone else; and

(3) That, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

c. *Explanation.*

(1) *Nature of offense.* Adultery is clearly unacceptable conduct, and it reflects adversely on the service record of the military member.

(2) *Conduct prejudicial to good order and discipline or of a nature to bring discredit upon the armed forces.* To constitute an offense under the UCMJ , the adu lterous conduct must either be directly prejudicial to good order and discipline or service discrediting. Adulterous conduct that is directly prejudicial includes conduct that has an obvious, and measurably divisive, effect on unit or organization disciple, morale, or cohesion, or is clearly detrimental to the authority or stature of or respect toward a servicemember. Adultery may also be service discrediting, even though the conduct is only indirectly or remotely prejudicial to good order and discipline. Discredit means to injure the reputation of the armed forces and includes adulterous conduct that has a tendency, because of its open or notorious nature, to bring the service into disrepute, make it subject to public ridicule, or lower it in public esteem. While adulterous conduct that is private and discreet in nature may not be service discrediting by this standard, under the circumstances, it may be determined to be conduct prejudicial to good order and discipline. Commanders should consider all relevant circumstances, including but not limited to the following factors, when determining whether adulterous acts are prejudicial to good order and discipline or are of a nature to bring discredit upon the armed forces:

(a) The accused's marital status, military rank, grade, or position;

(b) The co-actor's marital status, military rank, grade, and position, or relationship to the armed forces;

(c) The military status of the accused's spouse or the spouse of co-actor, or their relationship to the armed forces;

(d) The impact, if any, of the adulterous relationship on the ability of the accused, the co-actor, or the spouse of either to perform their duties in support of the armed forces;

(e) The misuse, if any, of government time and resources to facilitate the commission of the conduct;

(f) Whether the conduct persisted despite counseling or orders to desist; the flagrancy of the conduct, such as whether any notoriety ensued; and whether the adulterous act was accompanied by other violations of the UCMJ;

(g) The negative impact of the conduct on the units or organizations of the accused, the co-actor or the spouse of either of them, such as a detrimental effect on unit or organization morale, teamwork, and efficiency;

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EXHIBIT C-2
OTR 05-0019

Chapter 7
Prevention of Sexual Harassment
7–1. Overview
The prevention of sexual harassment is a commander's responsibility. The EOA plays a pivotal role by assisting the commander with policy awareness, training, command climate assessments, complaints processing and overall advisory assistance concerning the prevention of sexual harassment.
7–2. Chain of command responsibilities
Commanders and supervisors will—
a. Ensure that assigned personnel (to include RC personnel under their jurisdiction) are familiar with the Army policy on sexual harassment.
b. Publish and post written command policy statements for the prevention of sexual harassment. All statements will be consistent with Army policy. They will include the local command's commitment to the Army's policy against sexual harassment and will reaffirm that sexual harassment will not be tolerated. The statement will explain how and where to file complaints and will state that all complainants will be protected from acts or threats of reprisal. Each ACOM/ASCC/DRU, installation, separate unit, agency, and activity down to company, troop or battery level will publish a sexual harassment command policy statement. Units should coordinate these policy statements with the servicing staff judge advocate or legal advisor before publishing them.
c. Continually assess and be aware of the climate of command regarding sexual harassment. Identify problems or potential problems. Take prompt, decisive action to investigate all complaints of sexual harassment. Either resolve the problem at the lowest possible level or, if necessary, take formal disciplinary or administrative action. Do not allow Soldiers to be retaliated against for filing complaints. Continually monitor the unit and assess sexual harassment prevention policies and programs at all levels within area of responsibility. Ensure all leaders understand that if they witness or otherwise know of incidents of sexual harassment, they are obligated to act. If they do not, they themselves are also engaging in sexual harassment.
d. Set the standard.
7–3. Policy
a. The policy of the Army is that sexual harassment is unacceptable conduct and will not be tolerated. Army leadership at all levels will be committed to creating and maintaining an environment conducive to maximum productivity and respect for human dignity. Sexual harassment destroys teamwork and negatively affects combat readiness. The Army bases its success on mission accomplishment. Successful mission accomplishment can be achieved only in an environment free of sexual harassment for all personnel.
b. The prevention of sexual harassment is the responsibility of every Soldier and DA civilian. Leaders set the standard for Soldiers and DA civilians to follow.
7–4. Definition
a. Sexual harassment is a form of gender discrimination that involves unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature between the same or opposite genders when— (1) Submission to, or rejection of, such conduct is made either explicitly or implicitly a term or condition of a
person's job, pay, career, or
(2) Submission to, or rejection of, such conduct by a person is used as a basis for career or employment decisions affecting that person, or
(3) Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.

Exhibit C-2 (page 1 of3) *Editorial note: Footers denoting Exhibit and case number should be on all subsequent exhibit pages.*
OTR 05-0019
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b. Any person in a supervisory or command position who uses or condones implicit or explicit sexual behavior to control, influence, or affect the career, pay, or job of a Soldier or civilian employee is engaging in sexual harassment. Similarly, any Soldier or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature is engaging in sexual harassment.

7–5. Categories of sexual harassment

a. Verbal. Examples of verbal sexual harassment may include telling sexual jokes; using sexually explicit profanity, threats, sexually oriented cadences, or sexual comments; whistling in a sexually suggestive manner; and describing certain attributes of one's physical appearance in a sexual manner. Verbal sexual harassment may also include using terms of endearment such as "honey", ―babe", ―sweetheart", ―dear", ―stud", or ―hunk" in referring to Soldiers, civilian co-workers, or Family members.

b. Nonverbal. Examples of nonverbal sexual harassment may include staring at someone (that is, ―undressing someone with one's eyes"), blowing kisses, winking, or licking one's lips in a suggestive manner. Nonverbal sexual harassment also includes printed material (for example, displaying sexually oriented pictures or cartoons); using sexually oriented screen savers on one's computer; or sending sexually oriented notes, letters, faxes, or e-mail.

c. Physical contact. Examples of physical sexual harassment may include touching, patting, pinching, bumping, grabbing, cornering, or blocking a passageway; kissing; and providing unsolicited back or neck rubs. Sexual assault and rape are extreme forms of sexual harassment and serious criminal acts. When these acts occur, report them in accordance with the procedure outlined in chapter 8 and appendix H of this regulation.

7–6. Types of sexual harassment

a. Quid pro quo. ―Quid pro quo‖ is a Latin term meaning "this for that." This term refers to conditions placed on a person's career or terms of employment in return for favors. It includes implicit or explicit threats of adverse action if the person does not submit to such conditions and promises of favorable actions if the person does submit to such conditions. Examples include demanding sexual favors in exchange for a promotion, award, or favorable assignment; disciplining or relieving a subordinate who refuses sexual advances; and threats of poor job evaluation for refusing sexual advances. Incidents of ―quid pro quo" may also have a harassing effect on third persons. It may result in allegations of sexual favoritism or general discrimination when a person feels unfairly deprived of recognition, advancement, or career opportunities because of favoritism shown to another Soldier or civilian employee on the basis of a sexual relationship. An example would be a Soldier who is not recommended for promotion and who believes that his or her squad leader recommended another Soldier in his or her squad for promotion on the basis of provided or promised sexual favors, not upon merit or ability.

b. Hostile environment. A hostile environment occurs when Soldiers or civilians are subjected to offensive, un- wanted and unsolicited comments, or behaviors of a sexual nature. If these behaviors unreasonably interfere with their performance, regardless of whether the harasser and the victim are in the same workplace, then the environment is classified as hostile. A hostile environment brings the topic of sex or gender differences into the workplace in any one of a number of forms. It does not necessarily include the more blatant acts of ―quid pro quo‖; it normally includes nonviolent, gender-biased sexual behaviors (for example, the use of derogatory gender-biased terms, comments about body parts, suggestive pictures, explicit jokes and unwanted touching).

7–7. Techniques of dealing with sexual harassment

All Soldiers and civilians have a responsibility to help resolve acts of sexual harassment. Examples of how to accomplish this follow:

a. Direct approach. Confront the harasser and tell him/her that the behavior is not appreciated, not welcomed and that it must stop. Stay focused on the behavior and its impact. Use common courtesy. Write down thoughts before approaching the individual involved.

b. Indirect approach. Send a letter to the harasser stating the facts, personal feelings about the inappropriate behavior and expected resolution.

c. Third party. Request assistance from another person. Ask someone else to talk to the harasser, to accompany the victim, or to intervene on behalf of the victim to resolve the conflict.

d. Chain of command. Report the behavior to immediate supervisor or others in chain of command and ask for assistance in resolving the situation.

e. Filing a formal complaint. Details for filing an informal or formal complaint are included in appendix D.

7–8. Training

The elimination of sexual harassment within a unit begins with a policy of aggressive and progressive training to identify and prevent inappropriate behavior. Units will conduct progressive, interactive small group sexual harassment training twice each year. Soldiers must understand what sexual harassment is, how to recognize it, how to prevent it, how to report it and the consequences of engaging in sexual harassment.

a. The quality and effectiveness of unit training are of primary concern. The most effective approach to training to prevent sexual harassment is through interactive discussion in small groups of mixed gender. Situational vignettes or scenarios should be used to facilitate discussion among unit Soldiers and civilians. Role play is also an effective training means. The training focus should be appropriate to the level of the experience and breadth of responsibilities of each target audience. Unit commanders must attend this training and evaluate its content and quality.

b. Unit training for junior enlisted and civilian employees will focus on defining sexual harassment and gender discrimination, sanctions that may be used to punish harassers, techniques for Soldiers to deal with sexual harassment and methods of filing a complaint through the complaint system.

c. Unit training or professional development training for junior officers, noncommissioned officers and civilian supervisors will reinforce the aforementioned training. In addition, emphasis should be placed on promoting a healthy work environment within the section or unit as well as on techniques for receiving, handling and resolving complaints. Training on the EO complaint system must include leader responsibilities in processing informal and formal com- plaints. It must emphasize the prevention of reprisal actions against complainants. *d*. Training at unit level for senior noncommissioned officers, warrant officers, officers, civilian managers and senior executive service personnel will focus on fostering a healthy command climate and using appropriate means for determining a healthy command climate. This training will also focus on sanctions for offenders. In addition, it will reinforce the elements of training they receive at a more junior level.

d. Training at unit level for senior noncommissioned officers, warrant officers, officers, civilian managers and senior executive service personnel will focus on fostering a healthy command climate and using appropriate means for determining a healthy command climate. This training will also focus on sanctions for offenders. In addition, it will reinforce the elements of training they receive at a more junior level.

e. Leaders may enlist the service of their brigade or higher level EOA or TC 26–6, Commander's Equal Opportunity
Handbook, to help prepare and conduct Prevention of Sexual Harassment (POSH) training.

f. Commanders will document POSH training on the unit's training schedule. Documentation will include type, instructor, date, time, length of training, roster of attendees, and issues covered in the session.

g. The chain of command and EOAs will attend and participate in POSH sessions.

EXHIBIT D-1
OTR 05-0019

DA Form 4037, Officer Record Brief, COL Robert Eugene Brown married to Ms. Jennifer Coggins Brown

Exhibit D-1 (page 1 of 1) *Editorial note: Original DA form 4037 redacted for instructional purposes.*
OTR 05-0019

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EXHIBIT D-2
OTR 05-0019

NOTEL MOTEL

LYNCHBURG'S FINEST!

21 March to 22 March 2005

King Sized Bed, Single Room $50.00

Charged to VISA #xxxx-xxxx-xxxx-9827, Robert E. Brown, expiration date 12-06

Signature

Exhibit D-2 (page 1 of3) *Editorial note. Footers denoting Exhibit and case number should be on all subsequent exhibit pages.*
OTR 05-0019

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NOTEL MOTEL

LYNCHBURG'S FINEST!

27 March to 28 March 2005

King Sized Bed, Single Room $50.00

Charged to VISA #xxxx-xxxx-xxxx-9827, Robert E. Brown, expiration date 12-06

Signature

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NOTEL MOTEL

LYNCHBURG'S FINEST!

15 April to 16 April 2005

King Sized Bed, Single Room $50.00

Charged to VISA #xxxx-xxxx-xxxx-9827, Robert E. Brown, expiration date 12-06

Signature Robert Brown

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Section 4-15

Modified ROI / ROII with Command Product

1. During the course of an IG investigation / investigative inquiry, circumstances will arise that cause you to refer allegations / issues to the chain of command or another investigator within the Department of the Army (DA) for action as appropriate. The physical results of these command actions are called Command Products. Once the Command Product is complete, the IG reviews it for due process in accordance with the applicable regulation(s) that address the issue(s) / allegation(s). If the investigating officer followed due process in accordance with the governing regulation (e.g., AR 15-6, AR 195-2, etc.), the Directing Authority signed the product (document), the SJA performed a legal review (if required), the command addressed all allegations referred by the IG, and the IG concurred with the finding(s), then the IG can use the Command Product as the primary piece of evidence in a modified ROI / ROII. The IG is required to complete the modified ROI / ROII and obtain approval to document that the IG used the Command Product to determine an IG conclusion.

2. **Sworn statements.** If the allegation was referred to the command after beginning a formal investigation with a directive (as opposed to starting with an investigative inquiry), then the sworn statements or any other evidence from a command product would still be admissible as exhibits in the subsequent modified ROI -- even though IGs are required to record testimony under oath when conducting a formal investigation. IGs can't dictate to a command DA investigator how to interview a subject / suspect and at what level of formality. IGs present and discuss what witnesses (and subjects and suspects) said or wrote as if it were testimony.

3. **Attaching the Command Product.** If inclusion of the command product is so extensive that evidence is broken out into several exhibits, all interviews and statements will be presented as an IG exhibit starting with the letter 'B' for testimony; all documents will be presented as an IG exhibit starting with the letter 'D' for documents. However, the command product in totality is documentary evidence. Generally, a modified ROI / ROII will show the command product as one exhibit starting with the letter 'D' under the documentary evidence section. Normally, the command product does not qualify for producing a modified ROI / ROII if the evidence is broken out into separate exhibits.

4. **What happens if the IG finds the Command Product to be flawed?** Remember that the command product is another piece of evidence for the IG to consider in the course of resolving allegations. If due process was in accordance with the governing regulation, but the IG still does not agree with the finding(s), then the IG will present the Command Product as only part of the evidence used to make his or her finding(s). The IG will document his or her findings in an ROI / ROII (standard format) and in the IGARS database. Like all evidence, the Command Product will be an attachment to the ROI / ROII; so, when presenting the evidence, the IG will explain that the Command Product was flawed. The Command Product will still have sworn statements that will be useful in the IG investigation, and the IG will identify and use those useful pieces of evidence when explaining that the Command Product was flawed.

5. **How can the IG help the DA investigator?** The IG must ensure that the DA investigator understands what issue(s) / allegation(s) he or she must investigate. In accordance with AR 20-1, paragraph 3-5d (3) (a) through (c), an IG can provide limited information to a DA investigator. Providing the DA investigator with the witness list and the allegations in writing promotes a better command investigation and Command Product.

Report Example: Modified Report of Investigation / Investigative Inquiry Using a Command Product

MODIFIED REPORT OF INVESTIGATIVE INQUIRY
(OTR 08-XXXX)

[NOTE: An EXSUM is not needed due to the straightforward and uncomplicated nature of this case.]

NAME / POSITION: Chief Warrant Officer (CW5) Donald R. Webster, Human Resources Officer (HRO), Fort Von Steuben (FVS), Virginia (VA).

AUTHORITY: Command IG, FVS.

1. INTRODUCTION: The complainant, CW5 Frank F. Turmoil, a Soldier assigned to Headquarters, 66th Infantry Division (M), Fort Von Steuben, submitted an Inspector General Action Request (IGAR) to DAIG via fax on 11 March 2008 requesting an explanation as to why he was being required to accept a PCS assignment after another fully qualified Soldier was allowed to decline the same assignment. CW5 Turmoil was seeking an answer as to why one Soldier was allowed to decline this assignment while he was not afforded the same opportunity. CW5 Turmoil stated that he had been at his present duty station for only 19 months whereas the other qualified Soldier, CW4 Louis Rhines, had been at his duty station for over 10 years.

CONSIDERATION OF ALLEGATION

2. **Allegation:** CW5 Donald R. Webster improperly required an individual to accept an assignment in violation of the USAR Active Guard Reserve (AGR) Permanent Change of Station (PCS) Policy memorandum, dated 4 December 2003.

a. **Evidence:** Completed Army Regulation (AR) 15-6 investigation, dated 10 June 2008. The OCAR IO determined in the investigation that: "CW5 Webster decided not to force the PCS on CW4 Rhines due to single parent-status, children in school, unit mobilization, and the [Service member's] intent to retire." The AR 15-6 IO also found that: "If CW5 Webster had fully research[ed] the situation and followed the AGR PCS policy, he should have selected CW4(P) Rhines for the PCS to 2nd BDE [Aviation] before CW5 Turmoil. Although CW5 Webster had valid reasons for PCSing CW5 Turmoil and not CW4 Rhines, CW5 Webster made several assumptions that he failed to research fully and follow up. (EXHIBIT D-1)

b. **Discussion:** CW5 Donald R. Webster improperly required an individual to accept an assignment in violation of the AGR PCS Policy memorandum, dated 4 December 2003. An investigation was initiated in accordance with AR 15-6 to determine if a memorandum from the office, Chief, Army Reserve (OCAR), DAAR-HR, dated 4

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December 2003, subject: AGR PCS Policy, was violated. OCAR conducted an informal investigation IAW AR 15-6, and all of the documents gathered during the AR 15-6 investigations were relevant and accurate with regard to the allegation. It was further determined that the sworn statements of CW5 Turmoil, CW4 Rhines, and CW5 Webster were consistent with the facts of the case and are considered to be credible. The preponderance of credible evidence indicated that CW5 Webster violated the OCAR AGR PCS policy.

[IO Note: After careful consideration of all the evidence presented, it was determined that the documents and testimonies provided during the AR 15-6 investigation are relevant and accurate with regard to the allegation.**]**

c. **Conclusion:** The allegation that CW5 Donald R. Webster improperly required an individual to accept an assignment in violation of the Active Guard Reserve (AGR) Permanent Change of Station (PCS) Policy memorandum, dated 4 December 2002, was substantiated.

3. OTHER MATTERS: We concur with the findings and recommendations of the investigation IAW AR 15-6 by the OCAR IO. We conducted a thorough due- process review of the AR 15-6 product and determined that due process was served in accordance with that regulation. Also, the report of investigation had a legal review with an attached opinion that deemed the report legally sufficient.

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4. RECOMMENDATIONS: Approve the report and close this case.

BRUNO SHOULDER
MSG, IG
Investigator

RICHARD BRITTON
MAJ, IG
Investigator

APPROVED:

ALBERT R. RIGHTWAY
LTC, IG
Inspector General
(If the Directing Authority has retained the authority to approve substantiated ROIIs, then the Directing Authority approves.)

_____
Date

Encl
Exhibit List

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Example of a Command Product

(Note: This AR 15-6 report was documented using a memorandum-type format. Some AR 15-6 investigation reports are documented on DA Form 1574; however, use of DA Form 1574 is not required IAW AR 15-6.)

AR 15-6 Report of Investigation, CW5 Donald R. Webster

AUTHORITY: Memorandum for MAJ Duane J. Long, subject: Appointment as Army Regulation 15-6 Investigating Officer, dated 29 May 2008. (EXHIBIT A)

BACKGROUND:

The complainant, CW5 Frank F. Turmoil, a Soldier assigned to Office of the Chief, Army Reserve, Pentagon, submitted an Inspector General Action Request (IGAR) to DAIG via fax on 11 March 2008 requesting an explanation as to why he was being required to accept a Permanent Change of Station (PCS) assignment after another fully qualified Soldier was allowed to decline the same assignment. (EXHIBIT B)

CW5 Turmoil was seeking an answer as to why one Soldier was allowed to decline this assignment while he (CW5 Turmoil) was not afforded the same opportunity. CW5 Turmoil stated that he had been at his present duty station for only 19 months whereas the other qualified Soldier, CW4 Louis Rhines, had been at his duty station for over 10 years. At this time, the command initiated an investigation in accordance with AR 15-6 instead of an IG investigation.

Allegation Presented in the Appointment Memorandum: CW5 Donald R. Webster improperly required an individual to accept an assignment in violation of the Active Guard Reserve (AGR) Permanent Change of Station (PCS) Policy memorandum, dated 4 December 2002.

EVIDENCE:

1. Standard. AR 15-6, Chapters 2 and 3, dated 30 September 1996. (EXHIBIT C)

2. Standard. Memorandum, OCAR, DAAR-HR, 4 December 2002, subject: Active Guard Reserve (AGR) Permanent Change of Station (PCS) Policy. (EXHIBIT D)

a. Paragraph 4 of the policy states that: "…AGR Soldiers (officer or enlisted) will not be ordered to execute a PCS based solely on his / her time on station (TOS) in one geographical area. However, Soldiers with the longest time on station will be ordered to execute a PCS before Soldiers with less time on station based on the needs of the Army and the stabilization guidance listed below."

b. Paragraph 5 of the same policy states that the "Career and family needs of each AGR Soldier will be considered against the needs of the Army."

3. Testimony.

a. On 7 June 2008, CW5 Turmoil testified to the following information: CW5 Turmoil testified that the duty position against which he was slotted was in fact a flying position. Therefore, he (CW5 Turmoil) would have to go through a battery of physical and mental exams in order to be qualified for that position. CW5 Turmoil received his yearly flight physical and would probably pass the screening; however, it would take him at least six months to get qualified to fly this aircraft. CW5 Turmoil testified that CW4 Rhines is already qualified to fly the aircraft, so it would be prudent to place him in that billet. (EXHIBIT E)

b. On 9 June 2008, CW5 Webster testified to the following information: CW5 Webster testified that CW4 Rhines was stabilized in his career and felt that, due to his family circumstances, he should remain in his current position. CW5 Webster also testified that CW5 Turmoil was better qualified for the PCS position than CW4 Rhines. (EXHIBIT F)

4. Documentary Evidence: PCS Reassignment Orders, dated 1 March 2005~~8~~ for CW5 Turmoil indicated he (CW5 Turmoil) was reassigned to 2nd Brigade in Los Alamitos, CA, with a report date of 22 May 2008. (EXHIBIT G)

DISCUSSION:

1. CW5 Donald R. Webster improperly required an individual to accept an assignment in violation of the Active Guard Reserve (AGR) Permanent Change of Station (PCS) Policy memorandum, dated 4 December 2002.

2. It was determined that CW5 Webster acted improperly when he allowed CW4 Rhines to remain in his current duty assignment despite his having been on station for over 10 years. It was further determined that the sworn statements of CW5 Turmoil, CW4 Rhines, and CW5 Webster are consistent with the facts of the case and are considered to be credible. The reasons for this determination are as follows:

a. The normal stabilization period for a warrant officer is five years. CW4 Rhines had satisfied this requirement twice over.

b. CW5 Webster allowed CW4 Rhines's family needs to outweigh the needs of the Army, thereby violating paragraph five of LTG Lynch's policy. Paragraph five of the policy states that: "Career and family needs of each AGR Soldier will be considered against the needs of the Army." This guidance does not mean that a Soldier's family needs will be at the exclusion of the needs of the Army. CW4 Rhines had been in his present assignment for 10 years; he knew, or should have known, that a PCS move was a distinct possibility and should have made arrangements for his family accordingly. That said, the OCAR PCS policy also states that the priority of PCS moves will be determined by an OCAR-directed move and secondly by promotions. Since this PCS reassignment was an OCAR-directed move, and since CW4 Rhines was on the promotion list, he met the top two criteria for being reassigned.

3. This move did not effectively meet the needs of the Army. CW5 Turmoil testified that the position at the 2nd Brigade was a flying job, and the preponderance of the evidence supports the veracity of this statement. As a flying billet, CW4 Rhines was the better

qualified candidate to fill that position since he was currently on flying status. CW5 Turmoil, on the other hand, testified that he told CW5 Webster that it would take him six months to attain RL1 in order to fly. The most suitable and qualified warrant officer for the position at the 2nd Brigade was not given the job.

I / O Note: After careful consideration of all the evidence presented, it was determined that the documents and testimonies provided during the investigation in accordance with AR 15-6 were timely, relevant, and accurate with regard to the allegation.

FINDINGS: The preponderance of credible evidence indicated that CW5 Donald R. Webster improperly required an individual to accept an assignment in violation of the Active Guard Reserve (AGR) Permanent Change of Station (PCS) Policy memorandum, dated 4 December 2002.

RECOMMENDATIONS: Approve the report and close this case.

/s/
DUANE J. LONG
MAJ, FA
Investigating Officer

Encls
List of Exhibits
Legal Review

Section 4-16

Obtain Approval

1. **Investigative Inquiry**. The command or State IG will approve the ROII, if not directed by the Directing Authority, IAW paragraph 7-1b (4)(k), AR 20-1. If the investigative inquiry substantiated allegations, the IG must obtain a written legal review from the servicing SJA's office and the Directing Authority's approval to ensure the IG conclusions receive a responsible level of scrutiny. At the IG's discretion, the IG may request a written legal review for ROIIs and MROIIs with not-substantiated allegations. An independent legal review provides a reasoned and independent review. While not necessary in not-substantiated cases, it remains a good option. Generally speaking, SJA involvement improves the overall quality of the report.

2. **Investigation.** Before taking the ROI to the commander, the IG must obtain a written legal review from the servicing SJA. The legal review must be in memorandum or letter format if the report contains any substantiated allegations **(prescriptive provision in AR 20-1, paragraph 7-1b (4)(j))**. Once the SJA has deemed the ROI legally sufficient, present the ROI to the commander. Normally, the ROI is hand-carried to the commander for approval. If appropriate, give the Directing Authority an oral briefing in the form of a decision brief.

3. **Actions by the Directing Authority**. The Directing Authority approves, modifies, or disapproves the recommendations and directs any actions to be taken. The Directing Authority may not agree with either the conclusion or the recommendation. A Directing Authority, or other individual, should never compromise IG independence by suggesting that any particular conclusions or recommendations should appear in the report or that any conclusion should be changed. This kind of influence degrades the objectivity and independent nature of the investigation. However, it would not be incorrect for the commander to request that the IG gather more evidence to support a finding. The commander is not bound by the IG's findings, conclusion, opinions, or recommendations. Directing Authorities may act as they see fit.

4. **Actions by Higher Authorities**. Do not transmit ROIs from subordinate commands to a higher authority unless the investigation is requested by, or is of interest to, a higher headquarters or involves other commands. If the higher authority requests the investigation, that authority reviews the conclusions and recommendations, monitors action taken by the subordinate command, and then determines if further action is required. Final approval rests with the Directing Authority of the IG office of record. If the case is referred to a higher authority because other commands are involved, that headquarters takes any necessary action only when the other commands are within its jurisdiction. If not, the case is referred to the next higher headquarters. Unless requested, exhibits are not normally transmitted with the ROI to the higher headquarters. In Whistleblower reprisal investigation cases, the Directing Authority must concur or non-concur with the ROI. The ROI, including all exhibits, must be sent through IG channels through higher-level commanders in the chain of command for endorsement through DAIG Assistance Division to IG, DoD, for final approval (see paragraph 7-4b (3)(c), AR 20-1).

Section 4-17

Actions if Directing Authority Disapproves ROI / ROII

1. **Disapproval.** There are several actions a Directing Authority can take with an ROI / ROII. The IG's conclusions or recommendations do not bind the Directing Authority and the Directing Authority may approve or disapprove the report in part or in its entirety, to include modifying the IG's recommendations. If the Directing Authority agrees with the IG's conclusions and recommendations, then normally he or she will sign and approve the report. What if the Directing Authority disapproves the ROI / ROII's conclusions?

2. **Investigative Inquiry.** An investigative inquiry – less formal than an investigation – is normally authorized by the command / State IG. If the command / State IG authorized the investigative inquiry, then AR 20-1 does not require approval of the ROII by the commander / Directing Authority. However, if the Directing Authority has retained the authority to approve ROIIs with substantiated allegations, then the IG must notify the Directing Authority of the substantiated allegations (see paragraph 7-2d (1), AR 20-1).

3. **Investigation.** A formal investigation, however, requires a written directive from the Directing Authority; therefore, approval of the report will usually come from the same level, regardless of whether the allegations are substantiated or not substantiated. A Whistleblower reprisal case is an exception to this rule since DAIG's Assistance Division (SAIG-AC) is the office of record and IG, DoD, is the final approving authority.

4. **IG Response.** Responding to the disapproval of the recommendations is usually less difficult than resolving the disapproval of the conclusions. Common recommendations in the ROI / ROII include approving the report; filing and closing the case; and, if appropriate, a recommendation for a follow-on investigation or forwarding to a subordinate commander for action. The IG investigating officer (IO) should never recommend punitive, adverse, or disciplinary action. To do so compromises the status as a fair and impartial fact-finder. There are several reasons why the Directing Authority may not agree with the IG's recommendation(s). For example, the IO may recommend in the report to forward the allegations to a subordinate commander for appropriate action, but the Directing Authority may favor appointing a follow-on investigator himself / herself. Coordination with the SJA and a clear understanding of commander's guidance will help the IG in these cases. The key is to find out exactly why the Directing Authority disagrees with the recommendation(s). Resolving these differences in a face-to-face discussion with the Directing Authority when the IG submits / briefs the report is the best approach. If the report contains substantiated allegations, ensure that the SJA is available while briefing the Directing Authority. Allow the SJA to lead any discussion concerning appropriate type of follow-on investigation.

5. **Additional Fact Finding.** In some cases the Directing Authority may disapprove the IG's recommendation to close the case if he or she feels that certain documents were not included or a key witness was not interviewed. The standard course of action in that case would be to conduct the additional fact-finding and update the report accordingly. Get a new legal review from the SJA, and re-submit the final report to the Directing Authority.

6. **IG's Conclusions.** What if the Directing Authority disapproves of the Investigating Officer's (IO's) conclusion of either substantiated or not substantiated? The Directing Authority should never compromise the IO's independence by suggesting that any particular conclusions appear in the report or that any conclusion be changed. This kind of influence degrades the objectivity of the investigation. However, the Directing Authority may request that the IG gather more evidence to support a particular finding. Additionally, the Directing Authority may find that the discussion does not flow logically. IGs may find that when working directly on a case and writing the report, the IG becomes so familiar with the issues that the IG makes mental connections that are not apparent to the reader. A good IG peer review (from someone who did not work as closely on the case) will help. Peers can point out faulty logic, gaps in evidence, and grammatical errors. IG tech channels are another source for help, especially with complex cases. In any case, the IG's conclusions are not binding on the Directing Authority, and the Directing Authority may act as he or she sees fit.

7. **DAIG Can Help.** Just as with disapproval of IG recommendations, the key to dealing with the disapproval of an IG's conclusions is understanding why the Directing Authority disagrees, then taking appropriate action to resolve the issue. Once again, experience has shown that SJA involvement throughout the process and concurrence with the IG's conclusions prior to submitting the report will greatly enhance the likelihood that the Directing Authority will approve the IG's conclusion. If the IG and the Directing Authority are still at loggerheads and are unable to agree on the conclusion(s) (substantiated or not substantiated), then contact SAIG-AC. They will coordinate with DAIG Legal and TIG, if necessary, to make the final determination of what goes in IGARS – S or N.

Section 4-18

Common Pitfalls

1. **Lack of Evidence to Support Conclusions.** You may not have provided sufficient credible evidence to support the conclusions that you reached. Continue to investigate in this situation. If the evidence does not exist, you may have to alter your conclusion. You may have gathered sufficient evidence to support your conclusion but did not introduce it in the evidence subparagraph. If this is the case, correct your report.

2. **Inconsistent Conclusions.** You may draw incorrect conclusions by misreading or misinterpreting the evidence gathered, not wording allegations correctly, or by not having the fortitude to be candid. This in turn will adversely affect your recommendations, erode the integrity of the IG system, and subject you to an allegation of bias. A thorough peer review will help avoid this problem.

3. **Recommendations Not Synchronized With the Conclusions.** Common errors are recommendations in the ROI / ROII not supported by a conclusion or a conclusion that requires a recommendation and none is presented. All recommendations should be based on your conclusions.

4. **Interjection of Investigating Officer (IO) Opinions.** You may use IO notes to clarify information for the reader in the evidence subparagraph of an allegation. You may also enter your personal observations as evidence if they are pertinent. Avoid interjecting your opinions in the evidence sections of your ROI. Naturally, you must exercise judgment as you evaluate evidence in the discussion subparagraphs of your ROI. You must write out the rationale for your judgments in a logical and cogent manner so that they transcend mere opinions. If you are in doubt regarding any aspect of your ROI, do not hesitate to use tech channels and call either DAIG Assistance Division or the Investigations Instructor at TIGS. They will discuss your case with you and maintain the confidentiality you require.

Chapter 5

Step Five, Make Notification of Results

1. **Overview.** The post-investigation notifications (step 5 of the IGAP) are different from the initial notifications (step 3 of the IGAP). Normally, initial notifications of the subject or suspect and a commander are done verbally using the sample notifications in Chapter 3 to document proper due-process. Post-investigation notifications to the subject or suspect and commander or supervisor will be done in writing after you complete your case and the report is approved. The IG will make telephonic notifications to the subject or suspect of any unfavorable information included in the ROI / ROII of which the IG didn't previously notify the subject or suspect. Sample final notification letters and a final notification format for unfavorable information appear on the following pages. These letter formats and notification format may be used for both investigative inquiries and investigations. Initial notifications are attached to the ROI / ROII, but final notifications can't be attached officially to the ROI / ROII because the ROI / ROII is approved before the final notifications are executed. IGs will maintain all final notification records with the case file if the IG cannot attach the record to the electronic IGARS file **(prescriptive provision in AR 20-1, paragraph 7-1b (5)(f))**.

2. **Persons Notified Pertaining to Results of an IG Investigation or Investigative Inquiry**. The following individuals must be notified:

a. **Subordinate Commanders / Supervisors:** At the conclusion of an investigation / investigative inquiry, formally notify the current commanders or supervisors of the subjects and suspects **(prescriptive provision in AR 20-1, paragraph 7-1b (5)(c))**. Use the format below.

b. **Subjects / Suspects:** In an investigation / investigative inquiry, formally notify the subject or suspect in writing after the case is completed and approved **(prescriptive provision in AR 20-1, paragraph 7-1b (5)(a))**. Type and underline the words "Exclusive For" on the envelope IAW AR 25-50. If the subject or suspect desires more information, he or she must request it under the provisions of the Freedom of Information Act. In both inquiries and investigations, it is not appropriate for you to comment on actions contemplated by the command other than the appointment of a follow-on investigator.

NOTE: If the "Office of Record" is different from the "Office of Inquiry," the IG Office of Inquiry will forward a copy of the completed case to the IG Office of Record. The IG Office of Inquiry is not required to notify the subject / suspect that the investigation / investigative inquiry has gone back to the IG Office of Record. However, if asked, the IG could tell the subject / suspect (verbally or in writing) that the final reply would come from another IG office.

3. **Subject / Suspect Notified Pertaining to Unfavorable Information of which Not Previously Notified.** You must telephonically notify the subject / suspect of any unfavorable information included in the ROI / ROII of which you did not already notify the subject / suspect **(prescriptive provision in AR 20-1, paragraph 7-1b (5)(e))**. Use the notification format in the pages below.

4. **Subject / Suspect Notification in a Command-Referred Case.** After the IO (investigating officer) has completed the command product, the IG must review it to ensure the IO properly notified the subject / suspect. If the IO did not notify the subject / suspect, or if the IG must

conduct an interview, then the IG must notify the subject / suspect as described in IGAP, Step 3, as set forth in AR 20-1, paragraph 7-1 *b* (3)(*b)*.

The IO should notify the subject / suspect of the results of the IO fact-finding, but the command IO notification does not relieve the IG of his or her duty to notify the subject / suspect. Additionally, the command product results are not binding on the IG system. The IO and the IG may reach completely different conclusions based on their independent review and assessment of the relevant credible evidence. After reviewing the command product, and conducting any follow-on fact-finding necessary, the IG drafts an ROI, ROII, or Modified ROII for the Directing Authority to approve. Once approved, the IG notifies the subject / suspect of the IG results.

Letter Format: Subject or Suspect Notification of Results from an IG Investigation or Inquiry

(Letterhead)

March 23, 2006

Office of the Inspector General

Sergeant First Class (Subject's Name)
Address
Address

Dear Sergeant (Name):

The Inspector General received an allegation that you (improperly did something in violation of Army Regulation / Command Policy Letter - clearly state the allegation IAW the format in AR 20-1). We conducted an inquiry (or investigation) and determined that the allegation against you was (or was not) substantiated. (Indicate your conclusion[s] for additional allegations, if any.)

The case is closed; however, under provisions of AR 20-1 and AR 25-400-2, The Army Records Information Management System *(*ARIMS*)*, the results will be maintained in the IG database.

If you would like to receive a redacted copy of the report of inquiry (or investigation), you may request a copy from the Department of the Army Inspector General under the Freedom of Information Act (FOIA). Specify that you want a copy of case number_____ (enter your case number) in which you were the subject / suspect. To initiate the process, send a written request to the following address: US Army Inspector General Agency, Attn: SAIG-ZXR, 2511 Jefferson Davis Highway, Suite 12600, Arlington, VA 22202-3912. The phone numbers are: (comm) 703-601-1093, DSN 329-1093; fax 703-607-5865, DSN 327-5865.

Sincerely,

(Signature Block)*
Lieutenant Colonel, US Army
Inspector General

*Normally the Command IG or Directing Authority.

Memorandum Format: Commander / Supervisor Results of Investigation Memorandum

Office Symbol 3 May 2006

MEMORANDUM FOR Commander, 3rd Brigade, 66th Infantry Division,
Fort Von Steuben

SUBJECT: Results of Investigation

1. The 66th Infantry Division and Fort Von Steuben Inspector General completed the investigation into allegations of impropriety against (name), a member of your command. The investigation concluded that: (List all allegations and findings pertaining to the individual(s) in the command against whom the allegations were made)

a. The allegation that LTC Blank improperly used government transportation from domicile to duty in violation of The Joint Ethics Regulation was not substantiated.

b. The allegation that LTC Blank ... was substantiated.

2. The Inspector General completed the investigation and will take no further action pertaining to these allegations.

(SIGNATURE BLOCK)*
LTC, IG
Inspector General

* Normally the Command IG or Directing Authority.

NOTE: Type and underline the words "Exclusive For" on the envelope IAW AR 25-50.

For Official Use Only (FOUO)
Dissemination is prohibited except as authorized by AR 20-1.

SUBJECT / SUSPECT FINAL NOTIFICATION FOR UNFAVORABLE INFORMATION FORMAT

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the _____ IG Office. _____ (Directing Authority) has approved our report and we are making final notifications. The approved report contained the following unfavorable information and we are affording you the opportunity to comment (list all applicable unfavorable information as it appears in the ROI/ROII, continuing on the bottom of the page if necessary, but without revealing the source of the unfavorable information). There is no requirement to respond.
_____
_____.

2. ( ) You may respond using any of the following options:

a. Submitting to an interview by the IG.
b. Providing a sworn, written statement.
c. Submitting matters through the subject/suspect's attorney.
d. Requesting the IG consider certain documentary evidence.
e. Requesting the IG consider certain physical evidence.
f. Requesting the IG interview reasonably available witnesses with knowledge on the matter under investigation.

Contact information for the investigating officers follows: _____, contact number_____, email _____ and _____, contact number _____, and email _____. Our mailing address is _____
_____.

3. ( ) Would you like to respond by any of these options at this time?

a. (If subject or suspect requests an interview, choose 1 or 2.)

1. You will be contacted by (Investigating Officers) _____ or _____ to make necessary arrangements; or
2. We want to interview you at (time) _____ on (date) ____ at (location) _____. You have our contact information.

b. (If subject or suspect wants to submit a sworn, written statement or comment through his or her attorney read the following. Draw a line through the option not selected.)
To submit a sworn, written statement / comment through your attorney, please use the email addresses or physical address provided.

c. Is there any documentary or physical evidence you would like us to consider at this time? Are there any reasonably available witnesses with knowledge on the matter that you would like to request that we interview? (Read the next sentence if applicable.) If so, please spell the names, provide the contact information, and explain what relevant knowledge each one has. I will be writing the information as you provide it. If you don't have all of the information at this time or the list is long, you can email or mail it to us.

_____
_____
_____.

If you choose not to coordinate your response now, you will have until _____, five working days, to contact us with your response before we close the case in our database.

4. ( ) _____ was (telephonically / personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

Chapter 6

Step Six, Follow-Up

1. **Overview.** Follow-up ensures that all issues and / or allegations have been thoroughly addressed and the Inspector General's responsibilities have been fulfilled. Your actions do not end once you have made your notifications at the completion of your case. If you hand-off corrective actions to a proponent staff agency, you will probably have to follow-up to ensure that problems are fixed. Follow-up actions are driven by the nature of the case and are independent of the fact-finding process you used.

2. **Disposition of Documents / Physical Evidence**.

a. You should maintain and file the ROII / ROI as required by the appropriate regulations governing the maintenance of records and files. Consider carefully which case materials you keep beyond the ROII / ROI. You should maintain only case-related materials needed for factual documentation. As a general rule, eliminate any extraneous working papers such as draft reports, administrative notes, or other items not needed for your ROII / ROI and case file and return all other materials to their sources. Remember to dispose of all files in accordance with AR 25-400-2, The Army Records Information Management System. You are not authorized to keep any files beyond their destruction date.

b. When you have completed a case, you should purge your files of unnecessary notes, logs, internal memoranda, personal observations concerning the credibility of witnesses, etc. Your final action is to erase magnetic recording tapes used to record testimony once you have a transcript or summarized testimony and the case is closed.

3. **Unfavorable Information.** You must ensure that any responses from the subject / suspect unfavorable information that will appear in the ROI / ROII are maintained with the case file if the IG cannot attach the record to the electronic IGARS file. You must also ensure that any notification of unfavorable information made to the subject / suspect remains with the case file if the IG cannot attach the record to the electronic IGARS file **(prescriptive provision in AR 20-1, paragraph 7-1b (6))**.

Chapter 7

Step Seven, Close the IGAR

1. **Provide Final Reply to Complainant.** In both investigations and investigative inquiries, you must notify the complainant of the approved results of the investigation or investigative inquiry in writing (as part of step 7 of the IGAP) -- but only for those issues and allegations that directly pertain to the complainant.

a. In most cases, you will only notify the complainant of the results if you deem the complainant to be personally wronged (the victim of adverse actions related to the alleged misconduct by the subject / suspect). Whether third-party or injured, notification to the complainant must be done in writing **(prescriptive provision in AR 20-1, paragraph 7-1b (7))**.

b. IG, DoD, has expanded the definition of personally wronged parties to include Family members of an injured party in some cases. Third-party complainants (which includes spouses in adultery cases) are only entitled to know that the investigation or investigative inquiry was completed and that the commander will take appropriate action. See paragraph 6-2c of Army Regulation 20-1 for further guidance.

c. Sample final notification letters appear on the following pages. These letter formats may be used for both investigative inquiries and investigations. Initial notifications are attached to the ROI / ROII, but final notifications can't be attached officially to the ROI / ROII because the ROI / ROII is approved before the final notifications are executed. IGs will maintain all final notification records with the case file if the IG cannot attach the record to the electronic IGARS file **(prescriptive provision in AR 20-1, paragraph 7-1b (5)(f))**.

2. **Close the IGAR.** You must ensure that the IGAR is coded in accordance with Part One, Chapter 2, of this guide. Give special attention when deciding which codes are recorded. The function codes selected will identify the areas into which the IG inquired or investigated. The case notes, at a minimum, should reflect those key actions by the investigating officer such as notifications, interviews, important documents received, etc. The synopsis must be a clear, concise summary of the complaint; the allegations investigated; the evidence analyzed; the conclusion reached by the investigating officer; and the actions taken by the command. The synopsis must be a stand-alone document that can be retrieved from the IGARS database anytime in the future and understood by the IG reading it. It should answer the questions Who, What, When, Where, Why, and How, and How Many? Each allegation should be clearly written in the correct format (Who improperly did what in violation of a standard) with the conclusion of **substantiated** or **not substantiated** clearly displayed for each allegation. The determination codes (or SNA codes) should be indicated with an individual function code for each allegation. Do not simply copy and paste the ROI / ROII into the synopsis section; that violates the intent and doubles the work-load at DAIG Records-Release Office when a FOIA request is made.

Letter Format: Final response Letter to Complainant (Injured Party)

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION
FORT VON STEUBEN, VIRGINIA 22605

December 21, 2006

Office of the Inspector General

Captain John Doe
3030 Anywhere Lane
Anywhere, VA 22060

Dear Captain Doe:

This letter is in response to your December 1, 2004, letter to the Inspector General concerning the alleged misconduct of Major Rodney Ward.

We conducted a thorough inquiry into your allegations. Our inquiry determined that the allegations were not substantiated. (If more than one allegation was provided, address in the same order that the complainant listed in his or her initial letter / phone call.)

This office will take no further action pertaining to the allegations.

Sincerely,

(Signature Block)*
Lieutenant Colonel, US Army
Inspector General

* Normally the Command IG or Directing Authority.

NOTE: Type and underline the words "Exclusive For" on the envelope IAW AR 25-50.

Letter Format: Final response Letter to Complainant (Third Party)

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION
FORT VON STEUBEN, VIRGINIA 22605

May 25, 2006

Inspector General

Mr. Fredrick Von Steuben
1777 Valley Forge Dr
Lynchburg, VA 22025

Dear Mr. Von Steuben:

The 66th Infantry Division and Fort Von Steuben Inspector General has concluded an investigation of an allegation you made against an officer assigned to the 66th Infantry Division, Fort Von Steuben, Virginia.

The Commander, 66th Infantry Division, approved the report of investigation on May 21, 2005 and will take action as he deems appropriate. My office will take no further action pertaining to the allegation at this time.

Sincerely,

(Signature Block)*
Lieutenant Colonel, US Army
Inspector General

* Normally the Command IG or Directing Authority.

NOTE: Type and underline the words "Exclusive For" on the envelope IAW AR 25-50.

Chapter 8

Common Pitfalls, Issues, and Problems

1. **Overview.** Occasionally, IGs encounter problems when conducting investigative inquiries or investigations. Some commonly encountered problems and possible courses of action are discussed below.

2. **Refusal of a Commander to Cooperate**. Commanders may not be fully cooperative. In most cases, the best course of action is for the investigating IG to convince the commander that it is in his or her interest to cooperate fully. If a commanding officer (subordinate to your Directing Authority) will not allow his or her subordinates to testify or make them available for interview, two courses of action remain:

a. Advise the commander that the matter will be referred to the next higher commander or the Directing Authority. Frequently, the mere statement that the higher commander will be notified is sufficient to persuade a commander to cooperate.

b. Submit a written report to the senior IG or Directing Authority. Ensure the written report contains protective markings IAW AR 20-1, Chapter 3-2.

3. **Request to Have Others Present During an Interview**.

a. Allowing third-party individuals in the interview is not a preferred practice. These individuals are anyone other than the witness, the investigators, a stenographic secretary, court reporter or interpreter, union or collective-bargaining representative, and counsel when authorized. Third-party personnel include friends, spouses, assistants, physicians, nurses, and union representatives. Privacy promotes confidence; third parties do not. While the presence of third parties is discouraged, the final decision rests with the investigating officer.

b. In cases where the person being interviewed has requested the presence of an unauthorized observer or lawyer, weigh whether the presence of such a person will facilitate or inhibit communications. If the person's presence will make the interviewee more comfortable, consider making an exception. Indicate in the record the presence of all parties to an interview. If a witness requests the presence of another person, offer to have the other person located in a nearby room and admitted to the interview only if needed.

4. **Refusal of a Witness to Testify**.

a. Military members in a duty status and DA civilians are required to answer all questions related to an investigation except questions that may be self-incriminating or, in the case of military personnel, those that are privileged communications as defined in Section V, Rule 501-513, Military Rules of Evidence of the Manual for Courts-Martial. Lawyer-client, husband-wife, and certain communication with clergy members are privileged. The military doctor-patient relationship is not considered privileged

communication in the Army. However, the rules for each differ, and you should check with a legal advisor if a military witness claims one of the exemptions.

b. IGs cannot compel DA civilian or military witnesses who improperly refuse to answer questions (Remember: Commanders or supervisors can order a witness to answer a question, but the witness cannot be compelled to incriminate himself or herself). IGs should inform the person refusing to provide oral evidence that his or her commander will be notified so that the individual's continued access to classified material can be assessed. Allow the witnesses to explain why they should not be required to testify before you take action to require them to do so. This approach provides a basis for determining how to proceed. IGs confronted with a military member or DA civilian witness who improperly refuses to answer questions should consult with their SJA or legal advisor. IGs cannot order a witness to testify. IGs can remind witnesses that failure to cooperate is an offense punishable under applicable regulations. Possible punishments include dismissal from Federal service. Notify DAIG's Assistance Division (SAIG-AC) within two working days of any subject or suspect who fails to answer a question or provide information during the course of an IG investigation or investigative inquiry so that TIG may notify the commander to assess the individual's continued access to classified material **(prescriptive provision in AR 20-1, paragraph 7-1b (4)(h)).**

c. If a civilian contractor witness is the employee of a business with a government contract, that person may be ordered to answer by his or her supervisor. The investigator should contact the Contracting Officer or the Contracting Officer’s Representative to gain the cooperation of the witness. Again, allow the witnesses to explain why they should not be required to testify before you take action to require them to do so.

d. A witness may also refuse to answer because the response may reveal classified information. If the IG involved does not have the proper clearance, he or she should obtain it or request assistance from an IG who does have the proper clearance.

e. The witness may not refuse to testify on the basis that the question is not relevant. The investigating IG alone determines if a question is relevant to the investigation, and IGs should advise the witness accordingly.

f. If an IG encounters a reluctant witness whom the IG believes has information concerning a felony, the IG can familiarize the witness with Title 18, United States Code, Section 4, to convince him or her to consent to an interview. This law provides that any person having knowledge of a felony and who does not make this information known to civil or military authority is subject to a fine or imprisonment.

g. Civilian witnesses who are not DA employees may rightfully refuse to testify on the basis that IGs have no authority to make them do so. Personal appeals such as an appeal to the witness's sense of justice and fairness may help obtain their testimony. Title 18, United States Code, Section 4, is applicable. Realize, however, that the possibility of a civilian being taken to court for refusing to cooperate with an IG is remote. Be cautious about using this warning.

5. **False Testimony by a Witness**. False testimony knowingly given under oath by an individual subject to the Uniform Code of Military Justice constitutes false swearing.

False testimony knowingly given under oath by a civilian witness constitutes an offense under Title 18, United States Code, Section 1001. Appropriate advisements that may be read to individuals who provide false testimony are contained in applicable read-in scripts. Remember: a false official statement made by someone subject to the UCMJ is a criminal offense.

6. **Requests for Advice from an Investigating Officer**. A witness may ask for or seek advice, but the IG cannot give the witness any advice except as to rights, duties, and procedures regarding the interview. Do not advise witnesses whether or not they should consult with counsel. Do not advise witnesses whether they should consent to release of their testimony subject to a FOIA request.

7. **Intimidation of Witnesses**.

a. If the IG believes there has been tampering or interference with a witness, the IG should immediately report this information to the witness's commander and request that these practices cease immediately. If the commander does not cooperate, or if the commander is suspected of being a party to this irregularity, advise the Directing Authority and request that appropriate action be taken. Make sure you make a full record of such action and that the pertinent details appear in the ROI / ROII.

b. A witness may be intimidated by the fear of retribution for testifying about their superiors or supervisors. There have been instances where individuals were called as witnesses and gave testimony that implicated their commanding officer. Despite the assurance given to these witnesses by the investigator, reports have occasionally been forwarded to the same commander for necessary action. These referrals present the possibility of adverse or discriminatory action against the witnesses. The effect of such action is to destroy the confidence of witnesses in the integrity of the IG system. Therefore, avoid this practice whenever possible.

8. **Request by Witness or Lawyer to Record an Interview**. Normally, persons providing testimony are not allowed to tape interviews in order to preclude compromising testimony and other evidence (see paragraph 7-1b (4)(f), AR 20-1). Follow the procedures outlined below when you receive a request to record an interview.

a. **Military or DA Employee Witness**. Inform the witness that IG investigation procedures prohibit the witness from recording the interview. Should this advisement not resolve the issue, the IG may offer the witness an opportunity to read the testimony in the IG office upon proper request. Also, upon proper request (see paragraph 3-6*b*, AR 20-1), the witness may review a copy of his testimony after the ROI is approved. Both these requests must be in writing. If the witness is uncooperative and refuses to testify because he or she has been denied permission to record the interview, the IG can request that the witness's commander order the person to testify.

b. **Non-DA Civilian Witness**. If a civilian witness not affiliated with DA puts a condition on his or her cooperation such as refusing to testify unless allowed to record the session, you can persuade that person not to do so, to honor the request, or to forgo receiving his or her testimony. You cannot require a civilian witness to testify. If the IG allows a civilian witness to record an interview, the IG must retain the tape until the investigation is complete to avoid compromising the investigation or consider interviewing all other witnesses before allowing a civilian witness to record an interview.

9. **Request for a Copy of the ROI / ROII**. Individuals involved in an IG investigation or investigative inquiry will not be provided access to the ROI / ROII. ROI / ROIIs and accompanying testimony are released only as authorized by Chapter 3, AR 20-1.

10. **Request for Results of an Investigation.**

a. Follow guidelines in Chapter 3, AR 20-1. The Directing Authority may direct that you provide ROI / ROIIs or summaries within the Department of the Army for official purposes; however, take several precautions:

(1) Comply with all provisions of Chapter 3, AR 20-1.

(2) Make sure the protective markings are applied to each page of the report and attached testimony.

(3) Prohibit reproduction.

(4) Prohibit subsequent transfer to another agency.

(5) Attempt to satisfy the request for an ROI by permitting the report to be used in your office.

(6) Provide for return of the report to the IG office as soon as the action desired is completed.

b. The purpose of these restrictions is not to hinder operations but to limit access to IG records. An example of a ROI transmittal letter is at Appendix C.

11. **New Allegations Received During an Interview**. It is not uncommon to receive new allegations from an interviewee during an interview. If these allegations are related to your investigation, include them in your case – but you may need to expand your Directive. If you are unsure, brief your Directing Authority. If an unrelated issue surfaces, take it through the seven-step IGAP process. It could result in a separate investigative inquiry or investigation.

12. **Off-the-Tape Discussions**. If the witness appears to be withholding information or is uneasy talking about a subject, consider turning off the recording devices and discussing the apparent problem. Although the tape recorders are off, the discussion is still on the record and official. Address the witness's concerns, attempt to resolve the issues, and encourage the witness to allow the information to be recorded. While you can make a MFR of off-tape discussions, the witness may later contend that you modified or misunderstood what he said. It is best to have the witness put off-tape answers in the recorded testimony. When you resume taping, ask the witness to summarize what he told you off tape.

13. **Refusal to Swear or to Affirm Testimony**.

a. You cannot make individuals who are not subject to UCMJ or who are not DA employees testify under oath or affirmation. If a witness refuses to take an oath for testimony, let the record reflect his refusal and continue to interview.

b. You can require individuals subject to the UCMJ or DA employees to testify under oath or affirmation. If a witness refuses to be placed under oath, the IG may continue with an interview not under oath, or you may consult with a SJA and then ask the witness's commander or supervisor to direct the witness to swear or affirm to the testimony.

14. **Locating Civilian Witnesses**. The first choice for locating hard-to-find witnesses is through IG technical channels. When not practical, sources such as the local Provost Marshal, local CID detachment, or the designated liaison official for the local police or other law-enforcement agency can be helpful.

15. **Gifts and Social Activities**. Do not accept gifts or be involved in any social activities that might give the appearance of a conflict of interest with anyone involved in your investigative inquiry or investigation -- or any inquiry or investigation an IG is conducting in your office. If there is a situation where someone might question impartiality in an investigative inquiry or investigation, consider disqualifying the affected IG and informing the senior IG or Directing Authority. Even if the IG believes he or she can be impartial, preserving the image and integrity of the IG system is imperative. If the IG in question is the senior IG, then referring off the case to a higher IG may be appropriate.

16. **Amending Directives**. Directives may be inadequate for the investigation either because the original information was misinterpreted or new information outside the scope of the original Directive becomes available. If this situation occurs, amend the Action Memorandum and request that the Directing Authority expand the scope of the Directive. Do not confuse this situation with the discovery of matters not IG appropriate. Refer those inappropriate matters to the agency having jurisdiction for action.

17. **Requests for Interim Reports**.

a. IG investigations often take several weeks or months to complete. An executive summary or interim report may keep the senior IG or the Directing Authority informed of the investigation's progress. The executive summary must contain protective markings. Be careful not to speculate on the results of the investigation too early in the investigative process because subsequent evidence and legal reviews may alter those premature conclusions.

b. Complainants may ask, write, or call the IG, the commander, or a higher IG for the progress (or the results) of an investigation before the results have been approved. Do not provide any information other than to state that their complaint has been received and appropriate action is being taken. Do not release any other information such as the tentative conclusions stated in an interim report. Even when the case is complete, the complainant cannot be allowed to have any information except that which applies directly to him or her.

c. Never fall into the trap of leading a subject or suspect to believe that the allegations will be not substantiated before the case has been approved by your Directing Authority. The weight of evidence may change, or the Directing Authority may disagree.

18. **Using IG (Technical) Channels**. Some of the tasks one IG office might ask an IG from another headquarters to perform are:

a. Schedule and arrange locations for interviews.

b. Assist in gathering documents and other physical evidence.

c. Assist with, or conduct, interviews by being part of the interview team. For example, during a telephonic interview, the local IG can assist by administering the oath; conducting the pre-tape, and read-in, and read-out to a witness; or assist by actually conducting the interviews.

19. **Courtesy Calls**. During investigations IGs do not routinely make courtesy calls with commanders. Because of the confidential nature of IG investigations, IGs cannot normally discuss details of a case beyond what is provided in the Directive. This need for confidentiality applies to investigative inquiries as well. If a commander desires a courtesy call, exercise tact and restraint. Limit your discussion to the minimum information the commander needs to do his job -- usually the information in the Directive.

20. **Shifting from Investigative Inquiry to Investigation**. Shifting from an investigative inquiry to an investigation is not a significant problem. Frequently, IGs will begin an investigative inquiry and later determine that an investigation is more appropriate. The information from your investigative inquiry is the basis for the background paragraph in your Action Memorandum. Once the Directing Authority signs the Directive and the IG begins investigating, formally notify the subject's chain of command and the subject or suspect. The IG will use the evidence gathered during the investigative inquiry as evidence for investigation. IGs need not conduct formal interviews with witnesses previously interviewed informally. However, the IG should consider doing so to document the findings fully if the case is complex or if confronted with conflicting evidence.

Chapter 9

Special Topic IG Inquiries / Investigations

Section 9-1 – Service Member Whistleblower Reprisal Inquiries / Investigations

Section 9-2 – DA Civilian, Nonappropriated Fund, and DoD Contractor Employee Allegations of Whistleblower Reprisal

Section 9-3 – Example WIOB Tasking Memorandum

Section 9-4 – Example Whistleblower Reprisal ROI

Section 9-5 – State Equal Employment Manager and other Third-Party Complainants

Section 9-6 – Improper Referral for Mental Health Evaluation Investigations

Section 9-7 – Example Mental Health Evaluation ROII

Section 9-1

Service Member Whistleblower Reprisal Inquiries / Investigations

1. Section 1034 of Title 10, United States Code (10 USC 1034), revised by The Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, extended authority to Inspectors General within the Military Departments to grant Whistleblower protection for reprisal allegations presented directly to them by Service members. The section, implemented by DOD Directive 7050.06, requires Service IGs to investigate allegations of individuals taking or threatening to take unfavorable personnel actions or withholding or threatening to withhold favorable personnel actions as reprisal against a member of the Armed Forces for making or preparing a protected communication. A **protected communication (PC)** is:

a. Any lawful communication to a **Member of Congress** or an **IG**.

b. A communication in which **a member of the Armed Forces communicates information that the member reasonably believes is evidence of a violation of law or regulation,** including a law or regulation prohibiting sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is **made to any of the following**:

(1) **A Member of Congress**; an **IG**; or a **member of a DoD audit, inspection, investigation, or law-enforcement organization**.

(2) **Any person or organization in the chain of command** (as defined by DODD 7050.06)**;** or **any other person designated** pursuant to regulations or other established administrative procedures (i.e. Equal Opportunity Advisor, Safety Officer, etc.) to receive such communications.

2. If a Soldier alleges reprisal in violation of 10 USC 1034, the IG who receives the allegation will send a Whistleblower Reprisal Advisement to DoD IG with copies to the Whistleblower Investigation and Oversight Branch (WIOB) in DAIG's Assistance Division and the ACOM / ASCC / DRU IG within two working days using the Whistleblower Advisement (see page II-9-6). Include the name, grade, unit assignment, address, and phone number of the Soldier (complainant). Attach the complaint and readily available documents to the Advisement. **This amended process is a pilot program and does not follow the current guidance outlined in AR 20-1. TIG has authorized release of IG records for the purpose of this pilot program.** Coordination with WIOB is critical. After sending the Advisement and readily available documents to DoD IG, DoD IG may request that the IG collect additional documents. TIG has authorized this exception to records release for reprisal allegations only. The field IG should be prepared to respond to the following specific questions:

a. What PC(s) does the Soldier claim that he or she made or prepared?

b. To whom were they made?

c. When were they made?

d. What matters were addressed in the PC (i.e. gross mismanagement, waste, public safety, abuse, etc.)?

e. What were the unfavorable personnel actions alleged by the Soldier?

f. Who were the responsible management official(s) (RMOs) alleged by the Soldier to have taken or threatened the personnel action? Allegations against senior Army officials (i.e., COL(P)s, General Officers, and SES-grade civilians) must be reported to the DAIG Investigations Division within two days of receipt.

g. When were the personnel actions against the Soldier taken or threatened?

h. When did the Soldier first become aware of the personnel actions?

3. The complainant does not have to cite the specific standard to allege reprisal but instead only communicate that he or she believes that unfavorable personnel actions were taken or threatened (or favorable personnel actions were withheld or threatened) as a result of communicating with a Member of Congress, an IG, or officially reporting wrongdoing, and indicate that they want the alleged improper unfavorable personnel actions investigated as part of the resolution. If the complainant linked the unfavorable personnel actions to officially reporting wrongdoing, he or she must have reported the wrongdoing to the chain of command or any of the organizations eligible to receive a protected communication. If there is no protected communication, the IG should determine if Army Regulation 600-100, Army Leadership, is the appropriate standard for the allegation.

4. The IG receiving the allegation will acknowledge receipt in writing, informing the complainant that the IG forwarded his or her allegation to DoD IG for action. If DoD IG determines that an investigation is warranted, they will investigate it or refer it to WIOB. If referred to WIOB, WIOB will become the Office of Record and will likely refer it back to the originating IG office through the ACOM / ASCC / DRU IG for investigation. You will decide to go to your directing authority to recommend a written directive or if an investigative inquiry is sufficient. (See the example tasking memorandum on page II-9-6.)

5. The elements of proof to determine whether 10 USC 1034 was violated are four questions known as the "acid test." A 'yes' to the first three questions and a 'no' to question four indicate reprisal. Question four is the most challenging to answer. To satisfy successfully the burden of proof for answering question four, there are five additional elements of proof known as the five variables. A detailed chronology is critical for analyzing the elements.

a. Here are the four questions of the 'acid test':

(1) Question 1: Did the military member make or prepare a PC?

(2) Question 2: Was an unfavorable personnel action (UPA) taken or threatened, or was a favorable personnel action withheld or threatened to be withheld following the PC?

(3) Question 3: Did the official(s) responsible for taking, withholding, or threatening the personnel action know about the PC?

(4) Question 4: Does the evidence establish that the personnel action would have been taken, withheld, or threatened if the PC had not been made or prepared?

b. For each of the UPAs, apply the five variables: reasons, reasonableness, consistency, procedural correctness, and motive.

c. The chronology captures the timing of the PC(s), UPA(s), responsible management official (RMO) knowledge, and the date (and sometimes hour) that the complainant alleged reprisal. If the RMO had knowledge before he or she took, withheld, threatened, or influenced the UPA, it could be reprisal. Using the five variables, the motive for the UPA still has to be determined. See IG DoD Guide (IGDG) 7050.6 (available on the TIGS Website) for further information on the four questions and developing interrogatories for your interviews.

6. In accordance with DODD 7050.06, IG, DoD, is the final approving authority for cases involving allegations of Whistleblower reprisal. The command IG can direct an investigative inquiry; however, a written directive from the Directing Authority is required for an investigation. The investigating IG will obtain the command IG's or the Directing Authority's concurrence or non-concurrence with the conclusions and recommendations of the investigative inquiry / investigation IAW AR 20-1 and will forward the ROI / ROII through IG channels to DAIG. Each intermediate IG will review the ROI / ROII. The ROI / ROII will be prepared in accordance with AR 20-1, paragraph 7-2, and Part Two, Chapter 4, of this guide.

7. Once the IG forwards the reprisal allegation to DoD IG, with copies to WIOB and the ACOM / ASCC / DRU IG, there are three possible outcomes as follows:

a. DoD IG will conduct a Preliminary Inquiry (PI) into the allegation. If DoD IG determines that the case does not contain the elements for reprisal, they will close the case and notify the complainant and WIOB, who will in turn notify the ACOM / ASCC / DRU IG.

b. If DoD IG's PI determines that the case contains the elements for reprisal, DoD IG will refer the case to WIOB for further investigation. WIOB, as Office of Record, will refer the case to the appropriate ACOM / ASCC / DRU IG, who will in turn refer the case to a subordinate IG if appropriate.

c. DoD IG conducting the PI is a pilot program. DoD IG and WIOB may elect to follow the procedures in existence prior to the pilot program for select cases, or they may eliminate the program altogether. In either case, if the allegation is returned to the appropriate field IG without action at DoD IG, the field IG will conduct a Preliminary Inquiry (PI) to determine whether the allegation meets the criteria for Whistleblower reprisal.

(1) A PI will address the first two questions of whether a PC was made or prepared and if an unfavorable personnel action was taken or threatened, if a favorable personnel action was withheld or threatened to be withheld, and if the reprisal complaint was submitted within 60 days of when the complainant became aware of the unfavorable personnel action. A PI can only result in a recommendation that the case be declined or that more investigation is required. Only DoD IG can decline the case. The pilot program is in effect because DoD IG, DAIG, and field IGs believe they can be more responsive to complainants if DoD IG can determine whether the case will be declined or the allegation investigated without having to wait on the field IG and every higher headquarters IG to make a recommendation for the same thing.

(2) A declination would be indicated if there was no PC or no UPA -- or if the complaint was untimely. Submit a declination memorandum to DAIG Assistance Division. If the evidence indicates there was a PC, a UPA, and the complaint was timely, then you must conduct an investigative inquiry or investigation. WIOB is the Office of Record on all Whistleblower cases (see Section 9-3 for an example of the tasking memorandum for a PI, the PI format, and the Declination format).

8. If a field IG determines that the case is timely and there are valid PCs and UPAs, the field IG should notify WIOB prior to sending the reprisal allegation to DoD IG. WIOB will coordinate with DoD IG to bypass the PI and allow the field IG to conduct an investigation or investigative inquiry.

9. If, after reviewing the Army IG's ROI or ROII, DoD IG approves the report containing substantiated allegations of a violation of 10 USC 1034, Military Whistleblower Reprisal, then TIG had authorized through AR 20-1 automatic release of that document for use in possible adverse or other action by the local commander as may be appropriate.

Report Format: Whistleblower Advisement Format

Letterhead

Office Symbol **Date**

MEMORANDUM THRU Inspector General, Department of the Army (SAIG-AC), 1700 Army Pentagon, Washington DC 20310-1700

FOR Inspector General, Department of Defense, Directorate for Military Reprisal Investigations, 400 Army Navy Drive, Arlington, VA 22202-2884

SUBJECT: Advisement of Title 10, USC, Section 1034 Complaint

1. In accordance with Title 10, USC, Section 1034 (Military Whistleblower Protection), we provide the enclosed allegation(s) of reprisal:

a. Complainant Info: **Name, Rank, Unit, Home Address, Phone Number**

b. Complaint Received: **Date complaint was received**

c. Protected Communication(s): **List PC(s) and date(s)**

d. Personnel Actions: **List all personnel actions**

2. Responsible Management Official(s)**:** List RMOs and required IGARS information, if known, at the time the complaint is filed. **If RMOs are unknown, leave blank. Do not hold up advisement.** Provide RMO information / notification when known.

3. A copy of the complaint and documentation provided by the complainant are enclosed. If you have additional issues regarding the complaint, please contact my action officer (Name, Phone Number).

Signature Block
LTC, IG
Inspector General

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Memorandum Example: WIOB Tasking Memorandum

S: XX April 2009

SAIG-AC (20-1e) XX January 2009

MEMORANDUM FOR Commander, XXXXXXXX

SUBJECT: Case Referral for Report of Investigation (ROI) or Investigative Inquiry (ROII) / (Complainant's name and rank / DIH-09-600X)

1. The Department of Defense, Inspector General, determined that an investigation must be conducted regarding the whistleblower reprisal complaint filed by complainant's name with the IG, Command's name (Enclosure 1). Complaint's name alleged that he was list UPAs. **NOTE: DOD IG's attachments to their PI are being mailed to your office (if applicable).

2. Upon completion of the investigative inquiry or investigation, provide DAIG with the following:

a. Two copies of your Report of Investigation (ROI) or Report of Investigative Inquiry (ROII) with enclosures and one additional copy of just the ROI / ROII. In accordance with DOD Directive 7050.06, we will send a copy of the report to the IG, DOD. Upon approval of the report by IG, DOD, one copy will be forwarded to the complainant (redacted to preserve the privacy of others). To prepare these copies for IG, DOD, we need all relevant documents acquired during the investigation and transcripts of the interviews conducted attached to the ROI / ROII.

b. A written legal opinion of the sufficiency of the ROI / ROII by the Staff Judge Advocate (SJA) at your level. Include time for the legal review and opinion in your plan for meeting the above suspense.

c. A completed IGAR coding sheet (IGARS Database 1559 Form) and a copy of this memorandum.

3. Request you immediately advise this office of any field-grade officer (MAJ or LTC) or senior NCO (MSG or SGM) identified as a suspect during the course of your investigation / inquiry. Additionally, if any senior officials (COL (P), GO, SES) are identified, please contact DAIG Investigation Division at DSN 329-1000 within two working days. Report colonels, not promotable, to DAIG Investigation Division. Enter the additional suspect information in the IGARS database.

4. This memorandum is not a directive for the conduct of an inspector general investigation. The investigating officer must obtain an investigation directive signed by

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the proper directing authority. A copy of the directive must be included as an enclosure in the ROI / ROII.

5. An individual identified by the investigating officer as a responsible management official must be treated as a "suspect." When interviewing the suspect(s), the proper IG procedure is to afford him or her rights IAW AR 20-1 and the Assistance and Investigations Guide. For each suspect interview, include a copy of the DA Form 3881, Rights Warning Procedure / Waiver Certificate, in the ROI / ROII.

6. Closely coordinate with your SJA throughout the investigative inquiry / investigation to facilitate legal review and meet the case suspense. If your SJA has questions regarding procedures or legal sufficiency, DAIG's Legal Advisor can assist (DSN: 329-1093 or commercial (703) 601-1093).

7. DAIG is the IGARS office of record. We will electronically refer the case to you in IGARS. Reference the originator code and case number listed above in all correspondence and in your synopsis.

8. The point of contact at DAIG's Assistance Division is the undersigned at DSN: 329-1060 or commercial (703) 601-1060.

FOR THE INSPECTOR GENERAL:

Enclosures

SIGNATURE BLOCK
Assistant Inspector General

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ENCLOSURE 2

REPORT OF INVESTIGATION
(Complainant's Name/DIH#)

1. Purpose and Authority:

To conduct an (office of inquiry fills in its name) investigation into the allegations of Whistleblower Reprisal IAW Title 10, United States Code, Section 1034 (10 U.S.C. 1034), "Military Whistleblower Protection Act," and DOD Directive 7050.06, Military Whistleblower Protection.

Public Laws 100-456 as codified in Title 10 USC 1034, 102-190, and 103-337 (implemented by DOD Directive 7050.06, Military Whistleblower Protection, July 23, 2007) provide protections to members of the Armed Forces who make or prepare to make a lawful communication to a Member of Congress; an Inspector General; or any member of a DOD audit, inspection, investigation or law enforcement organization; any other person or organization in the chain of command (including the supervisory and rating chain); or any other person designated pursuant to regulations or other established administrative procedures for such communications concerning a violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, abuse of authority, or a substantial and specific danger to public health or safety.

2. COMPLAINANT:

- Name:
- SSN:
- Work Address:
- Work Phone #:
- Home Address:
- Home Phone #:

3. ALLEGATION(S):

4. DATE AND BACKGROUND WHEN COMPLAINANT ALLEGED REPRISAL:

5. DATE AND DISCUSSION OF PRELIMINARY INTERVIEW WITH COMPLAINANT:

6. PROTECTED COMMUNICATION(S)?

Example (Date) - What, reported to whom. 1 Feb 99 - Harassment by the Chain of Command, LTC Joe Jones, Command IG.

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7. DISPOSITION OF PROTECTED COMMUNICATION(S):

- i.*e., Address action taken on each one of the PCs mentioned above.*

8. LIST UNFAVORABLE PERSONNEL ACTION(S) AND RESPONSIBLE OFFICIAL(S):

DATE	PERSONNEL ACTION	RESPONSIBLE OFFICIAL
1 Mar 99	Harassment	CPT Hard Nose
15 Apr 99	Adverse NCOER	LTC Kick Back

9. RESPONSIBLE MANAGEMENT OFFICIAL(S) KNOWLEGE OF EACH PROTECTED COMMUNICATION:

- *Based on key witness interviews, did the Responsible Management Official(s) know about the protected communication before he or she took or threatened to take the adverse personnel action or withheld a favorable personnel action? (Reference paragraph 2-5, IGDG 7050.6)* **(Warning: Do not treat RMOs as witnesses but as suspects.)**

10. PREVIOUS OR CURRENT INVESTIGATIONS OF THE REPRISAL ALLEGATIONS BY ANY OTHER AGENCY?

11. ANALYSIS OF KEY WITNESS(ES) / RESPONSIBLE MANAGEMENT OFFICIALS INTERVIEWS:

- *Could the key witnesses confirm or deny that the personnel action(s), threat(s), or reprisal action took place based on a protected communication from the complainant?*

12. ANALYSIS OF COMPLAINT:

- *Briefly analyze the four questions and determine if there was any impact on the Responsible Management Official(s) directly related to the alleged acts of reprisal.*

- *After addressing each of the four questions, apply the five variables to the personnel actions: reasons, reasonableness, consistency, motive, and procedural correctness. (See paragraph 2-6, IGDG 7050.6 "The Green Book")*

13. CONCLUSION:

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14. RECOMMENDATIONS:

15. LEGAL REVIEWS: *Legal reviews are **required** for all WBR / MHE cases.*

BRUNO SHOULDER
MSG, IG
Investigator

RICHARD BRITTON
MAJ, IG
Investigator

CONCUR:

ALBERT R. RIGHTWAY
LTC, IG
Inspector General

APPROVED:

MOTTIN DE LA BLAME
MG, U.S. Army
Commander

_____
Date

Encl
Exhibit List

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Section 9-2

DA Civilian, Non-appropriated Fund, and DoD Contractor Employee Allegations of Whistleblower Reprisal

1. Section 2302(b)(8), Title 5, United States Code (5 USC 2302(b)(8)) provides similar coverage to appropriated fund (DA / DoD civilian) employees as previously discussed for members of the Armed Forces. Likewise, Non-appropriated Fund (NAF) employees are covered under 10 USC 1587, and coverage to DoD contractor employees is provided under Section 2409(a), Title 10, United States Code (10 USC 2409). When a DA / DoD civilian, NAF, or DoD contractor employee presents an allegation of reprisal for protected disclosure to an IG, you must perform the following actions based on the employee's status:

a. Inform the **appropriated fund civilian employee** of the right to present the reprisal allegation to the **Office of Special Counsel (OSC)**. Record the teach-and-train action in IGARS, but do not enter case specifics that the complainant may have disclosed.

b. Advise **the NAF employee** of his or her right to submit reprisal complaints to the **IG, DoD**, in accordance with DODD 1401.03. The IG may take the complaint from the NAF employee; however, the IG must forward the complaint to IG, DoD. Record your actions in IGARS.

c. Inform **DoD contractor employees** that they should make their complaint about reprisal to the **IG, DoD,** and inform them that the provisions of 10 USC 2409 govern their rights. Record your actions in IGARS.

2. If the employee elects not to present a complaint of reprisal to the OSC or IG, DoD, but still wants to present the complaint to an IG, obtain that decision in writing and coordinate with WIOB to determine which type of IG action is appropriate.

3. If the DoD contactor's, civilian's, or NAF employee's disclosure involves an allegation that the complainant reasonably believes gives evidence of a substantial and specific danger to public health and safety -- or to the health and safety of a Soldier, DoD employee, or Family member -- then the IG must take immediate action to address the danger. The IG should maintain confidence to the greatest extent possible, but the overriding concern shifts from confidentiality to safety. Unless exigent circumstances exist, consult with the command's and / or DAIG's legal advisor for guidance.

Section 9-3

Example WIOB Tasking Memorandum

S: 30 November 20XX
SAIG-AC 24 August 20XX

MEMORANDUM FOR INSPECTOR GENERAL, XXXXXX

SUBJECT: Referral for Whistleblower Reprisal Preliminary Inquiry (PI) UP 10 USC 1034 (SFC Huffy Duffy / DIH-06-60XX)

1. A military member reported to the Department of the Army Inspector General a complaint of reprisal. SFC Duffy alleged that she was reassigned and received an adverse NCOER in reprisal for her protected communication (PC) to the EO Advisor. The enclosed documentation (Enclosure 1) is forwarded for PI IAW 10 USC 1034 into the matters presented.

2. You must interview the complainant to clarify the allegations and issues. When you schedule the interview, ask the complainant to furnish any documentation that she has that establishes the fact that she prepared or made a PC and any documentation the individual can provide regarding the personnel action. **A questionnaire filled out by the complainant does not replace an interview.** The interview must be recorded in your files as a verbatim transcription or as summarized testimony. Key questions for the complainant include: Who do you believe is responsible for the personnel action? Why do you believe the Responsible Management Official (RMO) knew you had prepared or made a PC before he or she took the action or made the threat? Whom did you tell about making or preparing a PC? Who can testify or provide documents to show the RMOs were aware of the PC?

3. Begin your PI to determine how far you must proceed by answering the following questions:

a. Question 1: Was there a PC made or prepared under the provisions of 10 USC 1034?

b. Question 2: Was there an unfavorable personnel action taken or threatened, or was there a favorable action withheld or threatened to be withheld <u>following</u> the PC that affects or has the potential to affect the service member's current position or career?

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SAIG-AC
SUBJECT: Referral for Whistleblower Reprisal Preliminary Inquiry UP 10 USC 1034 (SFC Huffy Duffy / DIH-06-60XX)

c. Was the reprisal complaint submitted within 60 days of when the complainant first became aware of the unfavorable personnel action? (Each case should be considered based on merit, i.e. a Soldier on 179-day deployment may exceed the 60-day window versus a Soldier who procrastinates and waits one to two years to file a reprisal complaint.)

4. If there was no PC or no unfavorable personnel action -- or the complaint was untimely under 10 USC 1034 criteria, then **STOP!!** Do not progress any further under the statute. Complete the PI recommending declination under 10 USC 1034. Attach all evidence (documentation) and forward to the Whistleblower Investigations Oversight Branch (WIOB) in DAIG's Assistance Division. WIOB will then review the PI and submit it through IG, DoD, for final approval.

5. When completing the DA Form 1559 under the declination rule, ensure you use the "A" code in the *DETER box of the Function Information. You can then close your case in IGARS. Once IG, DoD, approves the recommendation for declination, WIOB will notify you of the findings.

6. Your suspense for completing the PI and forwarding all accompanying documents to WIOB is not later than 30 days from the date of receipt of this referral memorandum. The suspense for an investigative inquiry or investigation is provided on the top right corner of this referral memorandum.

7. A PI can only result in a recommendation that the case be declined or more investigation is required. A declination would be based on a "No" to either question 1 or 2; the complaint was not filed within 60 days after the complainant first became aware of the unfavorable personnel action; or the action was independent of the protected communication. You cannot recommend a finding of "substantiated" or "not substantiated" based on a preliminary inquiry**. If you cannot determine whether there was RMO knowledge or that the action was independent of the PC based upon the documentation you acquired during the preliminary inquiry, then you must conduct an investigative inquiry or investigation.**

8. If the answer to questions 1 and 2 above is "yes" and the complaint is timely, continue your analysis regarding the last two questions.

a. Question 3: Did the RMOs know or suspect a PC was prepared or made?

b. Question 4: Would the personnel action have occurred absent the PC?

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SAIG-AC
SUBJECT: Referral for Whistleblower Reprisal Preliminary Inquiry UP 10 USC 1034 (SFC Huffy Duffy / DIH-06-60XX)

9. You must report any field-grade officer (O-4 / 5) or senior NCO (E-8 / 9) identified as an RMO during the course of your investigative inquiry or investigation to Assistance Division, DSN: 329-1060. If any promotable colonels or senior officials (GO, SES) are identified, stop your actions and contact DAIG Investigation Division, DSN: 329-1000 within two working days.

10. You must interview the complainant and any key witnesses or suspects during your investigative inquiry or investigation. Treat all RMOs as suspects when interviewed. If you are questioning a RMO about an allegation of reprisal, you must inform that person of his or her rights. Ensure you ask the individuals you interview for a decision on whether they can authorize or deny the release of the information they provide outside of official channels. Protect the confidentiality of the complainant in accordance with AR 20-1, paragraph 1-12.

11. Use the enclosed Report of Investigative Inquiry (ROII) format (Enclosure 2). Provide two copies of the completed ROII with all supporting documentation to WIOB. Include a chronology for the case as well as an exhibit list.

12. This memorandum is not a directive for the conduct of an Inspector General investigation. If an investigation is conducted as a result of the PI, the investigating officer must obtain an investigation directive signed by the proper directing authority. A copy of the directive must be included as an enclosure in the completed Report of Investigation (ROI).

13. DAIG is the IGARS office of record and will make the record IGARS entry. Enter this case as a referred case in your IGARS database. Reference the originator code and case number listed above in all correspondence and in your synopsis.

14. The point of contact at DAIG's Assistance Division is the undersigned at DSN 329-1060 or commercial (703) 601-1060.

FOR THE INSPECTOR GENERAL:

Encls

Signature Block
Assistant Inspector General

Note: The PI Tasking Memorandum is not intended for use with the new pilot program.

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Report Format: Whistleblower Reprisal Preliminary Inquiry (PI) Format

(Letterhead)

Office Symbol **Date**

MEMORANDUM THRU Inspector General, Department of the Army (Attn: SAIG-AC), 1700 Army Pentagon, Washington, DC 20310-1700

FOR Inspector General, Department of Defense, Directorate for Military Reprisal Investigations, 400 Army Navy Drive, Arlington, VA 22202-2884

Subject: Whistleblower Reprisal Preliminary Inquiry (PI) (Case #)

1. Purpose: To report Preliminary Inquiry results regarding an allegation(s) of Whistleblower Reprisal IAW 10 USC 1034, Military Whistleblower Protection Act, and DoD Directive (DoDD) 7050.06, Military Whistleblower Protection.

2. Complainant Information:

- Name / Rank:
- SSN:
- Unit / Work Address:
- Work Phone #:
- Home Address:
- Home Phone #:

3. Date and Background of Complaint:

4. Date and Discussion of the Complainant Interview:

5. Was there a Protected Communication(s) and Disposition of PC(s)?:

- *List date, what it was, and to whom it was reported.*
- *Address action taken on each one of the PCs mentioned above.*

6. Was there an Unfavorable Personnel Action? *what, when?*

7. List the Unfavorable Personnel Action(s) and RMO(s): *example:*

Date	Personnel Action	Responsible Official
1 Mar 20XX	Article 15	CPT Doo Right

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Office Symbol
Subject: Whistleblower Reprisal Preliminary Inquiry (PI) (Case #)

8. Previous or Current Investigations of the Reprisal Allegation(s) by any Other Agency:

9. Analysis of the Evidence: *documents, interviews, etc.*

- *Briefly discuss the complaint and the evidence with respect to the "two questions" and the timeliness issue to determine if the case meets the criteria for Whistleblower reprisal.*

- *Could witnesses confirm or deny that the personnel action(s), threat(s), or reprisal action(s) took place based on a PC from the complainant?*

10. Conclusion:

11. Recommendation(s): *one or more possible recommendations*:

- *(Declination) - The allegation(s) does not meet the criteria outlined in DoD Directive 7050.06, i.e., question 1 or 2 of the complaint clarification process is "no", the complaint was not timely, or action was independent of the protected communication.*

- *(Investigative Inquiry / Investigation) - That the findings of the PI indicated that a Whistleblower Investigative Inquiry / Investigation be conducted in order to substantiate or not-substantiate the allegation(s) of Whistleblower reprisal.*

- *(Refer) - If the case is declined, analyze to determine appropriate action, i.e., non-Whistleblower IG Investigation / Investigative Inquiry, AR 15-6, Chain of Command, CID, MPI, etc. All issues must be addressed.*

12. Contact information:

Encls

Signature Block
LTC, IG
Inspector General

SJA Coordination: concur / non-concur

Note: The PI Tasking Memorandum is not intended for use with the new pilot program.

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Report Format: Declination

(Letterhead)

AFTR-IG 10 March 20XX

MEMORANDUM THRU Inspector General, Department of the Army (Attn: SAIG-AC), 1700 Army Pentagon, Washington, DC 20310-1700

FOR Inspector General, Department of Defense, Directorate for Military Reprisal Investigations, 400 Army Navy Drive, Arlington, VA 22202-2884

SUBJECT: Whistleblower Reprisal Preliminary Inquiry (PI) (SPC Snuffy / DIH-06-60XX)

1. Purpose: To report Preliminary Inquiry results regarding an allegation(s) of Whistleblower Reprisal IAW 10 USC 1034, Military Whistleblower Protection Act, and DoD Directive (DoDD) 7050.06, Military Whistleblower Protection, and recommend declination.

2. Complainant Information:

- Name / Rank: Beverly E. Snuffy / SPC
- SSN: 123-45-6789
- Unit / Work Address: 350th Battalion, 2511 Dolphin Rd, Fort Von Steuben, VA 22605
- Work Phone #: (540) 802-6543, DSN: 555
- Home Address: 2605 Otter Road, Lynchburg, VA 24503
- Home Phone #: (540) 123-4567

3. Date and Background of Complaint: SPC Snuffy filed a Whistleblower reprisal complaint with the Department of the Army Inspector General's (DAIG) Office on 1 February 2006 (Tab 1). DAIG forwarded the complaint and referred the case to the Fort Von Steuben IG Office on 10 February 2006. SPC Snuffy alleged that she received an Article 15 because she filed an EO complaint against her 1SG.

4. Date and Discussion of Interview with the Complainant:

a. On 16 February 2006, MAJ List and SFC Bergerac, Fort Von Steuben IG Office, interviewed SPC Snuffy (Tab 2). During the interview SPC Snuffy alleged that her 1SG was a "racist" and the Article 15 was "retaliation" for the EO complaint she (SPC Snuffy) filed against him (1SG Bailey).

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AFTR-IG
SUBJECT: Whistleblower Reprisal Preliminary Inquiry (PI) (SPC Snuffy / DIH-06-60XX)

b. SPC Snuffy provided the Article 15 paperwork and stated that there was a preliminary inquiry regarding an alcohol incident in the barracks.

c. SPC Snuffy could not provide any names of witnesses that could corroborate her allegations.

5. Was there a Protected Communication(s) and Disposition of PC(s)?: Yes, SPC Snuffy filed an EO complaint on 3 January 2006. SPC Snuffy alleged that 1SG Bailey discriminated against her because of her race. The Fort Von Steuben EO office investigated the EO complaint and completed it on 27 January 2006. The findings were not substantiated against 1SG Bailey (Tab 3).

6. Was there an Unfavorable Personnel Action? Yes, SPC Snuffy received an Article 15 on 30 December 2005 (Tab 4).

7. List the Unfavorable Personnel Action(s) and RMO(s):

Date	Personnel Action	RMO(s)
30 December 2005	Article 15	CPT Doo Right 1SG Bailey

8. Previous or Current Investigations of the Reprisal Allegation(s) by any Other Agency: None.

9. Analysis of the Evidence: The evidence indicated that SPC Snuffy and five other Soldiers consumed alcohol in the barracks on 10 December 2005 in violation of unit policy. The commander conducted an inquiry, and SPC Snuffy and the other five Soldiers received Article 15s on 30 December 2005. On 3 January 2006, SPC Snuffy filed an EO complaint against the 1SG claiming racial discrimination. The FVS EO office investigation found that the discrimination complaint was not substantiated. In order to meet the criteria for Whistleblower Reprisal, the unfavorable personnel action must follow the PC. In this case, the evidence indicated that the Article 15 (UPA) occurred before the EO complaint (PC).

10. Conclusion: The preponderance of credible evidence indicated the unfavorable personnel action (Article 15) occurred before the PC (EO complaint); therefore, this case does not meet the criteria for Whistleblower reprisal.

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AFTR-IG
SUBJECT: Whistleblower Reprisal Preliminary Inquiry (PI) (SPC Snuffy / DIH-06-60XX)

11. Recommendations: Recommend the case be declined and closed.

12. Contact Information: If you have questions or issues regarding the declination, please contact my action officer, MAJ List, at commercial: (540) 802-0603 or DSN: 555-0603.

/s/
Encls ALBERT R. RIGHTWAY
LTC, IG
Division IG

I have reviewed the Preliminary Inquiry and the findings are legally sufficient.

_____
MAJ Bailiff, Asst SJA: Concur / ~~Nonconcur~~

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Section 9-4

Example Whistleblower Reprisal Report of Investigation (ROI)

REPORT OF INVESTIGATION (WHISTLEBLOWER REPRISAL)
(DIH 08-60XX / OTR 08-00XX)

(Note: An introduction was included to promote effective and efficient writing that can be understood in a single, rapid reading.)

1. Introduction:

a. On 30 May 2008, SSG Carol Miranda, then Section Chief, Wheeled Vehicle Maintenance Section, Headquarters and Headquarters Company (HHC), 4th Support Battalion (SB), Fort Von Steuben, VA, met with her commander, CPT Paul G. Smith, regarding an alleged incident of misconduct in the unit.

b. On 10 June 2008, SSG Miranda was relieved from her duty position as Section Chief by the commander, CPT Smith.

c. On 28 August 2008, SSG Miranda visited the Fort Von Steuben IG office. Her visit to the IG office led to the filing of her reprisal complaint on 2 September 2008.

d. On 9 September 2008, SSG Miranda received an adverse Noncommissioned Officer Evaluation Report (NCOER). The rater for this NCOER was SFC William C. Jones, Motor Sergeant, HHC, 4th SB; the senior rater was CPT Smith; and the reviewer was LTC Richard Power, Battalion Commander, 4th SB.

2. Consideration of the Allegations:

a. Allegation # 1: CPT Smith improperly reprised against a subordinate through an adverse NCOER in violation of DODD 7050.06. Note: There would be at least two more allegations of reprisal against a subordinate through an adverse NCOER because all three officials signing the NCOER are Responsible Management Officials. To keep the example simple, those allegations are not shown here.

b Allegation # 2: CPT Smith improperly reprised against a subordinate by relieving that person of his / her duty position in violation DODD 7050.06.

[IO Note: The allegations were addressed together because of their related nature.]

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3. Evidence:

a. Standard: DODD 7050.06, Military Whistleblower Protection, dated 23 July 2007, stated in paragraph 4.3 that members of the Armed Forces would be free from reprisal for making or preparing a protected communication.

b. Document: SSG Miranda's DA Form 2166-8, NCOER, for the period February 2006 to June 2006 was a change of rater NCOER and reflected that she received "fair" ratings for performance and potential from her senior rater, CPT Smith. (EXHIBIT C)

c. Testimony:

(1) SSG Miranda testified on 12 November 2006 that her NCOER was adverse because the NCOER had ratings of "fair" by the senior rater (CPT Smith) for overall performance and potential. With respect to being relieved from her duty position, she testified that while members of their unit were deployed to Fort Polk, LA, for an exercise from 12 May 2006 to 4 June 2006, they were under a strict alcoholic beverage policy. The policy prohibited Soldiers participating in the exercise from drinking any alcoholic beverages during the exercise even when off duty. On three to five occasions, SSG Miranda went out to eat dinner with several other enlisted members of the unit. Occasionally, while they were at dinner, the other Soldiers would have a pitcher of beer on the table and pour their drinks from the pitcher. SSG Miranda said she did not always sit with them at the restaurant, and she did not drink any beer. She testified that every Soldier knew of the drinking policy. She was relieved of her duty position as Team Leader on 11 June 2006 because the company commander believed she violated and failed to enforce the drinking policy. (EXHIBIT B)

(2) SFC William Jones, Motor Sergeant, HHC, 4th SB, testified on 15 November 2006 that he did not deploy with HHC, 4th SB to Fort Polk, LA, due to a knee injury shortly before the exercise. For this reason he had no first-hand knowledge of SSG Miranda's actions while at Fort Polk. He heard quite a few of the rumors about violations of the drinking policy when the unit came back, and he thought they were just rumors. He was SSG Miranda's rater on her two most recent NCOERs, and he rated SSG Miranda's performance as average on both NCOERs. (EXHIBIT D)

(3) SFC Alan Moran, HQs Platoon Sergeant (a witness), HHC, 4th SB, testified on 16 November 2006 that SSG Miranda was relieved by CPT Smith because of her duty performance. She was too much of a buddy with the members of her team. He also testified that CPT Smith was upset with SSG Miranda at Fort Polk because she did not report the alleged incident of misconduct by an NCO to him, and she was the team's NCO-in-Charge. CPT Smith felt that she (SSG Miranda) was disloyal to him. CPT Smith said that in late August, and he (SFC Moran) told CPT Smith that SSG Miranda told him she had gone to the IG. (EXHIBIT E)

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(4) CPT Smith, a Responsible Management Official (RMO), testified on 22 November 2006 that he was the unit commander and denied that he took the adverse personnel actions against SSG Miranda in reprisal for her protected communications. He testified that he relieved SSG Miranda from her duty position because she lied to him. Each of the other Soldiers involved in the violation of the drinking policy incident said that SSG Miranda was the senior NCO present. Either the four Soldiers were lying or SSG Miranda was lying. SSG Miranda then admitted that she did lie to the commander and that she did violate the drinking policy. He no longer felt he could trust her, and he had no confidence in her ability to tell the truth. These were also the reasons why he put the adverse comments on SSG Miranda's NCOER. CPT Smith went on to say that he would work with SSG Miranda over the next several months to rehabilitate her and to send her to the NCO academy for schooling. He said that he gave SSG Miranda a key assignment as the NCOIC of a three-person team sent to support an Air Force Detachment and that she did a great job. He has seen much improvement in her performance over the past several months. (EXHIBIT F)

d. Discussion:

(1) Question 1: Was there a protected communication made or prepared that was protected by 10 USC 1034? Yes. There were two protected communications. On 30 May 2006, SSG Miranda met with her commander, CPT Smith, reference an alleged incident of misconduct in the unit. This qualified as a protected communication because the Soldier went to her company commander and discussed / reported her knowledge of an incident of misconduct by another member of the unit. The second protected communication was made when SSG Miranda visited the Fort Von Steuben IG in August 2006. Any lawful communication to an IG was a protected communication.

(2) Question 2: Was there an unfavorable personnel action taken or threatened, or was there a favorable action withheld or threatened to be withheld that affects or had the potential to affect the service member's current position or career after the protected communication was made or prepared? **Yes.** There were two unfavorable personnel actions: relief from duty position and an adverse NCOER. These actions are considered unfavorable personnel actions because they could harm a Soldier's career and have a negative impact on the Soldier's potential for future promotions.

(3) Question 3: Did the official(s) responsible for taking, withholding, or threatening the personnel action know about the protected communication(s)? **Yes.** The RMO was SSG Miranda's company commander, CPT Smith, and he testified he was aware of her protected communications.

(4) Question 4: Does the evidence establish that the personnel action would have been taken, withheld, or threatened if the protected communication had not been made? **Yes.** There were actions by SSG Miranda that could have been the basis for

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the personnel actions taken against her. SSG Miranda admitted that she allowed members of her team to violate a published drinking policy. She also initially denied knowing of the drinking violations to her commander. The paragraphs below discuss whether these actions were the basis for the RMO's unfavorable personnel actions against SSG Miranda.

e. Unfavorable Personnel Action #1, Relieved from Duty Position:

(1) Reasons: SSG Miranda was counseled on 10 June 2006 by her commander, CPT Smith, on the reasons why he relieved her from her current duty position. The reasons included tardiness, making a false statement to the commander, and allowing her Soldiers to violate the published drinking policy.

(2) Reasonableness: There were no other Soldiers of the same grade as SSG Miranda involved in violating the drinking policy. The other NCOs involved were also given adverse comments on their NCOERs similar to those given to SSG Miranda. SSG Miranda actually sat at the table while the Soldiers drank beer; and, on several occasions, she drove the Soldiers to and from the restaurant where they violated the policy. It was reasonable to conclude that she would receive a harsher punishment since she was the senior NCO involved with the violations of the drinking policy.

(3) Consistency: SSG Miranda was the only E-6 and the senior member of the group that included Soldiers who admitted to violating the drinking policy. The other members of the group included three E-5s and one E-3. All three E-5s received some form of unfavorable personnel action for violating the drinking policy. SSG Miranda was the senior member of the group and was the only one relieved from her duty position. There were no other Soldiers of SSG Miranda's grade involved in the violation of the drinking policy. The NCO who was involved in the reported misconduct (improper sexual act and homosexual proposition of an enlisted Soldier in the unit) was the same grade as SSG Miranda. This NCO was administratively discharged from the Army for his misconduct. This action showed that the command was consistent in taking significant action when an NCO violated rules and regulations.

(4) Motive: The RMO’s motives were to discipline SSG Miranda for her part in violating the Fort Polk drinking policy and not reporting to the chain of command the potential criminal sexual act of another member of the unit. CPT Smith was upset because SSG Miranda did not bring the issue of misconduct to his attention, and he wanted to ensure she understood that this behavior was not acceptable. CPT Smith also wanted to discipline SSG Miranda, but he didn't want to be too harsh. Therefore, he did not take the full action he could have by imposing the maximum punishment. The fact that SSG Miranda was given a Change-of-Rater NCOER instead of a Relief-for-Cause NCOER was an attempt by CPT Smith to discipline the Soldier without imposing the maximum punishment. Additionally, an overall attitude of distrust developed in the unit. The unit's leadership had good intentions and could have resolved many of their

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issues with better communication. Many of the issues that developed in the unit could have been avoided if there was a more formal atmosphere and better communications prior to mobilization.

(5) Procedural Correctness: SSG Miranda's Relief for Cause was not procedurally correct. The only documentation involved was the 10 June 2006 counseling statement. AR 623-205 required a Relief-for-Cause NCOER when an NCO was relieved regardless of the rating period involved. Relief for Cause was defined as the removal of an NCO from a ratable assignment based on a decision by a member of the NCO's chain of command or supervisory chain. SSG Miranda should have been given a Relief-for-Cause NCOER for the period of February 2006 to June 2006 instead of a Change-of-Rater NCOER. CPT Smith testified that he originally intended to give SSG Miranda a Relief-for-Cause NCOER but changed his mind based on advice from the Battalion Commander, LTC Power, and CSM Strickman, the Battalion CSM.

f. Unfavorable Personnel Action #2, Adverse NCOER:

(1) Reasons: CPT Smith testified the reasons for his adverse comments on SSG Miranda's NCOER were for the same reasons as her relief. These reasons included: a non-supportive and uncaring attitude, making a false statement to the commander, and allowing her Soldiers to violate the published drinking policy. CPT Smith showed documentation (counseling statements) to the reviewer, LTC Power, to support his rating. LTC Power and CPT Smith discussed the importance of having documentation to support his rating.

(2) Reasonableness: The violation of the published drinking policy was a significant negative event during SSG Miranda's rating period. It was reasonable and appropriate that this event would be documented on her evaluation report. The event was recorded on a counseling statement and later included in her overall performance evaluation. SSG Miranda also had several other documented issues that contributed to the overall negative characterization of her duty performance. These issues included tardiness and missing a formation (EXHIBIT O).

(3) Consistency: There were no other Soldiers of SSG Miranda's grade involved in the violation of the drinking policy. The Soldier who was involved in the improper sexual act and homosexual proposition of an enlisted Soldier in the unit was the same grade as SSG Miranda. This NCO was administratively discharged from the Army for his misconduct, which showed that the command was consistent in taking some sort of significant action when a NCO violated rules and regulations. The other NCOs who were members of SSG Miranda's team each received negative comments on their NCOERs because of their violations of the drinking policy. The negative comments the other three NCOs received were similar to the ones SSG Miranda received, but their ratings of performance and potential were not as low as SSG Miranda's. All of the other NCOs were one grade lower than SSG Miranda.

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(4) Motive: The RMO's motive was to discipline SSG Miranda for her part in violating the Fort Polk drinking policy. CPT Smith also wanted to punish SSG Miranda, but he didn't want to be too harsh. Consequently, he did not pursue a Relief-for-Cause NCOER. He sent a draft copy of her NCOER to the Battalion CSM, CSM Strickman, for his review to ensure that he was giving an appropriate rating. Additionally, an overall attitude of distrust developed in the unit. The unit's leadership had good intentions and could have resolved many of their issues internally with better communications. Many of the issues that developed in the unit could have been avoided if there was a more formal atmosphere and better communications prior to unit mobilization.

(5) Procedural Correctness: SSG Miranda's NCOER was not procedurally correct. The only documentation involved was the 10 June 2006 counseling statement. AR 623-205 required a Relief-for-Cause NCOER when an NCO is relieved regardless of the rating period involved. Relief for Cause was defined as the removal of an NCO from a ratable assignment based on a decision by a member of the NCO's chain of command or supervisory chain. SSG Miranda should have been given a Relief-for-Cause NCOER with thru dates of February 2006 to June 2006 instead of a Change-of-Rater NCOER. CPT Smith said that he originally intended to give SSG Miranda a Relief-for-Cause NCOER, but he changed it based on advice from LTC Power and CSM Strickman.

g. Conclusions:

(1) The allegation that CPT Smith improperly reprised against a subordinate through an adverse NCOER in violation of DODD 7050.06 was not substantiated.

(2) The allegation that CPT Smith improperly reprised against a subordinate by relieving her of her duty position in violation DODD 7050.06 was not substantiated.

4. Other Matters: The relief for cause NCOER in this case was not executed in accordance with AR 623-205.

5. Recommendations:

a. Concur with the conclusions above against CPT Smith as not substantiated.

b. Forward the case thru SAIG-AC to IG, DoD, for final approval.

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c. Ensure the G-1 includes coverage of the procedures for Relief-for-Cause NCOERs in accordance with the requirements of AR 623-205 in the Company Commander's and 1SG's course.

BRUNO SHOULDER
MSG, IG
Investigator

RICHARD BRITTON
MAJ, IG
Investigator

CONCUR:

NO LEGAL OBJECTION:

ALBERT R. RIGHTWAY
LTC, IG
Inspector General

APPROVED:

MOTTIN DE LA BLAME
MG, U.S. Army
Commander

_____
Date

Encl
Exhibit List

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Section 9-5

State Equal Employment Manager and other Third-Party Complainants

1. The State Equal Employment Manager (SEEM), Equal Opportunity (EO) advisor, EO representative, and other EO officials are eligible to receive protected communications under the provisions of 10 USC 1034. Protected communications to EO personnel subject the Service member to risk of Whistleblower reprisal. NGR 600-22 / ANGI 36-3, dated 30 March 2001, paragraph 1-7c, requires EO personnel to advise complainants of their right to report reprisal through IG channels within 60 days if he or she wishes full protection under 10 USC 1034.

a. EO personnel must advise complainants of this right if the complainant alleged reprisal for EO activity, i.e., for having filed a complaint of discrimination, for preparing to file a complaint of discrimination, for having testified as a witness in a discrimination complaint investigation, for informing officials within the chain of command or NGB of perceived discrimination, or any other protected communication related to EO matters.

b. EO complainants can allege reprisal as part of their discrimination complaint on NGB Form 333 (it is a category of basis for alleged discrimination) or on NGB Form 335, Reprisal Complaint Advisement and Election Form. Regardless, the EO official will advise the complainant of his or her right to report the allegation through IG channels IAW NGR 600-22 / ANGI 36-3.

2. IGs are not permitted to investigate a reprisal allegation from either a third party or an anonymous complainant. IGs will not work a case if the complainant does not cooperate with the IG or creates circumstances where the IG cannot reach him or her for an interview. This guidance is different than Army Regulation 20-1 because reprisal allegations are investigated IAW DODD 7050.06. EO officials, and anyone else other than the person who believes that he or she has experienced reprisal, are third-party complainants. Regardless of how the EO official reports the reprisal allegation to the IG (i.e., verbally, NGB Form 333, NGB Form 335), the response is the same. Teach and train the third party that IGs can't accept reprisal allegations from third parties and request that he or she tell the complainant that the IG cannot open a case unless the complainant alleges reprisal directly to the IG. Do not contact, or attempt to contact, the complainant directly. Doing so could breech the third party's confidentiality, and it will put the complainant at greater risk of reprisal.

Section 9-6

Improper Referral for Mental Health Evaluation Investigations

1. DOD Directive 6490.1, Mental Health Evaluation of Member of the Armed Forces, and DOD Instruction 6490.4, Requirements for Mental Health Evaluation of Members of the Armed Forces, establish and implement DOD policy, assign responsibility, and prescribe procedures for the referral, evaluation, treatment, and administrative management of Service members who may require mental health evaluation, psychiatric hospitalization, and / or assessment for risk of potentially dangerous behavior.

2. **IGs receiving allegations of improper referral for MHE will notify DOD IG and copy DAIG Assistance Division (SAIG-AC), Whistleblower Investigations and Oversight Branch (WIOB), and their ACOM / ASCC / DRU IG within two working days**. This notification will include the name, grade, address or duty location, and phone number of the complainant; a synopsis of the specific allegation(s); any supporting data received by the IG; the name, grade, address, and phone number of the IG action officer; and any other information required during notification in accordance with DOD Instruction 6490.4. Provide DOD IG with the complaint and readily available documents. These new procedures are part of a pilot program; TIG has authorized release of IG records for the purposes of this pilot program. Coordination with WIOB is critical.

3. All allegations of improper referral for MHE must also be analyzed for reprisal in accordance with 10 USC 1034. If the allegation is that the referral for MHE was improper because it was done in reprisal, then it becomes a reprisal allegation with referral for MHE as one of the unfavorable personnel actions and DODD 7050.06 as the standard. The commander becomes a suspect. Follow the procedures for reprisal (see Chapter 9-1). If the violation is strictly procedural, treat the commander and the mental health-care provider as subjects and use DODD 6490.1 and DODI 6490.4 for standards. If unsure whether the complainant is alleging reprisal, clarify the complaint with the complainant. Whether it is a reprisal allegation or a procedural allegation, the referral procedures must be addressed. Unlike reprisal allegations, allegations of improper referral for MHE cannot be declined. If the referral was allegedly in reprisal, but the elements aren't there (see Section 11-1), the reprisal allegation can be declined, but the referral will still have to be investigated.

Section 9-7

Example Mental Health Evaluation ROII

REPORT OF INVESTIGATIVE INQUIRY (MHE)
(Case # DIH 08-6099 / OTR 08-8011)

EXECUTIVE SUMMARY

NAME / POSITION: LTC Ross P. Boss, Battalion Commander, Recruiting and Retention (R&R) Command; SGM Jones, R&R Command; and COL (Dr.) Joe Smith, Branch Medical Clinic Complaintville.

AUTHORITY: On 10 June 2008, COL Edward J. Columbo, the State Inspector General, VAARNG, authorized MAJ Britton to conduct an investigative inquiry.

BACKGROUND: The VAARNG IG's office conducted an inquiry concerning allegations of an improper mental health evaluation referral for SGT Sane. SGT Sane alleged that his chain of command improperly referred him for a non-emergency mental health evaluation (MHE).

SUBSTANTIATED ALLEGATIONS:

LTC Boss improperly referred SGT Sane for a Mental Health Evaluation in violation of DODD 6490.1.

SGM Jones improperly referred SGT Sane for a Mental Health Evaluation in violation of DODD 6490.1.

COL (Dr.) Smith improperly conducted a Mental Health Evaluation of SGT Sane in violation of DODD 6490.1.

SYNOPSIS: DODD 6490.1 contains the policy for command-directed MHE referrals. The key evidence that led the IO to substantiate the allegations were the testimonies from the subjects. All three subjects testified that they were unaware of the proper procedures for referring individuals for an MHE.

On 2 May 2008, SGT Sane admitted himself into the Acme mental health clinic to receive counseling for work-related stress. He said that he was working 60-hour weeks in a dysfunctional office. SGT Sane signed a Privacy Act statement and a consent statement with LT Mindprobe, a physician's assistant at the Lightduty AFB.

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On 2 May 2008, CPT Lynn Logger, Commander, HHC, 123rd DISCOM, called Capt. (USAF) Anna Freud, psychologist, Lightduty AFB, about SGT Sane. CPT Logger was concerned about SGT Sane's mental state as he (SGT Sane) continuously came by her office and told her stories, which she described as "far-fetched."

After talking with CPT Logger, Capt. Freud in turn called SFC Enlistment, Operations Sergeant of the Recruiting and Retention Command, where SGT Sane was attached and serving on active duty for special work (ADSW) orders. Capt. Freud recommended that a psychiatrist evaluate SGT Sane.

When SFC Enlistment received this recommendation from Capt. Freud, she talked with her first-line supervisor, SGM Jones, Sergeant Major of the R&R Command. SGM Jones, in turn, telephoned LTC Ross P. Boss, the commander of the R&R Command. SGM Jones explained to LTC Boss that Dr. Freud had recommended that SGT Sane receive a mental health evaluation. LTC Boss acknowledged the recommendation and told SGM Jones to take the appropriate action to help SGT Sane.

Afterwards, SGM Jones called HHC, 123rd DISCOM (the unit to which SGT Sane was assigned), and spoke to SFC Three, the operations sergeant of HHC, 123rd DISCOM. SGM Jones explained to SFC Three that SGT Sane was in need of a psychiatric evaluation. SGM Jones did not inform the commander of HHC, 123rd DISCOM (CPT Logger), about the MHE referral.

SGM Jones directed SFC Enlistment to schedule SGT Sane for a MHE. SFC Enlistment scheduled this appointment and, upon further instruction from SGM Jones, SFC Enlistment prepared and signed the MHE referral. LTC Boss, Commander, R&R Command, did not sign the MHE request. (EXHIBIT A)

SGT Sane subsequently underwent his MHE with COL (Dr.) Joe Smith, psychiatrist for the VAARNG on 20 May 2008.

[IO Note: The R&R Command submitted the request for an MHE based upon the recommendation received from Capt. Freud, Psychologist, Lightduty AFB.]

All three allegations were substantiated.

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(Note: This ROII includes an EXSUM; therefore, the introductory paragraph is omitted.)

CONSIDERATION OF ALLEGATIONS

1. Allegation #1: That LTC Boss improperly referred SGT Sane for an MHE in violation of DODD 6490.1.

a. Evidence:

(1) Standard: DODD 6490.1, Mental Health Evaluations of Members of the Armed Forces, dated 1 October 1997, assigned responsibilities for referral, evaluation, and management of Service Members directed for mental health evaluation. (EXHIBIT C)

(2) Documentary evidence:

(a) In a memorandum, subject: Request for MHE, dated 3 May 2008 SFC Enlistment, Operations NCO, Recruiting and Retention Command, submitted the original request for a psychiatric evaluation for SGT Sane. (EXHIBIT A)

(b) In a memorandum, subject: Request for MHE, dated 7 May 2008, SSG Patty Hearst, Detachment X Medical Coordinator, approved the 3 May 2008 MHE request from SFC Enlistment. (EXHIBIT B)

(c) A memorandum, subject: Request for MHE, dated 20 May 2008, conveyed the results of SGT Sane's MHE to LTC Boss. (EXHIBIT D)

(d) In a memorandum, subject: Counseling with SGT Sane on 3 May 2008, dated 18 June 2008, SGM Jones, SGM of Recruiting and Retention Command, related the sequence of events surrounding SGT Sane's MHE. (EXHIBIT E)

(e) In a memorandum, subject: MHE, dated 20 June 2008, SFC Enlistment admitted that he signed the MHE request. There were no signatures on these memorandums from LTC Boss (Commander, Recruiting and Retention Command) or CPT Logger (Commander, HHC, 123rd DISCOM).

(3) Testimonial evidence:

(a) SGT Sane, HHC, 123rd DISCOM, testified on 10 June 2008 that he was improperly referred for a mental-health evaluation because he was not read his rights.

(b) SFC Enlistment, Operations Sergeant of the Recruiting and Retention Command, testified on 12 June 2008 that the commanding officer of the Recruiting and Retention Command (LTC Boss) did not consult with a mental health professional before

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referring SGT Sane for a mental-health evaluation. He (SFC Enlistment) testified SGT Sane was afforded his rights to speak with a lawyer and the Inspector General; he was not advised of these rights by his unit commander. (EXHIBIT A)

(c) LTC Boss, Commander, R&R Command, testified on 14 June 2008 that he did not consult with a mental health professional before referring SGT Sane for an MHE. LTC Boss did not provide SGT Sane written notice of the MHE referral. There was no written notice provided to SGT Sane. However, SFC Enlistment provided a written notice that included the date and time of the scheduled MHE, factual description of the behavior or verbal expressions, name of the mental health professional, and positions and telephone numbers of authorities, including attorneys and IGs. LTC Boss did not provide SGT Sane an opportunity to seek advice from an Armed Forces attorney or an IG. LTC Boss did not provide SGT Sane a choice to be evaluated by a mental health professional of his own choosing. LTC Boss did not restrict SGT Sane from lawfully communicating with an IG or a member of Congress. LTC Boss did not allow SGT Sane at least two business days before the scheduled MHE to meet with an attorney, an IG, a chaplain, or other appropriate party.

b. Discussion: SGT Sane alleged that his chain of command improperly referred him for a non-emergency MHE. DODD 6490.1, Mental Health Evaluations of Members of the Armed Forces, prohibited the improper referral of Soldiers for mental health evaluations. LTC Boss was aware of the MHE referral; in fact, he told SGM Jones to initiate the MHE. However, LTC Boss was not involved in the referral process and may not delegate authority to refer Soldiers for an MHE to someone who is not a commander or on orders as an acting commander IAW DODD 6490.1. Specifically, LTC Boss did not advise SGT Sane of his rights, and LTC Boss did not sign the MHE referral. LTC Boss testified that he was unaware of DODD 6490.1 and that he had no excuse for his actions. The preponderance of credible evidence indicated that LTC Boss violated DODD 6490.1.

c. Conclusion: The allegation that LTC Boss improperly referred SGT Sane for a Mental Health Evaluation in violation of DODD 6490.1 was substantiated.

2. Allegation #2: That SGM Jones improperly referred SGT Sane for a MHE in violation of DODD 6490.1.

a. Evidence:

(1) Standard: DODD 6490.1, Mental Health Evaluations of Members of the Armed Forces, dated 1 October 1997, assigned responsibilities for referral, evaluation, and management of Service Members directed for mental health evaluation. (EXHIBIT C)

(2) Documentary evidence:

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(a) In a memorandum, subject: MHE, dated 3 May 2008, SFC Enlistment, Operations NCO, Recruiting and Retention Command, submitted the original request for a psychiatric evaluation for SGT Sane. (EXHIBIT A)

(b) In a memorandum, subject: Counseling with SGT Sane on 3 May 2008, dated 18 June 2008, SGM Jones, SGM of Recruiting and Retention Command, related the sequence of events surrounding SGT Sane's MHE. (EXHIBIT D)

(3) Testimonial Evidence:

(a) SGT Sane, HHC, 123rd DISCOM, testified on 10 June 2008 that he was improperly referred for a mental-health evaluation because he was not read his rights.

(b) SFC Enlistment testified on 14 June 2008 that SGM Jones did not consult with a mental-health professional before referring SGT Sane for a mental health evaluation. SGT Sane was afforded his rights to speak with a lawyer and the Inspector General; he was not advised of these rights by SGM Jones. (EXHIBIT A)

(c) SGM Jones testified on 17 June 2008 that he did not consult with a mental-health professional before referring SGT Sane for the MHE. He did not provide SGT Sane written notice of the MHE referral. No written notice was provided by SGM Jones to SGT Sane. SGM Jones testified that SFC Enlistment provided a written notice to SGT Sane that included the date and time of the scheduled MHE, factual description of the behavior or verbal expressions, name of the mental-health professional, and positions and telephone numbers of authorities, including attorneys and IGs. SGM Jones did not provide SGT Sane an opportunity to seek advice from an Armed Forces attorney or an IG. SGM Jones did not provide SGT Sane a choice to be evaluated by a mental-health professional of his own choosing. SGM Jones did not restrict SGT Sane from lawfully communicating with an IG or a member of Congress. SGM Jones did not allow SGT Sane at least two business days before the scheduled MHE to meet with an attorney, an IG, a chaplain, or other appropriate party.

b. Discussion: SGT Sane alleged that his chain of command improperly referred him for a non-emergency MHE. DODD 6490.1, Mental Health Evaluations of Members of the Armed Forces, prohibited the improper referral of Soldiers for mental health evaluations. SGM Jones was aware of the MHE referral, and he told SFC Enlistment to initiate and write-up the referral. However, IAW DODD 6490.1, SGM Jones was not authorized to refer a Soldier for an MHE. Further, SGM Jones did not advise SGT Sane of his rights and failed to advise LTC Boss that the commander was responsible to notify the complainant of his or her rights, and the commander was required to sign the MHE referral. SGM Jones testified that he was unaware of DODD 6490.1 and that he had no excuse for his actions. The preponderance of credible evidence indicated that SGM Jones violated DODD 6490.1.

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c. Conclusion: The allegation that SGM Jones improperly referred SGT Sane for a Mental Health Evaluation in violation of DODD 6490.1 was substantiated.

3. Allegation #3: COL (Dr.) Smith improperly conducted a Mental Health Evaluation of SGT Sane in violation of DODD 6490.1.

a. Evidence:

(1) Standard: DODD 6490.1, Mental Health Evaluations of Members of the Armed Forces, dated 1 October 1997, assigned responsibilities for referral, evaluation, and management of Service Members directed for mental health evaluation. (EXHIBIT C)

(2) Documentary evidence:

(a) In a letter, dated 19 May 2008, from SGT Sane to Dr. Smith, SGT Sane expressed worry about leaving the VAARNG at the end of his ADSW tour on 31 May 2008. SGT Sane also indicated he was nervous about moving to Korea after he got out, even though he had a good contracting job lined up there. (EXHIBIT E)

(b) In a memorandum, subject: Mental Health Evaluation of SGT Sane, dated 20 May 2008, Dr. Smith indicated SGT Sane was mentally fit for retention but that SGT Sane overtly expressed signs of anxiety, which were attributed to his impending departure from service and relocation to Korea. (EXHIBIT F)

(3) Testimonial Evidence.

(a) SGT Sane, HHC, 123rd DISCOM, testified on 10 June 2008 that he was improperly referred for a mental-health evaluation because he was not read his rights.

(b) COL Smith, psychiatrist for the VAARNG, testified on 18 June 2008 that he did not assess the circumstances surrounding the request for the MHE to ensure that the evaluation was not due to reprisal. He did not report to the superior of the referring commander via mental health command channels that the MHE may have been inappropriate. COL Smith testified that he was unaware of DODD 6490.1 and was not aware that SGT Sane should have been advised of his rights prior to and after the MHE. He did not advise SGT Sane of the purpose, nature, and likely consequences of the evaluation. He did not make clear to SGT Sane that the MHE was not confidential. COL Smith assessed the mental state of SGT Sane but did not ask about the procedures leading up to the evaluation.

b. Discussion: SGT Sane alleged that his chain of command improperly referred him for a non-emergency MHE. DODD 6490.1, Mental Health Evaluations of Members of the Armed Forces, prohibited the improper referral of Soldiers for mental health

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evaluations. COL Smith testified he was unaware of his obligations as a privileged physician to advise SGT Sane of his rights prior to and during the MHE IAW DODD 6490.1. Also, COL Smith should have told SGT Sane that the results of the MHE were not confidential. The preponderance of credible evidence indicated that COL Smith violated the provisions of DODD 6490.1.

c. Conclusion: The allegation that COL Smith improperly conducted a Mental Health Evaluation of SGT Sane in violation of DODD 6490.1 was substantiated.

4. OTHER MATTERS: None.

5. RECOMMENDATIONS: This report be approved and the case closed.

BRUNO SHOULDER
MSG, IG
Investigator

RICHARD BRITTON
MAJ, IG
Investigator

CONCUR:

NO LEGAL OBJECTION:

ALBERT R. RIGHTWAY
LTC, IG
Inspector General

APPROVED:

MOTTIN DE LA BLAME
MG, U.S. Army
Commander

_____
Date

Encl
Exhibit List

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Chapter 10

IG Records

Section 10-1 – Overview

Section 10-2 – Nature of IG Records

Section 10-3 – Use of IG Records for Adverse Action

Section 10-4 – Official Use of IG Records within DA

Section 10-5 – Release of IG Records for Official Purposes Outside DA

Section 10-6 – Release of Records for Unofficial (Personal) Use

Section 10-7 – Release of Information to DA Investigating Officers

Section 10-8 – Release of Transcripts

Section 10-9 – Media Requests

Section 10-10 – Response to Subpoena or Court Order

Section 10-11 – Requests Under the Privacy Act to Amend IG Records

Section 10-12 – Disposition of Reports of Investigation and Investigative Inquiry

Section 10-13 – Basic IG Files Management

Section 10-1

Overview

IGs frequently receive requests for information and records. Provisions for handling such requests are covered in Chapter 3, AR 20-1. The most common situations you will face are discussed here. You must be thoroughly familiar with the procedures for safeguarding IG information as the potential exists for the compromise of confidentiality should records be inappropriately released. Study Chapter 3, AR 20-1, and refer to it when you receive requests for information. If you have any questions, consult with DAIG Records Release Office.

Section 10-2

Nature of IG Records

All IG records, including USAR and ARNG IG records pertaining to Federal matters, are the property of the Secretary of the Army (SA). IG records are maintained by TIG for the SA. The records frequently contain sensitive information and advice. Reports of Investigation are almost always sensitive information. Rarely will anyone but you, your SJA, and your commander review a complete copy of a ROII / ROI and only with proper authorization. As IG records belong to the SA, local IGs are not authorized to release them -- even if ordered to do so unless the release is in accordance with AR 20-1. This rule applies to release of IG records to other IGs. TIG, or a higher authority, must approve the release of IG records for adverse action. Refer to AR 20-1, paragraph 3-3.

Section 10-3

Use of IG Records for Adverse Action

1. IG records are not normally used for adverse action. To do so compromises the confidentiality built into IG fact-finding. Under legal due process, the suspect or subject will receive copies of the evidence used to support the adverse action, including IG records if they are used as the basis for adverse action. Under certain circumstances (cost, administrative burden, pending separation of the suspect, transfer of witnesses, etc.), the commander may wish to use your records to support an adverse action. In those cases the commander must request TIG approval for release of the record. Requests must state why a follow-on investigation would be unduly burdensome, disruptive, or futile. In those cases where there is a follow-on investigation in progress and the command has a bonafide need for IG records, the investigating officer will submit the request. While IG records are not normally used for adverse action, AR 20-1 does provide for use of IG records for adverse action against a non-senior-official when there is a DoD IG-approved ROI or ROII containing a substantiated allegation of Whistleblower Reprisal in violation of 10 USC 1034. AR 20-1, paragraph 7-4*b*(3)(d), outlines the procedures for Whistleblower Reprisal ROIs and ROIIs to complainants and to general court-martial convening authorities for potential adverse actions.

2. Send the records-release request to DAIG Records Release Office IAW procedures outlined in paragraph 3-3a of Army Regulation 20-1. Describe precisely what IG records are required, why they are required, and the adverse action that is contemplated. As a rule, only the minimum records required are released. Normally, the released records consist of selected transcripts and documentary evidence. IG opinions, conclusions, and recommendations are not evidence and will remain protected.

3. IG records may be used (and are often used) as the basis for an adverse action against senior officials with TIG or DTIG approval as outlined in Army Regulation 20-1, paragraph 3-6b. The adverse action must ultimately afford the senior official due-process protection.

Section 10-4

Official Use of IG Records within the Department of the Army

1. Many requests for IG records and information are for official use within DA. IG records and information can be used, without redaction, within DA for official purposes (other than adverse actions). You advise witnesses of this provision during the Pre-tape and Read-in for interviews. You are authorized, with certain restrictions, to release your records for official purposes. During the course of investigations or investigative inquiries, you will frequently uncover systemic problems that need to be fixed. You document these issues / problems in the ROII / ROI in the “Other Matters” paragraph and propose a corrective action with your recommendations. In such cases, you will initiate the release of information and records through an extract from your files to the agency or subordinate commander who will actually fix the problem.

2. Restrictions that apply are as follows:

a. IG records may not be used for adverse action without TIG approval. The TIG has granted blanket general release through AR 20-1 for substantiated Whistleblower Reprisal case records to be used for possible adverse or other action as the command may deem appropriate.

b. IG records are not to be used for comparison of commands or commanders.

c. IG records are not to be cited in evaluation reports, performance appraisals, award recommendations, or other evaluations maintained in personnel records.

d. IG records released for official purposes are not to be converted to personal use or further distributed without the authorization of the IG office of record.

e. The contents of a ROII / ROI are not to be released to subjects, suspects, or witnesses named in the report (except for their own testimony as discussed below).

f. IG records must be safeguarded and marked IAW AR 20-1.

3. Provide the minimum records and information required. Ensure that you properly mark all records and extracts (refer to paragraph 3-2, AR 20-1).

4. Ensure that the agency receiving the records understands that the records are not to be reproduced without your permission and that they are to be returned to you when they have served their purpose. Emphasize that the records are IG records "on loan" and must not be incorporated into another system of records that is subject to the Privacy Act. Remember: only TIG or a higher authority can approve the release of IG records outside DA for any purpose.

Section 10-5

Release of IG Records for Official Purposes Outside the Department of the Army

TIG is the release authority for records outside DA. IGs forward requests for IG records from other Federal Government agencies for official purposes along with **one copy** of the requested information to DAIG Records Release Office. Coordinate telephonically with this office prior to sending the records. Investigators from IG, DoD; Defense Investigative Service; GAO; Office of the Special Counsel; or the Merit Systems Protection Board may have an official need for IG records if they are relevant to one of their ongoing investigations or audits. Requests from these agencies for copies of your records must be submitted in writing and include the reason the copies are required. Forward these requests to DAIG Records Release Office. TIG must approve the release of the copies to these agencies. Requests for IG records from State, county, or municipal governments are processed under the Freedom of Information Act (FOIA).

Section 10-6

Release of Records for Unofficial (Personal) Use

1. Requests for release of records for unofficial or personal purposes are made under provisions of the Freedom of Information Act (FOIA). The FOIA allows individuals (anyone) to request government records for private purposes. IGs commonly receive FOIA requests from subjects or suspects against whom they substantiate allegations. It is important that you understand how to process requests for information that are made under the FOIA.

2. Requesters must make their request in writing and must reasonably identify the actual records being sought. No specific format exists; a simple letter will suffice. The request should describe the desired records as accurately as possible and may include a monetary limit on how much in FOIA fees the requester is willing to pay. The request should also furnish as many clues as possible regarding the requested records such as the time, place, persons, events, or other details that will help the DAIG Records Release Office respond to the request. The requester should send the request to **Headquarters, Department of the Army (SAIG-ZXR), 1700 Army Pentagon, Washington, D.C., 20310-1700.** The FAX number is commercial (703) 607-5865. Alternatively, the requester can email the request to the following email address: office.saig-zxl.ignet@consu.army.mil.

3. If someone submits his or her records request directly to your office instead of DAIG Records Release Office, respond to the requester in writing that you received the request and that you have referred it to the Records Release Office for search and direct reply. Simply acknowledge receipt of the request. **Do not inform the requester that you have the records and are forwarding them to DAIG.** The intent is not to divulge the existence of the records to a deceptive requester fishing for data without any specific knowledge of the record's existence. For example, a stranger says, "I need records for a case involving LTC NoGood. Can you give me the case number so I can FOIA them?" If the requester has specific knowledge from being involved in the case, use common sense and explain the procedures for a FOIA request.

4. **Forward the original FOIA request, one copy of the requested records, and a forwarding memorandum to DAIG Records Release Office within two working days** (see AR 20-1, paragraph 3-4c). Advise DAIG of any concerns you or your commander have concerning the release of the records. Identify witnesses by name and indicate who specifically did not consent to release of their testimony. Also indicate the source of any non-IG records being forwarded. Avoid retaining extraneous documents, notes, or comments in your case files. Once a FOIA request is received, the file is frozen and you cannot purge your files. It is a violation of Federal law to purge your files after a FOIA request is received. When you receive a FOIA request, forward all requested documents to DA for their review (even if the files are potentially embarrassing to you or your command).

5. DAIG Records Release Office processes the requested records for TIG approval. They review the records, apply FOIA exemptions, redact exempted information,

coordinate with the requester regarding processing fees, obtain TIG approval for release, and then mail the released records to the requester.

Section 10-7

Release of Information to DA Investigating Officers

1. If you develop facts that indicate that the allegations in the case on which you are working are going to be substantiated, then consider whether referral to another agency for investigation is appropriate. Should your commander close your case and appoint a DA investigator (AR 15-6, Rule 303, CIDC / MPI, Financial Liability Investigation of Property Loss), review paragraph 3-5d (3) in AR 20-1. In general, you may provide an investigator with the following:

a. **An oral briefing or written summary of the nature of allegations or matters the IG office examined**. Be careful to avoid revealing your findings, conclusions, or recommendations. You want the DA investigator to conduct an unbiased investigation -- don't prejudice him with your opinions.

b. **Commonly available documents**. Release evidence readily available that was not received by you in confidence. Under this category, you may release documents such as vehicle dispatches, personnel and pay records, travel documents, hotel receipts, etc. that can be obtained by DA personnel in the course of normal duties. Documents provided to the IG by a complainant are considered to be documents obtained in confidence.

c. **Identify witnesses and explain their relevance to the case** . You can provide a written or verbal list of witnesses and a brief synopsis of their testimony. Do not copy and paste any part of the transcript when providing a brief synopsis. Instead, provide a summarized list of the key evidence obtained from each witness (i.e., bullet comments). Avoid revealing the identity of the complainant where possible.

2. Do not allow a DA investigator to read your transcripts. Limit the information you release to the minimum the investigator needs to complete his task -- readily available documents and a summary. The most important facet of your communications to a DA investigator is ensuring that you preserve the impartiality of the investigator. Be careful not to be judgmental about the allegations, the credibility of the witnesses, or to reveal your findings. Communicate only the facts to the DA investigator.

Section 10-8

Release of Transcripts

1. **Records-Release Requests**. Witnesses, as well as subjects or suspects, commonly request copies of their testimony. Individuals who provided statements or completed an IGAR must submit a FOIA request to the IG office of record to obtain a copy of their own testimony or IGAR (DA Form 1559). Upon receipt of the written FOIA request, the IG office of record must forward one collated copy of the requested records to Headquarters, Department of the Army (SAIG-ZXR), 1700 Army Pentagon, Washington, D.C., 20310-1700, for action. The FAX number for the records-release office is commercial (703) 607-5865. IG records will only be released after case closure.

2. **Transcript Review by Witnesses.** You may allow witnesses, subjects, or suspects to read their transcript or summarized testimony in your office while the case is in progress. It is in your best interest to allow persons to review their own testimony. You can be open and forthright with the individual. The threat to the confidentiality of your case is low since these individuals already know the questions you asked and the answers provided. Additionally, they may remember new details when they are reviewing their testimony. If someone indicates a desire to change or add to his or her testimony, you can conduct a recall interview on the spot. A word of caution: if you prepared a MFR summarizing an interview, ensure that it contains <u>only</u> the evidence the witness provided. Ensure that any opinions or observations you have about the witness or witness's credibility are contained in a separate MFR (since the MFR is internal IG information, do not show it to the witness).

Section 10-9

Media Requests

Do not discuss specific investigations or investigative inquiries with media representatives. **Refer them to your local Public Affairs Office**. Neither confirm nor deny that a specific individual or topic is under investigation or inquiry. Should media representatives request IG records, advise them of the FOIA.

Section 10-10

Response to Subpoena or Court Order

1. **IG records and subpoenas**. Procedures regarding a subpoena of IG records are discussed in paragraph 3-9c in AR 20-1. The Judge Advocate General (TJAG) is the proponent for all aspects of litigation involving DA personnel. Should you receive a subpoena, a court order, or have reason to believe either is imminent, immediately consult with your local SJA and the DAIG Legal Advisor. DoD policy is that official information should be made reasonably available for Federal and State courts. However, TIG (or a higher authority) is the release authority for IG records outside DA, including IG records requested by courts.

2. **Responding to a subpoena or court order**. Do not ignore a subpoena or court order. Advise individuals requesting records that they must specifically state in writing what information they desire and why they want it. You should further advise them that TIG or a higher authority within DA or DoD is the release authority. Ensure the requester gives you the original subpoena (or copy of the original if sent electronically) for our records. The attested copy is the requestor's copy. Contact DAIG's Legal Division to coordinate release of the records.

Section 10-11

Requests Under the Privacy Act to Amend IG Records

The local IG can amend facts in a record such as a misspelled name, an incorrect Social Security Account Number, or an address. Only TIG can amend records pertaining to areas of judgment such as IG opinions, conclusions, and recommendations. Contact DAIG Assistance Division if you must amend an IG record.

Section 10-12

Disposition of Reports of Investigation and Investigative Inquiry

1. **Overview.** IG records include ROIs, extracts of ROIs and other supporting records and summaries. See Chapter 3, AR 20-1, for disposition, protection, use and release instructions. All IG records, regardless of where initiated, are the property of the Secretary of the Army.

a. As an advisor to your commander, it is imperative that the confidentiality of your reports be scrupulously maintained. However, under some conditions information contained in IG reports may be provided to commanders or higher military authority in the discharge of their official duties.

b. Nothing prevents a senior commander or higher military authority from acquiring a copy of a completed ROI following a proper request for official use.

c. **An ROI is NOT normally provided to anyone who is not a member of the directing authority's command or higher authority** (see in paragraph 3-5d (1), AR 20-1), for the following reasons:

(1) The ROI contains recommendations made in confidence by a subordinate (you) to a superior (your Directing Authority);

(2) The ROI contains allegations or accusations that may be substantiated by IG standards but may not provide proof beyond a reasonable doubt in a court of law.

(3) The ROI is advisory in nature and the conclusions and recommendations are not binding upon the commander.

(4) The ROI may have your comments and conclusions and may contain the personal opinions or the conclusions of witnesses. **Therefore, whenever practicable you should furnish information summaries rather than the ROI itself**.

d. Providing an extract from the ROI, or a summary of the pertinent information to a staff or higher headquarters, may be preferable to providing the complete report. A summary or extract allows the staff agency or headquarters to focus on their problem without the possibility of a breach of confidentiality concerning witness testimony.

2. **Release of ROIs Outside of the Department of the Army**.

a. Inspector General reports, including any witnesses' testimony and exhibits, will not be furnished to any agency or individual outside Department of the Army unless approved by TIG or higher authority.

b. Requests for complete or partial IG records are forwarded to DAIG IAW Chapter 3, AR 20-1.

3. **Use of Reports For Official Purposes Within the Department of the Army.**

a. Distribution of ROIs / ROIIs is restricted to the absolute minimum consistent with the effective management of the Army. ROIs / ROIIs will be used within Department of the Army IAW paragraph 3-5d (1), AR 20-1.

b. When a commander or the IG office of record finds it is necessary to use items of information contained in ROIs they may provide such information to agencies within their command or elsewhere within the Department of the Army IAW paragraph 3-6, AR 20-1. Information summaries will be used whenever practicable (see below). Utilize the transmittal format letters in Appendix C of this guide to convey these information summaries to commanders and staff agencies.

4. **Summaries.** Summaries are factual and complete. The following information is not normally included:

a. Classified material, except on a need-to-know basis to personnel possessing the appropriate security clearance and access.

b. Information received from agencies outside Department of the Army, particularly that received from the Federal Bureau of Investigation, unless approval of the pertinent agency is obtained.

c. Information revealing investigative techniques to include:

(1) The identity of confidential informants or sources of information.

(2) The name(s) of the IG who conducted the investigation.

(3) IG opinions, conclusions or recommendations.

(4) Any other information that would involve a breach of faith or violate a moral obligation to keep the information confidential.

(5) Derogatory testimony toward a superior that could result in adverse action against a witness.

Section 10-13

Basic IG Files Management

1. **Purpose**: This section provides guidance for IG file management within an IG office.

2. **Document Marking / Identification**: AR 20-1, paragraph 3-2, requires marking IG records with certain footers: "For Official Use Only. Dissemination is prohibited except as authorized by AR 20-1" and "This document contains information EXEMPT FROM MANDATORY DISCLOSURE under the FOIA. Exemption(s) [number(s)] apply." Furthermore, if handling classified records, follow AR 380-5, Department of the Army Information Security Program, for additional marking and storage requirements.

3. **Case File**: Case files help IGs organize and manage the numerous documents gathered when conducting assistance inquiries, investigative inquiries, investigations, or inspections.

a. **Inspection Files**: The basic inspection file includes the following items:

- Inspection Concept Memorandum
- Inspection Directive
- Detailed Inspection Plan
- Trip Reports
- Inspections Report

b. **Assistance and Investigation Files**: The basic case file for assistance cases or investigations includes, at a minimum, the following items:

- DA Form 1559 with the complainant's information, contact information (unless anonymous), and request and background information
- All supporting documents received initially and while working the case
- Detailed, extensive case notes that list everything such as all phone calls, letters, e-mails, contacts, notifications, etc. (see The Assistance and Investigations Guide, Part One, Section 2-3-3, for more information, including format)
- Synopsis: An executive summary / summary of the case (see The Assistance and Investigations Guide, Part One, Section 2-8-2, for more information, including format)
- The Electronic IGARS 1559 printed out from the Inspector General Action Request System (IGARS)
- Report of Investigative Inquiry (ROII), Report of Investigation (ROI), or Hotline Completion Report (HCR) (required if the complaint included an allegation and / or came as a Congressional or a DOD Hotline request for action)
- Legal review (either a separate document or a signature on the ROII, ROI, or HCR indicating legal sufficiency)
- Notification letters (required if an allegation was involved)
- Peer review / case-closure checklist (most offices use such checklists)

c. **'Stickies' and Other Extraneous Documents**: Prior to closing a case, IGs should transcribe all pertinent notes into the case notes and then shred the stickies, duplicates, or other extraneous documents such as personal bank information from a Family-support assistance case. Otherwise, if there is a records request, the IG can no longer delete or destroy any notes; and the entire record, including every stickie, has to be scanned and sent to DAIG Records Release Office.

5. **File Folder Labeling and Filing**: File folder labeling is described in AR 25-400-2, The Army Records Information Management System (ARIMS). According to ARIMS, the office may arrange records to best meet the needs of that particular office, i.e. by case number, case label, date opened, etc. The case label, also per local office SOP, can be unit and issue / allegation, the topic of an inspection, or combinations of the two. However, do not label files using personal identifiers -- names, SSNs, dates of birth -- to avoid possible violations of the Privacy Act. Furthermore, ARIMS requires labels to distinguish between records managed entirely within the office and records that will eventually be transferred to another location. AR 25-400-2 explains these requirements. The IG can manually type file labels or go to https://www.arims.army.mil for automated electronic file labels.

6. **File Folder Retention / Destruction**: The retention period to maintain a file depends on the type of record. The ARIMS Web site and the DAIG Web site have this type of guidance posted. For long-term records, ARIMS requires that the records go to the local Records Holding Facility. IGs need to exercise caution: not all facilities have restricted access areas to accommodate IG sensitive information in accordance with AR 20-1's FOUO requirements and FOIA exemptions. Contact DAIG Records Release Office or IRMD for more information.

a. **Inspection Records**: HQDA and field IGs need to be aware of the Record Instructions Details outlined in ARIMS (Record # 20-1 a, b and f) with particular attention to any inspection report that is likely to attract public and / or Congressional Committee or sub-committee interest or those deemed to be of historical significance. Additionally, inspection reports by IGs at division headquarters or higher in a combat environment must be maintained as permanent records.

b. **Assistance and Investigation Records**: Destruction is **three years** from case closure if the case was assistance or contained not substantiated allegation(s) and **30 years** if the case contained a substantiated allegation. There is a **15-year** hold before destruction for senior-official cases with not substantiated allegations; however, these records should only be found at DAIG Investigations Division and not at any of the local IG offices. Also, IGs need to maintain files that contain certain sensitive topics such as prisoner abuse or other topics considered of historical value. If in doubt, check with DAIG Assistance Division (especially if the case was linked / referred) and with Records Release Office prior to destruction.

c. **Digitization**: The Office of Record (OOR) will digitize all FY 03 to present cases with substantiated allegations (i.e. 30-year records) and forward the electronic digits to DAIG Information Resource Management Division (IRMD) (SAIG-IR) for long-term storage. If these cases were closed prior to FY 03, the OOR has the option to digitize and send them to DAIG IRMD but is not required to do so. The SAIG Web site Records Digitization link (on the left side) contains more information on the digitizing

process and requirements. Contact IRMD at (703) 601-1083 if you have questions regarding digitization.

7. **File Cabinets**: All IG records must be stored in a secure place. Since non-IG personnel such as building coordinators, maintenance, or custodial support often have access to offices, IGs need to ensure that their offices have filing cabinets with locks where only IGs have the keys. Furthermore, IGs should have a clean-desk policy in place to secure IG records (paper copies, CDs, tapes with recorded testimonies, and external drives) whenever all IGs leave the office -- even if it is just for lunch.

8. **References**: The following is a short (but not all-inclusive) list of records-management requirements.

- AR 20-1, Inspector General Activities and Procedures
- AR 25-1, Army Knowledge Management and Information Technology Management
- AR 25-400-2, The Army Records Information Management System (ARIMS)
- DA PAM 25-403, Guide to Recordkeeping in the Army
- DAIG Web site: https://ignethqdac2w1.ignet.army.mil/
- Records Management and Declassification Agency: https://www.rmda.army.mil/
- Army Records Information Management System: https://www.arims.army.mil

Appendix A

Interview Prep Book

1 - Pre-Tape Briefing Outline (page A-2)

2 - Credentials (page A-4)

3 - Directive (page A-5)

4 - Privacy Act Information (page A-6)

5 - Testimony Information Sheet (Header Sheet) (page A-7)

6 - Rights Warning Procedure / Waiver Certificate - DA Form 3881 (page A-8)

7 - Witness Interview Script (page A-12)

8 - Witness (Recall) Interview Script (page A-16)

9 - Subject Interview Script (page A-19)

10 - Subject (Recall) Interview Script (page A-23)

11 - Suspect Interview Script (page A-26)

12 - Suspect (Recall) Interview Script (page A-31)

PRE-TAPE BRIEFING OUTLINE

See the discussion paragraph 3 of this section, of the guide.
Use your own words, but address each item listed below.

1. **Introduction**

1a. **Telephonic**

- Are you still available? Can you speak freely and privately?
- Introduce the IGs present
- We're on a speaker phone so we can record and take notes. We'll tell you when we go on tape. We will be using standardized scripts.

1b. **Face-to-face.**

- Identify yourself as the Investigator(s) -- Show military ID and IG credentials / detail card
- Show the Directive

2. **Explain the Investigative Procedure** - “This is a four-part interview...”

1. PRE-TAPE briefing (we are doing this now).
2. Formal READ-IN. (a formality designed to ensure that the rights of the individual are fully explained, legal requirements are met, and the oath is administered to obtain your pledge to provide truthful testimony. Unless you prefer the word "affirm," we will use the word "swear." Do you have a preference? Do you have an objection to the phrase "so help me God?")
3. Questioning.
4. Formal READ-OUT.

3. **Explain IG investigator's role** - “IGs are...” or “We are...”

- Confidential fact-finders for the Directing Authority.
- Collect and examine all pertinent evidence.
- Make complete and impartial representation of all evidence in the form of a written report.
- No authority to make legal findings, impose punishment, or direct corrective action.
- Dual Role of IG:
  - Protect best interests of U.S. Army.
  - Establish the truth of the allegations or that the allegations are not true and clear a person's good name. Anyone can make allegations.
- IG confidentiality:
  - Protect the confidentiality of everyone involved but do not guarantee that protection.
  - Will not reveal sources of information.
  - Will not tell you with whom we have talked.
  - Will not tell you specific allegations being investigated (except for subjects and suspects).

4**. Explain the Interview ground rules**

- We normally take recorded testimony under oath and later transcribe it. Recorders improve accuracy. (Ask if the witness objects to swearing; some people would prefer to affirm.)
- All answers must be spoken. Tape recorder cannot pick up nods or gestures.
- Classified information: If classified information comes up, we will discuss that information off tape first.
- Break procedures: We can go off tape at any time, but…
- We never go off the record.
- Clarify that there is nothing that would prevent the witness from providing truthful and accurate testimony, e.g. medications, medical conditions, or other impairments.

5. **Release of your testimony**

- The last question we ask you during the READ-OUT is whether you consent to release your testimony and any and all documents provided to the IG to members of the public under the FOIA.
- FOIA allows members of the public to request government records for unofficial purposes. It is your choice whether you want to protect your testimony from release outside the Federal government.
- You will be asked to decide at the end of the interview if you consent to the release of your testimony (we do not infer anything from your answer).
- "NO" = Do not consent. "YES" = Do consent.
- Our report, including your testimony, will be used as necessary for official government purposes.

6. ***Privacy Act of 1974 (**Privacy Act pertains to U.S. citizens only unlike FOIA, which applies to the world.)

- Disclosure of SSN is voluntary.
- Describes authority to ask for personal information.
- Please read the Privacy Act. Will refer to it during the formal read-in.

7. ***Testimony Information Sheet (Header Sheet)**

- Individual fills out first four (4) lines (name, rank, address, phone, SSN).
  Note: SSN is voluntary per the Privacy Act of 1974.
- Used by investigators for notes, acronyms, proper names, etc.
- Aids in preparing an accurate transcript.

8**. Confirm Current Status (AC, RC, NG, AGR, MILTECH, etc.)**

9**. *Rights warning / waiver.** Execute DA FORM 3881 (when appropriate, such as during a suspect interview). (See also Section 4-10.)

10. **Transitioning to the Read in**

- This is an administrative procedure; not a court of law.
- We can accept and use hearsay and opinion.
- We protect everyone's confidentiality but *do not guarantee* confidentiality.
- To keep this case as confidential as possible, you will be asked not to discuss your testimony with anyone except your attorney, if you choose to consult with one, without our permission.

* Provide interviewee with appropriate document.

IG CREDENTIAL / DETAIL LETTER - EXAMPLE

DEPARTMENT OF THE ARMY
HEADQUARTERS, 66TH INFANTRY DIVISION (M)
FORT VON STEUBEN, VIRGINIA 22605

(DATE)

TO WHOM IT MAY CONCERN:

The officer whose signature is here presented, LTC Albert R. Rightway, is representing the Inspector General, 66th Infantry Division, Fort Von Steuben, United States Army, on duty with the Inspector General office at Fort Von Steuben, Virginia. His responsibilities include conducting investigations and inquiries into matters for the Commanding General.

LTC Rightway is entitled unlimited access to all information and assistance, consistent with his security clearance, in the execution of his mission.

/s/
MOTTIN DE LA BLAME
MG, USA
Commanding General

/s/
ALBERT R. RIGHTWAY
LTC, IG

NOTE: IG credentials are locally produced with specifications determined by the Directing Authority.

EXAMPLE DIRECTIVE

MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: Directive for Investigation

1. Investigate alleged improprieties by an Army official assigned to (Installation / Organization).

2. Submit your report to me as soon as possible, but protect the rights of all persons involved and ensure the investigation is complete and accurate.

MOTTIN DE LA BLAME
Major General, U.S. Army
Commanding

NOTE: Do not use the name(s) of subjects or suspects in the Directive. Remember: this is the document you will show the witness. PROTECT CONFIDENTIALITY.

PRIVACY ACT INFORMATION

DATA REQUIRED BY THE PRIVACY ACT OF 1974
PRIVACY ACT STATEMENT
FOR PERSONAL INFORMATION TAKEN DURING
INSPECTOR GENERAL WITNESS TESTIMONY

AUTHORITY: Title 10 US Code, Section 3020.

PRINCIPAL PURPOSE(S): Information is collected during an investigation to aid in determining facts and circumstances surrounding allegations / problems. The information is assembled in report format and presented to the official directing the inquiry / investigation as a basis for Department of Defense / Department of the Army decision-making. The information may be used as evidence in judicial or administrative proceedings or for other official purposes within the Department of Defense. Disclosure of Social Security Number, if requested, is used to further identify the individual providing the testimony.

ROUTINE USES:

a. The information may be forwarded to Federal, State, or local law-enforcement agencies for their use.

b. May be used as a basis for summaries, briefings, or responses to Members of Congress or other agencies in the Executive Branch of the Federal Government.

c. May be provided to Congress or other Federal, State, and local agencies when determined necessary by The Inspector General (DAIG).

MANDATORY OR VOLUNTARY DISCLOSURE AND THE EFFECT ON INDIVIDUALS FOR NOT PROVIDING THE INFORMATION:

For Military Personnel: The disclosure of Social Security Number is voluntary where requested. Disclosure of other personal information is mandatory, and failure to do so may subject the individual to disciplinary action.

For Department of the Army Civilians: The disclosure of Social Security Number is voluntary. However, failure to disclose other personal information in relation to your position or responsibilities may subject you to adverse personnel action.

For All Other Personnel: The disclosure of Social Security Number, where requested, and other personal information is voluntary and no adverse action can be taken against you for refusing to provide information about yourself.

TESTIMONY INFORMATION SHEET

INFORMATION FOR HEADING OF TESTIMONY TRANSCRIPT

To be completed in each interview, including recall witnesses.

Testimony of (Full Name):_____
(FIRST) (MI) (LAST)
SSN (voluntary):_____ Rank/Grade:_____
Position/Title:_____ Organization: _____
Address:_____ ZIP:_____ Phone: _____

XXXX

RIGHTS WARNING / WAIVER CERTIFICATE

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30, the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION	2. DATE	3. TIME	4. FILE NO
5. NAME *(Last, First, MI)*	8. ORGANIZATION OR ADDRESS		
6. SSN / 7. GRADE/STATUS			

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army _____ and wanted to question me about the following offense(s) of which I am suspected/accused: _____

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any questions or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. *(For personnel subject to the UCMJ)* I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

   - or -

   (For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS *(Continue on reverse side)*

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

WITNESSES *(If available)*	3. SIGNATURE OF INTERVIEWEE
1a. NAME *(Type or Print)*	
b. ORGANIZATION OR ADDRESS AND PHONE	4. SIGNATURE OF INVESTIGATOR
2a. NAME *(Type or Print)*	5. TYPED NAME OF INVESTIGATOR
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR

Section C. Non-waiver

1. I do not want to give up my rights:
   ☐ I want a lawyer. ☐ I do not want to be questioned or say anything.
2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT *(DA FORM 2823)* SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. WARNING - Inform the suspect/accused of:
   a. Your official position.
   b. Nature of offense(s).
   c. The fact that he/she is a suspect/accused.
2. RIGHTS - Advise the suspect/accused of his/her rights as follows:
   "Before I ask you any questions, you must understand your rights."
   a. "You do not have to answer my questions or say anything."
   b. "Anything you say or do can be used as evidence against you in a criminal trial."
   c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

   - or -

   (For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."
   d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"
(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Have you ever requested a lawyer after being read your rights?"
(If the suspect/accused says "yes," find out when and where. If the request was recent *(i.e., fewer than 30 days ago)*, obtain legal advice on whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"
(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" *(If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)*

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the suspect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.
2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE. If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS *(Continued)*

REVERSE OF DA FORM 3881

* U.S Government Printing Office1992- 311-830/60267

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE

For use of this form, see AR 190-30; the proponent agency is ODCSOPS

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)
PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.
ROUTINE USES: Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.
DISCLOSURE: Disclosure of your Social Security Number is voluntary.

Step 1

1. LOCATION	2. DATE	3. TIME	4. FILE NO.
Inspector General, Fort von Steuben, VA 22605			OTR 05-009

5. NAME *(Last, First, MI)*	8. ORGANIZATION OR ADDRESS
Brown, Robert E.	Director of Personnel and Community Activities
6. SSN / 7. GRADE/STATUS: COL / AD	Fort von Steuben, VA 22605

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army Inspector General, 66th Infantry Division and Fort von Steuben and wanted to question me about the following offense(s) of which I am suspected/accused: COL Brown conducted an adulterous affair in violation of article 134, UCMJ; and (see comments below)

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

1. I do not have to answer any question or say anything.
2. Anything I say or do can be used as evidence against me in a criminal trial.
3. *(For personnel subject othe UCMJ* I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.

- or -

(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.

4. If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

5. COMMENTS *(Continue on reverse side)*
Sexually harassed female employees in violation of AR 600-20.//

Section B. Waiver

I understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer first and without having a lawyer present with me.

Step 4

WITNESSES *(If available)*	3. SIGNATURE OF INTERVIEWEE
1a. NAME *(Type or Print)* Sonny Competent, MSG, IG	
b. ORGANIZATION OR ADDRESS AND PHONE: Office of the Inspector General, 66th Infantry Division Fort von Steuben, VA 22605 (540)802-0601	4. SIGNATURE OF INVESTIGATOR
2a. NAME *(Type or Print)*	5. TYPED NAME OF INVESTIGATOR: Albert R. Rightway, LTC, IG
b. ORGANIZATION OR ADDRESS AND PHONE	6. ORGANIZATION OF INVESTIGATOR: Office of the Inspector General 66th Infantry Division

Section C. Non-waiver

1. I do not want to give up my rights
   ☐ I want a lawyer ☐ I do not want to be questioned or say anything
2. SIGNATURE OF INTERVIEWEE

ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT *(DA FORM 2823)* SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED

DA FORM 3881, NOV 89 EDITION OF NOV 84 IS OBSOLETE USAPA 2.01

PART II - RIGHTS WARNING PROCEDURE

THE WARNING

Step 2

1. WARNING - Inform the suspect/accused of:
   a. Your official position.
   b. Nature of offense(s).
   c. The fact that he/she is a suspect/accused.
2. RIGHTS - Advise the suspect/accused of his/her rights as follows:
   "Before I ask you any questions, you must understand your rights."
   a. "You do not have to answer my questions or say anything."
   b. "Anything you say or do can be used as evidence against you in a criminal trial."
   c. (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be a civilian you arrange for at no expense to the Government or a military lawyer detailed for you at no expense to you, or both."

   - or -

   (For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."
   d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."

Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

Step 3

"Do you understand your rights?"
(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"~~Have you ever requested a lawyer after being read your rights?~~"
(If the suspect/accused says "yes," find out when and where. If the request was recent *(i.e., fewer than 30 days ago)*, obtain legal advice whether to continue the interrogation. If the suspect/accused says "no," or if the prior request was not recent, ask him/her the following question.)

"Do you want a lawyer at this time?"
(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" *(If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)*

SPECIAL INSTRUCTIONS

WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE: If the suspect/accused orally waives his/her rights but refuses to sign the waiver certificate, you may proceed with the questioning. Make notations on the waiver certificate to the effect that he/she has stated that he/she understands his/her rights, does not want a lawyer, wants to discuss the offense(s) under investigation, and refuses to sign the waiver certificate.

IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY: In all cases the waiver certificate must be completed as soon as possible. Every effort should be made to complete the waiver certificate before any questioning begins. If the waiver certificate cannot be completed at once, as in the case of street interrogation, completion may be temporarily postponed. Notes should be kept on the circumstances.

PRIOR INCRIMINATING STATEMENTS:

1. If the supsect/accused has made spontaneous incriminating statements before being properly advised of his/her rights he/she should be told that such statements do not obligate him/her to answer further questions.
2. If the suspect/accused was questioned as such either without being advised of his/her rights or some question exists as to the propriety of the first statement, the accused must be so advised. The office of the serving Staff Judge Advocate should be contacted for assistance in drafting the proper rights advisal.

NOTE: If 1 or 2 applies, the fact that the suspect/accused was advised accordingly should be noted in the comment section on the waiver certificate and initialed by the suspect/accused.

WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS: If during the interrogation, the suspect displays indecision about requesting counsel (for example, "Maybe I should get a lawyer."), further questioning must cease immediately. At that point, you may question the suspect/accused only concerning whether he or she desires to waive counsel. The questioning may not be utilized to discourage a suspect/accused from exercising his/her rights. (For example, do not make such comments as "If you didn't do anything wrong, you shouldn't need an attorney.")

COMMENTS *(Continued)*

REVERSE OF DA FORM 3881 USAPA V2.01

WITNESS INTERVIEW SCRIPT

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS.)

1. ***The time is*** **_____.** ***This tape-recorded interview is being conducted on*** **(**date**)** **_____** ***at*** **(**location**)** **_____ _____(**if telephonic, state both locations**).** ***Persons present are the witness*** **(**name**)** **_____,** ***the investigating officers*** **_____,** **_____,** (court reporters, attorney, union representative, others) **_____.** ***This*** **(investigation / inquiry was directed by _____) and** ***concerns allegations that*****:** (as stated in directive)

> NOTE: If the investigation concerns classified information, inform the witness that the report will be properly classified, and advise the witness of security clearances held by the IG personnel. Instruct the witness to identify classified testimony.

2. ***An Inspector General is an impartial fact-finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.***

3. ***Since I will ask you to provide your personally identifying information to help identify you as the person testifying, I provided you a Privacy Act Statement.*** (If telephonic, it may have been necessary to read the Privacy Act Statement.) ***Do you understand it?*** (Witness must state yes or no)

4. ***You are not suspected of any criminal offense and are not the subject of any unfavorable information.***

5. ***Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin? Please raise your right hand so that I may administer the oath*****.**

"Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?"

NOTE: The witness should audibly answer "yes" or "I do." If the witness objects to the oath, the word "swear" may be changed to the word "affirm," and the phrase "so help me God" may be omitted.

6. ***Please state your***: (as applicable)

Name
Rank **(Active / Reserve / Retired)**
Grade / Position
Organization
Address (home or office)
Telephone number (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7. <u>Question the witness</u>.

NOTE: (1) If during this interview the witness suggests personal criminal involvement, the witness must be advised of his rights using DA Form 3881, Rights Warning Procedure / Waiver Statement. Unless the witness waives his or her rights, the interview ceases. If during the interview you believe

the witness has become a subject, advise him or her that he or she need not make any self-incriminating statements.

NOTE: (2) During the interview, if it becomes necessary to advise a witness about making false statements or other false representations, read the following statement to the witness as applicable:

7a. For active duty or USAR / ARNG personnel subject to UCMJ:

I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Article 107. Additionally, under the provisions of the UCMJ, Article 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a courts-martial may direct. Do you understand? (Witness must state "yes" or "no.")

7b. For USAR / ARNG and civilian personnel not subject to UCMJ:

I consider it my duty to advise you that under the provisions of Section 1001, Title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies; conceals; or covers up by a trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than $10,000 or imprisoned for not more than five years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of Section 1621, Title 18, United States Code. Do you understand? (Witness must state "yes" or "no.")

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

8. ***Do you have anything else you wish to present?***

9. ***Who else do you think we should talk to and why?***

10. ***We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.***

NOTE: Others present should also be advised against disclosing information.

11. ***Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony and documents. If there is such a request, do you consent to the release of your testimony and documents, but not your personal identifying information such as name, home address, or home phone number, outside official channels?*** *(Witness must state "yes" or "no.")*

12. ***Do you have any questions? The time is _____, and the interview is concluded. Thank you.***

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(END READ-OUT)

WITNESS (RECALL) INTERVIEW SCRIPT

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS.)

1. ***The time is* _____. *This tape-recorded recall interview is being conducted on*** (date) _____ ***at*** (location) _____(if telephonic, state both locations). ***The persons present are the witness*** (name) _____**, *the investigating officers*** _____, _____, (court reporter, attorney, union representative, others) _____. ***This is a continuation of an interview conducted on*** (date)_____ ***as part of a* (investigation / inquiry) directed by** _____) ***concerning allegations of*:** (as stated in directive)

> NOTE: If the investigation concerns classified information, inform the witnesses that the report will be properly classified, and advise the witnesses of security clearances held by IG personnel. Instruct the witnesses to identify classified testimony.

2. ***You were previously advised of the role of an Inspector General, of restrictions on the use and release of IG records, and of the provisions of the Privacy Act. Do you have any questions about what you were previously told?*** (Witness must state "yes" or "no.")

3. ***You were also informed you are not suspected of any criminal offense and are not the subject of any unfavorable information. During the previous interview, you were put under oath before giving testimony and were reminded that it is a violation of Federal law to knowingly make a false statement under oath. You are still under oath.***

4. ***For the record, please state your*:** (as applicable.)

> ***Name***
> ***Rank*** (Active, Reserve, Retired)
> ***Grade / Position***
> ***Organization***
> ***Address / Telephone*** (home or office)

(END READ-IN)

5. Question the witness.

NOTE: During this interview, if the witness suggests personal criminal involvement, the witness must be advised of his rights using DA Form 3881, Rights Warning Procedure / Waiver Statement. Unless rights are waived, the interview ceases. During the interview, if you believe the witness has become a subject, advise him that he need not make any statement that may incriminate him. See Witness Read-In Script for dealing with false statements.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

6. ***Do you have anything else you wish to present?***

7. ***Who else do you think we should talk to and why?***

8. ***We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.***

NOTE: Others present should also be advised against disclosing information.

9. ***In our first interview, I advised you that your testimony and any documents that you provided to the IG may be made part of an official Inspector General record and that, while access is normally restricted to persons who clearly need the information to perform their official duties, any member of the public could***

ask the Inspector General for a copy of these records. You* (did / did not) *consent to the release of your testimony and documents. Do you consent to the release of the testimony you gave today and any documents that you provided but not your personal identifying information such as name, home address, or home phone number? (Witness must state “yes” or “no.”)

10. ***Do you have any questions? The time is _____, and this recall interview is concluded. Thank you.***

(END READ-OUT)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SUBJECT INTERVIEW SCRIPT

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS)

1. ***The time is* _____. *This tape-recorded interview is being conducted on*** (date) _____ ***at*** _____(location) _____ (if telephonic, state both locations). ***Persons present are*** (subject's name) _____, ***the investigating officers*** _____, _____, (court reporters, attorney, union representative, others) _____. ***This* (investigation / inquiry) was directed by _____) *concerns allegations that*:** (as stated in action memorandum)

> NOTE: If the investigation concerns classified information, inform the subject that the report will be properly classified, and advise the subject of security clearances held by IG personnel. Instruct the subject to identify classified testimony.

2. ***An Inspector General is an impartial fact-finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, social security account number, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act.***

3. ***Since I will ask you to provide your social security account number to help identify you as the person testifying, I provided you a Privacy Act Statement.*** (If telephonic, it may be necessary to have read the Privacy Act Statement.) ***Do you understand it?***

4. ***While you are not suspected of a criminal offense, we have information that may be unfavorable to you. We are required to give you the opportunity to comment on these matters. However, you do not have to answer any question that may tend to incriminate you. The information is that:***

5. ***Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin? Please raise your right hand so I may administer the oath.***

"Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth so help you God?"

NOTE: The subject should audibly answer "yes" or "I do." If the subject objects to the oath, the word "swear" may be changed to the word "affirm," and the phrase "so help me God" may be omitted.

6. ***Please state your*:** (as applicable)

Name
Rank (Active, Reserve, Retired)
Grade / Position
Organization
Social Security Account Number (voluntary)
Address / Telephone (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7. <u>Question the subject</u>.

NOTE: (1) If during this interview the individual suggests personal criminal involvement, the individual must be advised of his rights using DA Form 3881, Rights Warning Procedure / Waiver

Statement. Unless the subject waives his rights, the interview ceases.

NOTE: (2) During the interview, it becomes necessary to advise a subject about making false statements or other false representations, read the following statement to the subject:

7a. <u>For active duty or USAR / ARNG personnel subject to UCMJ:</u>

I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Article 107. Additionally, under the provisions of UCMJ, Article 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a courts-martial may direct.

Do you understand? (Subject must state "yes" or "no.")

7b. <u>For USAR ARNG and civilian personnel not subject to UCMJ:</u>

I consider it my duty to advise you that under the provision of Section 1001, Title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies; conceals; or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than $10,000 or imprisoned for not more than five years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of Section 1621, Title 18, United States Code.

Do you understand? (Subject must state "yes" or "no.")

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

8. ***Do you have anything else you wish to present?***

9. ***Who else do you think we should talk to and why?***

10. ***We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.***

NOTE: Others present should also be advised against disclosing information.

11. ***Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public, who do not have an official need to know, may request a copy of this record, to include your testimony and documents. If there is such a request, do you consent to the release of your testimony and documents but not your personal identifying information such as name, social security account number, home address, or home phone number, outside official channels?*** *(Subject must state "yes" or "no.")*

12. ***Do you have any questions? The time is _____, and the interview is concluded. Thank you.***

(END READ-OUT)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SUBJECT (RECALL) INTERVIEW SCRIPT

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS.)

1. ***The time is* _____. *This tape-recorded recall interview is being conducted on*** (date) _____ ***at*** (location) _____; (if telephonic, state both locations). ***The persons present are*** (subject's name) _____, ***the investigating officers*** _____**,** (court reporter, attorney, union representative, others) _____. ***It is a continuation of an interview conducted on*** (date)_____ ***as part of a* (investigation / inquiry) directed by** _____ ***concerning allegations of*:** (as stated in action memorandum)

> NOTE: If the investigation concerns classified information, inform the subject that the report will be properly classified, and advise the subject of security clearances held by IG personnel. Instruct the subject to identify classified testimony.

2. ***You were previously advised of the role of an Inspector General, of restrictions on the use and release of IG records, and of the provisions of the Privacy Act. Do you have any questions about what you were previously told?*** (Subject must state "yes" or "no.")

3. ***You were also informed you are not suspected of any criminal offense. Therefore, I am not advising you of the rights to which such a person is entitled. I do want to remind you that you do not have to answer any question that may tend to incriminate you. You are reminded it is a violation of Federal law to knowingly make a false statement under oath.***

4. ***Since our previous interview, our investigation has developed unfavorable information about which you have not yet had the opportunity to testify or present evidence. The unfavorable information is*:**

5. ***Earlier, we placed you under oath. You are advised that you are still under oath*.**

6. ***For the record, please state your*:** (as applicable)

Name
Rank (Active, Reserve, Retired)
Grade / Position
Organization
Social Security Account Number (voluntary)
Address / Telephone (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7. Question the subject.

NOTE: See notes in Subject Read-In Script for dealing with false statements and Suspect Read-In Script for dealing with suggested criminal involvement.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

8. ***Do you have anything else you wish to present?***

9. ***Who else do you think we should talk to and why?***

10. ***We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.***

NOTE: Others present should also be advised against disclosing information.

11. ***In our first interview, I advised you that your testimony and any and all documents that you provided to the IG may be made part of an official Inspector General record and that any member of the public could ask the Inspector General for a copy of these records. You* (did / did not) *consent to the release of your testimony and documents. Do you consent to the release of the testimony you gave today and any documents that you provided but not your personal identifying information such as name, social security account number, home address, or phone number?*** (Subject must state "yes" or "no.")

12. ***Do you have any questions? The time is _____, and this recall interview is concluded. Thank you.***

(END READ-OUT)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

SUSPECT INTERVIEW SCRIPT

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS)

1. ***The time is* _____. *This tape-recorded interview is being conducted on*** (date) _____ ***at*** _____ (location) (If telephonic, state both locations). ***Persons present are*** (suspect's name) **_____**, ***the investigating officers*** **_____, _____,** (court reporters, attorney, union representative, others) **_____**. ***This* (investigation / inquiry) was directed by _____ *concerns allegations*:** (as stated in action memorandum)

> NOTE: If the investigation concerns classified information, inform the suspect that the report will be properly classified, and advise the suspect of security clearances held by IG personnel. Instruct the suspect to identify classified testimony.

2. ***An Inspector General is an impartial fact-finder for the commander. Testimony taken by an IG and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons, such as the subject of an action that may be taken as a result of information gathered by this inquiry / investigation, may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony and any and all documents that you provided to the IG but not your personal identifying information such as name, social security account number, home address, or home phone number if requested by members of the public pursuant to the Freedom of Information Act.***

3. ***Since I will ask you to provide your social security account number to help identify you as the person testifying, I provided you a Privacy Act Statement.*** (If telephonic, it may have been

necessary to read the Privacy Act Statement.) ***Do you understand it?*** (Suspect must state “yes” or “no.”)

4. ***You are advised that you are suspected of the following allegations, which we want to question you about*:**

(Advise the suspect of general nature of all allegations made against him. Refer to the Action Memorandum.)

5. ***I previously advised you of your rights, and you signed a DA Form 3881 waiver certificate*.**

“Do you understand your rights?” (Suspect must state “yes” or “no.”)

“Do you agree to waive your rights at this time?” (Suspect must state “yes” or “no.”)

6. ***Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Is there anything that would prevent you from giving truthful testimony today? Do you have any questions before we begin? Please raise your right hand so that I may administer the oath.***

“Do you swear that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth, so help you God?”

NOTE: The suspect should audibly answer "yes" or "I do." If the suspect objects to the oath, the word "swear" may be changed to the word "affirm," and the phrase "so help me God" may be omitted.

7. ***Please state your*:** (as applicable)
Name
Rank (Active / Reserve / Retired)
Grade / Position
Organization
Social Security Account Number (voluntary)

Address / Telephone number (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

8. Question the suspect.

NOTE: During the interview, if it becomes necessary to advise suspect about making false statements or other false representations, read the following statement to the suspect as applicable.

8a. For active duty or USAR / ARNG personnel subject to UCMJ:

I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Article 107. Additionally, under the provisions of UCMJ, Article 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a courts-martial may direct. Do you understand? (Suspect must state "yes" or "no.")

8b. For USAR / ARNG and civilian personnel not subject to UCMJ:

I consider it my duty to advise you that under the provisions of Section 1001, Title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies; conceals; or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than $10,000 or imprisoned for not more than five years, or both. Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of Section 1621, Title 18, United States Code. Do you understand? (Suspect must state "yes" or "no.")

NOTE: During this interview, if the IG suspects the individual of having committed an additional criminal offense, re-advise the suspect of his or her rights concerning the additional offense. The DA Form 3881 will be annotated and initialed by the suspect and the investigator(s).

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

9. ***Do you have anything else you wish to present?***

10. ***Who else do you think we should talk to and why?***

11. ***We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.***

Note: Others present should also be advised against disclosing information.

12**.** ***Your testimony may be made part of an official Inspector General record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony and documents. If there is such a request, do you consent to the release of your testimony and documents but not your personal identifying information such as name, social security account number, home address, or home phone number, outside official channels?*** (Suspect must answer "yes" or "no.")

13. ***Do you have any questions? The time is _____, and the interview is concluded. Thank you.***

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(END READ-OUT)

SUSPECT (RECALL) INTERVIEW SCRIPT

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS)

1. ***The time is* _____. *This tape-recorded recall interview is being conducted on*** (date)_____ ***at*** (location) _____ (if telephonic, state both locations). **The persons present are** (suspect's name) _____, ***the investigating officers*** _____, _____, (court reporter, attorney, union representative, others) _____. ***It is a continuation of an interview conducted on*** (date**)**_____ ***as part of a*** **(investigation / inquiry) directed by** _____ ***concerning allegations of*****:** (as stated in action memorandum)

> NOTE: If the investigation concerns classified information, inform the suspect that the report will be properly classified, and advise the suspect of security clearances held by IG personnel. Instruct the suspect to identify classified testimony.

2. ***You were previously advised of the role of an Inspector General, of restrictions on the use and release of IG records, and of the provisions of the Privacy Act. Do you have any questions about what you were previously told?***

3. ***During our previous interview, you were advised that you were suspected of*****:**

You were warned of your rights, and you signed a DA Form 3881 in which you consented to answer questions. I will show you that DA Form 3881 now. You are reminded that it is a violation of Federal law to knowingly make a false statement under oath.

> NOTE: Show DA Form 3881 to the suspect.

4. ***Since our previous interview, I have obtained new information about which you have not yet had the opportunity to comment.***

NOTE: If new information is criminal, re-advise the suspect of his rights and annotate / initial DA Form 3881. If new information is unfavorable, advise the suspect that he does not have to answer any question that may incriminate him.

5. ***Earlier, we placed you under oath. You are advised that you are still under oath*.**

6. ***For the record, please state your*:** (as applicable)

Name
Rank
Grade / Position
Organization
Social Security Account Number (voluntary)
Address / Telephone (home or office)

(END READ-IN)

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

7. Question the suspect.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(BEGIN READ-OUT)

8. ***Do you have anything else you wish to present?***

9. ***Who else do you think we should talk to and why?***

10. ***We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney if you choose to consult one.***

NOTE: Others present should also be advised against disclosing information.

11. ***In our first interview, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony and any and all documents that you provided to the IG may be made part of an official Inspector General record and that any member of the public could ask the Inspector General for a copy of these records. You*** **(did / did not)** ***consent to the release of your testimony and documents. Do you consent to the release of the testimony you gave today and any documents that you provided but not your personal identifying information such as name, social security account number, home address, or phone number?*** (Suspect must answer "yes" or "no.")

12. ***Do you have any questions? The time is _____, and this recall interview is concluded. Thank you.***

(END READ-OUT)

Appendix B

Interviewing Techniques

1 – Overview (page B-2)

2 – Formulating Questions (page B-3)

3 – Establishing Rapport (page B-7)

4 – Active Listening (page B-9)

5 – Non-Verbal Communications and Body Language (page B-11)

6 – Interview Guidelines and Witness Control (page B-15)

7 – Interviewing Civilian-Civilians (page B-17)

8 – Interviewer Observations (page B-18)

9 – Memorandum For Record (page B-19)

10 – Polygraph Use (page B-20)

11 – Common Pitfalls (page B-21)

Overview

1. The basis for the resolution of many IG cases is intelligent, careful questioning. Effective questioning requires skill, preparation, and experience. The nature of IG business involves dealing with perceptions and the reason why things occurred. Therefore, IGs normally conduct interviews as a question-and-answer session rather than taking written statements. The previous section focused on the process of conducting interviews. This section focuses more on the **art** of interviewing.

2. The quality of a good IG interview is directly related to the amount of planning put into it. IGs must clearly focus on obtaining facts directly pertinent to the matters under investigation. What are the issues and allegations? What standards are you using against which to compare your evidence? What events have transpired up to the point of the interview? What evidence do you already possess, and what evidence do you still require? Have you constructed your interrogatory while keeping the above questions under consideration? Have you consulted with your Staff Judge Advocate? If you have considered the above, you will be mentally ready for the interview.

3. Aside from the administrative considerations (interview location, tape recorder acquisition and preparation, and necessary paperwork needed) and the preparation of the interrogatory, most IGs still feel unprepared for the actual interview. The art of facing another human being and having to ask the hard questions drains most people. You are no exception. How can you quickly and pleasantly begin, and then conduct, the interview? This chapter will discuss the tactics and techniques used during the IG interview.

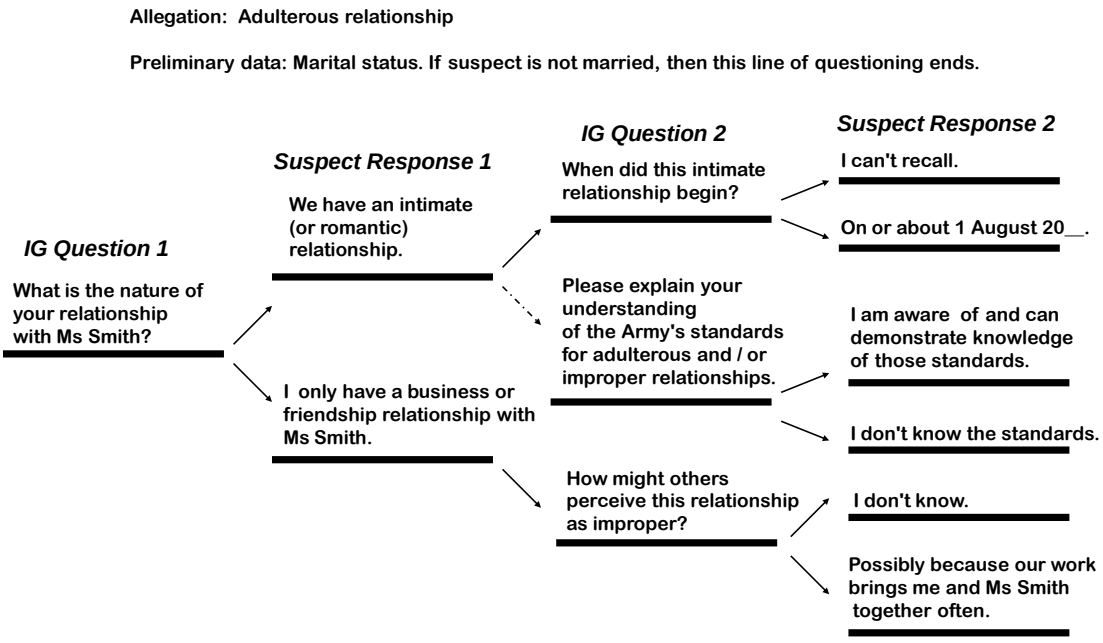
Formulating Questions

1. **The Interrogatory**. The goal of an interrogatory is to gather the information needed to answer the elements of proof or applicable standard as they apply to the allegations under investigation. A well thought-out interrogatory is one of the keys to a successful interview. The elements of proof and / or the applicable standard will establish the framework within which you will develop your questions and determine what you ask, how you ask it, and how you react to the responses.

Use care when determining the order of your questions. If you are investigating multiple allegations, then order the questions to address one allegation at a time and in a logical sequence that will allow you to arrive at the information you need to help substantiate or not substantiate the allegation. Your interrogatory ***must*** include a range of possible anticipated answers. If you cannot anticipate the answer, be ready to follow-up with other prepared questions. Avoid being surprised, but don't let surprises upset you. Do not hesitate to take a break to think your way around surprises or develop changes in your line of questioning. Remember you are on a fact finding mission, and be prepared to explore and ask probative questions when new information arises. A well thought-out question is better than a reactive question. Keep in mind that you will be interviewing three categories of individuals: subjects, suspects, and witnesses. Based on the nature of the allegations and the questions you must ask, these people will exhibit varying degrees of reluctance, cooperation, and perhaps even hostility. The questions you craft should anticipate their possible attitude at the moment of questioning, allowing you to soften the language you use or adjust your approach in other ways (see the section on Rapport).

The best way to develop an interrogatory is through a graphic representation that allows you to map out a question with anticipated responses and follow-up questions to those anticipated responses. The diagram on the next page provides an example that begins with an open-ended question.

Developing an Interrogatory



Graphic Portrayal of an Interrogatory with Anticipated Responses and Follow-On Questions

Note that any preliminary data such obtained during the pre-tape portion of the interview such as marital status may preclude the need to follow one or more of the planned lines of questioning. The follow-on questions developed by anticipating planned responses should continue until you gather the information you need. Keep 'drilling down' until you feel that you have the answers you need. Once you have the information required, stop the line of questioning. Do not develop questions that 'fish' or probe for other types of wrongdoing, but remain alert and listen carefully to what the person says. If the subject, suspect, or witness intimates additional wrongdoing not related to the allegation under investigation, you must address those matters directly through additional questioning (keep in mind that self-incrimination may require you to read the person his or her rights). Any information gathered in these cases may result in your Directing Authority expanding the current investigation or directing another investigation.

2. **Phrasing Questions.** Phrase your questions so the information comes from the witness. Providing too much information in your question may identify your sources. Avoid questions that the interviewee can answer with a yes or no response (otherwise known as a close-ended question). For example, if you want to know if the witness was at a certain place on a particular day, do not ask him if he was there. Instead, ask where that person was that day. Open-ended questions allow the subject, suspect, or witness to engage more in a conversation than in a question-and-answer session. If possible, let the interviewee tell a story (a narrative response) so that the information you need

comes out naturally and in the context of what the individual believes happened or knows to be true. This approach generally facilitates recall and allows the interviewee to experience some sense of control in the interview, which helps with rapport. Do not try to force the conversation to adhere strictly to your interrogatory, but be certain to get the information you need. Avoid frequent interruptions. Your sequencing of questions may not follow how the interviewee remembers events. Ask any 'clean-up' questions after the person is finished speaking. As long as you get the information you need, let the interviewee do most of the talking.

3. **Be Methodical**. Ask one question at a time, and then patiently wait for the answer. If the witness hesitates, don't immediately start rephrasing the question -- he or she simply may need time to think. In many instances, a witness starts to answer a question and one or both investigators interrupt with another question for clarification before the witness has completed answering the original question. Write a note, and ask the question when the witness finishes the answer. Usually, if a witness does not understand a question, he will ask for clarification.

4. **Avoid Leading Questions**. Human beings are easily swayed by the power of suggestion. Avoid questions that suggest an answer or that can be seen as 'leading.' Don't make detailed statements followed by, "Is that correct?" For example, the following leading question suggests both a response and puts words in the person's mouth:

"So you showed up at the bar, saw Mrs. White standing near the jukebox, approached her, and began to say unkind things to her in front of two of her friends? Is that correct?"

Another example of putting words into the mouth of a witness is as follows: “You really didn’t use the Government sedan to go hunting, did you?” However, it may be appropriate to summarize to the witness what you think he said. You can say, “Let me get this straight. You are telling me that the Government sedan was inoperable on the day you were alleged to have been out hunting?” Your ultimate purpose is to gather the information that the subject, suspect, or witness can provide and not create responses that somehow match your own expectations. Stay fair and impartial!

You should also avoid questions that suggest that the answer is 'no.' For example, "You don't know his name, do you?" The likely response will be what you seem to expect: 'no.' Likewise, overly polite phrasings of questions can also make it easy for the interviewee to say 'no'.

5. **Language Usage.** Use language that the witness understands; but, if possible, gently try to persuade the witness to avoid jargon or slang. If jargon, slang, or acronyms are used, clarify them during the interview. Rephrase the question if the answer you receive is incomplete or not to the point. Don't allow vulgar and inappropriate language to dominate the conversation since, in most cases, you will be interviewing Soldiers and civilians who remain bound by the Army's professional ethic. Summarizing the person's statement for clarification purposes but without using the vulgar language can send an indirect signal to the interviewee that such language is not appropriate.

6. **Ask Simple Questions.** Do not ask compound questions (more than one question at a time). Compound questions elicit incomplete answers, and determining later which question the witness answered can be difficult.

7. **Sketches and Diagrams**. If you ask about locations or positions, allowing the witness to draw a rough diagram or sketch can be helpful. This diagram or sketch can be entered into the ROI as an exhibit that can later help a reader understand the testimony.

8. **Getting to the Point**. At the appropriate time during the interview, you must directly address the issues and allegations. Asking the hard questions at the correct time is a genuine art form. You need to establish background information and put the witness at ease before getting into difficult areas that could cause the witness to become defensive. The best approach is to begin by asking background questions that are pertinent but not controversial and then work your way toward the more difficult subjects. You should develop your interrogatory with this approach in mind. A defensive witness may not want to answer your questions, and a defensive suspect may invoke his right not to incriminate himself. Waiting too long can appear to be "beating around the bush" or "fishing," which can be just as bad. **Remember that when interviewing a subject or suspect, you must ask questions that allow that person to comment on the allegations and all adverse information that will appear in the report -- even if only to deny the allegations.**

Establishing Rapport

1. **Barriers to Communication.** The goal of all IG interviews is to gather evidence from people via oral statements. However, most people feel intimidated and nervous when talking to an IG. You face a daunting task in removing this barrier to effective communications during your interview. Part of the art of interviewing is your ability to use rapport as a way to bring about desired changes in ways of thinking, feeling, and acting in the individuals whom you interview. Establishing rapport aids greatly in achieving a more open environment and is vital in conducting an IG interview. Barriers can also be physical, so avoid distancing yourself too much from the interviewee by sitting on the other side of a large table or desk; by contrast, smaller tables can create an uncomfortably close proximity. Finding the physical middle ground that will work for you and the interviewee is essential -- even if you must rearrange your prepared interview room's set-up to accommodate the interviewee's needs.

2. **Techniques**. Rapport-building is a key and essential building block in interviewing and an ongoing process that should continue throughout the interview. Rapport conditions the person to talk to you and establishes a behavioral baseline. You can put the witness at ease by preparing and then asking background questions first in order to establish rapport. Your first step is to greet your subject, suspect, or witness warmly and with appropriate military courtesy. Begin some casual conversation prior to going into the pre-tape outline to establish rapport. Potential topics can include the following:

a. Family (be careful of what areas to focus on and avoid)

b. Hobbies (discuss if common but listen if unknown)

c. Medical issues (can demonstrate concern by the IG)

d. Education (degree level or maybe even a former IG)

e. Perception of the Army (helps determines values and view about career)

f. Units and deployments (another potential for common ground with the IG)

Establish rapport from the onset by clearly stating your name, your title, and the purpose of the interview. Ensure that the person whom you are interviewing understands that an allegation has been made, that anyone can make allegations, and that IGs inquire into allegations for the commander. The pre-tape outline is designed to help build rapport.

3. Application. **Your efforts to build rapport must appear to be genuine and not contrived, or it will be counterproductive to your goal of enabling your subject / suspect / witness to answer your questions freely.** The interviewee has to believe that the IG is truly concerned with what he or she has to say. Furthermore, rapport offers you the opportunity to discern what is important to the subject, suspect, or witness and to determine the most effective interviewing and questioning strategy or style to employ. Rapport can sometimes be nothing more than a firm handshake, a smile, professional demeanor, or even the smooth and controlled way you explain procedures during the pre-tape briefing. Rapport sets the conditions and tone for the subject, suspect, or

witness to speak with the IG and establishes a secondary, non-verbal method of communication.

Active Listening

1. **Importance.** As your subject, suspect, or witness discusses matters under investigation with you, employ good active-listening skills. Active listening is an important interviewing skill. Active listening is a good technique for improving communication skills in any context, but it is critical for interviewing because you do not always have the opportunity to interview key subjects, suspects, or witnesses a second time. Active listening is much more than simply concentrating on what the other person is saying because it frequently requires you to test the accuracy of your own perceptions. **Listen carefully for the answers you receive from your questioning, because these answers are your evidence.**

2. **Techniques.** Active listening begins by putting subjects, suspects, or witnesses at ease and letting them know that what they say is important. Good IGs minimize their own speaking while reacting positively to subject, suspect, or witness comments. Head nods; body language that suggests interest; and brief statements like “yes,” “I see,” “go on,” etc. let subjects, suspects, or witnesses know that you understand what they are saying and consider it important. These techniques encourage them to keep speaking.

3. **Questioning for Clarification and Feedback**. Paraphrasing, or putting into your own words what the other person seems to be communicating to you, is the central skill in active listening. This technique enables subjects, suspects, or witnesses to know whether or not their point is getting through, or whether you have misunderstood and need further explanation. Paraphrasing minimizes the potential for the subject, suspect, or witness to take exception to your subsequent record of the interview.

4. **Know your Witness.** You must remember that most subject, suspect, or witness have not developed the skill of active listening and may misinterpret what you are asking them, even when you skillfully phrase the question. Consequently, subjects, suspects, or witnesses often give an answer that does not respond to the question. Unfortunately, IGs who are not good active listeners do not realize that they never received an answer to their question until they try to write a synopsis of the interview. Non-responsive answers can be important and useful because they may reveal what truly concerns the subject, suspect, or witness and provide a useful basis for follow-up questions. However, you must also be sure to get the answer to the question.

5. **Keep an Open Mind.** To be able to paraphrase effectively, the IG must keep an open mind and avoid making assumptions or judgments, both of which are distracting. Active listening tests your own ability to perceive accurately and demonstrates that you must share in the responsibility for the communication.

6. **The Two-Person Rule.** The proper interpretation of a subject's, suspect's, or witness's body language is an important part of the skill of active listening and is another reason why, when possible, two people should conduct interviews. While one person takes notes, the other concentrates on watching the subject, suspect, or witness to ensure that the subject's, suspect's, or witness's body language (non-verbal communication) is consistent with what the subject, suspect, or witness is saying. Body language may reveal that a verbal denial is really a silent admission. Your eyes can tell you how to listen. But be careful: the two-person rule can potentially be very distracting or intimidating to the interviewee, so the IG team must not create a situation in which

they appear to be 'ganging up' on the person by rapidly shifting from one IG to the other to ask questions or to attempt anything that might resemble the familiar theatrical mode of 'good cop, bad cop.' Such contrived efforts can (and usually will) fall flat quickly and will scuttle the interview.

Non-Verbal Communications and Body Language

1**. Overview.** IGs use their eyes to listen. Non-verbal communications (i.e., the body language displayed by a subject, suspect, or witness) can reveal much about what a person is attempting to convey to you. Most people can control their verbal communications better than their non-verbal ones. We may think before we talk, but our non-verbal communications, or body language, may say more about what we really mean. This fact is particularly true during interviews. For example, some subjects, suspects, or witnesses will hesitate or pause before or during a response to certain questions in order to think about and formulate the answer. Such hesitation may indicate an attempt to think of a deceptive answer, but it also could be an attempt to give a controlled response to a sensitive question or area of concern. During the pause in the verbal communication, the subject, suspect, or witness may engage in patterns of non-verbal communications that are unconscious and therefore uncontrolled. These spontaneous reactions generally are more reliable indicators than the verbal response that accompanies or follows the body language. Thus, the good IG reads body language to give context to verbal communication.

a. Eye gaze, eye movement, pupil constriction / dilation, touching, and distance or spacing are all part of non-verbal communication. You need to know how to use these concepts in the interview to reduce or increase tension in a subject, suspect, or witness, to gain rapport, and to enhance cooperation.

b. Likewise, you need to be aware of the subject, suspect, or witness's non-verbal behavior to evaluate credibility properly. Is the subject, suspect, or witness withholding information? Lying? Unfortunately, there is no one single non-verbal indicator that magically tells whether the subject, suspect, or witness is being deceptive. Most people will exhibit some signs of stress when they are omitting or falsifying information. However, the stress may be induced by a variety of unrelated issues or problems, and all individuals have favored verbal and non-verbal behavior that is normal for them. The subject's, suspect's, or witness's intelligence, sense of social responsibility, and degree of maturity may also affect stress.

2. **How to Read Body Language.** There are a number of general observations about mood and veracity that you may draw from specific body-language responses. A few of them appear in the following paragraphs.

a. Failing to exhibit any facial expression or exhibiting fear may indicate deception. By contrast, an expression of anger probably indicates truthfulness. A defiant expression, especially when coupled with crossed arms and / or legs, indicate deception as does an expression of acceptance (sad expression, eyes dropped, or hand across the mouth). Indications of pleasure (including cocky or challenging attitudes) are typical expressions of deception (an exception may apply to juveniles).

b. Changes in facial color may be revealing. Blanching, an indication of fear, may also indicate deception. Blushing is more likely to mean embarrassment than deception.

c. Normal eye contact is maintained 30 to 60 percent of the time between two persons engaged in conversation. IGs have greater freedom in maintaining or breaking

eye contact than subject, suspect, or witness, and a long gaze by a subject, suspect, or witness may be interpreted as a challenge. Truthful persons look at you longer during the interview than do deceptive persons. Truthful eyes are direct, but not overly so; are open with a good portion of the whites showing; and are attentive and looking at you. Deceptive subjects, suspects, or witnesses tend to avert their gaze and avoid direct eye contact. They range from evasive to a cold stare; they may appear tired or have a glassy look.

d. A body movement such as shifting the torso shows internal conflict when the movement is consistently in time with the questioning. Deceptive people unconsciously retreat from a threatening situation. In those cases, subjects, suspects, or witnesses actually move their chair away from you or toward a door or window.

e. Body posture for subjects, suspects, or witnesses is characterized as either truthful or deceptive. The chart below summarizes body posture attributes.

Truthful Body Posture	**Deceptive Body Posture**
Open, upright, and comfortable	Slouched in chair, preventing the IG from getting close
Aligned frontally to face the IG directly	Unnaturally rigid
Leaning forward with interest	Lacking frontal alignment
Relaxed, casual, with some nervousness or excitement	Tending to retreat behind physical barriers
Smooth in its changes with no pattern	Erratic in its changes (can't sit still)
	Closed (elbows close to sides, hands folded in their lap, legs and ankles crossed)
	A "runner's position" (one foot back ready to push off)
	Exhibiting head and body slump

f. Supportive and symbolic gestures may indicate:

- **Sincerity**, with open arms, palms up;
- **Disbelief**, with hands to chest (who me?);
- **Denials**, by head shaking;
- **Accusation**, by pointing a finger (usually by a truthful person);
- **Threats**, by pounding or slamming the fist (usually by a truthful person);
- **Disgust**, by turning the head away and sighing (indicative of an untruthful person);
- **Agreement**, by nodding the head and dropping eye contact, to indicate an admission;
- **Lack of interest**, with head or chin in hand and head cocked;
- **Interest**, with head or chin in hand and head straight;
- Closed posture (**deception**) by crossing of arms, legs, and ankles; or by hiding hands, feet, mouth, or eyes.

g. Grooming gestures are exhibited because the body needs stress and tension relievers. Grooming gestures keep the hands busy and allow the subject, suspect, or witness to delay answering questions. These gestures usually occur when the subject, suspect, or witness is lying and are inappropriate for the situation. Grooming gestures include tie straightening, sleeve or skirt tugging, head or hair combing or scratching, clothes sweeping, etc.

h. Some general observations of verbal patterns indicating truthful and deceptive persons may include the following:

- **Deceptive** persons tend to deny their wrongdoing specifically while the truthful person will deny the problem in general.
- **Deceptive** persons tend to avoid realistic or harsh language while the truthful do not.
- **Truthful** persons generally answer specific inquiries with direct and spontaneous answers. The answers are on time with no behavioral pause.
- **Deceptive** persons may fail to answer or delay answers. They may ask to have the question repeated or repeat the question asked. This tactic allows them time to think of an answer. "Could you repeat the question?"
- **Deceptive** persons may have a memory failure or have too good a memory. "I don't remember the specifics of that." "I don't recall."
- **Deceptive** persons tend to qualify their answers more than truthful persons. "I was not involved in an adulterous relationship in December of 2003."
- **Deceptive** persons may evade answering by talking off the subject. "Hey, enough of this stuff. How about those Yankees?"
- **Deceptive** persons may support their answers with religion or oaths. The truthful rarely employ this tactic. "May God strike me dead..."
- **Deceptive** persons tend to be overly polite, and it is more difficult to arouse their anger.
- **Deceptive** persons may feign indignation or anger initially but will quit as the interview continues. "Is that all you have on me – this trivial issue?"

3. **A Note of Caution**. It is important that you identify both verbal and non-verbal communication throughout the interview. You must read clusters of behavior and may not rely on a single observation. Limitations and exceptions to the use of body language are based on factors such as emotional stability; cultural variations and the age of the subject, suspect, or witness; outside influences such as drugs or alcohol; and the intelligence of the subject, suspect, or witness (the higher the level of intelligence, the more reliable the behavioral symptoms as an indicator of truth or deceit).

4. **A Final Caution:** Effective use and interpretation of body language requires training and practice. IGs should be wary of making decisions about subject, suspect, or witness veracity based only on their interpretation of that person's body language.

a. As an IG, you conduct interviews as part of an administrative proceeding – not a court of law. However, the people you interview typically have misconceptions about the proceedings. Consequently, most subjects, suspects, or witnesses tend to exhibit psychological traits that the IG can exacerbate if he or she is not cognizant of the stress levels that the interview can generate.

b. There are a number of psychological factors that have a direct bearing on interviewing techniques and influence the reliability of the information obtained. The IG should ascertain the existence of such factors in the subject, suspect, or witness and, in some cases, reduce or heighten them. Some of the more important emotional factors are anger, fear, and excitement. Such factors are readily recognizable through their physical and verbal manifestations.

- Subjects, suspects, or witnesses who become angry may resist the IG emotionally. In most cases, the IG must suppress this anger. In some cases, however, anger may cause the subject, suspect, or witness to make truthful admissions that he or she might have otherwise withheld. IGs must always keep their own anger in check.
- Fear is aroused through any present or imagined danger. The fear associated with interviews is not fear of physical danger but of psychological danger associated with job and financial security. This emotion may be beneficial when interviewing a hostile subject, suspect, or witness. When attempting to elicit information from a friendly subject, suspect, or witness, IGs should attempt to minimize its influence.
- Excitement tends to heighten perception and may leave false impressions. However, neutral excitement means the subject, suspect, or witness is merely prepared to meet whatever may arise and may also affect the perception of the subject, suspect, or witness. This neutral excitement could develop into fear or anger with their attendant changes in mental attitude. Usually, neutral excitement is aroused when people are aware of a potential danger not specifically directed at them as would be the case in a subject, suspect, or witness interview. IGs may eliminate the supposed danger by adequate assurances to the subject, suspect, or witness that the situation is not a threat to that person. Tell the subject, suspect, or witness that you are interviewing him because he may have pertinent information to the matter under investigation or that he is not the target or subject of the inquiry.

5. **Remember:** Unless you are formally trained in the use of body-language assessment, your observations should only be used to facilitate more in-depth questioning. Do not enter your observations of subject, suspect, or witness body language into an ROI / ROII unless you are fully trained and certified to make such an assessment.

Interview Guidelines and Witness Control

As a general rule, the following guidelines should be followed during IG interviews:

- **Greet** the person to be interviewed in an appropriate manner

- **Create and define the space within which the interview will take place** -- avoid large barriers (such as a big table or desk) that can overly separate the IGs from the interviewee, but also avoid situations that are too close for comfort

- Open the interview in accordance with AR 20-1 and The Assistance and Investigations Guide

- **Define or state the purpose** of the interview

- Establish and maintain **rapport**

- **Maintain control** -- don't let the subject, suspect, or witness interview you

- **Remember** -- the interviewer controls the interview

- **Don't argue** with each other or with the subject, suspect, or witness

- Try to **evaluate each piece of information or allegation on its own merit**; the subject, suspect, or witness may present many allegations that are patently untrue but may also make an allegation that has great significance or importance (IGs who stop listening will miss the latter)

- **Refrain from trying to impress the subject, suspect, or witness** unless such action is specifically used as an interviewing technique

- **Maintain strict impartiality** and keep an open mind, receptive to all information regardless of its nature – **be a fair and impartial fact-finder**

- **Listen before taking action**

- Take your time -- **don't hurry**

- **Be a good listener**

- **Accept the subject's, suspect's, or witness's feelings**

- Ensure you **understand** what **the speaker** is trying to convey

- Use **appropriate questioning techniques** based upon the subject, suspect, or witness's demeanor

- **Make perception checks** to ensure you understand what the subject, suspect, or witness means

- **Use silence** when it is appropriate to elicit a response

- **Do not try to solve the problem during the interview**, but do mention the types of subject-matter experts (personnel specialist, counsel, etc.) that may be of assistance

- **Review your notes** and information to ensure **you and the subject, suspect, or witness agree on what was said**

- **Ask what the complainant or subject, suspect, or witness expects or wants to happen** as a result of the information provided

- **Allow your IG peer to ask questions**

- **Make no promises**

- **Ask** if there is **any other issue or information the IG should know** or anything else the subject, suspect, or witness would like to add

- Set up time for continuation, if necessary. **When in doubt, don't punt – HUDDLE!**

- **Extend your appreciation**

- Close the interview in accordance with AR 20-1 and The Assistance and Investigations Guide.

Interviewing Civilian-Civilians

1. You do not have the authority to require the appearance or testimony of non-DA civilian witnesses. Your techniques in dealing with civilian-civilians will frequently determine if you can gain their cooperation and testimony. Consider these techniques when dealing with civilian witnesses.

a. Adopt an objective, empathetic attitude.

b. Explain the procedures that will be followed and the rationale because some civilians may not understand your role or may view the investigation more as an inquisition. Anticipate potential problems. Do not use military jargon and acronyms.

c. Attempt to conduct all interviews at your location. If the witness does not agree to this request then conduct the interview at a neutral place like a hotel or motel conference room. If the witness still refuses, it is permissible to conduct the interview where the witness suggests. However, make sure you take appropriate measures to avoid the appearance of impropriety. Be aware of the impact you and your partner have, as IGs, when you go to a person's place of business to conduct an interview. There may be rumors that adversely affect the witness. If you make witnesses aware of these potential problems, they will often change their minds about interviewing at the place of work. Civilian clothes could be appropriate when interviewing civilian witnesses at their home or work place.

d. Explain the IG concept of confidentiality and the methods used to protect the rights of all those involved in the investigative process.

e. Should the witness be reluctant to participate in a formal interview, explain the emphasis on the IG process of recorded testimony taken under oath and transcribed. If the witness remains reluctant, then continue the interview without recording the session. Complete a written summary of the information provided immediately following the interview.

2. Consider other alternatives if there is continued reluctance to testify after repeated explanations. For example, if a witness refuses to give oral testimony, ask for a written statement. Ask yourself if this witness's testimony is critical to your investigation. Can this information be obtained from another source? A decision not to interview a reluctant witness is sometimes best.

Interviewer Observations

Your observations are of value when developing follow-on questions and may be of value when weighing the evidence or credibility of a witness. During the questioning, continuously evaluate the mannerisms and emotional state of the witness. Hesitation, evasive answers, body movements, and fidgeting may indicate the witness is not telling the truth or is concealing information. Such behavior may only mean that the witness is nervous with the interview process. Your ability to put the witness at ease becomes very important in these instances. You are better able to judge when a specific question causes the witness obvious discomfort. Rephrasing the question may be worthwhile, or it may be appropriate to direct your question to their discomfort. For example, "I sensed a change in your voice when I asked that question. Why?" When appropriate, write a Memorandum For Record that describes physical mannerisms. Use caution, however, in interpreting physical mannerisms, and avoid attaching undue or unfounded significance to them.

Memorandum For Record

1. A Memorandum For Record (MFR) is a suitable way to record your observations, to identify exhibits, or to record other information important to the investigation. An MFR can also be used to document a summary of witness testimony. **Remember: when you include an MFR with your observations in your report, you become a witness in your case.**

2. Prepare MFRs while the matters are fresh in your mind. Take a few minutes after the interview to make either notes on the testimony transcript information sheet or dictate your observations on the tape immediately after the recorded testimony.

3. The MFR should contain:

   a. What was observed (who, what, when, where, and how, if applicable).

   b. Why the action was recorded.

   c. What was found.

   d. Explanatory notes, comments, or comparisons.

   e. The signature of at least one investigating officer.

Polygraph Use

The polygraph, commonly known as a lie detector, is not an appropriate method for gathering evidence in an IG inquiry or investigation. An investigation that requires the use of the polygraph has gone beyond the scope of what is appropriate for an IG. If you need to use a polygraph, consult with your SJA and consider referring the case to a criminal investigator.

Common Pitfalls

1. Successful IGs use their personal traits but must be able to adjust their own dispositions to harmonize with the traits and moods of the subject, suspect, or witness. There are many errors that an IG can make while making this adjustment. Some of the most blatant are:

- **Showing personal prejudice** or allowing prejudice to influence the conduct of the interview - destroys IG objectivity and credibility;

- **Lying** - destroys the IG's credibility and encourages similar behavior from the subject, suspect, or witness;

- **Hurrying** - encourages mistakes and omissions and leads to the IG improperly evaluating the veracity of the information provided;

- **Making assumptions**, drawing unconfirmed inferences, and jumping to conclusions - may result in important information not being requested or may allow false or unverifiable information to be introduced into the investigation;

- **Making promises you can't keep** - destroys the IG's credibility and reputation and may cause the subject, suspect, or witness to react negatively to other investigative personnel in the future (note: the only promise IGs legitimately can make to a person involved in wrongdoing is, "I will bring your cooperation to the attention of the appropriate officials");

- **Looking down at, or degrading, the subject, suspect, or witness**, or showing a contemptuous attitude - may anger subject, suspect, or witness and encourage unnecessary emotional barriers;

- **Placing too much value on minor inconsistencies** - allows the interview and the IG to get ‘hung up’ on minor or irrelevant issues;

- **Bluffing** - destroys the IG's credibility and may allow the subject, suspect, or witness to take charge of the interview;

- **Anger** - results in control of the session reverting to the subject, suspect, or witness; it serves as a relief to the subject, suspect, or witness and is a distraction from the information-gathering process; and

- **Underestimating the mental abilities of subject, suspect, or witness** especially by talking down to him or her - antagonizes the subject, suspect, or witness and invites the person to trip up the IG.

2. **Summary.** AR 20-1 stresses a procedurally correct IG subject, suspect, or witness interview. **<u>However, the ultimate goal of the proceeding is to capture the information, facts, and subsequent evidence you need from that person.</u>** IGs set the stage for success through detailed planning and careful interrogatory development. They build upon this planning during the interview by establishing and maintaining rapport with the subject, suspect, or witness, by understanding and compensating for

psychological factors, and by practicing active listening by using both verbal and non-verbal means. Use these techniques when you conduct your interviews. Your interviews will benefit greatly from these techniques, and you will gather the evidence you need to resolve the allegation (or allegations) in question.

Appendix C

Transmittal Memorandums

1 - Transmittal of Report of Investigation to Subordinate Commander (page C-2)

2 - Transmittal of Report of Inquiry to Staff Agency (page C-3)

3 - Transmittal of Summary of Report of Investigation (page C-4)

Transmittal of Report of Investigation to Subordinate Commander

Office Symbol <Date>

MEMORANDUM FOR COMMANDER, 3RD BDE, 66TH IN DIV

SUBJECT: Transmittal of IG Report of Investigation

1. This Inspector General (IG) Report of Investigation (or applicable portion) is forwarded for action as deemed appropriate.

2. This Inspector General document contains privileged information and will be protected in accordance with the provisions of AR 20-1, paragraphs 3-2, 3-3a, and 3-4. Dissemination of this document will be restricted and will not be reproduced or further disseminated without specific permission of this office. Use or attachment of IG records as exhibits or enclosures to records of other DA agencies is not authorized without the written approval of The Inspector General. Use of IG records as a basis for adverse personnel action or attachment of IG records as exhibits or enclosures to records of other DA offices or agencies is not authorized without written approval of The Inspector General.

3. This report must be returned to the 66th Infantry Division and Fort Von Steuben IG office when it has served its purpose.

Enclosure

ALBERT R. RIGHTWAY
LTC, IG
Inspector General

Transmittal of Report of Inquiry to Staff Agency

Office Symbol <Date>

MEMORANDUM FOR DIRECTOR OF LOGISTICS

SUBJECT: Transmittal of IG Report of Inquiry

1. The enclosed 66th Infantry Division Fort Von Steuben Inspector General Report of Inquiry (or applicable portion) is forwarded for action as deemed appropriate.

2. This Inspector General document contains privileged information and will be protected in accordance with the provisions of AR 20-1, paragraphs 3-2, 3-3a, and 3-4. Dissemination of this document will be restricted and will not be reproduced or further disseminated without specific permission of this office. Use or attachment of IG records as exhibits or enclosures to records of other DA agencies is not authorized without the written approval of The Inspector General. Use of IG records as a basis for adverse personnel action or attachment of IG records as exhibits or enclosures to records of other DA offices or agencies is not authorized without written approval of The Inspector General.

3. This report must be returned to the IG office when it has served its purpose.

Enclosure

ALBERT R. RIGHTWAY
LTC, IG
Inspector General

Transmittal of Summary of Report of Investigation

Office Symbol <Date>

MEMORANDUM FOR DIRECTOR OF PUBLIC WORKS

SUBJECT: Transmittal of Summary of IG Report of Investigation

1. Under the provisions of AR 20-1, you are provided, for official purposes, a summary of an Inspector General Report of Investigation into allegations of _____.

2. This Inspector General document contains privileged information and will be protected in accordance with the provisions of AR 20-1, paragraphs 3-2, 3-3a, and 3-4. Dissemination of this document will be restricted and will not be reproduced or further disseminated without specific permission of this office. Use or attachment of IG records as exhibits or enclosures to records of other DA agencies is not authorized without the written approval of The Inspector General. Use of IG records as a basis for adverse personnel action or attachment of IG records as exhibits or enclosures to records of other DA offices or agencies is not authorized without written approval of The Inspector General.

3. The report must be returned to this office upon completion of your review.

Enclosure

ALBERT R. RIGHTWAY
LTC, IG
Inspector General

Appendix D

Adverse Personnel Actions

1. **Adverse Action.** AR 20-1 describes adverse actions as any administrative or punitive action that takes away an entitlement, results in an entry or document added to the affected person's personnel records that could be considered negative by boards or supervisors, or permits the affected person to rebut or appeal the action. Adverse action includes 'unfavorable information' as described in AR 600-37, UCMJ action, or with regard to civilian employees, 'personnel action' as defined in 5 USC 2302, or a 'disciplinary action' pursuant to AR 690-700 (see Glossary, Section II, of AR 20-1 for a definition of adverse action).

2. **Criminal and Administrative Actions.** Listed below are some of the adverse personnel actions for which a right of confrontation (a right to see the evidence) is required in some measure. If Inspector General reports or records are used as the basis for these actions, those IG records or applicable portions of the records may be made available to the individual against whom the adverse action is directed. This list is not complete and is provided to help further define an "adverse action." Your local Staff Judge Advocate (SJA) can provide further guidance. Contact your SJA or DAIG Legal Division in all instances involving the potential use of IG records for possible adverse action.

3. **Criminal Actions**

- General Courts-Martial
- Special Courts-Martial (empowered to adjudge a Bad Conduct Discharge)
- Special Courts-Martial
- Summary Courts-Martial
- Field Grade Article 15
- Company Grade Article 15

4. **Administrative Actions**

a. **Rank Indiscriminate**

- Revocation of Security Clearance (AR 380-67)
- Letter of Reprimand (AR 600-37)
- Financial Liability Investigations of Property Loss (AR 735-5)
- Line of Duty Investigation (AR 600-8-4)

- Conscientious Objection (AR 600-43)
- Academic Evaluation Report (Chapter 3, AR 623-3)

b. **Officer Personnel**

- Special Adverse OER (Chapter 3, AR 623-3)
- Relief from Command (Chapter 3, AR 600-20)
- Elimination from Service (AR 600-8-24)
- Resignation for Good of the Service (AR 600-8-24)
- Removal from Promotion, School, or Command List

c. **Enlisted Personnel**

- Elimination for Alcohol / Drug Abuse (Chapter 9, AR 635-200)
- Elimination for Unsatisfactory Performance (Chapter 13, AR 635-200)
- Elimination for Good of the Service (Chapter 10, AR 635-200)
- Entry-Level Separation (Chapter 11, AR 635-200)
- Elimination for Misconduct (Chapter 14, AR 635-200)
- Administrative Reduction (AR 600-8-19)
- Bar to Reenlistment (Chapter 6, AR 601-280)
- Military Occupational Specialty Reclassification (Chapter 6, AR 611-1)
- Special Adverse Non-Commissioned Officer Evaluation Report (Chapter 3, AR 623-3)
- Removal from School or Promotion List

d. **Civilian Personnel Actions**

- Removal (5 USC 7512, 7532)
- Involuntary Resignation
- Suspension (5 USC 7503, 7512, 7532)
- Reduction in Grade (5 USC 7512)

- Reduction in Pay (5 USC 7512)
- Reclassification (5 USC 5362)

In addition, other adverse or grievance actions may be set out in local bargaining agreements. These agreements may establish their own procedural requirements, and IGs must be familiar with them.

Appendix E

Mental Health Evaluation Document Formats

1 – Commanding Officer Request for Routine (NON-EMERGENCY) Mental Health Evaluation (page E-2)

2 – Service Member Notification of Commanding Officer Referral for Mental Health Evaluation (page E-4)

3 – Memorandum from Mental Health Care Provider to Service Member's Commanding Officer (page E-7)

4 – Guidelines from Mental Health Evaluation for Imminent Dangerousness (page E-10)

Commanding Officer Request for Routine (NON-EMERGENCY) Mental Health Evaluation

Office Symbol <Date>

MEMORANDUM FOR (Name of Medical Treatment Facility (MTF) or Clinic)

SUBJECT: Command Referral for Mental Health Evaluation of (Service Member Rank, Name, Branch of Service, and SSN)

References:

a. DoD Directive 6490.1, Mental Health Evaluations of the Armed Forces, dated 1 October 1997

b. DoD Instruction 6490.4, Requirements for Mental Health Evaluations of Members of the Armed Forces, dated 28 August 1997

c. Section 546 of Public Law 102-484, National Defense Authorization Act for Fiscal Year 1993, dated October 1992

d. DoD Directive 7050.06, Military Whistleblower Protection, dated 23 July 2007

1. In accordance with references (a) through (d), I hereby request a formal mental health evaluation of (rank and name of Service Member).

2. (Name and rank of Service Member) has (years) and (months) active-duty service and has been assigned to my command since (date). Armed Services Vocational Aptitude Battery (ASVAB) scores upon enlistment were: (list scores). Past average performance marks have ranged from ____ to ____ . Legal action is / is not currently pending against the Service Member. (If charges are pending, list dates and UCMJ articles). Past legal actions include: (List dates, charges, non-judicial punishments and / or Courts-Martial findings.)

3. I have forwarded to the Service Member a memorandum that advises (rank and name of Service Member) of his (or her) rights. This memorandum also states the reasons for this referral; the name of the mental health care provider(s) with whom I consulted; and the names and telephone numbers of judge advocates, DoD attorneys and / or Inspector General who may advise and assist him (or her). A copy of this memorandum is attached for your review.

4. (Service Member's rank and name) has been scheduled for evaluation by (name and rank of mental healthcare provider) at (name of MTF or clinic) on (date) at (time).

5. Should you wish additional information, you may contact (name and rank of the designated point of contact) at (telephone number).

6. Please provide a summary of your findings and recommendations to me as soon as they are available.

Attachment (Signature)
Rank and Name of Commanding Officer

Service Member Notification of Commanding Officer Referral for Mental Health Evaluation

Office Symbol <Date>

MEMORANDUM FOR (Service Member...)

SUBJECT: Notification of Commanding officer Referral for Mental Health Evaluation (Non Emergency)

References: a. DoD Directive 6490.1, Mental Health Evaluations of the Armed Forces, dated 1 October 1997

b. DoD Instruction 6490.4, Requirements for Mental Health Evaluations of Members of the Armed Forces, dated 28 August 1997

c. Section 546 of Public Law 102-484, National Defense Authorization Act for Fiscal Year 1993, dated October 1992

d. DoD Directive 7050.06, Military Whistleblower Protection, dated 23 July 2007

1. In accordance with references (a) through (d), this memorandum is to inform you that I am referring you for a mental health evaluation.

2. The following is a description of your behaviors and /or verbal expressions that I considered in determining the need for a mental health evaluation: (Provide dates and a brief factual description of the Service Member's actions of concern). Before making this referral, I consulted with the following mental health care provider(s) about your recent actions: (list rank, name, and medical corps branch of each provider consulted) at (name of Medical Treatment Facility (MTF) or clinic) on (date(s)). (Rank(s) and name(s) of mental healthcare provider(s)) concur(s) that this evaluation is warranted and is appropriate.

OR

3. Consultation with a mental healthcare provider prior to this referral is (was) not possible because (give reason; e.g., geographic isolation from available mental healthcare provider, etc.).

4. Per references (a) and (b), you are entitled to the rights listed below:

a. The right, upon your request, to speak with an attorney who is a member of the Armed Forces or employed by the Department of Defense and who is available for the purpose of advising you of the ways in which you may seek redress should you question this referral.

b. The right to submit to your Service Inspector General or to the Inspector General of the Department of Defense (IG, DoD) for investigation an allegation that your

mental health evaluation referral was a reprisal for making or attempting to make a lawful communication to a Member of Congress; any appropriate authority in your chain of command; an IG; or a member of a DoD audit, inspection, investigation or law - enforcement organization or in violation of (reference (a)), (reference (b)), and / or any applicable Service regulations.

c. The right to obtain a second opinion and be evaluated by a mental healthcare provider of your own choosing, at your own expense, if reasonably available. Such an evaluation by an independent mental healthcare provider shall be conducted within a reasonable period of time (usually within 10 business days) and shall not delay or substitute for an evaluation performed by a DoD mental healthcare provider.

d. The right to communicate without restriction with an IG, attorney, Member of Congress, or others about your referral for a mental health evaluation. This provision does not apply to a communication that is unlawful.

e. The right, except in emergencies, to have at least two business days before the scheduled mental health evaluation to meet with an attorney, IG, chaplain, or other appropriate party. If I believe that your situation constitutes an emergency or that your condition appears potentially harmful to your well being, and I judge that it is not in your best interest to delay your mental health evaluation for two business days, I shall state my reasons in writing as part of the request for the mental health evaluation.

5. If you are assigned to a naval vessel, deployed, or otherwise geographically isolated because of circumstances related to military duties that make compliance with any of the procedures in paragraphs (3) and (4) above impractical, I shall prepare and give you a copy of the memorandum setting forth the reasons for my inability to comply with these procedures.

6. You are scheduled to meet with (name and rank of the mental healthcare provider) at (name of MTF or clinic) on (date) at (time).

7. The following authorities are available to assist you if you wish to question this referral:

a. Military Attorney: (Provided rank, name, location, telephone number, and available hours.)

b. Inspector General: (Provided rank / title, name, address, telephone number and available hours for Service and IG, DoD. The IG, DoD, number is 1-800-424-9098.)

c. Other available resources: (Provide rank, name , and medical corps branch / title of chaplains or other resources available to counsel and assist the Service Member.)

(Signature)

Rank and Name of Commanding Officer

I have read the memorandum above and have been provided a copy.

Service Member's signature:_____ Date: _____

OR

The Service Member declined to sign this memorandum, which includes the Service Member's Statement of Rights because (give reason and / or quote Service Member).

Witness's signature:_____ Date: _____

Witness's rank and name:_____ Date: _____

(Provide a copy of this memorandum to the Service Member.)

Memorandum from Mental Health Care Provider to Service Member's Commanding Officer

Office Symbol <Date>

MEMORANDUM THRU COMMANDING OFFICER, (Name of Subject's Command)

FOR COMMANDING OFFICER, (Medical...)

THROUGH: COMMANDING OFFICER, (Medical Treatment Facility or Clinic)

SUBJECT: Health Evaluation in the Case of (Service Members Rank, Name, SSN)

References: a. DoD Directive 6490.1, Mental Health Evaluations of the Armed Forces, dated 1 October 1997

b. DoD Instruction 6490.4, Requirements for Mental Health Evaluations of Members of the Armed Forces, dated 28 August 1997

1. The above named Service Member was seen on (date) at (location) by (mental healthcare provider's rank and name) after referral by (rank and name of Service member's commanding officer) for an emergency evaluation because of (brief summary of pertinent facts).

OR

for a non-emergency, command-directed evaluation because of (brief summary of pertinent facts).

2. The evaluation revealed (brief description of findings).

3. The Diagnosis(es) is / are

Axis I
Axis II
Axis III

4. The Service Member's diagnosis(es) do(es) not meet retention standards for continued military service and his / her case will be referred to the Physical Evaluation Board for administrative adjudication.

OR

The Service Member is deemed unsuitable for continued military service on the basis of the above diagnosis(es). (Provide explanation on how the Service Member's personality disorder or substance abuse, for example, is maladaptive to adequate performance of duty.)

5. This Service Member is considered (Imminently Dangerous OR Potentially Dangerous) based upon (summary of clinical data to support this determination).

6. The following clinical treatment plan has been initiated:

a. The Service Member has been admitted to (ward and name of Medical Treatment Facility (MTF) or hospital) for further evaluation / observation/treatment. His / her physician is (rank / title and name) and may be reached at (telephone number).

OR

b. The Service Member has been scheduled for outpatient follow-up (or treatment) on (date and time) at (name of MTF or mental health clinic) with (rank / title and name of privileged mental healthcare provider) who may be reached at (telephone number).

7. RECOMMENDATIONS TO THE COMMANDING OFFICER: The Service member is returned to his / her Command with the following recommendations (for potentially dangerous Service Members, only):

a. Precautions: (e.g., order to move into military barracks; prevent access to weapons; consider liberty / leave restrictions; issue restraining order, etc.)

AND / OR

b. Process for expeditious administrative separation in accordance with applicable Service directive). The Service Member does not have a severe mental disorder and is not considered mentally disordered. However, he / she manifests a long-standing disorder of character, behavior, and adaptability that is of such severity so as to preclude adequate military service. Although not currently at significant risk for suicide or homicide, due to his / her lifelong pattern of maladaptive responses to routine personal and / or work-related stressors, he / she may become dangerous to himself / herself or others in the future.

AND / OR

c. The Service Member (is / is not) suitable for continued access to classified material and his / her (Secret / Top Secret / Top Secret Special Compartmentalized Clearance) should be (retained / rescinded).

AND / OR

d. Other _____(describe).

8. The above actions taken and recommendations made have been discussed with the Service Member, who acknowledged that he / she understood them.

OR

The Service Member's condition (diagnosis(es)) prevent(s) him / her from understanding the actions taken and recommendations made above.

9. If you do not concur with these recommendations, DoD Directive 6490.1, Mental Health Evaluations of Members of the Armed Forces, dated 1 October 1997, (reference (a)) requires that you notify your next senior commanding officer within two business days explaining your decision to act against medical advice regarding administrative management of the Service Member.

(Signature)

Mental Healthcare Provider's Rank, Name, and Medical Corps Branch

Guidelines from Mental Health Evaluation for Imminent Dangerousness

Clinical evaluation should include:

1. Record Review
    a. Medical Record
    b. History of pertinent medical problems and treatment
    c. History of substance abuse evaluations and / or treatment
    d. History of mental health evaluation and / or treatment
    e. Family Advocacy Program (if applicable)
    f. Service Personnel Record (if applicable)
    g. Review documentation for disciplinary problems and counseling

2. History

    a. History as obtained from the Service Member and assessment of reliability

        1) History of past violence towards others: ("Have you ever hurt anyone physically? Who? What did you do? How badly was the person hurt? How did you feel about it afterward? How do you feel about it now?")

        2) Alcohol and illicit substance abuse / dependence

        3) Personal / marital problems

        4) Recent losses (job / family)

        5) Legal / financial problems

        6) History of childhood emotional, sexual, and / or physical abuse (or witnessing abuse)

        7) Past psychiatric history

        8) Past medical history and current / recent medications

    b. Information from command representative on Service Member's behavior, work performance, and general functioning

    c. Pertinent information from family or friends

3. Mental Status Examination (emphasis on abnormal presentation)

    a. Appearance (ability to relate to the examiner, eye contact, hygiene, grooming)

b. Behavior (psychomotor agitation or retardation)

c. Speech (rate, rhythm)

d. Mood (Service member's stated predominant mood)

e. Affect
   1) Is examiner's observations of member's affect consistent with stated mood?
   2) If inconsistent, in what way?

f. Thought Processes
   1) Is there evidence of psychotic symptoms, paranoid thoughts, or feelings?

g. Thought Content
   1) What does the Service Member talk about spontaneously when allowed the opportunity? How does the Service Member respond to specific questions about the facts or issues that led to his or her psychological evaluation? Is there evidence of an irrational degree of anger, rage, or jealousy?

h. Cognition
   1) Is the Service member oriented to person, place, time, date, and reason for the evaluation? Can he / she answer simple informational questions and do simple calculations?

i. Assessment of Suicide Potential
   1) Ideation: Do you have, or have you had, any thoughts about dying or hurting yourself?
   2) Intent: Do you wish to die?
   3) Plan: Will you hurt yourself or allow yourself to be hurt "accidentally" or on purpose?

j. Do you have access to weapons at work or at home?
   1) Behaviors: Have you taken any actions towards hurting yourself; for example, obtaining a weapon with which you could hurt yourself?
   2) Attempts: Have you made prior suicide attempts? When? What did you do? How serious was the injury? Did you tell anyone? Did you want to die?

k. Assessment of Current Potential for Future Dangerous Behavior
   1) Ideation: Do you have, or have you recently had, any thoughts about harming of killing anyone?
   2) Intent: Do you wish anyone were injured or dead?
   3) Plan: Will you hurt or try to kill anyone?
   4) Behaviors: Have you verbally threatened to hurt or kill anyone? Have you obtained any weapons?
   5) Attempts: Have you physically hurt anyone recently? (Describe)

4. Psychological Testing Results (if applicable)

5. Physical Examination and Laboratory Test Results (if applicable)

6. Assessment Shall Include:

   a. Axis I through III diagnoses, as indicated, and Axis IV and V assessments

   b. A statement of clinical assessment of risk for dangerous behavior supported by history obtained from the Service Member and others; the mental status examination; pertinent actuarial factors; and, if pertinent, the physical examination and laboratory studies results.

7. Recommendation / Plans Shall Address:

   a. Further clinical evaluation and treatment, as indicated,

   b. Precautions taken by the provider and recommendations to the Service Member's commanding officer per DoD Directive 6490.1 (reference(a)) and DoD Instruction (reference (b)),

   c. Recommendations to the Service Member's commanding officer for administrative management.

8. Documentation

   a. Documentation of the history, mental status examination, physical findings, assessment, and recommendations shall be recorded on Standard Forms for impatient or outpatient care.

   b. In those cases of individuals clinically judged to be imminently or potentially dangerous, a memorandum documenting the summary of clinical findings, precautions taken by the provider, verbal recommendations made to the Service Member's commanding officer, and current recommendations shall be forwarded by the mental healthcare provider via the Medical Treatment Facility commanding officer to the Service Member's commanding officer within one business day after the evaluation is completed.

Glossary of Abbreviations

CIDC	Criminal Investigation Division Command
DADT	Don't Ask, Don't Tell
DAIG	Department of the Army Inspector General Agency
DoD	Department of Defense
FOIA	Freedom of Information Act
FOUO	For Official Use Only
IG	Inspector General
IGAP	Inspector General Action Process
IGAR	Inspector General Action Request
IGNET	Inspector General Worldwide Network
IGPA	Inspector General Preliminary Analysis
IO	Investigating Officers or Intelligence Oversight
MFR	Memorandum For Record
MP	Military Police
MPI	Military Police Investigator
NSPS	National Security Personnel System
PA	Privacy Act or Preliminary Analysis
ROI / ROII	Report of Investigation or Investigative Inquiry
SAIG	Office Symbol for DAIG
SES	Senior Executive Service
SJA	Staff Judge Advocate
TIG	The Inspector General
USAAA	U.S. Army Audit Agency

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