

DEPARTMENT OF DEFENSE

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**JOINT INSPECTOR GENERAL  
INVESTIGATIONS GUIDE**



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Revision 2 (Change 1)







# The Joint IG Investigations Guide

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# Introduction

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## The Joint IG Investigations Guide

1. **Purpose.** This guide outlines the specific techniques, formats, and procedures used when performing Joint IG Investigations.

### 2. The Joint IG Investigations Guide

a. Investigations are one of the four specific Joint IG functions. An investigation is a fact-finding examination into allegations of impropriety by an individual or an adverse condition that affects the warfighting capability of a Joint command. The Joint Command IG (JCIG) may investigate any violation of law, policy, or ethical standards, including, but not limited to, allegations of fraud, waste, abuse, and mismanagement. The JCIG is also responsible for conducting investigations into allegations of restricting access to the IG, statutory Whistleblower Reprisal, and Improper Mental Health Referrals involving military members, civilians, non-appropriated fund employees, and contractors in accordance with established law and DoD policy. The JCIG will report allegations against senior officials to the Department of Defense IG (DoD IG) through the COCOM IG (if a JTF IG is reporting) and the Joint Staff IG with a concurrent report to the respective Service IG.

b. A Joint IG investigation must meet four standards; independence, accountability, completeness, and timeliness (IACT). Although sometimes difficult, a Joint IG must be **independent** and impartial both in fact and appearance. The Joint IG gives the final Report of Investigation (ROI) to the Directing Authority (commander), the person normally authorized to use the ROI and to hold wrongdoers **accountable** for their actions. The report stands alone, is **complete**, and tells the story from beginning to end without compelling the reader to refer to the enclosures to understand the report. The reader should understand the content of the report and come to the same conclusion as the investigator. In support of the investigative process, the Joint IG should complete the investigation and submit the report to the Directing Authority in a **timely** manner. This timeliness is particularly important given the impact a Joint IG investigation has on an organization and the lives and careers of individuals.

c. Joint IG investigations are administrative in nature. Depending on the circumstances, the JCIG may refer allegations of criminal activity to the commander, the Service IG, or the appropriate criminal investigative service. If the alleged criminal activity involves the commander or deputy commander, the JCIG should refer the matter through the COCOM IG (if a JTF) to the Joint Staff IG for subsequent referral to DoD IG.

3. **The Guide as a Handbook.** This guide is designed to serve as a ready reference and step-by-step handbook that will allow a Joint IG to conduct an administrative investigation (or investigative inquiry) as part of the Inspector General Action Process (IGAP). Many of the techniques and formats offered herein are not mandatory for use but instead offer all Joint IGs a common frame of reference and a generally approved way of executing IG investigative actions. This guide supports and complements The Joint Inspector General Concept and System Guide.

**4. Format for Sample Memorandums.** This guide contains numerous sample memorandums that adhere to the format requirements outlined in Joint Staff Manual (JSM) 5711.01D, Joint Staff Correspondence Preparation. However, in an effort to save space and paper, some of the required font sizes and spacing have been compressed. Refer to JSM 5711.01D for the precise format specifications.

**5. Questions and Comments.** For questions or comments concerning this guide, please contact the staff and faculty at the Joint Inspector General Course.

# Chapter 1

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## Overview

- Section 1.1 Introduction and Purpose
- Section 1.2 Rights and Protections
- Section 1.3 Joint Inspector General Action Process



# Section 1.1

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## 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 requirements for IG investigations and investigative inquiries in accordance with The Joint IG Concept and System Guide.
2. **Scope.** If in the process of resolving Joint Inspector General Action Requests (Joint IGARs), preliminary analysis reveals possible wrongdoing by an individual, the fact-finding process will either be an investigative inquiry or an investigation. In this section, the principles and philosophies of IG investigative inquiries and investigations are described, as well as the techniques used to conduct them. The techniques discussed are based on years of effective field investigation experience. Every case will be unique and the facts and circumstances will differ. Consequently, sound judgment must be applied based upon training, experience, knowledge of the case at hand, and the desires of the commander.
3. **Caution.** Before conducting an investigation or investigative inquiry, review Chapter 5 of this Guide, to ensure familiarization with the requirements of an investigation and an investigative inquiry.



## Section 1.2

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### Rights and Protections

1. **Overview.** IG investigative inquiries and investigations afford subjects and suspects against whom allegations are made a broader range of rights and protections (both legal and administrative) than are afforded individuals in a criminal investigation. Complainants and witnesses also have certain rights. Chapter 4 of this guide discusses these rights and protections.

2. **Legal and Administrative Basis.** Joint IG investigations and investigative inquiries are administrative and not legal actions. The administrative due process afforded during Joint IG investigations is as follows:

- Advising the subject or suspect of the allegations made against him or her;
- Advising the subject or suspect of the unfavorable information against him or her;
- Giving the subject or suspect the opportunity to comment on unfavorable information that will be used against him or her; and
- Protecting the rights of all persons against self-incrimination.

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

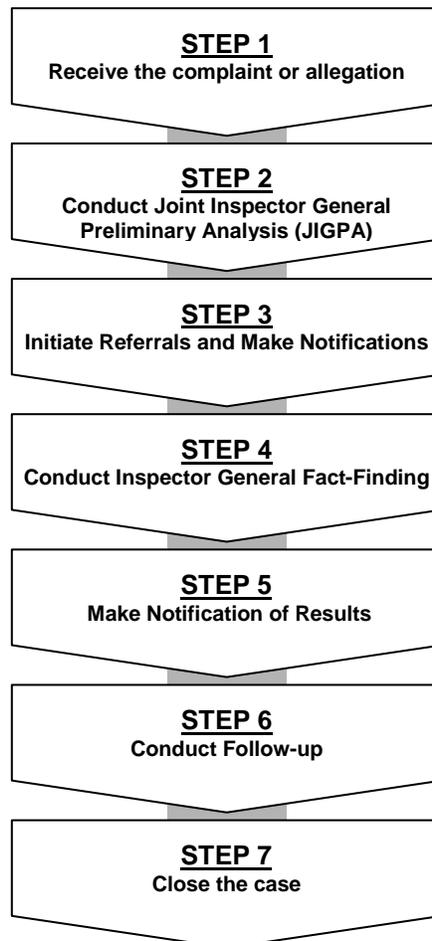


## Section 1.3

### Joint Inspector General Action Process (JIGAP)

1. Joint IGs conduct investigations and investigative inquiries in accordance with the JIGAP. The JIGAP facilitates a systematic, fact-finding approach to IG problem solving. Specific actions or components of the JIGAP are integral to the entire process and are not intended to be a group of isolated steps accomplished independent of the process. The process does not require a dogmatic, sequential application of each step for every case. The JIGAP allows the Joint IG to accomplish all critical tasks in resolving complaints. The JIGAP begins with the Joint IG receiving a complaint or allegation. Anyone can make a complaint or allegation to a Joint IG. They come from walk-ins, call-ins, e-mail messages, write-ins, web-based or from information an IG learns independently.

2. **JIGAP.** There are seven steps in the JIGAP:





## Chapter 2

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### Preliminary Analysis (PA)

- Section 2.1 Preliminary Analysis
- Section 2.2 Issues
- Section 2.3 Allegations
- Section 2.4 Examples of Violations of Standards
- Section 2.5 IG Appropriateness
- Section 2.6 Course of Action Development
- Section 2.7 Allegations Often Resolved by an Investigative Inquiry or Investigation
- Section 2.8 Comparison of Investigative Inquiries and Investigations
- Section 2.9 Obtain Authority
- Section 2.10 Common Pitfalls



## Section 2.1

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### Preliminary Analysis

1. **Overview.** Joint IGs begin the JIGAP by receiving complaints, the first step of the process. Complaints can be made directly to the Joint IG by initiating a Hotline complaint or submitting a request for assistance (Joint IG Action Request, or Joint IGAR) or can be referred to the IG from other sources such as DoD IG or the Office of Congressional Liaison. Regardless of the method of receipt, Joint IGs treat each complaint with equal vigor and attention to detail.

2. **Refine the Issues and Allegations.** In step two, "Conduct Joint IG Preliminary Analysis," of the seven-step Joint IG Action Process (JIGAP), the Joint IG must identify the issues and develop the allegations. If step two of the JIGAP revealed an impropriety, then fact-finding (step four of the seven-step process) is either an investigative inquiry or an investigation. This approach is detailed, structured, and requires additional analysis of the allegations. The process builds upon the analysis performed as part of a preliminary analysis (PA). While additional analysis may appear redundant, it is important. Failing to properly identify the issues and allegations is the greatest problem encountered by Joint IGs when they conduct investigative inquiries and investigations.

This part of the process will determine if the Joint IGAR is an allegation, an issue, a request for assistance or a combination of the three. Not all issues brought to the Joint IG's attention require an investigation. Some issues will be referred onward.

a. Joint IG Preliminary Analysis (JIGPA) is a process used by a Joint IG to determine how best to proceed with a case. JIGPA 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 Joint IG action, acknowledges receipt to the complainant, and assists the Joint IG in developing a course of action (COA). A Joint IG will use JIGPA to determine who should resolve the problem and how to solve it.

The Joint IG may provide assistance; conduct a Joint IG Inspection or Investigation; refer the case to another Inspector General or agency; or recommend a follow-on investigation using other investigative processes such as a commander's inquiry or appropriate Service-related criminal investigation. A Joint IG is usually in JIGPA until he or she selects a course of action.

b. Joint IGs 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 Joint IG to turn a matter of concern over to another individual or agency. This referral process requires the Joint IG to be aware of the possible implications concerning the confidentiality of the complainant. A person who asks for help may not want his supervisor to know that he made a complaint to the Joint IG. While interviewing the complainant, the Joint IG should determine the circumstances and act accordingly.

Referring the complaint to another agency usually means the Joint IG will need to follow-up to determine the action taken and whether or not it addressed the complaint.

The Joint IG should request that the individual or agency provide the response back to the Joint IG. The Joint IG 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 Joint IG.

## Section 2.2

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### Issues

1. **Overview.** Issues are a complaint, request for information, or request for assistance to a Joint IG that does not list a “who” as the alleged violator of a standard or policy. Simply stated, an issue is something a person states in a complaint into which a Joint IG must inquire. It may be a rationale for why something has transpired or an allegation of wrongdoing within an organization. Issues can become allegations when all five parts of an allegation are present.

2. **Requirement.** Issue identification is critical to preliminary analysis. Joint IGs must address a complainant’s issues during the investigation or investigative inquiry in order to resolve the complaint. Failure to do so may result in a dissatisfied complainant alleging that the Joint IG improperly white-washed or covered up a complaint.



## Section 2.3

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### Allegations

1. **Overview.** Complainants do not normally write allegations in a manner that is useful for fact-finding purposes; this responsibility falls to the Joint IG. The Joint IG must take the information from the complainant, research the standards for each issue raised by the complainant, and write a concise allegation that contains five elements (Five Ws): Who, did What, to Whom, in violation of What order, regulation, or policy, When. The Joint IG must consider each of the five 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, a complaint is received alleging the commander of a Truck Company improperly used a Government vehicle. The individual who was the company commander at the time of the alleged impropriety must be identified in order to identify the subject or suspect. He or she should be a military member or DoD civilian in the IGs command. If he or she is not in the command, coordinate a referral of the case through IG technical channels to another IG. If he or she is a civilian, consult with the SJA. For example, a complaint is received alleging that the garrison commander's wife was using an official vehicle to visit the commissary. If she was not a DoD employee, the IG has 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 the SJA.

c. Describe the “**WHAT**” to “**WHOM**” (alleged acts) that constitute the impropriety. This information is extracted from information provided by the complainant -- interview, complaint letter, request for assistance, etc. The language in an allegation should be kept simple and must be worded in such a way that substantiation represents impropriety. In some cases, the alleged act could be a failure to act such as a commander failing to take action when informed of misconduct by a subordinate. Ensure that the focus is correct and that there is a balance between specificity and confidentiality. For example, a complaint alleging a supervisor sexually harassed his secretary during the month of May might be written that the supervisor “sexually harassed a female subordinate assigned to Naval Air Station, Blue Sky.”

d. Establish a standard (in violation of “**WHAT**”) applicable to each allegation. Researching the standard is often the most difficult and important step in properly writing allegations. The IG, not the complainant, determines which standard to use. Often complainants will observe something they believe to be wrong that actually did not

violate any standard. The question that the IG must continually ask is: "Do the alleged acts violate a law, regulation, or policy?"

e. Identify the "**WHEN**" or time period covered by the alleged acts or omissions at the end of each allegation. If a specific date is known, include the date in the allegation (for example: on or about 20 March 20xx). If the allegation covers a period of time, express it as follows: "during the period June through December 20xx."

f. If the IG cannot identify a violation of a standard, there may not be an impropriety; hence, no need to investigate or inquire. Be cautious, however. Actions may violate one of the service components' core values or the 14 general ethical principles contained in DoD 5500.7-R, The Joint Ethics Regulation (JER). Other acts might violate common sense or indicate negligence to a degree that allows the use of the provisions of dereliction of duty as a standard. Sometimes an applicable standard may not exist. The IG cannot substantiate an impropriety for an action that does not violate an established standard. In such cases, the case may have to be closed. If in doubt, consult with the legal advisor.

g. Some acts violate more than one standard. Sexual harassment, for example, may violate Service regulations and policy, the JER, and the UCMJ. In selecting the appropriate standard, consult the SJA and discuss the situation surrounding the allegation and determine the applicable standard. Ensure that the the standard in effect at the time the alleged impropriety occurred is applied.

h. The IG may encounter a situation where in which a standard cannot be determined but systemic problems are evident. In such cases, the IG may elect to inspect, teach and train, or recommend corrective action rather than inquire or investigate.

i. There are situations in which systemic problems are identified during an inquiry or investigation that violate a standard but do not indicate misconduct (an allegation) on the part of any individual. The systemic issue may addressed in the other matters paragraph of the ROI/ROII.

j. It may be necessary for the IG to interview experts to determine the applicable standards. For example, if allegations of wasteful official travel are received, personnel from the servicing finance office may be interviewed to gather information on the provisions of the Joint Federal Travel Regulation (JFTR) (applicable to uniformed Service members) and the Joint Travel Regulation (JTR) (applicable to DoD civilian employees). When discussing standards with experts other than the SJA, always be aware of the need to maintain confidentiality.

k. Protect the identity of the 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 the research of the cited regulations.

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 the investigator's 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 the conclusion? "Partially substantiated" is not an acceptable IG conclusion. Write another properly formatted allegation for each act of impropriety.

3. Review the allegation and consult with the SJA. If the investigator intends to recommend that the commander direct an investigation, **ensure coordination with the SJA**. It is often helpful to ask the SJA what facts are needed to substantiate a violation of a standard. Talking to the SJA is particularly vital when dealing with standards. Always establish whether any of the allegations violated a criminal standard. If they did, the subject of the allegation(s) must be treated as a suspect, rather than a subject.

4. When formulating the allegations, do not be afraid to tackle complex, technical cases simply because of lack of previous experience in that area.

**Remember:** Experts may be called as witnesses or can be made temporary assistant IGs for the 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. By carefully studying and becoming "smart" in the area being investigated, the investigator will become extremely knowledgeable.

5. In general, the allegation should be worded along the following lines: someone (the subject) did, or failed to do, something (the act or omission), to someone (in many cases there is a victim) and such act or omission was improper (the wrongdoing) because it violated some standard (the law, rule, regulation, directive, instruction, notice or policy), on a date or during a period of time. A simple guide in formulating allegations is the five Ws: Who; did What; to Whom; in violation of What order, regulation, or policy; When. The following is a general guide for crafting an allegation:

**Example:** That Staff Sergeant John J. Jones, USMC (**Who**) accepted a gift from a prohibited source (**What**), Defense Contractor representatives (**Whom**), in violation of DoDD 5500.7, Standards of Conduct (**What**), between February through May 20xx (**When**).

6. Writing accurate allegations takes practice. Do not hesitate to ask for help from other IGs in the office or through IG technical channels, or consult the SJA.



## Section 2.4

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### Examples of Violations of Standards

1. The following are examples of alleged wrongdoing from recent cases. The bulk of allegations are violations of DoD 5500.7-R, The Joint Ethics Regulation (JER); CCMD policies; Service regulations; or personal conduct in violation of the UCMJ (for military personnel).

a. Accepting gifts and gratuities in violation of the JER.

- Expensive meals from contractors
- Expensive departure and retirement gifts

b. Use of government equipment and employees in violation of the Joint Ethics Regulations.

- 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 CCMD policies, Service regulations, the UCMJ, or the JER.

- Adultery
- Improper relationship
- Sexual harassment
- Public drunkenness
- Fraternization with subordinates
- Verbal abuse of civilians or Service members
- Sexual Assault

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. Use of aircraft or vehicles in violation of the U.S. Code or 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. Use of government funds in violation of the U.S. Code or the UCMJ (coordinate with the criminal investigative representative 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 JER.
1. Inadequate or improper response to a subordinate's impropriety, i.e., cover-up or whitewash (failure to take action)
  2. Coercion (or the perception of coercion) to join a private organization
  3. Disregarding regulatory requirements for hiring, assigning, and firing subordinates
  4. Using inappropriate language (cursing) directed toward, or in the presence of, subordinates

**2. Special Category Allegations.** DoDD 5505.06 Investigations of Allegations Against Senior Officials of the Department of Defense, requires all allegations against Senior Officials to be reported directly to the DoD IG. Senior Officials are:

- Active duty, retired, Reserve, or National Guard military officers in grades O-7 and above, or selected for promotion to grade O-7 whose name is on the O-7 promotion board report forwarded to the Military Department Secretary.
- Current and former members of the Senior Executive Service; other current and former DoD civilian employees whose positions are deemed equivalent to that of a member of the Senior Executive Service (e.g., Defense Intelligence Senior Executive Service employees, Senior-Level employees, and non-appropriated fund senior executives)
- Current and former Presidential appointees.

DoD IG will determine the method of investigation. Additionally allegations against field-grade/senior officers or senior NCOs /Chief Petty Officers and allegations of post-employment violations have additional reporting requirements as noted below.

a. **Allegations Against Senior Officials.** Joint IGs must promptly report allegations made against senior officials to the DoD IG by confidential means within **five work days** in accordance with DoDD 5505.06, and include a copy of the complaint. As facts and evidence are gathered in an investigative inquiry, continually evaluate whether the new allegations or issues are appropriate for continued involvement. As an example, if senior-official allegations are developed during an investigative inquiry or investigation, notify the DoD IG. When in doubt, call the DoD IG for guidance. If the senior official is the IG's boss, there could be concerns about confidentiality and the possible damage that could occur to the relationship between the IG and the commander. Make the DoD IG aware of these concerns. During the initial report the

DoD IG will take every reasonable step to protect the relationship between the IG and the commander. ***Do not do any preliminary analysis into allegations against senior officials.***

(1) Inform the commander of the general nature of the allegations against other senior officials in the command. Should an IG receive an allegation against his/her general/flag officer commander, contact the DoD IG for guidance prior to informing the commander. Past experience has shown that IGs who have attempted to "protect" their Commander by informing them of the allegations and/or conducting their own "preliminary analysis" or "preliminary inquiry" have actually exposed the commander and themselves to allegations of reprisal and regulatory violations. The best method of protecting the Commander is to immediately report the allegation in accordance with DoDD 5505.06. The DoD IG will provide information and/or guidance on what, if anything, to tell the Commander.

(2) If the DoD IG is conducting an investigation within the IG's own command, the agency will normally inform the commander. The DoD IG may not inform the IG of the investigation, specific allegations or status unless the DoD IG deems that they have a need to know.

b. Service reporting requirements for investigations involving other than senior officials are as follows:

(1) Army: Joint IGs will report investigations or inquiries into allegations against an E-8, E-9, or Army officer in the pay grade of O-4 through O-5 promotable (P) to DAIG Assistance Division (SAIG-AC) within two days after receipt. Send copies of all ROIs (even those not substantiated) to SAIG-AC. Joint IGs will report investigations, inquiries, or allegations against O-6s and above to DAIG Investigations Division (SAIG-IN) within two days after receipt. Send copies of all ROIs (even those not substantiated) to SAIG-IN.

(2) Air Force: Air Force: Joint IGs will report allegations of wrongdoing against Air Force officers in the grades of colonel, colonel select, or GM 15/YA-03 to SAF/IGQ Complaints Resolution Directorate. Send copies of all ROIs, CDIs, and 15-6s involving Air Force members in these grades to SAF/IGQ even when allegations are not substantiated. Additionally, forward any command action taken against Air Force members in these grades to SAF/IGQ for documentation in accordance with Air Force policies detailed in AFI 90-301, Inspector General Complaints Resolution.

(3) Marine Corps: The USMC requires initial notification to the Commandant of the Marine Corps (CMC) (JAM) when Marine Corps officers are involved in an incident of misconduct (civilian or military) that is under criminal investigation, command investigation, or preliminary inquiry under R.C.M. 303, MCM, 2008, or if the incident or allegation may generate media interest. Joint IGs will report to CMC (JAM), Report Symbol MC-1621-04, by electronic mail, facsimile (DSN 225-8350; commercial 703-695-8350), or telephone (DSN 224-4250/1740; commercial 703-614-4250/1740). If made telephonically, the Joint IG must follow-up the report with either electronic mail or facsimile within one working day. The report will be made by:

- The staff judge advocate, senior judge advocate assigned, or other designated representative within the command.

- The commanding officer or officer-in-charge where no judge advocate is assigned to the organization or when the officer is not under the command of a Marine OEGCMJ. Paragraph 402, Chapter 4, Marine Corps Legal Admin Manual, applies.

(4) Navy: Any commander, commanding officer, supervisor, or IG office must report to the Naval Inspector General within two work days of receipt (received in the form of a Hotline complaint) allegations against a retired, reserve, military officer in (or selected for) grades O-7 select or above; current or former civilians in Senior Level or Scientific and Professional positions; current or former members of the Senior Executive Service; and current or former Department of the Navy civilian presidential appointees . Report allegations against Commanding Officers in the pay grade of O-6 to the Naval Inspector General (NAVINSGEN). Forward to the NAVINSGEN's Hotline or Special Inquiries Division Directors all reports of allegations of wrongdoing against all active and reserve officers in the pay grades of O-2 through O-6, active Chief Warrant Officers 3 and 4, and enlisted personnel who serve in Joint organizations. Once the investigation is completed, Joint IGs must forward the results of the investigation, whether substantiated or not substantiated, to NAVINSGEN and include a report of corrective action.

c. **Post-Employment Violations.** If allegations of post-employment violations are received (e.g., 18 USC 207(a), (b) or (c), 5 USC 3326, 37 USC 908, or 41 USC 423(d)), coordinate with the command Ethics Counselor (SJA), the Joint IGs will report these types of allegations to the DoD IG for action. If an investigation is required, the DoD IG will usually ask the activity of the service higher-level command involved to conduct the investigation and will furnish specific guidance.

d. **Allegations Involving CCMD J-2 (Intelligence Personnel) Civilians.** Joint IGs must report allegations involving CCMD J-2 Intelligence civilian personnel to the Defense Intelligence Agency (DIA) IG, and any investigations must occur in accordance with CCMD/DIA standing MOUs. CCMD and DIA IGs will coordinate investigations of CCMD Intelligence J-2 civilian personnel; all other reporting requirements apply in accordance with existing CJCSI, DoD, and Federal guidance. The investigating IG will provide a copy of an issued report involving CCMD J-2 civilian personnel to the appropriate CCMD or DIA IG.

e. **Criminal Activities.** Joint IGs will report criminal allegations to the Joint commander and the Staff Judge Advocate and refer them to DoD IG, the applicable DoD agency, or the respective service's criminal investigative authorities for action. Report allegations involving CCMD J-2 civilian personnel, J-2 contracts, and J-2 funding to the Defense Intelligence Agency (DIA) IG, and any investigations must occur in accordance with CCMD/DIA standing MOUs. CCMD and DIA IGs will coordinate investigations of CCMD J-2 Intelligence civilian personnel, J-2 Intelligence Program contracts, and J-2 Intelligence program funding. The investigating IG will provide a copy of an issued report involving CCMD J-2 civilian intelligence personnel, J-2 contracts, or J-2 funding to the appropriate CCMD or DIA IG.

## Section 2.5

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### IG Appropriateness

1. **Overview.** 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 Joint IG. Furthermore, allegations constituting a felony offense are not appropriate for a Joint 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**. Joint IGs frequently inquire into and investigate these types of allegations. Consult the legal advisor for advice if there is uncertainty in this area.

b. When **other means of redress** are available (see Table 2.5.1), Joint IGs should advise complainants to exhaust the prescribed redress or remedy first, except in cases of reprisal. Reprisal cases should be filed immediately. Joint IG involvement should 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 a Joint 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, advise him or her as to the procedure for redress and deem the complaint not IG appropriate.

c. The Directing Authority may require an investigation or investigative inquiry be conducted into matters that would normally not be IG appropriate. When this situation arises, advise the Directing Authority that there may be another more appropriate venue to the issue. If still directed to proceed, contact the legal advisor and local criminal investigation organization office as appropriate.

2. **Chain-of-command action.** If the chain of command decides to address the issues and allegations made by a complainant, subordinate commanders should be afforded the opportunity to conduct a commander's inquiry. ***Joint IGs try to give the command an opportunity to address problems first. Allegations of reprisal and restricted access cannot be investigated within command chains and must be handled by the IG.***

3. **Misconduct by Military Lawyers.** Allegations involving professional misconduct by military lawyers are not IG appropriate. Refer these allegations through the appropriate Service IG Legal Division's senior counsel for disposition.

4. **Misconduct 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 the appropriate Service IG Legal Division's senior counsel for disposition.

**Table 2.5.1. Established Redress and Resolution Paths**

	<b>A</b>	<b>B</b>
	<b>Type of Issue</b>	<b>Appropriate Agency to Resolve the Issue</b>
<b>1</b>	Appropriated Fund Employees: Conditions of Employment (personnel policies, practices, and matters affecting working conditions)	Servicing Human Resources Office
<b>2</b>	Equal Employment Opportunity (EEO) Issue (Discrimination based on age, disability, equal pay/compensation, genetic information, national origin, pregnancy, race/color, religion, sex, sexual harassment)	Local EEO Officer
<b>3</b>	Allegations of Reprisal	Complaints that are non-EEO: Direct the complainant to the DoD Hotline ( <a href="http://www.dodig.mil/hotline">www.dodig.mil/hotline</a> ) The complainant also has the option to contact Office of Special Counsel ( <a href="http://www.osc.gov">www.osc.gov</a> )
<b>4</b>	<b><u>Non-appropriated Fund (NAF) Employees:</u></b> Conditions of Employment (personnel policies, practices, and matters affecting working conditions)	Servicing Non-appropriated funded Employment Office
<b>5</b>	Equal Employment Opportunity Issue (NAF)	Local EEO Officer, Civilian Personnel Advisory Center, and Staff Judge Advocate Labor Counselor, as appropriate.
<b>6</b>	Allegations of Reprisal (NAF)	Direct the complainant to the Office of Special Counsel ( <a href="http://www.osc.gov">www.osc.gov</a> ) or DoDIG Hotline ( <a href="http://www.dodig.mil/hotline">www.dodig.mil/hotline</a> )
<b>7</b>	Reserve Assignment matters	Appropriate Service Reserve Command
<b>8</b>	Military Equal Opportunity Issue	Commander; Local EO Representative
<b>9</b>	Administrative Separations	Military Personnel Office
<b>10</b>	Equal Opportunity in off-base housing	Housing Referral Office
<b>11</b>	Landlord complains about a	Commander

	service member	
12	Service member complains about the landlord	Staff Judge Advocate (SJA)
13	Claims against the U.S. Government	SJA
14	Correction of military records	Service-specific Board for Correction of Military Records
15	Promotion Recommendations	Commander
16	Appeal of Performance Reports	Commander; Service-specific Personnel Office
17	Support of Dependents	Service member's Commander
18	Private Indebtedness	Commander; SJA
19	Letter Of Counseling, Letter Of Reprimand, or Article 15 (other than discrimination/reprisal)	Applicable service regulations for the appeal process; Commander; SJA
20	Punishment under UCMJ	SJA
21	Article 138, UCMJ (Complaint of Wrong)	SJA
22	Hazardous Working Conditions	Appropriate Service or Command Safety channels
23	Elimination From Training	Commander
24	Medical Treatment	Commander of the Medical Command
25	TRICARE Complaints	TRICARE Benefits Services Office ( <a href="http://www.tricare.mil">www.tricare.mil</a> )
26	Misuse or abuse of government vehicles	Base transportation or Commander
27	Unprofessional Relationships	Commander
28	Adultery	Commander
29	Sexual Harassment (Military)	Commander or local EO representative
30	Allegations of reprisal by DoD contractors	DoDIG Hotline
31	Allegations against Military Defense Counsel	Chief Circuit Defense Counsel or Headquarters
32	Anti-Deficiency Act Violations	SJA or Appropriate Service Financial Management Branch
33	Health Insurance Portability and Accountability Act (HIPAA) Issues	Commander of the Medical Command
34	National Guard Title 32 matters	State Joint Forces Headquarters IG or National Guard Bureau IG

35	Commander-Directed Investigations	Review for due-process; Commander; Legal Office
36	Local Nationals or Third Country Nationals	SJA for advice on proper course of action
37	Sexual Assault	Report to law enforcement and to Sexual Assault Response Coordinator (SARC); Commander
38	Trafficking in Persons	Report to commander and Law Enforcement
39	Domestic Violence	Law Enforcement; Family Advocacy Program
40	Change to a Service Publication	Proponent of publication

**Note:** The appropriate agency to which a complainant should be referred will depend on whether the complaint is made *by* the service member or *about* the service member.

## Section 2.6

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### Course of Action Development

#### 1. Commander's/Directing Authority's Options

a. Joint commanders have several options available to resolve allegations of wrongdoing. After considering the allegation, they may elect to take no further action, pass the allegations to a subordinate commander, refer the case to another investigative venue, or conduct either an IG investigative inquiry or investigation. The least desirable option is to do nothing. This option could result in an allegation against both the IG and the commander for failing to take appropriate action. Commanders do not have the authority to conduct reprisal or restricted access investigations; by law, these allegations must be addressed within IG channels.

b. The decision whether to conduct IG fact-finding or to conduct a non-IG investigation rests with the Joint commander and is usually based on the recommendations of the Joint IG and the SJA. Ensure recommendations are coordinated with the SJA before bringing allegations to the commander for a decision.

c. In some cases 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 the IG understands his/her commander. There are certain types of allegations that the commander will want to know about immediately. Also, the Joint commander will probably want to know immediately when allegations are made against key individuals in the command. On the other hand, the commander may permit the IG to inquire into some allegations without informing him or her in advance. Many Joint commanders provide either verbal or written guidance to their IGs concerning those topics on which the Joint IG can initiate investigative inquiries without prior approval. As the IG's relationship with the commander evolves, he/she will gain a better understanding of those issues important to the commander. The key point here is to avoid "blind-siding" the Joint commander.

#### 2. Select a Fact-Finding Process

a. After the allegations are formulated and IG appropriateness is determined, the IG must determine whether they will conduct an investigative inquiry or recommend that the commander direct an investigation. Except for reprisal and restricted access cases, there are no hard and fast rules to guide the IG in making this determination. Every case is different. As the IG's relationship with their commander develops, he/she will gain an appreciation for the types of issues of personal interest to the commander. During the IG's initial in-brief with the Joint commander, they should ask for guidance on this subject. Factors to consider when deciding whether to recommend an investigation or an inquiry are:

(1) **Seriousness of the Allegations.** 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. Sometimes referring the allegation to a subordinate commander may be appropriate. If a recommendation to investigate is appropriate at the current level, then an IG investigation may be appropriate for the subordinate-level commander.

(3) **Image of the DoD.** Are the issues so sensitive that the image of the DoD or the CCMD could be needlessly damaged if confidentiality is not maintained? Confidentiality is a key tenet of Joint IG investigations.

(4) **Impact on Command.** If known, could the allegations impact the Joint command's ability to function or the ability of key members of the command to function effectively?

(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? JCIGs document all investigations and investigative inquiries in the ROI/ROII format.

(6) **Harm to Service member.** Do the issues have the potential to cause real or perceived harm to a Service member's career or personal life?

(7) **Civilian Involvement.** Do the allegations involve civilians or members of another command not under the Directing Authority's control?

(8) **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 and inquiries protect the rights of all persons involved.

(9) **"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.

(10) **Media Interest.** Do the issues have potential media interest (or already have media interest)?

b. Depending on the situation, any combination of these issues might cause the IG or Joint commander to resolve the issues with an IG investigation or investigative inquiry. Remember that the primary factor in the decision should be: Will the decision to conduct either an inquiry or investigation satisfy the commander's needs, be thorough, and protect the rights of everyone involved?

### 3. Nature of IG Investigative Inquiries and Investigations

a. **Fair and Impartial.** The Joint commander will base decisions on the facts the IG presents. Therefore, the IG must thoroughly investigate and make an independent, accountable, complete, and timely report. As an impartial fact-finder, the IG must also report both sides of the story, not just the evidence that supports the conclusion. Additionally, IG investigations and investigative inquiries are always conducted in an

overt manner; covert methods are not appropriate for IGs. However, Joint 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. The IG can minimize these effects by maximizing their protection of confidentiality and limiting distribution of information about the investigation to only those who need to know.

c. **Confidentiality.** All DoD personnel have a duty to cooperate with Joint IGs. Individuals who provide information have a reasonable expectation that their identity and the nature of their testimony will be safeguarded to the maximum extent possible. Successfully protecting the confidentiality of those with whom the IG interacts is a key component of the Joint IG system as it protects individual privacy and precludes retaliation. This approach also maintains confidence in the Joint IG system and encourages voluntary cooperation and willingness to ask for help or to present a complaint for resolution. **However, the IG must not state or imply a "guarantee" of confidentiality.** Information and testimony provided to Joint IGs is used within the DoD for official purposes and may be released outside the DoD if required by law or regulation.

d. **Non-adversarial Approach.** Joint IGs conduct investigations in a non-adversarial manner. Joint IGs must conduct themselves professionally, tactfully, and in a non-judgmental manner. Joint IGs must conscientiously avoid becoming biased during the course of an investigation or investigative inquiry. A Joint IG conducting an investigative inquiry or an investigation **is not** a prosecutor conducting a trial. Remember: the Joint IG's role is to protect the best interests of the government as well as the rights and confidentiality of all involved individuals.

e. **No Recommendations for Adverse Action**

(1) Joint IGs do not recommend adverse action in the ROI/ROII.

(2) Joint IGs assess facts, draw conclusions, and make recommendations. Prior to rendering a report to the commander, the IG should request a legal review of the ROI and, in some cases, an ROII for legal sufficiency. Accordingly, the legal advisor may then provide specific recommendations to the Joint commander regarding subsequent action.

(3) Joint IG records may be used as the basis for adverse personnel action only with concurrence of the individual's Joint commander and the approval of the CCMD commander (or his or her designated representative). Joint IGs should advise the commander on the possible consequences such action may have on the perceived confidentiality of the Joint IG system. Should Joint 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) Subjects and suspects of Joint IG investigations should not have favorable personnel actions suspended as this could compromise confidentiality. If personnel actions are pending, the JCIG should inform the Joint commander of the allegations and status of the investigation so the Joint commander can make an appropriate decision regarding the personnel action.

f. **Joint IGs Identify Problems.** If during an investigative inquiry or investigation, the IG discovers issues or problems not specifically related to the allegation, they can initiate corrective action by bringing the issues to the attention of the Joint 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 JCIG determined that travel claims are not properly processed within the command. The JCIG could alert the Joint commander and provide the local Finance and Accounting Officer an extract of the pertinent information without revealing confidential information.

## Section 2.7

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### Allegations Often Resolved by an IG Investigative Inquiry or Investigation

1. **Overview.** Experience has shown that Joint 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/US Code) or of punitive standards within regulations.
2. **Criminal Allegations.** Joint IGs do not investigate criminal offenses (generally 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 criminal investigators typically do not investigate but do reflect on the credibility of the command. Therefore, the commander may direct the IG 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 the 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 Joint IGs frequently investigate them.
4. **Exceptions.** Joint IGs may investigate some UCMJ violations. Adultery and dereliction of duty are typical examples of allegations not normally investigated by DoD and Service criminal investigators even though they are criminal violations of the UCMJ. IGs should coordinate with law enforcement officials and the SJA in cases involving allegations that are criminal in nature.



## Section 2.8

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### 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 Joint IG must analyze the situation at hand, decide if standards have been violated, and determine what evidence he or she must gather, 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.** Joint IG investigative inquiries and investigations are processes designed specifically to look at allegations of wrongdoing on the part of a person. Both 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 nature of the case determines the detail with which evidence is gathered and evaluated, not the fact-finding process selected. If each investigative inquiry and investigation is conducted in accordance with the procedures in this guide, this will ensure thoroughness, fairness, and impartiality.

c. **Difficulty.** Some Joint 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.

d. **Directing Authority.** A JCIG may initiate an investigative inquiry. Many Joint IG offices have a local policy that outlines who may inquire into what types of allegations. Only the Joint commander may *direct* an IG investigation, usually upon the recommendation of the JCIG.

#### 2. Personnel who can conduct an Investigation or Investigative Inquiry

a. A Joint Command IG (JCIG), Deputy Joint Command IG (DJCIG), and Assistant IG (AIG) may lead an investigation or investigative inquiry. Temporary Assistant IG (TAIGs) routinely assists detailed IGs in all phases of investigations (normally two IGs are assigned to an investigation). TAIGs may not lead an investigation. A Liaison IG (LIGs) is limited to providing administrative support only for investigative inquiries and investigations.

b. Outside experts such as medical doctors, psychologists, military or DoD civilian lawyers, Equal Opportunity staff officers, auditors, or contracting specialists may also be required to assist in investigations or investigative inquiries. Normally, Joint IGs call upon these types of individuals as expert witnesses or subject-matter experts. If the

Joint IG needs them to assist throughout the investigative inquiry or investigation, the Joint IG may appoint them as Temporary Assistant IGs (TAIGs). Administer TAIGs the IG oath in accordance with The Joint IG Concept and System Guide and limit their duties to their areas of expertise.

3. **Evidence.** Oral statements from witnesses often provide the bulk of the evidence in both investigative inquiries and investigations. In investigative inquiries, statements may be made in informal interviews. In investigations, witnesses will provide sworn, recorded testimony. However, there are circumstances under which sworn testimony is appropriate in investigative inquiries. Unsworn statements in investigations occur by exception.

4. **Protections.** Investigative inquiries and investigations must provide protection for the persons involved, the Joint command, and the Joint IG system. Protections are built into the investigation process. They include administrative due process; Privacy Act rights; consent to release under the Freedom of Information Act (FOIA); and confidentiality.

## Section 2.9

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### Obtain Authority

1. **Overview.** Gaining authority for an IG investigation or investigative inquiry is a simple but sometimes misunderstood process.
2. **Investigative Inquiries.** If the IG determines that an investigative inquiry is the appropriate fact-finding process, a written directive is not required. The JCIG can direct an investigative inquiry. The lack of requiring a directive does not, however, relieve the JCIG of responsibility to keep the Joint commander informed. Local Joint IG office procedures will provide guidance on the conduct of investigative inquiries. Joint IGs should not begin an investigative inquiry without a directive from the JCIG. The JCIG may provide either a written or oral directive.
3. **Investigations.** Should the IG recommend that an investigation is appropriate, there are formal steps required to obtain the authority to begin. The commander is the only individual who is authorized to "direct" the IG to conduct an investigation. The tool used to obtain a Directive is the Action Memorandum.

a. **Action Memorandum.** When determined that an IG investigation is necessary, prepare an Action Memorandum for the commander (an example is shown in Exhibit 2-9-1 or use another locally acceptable format). The Action Memorandum is an internal administrative document and should be included in the final ROI (ROI if appropriate). It defines the scope and limits of what the IG and the commander decided to investigate. As a document prepared in conjunction with an IG investigation, the Action Memorandum is For Official Use Only (FOUO) and must be marked accordingly. It may be 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 the 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 the IGs 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 Directive.*** This lack of disclosure helps maintain confidentiality. The Directive is prepared by the IG, signed by the Directing Authority, and addressed to the Directing Authority's IG (originator). If the IG issues the initial Directive orally, a Memorandum For Record (MFR) should be written that outlines instructions. A signed Directive should be secured as soon as practicable. Ensure that the SJA concurs with the approach and recommendation for an IG investigation.

c. The Directive (see Exhibit 2-9-2):

- Is 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 the investigator's authority
- Is quoted in the formal read-in of witnesses.
- Gives the authority to require the presence of military and DoD 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 Joint 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 Joint IG and Directing Authority concerning what the Joint IG should investigate.

5. Any Joint commander who is authorized a Joint IG may direct an IG investigation. Only DoD IG may direct an investigation of a senior official.

6. The Action Memorandum and Directive should be hand-carried to the Joint commander. Schedule time to provide the commander a desk-side briefing on the allegations and issues; the IG may ask the SJA to be present. Do not send an Action Memorandum and Directive through normal distribution, and do not assume that the Deputy Commander, Chief of Staff, or other members of the staff should be made aware of the investigation unless the commander so desires.

**Exhibit 2-9-1**

**EXAMPLE ACTION MEMORANDUM**

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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

JOHN E. APPLESEED  
CAPT, USN  
Inspector General

**FOR OFFICIAL USE ONLY**

**Exhibit 2-9-2**  
**EXAMPLE DIRECTIVE**

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MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: Directive for Investigation

1. Investigate alleged improprieties by a Service member assigned to (Command/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.

SAIL A. SHIP  
Rear Admiral, USN  
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.

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## Section 2.10

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### Common Pitfalls

1. **Overview.** The greatest problem with Joint IG preliminary analysis (PA) is improperly developed allegations. Common problems are:

a. Poorly worded allegations that do not address the complaint frequently appear in IG investigations.

b. Allegations are sometimes too broad in scope, combining two or more allegations.

c. Standards used are frequently either wrong or not dated with the time of the alleged impropriety.

d. 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, Joint IGs should use formal proceedings (investigation) to ensure that the suspect's rights are fully protected.***

2. Frequently, Joint IGs will receive complaints that generate multiple allegations against multiple individuals. In such situations, the 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.

3. ***Never work cases on General/Flag Officers, SES personnel, or Colonels/Captains (USN) selected for promotion.*** Refer these cases to the DoD IG within **five work days** via the most secure and confidential means possible. ***Do not open a Joint IGAR, and do not conduct a preliminary analysis!***



# Chapter 3

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## Referrals and Initial Notifications

Section 3.1 Referring Allegations

Section 3.2 Initial Notifications

Section 3.3 Use of Command Products



## Section 3.1

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### Referring Allegations

1. **Referral to Another IG.** If after preliminary analysis the IG determines that the case is not appropriate for his/her Joint IG office but is appropriate for a higher, lower, or adjacent-level IG, refer the case to that office. Once the case is accepted on the other end, the referral may be closed-out. If the local Joint IG is maintaining office-of-record status, keep the case open until the office of inquiry completes the report and forwards it 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 refer matters to the chain of command, monitor the case to ensure the chain of command takes appropriate action, write an executive summary of investigation using the command product as a piece of evidence, and then complete steps five through seven of the JIGAP to close out the case.

a. If a case is referred or recommended to another Joint commander for the commander to conduct an inquiry or investigation, keep the case open. All referral documents sent to commanders requesting that an inquiry or investigation be conducted should include all allegations written in the correct five-part format (i.e. Who, did What, to Whom, in violation of What order, regulation, or policy, When). The referral document should also inform the Joint commander that the JCIG requires a copy of the inquiry or investigation. Additionally, advise the commander that the JCIG will notify the subject/suspect of the inquiry or investigation of the results posted in the IG database (see exhibit 3.1.1, the example referral memorandum). Upon reviewing the command product and determining that information is missing or that the command did not address all issues, discuss the discrepancies with the Joint commander and ask that the corrections be made. If the Joint commander refuses to address the missing issues or add the missing information, inform the Joint commander that the JCIG will conduct an inquiry on only those areas the Joint commander refuses to address. Further disagreement with procedures followed for the conduct of the investigation, should be resolved with the command. If the issues cannot be resolved, contact the COCOM IG or Joint Staff IG for guidance before proceeding.

b. If the Joint commander refuses to provide a copy of his/her inquiry or investigation, explain to the commander that the IG is authorized a copy of the inquiry or investigation. If after Directing Authority intervention, the Directing Authority refuses, contact the COCOM IG or Joint Staff IG for guidance before proceeding. If an inquiry or investigation is being conducted and then it is discovered 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 the COCOM IG or Joint Staff IG for guidance before proceeding. Table 3.1.1 shows when to transfer a complaint to another IG; however, this table is not all-inclusive. Table 3.1.2 explains how to transfer a complaint to another IG.

**Table 3.1.1  
When to Transfer a Complaint to Another IG**

	<b>If...</b>	<b>and...</b>	<b>then..</b>
1.	The Subject is a Senior Official (General Officer, Flag Officer, SES, SES equivalent, Flag Select, or General and Flag officer select, Presidential appointee, retired Senior Official – see App A).		Transfer the complaint to DoD IG.
2.	The complaint has not been addressed at the level where the alleged wrongdoing occurred.	The higher level Joint IG determines transfer to the lower level Joint IG is appropriate and no evidence of bias by lower-level Joint IG exists.	Transfer the case to the lower-level Joint IG.
3.	The complaint presents a conflict of interest for the Directing Authority or Joint IG.		Transfer the complaint to the next higher level Joint IG.
4.	The subject is the Directing Authority or a member of his/her immediate staff, or an Joint IG staff member.		Transfer the complaint to the next higher level Joint IG.
5.	The subject is assigned to a higher level command than the Joint IG who received the complaint.		Transfer the complaint to the Joint IG at the same command as the subject.
6.	The complainant is assigned to a tenant command and is anonymous or a third party.	The subject is assigned to the host command.	Transfer the complaint to the IG of the host command.
7.	The complainant is seeking assistance with an issue not under the receiving Joint IG's purview.	There is no allegation of wrongdoing.	Transfer the Joint IGAR to the IG under whose purview the issue falls.

**Table 3.1.2  
How to Transfer a Complaint to Another IG**

<b>Step</b>	<b>Action</b>
1.	Using preliminary analysis, determine if the complaint is appropriate for the IG process and should be transferred to another Joint Inspector.
2.	Transfer the complaint, in writing, to the appropriate IG explaining the rationale for transfer. A courtesy telephone call prior to transfer is recommended. Ensure that the transferring IG has all the necessary supporting documentation/information in order for the receiving IG to resolve the matter.
3.	Notify the complainant, in writing, of the transfer.
4.	Document the case in IG database as a 'Transfer', and close the case at this level.

**3. Referral to other agencies.** The IG 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, the IG should refer the information to the local criminal investigations field office and request that that office follow up with the individual and advise the referring IG of the results. The Joint IG should retain a copy of the complaint. The local criminal investigations field office may not accept it, and the IG may need to refer the allegation to the chain of command for inquiry or investigation. If the IG refers the allegation to civil authorities, be mindful that they may choose not to comply with the request for action or for a copy of their investigation. Table 3.1.3 shows how to refer the complainant to that person, agency or organization.

**Table 3.1.3  
How to Refer a Complaint**

<b>Step</b>	<b>Action</b>
1.	Using preliminary analysis, determine if the complaint could be handled in other channels.
2.	Refer the complaint in writing to the appropriate agency and notify the complainant, in writing (if possible), of the referral.
3.	Ask the referral agency to provide a copy of any closure response to the complainant for the case file.
4.	Document the case in IG database as a "Referral" and close the case.
5.	If no closure response is received, follow up with the referral agency every 30 days and document that follow-up action in IG database.

4. See exhibits 3.1.1 and 3.1.2 for a sample notification letter and transfer/referral memorandum.

**Exhibit 3.1.1**  
**Letter Format: Notification Letter to the**  
**Subject/Suspect Referral of Allegation to a Subordinate Command**

***(Letterhead)***

August 25, 2008

Grade (Subject's/Suspect's Name)  
Address  
Address

Dear Grade \_\_\_\_\_

The Joint Inspector General received an allegation that you improperly directed a subordinate to make unauthorized purchases with your government purchase card in violation of DoD 5500.7-R, Joint Ethics Regulation (JER), on 2 June 2\_\_\_\_.

In accordance with The Joint IG Investigations Guide, we referred the allegations to the chain of command for appropriate action. We will notify you of the results after the chain of command has completed its action and we have completed our report.

Sincerely,

(SIGNATURE BLOCK)  
Grade, Service  
Inspector General

(The protective markings on this letter are for the file copy only)

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**Exhibit 3.1.2**

**Memorandum Format: Complaint Referral for Investigation to a Joint Commander**

Office Symbol  
2 Feb 08

MEMORANDUM FOR Commander (unit referred for action)

SUBJECT: Inspector General Case Referral (Case Name/Case Number)

1. The COCOM Inspector General received complaints alleging misconduct by members of your command. In accordance with The Joint IG Investigations Guide, 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. We will use the results of your action as the basis for our response and notification to the subject(s) of the investigation/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 The Joint IG Investigations Guide.)
  - a. Allegation 1: Grade Name (Specify the NAME of the alleged subject) made false statements against another NCO concerning APFT cards in violation of Article 107, False Official Statements, UCMJ, on or about 10 July 2\_\_\_\_.
  - b. Allegation 2: Grade Name (Specify the NAME of the alleged subject) attempted to obstruct an IG inquiry by influencing and intimidating subordinates in violation of (regulation) on 29 July 2\_\_\_\_.
5. This Joint Inspector General document contains privileged information and will be protected IAW DoD regulations. Please restrict dissemination of the document to the absolute minimum consistent with your requirement to provide a reply, and return it 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

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### Initial Notifications

1. Notifications are required when the IG conducts an investigative inquiry or an investigation. Joint IGs will make notifications and document them using one of the notification formats in exhibits 3.2.2 and 3.2.3. The Joint IG must include a copy of the notifications in the ROI/ROII.

2. After obtaining authority to conduct the investigation or inquiry, notify the subject/suspect's commander/supervisor before contacting any other witnesses or gathering further evidence.

- Notification of the commander involved ensures cooperation and understanding.
- Do not confuse this notification requirement with acknowledgment of the case to the complainant.
- Third-party complainants, those not directly wronged by the impropriety, are not entitled to any information other than the acknowledgment of receipt and closure of the case.
- The Joint IG will notify the subjects or suspects, if appropriate, of the nature of the allegations prior to conducting interviews or taking statements. This notification provides for their due-process right to know that there are allegations against them and allows them to seek legal counsel. Notification is also appropriate as Joint IGs do not operate covertly.
- Complainants, if personally wronged by the impropriety, are not entitled to know any information concerning the case other than that the allegation was substantiated or not substantiated. Communication with the complainant is a separate action and not a part of the notification step of the investigative process.

a. Command Notifications:

(1) **Chain of Command.** Normally, the Joint IG will notify the first commander or supervisor in the chain of command of the individual whom the Joint IG is investigating. Use the notification format in exhibit 3.2.2 to make these notifications. The IG, the Directing Authority, or someone designated by the Directing Authority may make these notifications. The amount of information provided, how deep in the chain of command notification is made, and whether the commander is given the option to inform other members in the chain of command will vary. The IG needs to consider the nature of the allegations, the Joint commander's guidance, and the personalities of the commanders or supervisors involved. In sensitive cases, the IG might not provide any detail except that there is an ongoing investigation.

At other times, the IG may choose 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 IG receives sensitive allegations against a commander into which the Joint commander directs an investigation. The Joint commander believes the JTF commander should be informed of the investigation but is concerned that this notification may needlessly damage the commander's reputation in the eyes of the JTF commander. Therefore, the IG may choose only to provide the JTF commander with the general information contained in the directive. Should the facts indicate that the allegations will be substantiated and that the JTF commander was knowledgeable and condoned the misconduct, the IG may need to investigate the JTF commander.

(2) **Visited Commands.** The Joint IG 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. It is the IG's decision whether or not to notify the commanders of those organizations where the investigation is being conducted. Normally, it is only necessary to provide other commands with the general information contained in the directive.

(3) **Higher Commands.** Higher commands are not automatically notified of Joint IG investigations. Notify higher commands of an investigation based on the nature of the investigation, the rank or grade of the person whom the Joint IG is investigating, or as requested by higher headquarters or directed by the commander. Use judgment and the commander's guidance to determine when to notify higher commanders. See Chapter 2 of this Guide or the [Joint IG Concept and Systems Guide](#).

#### **b. Subject/Suspect Notification**

(1) Always notify the individuals against whom the allegations are made. Failure to do so may jeopardize their due-process rights. The Joint IG should notify the person as either the subject or suspect. Determining their status in the case is the IG's responsibility; although in a difficult case, the command legal advisor may need to be consulted if there are any questions about the proper status. Making the proper distinction is important since the rights afforded vary with the individual's status. More procedural safeguards apply to suspects than to 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.

**Remember:** Military personnel who have criminal or punitive allegations leveled against them must be treated as suspects.

(2) **What to tell the subject or suspect.** A Joint IG investigation is not an adversarial proceeding. Therefore, the IG does not have to notify the subject or suspect of the specific allegations at the time of notification, but the person must be told what appears in the Directive. Under most circumstances, the IG 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. The IG must avoid any act that may jeopardize confidentiality and 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 the investigation. ***Do not tell the subject/suspect with whom the IG has talked (other than commander/ supervisor, if notified) or with whom the IG plans to talk.***

(3) The IG should understand that if he/she does not give a suspect the specific allegations during notification, then once that person is advised the specific allegations during the interview, he or she may ask to see an attorney. This situation may slow the investigation, but it is the suspect's right to seek legal advice. Exhibit 3.2.3 contains sample notification formats for subjects and suspects.

**c. Who makes the Notifications?** Who makes the notifications will be based on the Joint IG's standing operational procedures (SOP) and will vary with the grade of the person against whom the allegations are made. There are several advantages for the investigating officer to make the subject or suspect notification. It gives the IG the opportunity to begin to develop a rapport with the individual. The IG may also be able to anticipate from this conversation whether that person will be cooperative or not, and allow the IG to prepare accordingly.

**d. How are Notifications made?** Joint IGs may make notifications in person or by telephone. Experience has shown that telephonic notifications are best. Chain-of-command notifications made over the telephone are discreet and minimize disruption to the unit. In-person 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 subject or suspect, the IG should avoid discussing the facts surrounding 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. The IG may provide the allegations to their attorney. Remember that experience has shown that the best course of action is to interview the subject or suspect last, after conducting most of the investigation and the facts are known. The notification memorandums are for the IG files and should be included in the ROI/ROII. Do not send the memorandum or give it to the individuals who were notified.

**e. New Allegations/New Subjects/New Suspects.** During the investigation, new allegations may develop that are unrelated to the original allegations or unrelated to the subjects or suspects. The IG must brief or send a memorandum to their Directing Authority to expand the investigation by explaining the additional allegations and/or new subjects or suspects. Prior to completing the investigation, the Joint IG must inform the subject or suspect and give him or her the opportunity to present his or her side of the story. If the allegations are against someone not originally defined as a subject or suspect, then the Joint IG should notify and interview that person.

**Remember:** Subjects/suspects have the right to know and comment on the allegations against them and any unfavorable information.

f. Refer to the Joint IG Concept and System Guide and Figure 3.2.1, Reporting Requirements to the Services.

**Figure 3.2.1  
INVESTIGATIONS NOTIFICATION MATRIX**

	<b>Whistleblower</b>	<b>Mental Health Evaluations</b>	<b>DoD IG Hotline</b>	<b>Questionable Intelligence Activity (Procedure 15)</b>	<b>Senior Official</b>	<b>Other Service-Related Investigations</b>
<b>Army, Navy, Air Force, Marine Corps</b>	Notify – Yes IAW service policy	Notify – Yes IAW service policy	Notify – Yes IAW service policy	Notify – Yes IAW service policy	Notify – Yes IAW service policy	Notify – Yes IAW service policy
<b>Joint Staff Deputy IG</b>	Notify only if transferring investigation to another IG or doing a declination memo.			Notify immediately. Must submit a Qtly Report. JS DIG submits annual report to ATSD (IO).		
<b>IG, DoD</b>	Notify within 10 working days. Investigate if directed by IG, DoD, COCOM IG, or Joint Staff IG. Copy report - yes	Notify within 10 working days. Investigate if directed by IG, DoD, COCOM IG, or Joint Staff IG. Copy Report - Yes	Notify receipt – Yes. Investigate as directed by IG, DoD, COCOM IG, or Joint Staff IG. Copy Report - Yes	NA	Notify within 5 working days, with copy of complaint. Investigate if directed by IG, DoD. Copy Report - Yes	NA
<b>Asst. To SECDEF (Intelligence Oversight) ATSD(IO)</b>	NA	NA	NA	Notify immediately. Investigate if directed by ATSD (IO). Copy Report – Yes	NA	NA

**Exhibit 3.2.2**

**JOINT 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, Joint 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 Joint 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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Exhibit 3.2.3

**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. \_\_\_\_\_ (Directing Authority)  
has directed us 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. (Investigating Officer(s)) will contact you \_\_\_\_\_  
\_\_\_\_\_ 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 Investigating Officers 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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**Exhibit 3.2.2 (continued)**

**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. \_\_\_\_\_ (Directing Authority) has directed us 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. (Investigating Officers) will contact you \_\_\_\_\_  
\_\_\_\_\_ 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. ( ) We have 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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## Section 3.3

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### Use of Command Products

1. **Overview.** Joint IGs may use command products to resolve allegations presented to the Joint IG that were referred to the command for resolution. The Joint IG must resolve the matter within the Joint IG system, since the allegation started with the IG. Existing policy allows IGs access to all documents and other evidentiary materials (such as command products) needed to discharge their duties.

2. **Definition.** The term is a generic reference to the reports generated by command investigations or inquiries. Command products include, but are not limited to, commander's inquiries and formal and informal investigations conducted under the provisions of Service Regulations.

3. **Using 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 Joint IGs to support IG findings, conclusions, recommendations, or resolution actions become part of the IG's record. In the case of command investigation findings and reports, the commander that initiated the investigation makes the determination whether it should be released.

4. **Cautionary Note.** Joint IGs 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 may not afford due process, the Joint 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. **Joint IGs Do Not Use Command Products Alone to Resolve Allegations.** While command products can be vital to a Joint IG investigation or inquiry, they are not an alternative to an inquiry or investigation by an IG. A completed command product will rarely address each and every issue and allegation presented by a complainant to an IG and will not provide acknowledgement or feedback to complainants. Command products normally have a very specific and narrow focus and do not easily accommodate the exploration of new issues or allegations that may emerge. Command investigating officers often have less investigative training and experience than IG Investigating Officers and lack access to resources such as records and a global network.

6. **Analysis of Command Products by a Joint IG.** It is a misconception that when a Joint IG receives a complaint 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 complaint 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 a command 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 Joint 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 should follow the Joint Inspector General Action Process (JIGAP) with each complaint received, beginning with *preliminary analysis* to determine IG appropriateness and the course of action. Command products are appropriately used by Joint IGs in the *fact-finding* phase of the JIGAP, *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.

**7. SJA Coordination and Command Products.** When an IG receives a complaint and a commander's inquiry or command investigation is either already underway or not yet initiated, the Joint 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 JCIG and the SJA/command, the final product will likely not fully address the issues and allegations presented to the IG by the complainant.

**8. Sample ROI/ROII.** Chapter 9 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 a Joint IG investigation/investigative inquiry, and the pre-existence of a command product does not pre-determine how an IG must handle a complaint. If an allegation starts with the IG, it must 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 on the matter using the ROI/ROII. The command product becomes a major piece of evidence in this final determination. In addition, the JCIG must ensure that each issue and allegation presented in the complaint 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 JCIG must be prepared to question the adequacy of the command product and to look beyond its bounds.

## **Chapter 4**

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### **Rights, Non-Rights, and Witness Cooperation**

Section 4.1 Categories of Individuals

Section 4.2 Rights of Individuals Involved in IG Investigations

Section 4.3 Non-Rights of Individuals Involved in IG Investigations

Section 4.4 Duties of Individuals Involved in IG Investigations



## Section 4.1

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### Categories of Individuals

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

a. A **witness** is someone who may have information that supports or refutes an allegation. A witness may also be an expert in some field in which the IG needs to acquire knowledge concerning a law, regulation, process, or procedure.

b. A **subject** is someone alleged to have committed misconduct.

c. A **suspect** is someone against whom sufficient evidence exists to create a reasonable belief that they engaged in criminal misconduct.

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(b), UCMJ.

3. **Criminal/Punitive Allegations.** Joint IGs often use these two terms interchangeably; however, a violation of a policy's punitive provisions can be criminal under Article 92, UCMJ. The bottom line is that criminal violations may include violations of punitive regulations, violations of the UCMJ, and U.S. Code. Consult with the staff judge advocate when in doubt about the criminal nature of an allegation.

a. For the most part, the DoD and Joint technical instructions, administrative regulations, directives, and manuals serve to standardize DoD and Joint operations. Violations of regulations may subject the service member to punishment under Article 92, UCMJ. DoD civilian employees may be subject to adverse actions for violations of DoD and Joint technical instructions, administrative regulations, directives, and manuals.

b. Punitive provisions must be more than mere policy statements or administrative guidelines. Such provisions must impose a specific duty on military personnel to perform or refrain from certain acts. These provisions and regulations cannot require further implementation from subordinates. For a violation of a lawful order, no general officer promulgation is required but actual knowledge is an element.

c. The DoD/Joint Staff/COCOMs/JTFs almost always delineate their 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 military personnel who violate the subject provisions will be subject to disciplinary action under the UCMJ.



## Section 4.2

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### Rights of Individuals Involved in IG Investigations

#### 1. Opportunity to Comment

a. Administrative due process in Joint IG investigative inquiries and investigations afford a suspect or subject the opportunity to know and comment on unfavorable information that may result in adverse information included in the ROI/ROII. This administrative due process should not be confused with legal due process. The subject or suspect in a Joint IG 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. At a minimum, if IG develops substantiated allegations in an investigative inquiry that will be made a matter of IG record, subjects or suspects must be informed of the nature of the allegations and provide them the opportunity to comment. 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 Joint 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 have gathered.

#### 2. Right to Counsel:

a. Witnesses, subjects, and suspects should be afforded an opportunity to consult with a lawyer if they so desire; however, only the suspect has a right to have an attorney present during questioning. The right to legal counsel in Joint IG investigations is related to the right to remain silent and not to incriminate oneself. If the IG is going to question someone who is suspected of engaging in criminal misconduct, the person must be advised of his or her rights using the appropriate rights advisement form before questioning (contact a legal advisor for additional guidance if necessary). If during an interview, a witness or subject says something that makes the IG believe that he/she has committed a criminal offense, the IG must warn him/ her of their rights before continuing questioning. Once advised, an individual has the right to seek the advice of a lawyer, have a lawyer present during questioning, and to remain silent.

b. At the IG's discretion, lawyers may be present during witness or subject interviews. Experienced IGs comfortable with the Joint IG investigations process and with conducting interviews may allow a lawyer to be present. It usually makes the interviewee more comfortable and cooperative. Remember that the lawyer's only function in a Joint 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. The

ground rules should be explained at the beginning of the interview. If a lawyer attempts to control an interview or advise on the process, the IG may terminate the interview and seek SJA advice. Exercise care in this situation to ensure that termination of the interview does not result in the subject or suspect being denied the right to comment on the allegations and unfavorable information.

c. Ask counsel to identify himself/herself at the beginning of the interview. If counsel identifies himself/herself as Counsel for a DoD agency or organization, stop the interview and notify the Directing Authority. Government counsel, including military attorneys assigned as SJAs should not represent the interests of an individual during an IG investigation.

### 3. Right to Union Representation (Weingarten Rights):

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. An employee in a bargaining unit represented by a union may refuse to submit to an investigatory interview without union representation being present, if the employee has a reasonable belief that the examination may result in disciplinary action. It is the employee's right, not a union prerogative. The union representative may not demand to be present against a witness/employee's objectives. If an employee in a bargaining unit represented by a union makes a request for union representation, the IG must grant the request, discontinue the interview, or offer the employee the choice of continuing the interview without representation. If the union representative is not immediately available, reschedule the interview to permit the employee a reasonable amount of time to get a union representative.

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, if the IG is not sure, consult with the legal advisor before interviewing Federal employees to ensure that terms of a local contract are not violated.** Additionally, the installation may have more than one collective bargaining agreement or union contract. Find out before conducting 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 answer questions. Current law and policy provide that a union representative may ask but not answer questions, provided the representative does not interfere with the interview. Should that occur, the investigator may terminate the interview and provide the interviewee the choice of proceeding without the presence of the union representative.

d. In some cases, the right to union representation has been extended to other IG activities such as sensing sessions. The IG 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.

#### 4. Right of Individuals to Confidentiality

a. **Inspector General Act.** Section 7(b) of the IG Act forbids the disclosure of the identity of an employee, after receipt of a complaint or information, without the employee's consent, unless necessary in the course of the investigation. Under the Act, the IG is required to protect the identities of its sources to the maximum extent possible under the law, but can authorize release without the employee's consent if he/she determines that such disclosure is necessary or unavoidable. There is no absolute right to confidentiality under the IG Act.

b. Joint IGs always strive to provide confidentiality to protect privacy, maintain confidence in the Joint IG System, and minimize the risk of reprisal. Confidentiality is a key component of the Joint IG System because it encourages voluntary cooperation and willingness to present complaints for resolution. Protecting the identities of all persons involved from unnecessary disclosure as well as protecting the nature of their contact with the IG maintains confidentiality. However, the Joint IG must ensure that people who seek their help understand that while protecting confidentiality is a concern, it cannot be guaranteed. Legal or policy requirements may result in the disclosure of the identities of individuals and the information they provide. The COCOM commander or his designated representative may also disclose this same information if necessary. Joint IGs also cannot guarantee confidentiality because the Freedom of Information Act (FOIA) allows members of the public to request government records for unofficial purposes. Joint IGs should inform individuals of the provisions of the FOIA as it applies to the release of Joint IG inquiries and investigations.

c. IGs should inform the witness that he/ she is under no obligation to disclose the nature of the interview to others, including supervisors. The IG should ask the witness not to disclose his or her testimony on the matters under investigation to avoid hindering further investigative work. The IG may not direct that a witness not disclose his or her testimony.

5. **Privileged Information.** Witnesses may claim a "privilege" that prevents them from cooperating with the IG. The following claims represent those most commonly encountered and should not be considered as an inclusive list. If there are questions regarding issues of privilege, consult the SJA.

a. **Promotion Boards.** Board members, recorders, and support personnel are sworn to secrecy. If individuals must be interviewed regarding board proceedings, obtain a memorandum from the Service Secretary releasing them from their oaths. In most cases however, the IG may be able to coordinate the action through the Service IG.

b. Attorney-Client. A client has a privilege to refuse to disclose and to prevent any other person from disclosing confidential communications made for the purpose of facilitating the rendition of professional legal services to the client.

c. Husband-Wife. A person has a privilege to refuse to testify against his/her spouse.

d. Clergyman-Penitent. A person has a privilege to refuse to disclose and prevent another from disclosing a confidential communication by the person to a clergyman or a clergyman's assistant, if such communication is made either as a formal act of religion or as a matter of conscience.

e. Doctor-Patient. Many witnesses (and medical professionals) believe that communications between a patient and a doctor are protected by privilege similar to the attorney-client privilege described above. However, under Federal law, such privilege generally does not exist except under certain circumstances between a psychotherapist and his/her patient. Furthermore, there is no privilege regarding medical treatment of military personnel, military family members, or civilian employees by Government physicians. Thus, a military doctor must testify regarding his/her treatment of a service member. Additionally, IGs investigating senior official or military reprisal cases may also gain access to treatment records maintained by government medical facilities.

f. Fifth Amendment Privilege. A witness may not be forced to incriminate self.

**6. Request to Review One's Own Testimony.** Witnesses, subjects, and suspects may request 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.

## Section 4.3

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### Non-Rights of Individuals Involved in IG Investigations

The following are some common misperceptions of persons involved with ongoing IG inquiries or investigations. These common misperceptions are called non-rights and consist of the following:

1. **Identity of Witnesses.** While an IG investigation or investigative inquiry is in progress, neither the suspect nor the subject has the right to know who made allegations against him or her or to know the names of witnesses or other individuals who provided information. After the case is closed and 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. **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 whom the Joint IG interviews 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. **Tape Record or Take Notes.** Although we allow witnesses to record interviews or take notes if they desire, we discourage them from doing so. Allowing a witness to do this surrenders control of potentially sensitive information regarding an official IG investigation. If a witness expresses a desire to record or take notes, offer a copy of the transcript and/or tape instead. If the witness persists, admonish him or her regarding the sensitivity of the investigation and proceed with the interview. If the interview is being taped, state in the on-tape introductory remarks that the witness is also recording the interview. At the conclusion of the interview, the IG will ask the witness to allow them to secure his or her tape/notes until the case is complete.

4. **Friend or Family Member Present during Interviews.** No one has the right to have friends or family members present during interviews. Should someone make such a request, permission may be granted based upon the IG's assessment of the benefit gained (a more relaxed individual). If the IG accedes to the request, they should not permit the friend or family member to advise the witness or otherwise participate in the interview. The friend or family member must be counseled regarding confidentiality and the importance of not disclosing the matters under investigation.



## Section 4.4

### Duties of Individuals Involved in IG Investigations

1. **Military Service Members and Federal Employees.** Military Service members and Federal employees must cooperate in IG investigations and inquiries. Commanders and supervisors may order those who refuse to cooperate to do so. However, witnesses, suspects, and subjects may not be compelled to make incriminating statements or disclose privileged information. Before interviewing anyone from outside the Joint organization, coordination should be made with the individual's service or department supervisory chain concerning doubts about the individual's obligation to cooperate. Do not order individuals to cooperate. To do so creates an adversarial position between the individual and IG conducting the interview. **Seek assistance from the individual's supervisor or commander and the Joint IG legal advisor when necessary.**

#### 2. Non – Federal Civilians

a. Non-Federal Civilians cannot be compelled to cooperate with a Joint IG conducting an investigation or inquiry. IGs have no authority to investigate non-federal civilians. Family members are non-federal civilians unless DoD employs them in some capacity. Individuals employed by companies under contract to DoD are also non-federal civilians.

b. Should criminal allegations develop against a non-federal civilian, immediately consult with a legal advisor or local military criminal investigative organization.

c. Since non-federal civilians are not required to cooperate, the IG has limited recourse should they request to take notes, record interviews, or have friends present. As with military Service members, the best approach is to convince them of the need for confidentiality. As with military Service members and DoD employees, IG's may offer non-federal 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 non-federal civilian refuses to interview without taping or having a friend present, the IG must decide whether the individual's testimony is crucial enough to warrant conducting the interview under those conditions. Even though non-federal civilians are not required to cooperate with the IG, it is a violation of Federal law under Title 18, US Code, Section 1001, for them knowingly to give false testimony under oath.

3. **Department of Defense Contractor Witnesses.** DoD Contractor personnel are considered to be civilians; however, they may have an obligation to cooperate with IG investigations and investigative inquiries if the contract employing them with the Government requires them to cooperate. In these situations, contact the 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.

4. Table 4.4.1 summarizes rights and witness cooperation requirements for all IG investigations and investigative inquiries.

**Table 4.4.1**

Status at Time of Interview	Role in Investigation	Subject to UCMJ	Required to Testify	Lawyer Present	Union Representation
Active Duty Military	Witness	Yes	Yes	No	NA
	Subject	Yes	Yes	No	NA
	Suspect	Yes	Yes (1)	Yes	NA
Retired members of a regular component who are entitled to pay	Witness	Yes	Yes	No	NA
	Subject	Yes	Yes	No	NA
	Suspect	Yes	Yes (1)	Yes	NA
Fleet Reserve and Fleet Marine Corps Reserve	Witness	Yes	Yes	No	NA
	Subject	Yes	Yes	No	NA
	Suspect	Yes	Yes(1)	Yes	NA
Reserve on any Official Status	Witness	Yes	Yes	No	NA
	Subject	Yes	Yes	No	NA
	Suspect	Yes	Yes (1)	Yes	NA
National Guard Title 10 (IADT, OCONUS) (2)	Witness	Yes	Yes	No	NA
	Subject	Yes	Yes	No	NA
	Suspect	Yes	Yes (1)	Yes	NA
National Guard Title 32 (IDT, AT)	Witness	No	Yes	No	NA
	Subject	No	Yes	No	NA
	Suspect	No	Yes (1)	Yes	NA
Reserve & National Guard - Not on Duty	Witness	No	No	No	NA
	Subject	No	No	No	NA
	Suspect	No	No	Yes (3)	NA
DoD Federal Employees	Witness	No	Yes	No	Yes (4)
	Subject	No	Yes	No	Yes (4)
	Suspect	No	Yes (1)	Yes (3)	Yes (4)
Non-Federal Civilians, including State NG employees and Family members	Witness	No	No	No	No (4 & 5)
	Subject	No	No	No	No (4 & 5)
	Suspect	No	No	Yes (3)	No (4 & 5)
DoD Contractor	Witness	No	Yes (6)	No	NA
	Subject	No	Yes (6)	No	NA
	Suspect	No	Yes (6)	Yes (3)	NA
Local Nations and Third Country Nationals	Witness	No	Consult	Consult	Consult
	Subject	No	SJA	SJA	SJA
	Suspect	No			

**Interviewee Status, Rights, and Non-Rights**

**NOTES:**

- (1) A suspect may be required to testify but may not be compelled to incriminate him/herself.
- (2) IG should check the guardsman's orders to determine status. They 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 a collective-bargaining agreement covers the civilian employee's position. The employee does not have to be a member of a union.
- (5) Normally, a Non-Federal civilian will not be either a subject or suspect in an IG investigation. Consult with the SJA.
- (6) Check with Contracting Officer for applicable wording in contract requiring cooperation. Consult with the SJA.



# Chapter 5

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## Fact Finding

Section 5.1 Overview

Section 5.2 Comparison of Fact-Finding Methodologies

Section 5.3 Plan the Investigative Inquiry or Investigation



## **Section 5.1**

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### **Overview**

As with all forms of intellectual endeavor, a Joint 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, material, and labor) consumed in the process.

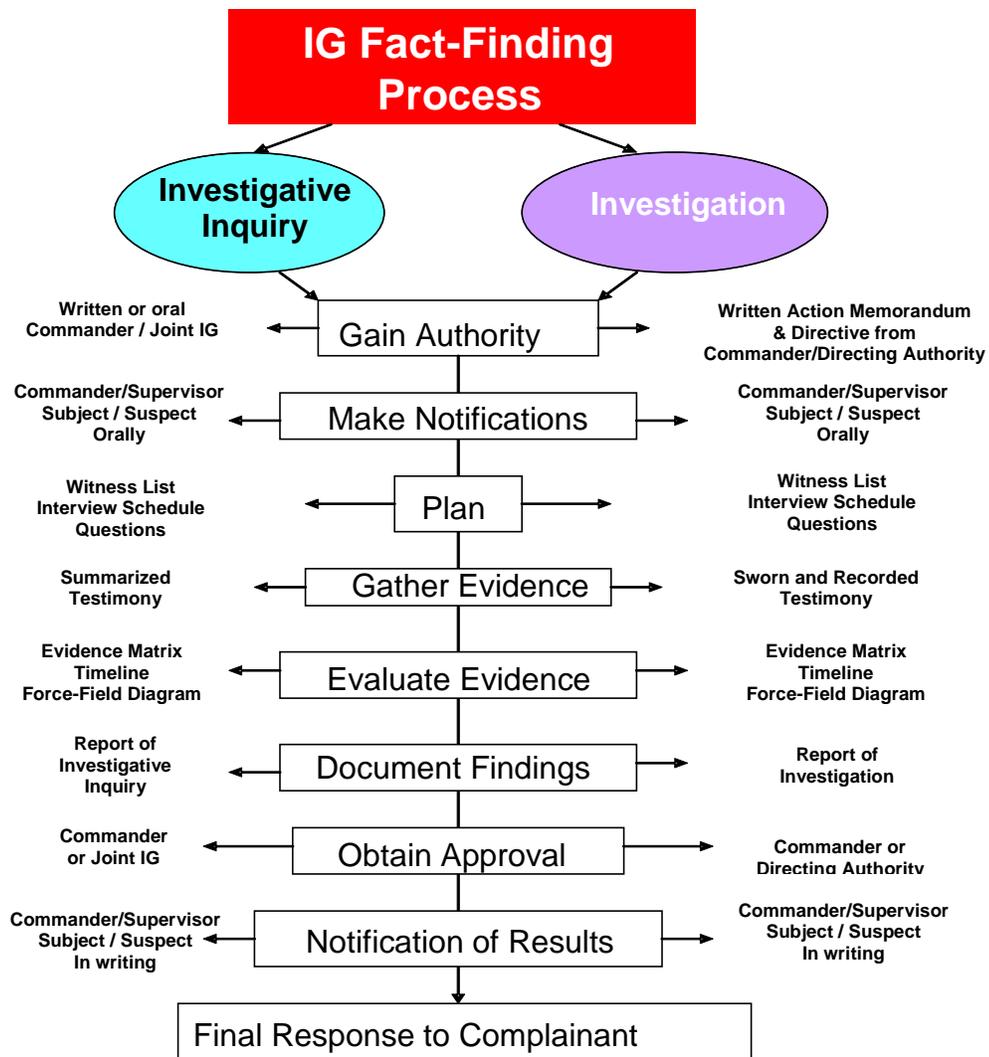


## Section 5.2

### Comparison of 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 logically gather and assess information pertaining to the issues and allegations presented for investigation.

2. Figure 5.2.1 below depicts the steps which may be used in the Joint IG investigative fact-finding process (within the seven-step JIGAP). Refer to this chart throughout this section.



**Figure 5.2.1  
IG Fact-Finding Process**



## Section 5.3

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### Plan the Investigative Inquiry or Investigation

1. As in any military operation, planning is a critical element leading to the successful achievement of the objective. IGs formulate a plan of how facts and information will be obtained pertinent to the allegations received. The planning process for investigative inquiries and investigations is the same.
2. The planning process begins with the IG's assessment of the facts he/she 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, determine where to go to gather those facts. Generally, this step involves deciding who must be interviewed (witnesses) to gather and corroborate those facts and the questions that must be asked to elicit the required information. Then develop a logical sequence for conducting the interviews. At this point, the IG must also assess what documentary or physical evidence might be available that would contribute to the investigation.
3. A certain amount of logistical planning must be conducted – court-reporter availability, voice recorder, travel orders, hotel arrangements, rental car, airline tickets, interview location, etc.
4. A suggested format for a plan is shown in Figure 5.3.1. ***The plan should include a list of the witnesses (also complainant, subjects, and suspects) in the order the IG wants to interview them, where they will be interviewed, and for how long.*** List the witnesses and documents needed for each allegation separately. This technique will prevent investigators from unexpectedly coming up short on evidence for a particular allegation. Often, this information appears in the form of an Investigation Matrix. An example matrix is shown at Figure 5.3.2. 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 developed to this point (from the Action Memorandum).
  - c. **Evidence Required.** In order to plan an investigative inquiry or investigation properly, the IG must have an understanding of the evidence required to establish the facts that will either substantiate or refute the allegation. Generally, the applicable standards regarding the conduct at issue will help one identify necessary facts. For example, if investigating allegations of adultery, one 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. The IG should also have a feel for the evidence he/she will realistically be able to gather in the case (as seen at that point in time). For example, in the case of adultery, 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 the standard of proof in the case will be (how much evidence will be needed to establish a preponderance of credible evidence).

**6. Develop a Witness List.** This list includes complainants, witnesses, subjects, and suspects. There are three areas on which the IG should focus: Who will be interviewed? In what sequence will the interviews be conducted? What type of interview format will be used?

**a. Who will be interviewed?** Selecting who will be interviewed can seem very difficult until the IG has had some practice. Plan to interview the minimum number of witnesses necessary to ascertain the facts in the case. Remember: IGs are always concerned with confidentiality. There is no set rule for establishing the minimum number required. The particular circumstance of each case determines the number of appropriate witnesses. Ultimately, Investigating Officers must apply their judgment to determine when they have reached a preponderance of evidence. Keep in mind that all important facts will need to be verified and that something is not accepted as factual or true just because someone of a higher rank says it is so. Each fact must have at least one source such as testimony or documentation. The IG 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, the IG 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 provide 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 names of witnesses, but do not limit resources to what the complainant provides. The IG will also need to develop their own witness list since the complainant is not likely to give names of people who could provide another side of the story.

**b. In what sequence will the interviews be conducted?** Normally, the complainant will be interviewed first, followed by any expert witnesses, the witnesses, and the subject or suspect last. Under some unusual circumstances, such as a vague or anonymous allegation, the investigating officer might elect to interview the subject or suspect first.

**c. What type of interview format will be used?** Most interviews conducted in an investigative inquiry will be statements while those conducted during an investigation will be testimonies. However, the investigating officer may choose the type of interview to conduct based upon the nature of the case. If the sensitivity of the interviews requires the taking of testimony during an investigative inquiry, then do so. The investigator can always summarize the testimony from the tape recordings to statements.

**7. Additional Items.** Additional items that the investigator must include in plan are the elements of proof from the standard. Consult the SJA to ensure 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 the report. Detail any other requirements such as travel arrangements and coordination required with external agencies. If the investigator uses an evidence matrix as an information-management tool, it can also be used as a planning tool to assist in describing the information each witness or document may contribute to the investigation of the allegations. The Evidence Matrix is discussed in more detail in chapters 6 and 9.

**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 the investigation. Additionally, ensure all the witnesses provided by the complainant and the suspect/subject are interviewed who 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, the investigator may need to provide a witness with additional information so that that person can prepare for the interview. For example, if a witness needs to bring documents related to a case to the interview, provide him or her enough information to identify the documents. Use caution. At times, the investigator 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 prepared to conduct the interview; however, on occasion the investigator may decide to question a witness during the scheduling process to determine if that person is the correct witness. Again, be concerned about confidentiality. Be careful if a witness whom it is believed has information important to the case attempts to convince the investigator otherwise. It is often difficult to judge over the telephone whether a witness is being misleading in order to avoid being involved.

d. Ask the witness not to discuss the investigation with anyone and explain the IG concept of confidentiality.

e. The investigating officer benefits from personally making the scheduling calls rather than having someone else make them. The investigating officer is 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, the investigating officers is the most likely person to persuade him or her to cooperate. Do not attempt to compel (order) a witness (service member or Federal 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 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 technical channels or members of the witness' chain of command can schedule the person for investigators. Ensure they are given specific instructions concerning confidentiality, location, and time of the interview. If a witness is from another Joint command, consider contacting that command's Joint IG before contacting the witness or the witness' commander.

**Figure 5.3.1**  
**Investigative Inquiry and Investigation Plan Format Outline**

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MEMORANDUM FOR RECORD

SUBJECT: Inquiry (or Investigation) Plan - (Case Name)

1. Mission. (Information should be similar to that stipulated in the first paragraph of the 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 Directing Authority signed the Directive, and refer to any relevant correspondence to or from VIPs.)

b. Applicable Standards 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. Joint 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 such organization as follows: the specific division; corps; Naval Task Force; and possibly COCOM headquarters.)

d. Joint 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. (List the names of witnesses to be interviewed for each allegation from available information. **Remember:** the number of witnesses and possibly the allegations within the scope of the directive may change. The investigator may not need to question all witnesses about every allegation.)

(1) Allegation 1: (State the specific allegation)

(a) Witness #1

(b)

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(2) Allegation 2: (State the specific allegation)

(a) Witness #1

(b)

b. Documents. (List documents and records needed 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 the investigator plans 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.)

INVESTIGATOR'S SIGNATURE

List of relevant enclosures

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**Figure 5.3.1 (continued)**  
**Witness Notification Format**

---

To: (Rank and Name) \_\_\_\_\_  
Position and Organization: \_\_\_\_\_  
Phone number: \_\_\_\_\_  
(CHECK WHEN DONE)

1. ( ) \_\_\_\_\_, this is \_\_\_\_\_ from  
\_\_\_\_\_ Joint IG Office. \_\_\_\_\_ (Directing Authority)  
has directed us to investigate the following allegations: (as stated in Directive)\*  
\_\_\_\_\_  
\_\_\_\_\_

\*NOTE: Use the general wording from the Directive. If the investigator needs 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 Investigating Officers are \_\_\_\_\_ and \_\_\_\_\_. Our telephone number is \_\_\_\_\_.

3. ( ) \_\_\_\_\_ has been notified of the investigation. (Can omit for 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 (see Figure 5.3.2), there are several tools that can aid investigators in both planning and resolving the investigation. A matrix can be used to help organize planning efforts. A Force-Field diagram may be used to assist the investigator in concluding your findings. The Force-Field Diagram is explained in detail in Sections 6.5 and 9.3. An example Force Field Diagram is shown in Figure 5.3.3.

**Figure 5.3.2  
Sample Investigation Matrix**

## Investigation Matrix

Witness	Allegation #1	Allegation #2	Allegation #3	Other	Due Outs
Mr. Taylor (Confidential Complainant)	<b>X</b>	<b>X</b>	-		
Col David Chief of Staff	<b>X</b>	~	-		
RADM Kelley Commander	<b>X</b>	~	-		
Mr. Carl Brominator (Co-worker)	~	~	-		
Mr. Steve Catherman (Co-worker)	~	~	-		
Colonel Sturdevant (Subject)	<b>X</b>	<b>X</b>	<b>X</b>		
Ms. Rachael Walker (Subject)	<b>X</b>	<b>X</b>	<b>X</b>	Was safety report filed? Was leave requested?	

Timeline Complaint Received

**X** = Primary Witness    - = Discuss if knowledgeable    ~ = Do not discuss

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**Figure 5.3.3  
Sample Force-Field Diagram**

## Force-Field Diagram

**Allegation:** Col Sturdevant failed to be at his official place of duty in violation of Article 86, UCMJ.

**Elements of Proof:** The accused without authority failed to go to his appointed place of duty at the time prescribed. Accused remained absent from place of duty at which he was required to be at time prescribed. Conduct was detrimental to good order and discipline.

Substantiate	Not Substantiate
<ul style="list-style-type: none"> <li>• Enter evidence here that would indicate the subject/suspect <u>did</u> perform the alleged impropriety</li> <li>• Summarize the evidence and indicate its category and level (see Chapter 6)</li> </ul>	<ul style="list-style-type: none"> <li>• Enter evidence here that would indicate the subject/suspect <u>did not</u> perform the alleged impropriety</li> <li>• Summarize the evidence and indicate it's category and level (see Chapter 6)</li> </ul>

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



# Chapter 6

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## Evidence

- Section 6.1 Overview
- Section 6.2 Categories of Evidence
- Section 6.3 Levels of Evidence
- Section 6.4 Facts
- Section 6.5 Evaluating Evidence
- Section 6.6 Military Rules of Evidence



## **Section 6.1**

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### **Overview**

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 the investigator draws from evaluating the preponderance of credible evidence gathered in his/her proceeding. Consequently, the investigator should 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 6.2

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### Categories of Evidence

1. **Categories.** Evidence is first described by its source category. Evidence generally falls into one of four major categories: 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. **Documentary Evidence.** Documentary evidence includes written items (including Federal Form 2823, Sworn Statement, from witnesses, if used), photographs, maps, sketches, regulations, laws, records (travel vouchers, evaluation reports, medical records), other investigation reports, and other types of written material. Nearly all investigative inquiries or investigations include some documentary evidence. Investigators should gather documents early in the investigative inquiry or investigation and identify each document 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.

3. **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. If the investigator needs to forward an object, it should be securely attached to the ROI/ROII and identified 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.

4. **Oral Statements.** An oral statement is evidence given orally by a competent witness. Oral statements are a primary means of gathering 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 sworn and recorded oral statement. 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 Joint IGs may use it in inquiries. **Recorded testimony is transcribed verbatim.** Court reporters (sometimes available from the SJA) can prepare verbatim transcripts as well as contract transcriptionists (or the Joint IG may type it). 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 the case is turned over to a follow-on Investigating Officer, a transcript may not be necessary. Should the investigator determine a transcript is necessary as the case proceeds, it can be prepared at that time. Another alternative is to transcribe only the testimony of key witnesses (complainant and subject or suspect, for example). Investigators 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, investigators may record interviews even if they 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 sworn. Joint IGs conduct the interview as part of either an investigative inquiry or an investigation, and the Joint IG may or may not record the session. The IG who conducted the interview can document the statement in summarized form in a MFR. When preparing the summary, the investigator must be extremely careful to write what the witness actually said and not what they think the witness said. Claims by witnesses that IGs misquoted them sometimes occur. Draft the summary immediately following the interview to avoid having to rely upon memory several hours or days later. Investigators may also ask the interviewee to verify their summary of the interview. For accuracy, the investigator may tape record verbal statements even if they are not sworn. This technique is particularly important if the issues or allegations are serious, complex, or conflicts with the evidence exist. When taping a telephonic interview, the investigator must ensure they inform the interviewee that they are being recorded.

(2) If investigators are unable to obtain an oath, they 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 emphasizes to the witness that he or she must be truthful. For military service members, a false official statement (sworn or not sworn) is a criminal offense. For Federal employees and civilians, false sworn statements are a violation of Federal law. When evaluating evidence, sworn statements may be given more weight than unsworn statements.

(3) Individuals may present written statements to the investigator. 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. But be warned; the best form of oral evidence is sworn and recorded testimony. Always strive to obtain the highest quality of oral evidence.

### **c. Personal Observation**

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

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



## Section 6.3

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### Levels of Evidence

1. **Overview.** Evidence generally falls into one of four types: 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 get out of his car at the headquarters on day x at time y and talk to SGT X," the investigator has 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," without any other corroborating evidence, is circumstantial evidence that the subject was inside the headquarters at that time. Circumstantial evidence is often given less weight than direct evidence and is 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. Direct evidence seldom establishes some issues such as command climate and unit morale. Frequently, circumstantial evidence alone establishes them.
4. **Hearsay.** Hearsay, a form of circumstantial evidence, is what one individual says another person said. It is an acceptable source of information in IG investigative inquiries and investigations. However, the investigator 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. The investigator may ask witnesses for their opinions, but they need to develop the reasons why the witnesses 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 6.4

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### Facts

1. Joint 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 experience to weigh the evidence, consider its probability, and base conclusions on what is the most credible.
2. A general guide in establishing facts is to obtain the testimony of two or more sworn, credible 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.



## Section 6.5

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### Evaluating Evidence

1. The critical analytical task performed by the Joint 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 Joint IGs use to reach a conclusion and resolve an allegation.*

This guide defines 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, investigating officers must first determine the facts that the evidence must support or refute to indicate whether or not the impropriety occurred. Investigators 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. Investigators must look for and address voids and conflicts in the evidence, and should seek corroboration. A relative value must be assigned to each item of evidence; some evidence is more important than other evidence. Finally, determine if a preponderance of the credible evidence substantiates or does not substantiate the allegation, which is a highly subjective process.

**Remember:** the more thorough investigating officers are in gathering pertinent evidence, the more likely they are to be objective in evaluating the facts.

3. Investigators repeat this evaluation process for each of the facts essential to the allegation. Finally, given a set of supported or refuted facts, determine whether a preponderance of credible evidence exists regarding the allegation as a whole. If preponderance indicates that the impropriety occurred, the allegation is substantiated. If preponderance indicates that the impropriety did not occur, the allegation is not substantiated. If the investigator is unable to establish a preponderance of credible evidence, they should re-evaluate their 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 the investigator does not have greater than 50 percent.

4. The rules of evidence that apply in a court of law do not bind the Joint IG; in other words, an IG does not have to 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** (Figure 6.5.1) is an invaluable tool for graphically depicting the assigned weight of evidence, determining facts, and assessing the preponderance of credible evidence in any investigation or investigative inquiry.

a. Begin by first writing the allegation and elements of proof at the top of the chart.

b. Next, divide 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.

c. Indicate the level of each piece of evidence (direct, circumstantial, hearsay, opinion). Similarly, make a notation if un-sworn testimony is provided (i.e., statement) versus sworn 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. The IG Investigating Officer then weighs the resulting columns of evidence 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.

6. An Evidence Matrix, similar to the Investigation Matrix discussed in Section 5.3, may also be used to assist investigators in weighing evidence (see Figure 6.5.2.).

Figure 6.5.1

## Force-Field Diagram

**Allegation:** Ms. Rachael Walker improperly used her official time in violation of 5 C.F.R. Part 2635.705(a), Use of Official Time.

**Elements of Proof:** Employee was in a duty status. Employee was obligated to perform official duties. Employee either performed the duties or was charged official leave.

Substantiate	Not Substantiate
<p><b>(O)</b> Confidential complainant stated Ms. Walker was goofing off instead of attending the seminar.</p> <p><b>(C)</b> Attendance sheets from the 1300 leadership seminar on 21 April 2010, did not contain Ms. Walker's signature.</p> <p><b>(D)</b> Two witnesses (Mr. Brominator and Mr. Catherman) testified they were both in the 1300 seminar on 21 April 2010, and Ms. Walker was not there.</p> <p><b>(H/S)</b> Ms. LeClair heard Ms. Walker always took extended lunch hours and left the conference site several times.</p> <p><b>(D)</b> Ms. Walker stated she returned to the conference site at 1330, 21 April 2010, but did not return to the seminar area until 1445.</p> <p><b>Fact – Ms. Walker was in receipt of TDY orders to an official conference. She was required to attend leadership briefings between 1300 and 1500 on 21 April 2010. Ms. Walker did not attend the 1300 briefing, was off-site, and did not return to the seminar area until 1445.</b></p>	<p><b>(D)</b> Ms. Walker stated she tripped on the stairs at the conference site and broke the heel of her shoe.</p> <p><b>(O)</b> Ms. Walker stated she thought she made it back in time for the 1300 leadership seminar.</p>
<p>Key - (O) Opinion; (H/S) Hearsay; (C) Circumstantial; (D) Direct</p>	

Sample Force-Field Diagram

Figure 6.5.2

**EVIDENCE MATRIX**

**Allegation #1**

**(COL Sturdevant failed to be at his official place of duty, the TRICOM Leadership Conference, on 21 April 2010.)**

<b>Witness</b>	<b>Testimony/Statement/Documents</b>	<b>Evidence Type</b>	<b>Substantiate/Unsubstantiate</b>
Mr. Taylor (Confidential Complainant)	Co-worker of COL Sturdevant; had lunch with COL Sturdevant, but stated the COL never returned to the conference after lunch.	Circumstantial	Substantiate (if proven COL did not return to conference)
Ms. Walker (Witness)	Stated she heard rumors that COL Sturdevant never returned to the afternoon leadership seminars.	Hearsay	Unsubstantiate
Col David and RADM Kelley (Witnesses)	Both testified that COL Sturdevant was directed to attend another meeting on the Admiral's behalf, off-site, in the afternoon of 21 Apr 10.	Direct	Unsubstantiate
COL Sturdevant (Subject)	Was in receipt of TDY orders to attend an off-site leadership conference from 20 through 22 April 2010. He admitted to leaving the conference site on 21 Apr 10.  Afternoon attendance sheets from 21 Apr 10 do not contain COL Sturdevant's signature.	Direct  Circumstantial	Substantiate  Substantiate (if COL cannot account for whereabouts)
COL Sturdevant (Subject)	Testified Col David (CofS) directed him to attend BRAC meeting at Pentagon in afternoon of 21 Apr 10.	Direct	Unsubstantiate

## **Section 6.6**

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### **Military Rules of Evidence**

1. Joint IGs may 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.

2. 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. If uncertain about whether or not particular evidence or information may be used, investigators should consult their legal advisor.



# Chapter 7

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## Interviews

- Section 7.1 Overview
- Section 7.2 Preparation for Interviews
- Section 7.3 Interview Types and Modes
- Section 7.4 Witness Availability and Cooperation
- Section 7.5 Other Participants in Interviews
- Section 7.6 Interview Sequence and Conduct
- Section 7.7 Self-Incrimination and Rights Warning/Waiver Certificate Procedures
- Section 7.8 Break Procedures



## Section 7.1

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### Overview

The predominant category of evidence gathered by Joint IGs is testimony obtained through oral statements. Interviews are the method used to gather oral evidence. In every interview, the Joint IG has three major concerns: the rights of the individual the IG is questioning, maintaining confidentiality, and obtaining the evidence needed. The process used by Joint IGs to conduct interviews protects rights and enhances confidentiality. The Joint IG's preparations and skills as an interviewer affect the quantity and quality of the evidence gathered. In investigations, the Joint IG usually gathers sworn, recorded testimony by conducting formal interviews. In investigative inquiries, statements gathered via informal interviews, are the norm.

One of the keys to the successful resolution of an investigation rests with the ability of the IG to elicit information from witnesses during interviews. While documentary evidence may lay the foundation for the case, an IG must build upon it with testimony from individuals who are knowledgeable of the events surrounding the allegations. How IGs conduct themselves and how well they are prepared, sets the stage for the interview process.

This section describes the process used by Joint IGs to conduct both formal and informal interviews.



## Section 7.2

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### Preparation for Interviews

1. **Overview.** As with most activities, interview preparation is critical to investigative success. Interview preparation falls into three areas: witness scheduling, administrative considerations, and substantive issues. Determining the sequence in which the interviews will be conducted is a key step in the planning process. It is strongly recommended that after the completion of the interview, to have someone to hand-off all subjects, suspects and distraught witnesses. The hand-off is intended to act as a safety net to those individuals who might be emotionally distraught as to pose a danger to themselves or others.

2. **Basics on Conducting Interviews.** The investigator should at all times conduct himself or herself in a manner that reflects the highest standards of integrity, impartiality, and professionalism. To maintain credibility, he/she must clearly demonstrate that they are objective and beyond reproach. Exude competence and confidence. By displaying these qualities, the investigator will be more likely to receive respect and cooperation from witnesses.

a. Interview witnesses in private. Do not interview more than one witness at a time. Witnesses must be interviewed in isolation so that one witness does not influence another witness' independent recollection of events.

b. Avoid attribution. Do not reveal by name the testimony of one witness to another witness, especially to the subject. As a general rule, do not reveal the testimony of previous witnesses to a witness being interviewed. If it becomes necessary to reveal previous testimony to prompt a witness' memory or to confront a witness with conflicting information, describe the testimony collectively and generically. For example: "We have received credible evidence that you met privately with Ms. Jones on March 8, 20xx." Do not say, "Mr. Brown and Mr. Smith told us that you met privately with Ms. Jones on March 8, 20xx."

c. Under most circumstances, conduct interviews with another IG present. A second IG can be invaluable in clearing up ambiguous statements made by a witness and detecting inconsistencies in the witness' testimony. Coordinate in advance the line of questioning, the investigator's role, and the role for the assisting IG. Avoid interrupting each other during the interview.

### 3. Tips to Remember During Interviews

a. **Be objective.** Approach interviews with an open mind. Do not reach a conclusion until all the evidence is evaluated. Do not skew the investigation to reach a preferred outcome. Do not be in a headhunting or "guilty until proven innocent" mode.

b. **Be courteous.** Investigators should treat witnesses without prejudice and with the dignity and respect the investigator would want to receive if they were the one being interviewed. Do not be rude, obnoxious, or condescending.

c. **Be confident, firm, and forceful.** Control the interview. Do not be tentative in unfamiliar settings or intimidated by rank. The investigator should not apologize for performing his/her duty. For example: Do not preface the interview with remarks such as “We’re sorry that we have to take your time to ask about...”

d. **Be composed.** It is acceptable to challenge or confront witnesses, but do not become violent, threatening or abusive.

e. **Be patient and listen.** Do not rush the witness. Do not interrupt when a witness is answering a question.

f. **Be persistent.** Insist that witnesses answer the questions. Do not let the witness evade questions, but avoid browbeating. Repeat or rephrase questions when the answer is not on-point. If necessary, challenge witnesses who are unable to recall recent or significant events.

g. **Be in control.** Tactfully force witnesses to focus on relevant information.

h. **Planning.** It is imperative that the investigating officer be well prepared before beginning to interview witnesses. This requires planning. First identify all relevant issues. Then consider the facts or information necessary to resolve each of those issues. Determine which witnesses can supply needed facts or information and, thus, must be interviewed. Formulate an objective for each interview and develop a line of questioning based on that objective. Consider the location of the interviews and the order in which the witnesses will be interviewed. Review biographical data on the witnesses and information on the witnesses’ organization(s). The internet is an excellent source for biographical information.

**Note:** If a subject has retained counsel, continue to contact the subject to arrange an interview. Likewise, if a witness has retained an attorney, arrange the interview through the witness. The Attorney’s only role is to advise their client. The Attorney doesn’t manage the interview.

i. **Witness Scheduling.** Experience has shown that the best sequence is to interview the complainant first; then the subject-matter experts; 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 Investigating Officers are inclined to resolve cases quickly by talking to subjects or suspects first. Avoid that pitfall by following the recommended sequence that will:

- Give the investigating officer 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 the investigator has done their homework).
- Enable the investigator to immediately challenge statements that are inconsistent with other evidence or that appear untrue.
- Allow the investigator to advise subjects or suspects of all unfavorable information against them and allow them an opportunity to comment. Investigating officers may have more unfavorable information at the end of an

investigation than at the beginning. **Remember:** Allow the subject or suspect to comment on all unfavorable information that the investigator intends to use in the 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 time.
- Protect the legal rights of all persons involved; witnesses, subjects, and suspects. For example, as the investigator becomes more knowledgeable about the case, she/he is less likely to interview someone as a witness when they should have treated that person as a subject or suspect.

The investigator should also consider the order in which they will interview similar witnesses. Frequently, Investigating Officers will group witnesses by the evidence the Joint IG expects the witness to provide. For example, the Joint IG might interview sequentially all witnesses who observed a specific event.

j. **Out-of-Sequence Interviews.** There are circumstances that may cause the investigator to interview the subject or suspect early in the investigation or inquiry. Examples of these circumstances are as follows:

- The subject or suspect has information not readily available elsewhere that the investigator needs 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 delaying their departure is not appropriate or practical
- The investigator believes this is one of those rare occasions when the need for speed justifies the risk.

k. **Administrative Preparation.** Ensure that the proper administrative details have been completed prior to the interview. These details include selecting the right interview guide from Appendix C and filling in the blank spaces with information from the Action Memorandum and Directive. If the investigator is going to request a social security number, a copy of the Privacy Act Statement should be available. If recording, set up and test the recorders and have extra batteries on-hand. Use AC power whenever possible; use batteries only as a back-up power source.

**(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. Don't rush interviews, particularly those with the complainant or subject. Schedule interviews to ensure that sufficient time is available to cover all of the issues and allow enough time to follow-up on unanticipated information. Allocate time for breaks (generally 5 or 10 minutes each hour). The investigator must plan sufficient time between appointments so that witnesses do not confront one another when arriving or leaving the interview site. At a minimum, investigators should plan time for the following :(a) Rapport Building. Set aside a few minute or two to put the witness at ease before beginning the interview.**

(b) **Pre-recording or Introduction**. Plan to spend 5-15 minutes covering the points of the pre-recording. More time is required if a rights warning certificate must be executed.

(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. Have a contingency plan in place in the event there is a witness in the 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 to compare notes if a second interviewer is present, 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**. Interviews may be conducted almost anywhere. The major consideration in choosing a location is privacy. Some locations, however, offer other advantages as well. The location of the interview should be compatible with the confidentiality of an IG investigation. The atmosphere of privacy helps place witnesses at ease and makes them more forthcoming. A quiet location reduces distractions and enhances the quality of the recording.

(a) **IG office**. Experience has proven that an IG office is often the best place to conduct interviews. The investigator controls the environment and can avoid interruptions such as ringing telephones and people entering unannounced. The IG office personnel can control other witnesses who may come early for an interview. If the investigator senses that a witness is going to be difficult, assistance may be requested from a more experienced IG or an IG of a higher rank. The IG's office is probably located away from the subject or suspect's workplace, and witnesses can discreetly visit the IG office. Conducting interviews at the IG's office maximizes efficiency. The IG does not have to spend time traveling, and has administrative support immediately available.

(b) **Witness' Workplace**. Another choice is to conduct the interview at the suspect's, subject's, or witness' office. The advantages are that the interviewee may be more at ease, more willing to cooperate, and more willing to share information. Often, the investigator's willingness to come to the witness' 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. If possible, conduct interviews in a quiet location away from the witness' office to ensure privacy and prevent interruptions. The disadvantages are that many people at that office may find out that you are there, and rumors could result. Additionally, the investigator has little control over privacy and probably cannot prevent unwanted interruptions. Subjects or suspects may want the investigator 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 the investigating officer may need to travel, and interviews may have to be conducted at a motel or hotel. These interviews can be effective if you plan ahead. When possible, arrange for a neutral interview location (have orders cut authorizing a conference room rental, extra room, or business suite). When notifying someone that they will be interviewed at a motel, set up an initial meeting in a public place such as the lobby. There, the investigating officer can properly identify him/herself and make the interviewee more at ease.

**Note:** Always use two IGs for interviews in hotel/motel rooms or private residences.

(d) **Other Installations.** If the investigator must travel to another installation, request that the local IG provide an interview room. Ensure that the local IG is aware of the investigator's needs and requirements. Additionally, consider asking the local IG to make witness notifications. The local IG is known in the command, knows the local environment, and can possibly enhance the confidentiality of the 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' Home.** At times, a witness (usually a civilian) may have to be interviewed at his or her home. This situation can be undesirable because of the lack of control. Interviews conducted in a home are fraught with distractions. Additionally, the physical characteristics of the site may not be good. In all cases the interview location should be private enough to ensure that confidentiality of witnesses can be protected and preclude unnecessary disclosure of the details of the case.

l. **Objective of Interview.** Before conducting an interview, know what evidence the witness can be expected to provide. If the purpose of the interview is merely to develop background information, extensive preparation may not be necessary. But if the witness to be interviewed is substantially involved in the matters under investigation, prior to the interview determine what information that witness may possess that will either substantiate or refute the allegations. Develop a line of questioning that will allow that information to be obtained.

m. **Line of Questioning.** Prepare an interrogatory (list of questions) for the interview. The process of building an interrogatory begins with the standards/elements of proof and the investigating officer's assessment of the evidence he/she believes the witness possesses. Then write questions to gather that evidence. War-game possible answers the interviewee might provide. The interrogatory provides a road map for the interview and helps ensure that the investigator does not forget to ask questions on all key points. If the investigator plans to have the interviewee comment on documentary evidence, ensure that the documents are at hand in the order that he/she plans to introduce them during the interview. (See Interviewing Techniques in Chapter 8 in this guide for additional information.)

2. **Pre-Interview Rehearsal.** The investigator should also consider rehearsals during the interview preparation. Set up all of the required materials in the location to be used for the interview. Ask for other IGs in the office to role-play the part of the witness planned for interview. Test the recorders and telephone (if required) for sound quality while practicing the read-in and read-out procedures. Ask the role-playing witness the draft questions and refine the interrogatory. Good IG interviews don't just happen through wishful thinking.

3. **Prior to the Interview.** Before beginning an interview, several administrative details must be addressed. Use the few minutes required to set the tone for the interview by displaying professional competence and establishing rapport with the witness. At a minimum the investigator will:

- Identify him/herself to the witness and provide a business card. Display the Directive for the investigation to each witness.
- Advise the witness that they are conducting an administrative (not criminal) investigation.
- Briefly state the purpose of the interview and explain why it is necessary to interview the witness. Describe the general nature of the allegations to witness but be more specific when interviewing subjects.
- Inform the witness that the interview will be conducted under oath and that it will be recorded.
- Provide the witness with a copy of the Privacy Act and Freedom of Information Act notifications.

**Note:** Advise the witness that disclosure of information relating to the matters under investigation is mandatory, the testimony he/she provides may be made part of an IG report and that it may be used within the Government for official purposes or released outside the Government under the Freedom of Information Act (FOIA). Should the witness ask, advise the witness that names, other than those of senior officials, are not normally included in reports and are redacted when information is released publicly under the FOIA. Allow the witness time to read the Privacy Act and FOIA information if he/she desires.

- Explain the rights warning if necessary.
- Ask the witness if he/she has any questions about the interview process.

## Section 7.3

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### 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 conducting and that are addressed later in this section and in Chapter 8.

#### 2. Interview Modes

a. **Face-to-Face.** This is the most efficient method of communication and is the ideal method for conducting IG interviews for both investigative inquiries and investigations. Face-to-face interviewing allows the investigator to observe the non-verbal reactions of the individual, enhancing the investigator's ability to establish and maintain rapport and ask effective follow-up questions. Always attempt to interview key witnesses and the subject or suspect face-to-face.

#### b. Telephonic Interviews.

(1) The investigator 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 the investigator cannot observe the witness' non-verbal communications, they can often gain insights from the witness' inflection or tone of voice.

(2) Normally, witnesses must be contacted in advance to schedule telephonic interviews. Many witnesses are not prepared to devote the required time when first contacted by the investigator. Also, the investigating officer must be concerned about confidentiality. If contacted at work, a witness 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. 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' location and set a time for the interview. This approach may help put the witness at ease and establish the investigating officer's identity. The local IG may also provide a private location in his or her office for the witness to speak with the investigator during the telephonic interview. The local IG can also verify the identity of the witness for the investigator.

(4) If conducting a formal interview, just prior to calling, have the IG at the witness' location conduct a read-in on tape using the appropriate interview guide from Appendix C. Once the call is placed, the IG who administered the read-in script can verify the witness' identification and the fact that the witness has been properly sworn and advised of his or her rights. If you do not have an IG present at the witness' location, the investigator 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, an investigator may want the local IG at the witness' location to remain in the room or even on the telephone with the witness. The IG can later provide the investigator feedback on the non-verbal reactions to questions by the witness. In other sensitive cases, the investigator 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' answers and have follow-on questions prepared. It helps to have another IG participate in the interview using an extension telephone. Make sure the witness is informed of all parties on the telephone at your location.

(7) If the investigator records a telephonic interview, she/he must inform all parties that the call is being recorded. Recording telephone conversations without the knowledge of all parties can violate Federal and/or State law. Simple devices may be purchased through the supply system that allows recorders to adapt to a telephone. The investigator may also use a speaker telephone if available. This technology allows the investigator to record the conversation and aids in the process when another IG is present. It is critical to have the witness acknowledge on the record that a telephone interview is being recorded. A number of states require all parties to consent to recording of a telephone call. Consent can be implied; however, when evidence establishes an individual knew of the monitoring and continued the call, and a statement on the record by the individual is clear evidence of knowledge.

(8) 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 the investigator may coordinate via technical channels for another IG to interview witnesses. The investigators 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 might be expected from each witness. Also provide the IG a copy of the 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 the investigating officer the recordings or copies of the transcripts. After the investigating officer acknowledges receipt of the testimony, the assisting IG destroys all file material.

## Section 7.4

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### Witness Availability and Cooperation

- 1. Department of Defense Witnesses.** DoD personnel assigned to Joint Commands are required to cooperate with Joint IGs. 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 cooperation is in his or her (and the organization's) best interest. If unsuccessful, the investigator should seek the assistance of the witness' commander (through the SJA), who can order or direct the individual to cooperate. The investigator should not order or direct the individual; this could cause the investigator to lose IG impartiality.
- 2. Witnesses from other Services.** Within Joint organizations, investigators will typically interview witnesses from multiple branches of the Armed Forces.
- 3. Non-Federal Civilians.** The investigator cannot compel civilians to cooperate with them. They have no authority (to subpoena) over Non-Federal civilian witnesses. Contact the SJA for advice in situations regarding Non-Federal civilian witness cooperation. However many civilians will testify if you explain why you are conducting an investigation and the testimony provided is useful.
- 4. Department of Defense Contractor Witnesses.** DoD Contractor personnel are considered to be civilians. However, they may have an obligation to cooperate with IG investigations and investigative inquiries if the contract employing them with the Government requires them to cooperate. In these situations, contact the Contracting Officer 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. Control of Witnesses.** It is difficult to conduct an investigation if the witnesses talk to each other about the case. Ensure each witness is informed of the requirement not to reveal to anyone the questions or topics discussed during the interview. Appendix C details specific language that must be used to enhance IG confidentiality during interviews.
- 6.** Refer to Section 4, Table 4.4.1 for more information on interviewee status, rights, and non-rights.



## Section 7.5

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### Other Participants in Interviews

1. **Court Reporters.** If a court reporter not assigned to Joint IG office is used to record testimony, the investigator must instruct the reporter on his/her 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 the interview begins. Require the reporter to save notes and give them to the investigator 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”*

2. **Interpreters.** If a witness has a better grasp of matters in his/her native language, consider arranging for an interpreter to be present during the interview. The investigator is responsible for obtaining the interpreter. Do not rely on the witness to obtain one. If an interpreter is required, caution him on the privileged nature of the investigation. The investigator may administer to the interpreter the IG oath for a Temporary Assistant IG (TAIG) (see Chapter 2, The Joint IG Concept and System Guide). 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. The investigator 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. The investigator must caution a lawyer from answering questions for the suspect or to advise the investigator on how to conduct the interview. Anyone other than the transcribers are not allowed to record or take notes during Joint IG interviews. If difficulties are encountered 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 before the interview begins. 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 the investigator do? Explain that a Joint 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. The investigator 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 the investigator's choice. In most cases it is best to allow them to do so. Not allowing them to do so might make them defensive and reluctant to answer questions.

Ask counsel to identify him or herself at the beginning of the interview. If counsel identifies him/herself as Counsel for a DoD agency or organization, stop the interview and notify the Directing Authority. Government counsel, including military attorneys assigned as SJAs, should not represent the interests of an individual during an IG investigation.

**4. Friends.** Persons being interviewed may request to have friends present. No one has a right to have a friend present. If the investigator chooses to allow a friend to be present, he/she 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 (Weingarten Rights).** An employee in a bargaining unit represented by a union may refuse to submit to an investigatory interview without union representation being notified, if the employee has a reasonable belief that the examination may result in disciplinary action. It is the employee's right, not a union prerogative. The union representative may not demand to be present against a witness/employee's objectives. If an employee in a bargaining unit represented by a union makes a request for union representation, the investigator must grant the request, discontinue the interview, or offer the employee the choice of continuing the interview without representation. If the union representative is not immediately available, reschedule the interview to permit the employee a reasonable amount of time to get a union representative. It is the investigator's responsibility to control a union representative at the interview. Check with SJA regarding the collective-bargaining agreement at the installation, post, camp, or base.

**6. Minor's Right to Have Parents Present.** If a witness is under 16 years old, the investigator should normally arrange for a parent to be present during the interview. As an exception, a service member who has not reached his/her 18<sup>th</sup> birthday need not have a parent present during an interview.

## Section 7.6

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### Interview Sequence and Conduct

1. Depending on the nature of the allegations, sensitivity of the case, and location of witnesses, the 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 the interviews in an investigative inquiry will be informal. In an investigative inquiry, formal, recorded interviews are not the rule; but, in certain situations, they may be the best way to proceed. Generally, the more serious the issue, the more formality is appropriate. Sworn and recorded interviews are also useful in situations when the investigator has conflicting evidence from different sources or when the allegations and issues are complicated. The sworn verbatim transcript will provide an accurate record of what was said. During investigations IGs take sworn testimony. There are circumstances, however, when sworn, recorded testimonies are not required such as interviews with reluctant civilian witnesses or with subject-matter experts.

b. **Testimony.** Formal interviews are conducted in four parts consisting of a Pre-recording briefing; a recorded Read-in; recorded Questioning; and a recorded Read-out. Interview Guides can be found at Appendix C.

2. **Pre-Recording Concept.** The pre-recording briefing shown below is an informal briefing given by the investigator to the interviewee and 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 the investigator an opportunity to establish a dialogue with the witness. A skillful interviewer uses the pre-recording briefing to assess demeanor and to condition the witness to respond to questions. Most importantly, the pre-recording briefly explains key information, outlines administrative details, and answers any questions the interviewee may have concerning the interview process off the recording, thus saving transcription time and expense. The pre-recording briefing includes:

- Advising the witness of the Privacy Act. (Required when the investigator asks for personal identifying information such as the witness' social security number, home address, or home telephone number.) See Figure 7.6.1.
- Advising the witness of the FOIA and that his or her 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-recording Briefing Outline.** The investigator should use the pre-recording outline as a guide (see Figure 7.6.2), become familiar with the contents, and brief the

witness in his/her own words. The investigator should also ensure that they can explain the reasons for each item. This briefing comes easily with experience and provides the opportunity to establish rapport with the witness and condition him or her to respond to the questions. The following paragraphs amplify the outline contained below.

a. The investigator should introduce her/himself and show their credentials. Credentials include a Letter of Identification and an ID card. An example of an IG Letter of Identification is at the end of this section (Figure 7.6.3). Many IGs reduce this letter to ID card size and laminate it.

b. Explain that the interview will be conducted in four parts (Pre-recording briefing, Read-in, Interrogatory, and Read-out), and explain that the procedures are standard for IG investigations.

c. Explain the investigator's role as a confidential fact-finder and that both "hearsay" and "opinion" evidence is acceptable in testimony. The investigator may have to define those terms for the person whom they 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 the session 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 sworn, recorded testimony.

f. Explain that a prepared script will be used during the Read-in and Read-out portions of the interview to ensure that the witness' rights are explained as required by law and regulation. These scripts are contained in the Interview Guides at Appendix C.

g. Explain that the questions will be asked and the witness will be given time to respond.

h. Explain that at the end of the interview, a prepared script will be read, 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 the investigator to turn off the recorder prior to discussing classified information so that the determination can be made whether the information is necessary to the case and for the transcript. If any portion of the recording contains classified information, then the recording and recorder must be classified. Likewise, if classified material is used in the report, the report also must be classified and protected as appropriate. If court reporters are used,

the investigator must 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. An individual's invocation of a privacy interest is a factor that will be considered in assessing whether a FOIA exemption should be invoked but is not dispositive. IG records can be released without an individual's consent in response to a FOIA request.

m. Provide the witness a copy of the Privacy Act Statement summary (Figure 7.6.4) and allow the witness to read it. Ask if the witness has any questions. This procedure will save time after the investigator starts the interview. If there are questions, tell the witness that the purpose of providing the summary is to explain the IG's authority to request personal information and that the release of his or her social security number is voluntary. This statement is not consent to release to a third party and does not have to be signed. The investigator will refer to it in the Read-in.

n. 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 whoever does the transcribing. During the interview, record correct spellings of proper names and acronyms on this sheet. The person transcribing often has difficulty with those items.

o. Explain that the recording devices may be turned off and points discussed unrecorded, but that everything said it may be used by the investigator in the investigation even if the recorder is off. Explain that the investigator can turn the recorders off for any breaks as required, but anything said unrecorded is still on the record, and may be introduced later.

p. Verify the status of the witness (Active Duty, Reserve, National Guard, Federal technician, State technician, civilian, etc) to determine his or her rights and whether he or she is subject to the UCMJ (see above).

q. While not required, investigators may explain to civilian Federal employees their right to have a union representative present as described previously in Section 7-5.

r. If interviewing a suspect, execute the Rights Warning Procedure/Waiver Certificate during the Pre-recording briefing. Refer to it during the Read-in. If possible, ensure a Legal Advisor reviews it for legal correctness. (See also Section 7-7.)

(1) Use the Rights Warning Procedure/Waiver Certificate to advise suspects and witnesses who incriminate themselves of their rights. Consult the SJA concerning its proper use. The general procedures are to have the suspect read the front side, Part I, which the investigator 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. The investigator must also sign the appropriate block in Section B. Ensure that the name of any witness of the waiver's execution appears in the appropriate block in Section B.

(2) Should the investigator have to execute a Rights Warning Procedure/Waiver Certificate during an interview and she/he is not sure what to put as the charges stop the interview and consult with the legal advisor. If the legal advisor is unavailable, a general description of the charges, in the investigator's own words (i.e., failure to follow a regulation, misuse of government equipment, etc.) will suffice. If the investigator questions a suspect a second time on the same allegation(s) for which a completed Rights Warning Procedure/Waiver Certificate was already executed (and that person waived his or her rights), a new form does not have to be completed. However, if the investigator is questioning the suspect concerning new allegations, a new form must be completed that includes any new allegations or suspected violations. The investigator should include the original copy of the Rights Warning Procedure/Waiver Certificate with the suspect's testimony in the ROI/ROI.

4. **Read-in Script.** The Read-in is a formal script used to begin the interview. Appendix C 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 the investigator is conducting an investigative inquiry and has no Action Memorandum or Directive, he/she should fill in the allegations about which they are inquiring. During the interview, complete the Pre-recording briefing, turn on the recorder, and read the Read-in script verbatim. This technique ensures, as a matter of record, that the investigator 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 the investigator should make are if an individual advises the investigator that he will neither swear nor affirm (indicate that the testimony is not sworn) or if a recall interview is being conducted and the previous testimony was not sworn (add the oath to the recall Read-in).

5. **Questioning.** The questions are the element in 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. Investigators may have to alter the questions or the order in which they 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' answers and have follow-on questions prepared. It helps to have another IG participate in the interview. The investigator's partner should ensure the witness answers the questions clearly and completely. Investigators must also be prepared to ask difficult or embarrassing questions in a calm, forthright, and professional manner. The elements of proof from the standards will guide the investigator's question development. When interviewing a subject or suspect, 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 are located in Appendix C. A key portion of the Read-out is advising the witness of the FOIA and having that person respond "yes" or "no" on record to acknowledge understanding that their testimony may be released, but not their personal identifying information. Another key item is the admonition to the witness regarding confidentiality.

7. **Statements.** A variety of interview techniques may be employed depending on the nature of the investigation and the circumstances of a particular situation. However, interviews commonly have four phases: introduction, initial questioning, follow-up questioning and summary.

a. **Introduction Phase.** During the introduction phase, ask questions to establish the biographical information of the individuals and organizations relevant for that particular witness, such as present duty assignment and duty title, duties, and rank or grade level. Using a standard outline helps to ensure that each witness gets the same information, that the investigator covers all essential topics, and that the investigator's presentation is smooth and confident. At a minimum, the investigator should discuss the investigation/investigative inquiry process, the IG role, Privacy Act, FOIA, and rights warning (if required). If conducting Senior Official, Military Reprisal or Civilian Reprisal investigations, then policy requires that certain information be included in the interview, as follows:

- Name(s) of the investigators
- Name of the witness and any other person present, such as a lawyer
- Location of the interview
- Date and time of the interview

After inserting this information into the record, ask the witness to raise their right hand and administer the oath to the witness.

Following the administration of the oath, ask the witness to acknowledge that he/she is aware that the interview is being recorded and that he/she was advised of the provisions of the Privacy Act and FOIA. Appendix C has all of the Interview Guides.

b. **Initial Questioning.** During initial questioning, get the detailed information (who, what, when, where, why, and how) relating to the facts of the case. However, the manner in which that information is sought often influences the success of the interview. Asking questions in a casual manner tends to put the witness at ease, fosters a conversational atmosphere, and may lead to greater cooperation from the witness. Ask open-ended questions that encourage the witness to give narrative responses. This is often the best way to gain previously unknown facts and information. There is no difference between questioning when taking a statement and questioning when taking testimony. The evidence that the investigator expects to gather affects the questions drafted in the interrogatory. The information the investigator receives and the demeanor of the witness affects how the questions are actually asked. These factors are independent of the type of interview conducted. Remember: both are equally as thorough.

c. **Follow-Up.** During the follow-up, ask questions that call for direct, short, clear, unequivocal responses. Often, these types of questions will require the witness to answer "yes" or "no." The point of this type of follow-up questioning is to clarify issues or resolve conflicts that have been noted during the interview. Do not allow the witness to evade answering the questions.

d. **Wrap-Up.** During the wrap-up, summarize the witness' testimony and ask the witness to confirm key points. Finish the questioning by asking the witness if he/she:

- Has any additional information relevant to the inquiry;
- Recommends any other witnesses to be interviewed; or
- Wants to state anything else for the record.

At the conclusion of a recorded interview, state for the record that the interview is concluded and note the date and time. After turning off the recorder, inform the witness that he/she is under no obligation to disclose the nature of the interview to others, including supervisors. Additionally, ask that the witness not disclose his/her testimony or the matters under investigation to avoid hindering further investigative work. However, **the investigator may not direct that a witness not disclose his/her testimony.**

**8. Authority to Administer Oaths.** The authority for IG investigators to administer oaths is set forth in Public Law 100-504, October 18, 1989, Inspector General Act Amendments, Section 107, Oath Administration Authority.

a. It is good policy to obtain sworn, recorded testimony from all complainants, subjects and primary witnesses who are interviewed. Interviews are recorded to ensure an accurate record and to improve quality. A transcript of a recorded interview is not susceptible to a witness' argument that the investigator "misinterpreted" their remarks. Recording allows an IG to concentrate on the testimony of the witness undistracted by a need to take notes.

b. It is good policy that all witnesses who are being recorded acknowledge on the record that they are aware they are being recorded. Prior to the start of an interview, explain to the witness that the interview will be recorded. Do not ask the witness for permission to record. Explain that the purpose of the recording is to ensure accuracy, and if requested, the witness may be provided a copy of the transcript. When the recorded interview begins, ask the witness to verbally acknowledge that the interview is being recorded.

c. Telephone interviews may also be recorded. If only one IG is participating in the telephone interview, it is even more critical to have the witness acknowledge on the record that the telephone interview is being recorded. Inform the witness prior to beginning the recorded interview about the recording and then, during the introductory phase of the interview, have the witness state that they are aware the interview is being recorded.

**9. Providing a Transcript of an Interview.** Provide a witness or subject a copy of his/her transcribed interview only upon request.

a. If necessary, discuss with the Directing Authority and/or SJA the timing of providing witnesses copies of their transcripts. In some cases, the release of testimony might adversely affect the integrity of an on-going investigation or compromise the confidentiality of witnesses. Generally, it is prudent to hold transcripts until after completion of the draft report and provide them to witnesses prior to the submission of the final report to the JCIG for approval.

b. If a witness returns the copy of the transcript with corrections or additions, be sure to fully consider any substantive comments. Document any consistencies on

matters of substance between the subject's comments and the actual interview in the case log, and if necessary, in the report. Consider re-interviewing the witnesses under oath and on record regarding substantive issues that the witness may have raised.

**10. Challenges to Recording Procedures.** Recording may initially cause witnesses to be uncomfortable. Should a witness challenge the procedure, explain that it is IG policy and standard practice to conduct sworn, recorded interviews for administrative investigations. Tell the witness that recording the interview is in everyone's best interest because it eliminates any possibility of error inherent in note taking and that a verbatim transcript can be provided to him/her.

We do not secretly record conversations or telephone calls.

**11. Recording by Witnesses.** Do not allow witnesses to record interviews. Allowing a witness to record an official IG investigation surrenders control of potentially sensitive information. If a witness expresses a desire to record, offer a copy of the transcript and/or recording instead. If the witness persists, admonish him/her regarding the sensitivity of the investigation and proceed with the interview. .

Witnesses may record conversations or telephone calls with an IG. If the investigator becomes aware that a witness is recording a personal interview or telephone conversation, inform the witness and ask for confirmation. If the witness refuses to disclose whether he or she is recording or admits to recording the conversation, provide an admonishment regarding confidentiality and then proceed.

## **12. Procedures**

a. Using the recorder. Before beginning the interview, test the recorder to ensure that it is in good working condition. Set the volume of the recorder to the medium to high range. Do not set the recorder in the voice-activation mode.

b. During the interview, place the recorder near the witness. Position the recorder as inconspicuously as possible, but do not hide it from the witness. The witness will often feel more comfortable and talk more freely if the recorder is positioned to the side. The investigator should encourage the witness to speak to them and not the recorder. If using batteries, check to ensure that the batteries have a full charge and carry a spare set. If using the electric chord, make sure that there is an electrical outlet in the room.

c. Make a good record. It is important that the transcript of an interview accurately and clearly portrays in words the information presented by the witness.

- If necessary, ask the witness to speak loudly and clearly.
- Explain any acronyms used by the witness and spell out any questionable words or names. Be careful not to interrupt the witness.
- If the witness makes nonverbal gestures such as head nods or hand movements, direct the witness to provide audible responses. Pay attention if the witness gives a verbal response while simultaneously giving conflicting nonverbal signs. Under such circumstances, prompt the witness for an explanation. For example, the investigator might say, "When you gave us that last answer, you were grinning and shrugged your shoulders. Tell us what you meant by those gestures."

- Explain verbally any documents that are introduced during the interview. Refer to them by name, date, and page or paragraph number. If necessary, mark or number documents brought to an interview (for example: Document 001) and have the witness refer to the document identifier while testifying about the document.

d. Turning off the recorder. Sometimes witnesses may desire to make unrecorded statements during the course of an otherwise recorded interview. Caution the witness this does not constitute going “off the record” and that anything said unrecorded may be used as part of the investigation.

e. The recording represents the best record of a witness’ testimony. If a witness asks to stop the recording and while the recorder is off, presents relevant information, insert that information into the record when recording resumes. Some effective techniques include:

- Ask specific questions to the witness to elicit the relevant information; or
- Summarize the unrecorded comments made by witness and ask the witness to verify them.
- Inform the witness that the interview will be conducted under oath and that it will be recorded.
- As a less preferable alternative, you may document the unrecorded discussion in a memorandum for the record.

f. It may be necessary to stop the recorder during the interview for breaks or to provide the witness time to review a lengthy document. Before turning off the recorder, state that the recorder is being turned off and explain why. When recorded testimony is resumed, state the time.

g. At the conclusion of the interview, state the time of termination.

h. Transcription. Determine whether the interview needs to be transcribed or if a summarization in a memorandum for the record is sufficient. If transcribing is warranted, assist the transcribers by creating a list of unfamiliar names, acronyms, words, etc. The investigator should identify anything that they believe a person outside DoD would not recognize. If the investigator intends to cite evidence provided by a witness in the report, then obtain a transcript.

Consider duplicating tapes of key interviews before sending the originals out for transcription. Doing so allows the investigator to review testimony while awaiting a transcript or provides a back-up copy of critical evidence.

If the recording contains classified information, advise the JCIG before sending the recording out for transcription. Ensure that all recorders and recordings are properly marked and secured.

**13. Recording Third Party Telephone Conversations.** Do not record telephone conversations when the investigators are not one of the callers. Doing so is called wire-tapping and is prohibited under Federal law without prior authorization from a judge. This conduct may also be prohibited under state law. IGs who wrongfully record

telephone conversations may be prosecuted, and subjected to penalties.

Figure 7.6.1

## PRIVACY ACT INFORMATION

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DATA REQUIRED BY THE PRIVACY ACT OF 1974  
PRIVACY ACT STATEMENT  
FOR PERSONAL INFORMATION TAKEN DURING  
INSPECTOR GENERAL WITNESS TESTIMONY

AUTHORITY: Title 5 US Code, Section 552a.

**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/COCOM/Joint Staff 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 COCOM commander.

### 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 Defense 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.

**Figure 7.6.2**

**PRE-TAPE BRIEFING OUTLINE**

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See Instructions (above) in this section of the guide.  
Use your own words, but address each item listed below.

- 1. Identify yourself as the Investigating Officer(s)** -- Show Military ID and Joint IG Credential/Detail Card
- 2. Show the Directive**
- 3. Explain the Investigative Procedure** - “This is a four-part interview...”
  1. PRE-RECORDING briefing (we are doing this now).
  2. Formal READ-IN. (a formality designed to ensure that the rights of the individual are fully explained and legal requirements are met.)
  3. Questioning.
  4. Formal READ-OUT.
- 4. Explain IG Investigating Officer'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 the Department of Defense.
    - 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 to interviewees.
    - Will not tell you with whom we have talked.
    - Will not tell you specific allegations being investigated (except for subjects and suspects).
- 5. Explain the Interview ground rules**
  - We normally take sworn and recorded testimony. Recorders improve accuracy. (Ask if the witness objects to swearing; some people would prefer to affirm.)
  - All answers must be spoken. The recorder cannot pick up nods or gestures.
  - Classified information: If classified information comes up, we will discuss that information off recorder first.
  - Break procedures: We can turn off the recorder at any time, but...
  - We never go off the record.

## 6. Release of your testimony

- The last question we ask you during the READ-OUT is whether you understand terms of release of your testimony to members of the public under the FOIA.
- FOIA allows members of the public to request government records for unofficial purposes.
- I will ask you if you understand about the release of your testimony but not your private information.
- "NO" = I do not understand. "YES" = I do understand.
- Our report, including your testimony, will be used as necessary for official government purposes.

## 7. \*Privacy Act of 1974 (Privacy Act protections apply only to U.S. citizens and lawful aliens.)

- 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.

## 8. \*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 Investigating Officers for notes, acronyms, proper names, etc.
- Aids in preparing an accurate transcript.

## 9. Confirm Witness Status

## 10. \*Rights warning/waiver. Execute the Rights Warning Procedure/Waiver Certificate (when appropriate, such as during a suspect interview). (See also Section 7-8.)

## 11. Wrap-up

- This is an administrative procedure; not a court of law.
- We can accept and use hearsay and opinion.
- We protect everyone's confidentiality to the maximum extent possible but *do not guarantee* confidentiality.

\* Provide interviewee with appropriate document.

**Figure 7.6.3**  
**IG CREDENTIAL/DETAIL LETTER - EXAMPLE**

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**COMMAND ADDRESS**

(DATE)

TO WHOM IT MAY CONCERN:

The officer, whose signature is here presented, LtCol Ira M. Marine, is representing the Joint Inspector General [insert the represented COCOM or Joint Command]. His responsibilities include conducting investigations and inquiries into matters for the Commander.

LtCol Marine is entitled unlimited access to all information and assistance, consistent with his security clearance, in the execution of his mission.

/s/  
JOHN J. BLUE  
MG, USAF  
Commanding

/s/  
IRA M. MARINE  
LtCol, IG

**Figure 7.6.4**  
**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: \_\_\_\_\_ Rank/Grade: \_\_\_\_\_

Position/Title: \_\_\_\_\_ Organization: \_\_\_\_\_

Address: \_\_\_\_\_ ZIP: \_\_\_\_\_ Phone: \_\_\_\_\_

XX

(Completed by IG)

Testimony taken at: \_\_\_\_\_, Date: \_\_\_\_\_

From: \_\_\_\_\_(hrs), To: \_\_\_\_\_(hrs).

By: \_\_\_\_\_ and \_\_\_\_\_

Does this witness understand release authority under the FOIA? \_\_\_\_ Yes \_\_\_\_ No

FOR OFFICIAL USE ONLY

## Section 7.7

### Self-Incrimination and Rights Warning/Waiver Certificate Procedures

1. **Overview.** The investigator 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 being investigated. This point also applies to suspects who may implicate themselves in an area outside the scope of the investigation. If an individual implicates himself or herself in criminal activity; stop **and consult with the SJA.**

2. **Procedures.** The Rights Warning Procedure/Waiver Certificate procedures vary by service. Use the Rights Warning Procedure/Waiver Certificate that applies to the individual's parent service. This section contains all of the service examples (See Figure 7.7.1 (Army), Figure 7.7.2 (Navy), Figure 7.7.3 (Air Force), and Figure 7.7.4 (Marine Corps). If the investigator has any questions or encounter any difficulty when preparing or executing a warning/waiver, they should consult with the SJA.

3. See the 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.

4. **Obligations of Witnesses to Answer All Questions Related to an IG Investigation.** A witness who is a military member who refuses to testify or be sworn or affirmed may be ordered to do so by the witness' commanding officer. However, a military witness may not be compelled to make incriminating statements without Article 31b warnings.

Federal civilian employee witnesses have an obligation, under the IG Act, to provide an IG investigator with information. Should a Federal civilian employee witness fail to cooperate with you, contact your SJA.

**Figure 7.7.1  
ARMY - RIGHTS WARNING/WAIVER CERTIFICATE**

<b>RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE</b>			
For use of this form, see AR 190-30, the proponent agency is ODCSOPS			
DATA REQUIRED BY THE PRIVACY ACT			
<b>AUTHORITY:</b>		Title 10, United States Code, Section 3012(g)	
<b>PRINCIPAL PURPOSE:</b>		To provide commanders and law enforcement officials with means by which information may be accurately identified.	
<b>ROUTINE USES:</b>		Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.	
<b>DISCLOSURE:</b>		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			
<b>Section A. Rights</b>			
<p>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: _____</p> <p>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:</p> <ol style="list-style-type: none"> <li>1. I do not have to answer any questions or say anything</li> <li>2. Anything I say or do can be used as evidence against me in a criminal trial</li> <li>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</li> </ol> <p align="center">- or -</p> <p>(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.</p> <ol style="list-style-type: none"> <li>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.</li> </ol>			
5. COMMENTS (Continue on reverse side)			
<b>Section B. Waiver</b>			
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)			
b. ORGANIZATION OR ADDRESS AND PHONE		5. TYPED NAME OF INVESTIGATOR	
2b. NAME (Type or Print)			
b. ORGANIZATION OR ADDRESS AND PHONE		6. ORGANIZATION OF INVESTIGATOR	
2c. NAME (Type or Print)			
<b>Section C. Non-waiver</b>			
1. I do not want to give up my rights. <input type="checkbox"/> I want a lawyer. <span style="margin-left: 200px;"><input type="checkbox"/> I do not want to be questioned or say anything</span>			
2. SIGNATURE OF INTERVIEWEE			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT (DA FORM 2523) SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			

<b>PART II - RIGHTS WARNING PROCEDURE</b>	
<b>THE WARNING</b>	
<p>1. <b>WARNING</b> - Inform the suspect/accused of:</p> <ol style="list-style-type: none"> <li>a. Your official position.</li> <li>b. Nature of offense(s)</li> <li>c. The fact that he/she is a suspect/accused.</li> </ol> <p>2. <b>RIGHTS</b> - Advise the suspect/accused of his/her rights as follows:                      "Before I ask you any questions, you must understand your rights."  <ol style="list-style-type: none"> <li>a. "You do not have to answer my questions or say anything."</li> <li>b. "Anything you say or do can be used as evidence against you in a criminal trial."</li> <li>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</li> </ol> </p>	<p>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 "</p> <p style="text-align: center;">- or -</p> <p><i>(For civilians not subject to the UCMJ)</i> 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 "</p> <ol style="list-style-type: none"> <li>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 "</li> </ol> <p>Make certain the suspect/accused fully understands his/her rights.</p>
<b>THE WAIVER</b>	
<p>"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.)</p> <p>"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>i.e.</i>, 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.)</p>	<p>"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.)</p> <p>"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?" (<i>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.</i>)</p>
<b>SPECIAL INSTRUCTIONS</b>	
<p><b>WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE:</b> 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.</p> <p><b>IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY:</b> 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.</p> <p><b>PRIOR INCRIMINATING STATEMENTS:</b></p> <ol style="list-style-type: none"> <li>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.</li> </ol>	<ol style="list-style-type: none"> <li>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.</li> </ol> <p><b>NOTE:</b> 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.</p> <p><b>WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS:</b> 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.")</p>
<p><b>COMMENTS (Continued)</b></p>          	

<b>RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE</b>			
For use of this form, see AR 190-30; the proponent agency is ODCSOPS			
DATA REQUIRED BY THE PRIVACY ACT			
<b>AUTHORITY:</b>		Title 10, United States Code, Section 3012(g)	
<b>PRINCIPAL PURPOSE:</b>		To provide commanders and law enforcement officials with means by which information may be accurately identified.	
<b>ROUTINE USES:</b>		Your Social Security Number is used as an additional/alternate means of identification to facilitate filing and retrieval.	
<b>DISCLOSURE:</b>		Disclosure of your Social Security Number is voluntary.	
1. LOCATION	2. DATE	3. TIME	4. FILE NO.
Inspector General, Fort von Steuben, VA 22605			OTR 05-009
5. NAME (Last, First, MI) Brown, Robert E.		8. ORGANIZATION OR ADDRESS Director of Personnel and Community Activities Fort von Steuben, VA 22605	
6. SSN	7. GRADE/STATUS COL / AD		
PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE			
<b>Section A. Rights</b>			
<p>The investigator whose name appears below told me that he/she is with the United States Army <u>Inspector General, 66th Infantry Division and Fort von Steuben</u> and wanted to question me about the following offense(s) of which I am suspected/accused: <u>COL Brown conducted an adulterous affair in violation of article 134, UCMJ; and (see comments below)</u></p> <p>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:</p> <ol style="list-style-type: none"> <li>I do not have to answer any question or say anything.</li> <li>Anything I say or do can be used as evidence against me in a criminal trial.</li> <li><i>(For personnel subject to the UCMJ)</i> 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.</li> </ol> <p style="text-align: center;">- or -</p> <p><i>(For civilians not subject to the UCMJ)</i> 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.</p> <ol style="list-style-type: none"> <li>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.</li> </ol>			
5. COMMENTS <i>(Continue on reverse side)</i> Sexually harassed female employees in violation of AR 600-20.//			
<b>Section B. Waiver</b>			
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 <i>(If available)</i>		3. SIGNATURE OF INTERVIEWEE	
1a. NAME <i>(Type or Print)</i> 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			
2a. NAME <i>(Type or Print)</i>		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	
<b>Section C. Non-waiver</b>			
1. I do not want to give up my rights <input type="checkbox"/> I want a lawyer <span style="float: right;"><input type="checkbox"/> I do not want to be questioned or say anything</span>			
2. SIGNATURE OF INTERVIEWEE			
ATTACH THIS WAIVER CERTIFICATE TO ANY SWORN STATEMENT <i>(DA FORM 2823)</i> SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED			

Step 1 {

Step 4 {

Step 2

Step 3

PART II - RIGHTS WARNING PROCEDURE	
THE WARNING	
<p>1. WARNING - Inform the suspect/accused of:</p> <ul style="list-style-type: none"> <li>a. Your official position.</li> <li>b. Nature of offense(s).</li> <li>c. The fact that he/she is a suspect/accused.</li> </ul> <p>2. RIGHTS - Advise the suspect/accused of his/her rights as follows:</p> <ul style="list-style-type: none"> <li>a. "Before I ask you any questions, you must understand your rights."</li> <li>b. "Anything you say or do can be used as evidence against you in a criminal trial."</li> <li>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</li> </ul>	<p>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."</p> <p style="text-align: center;">- or -</p> <p>(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."</p> <ul style="list-style-type: none"> <li>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."</li> </ul> <p>Make certain the suspect/accused fully understands his/her rights.</p>
THE WAIVER	
<p>"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.)</p> <p>"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.)</p>	<p>"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.)</p> <p>"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.)</p>
SPECIAL INSTRUCTIONS	
<p><b>WHEN SUSPECT/ACCUSED REFUSES TO SIGN WAIVER CERTIFICATE:</b> 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.</p> <p><b>IF WAIVER CERTIFICATE CANNOT BE COMPLETED IMMEDIATELY:</b> 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.</p> <p><b>PRIOR INCRIMINATING STATEMENTS:</b></p> <ul style="list-style-type: none"> <li>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.</li> </ul>	<ul style="list-style-type: none"> <li>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.</li> </ul> <p><b>NOTE:</b> 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.</p> <p><b>WHEN SUSPECT/ACCUSED DISPLAYS INDECISION ON EXERCISING HIS OR HER RIGHTS DURING THE INTERROGATION PROCESS:</b> 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.")</p>
COMMENTS (Continued)	

**The following steps allow the Joint IG to complete the Army waiver (Figure 7.7.1), DA Form 3881, in the correct sequence.**

Step 1. Complete the administrative data on the front side at the top of the form 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 form. 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 form (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 form (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 form 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.

**Figure 7.7.2  
NAVY - RIGHTS WARNING/WAIVER CERTIFICATE**

**Sample Rights Warning (Service Members)**

Suspect's Rights Acknowledgement/Statement (See JAGMAN 0170)

FULL NAME (ACCUSED/SUSPECT)	SSN	RATE/RANK	SERVICE (BRANCH)
ACTIVITY/UNIT			DATE OF BIRTH
NAME (INTERVIEWER)	SSN	RATE/RANK	SERVICE (BRANCH)
ORGANIZATION		BILLET	
LOCATION OF INTERVIEW		TIME	DATE

I certify and acknowledge by my signature and initials set forth below that, before the interviewer requested a statement from me, he warned me that:

- (1) I am suspected of having committed the following offense(s);
- (2) I have the right to remain silent;
- (3) Any statement I make may be used as evidence against me in trial by court-martial;
- (4) I have the right to consult with lawyer/counsel prior to any questioning. This lawyer/counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both;
- (5) I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.

(initial the spaces)

I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that,

- (1) I expressly desire to waive my rights to remain silent;
- (2) I expressly desire to make a statement;
- (3) I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to any questioning;
- (4) I expressly do not desire to have such a lawyer present with me during this interview; and,

\_\_ (5) This acknowledgement and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

Signature (Accused/Suspect)	Time	Date
Signature (Interviewer)	Time	Date
Signature (Witness)	Time	Date

**NAVY - RIGHTS WARNING/WAIVER CERTIFICATE**

**Sample Rights Warning (Navy Civilian Employees)**

Place: \_\_\_\_\_

I, \_\_\_\_\_ have been advised by

\_\_\_\_\_ that I am suspected of

\_\_\_\_\_.

I have also been advised that:

- (1) I have the right to remain silent and make no statement at all;
- (2) Any statement I do make can be used against me in a court of law or other judicial or administrative proceeding;
- (3) I have the right to consult with a lawyer prior to any questioning. This lawyer may be a civilian lawyer retained by me at no cost to the United States, or, if I cannot afford a lawyer, one will be appointed to represent me at no cost to me.
- (4) I have the right to have my retained or appointed lawyer present during this interview; and,
- (5) I may terminate this interview at any time, for any reason.

I understand my rights as related to me and as set forth above. With that understanding, I have decided that I do not desire to remain silent, consult with a retained or appointed lawyer, or have a lawyer present at this time. I make this decision freely and voluntarily. No threats or promises have been made to me.

Signature: \_\_\_\_\_

Date and Time: \_\_\_\_\_

Witnessed: \_\_\_\_\_

Date and Time: \_\_\_\_\_

At this time, I \_\_\_\_\_ desire to make the following voluntary statement. This statement is made with an understanding of my rights as set forth above. It is made with no threats or promises having been extended to me.

### Figure 7.7.3 AIR FORCE - RIGHTS WARNING/WAIVER CERTIFICATE

<b>STATEMENT OF SUSPECT/WITNESS/COMPLAINANT</b>					SUSPECT
					WITNESS/COMPLAINANT
<b>PRIVACY ACT STATEMENT</b>					
<p><i>AUTHORITY: 10 U.S.C. 8013; 44 U.S.C. 3101; and EO 9397</i></p> <p><i>PRINCIPAL PURPOSES: Used to record information and details of criminal activity which may require investigative action by commanders, supervisors, security police, AFOSI special agents, etc.; and to provide information to appropriate individuals within DoD organizations who ensure proper legal and administrative action is taken.</i></p> <p><i>ROUTINE USES: Information may be disclosed to local, county, state, and federal law enforcement/investigative authorities for investigation and possible criminal prosecution or civil court action. Information extracted from this form may be used in other related criminal and/or civil proceedings.</i></p> <p><i>DISCLOSURE IS VOLUNTARY: SSN is used to positively identify the individual making the statement.</i></p>					
<b>I. STATEMENT INFORMATION</b>					
DATE (YYYYMMDD)	TIME	LOCATION AND <small>(Bldg/Room No)</small>	UNIT TAKING	REPEAT (If known)	
				OFFENSE	
				COMPLAINT	
<b>II. PERSONAL IDENTIFICATION (Print or Type)</b>					
NAME (Last, First, Middle Initial)		SSN		STATUS/GRADE	
LOCAL ADDRESS (Include Zip Code)		DATE AND PLACE OF <small>(If required)</small>		TELEPHONE	
				HOME	DUTY
PERMANENT ADDRESS OR HOME OF RECORD (Include Zip Code)		MILITARY		DEROS	
<b>SPONSOR</b>					
NAME (Last, First, Middle Initial)		GRADE	SSN	ORGANIZATION	DUTY PHONE
<b>III. ACKNOWLEDGEMENT OF OFFENSES AND 5TH AMENDMENT/ARTICLE 31 RIGHTS ADVISEMENT (Suspect Only)</b>					
I have been advised that I am suspected of the following offenses:					
ADVISED (Full Name and Rank)			INDIVIDUAL IDENTIFIED HIMSELF/HERSELF AS (SF, special agent, etc.)		
SUSPECT INITIALS	and advised me that I have the following rights according to the 5th Amendment of the U.S. Constitution/Article 31 of the Uniform Code of Military Justice.				
	I have the right to remain silent - that is to say nothing at				
	Any statement I make, oral or written, may be used as evidence against me in a trial or in other judicial, non-judicial, or administrative proceedings.				
	I have the right to consult with a lawyer.				
	I have the right to have a lawyer present during this				
	I may obtain a civilian lawyer of my own choice at no expense to the government.				
	I may request a lawyer any time during this interview.				
	If I decide to answer questions with or without a lawyer present, I may stop the questioning at any time.				
	MILITARY ONLY: If I want a military lawyer, one will be appointed for me free of charge.				
	CIVILIANS ONLY: If I cannot afford a lawyer and want one, a lawyer will be appointed for me by civilian authorities.				
SUSPECT INITIALS	I have read my rights as listed above and I fully understand my rights. No promises, threats, or inducements of any kind have been made to me. No pressure or coercion has been used against me.				
	I make the following choice. (Initial One)				
	I do not want a lawyer. I am willing to answer questions or make a statement or both, about the offense(s) under				
	I do not want a lawyer and I do not wish to make a statement or answer any questions.				
	I want a lawyer. I will not make any statement or answer any questions until I talk to a lawyer.				
I fully understand my rights and that my signature does not constitute an admission of guilt.					
SIGNATURE OF			SIGNATURE OF		



**Figure 7.7.4**

**MARINE CORPS - RIGHTS WARNING/WAIVER CERTIFICATE**

**ARTICLE 31 RIGHTS WARNING FORM SUBJECT (SUSPECTED OF WRONGDOING)**

This form is issued to Rank, Name, SSN/MOS Component as part of IGMC Investigation into alleged: \_\_\_\_\_

Rights Warning

- \_\_\_\_\_ 1. You are suspected of violating Article ( ), UCMJ, ....., in that, .....
- \_\_\_\_\_ 2. You have the right to remain silent.
- \_\_\_\_\_ 3. Any statement you make may be used against you in a trial by court-martial.
- \_\_\_\_\_ 4. You have the right to consult with a lawyer before any questioning. The lawyer may be a civilian lawyer retained by you at your own expense, a military lawyer appointed to act as your lawyer without cost to you, or both.
- \_\_\_\_\_ 5. You have the right to have such a retained civilian lawyer and/or appointed military lawyer present during this interview.
- \_\_\_\_\_ 6. If you decide to answer questions now, without a lawyer present, you have the right to stop this interview at any time. You also have the right to stop answering questions at any time in order to obtain a lawyer.

Rights Waiver

1. Do you want a lawyer? Yes\_\_\_\_\_ No\_\_\_\_\_

If yes, provide the lawyers name and have them provide their signature to verify you spoke to them prior to answering any questions.

Lawyer Name \_\_\_\_\_

Lawyer Signature\_\_\_\_\_

2. Do you understand that if you should decide to answer questions, you may stop answering at any time?

Yes\_\_\_\_\_ No\_\_\_\_\_

3. Do you want to answer questions and provide a statement?

Yes\_\_\_\_\_ No\_\_\_\_\_

Date:

Name (print)\_\_\_\_\_ Signature\_\_\_\_\_

Rank\_\_\_\_\_ SSN\_\_\_\_\_

**MARINE CORPS - RIGHTS WARNING/WAIVER CERTIFICATE**

**ARTICLE 31 RIGHTS WARNING FORM SUBJECT (NOT SUSPECTED OF WRONGDOING)**

This form is issued to Rank, Name, SSN/MOS, and Component as part of IGMC

Investigation into allegations that: \_\_\_\_\_

You are the Subject of this investigation, however, you are not suspected of wrongdoing at this time.

Rights Warning

\_\_\_\_\_ 1. Although you are not suspected of committing a criminal offense, or violating the UCMJ, the information you provide during your testimony may be unfavorable towards you.

\_\_\_\_\_ 2. You have the right to remain silent.

\_\_\_\_\_ 3. Any statement you make may be used against you in a trial by court-martial.

\_\_\_\_\_ 4. You have the right to consult with a lawyer before any questioning. The lawyer may be a civilian lawyer retained by you at your own expense, a military lawyer appointed to act as your lawyer without cost to you, or both.

\_\_\_\_\_ 5. You have the right to have such a retained civilian lawyer and/or appointed military lawyer present during this interview.

\_\_\_\_\_ 6. If you decide to answer questions now, without a lawyer present, you have the right to stop this interview at any time. You also have the right to stop answering questions at any time in order to obtain a lawyer.

Rights Waiver

1. Do you want a lawyer? Yes\_\_\_\_\_ No\_\_\_\_\_

If yes, provide the lawyers name and have them provide their signature to verify you spoke to them prior to answering any questions.

Lawyer Name \_\_\_\_\_

Lawyer Signature\_\_\_\_\_

2. Do you understand that if you should decide to answer questions, you may stop answering at any time?

Yes\_\_\_\_\_ No\_\_\_\_\_

3. Do you want to answer questions and provide a statement?

Yes\_\_\_\_\_ No\_\_\_\_\_

Date:

Name (print)\_\_\_\_\_ Signature\_\_\_\_\_

Rank\_\_\_\_\_ SSN\_\_\_\_\_

**MARINE CORPS - RIGHTS WARNING/WAIVER CERTIFICATE**

**ARTICLE 31 RIGHTS WARNING FORM WITNESS (POTENTIAL WRONGDOING)**

This form is issued to Rank, Name, SSN/MOS, Component as part of DNIGMC Investigation into allegations that:\_\_\_\_\_

Rights Warning

\_\_\_\_\_ 1. Although you are not suspected of committing a criminal offense, or violating the UCMJ, the information you provide during your testimony may be unfavorable towards you.

\_\_\_\_\_ 2. You have the right to remain silent.

\_\_\_\_\_ 3. Any statement you make may be used against you in a trial by court-martial.

\_\_\_\_\_ 4. You have the right to consult with a lawyer before any questioning. The lawyer may be a civilian lawyer retained by you at your own expense, a military lawyer appointed to act as your lawyer without cost to you, or both.

\_\_\_\_\_ 5. You have the right to have such a retained civilian lawyer and/or appointed military lawyer present during this interview.

\_\_\_\_\_ 6. If you decide to answer questions now, without a lawyer present, you have the right to stop this interview at any time. You also have the right to stop answering questions at any time in order to obtain a lawyer.

Rights Waiver

1. Do you want a lawyer? Yes\_\_\_\_\_ No\_\_\_\_\_

If yes, provide the lawyers name and have them provide their signature to verify you spoke to them prior to answering any questions.

Lawyer Name \_\_\_\_\_

Lawyer Signature\_\_\_\_\_

2. Do you understand that if you should decide to answer questions, you may stop answering at any time?

Yes\_\_\_\_\_ No\_\_\_\_\_

3. Do you want to answer questions and provide a statement?

Yes\_\_\_\_\_ No\_\_\_\_\_

Date:

Name (print)\_\_\_\_\_ Signature\_\_\_\_\_

Rank\_\_\_\_\_ SSN\_\_\_\_\_

## Section 7.8

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### Break Procedures

**Taking Breaks.** Should the investigator or the witness need to take a break for any reason while recording testimony, state for the record (on the recorder) 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 and explain the reason for the change.

**Remember:** During the Pre-recording portion, the investigator advised the witness that anything said during a break can and will be introduced on record. The investigator must be mindful of the content of conversations when the recorder is off.



# Chapter 8

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## Interviewing Techniques

- Section 8.1 Overview
- Section 8.2 Formulating Questions
- Section 8.3 Establishing Rapport
- Section 8.4 Active Listening
- Section 8.5 Non-Verbal Communications and Body Language
- Section 8.6 Interview Guidelines and Witness Control
- Section 8.7 Interviewing Civilians
- Section 8.8 Interviewer Observations
- Section 8.9 Memorandum For Record (MFR)
- Section 8.10 Polygraph Use
- Section 8.11 Common Pitfalls



## Section 8.1

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### Overview

1. The basis for the resolution of many Joint IG cases is intelligent, careful questioning that requires skill, preparation, and experience. The nature of Joint IG business involves dealing with perceptions and the reason why things occurred. Therefore, Joint 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 results of a good IG interview are directly related to the amount of planning put into the effort. The investigator must be clearly focused on obtaining facts directly pertinent to the matters under investigation. What are the issues and allegations? Which standards is the investigator using against which to compare his/her evidence? What events have transpired up to the point of the interview? What evidence does the investigator already possess, and what evidence does he/she still require? Has the investigator constructed their interrogatory while keeping the above questions under consideration? Have they consulted with the Staff Judge Advocate? If the investigator has considered the above, he/she 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 Joint 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. The Joint IG investigator is no exception. How can the investigator quickly and pleasantly begin, and then conduct, the interview? This chapter will discuss the tactics and techniques used during the Joint IG interview.



## Section 8.2

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### Formulating Questions

1. **The Interrogatory.** A well thought-out interrogatory is one of the keys to a successful interview. An interrogatory is a formal set of questions. Use care when determining the order of questions. Investigators can put the witness at ease by asking background questions first in order to establish rapport. The investigator's interrogatory should include the anticipated answers or right answers. If the answer cannot be anticipated, be ready to follow-up with other prepared questions. Investigators should try to avoid being surprised, but not let surprises upset them. Do not hesitate to take a break to think a way around surprises or develop changes in the line of questioning. A well thought-out question is better than a reactive question.

2. **Getting to the Point.** At the appropriate time during the interview, the investigator must directly address the issues and allegations. Asking the hard questions at the correct time is a genuine art form. Investigators 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 toward the more difficult subjects. A defensive witness may not want to answer the investigator's 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.

3. **Phrasing Questions.** Phrase questions so the information comes from the witness. Providing too much information in the question may identify the investigator's sources. Avoid questions that the interviewee can answer with a yes or no response (otherwise known as a close-ended question). For example, if the investigator wants to know if the witness was at a certain place on a particular day, do not ask him or her if he or she was there. Instead, ask where that person was that day.

4. **Be Methodical.** Ask one question at a time, 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 Investigating Officers 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/she will ask for clarification.

5. **Avoid Leading Questions.** Avoid making detailed statements followed by, "Is that correct?" Do not put words into the mouth of a witness such as, "You really didn't use the Government sedan to go hunting, did you?" However, it may be appropriate for the investigator to summarize to the witness what they think he/she said. The investigator 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?"

6. **Language Usage.** Use language that the witness understands, and try to persuade the witness to avoid jargon or slang. If the witness uses jargon, slang, or acronyms, clarify them during the interview. Rephrase the question if the answer received is incomplete or not to the point.

7. **Ask Simple Questions.** Do not ask compound questions; they elicit incomplete answers, and it is difficult to determine later which question the witness answered.

8. **Sketches and Diagrams.** If the investigator asks about locations or positions, it is frequently helpful to have the witness draw a rough diagram or sketch. The diagram or sketch can be attached to the ROI as an exhibit where it can help a reader to understand the testimony.

## Section 8.3

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### 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. Investigators face a daunting task in removing this barrier to effective communications during their interview. Establishing rapport aids greatly in achieving a more open environment and is vital in conducting an IG interview.

2. **Techniques.** Rapport is an ongoing process that should continue throughout the interview. The first step is to greet the witness/subject/suspect warmly with appropriate military courtesy. Begin some casual conversation prior to going into the pre-tape outline to establish rapport. The investigator should establish rapport from the onset by clearly stating their name, title, and the purpose of the interview. Ensure that the person being interviewed 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.** The investigator's efforts to build rapport must appear to be genuine and not contrived, or it will be counterproductive to the goal of enabling witness/subject/suspect to answer questions freely. Furthermore, rapport offers the investigator the opportunity to discern what is important to the witness/subject/suspect and to determine the most effective interviewing and questioning strategy or style to employ. Rapport can be nothing more than a firm handshake, a smile, professional demeanor, or even the smooth and controlled way the investigator explains procedures during the pre-tape briefing. Rapport sets the conditions and tone for the witness/subject/suspect to speak with the IG and establishes a secondary, non-verbal method of communication.



## Section 8.4

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### Active Listening

- 1. Importance.** As the witness/subject/suspect discusses matters under investigation, investigators should employ good active-listening skills. Active listening is an important interviewing skill. It is a good technique for improving communication skills in any context, but it is critical for interviewing because investigators do not always have the opportunity to interview key witness/subject/suspects a second time. Active listening is much more than simply concentrating on what the other person is saying because it frequently requires the investigator to test the accuracy of her/his own perceptions.
- 2. Techniques.** Active listening begins by putting witness/subject/suspects at ease and letting them know that what they say is important. Good Joint IGs minimize their own speaking while reacting positively to witness/subject/suspect comments. Head nods; body language that suggests interest; and brief statements like “yes,” “I see,” “go on,” etc. let witness/subject/suspects know that the investigator understands 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 the investigator’s own words what the other person seems to be communicating to them, is the central skill in active listening. This technique enables witness/subject/suspects to know whether or not their point is getting through, or whether the investigator has misunderstood and needs further explanation. Paraphrasing minimizes the potential for the witness/subject/suspect to take exception to the investigator’s subsequent record of the interview.
- 4. Know your Witness.** Investigators must remember that most witness/subject/suspects have not developed the skill of active listening and may misinterpret what the investigator is asking them, even when the question is skillfully phrased. Consequently, witness/subject/suspects often give an answer that does not respond to the question. Unfortunately, Joint 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 witness/subject/suspect and provide a useful basis for follow-up questions. However, the investigator must also be sure to get the answer to the question.
- 5. Keep an Open Mind.** To be able to paraphrase effectively, the Joint IG must keep an open mind and avoid making assumptions or judgments, both of which are distracting. Active listening tests the investigator’s own ability to perceive accurately and demonstrates that they must share in the responsibility for the communication.
- 6. The Two-Person Rule.** The proper interpretation of a witness/subject/suspect’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 witness/subject/suspect to ensure that the witness/subject/suspect’s body language (non-verbal communication) is consistent with what the witness/subject/suspect is saying. Body language may reveal that a verbal denial is really a silent admission. The investigator’s eyes can tell them how to listen.



## Section 8.5

### Non-Verbal Communications and Body Language

1. **Overview.** Joint IGs use their eyes to listen. Non-verbal communications (i.e., the body language displayed by a witness/subject/suspect) can reveal much about what a person is attempting to convey to the investigator. 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 an interview. For example, some witness/subject/suspects 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 witness/subject/suspects may engage in patterns of non-verbal communications that are unconscious and therefore uncontrolled. These spontaneous reactions may be more reliable indicators than the verbal response that accompanies or follows the body language. Thus, the good Joint IG reads body language to give context to verbal communication.

**But remember:** Unless the investigator is formally trained in the use of body-language assessment, his/her observations should only be used to facilitate more in-depth questioning. Do not enter these observations of witness/subject/suspect body language into an ROI/ROII unless fully trained and certified to make such an assessment.

2. **Caution:** Effective use and interpretation of body language requires training and practice. Joint IGs should be wary of making decisions about witness/subject/suspect veracity based only on their interpretation of that person's body language.

a. Eye gaze, eye movement, pupil constriction/dilation, touching, and distance or spacing are all part of non-verbal communication. Investigators need to know how to use these concepts in the interview to reduce or increase tension in a witness/subject/suspect, to gain rapport, and to enhance cooperation.

b. Likewise, investigators need to be aware of the witness/subject/suspect's non-verbal behavior to evaluate credibility properly. Is the witness/subject/suspect withholding information? Lying? Unfortunately, there is no one single non-verbal indicator that magically tells whether the witness/subject/suspect is being deceptive. Most people will exhibit some signs of stress when they are omitting or falsifying information. However, a variety of unrelated issues or problems may induce the stress, and all individuals have preferred verbal and non-verbal behavior that is normal for them. The witness/subject/suspect's intelligence, sense of social responsibility, and degree of maturity may also affect stress.

c. Joint IG's conduct interviews as part of an administrative proceeding – not a court of law. However, the people interviewed typically have misconceptions about the proceedings. Consequently, most witness/subject/suspects tend to exhibit psychological traits that the Joint IG can exacerbate if he or she is not cognizant of the stress levels that the interview can generate.

d. There are a number of psychological factors that have a direct bearing on interviewing techniques and influence the reliability of the information obtained. The Joint IG should ascertain the existence of such factors in the witness/subject/suspect 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.

- Witness/subject/suspects who become angry may resist the Joint IG emotionally. In most cases, the Joint IG must suppress this anger. In some cases, however, anger may cause the witness/subject/suspect to make truthful admissions that he or she might have otherwise withheld. Joint 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 witness/subject/suspect. When attempting to elicit information from a friendly witness/subject/suspect, Joint IGs should attempt to minimize its influence.

Excitement tends to heighten perception and may leave false impressions. However, neutral excitement means the witness/subject/suspect is merely prepared to meet whatever may arise and may also affect the perception of the witness/subject/suspect. 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 witness/subject/suspect interview. Joint IGs may eliminate the supposed danger by adequate assurances to the witness/subject/suspect that they are not threatened by the situation. Tell the witness/subject/suspect that they are being interviewed because they may have pertinent information to the matter under investigation, or that he or she is not the target or subject of the inquiry.

**3. How to Read Body Language.** There are a number of general observations about mood and veracity that the investigator 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, false allegations, or intimidation of the process. 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. Joint IGs have greater freedom in maintaining or breaking eye contact than witness/subject/suspects, and a long gaze by a witness/subject/suspect may be interpreted as a challenge. Truthful persons look at the

investigator 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 the investigator. Deceptive witness/subject/suspects 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, witness/subject/suspects actually move their chair away from the investigator or toward a door or window.

e. Body posture for witness/subject/suspects is characterized as either truthful or deceptive. The chart below summarizes body posture attributes.

<u>Truthful Body Posture</u>	<u>Deceptive Body Posture</u>
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 witness/subject/suspect to delay answering questions. These gestures usually occur when the witness/subject/suspect 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?"

## Section 8.6

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### Interview Guidelines and Witness Control

As a general rule, Joint IGs should follow the following guidelines for Joint IG interviews:

- **Greet** the person the Joint IG will interview in an appropriate manner.
- Open the interview in accordance with this guide and the Pre-tape outline.
- **Define or state the purpose** of the interview.
- Establish and maintain **rappport**.
- **Maintain control** - don't let the witness/subject/suspect interview you.
- **Don't argue** with each other or with the witness/subject/suspect.
- Try to **evaluate each piece of information or allegation on its own merit**; the witness/subject/suspect 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 witness/subject/suspect** unless you are using such action specifically 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 witness/subject/suspect's feelings**.
- Ensure you **understand** what **the speaker** is trying to convey.
- Use **appropriate questioning techniques** based upon the witness/subject/suspect's demeanor.
- **Make perception checks** to ensure you understand what the witness/subject/suspect means.
- **Use silence** when it is appropriate to force 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 witness/subject/suspect agree on what you both said.**
- **Ask what the complainant or witness/subject/suspect 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 witness/subject/suspect would like to add.
- Set up time for continuation, if necessary.
- **Extend your appreciation.**
- Close the interview in accordance with this guide.

## Section 8.7

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### Interviewing Non – Federal Civilians

1. Joint IG investigator do not have the authority to require the appearance or testimony of Non-Federal civilian witnesses. The investigator's technique in dealing with Non-Federal civilians will frequently determine if they can gain their cooperation and testimony. Consider these techniques when dealing with Non-Federal civilian witnesses.

a. Adopt an objective, empathetic attitude.

b. Explain the procedures that will be followed and the rationale because some Non-Federal civilians may not understand the IG's 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 the investigator's 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, the investigator may conduct the interview where the witness suggests. However, make sure that appropriate measures are taken to avoid the appearance of impropriety. Be aware of the impact that the investigator and his/her partner have, as IGs, when going to a person's place of business to conduct an interview. There may be rumors that adversely affect the witness. If witnesses are made 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 Non-Federal civilian witnesses at their home or workplace.

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 sworn, recorded testimony. 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 the witness continues to be reluctant to testify after repeated explanations. For example, if a witness refuses to give oral testimony, ask for a written statement. The investigator must ask him/herself if this witness' testimony is critical to the investigation. Can this information be obtained from another source? A decision not to interview a reluctant witness is sometimes best.



## Section 8.8

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### Interviewer Observations

The investigator's 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. The investigator's ability to put the witness at ease becomes very important in these instances. Investigators are better able to judge when a specific question causes the witness obvious discomfort. It may be worth rephrasing the question, or it may be appropriate to direct the 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.



## Section 8.9

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### Memorandum For Record (MFR)

1. A Memorandum For Record (MFR) is a suitable way to record observations, to identify exhibits, or to record other information important to the investigation. Summarize witness interviews that have not been tape recorded in a written format as soon as possible after the interview has been completed. It is the investigator's responsibility to effectively take notes and accurately reflect the witness' comments in the MFR.

**Note:** Do not convey personal opinions, conclusions or analysis in an MFR documenting an interview. Stick to what the witness said.

2. Prepare MFRs while the matters are fresh in the investigator's mind. Take a few minutes after the interview to make either notes on the testimony transcript information sheet or dictate observations on the tape immediately after the recorded testimony.

3. The MFR should contain:

a. In the subject line of an MFR, include the name, rank, and duty assignment of the witness. In the first paragraph of the MFR include the date, time, location and purpose of the interview. If the interview was conducted by telephone, include the telephone number of the witness.

b. In the body of the MFR convey in clear, concise terms the facts (who, what, when, where, how and why) obtained from the witness. Also include the witness' opinions and impressions that are relevant and may be valuable. Use verbatim quotes on key points; however, use caution. Should a witness be quoted, make sure that the words are captured exactly with the context in which they were used.

c. Close the MFR with any outstanding requests for information that the witness may provide in the future. Make sure that the MFR is dated and signed.

d. Witnesses will frequently ask to review and approve the MFR. The investigator may provide a copy of the MFR to the witness for his/her review and comment. However, the MFR is the investigator's product and not subject to witness approval. Attach any substantive comments from the witness as an addendum to the MFR. The investigator is not required to advise a witness of their intent to write an MFR documenting his/her interview. However, should the witness ask, there is no reason not to inform the witness of the intent to do so.



## **Section 8.10**

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### **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 the investigator needs to use a polygraph, then consult with the SJA and consider turning the case over to a criminal investigator.



## Section 8.11

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### 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 witness/subject/suspect. 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 witness/subject/suspect;
- **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 witness/subject/suspect 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 witness/subject/suspect**, or showing a contemptuous attitude - may anger witness/subject/suspect 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 witness/subject/suspect to take charge of the interview;
- **Anger** - results in control of the session reverting to the witness/subject/suspect; it serves as a relief to the witness/subject/suspect and is a distraction from the information-gathering process; and
- **Underestimating the mental abilities of witness/subject/suspect** especially by talking down to him or her - antagonizes the witness/subject/suspect and invites the person to trip up the IG.

2. **Summary.** Conducting interviews using procedurally correct IG witness/subject/suspect interviews is important to the investigative process. However, the information, facts, and subsequent evidence gleaned from the interview are the ultimate goal of the proceeding. 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 witness/subject/suspect, by understanding and compensating for psychological factors, and by practicing active listening by using both verbal and non-verbal means. The Joint IG should use these techniques when conducting interviews. The investigator's interviews will benefit greatly.

# Chapter 9

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## Evaluating Evidence and Documenting Findings

- Section 9.1 Overview
- Section 9.2 Findings Standard
- Section 9.3 Evidence Matrix and Force-Field Diagram Evaluation
- Section 9.4 Report of Investigation and Report of Investigative Inquiry
- Section 9.5 Modified ROI/ROII with Command Product
- Section 9.6 Obtain Approval
- Section 9.7 Actions if Directing Authority Disapproves of ROI/ROII
- Section 9.8 Common Pitfalls



## Section 9.1

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### Overview

As investigators gather evidence in their case, they must evaluate it and determine if they have obtained a preponderance of credible evidence that is sufficient to allow them to draw a conclusion. This is a complex, intellectual process. Effectiveness depends upon investigator skill and experience, knowledge of the categories and levels of evidence, the quantity of evidence gathered, and assessment of the credibility of each item of evidence. **After the investigator evaluates the evidence, he/she must decide whether the allegations are substantiated or not substantiated.** They then document the findings, conclusions, and recommendations for the Directing Authority in a Report Of Investigation or Report Of Investigative Inquiry. This section will guide the investigator through this entire process.



## Section 9.2

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### Findings Standard

Joint IG investigations and investigative inquiries make conclusions based on the **preponderance of evidence** (civilian reprisal cases are based on the clear and convincing standard) available and *not* on proof **beyond a reasonable doubt**. Consult with other IGs or with the SJA if questions arise after the evidence is evaluated. The investigator will use a finding statement of “**substantiated**” or “**not substantiated**” for each allegation addressed in the ROI/ROII.



## Section 9.3

### Force- Field Diagram Evaluation

1. **Translating the Force-Field Diagram into the ROI.** The evidence entered into the force-field diagram (Figure 9.3.1) can be directly written into the ROI/ROII discussion paragraph by formatting specific subparagraphs that address evidence supporting substantiation and not supporting substantiation. Formatting the discussion of the evidence in this manner clearly details a preponderance of evidence to the reader (JCIG or Directing Authority). Figure 9.3.2 presents another way of analyzing evidence in the form of a Web Diagram.

**Figure 9.3.1  
Force-Field Diagram**

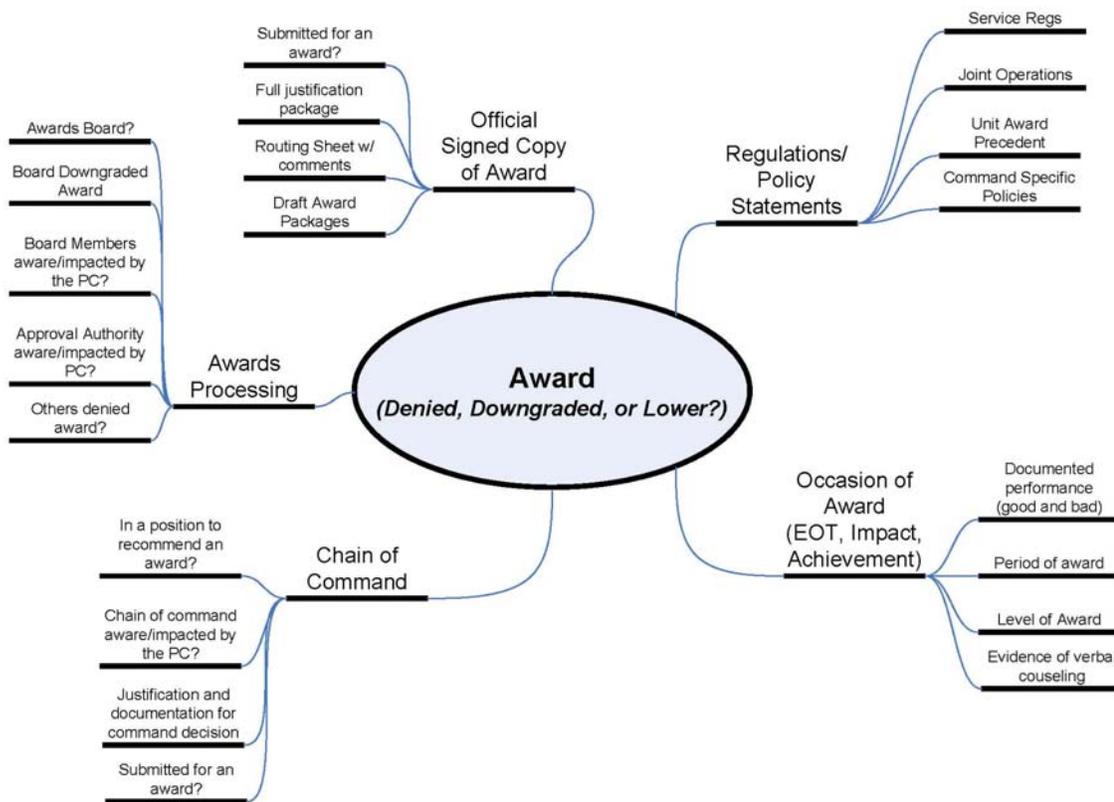
**Allegation:** Ms. Rachael Walker improperly used her official time in violation of 5 C.F.R. Part 2635.705(a), Use of Official Time.

**Elements of Proof:** Employee was in a duty status. Employee was obligated to perform official duties. Employee either performed the duties or was charged official leave.

Substantiate	Not Substantiate
<p><b>(O)</b> Confidential complainant stated Ms. Walker was goofing off instead of attending the seminar.</p> <p><b>(C)</b> Attendance sheets from the 1300 leadership seminar on 21 April 2010 did not contain Ms. Walker's signature.</p> <p><b>(D)</b> Two witnesses (Mr. Brominator and Mr. Catherman) testified they were both in the 1300 seminar on 21 April 2010, and Ms. Walker was not there.</p> <p><b>(H/S)</b> Ms. LeClair heard Ms. Walker always took extended lunch hours and left the conference site several times.</p> <p><b>(D)</b> Ms. Walker stated she returned to the conference site at 1330, 21 April 2010, but did not return to the seminar area until 1445.</p> <p><b>Fact – Ms. Walker was in receipt of TDY orders to an official conference. She was required to attend leadership briefings between 1300 and 1500 on 21 April 2010. Ms. Walker did not attend the 1300 briefing, was off-site, and did not return to the seminar area until 1445.</b></p>	<p><b>(D)</b> Ms. Walker stated she tripped on the stairs at the conference site and broke the heel of her shoe.</p> <p><b>(O)</b> Ms. Walker stated she thought she made it back in time for the 1300 leadership seminar.</p>
<p>Key - (O) Opinion; (H/S) Hearsay; (C) Circumstantial; (D) Direct</p>	

Figure 9.3.2

## WEB DIAGRAMMING



(This sample is for a Reprisal allegation. Diagram may be based on a person or an allegation.)

## Section 9.4

### Report of Investigation and Report of Investigative Inquiry

1. **Documenting the Findings.** Once the investigator has completed the investigative inquiry or investigation, she/he needs to document the findings (substantiated and not substantiated) in an ROI/ROII. The ROI/ROII format shown on page 9-14 (Figure 9.4.1) provides a logical, disciplined approach for presenting the case to an uninformed reader. 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 format in Section 11.4 is used to resolve allegations of Whistleblower Reprisal because that format incorporates the "elements of reprisal."

a. **IG Investigation.** As part of the formal investigation process, investigators need to document their case by preparing an ROI. The format and detailed instructions for preparing an ROI are shown in Figure 9.4.1. Before preparing an ROI, investigators should review previously prepared reports so that they can get a feel for the style and level of detail required in their command.

b. **IG Investigative Inquiry.** Use the ROI format to document the investigative inquiry.

2. The ROI/ROII is a very important document. It gives the Directing Authority the facts, conclusions, and 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 the command. The investigator's findings may also be used in the personnel screening process for centralized selection boards and can impact a military member's career.

3. The ROI/ROII is the official record of the case. It documents the authority to conduct the investigation, 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 IG database must be concise, complete, and able to stand alone long after the paper file is destroyed.

4. **Executive Summary:** The Executive Summary (EXSUM) is a separate, stand-alone document that provides a succinct overview of the case, providing the background (where the case originated) as well as identifying the complaint. An EXSUM is not required but is recommended, especially for complex cases involving multiple allegations and/or multiple subjects/suspects. The allegations are presented by grouping those that are substantiated and those that are not substantiated. Write a brief synopsis of the key evidence that led to the conclusion. Don't get into the details of the case in the EXSUM. The EXSUM is a summary of the case, not the detailed discussion contained in the ROI itself.

## 5. Evidence

a. The main body of the ROI must be a clear, concise presentation and analysis of the pertinent evidence. Do not simply restate all the facts gathered. Use the ROI format in all cases for which an investigation is completed. In those cases where the investigator terminates before completion or turns the case over to a follow-on Investigating Officer, the investigator may abbreviate this ROI format. However, this abbreviated format does not relieve the investigator of the requirement to complete the investigative inquiry or investigation process, to write the report, to make notifications, to close the case, and to enter the information into the local IG database.

b. In most investigations, investigators will probably collect more evidence than they need to substantiate or refute an allegation. Evidence may have been collected that has no bearing on the case, is redundant, or will serve no useful purpose if included in the report. Investigators may omit evidence with no bearing on the case without comment in the ROI.

c. Testimony is difficult evidence to analyze. Usually, only a few witnesses provide vital testimony. Witnesses often provide fragments of information that the investigator must piece together to present a picture of what took place. In these cases, investigators may summarize the testimony of the witnesses who provided pieces of information, 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. In complex cases (or those with many witnesses), developing a system for identifying what each witness said about each allegation is helpful. A matrix, an outline, or file cards may also be helpful. Whatever system you use, reference the testimony. This technique will also help eliminate unneeded testimony.

d. The investigator's analysis of the evidence must bring together all evidence (documentary, physical, and testimonial) relating to the allegations and result in a determination of whether the allegations were substantiated or not substantiated. The weight of the evidence must clearly support the conclusions. Some conclusions may not be clearly supported because of vague standards or inconsistencies in testimony. In such cases, investigators must use their judgment and objective reasoning to formulate their conclusions. Have another IG who had no contact with the case look at the draft report and comment on judgments. The IG working the case is often too close to critique the case them self.

e. Investigators should analyze and address any conflicts in evidence. If the investigator has witnesses who are not credible or whom they believe to be untruthful, they should say so. The investigator is explaining to the reader how he/she determined the preponderance of evidence. The discussion might state that five witnesses said the suspect did not do what was alleged and three witnesses said the suspect did. The preponderance of evidence points toward not substantiated. However, it would be helpful to explain the credibility of the three witnesses. Without that explanation, a reader might wonder what the conclusion might have been had the investigator interviewed more witnesses.

## 6. Discussion

a. In the discussion subparagraph, merely restating evidence already presented is not sufficient. The discussion should lead an uninformed reader logically through the evidence to obvious conclusions. If the facts and evidence already presented lead to obvious conclusions, this section need only be a brief statement leading to the conclusions. The investigator may offer his/her opinion; however, experience has shown that unsupported opinions often weaken a report. For example, if in the investigator's opinion, a unit had poor morale and discipline, they should support that statement with evidence (appearance of military personnel, comments the investigator overheard, etc.) However, the investigator is now a witness in the case, which may detract from the investigator's impartial fact-finding role. It is best to present evidence from witnesses who testify or state that, in their opinion, the unit had poor morale and discipline. The witnesses should give examples. This procedure strengthens the analysis of the case by the objective or impartial Investigating Officer.

b. The directing authority will use the discussion subparagraph to gain a clear understanding of the evidence. Weigh and discuss the evidence presented in the evidence section. If the investigator believes that she/he should introduce their opinions or judgments, then do so here, but clearly identify them as opinions and introduce them sparingly. Do not present new evidence in the discussion paragraph. The biggest problem in writing the discussion portion of the ROI is that Investigating Officers tend to introduce things that they know but have failed to put in the evidence section. If the investigator knows it, they probably got the information from a source. Find the source and place it in evidence.

## 7. Conclusion

a. The goal of the investigation should be to develop and report sufficient evidence to conclude that the allegations are either substantiated or not substantiated. Investigators must gather evidence either to support or refute the allegations with equal vigor. If the investigator does not find enough credible evidence to draw a conclusion of substantiated or not substantiated, and no other evidence is reasonably available, the finding must be not substantiated.

b. Conclusions must be consistent with the allegations, evidence, and discussion. If the investigator has properly presented his/her discussion, the conclusions need no further explanation. It should follow logically from the discussion that an allegation is substantiated or not substantiated.

**Remember:** A substantiated allegation must always indicate an impropriety.

c. **The only conclusions for allegations in an IG investigative inquiry or investigation are substantiated and not substantiated.** If the investigator is at the point where he/she believes only part of the allegation is substantiated, then they should divide the allegation into several parts and discuss each allegation separately.

d. Make sure the conclusions are complete. Investigators may determine that an individual's behavior violated a regulation, but extenuating or mitigating circumstances existed which the Directing Authority may want to know about. These circumstances are normally worded as follows: "However, the evidence indicated that a concern for his

subordinates and not self-interest motivated the suspect's actions." The investigator could also conclude that an allegation was not substantiated but include the comment, "However, the suspect's actions led many in the unit to believe that the suspect was involved in an impropriety."

## 8. Other Matters

a. During an investigation matters may develop that are outside the scope of the specific allegations but require a detailed examination or other action. For example, if investigating allegations of improper command influence, and witnesses also tell the investigator about (or the investigator observes) poor vehicle maintenance, it would be proper to discuss that fact in the Other Matters section of the ROI/ROII. Since vehicle maintenance is outside the scope of the original directive, the investigator might present this issue and recommend an IG inspection or an examination by another staff agency.

b. However, if the investigation into improper command influence developed information that the morale in the unit was low based on this improper influence, then that issue/situation would be a related matter for investigation within the scope of the Directive. The investigator would then present their evidence of the low morale and their conclusion in the body of the ROI/ROII. Use this paragraph with care; it is not a license to go beyond the scope of the Directive. If unsure, seek guidance from the JCIG or Directing Authority.

## 9. Recommendations

a. Investigators should close the ROI with recommendations for action by the Directing Authority, i.e., that the report be approved; that the case be closed; and, possibly, that the ROI or portions of it be forwarded to the appropriate commander or staff section for action. **Do not make recommendations of any punitive, adverse administrative or disciplinary action concerning the subject or suspect.** To do so compromises the investigator's status as an impartial fact-finder. However, administrative action to correct a mistake (for example, recovery of an improper TDY payment) may be part of an IG investigation recommendation. Investigators may also recommend that allegations be turned over for investigation by another investigating officer or another criminal investigative agency.

Joint IGs do not recommend a specific type of follow-on investigation such as a Commander's Inquiry, a Command Investigation, or Article 32 investigation -- and **never make any recommendation concerning adverse action against individuals or organizations.**

b. By approving a recommendation to close a case, the Joint commander implicitly tells the investigator to monitor any required actions taken such as implementing letters, forwarding the ROI/ROII to a higher headquarters, and closing the file without further recommendations to the Directing Authority. If the recommended follow-up action appears incomplete, the investigator should advise the Directing Authority.

c. **If systemic problems are identified and noted in Other Matters, the investigator's recommendations should address the general corrective action he/she anticipates.** For example, "An extract of the report identifying the problem be

provided the commander/director of \_\_\_\_\_." The investigator may recommend that the commander sign and forward a letter (prepared by the investigator) describing a generic problem that the subordinate command needs to address. If the investigator should determine that teaching and training is required, recommend a specific office or agency to execute the necessary action.

**10. Addressing Issues in an ROI/ROII.** Issues are complaints or requests for information or assistance to a Joint IG that do not identify a "who" or alleged violator of a standard or policy. Investigators can address separately in the ROI/ROII issues brought forth by the complainant in conjunction with allegations. Address these issues in the same format used for allegations. Issues are either **Founded** or **Unfounded**. The investigator would describe the issue, state the standard, detail and explain the evidence, compare the evidence to the standard, and make a conclusion.

a. For example, a complainant stated that he lost his Government contract to another bidder who did not possess the necessary equipment to perform the contract. During an investigation, the investigator determined that the contracting standards that pertained to contract awards in The Federal Acquisition Regulation (FAR) did not require a bidder to actually possess the equipment to win the contract. Witness testimony and documentary evidence indicated the contracting personnel deemed the new bidder to be responsible and reasonable and awarded the contract in accordance with the FAR. The investigator determined therefore, that the issue was *not founded*.

b. This evidence would be documented in the ROI/ROII and the discussion paragraph would state that: "The complainant contended that another bidder was awarded a contract even though he did not possess the necessary equipment to perform the contract. In accordance with The Federal Acquisition Regulation, paragraphs..., an official bidder for a Government contract needed only to possess lines of credit to acquire requisite equipment to be considered a responsive and responsible bidder. The preponderance of evidence indicated that contracting personnel deemed that the winning bidder was reasonable and responsive and was most advantageous to the Government. The contract was properly awarded." The investigator would then conclude: "The issue was **unfounded** (or **founded**)."

## FIGURE 9.4.1

### 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 reader has any knowledge of the case.

**NAME/POSITION:** Provide the name, grade, and duty positions of all subjects or suspects as of the date the improprieties allegedly occurred.

**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 the Directive and any changes to it as EXHIBIT A of the ROI.

**BACKGROUND:** Briefly describe how the allegations were received. Identify the complainant, if known. Add any other information needed to understand the case.

**SUBSTANTIATED ALLEGATION:** State the first allegation that was substantiated. It should be worded exactly the same as in the Action Memorandum unless the investigator modified it during the course of the investigation.

**SYNOPSIS:** The synopsis should include a concise summary of the standard and the key evidence and a comparison of the evidence that led the investigator to conclude that the allegation was substantiated. Do not include all the details; these details are available in the ROI itself. This synopsis is a brief summation of the evidence. Conclude the synopsis with a finding statement that states, "The preponderance of evidence indicated (name) (did) or (failed to do) (something)."

(In succeeding paragraphs list other substantiated allegations followed by summaries of the key evidence for each)

**NOT SUBSTANTIATED ALLEGATION:** State the first not substantiated allegation. Again, word it exactly the same as in the Action Memorandum unless modified.

**SYNOPSIS:** As in the previous discussion, summarize the complaint and key evidence that led the investigator to conclude that the allegation was not substantiated.

(In succeeding paragraphs list the remaining allegations that were not substantiated, each followed by its synopsis.)

FOR OFFICIAL USE ONLY

(Each page of the executive summary and the ROI must have as a footer "FOR OFFICIAL USE ONLY.")

## INTRODUCTION

1. Begin the main body of the ROI on a new page. The introduction is optional and is often omitted if an executive summary is included. Use it to present extensive background or introductory material that is necessary for a reader to understand the case but is not appropriate for inclusion in the executive summary. Do not repeat information in the executive summary. Do not include evidence in the introduction.

## CONSIDERATION OF ALLEGATIONS

2. **Allegation 1:** Should there be more than one allegation, the first allegation that is addressed in the body of the ROI/ROII need not be the first allegation in the Action Memorandum or the first allegation listed in the executive summary. Sometimes the investigator can make the ROI/ROII more readable by listing allegations in chronological order. On other occasions, the investigator may wish to cover the most serious allegation first. Frequently, Investigating Officers will address the simplest allegations early in their ROI and address the most complex last. In all cases, restate the allegations exactly as written in the executive summary.

(Note: If the introduction is omitted, 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, succeeding subparagraphs will be used for each item of evidence beginning with the complaint 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).

(1) **Standard.** In this and succeeding subparagraphs, cite and describe the standards. Summarize (if the standard is lengthy) or quote verbatim the guidance contained in regulations, policies, or the UCMJ. If the investigator summarizes the standard, the complete standard will always appear as an exhibit for more detailed reference. Also, describe the elements of proof contained in the standard. Attach extracts of the regulations, policies, or UCMJ to the report as exhibits. Ensure that the standards used were in effect at the time the misconduct allegedly occurred by indicating the standard's date since 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 Joint IGAR or letter signed by the complainant. Describe each item of documentary evidence by identifying the document and describing the evidence it contains. Example: "(n) Travel Voucher or Sub voucher, 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 the ROI as exhibits. Note: Address physical evidence like documentary evidence. Identify the object and describe its relevance. Since investigators will usually not maintain the object with the ROI/ROII, explain where it is stored. Frequently, the investigator may have documentary evidence in lieu of physical evidence (e.g., an accident report instead of a damaged vehicle).

FOR OFFICIAL USE ONLY

(3) **Testimonial Evidence.** Conduct the complainant's interview early in the investigation. The complainant is often the primary source of evidence against the subject/suspect. Also, the complainant is frequently able to identify other witnesses. The ROI will flow more easily if the investigator introduces the complainant's evidence first. Investigators should 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 that must be provided unless the investigator 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. Paraphrase and summarize what witnesses said rather than quoting them directly. Append the transcripts or summarized testimony to the ROI/ROII as exhibits. When the suspect or subject is interviewed, the investigator should provide her/him the opportunity to comment on all unfavorable information that will be used in the ROI/ROII (this rationale leads the investigator to interview the subject or suspect after all witnesses).

NOTE: As an exception to providing separate subparagraphs for each witness, and in the event that several witnesses provided the same evidence, investigators 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...").

(4) **Other Evidence.** Describe and/or enter physical evidence in this paragraph. Attach renderings 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.

#### **b. Discussion**

(1) In the discussion paragraph, concisely evaluate the evidence. Investigators must make judgments regarding the credibility of the evidence. They must determine if the evidence supports or refutes each element of proof captured in the allegation. Discrepancies and contradictions must be resolved (witnesses' recollections of events will rarely be the same). Finally, the investigator must determine if they have a preponderance of credible evidence either to substantiate or refute the allegation. If they do not have a preponderance of credible evidence, they must determine what additional fact-gathering will yield the preponderance that is required.

(2) The discussion paragraph must clearly describe the findings for an allegation. The burden is upon the investigator to logically and clearly present the evidence gathered so that the commander will understand the case and draw the same conclusions as the investigator. Investigators must explain why they reached their conclusion in a logical, step-by-step method. The investigator's reasoning and writing skills are key. Remember: the investigator's job is to remain impartial and tell both sides of the story. Begin the paragraph by restating the allegation then summarize the standard(s) used. Next, summarize the key evidence that would tend 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

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revealed. Conclude the discussion with a finding statement that states, "The preponderance of evidence indicated (name) (did) or (failed to do) (something)."

c. **Conclusion:** The allegation that (name) improperly (did or failed to do something) in violation of (standard) (was/was **not**) **substantiated**. The conclusion is a concise statement of the investigator's 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, the standard, and the time period) followed by ". . . was substantiated" or ". . . was not substantiated." Neither/nor conclusions are not used.

3. **Allegation 2:** State the next allegation followed by its evidence, discussion, and conclusion.

a. **Evidence:** Frequently, witnesses will provide evidence on more than one allegation. The investigator must sort through the witnesses' testimony and enter the evidence where appropriate in the ROI/ROII. For clarity, the investigator 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 (did or failed to do something) in violation of (standard) (was/was **not**) **substantiated**.

4. **Issue 1:** 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, investigators will often uncover situations that while not pertinent to the allegations, require the commander's attention. These situations may be systemic problems that require correction by a staff agency or perhaps an inspection by the Joint IG office. Document these situations in separate paragraphs in the Other Matters section (one paragraph for each issue). For example, an Other Matter might read: "During the course of the investigation, it was determined that the procedures for verifying travel vouchers outlined in JS 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)."

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**RECOMMENDATIONS**

6. The most common recommendation for an ROI/ROII is as follows: "This report be approved and the case closed." Never recommend adverse action.

7. Any other recommendations. If the investigator has documented other matters, he/she must include a recommendation for each of them. Ensure that the recommendations are appropriate for the issues raised. These recommendations are normally written like an IG inspection report recommendation (Who will fix it and how to fix it) found in The Joint IG Inspections Guide. Investigators should coordinate in advance with the agencies specified in the recommendations (the proponents) as the ones they think should fix the problem as a professional courtesy. Keep in mind however the guidelines for release of information and the need to maintain confidentiality.

Investigating Officer's  
signature block

Investigating Officer's  
signature block

CONCUR:

NO LEGAL OBJECTION:

Inspector General's  
signature block

Staff Judge Advocate's  
signature block (if required)

APPROVED:

DATE APPROVED: \_\_\_\_\_

Directing Authority's  
Signature block

Encl  
Exhibit List

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## EXHIBITS

1. Attach exhibits to the ROI/ROII or include them in separate volumes if there are several exhibits. Identify exhibits by letter. Attempt to arrange exhibits in the order they appear in the report. The Directive for Investigation is normally EXHIBIT A, 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 may include a date of the testimony. List all persons who testified, including those whose testimony was summarized and those who provided statements.

## STYLE NOTES

1. The first time the investigator refers to an individual, include his/her grade, full name, and position. Thereafter, simply refer to him/her by grade and last name. If an individual has changed grade, name (marriage, for instance), or duty position, indicate it in the report. (e.g.: "MAJ Jane Smith, Deputy commander, 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.
4. Do not alter the text or verb tense of standards cited directly from the source text. Doing so increases the likelihood of unintentionally changing the meaning of the standard.
5. Write the report (and any summarized standards) in the **past tense**. The document is a "snapshot" of a particular time, and standards may have changed.

## CLASSIFICATION REQUIREMENTS

1. Classify and safeguard ROI/ROII that contain classified defense information per Enclosure D, JSM 5711.01D, Joint Staff Correspondence Preparation.
2. Mark an ROI/ROII that does not contain classified defense information per Enclosure D, JSM 5711.01D, Joint Staff Correspondence Preparation. Place "FOR OFFICIAL USE ONLY" at the bottom of each page containing FOUO information, on the front cover (if any), and on the outside of the back cover (if any).
3. ROIs transmitted outside IG channels should be handled and marked in accordance with instructions contained in JSM 5711.01D, Joint Staff Correspondence Preparation.

## ROI/ROII REVIEWS

1. **Internal (Peer) Review.** While the ROI is in draft, have as many IGs as practical review the document to ensure that it is complete, correct, and understandable. Investigators will find that when they work directly on a case and write the ROI, they become so close and familiar with the issues that they will make mental connections that are not apparent to the reader. The investigator's 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 don't be defensive. Evaluate all comments with an open mind. Make sure the evidence supports the investigator's discussion points and that conclusions flow logically from the discussion.

2. **Joint Command IG Approval.** Once the peer review process is complete and the ROI assembled, the investigator and their partner IG should sign and submit the report through the JCIG. The JCIG can concur with the report and forward it or return it to the investigator with recommended changes. The JCIG 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 the report while in draft form (after an internal peer review but before it is sent to the senior IG). This allows the investigator to correct any possible problems before finalizing the ROI. The SJA should review the ROI for any legal objections and to ensure that a preponderance of evidence supports the conclusions before the Senior IG reviews and approves the document. The investigator should also ask for the SJA's opinion concerning whether the laws, regulations, and policy have been interpreted properly. Remember: if the investigator expects the SJA to do a good job, this should not be the first time he or she has seen the case. The SJA should have agreed with the investigator's 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 the evidence matrix. Depending on the nature of the allegations and whom the allegations are against, the SJA may want to accompany the investigator when she/he briefs the Directing Authority.

## ROI/ROII COPIES

The circumstances of each case and local SOP dictate the number of copies required; but, in most cases one copy in addition to the original is sufficient. In many cases, the investigator will not make copies of the exhibits. Attach the implementing documents and transmittal letters to the report.

**Figure 9.4.2**  
**EXAMPLE REPORT OF INVESTIGATION**  
**(CASE 2010-0039)**

**EXECUTIVE SUMMARY**

**NAME/POSITION:**

1. Colonel Mitch R. Sturdevant, Director, Joint Base Andrews Facilities Department.
2. Ms. Rachael Walker, Assistant Director, Joint Base Andrews Facilities Department.

**AUTHORITY:** Commander, Tri-Command (TRICOM) Directive of 17 May 2010. (EXHIBIT A-1). Colonel Pam Murphy, TRICOM Inspector General, Investigating Officer; LtCol Chrystal McFarland, Deputy Inspector General, Investigating Officer.

**BACKGROUND:** In a letter received by the TRICOM Inspector General's office on 29 April 2010 (EXHIBIT A-2), a complainant alleged that Colonel Sturdevant and Ms. Walker were absent from mandatory training evolutions held off-site at the National Conference Center, Leesburg, VA on 21 April 2010.

**SUBSTANTIATED ALLEGATION:** Ms. Rachael Walker, Assistant Director, Joint Base Andrews Facilities Department, GS-14, improperly used her official time when she did not attend afternoon sessions of a leadership workshop while assigned Temporary Additional Duty to the National Conference Center, Leesburg, VA, in violation of 5 C.F.R. Part 2635.705(a), Use of Official Time, on 21 April 2010.

**SYNOPSIS:** A complainant alleged that Ms. Walker did not attend a required briefing while executing Temporary Additional Duty orders to the National Conference Center, Leesburg, VA. As required by 5 C.F.R. 2635.705(a), an employee not under a leave system has an obligation to perform official duties when on official time. Mr. Jonathan Taylor, Joint Base Andrews Facilities (Real Property Management Division), testified that Ms. Walker did not appear at the required leadership sessions in the afternoon, 21 April 2010. Other witnesses testified that while they did not see Ms. Walker at the 1300 session *Leadership: A top Issue*, she did attend the 1500 session *Why Leaders Fail*. Another witness, Ms. Bonnie LeClair, Joint Base Andrews Security Manager, testified that when complimenting Ms. Walker on her shoes on 22 April 2010, Ms. Walker indicated that she had just purchased them the day before at lunchtime at the outlet malls down the street. Colonel Sturdevant and Mr. Taylor testified that they spent the lunch period on 21 April 2010, with Ms. Walker at Panera Bread, an off-site restaurant co-located with the outlet mall. Ms. Walker testified that while she did have lunch with Colonel Sturdevant and Mr. Taylor, she decided to stop by the mall to see if she could find a pair of shoes to replace ones she was wearing at the conference, since the heel of one of her shoes broke while descending a staircase. Ms. Walker further testified that she did not realize how much time had passed until she arrived back at the conference center. The preponderance of evidence indicated Ms. Walker violated 5 C.F.R. 2635.705(a), Use of Official Time.

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**NOT SUBSTANTIATED ALLEGATION:** Colonel Mitch R. Sturdevant, Facilities Director, Joint Base Andrews, failed to be at his official place of duty, the TRICOM Leadership Conference, National Conference Center, Leesburg, VA, in violation of Article 86, Uniform Code of Military Justice (UCMJ) (Absent without leave), on 21 April 2010.

**SYNOPSIS:** A confidential complainant alleged Colonel Sturdevant was absent from mandatory training evolutions held off-site, at the National Conference Center in Leesburg, VA. Colonel Sturdevant was executing Temporary Additional Duty orders to attend training required for all Joint Base Andrews leadership personnel. While witness testimony attests to Colonel Sturdevant's attendance at the morning training sessions, none of the witnesses could support his attendance at the afternoon briefings on 21 April 2010. Colonel Sturdevant testified that Colonel David, Chief of Staff, Joint Base Andrews contacted him via telephone at approximately 1000, 21 April 2010, advising him that Admiral Kelley, Joint Base Andrews Commander, wanted him to attend a 1330 Base Realignment and Closure (BRAC) meeting at the Pentagon. Colonel Sturdevant further stated that it was an omission on his part that he did not inform his co-workers that he had another meeting to attend for the Admiral. Colonel Sturdevant's testimony was corroborated by both Colonel David and Admiral Kelley. The preponderance of evidence indicated Colonel Sturdevant did not violate Uniform Code of Military Justice, Article 86 (Absent without leave).

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**[Note: Because an EXSUM was included, the introduction was omitted.]**

## **CONSIDERATION OF ALLEGATIONS**

**1. Allegation #1: Colonel Mitch R. Sturdevant failed to be at his official place of duty, the TRICOM Leadership Conference, National Conference Center, Leesburg, VA, in violation of the Uniform Code of Military Justice (UCMJ), Article 86 (Absent without leave), on 21 April 2010.**

**a. Evidence:**

(1) The TRICOM Inspector General's office received a letter from a confidential complainant on 29 April 2010. In the letter, the complainant alleged misconduct on the part of Colonel Sturdevant. The complainant alleged Colonel Sturdevant failed to attend mandatory leadership seminars on the afternoon of 21 April 2010, at the National Conference Center, Leesburg, VA. (EXHIBIT A-2)

(2) Article 86 of the UCMJ, Manual for Courts-Martial 2008, prohibits a member of the armed forces from absenting himself from his appointed place of duty without authority. The stated essential elements of Absent without leave are: That a certain authority appointed a certain time and place of duty for the accused; that the accused knew of that time and place; and that the accused, without authority, went from the appointed place of duty after having reported at such place. (EXHIBIT C-1)

(3) Colonel Sturdevant's Temporary Additional Duty orders issued by the Commander, Joint Base Andrews on 15 April 2010, indicated that he was required to report to the National Conference Center, Leesburg, VA from 20 through 22 April 2010 to attend a conference. (EXHIBITS D-1, D-3)

(4) Registration entries and receipts for the National Conference Center, Leesburg, VA indicated that Colonel Sturdevant registered at the site at 0710, 20 April 2010. The cost of the room and conference fees were charged to Colonel Sturdevant's Government Travel Credit Card. (EXHIBIT D-4)

(5) Attendance records for leadership seminars on 20 April (morning and afternoon sessions), the morning sessions only on 21 April 2010, and both morning and wrap-up session on 22 April 2010 contain Colonel Sturdevant's signature. Colonel Sturdevant's signature does not appear on any seminar attendance sheets for the afternoon of 21 April 2010. (EXHIBIT D-5)

(6) Mr. Jonathan Taylor, testified on 24 May 2010, that he and Ms. Walker, had lunch with Colonel Sturdevant at Panera Bread, Leesburg, VA at approximately 1145, 21 April 2010. He further testified that they left the restaurant in their own separate vehicles at approximately 1220. (EXHIBIT B-1)

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(7) Ms. Rachael Walker, Assistant Director, Joint Base Andrews Facilities Department, testified on 27 May 2010, that she and Mr. Jonathan Taylor, Joint Base Andrews Facilities (Real Property Management Division), had lunch with Colonel Sturdevant at Panera Bread, Leesburg, VA at approximately 1145, 21 April 2010. She further testified that they all left the restaurant at approximately 1220, in their own private vehicles. (EXHIBIT B-2)

(8) Colonel David, Joint Base Andrews Chief of Staff, testified on 26 May 2010, that he contacted Colonel Sturdevant via his cell phone at approximately 1000, 21 April 2010, to advise him that the Joint Base Andrews Command wanted him to attend a Base Realignment and Closure (BRAC) meeting at the Pentagon at 1330 that same day (21 April 2010). (EXHIBIT B-3)

(9) Rear Admiral John Kelley, Commander, Joint Base Andrews, testified on 26 May, 2010, that he directed Colonel David to contact Colonel Sturdevant at the leadership conference, and have him leave the conference to attend the BRAC meeting at the Pentagon at 1330. (EXHIBIT B-4)

(10) Colonel Sturdevant testified on 27 May 2010, that while attending the morning seminar sessions, he received a telephone call from Colonel David, his superior officer, at 1000, 21 April 2010, directing him to attend a BRAC meeting at the Pentagon at 1330 that same day. (EXHIBIT B-5)

**b. Discussion:**

(1) (*Restated Allegation*) A confidential complainant alleged that Colonel Sturdevant failed to attend mandatory leadership seminars at the National Conference Center, Leesburg, VA, in violation of Article 86, UCMJ, on the afternoon of 21 April 2010.

(2) (*Summarized Standard*) Article 86, UCMJ, Manual for Courts-Martial 2009, prohibits a military member from being absent from his appointed place of duty without authority. The stated essential elements of proof for this offense were that the accused without authority failed to go to his appointed place of duty at the time prescribed and remained absent from his place of duty at which he is required to be at the time prescribed.

(3) (*Evidence Supporting Substantiation*) Colonel Sturdevant was in receipt of and executing Temporary Additional Duty orders for an off-site Joint Base Andrews Leadership Conference at the National Conference Center, Leesburg, VA from 20 through 22 April 2010. Colonel Sturdevant was among those leaders required to attend the Leadership conference. Review of attendance sheets for the seminars scheduled for the afternoon of 21 April 2010, revealed that Colonel Sturdevant did not attend any of the seminars that afternoon.

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(4) (*Evidence Supporting Not Substantiated*) Colonel Sturdevant testified that he received direction from the Joint Base Andrews Commander, Rear Admiral Kelley, via the Chief of Staff, Colonel David, to attend a 1330 meeting on the afternoon of 21 April 2010. Colonel Sturdevant's testimony was corroborated by testimony provided by both Admiral Kelley and Colonel David, and further supported by BRAC Meeting minutes from 21 April 2010.

(5) (*Analysis of All Evidence*) Documentary evidence and witness testimony indicated that while Colonel Sturdevant did not attend required leadership training seminars on the afternoon of 21 April 2010, at the National Conference Center, Leesburg, VA per Temporary Additional Duty orders issued to him on 15 April 2010, he was executing a subsequent, verbal order issued by the Commander, Joint Base Andrews, to attend a meeting at the Pentagon at 1330, 21 April 2010. The preponderance of evidence indicated that there was no impropriety, that Colonel Sturdevant was in his official place of duty, and not in violation of Article 86, UCMJ, on the afternoon of 21 April 2010.

c. **Conclusion.** The allegation that Colonel Mitch R. Sturdevant failed to be at his official place of duty, the TRICOM Leadership Conference, National Conference Center, Leesburg, VA, in violation of Article 86, Uniform Code of Military Justice (UCMJ) (Absent without leave), on 21 April 2010, **was not substantiated.**

**2. Allegation #2: Ms. Rachael Walker, Assistant Director, Joint Base Andrews Facilities Department, GS-14, improperly used her official time when she did not attend an afternoon session of a leadership workshop while assigned Temporary Additional Duty to the National Conference Center, Leesburg, VA, in violation of 5 C.F.R. Part 2635.705(a), Use of Official Time, on 21 April 2010.**

a. **Evidence**

(1) The confidential complaint received by the TRICOM Inspector General's office on 29 April 2010, alleged that Ms. Walker misused her official time by not attending an afternoon session of a leadership workshop at the National Conference Center, Leesburg, VA, to which she was assigned by Temporary Additional Duty orders issued on 13 April 2010. (EXHIBIT A-2)

(2) Per 5 C.F.R. Part 2635.705(a), "...an employee shall use official time in an honest effort to perform official duties." The elements of this regulation indicate that an employee is obligated to perform official duties, or be charged annual leave. (EXHIBIT C-2)

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(3) Ms. Walker's Temporary Additional Duty orders issued by the Commander, Joint Base Andrews on 13 April 2010, indicated that she was required to report to the National Conference Center, Leesburg, VA from 20 through 22 April 2010, to attend a leadership conference. (EXHIBITS D-2, D-3)

(4) Mr. Jonathan Taylor, Joint Base Andrews Facilities, Real Property Division, testified on 24 May 2010, that he had lunch with Ms. Walker on 21 April 2010, around 1145, at Panera Bread restaurant located approximately two miles off of the National Conference Center complex. Mr. Taylor further testified that they left the restaurant approximately 1220, each person in their own private vehicle. Mr. Taylor testified that he did not see Ms. Walker again that day at the afternoon leadership sessions at the National Conference Center. (EXHIBIT B-1)

(5) Training attendance sign-in sheets were reviewed to document Ms. Walker's attendance at leadership seminars on 21 April 2010. Ms. Walker's signature appears on the morning session seminars (*How to Handle Difficult Employees*, 0800 to 0900; *Conflict Resolution*, 0900 to 1130). Review of the afternoon session sign-in sheets for 21 April 2010 indicate Ms. Walker attended the *Why Leaders Fail* lecture at 1500, 21 April 2010, but failed to sign-in for the *Leadership: A Top Issue* lecture at 1300, 21 April 2010, which she signed-up for the previous day. (EXHIBIT D-5)

(6) Ms. Bonnie LeClair, Joint Base Andrews Security Manager, testified on 25 May 2010, that she recalled having a conversation on 22 April 2010, with Ms. Walker in which she complimented Ms. Walker's shoes. Ms. Walker responded to the compliment by advising Ms. LeClair that she "...just purchased the shoes yesterday [21 April 2010] at lunchtime at the outlet malls down the street." (EXHIBIT B-6)

(7) Two witnesses, Mr. Carl Brominator, Joint Base Andrews Director of Operations, and Mr. Steven Catherman, Joint Base Andrews Executive Assistant, whose names were selected from the 1300, 21 April 2010, sign-in sheet for "Leadership: A Top Issue," seminar both testified on 25 May 2010, that they did not recall seeing Ms. Walker at the seminar. They both asserted that they know Ms. Walker "pretty well" and would have remembered if she were at the 1300 seminar. (EXHIBITS B-7, B-8)

(8) Ms. Walker testified on 27 May 2010, that she did attend the morning leadership sessions on 21 April 2010, and left the conference center at approximately 1130 and met Mr. Jonathan Walker and Colonel Sturdevant at Panera Bread Restaurant, which is a couple of miles from the National Conference Center. She left the restaurant at approximately 1220, and proceeded in her own car to the Leesburg Outlet mall to see if she could find a pair of shoes to replace the ones she was wearing. Earlier that morning, she had tripped while descending a flight of stairs at the conference center and broke the heel of her shoe. She didn't realize until they had gone into the restaurant that the mall was so close; otherwise, she would have skipped lunch and

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went directly to the mall instead. Ms. Walker further testified that she thought she would be able to get in-and-out of the store, and still get back to the conference center in time for the 1300 leadership session. She did not get back to the conference center until approximately 1330, at which time she proceeded directly to her room located in the conference center to change shoes. She did not want to disrupt the session by coming in late. Ms. Walker testified that she got back to the area where the workshops were being held at approximately 1445, and waited to attend the 1500 session. (EXHIBIT B-8)

## **b. Discussion**

(1) (*Restated Allegation*) A confidential complainant alleged that Ms. Walker misused her official time by not attending an afternoon session of a leadership workshop at the National Conference Center, Leesburg, VA, to which she was assigned by Temporary Additional Duty orders issued on 13 April 2010, in violation of 5 C.F.R. Part 2635.705(a), Use of Official Time.

(2) (*Summarized Standard*) 5 C.F.R. Part 2635.705(a) requires that an employee use official time in an honest effort to perform official duties. The elements of this regulation further discuss an employee's obligation to perform official duties, or be charged annual leave.

(3) (*Evidence Supporting Substantiation*) Three witnesses testified that Ms. Walker was not present for the 1300 leadership seminar on 21 April 2010, at the National Conference Center. A review of conference attendance sign-in sheets indicated that Ms. Walker was present for all of the seminars except the 1300 seminar on 21 April 2010. Ms. Walker admitted that she left the conference center with two co-workers at approximately 1130 to have lunch at Panera Bread restaurant located off of the conference complex. After lunch at approximately 1220, Ms. Walker admitted to stopping by the Outlet Mall, located next to the restaurant, to purchase a pair of shoes to replace the ones she broke earlier that morning while descending stairs at the conference center. Ms. Walker further testified that she returned to her room at the National Conference Center at approximately 1330, but did not return to the seminar area until approximately 1445, in time for the next workshop scheduled for 1500.

(4) (*Evidence Supporting Not Substantiated*) Ms. Walker admitted that she did not realize how much time had passed from the time she left the restaurant until she returned to the conference center. She testified that she didn't believe she could make it through the remainder of the afternoon sessions with a broken shoe, and felt it was necessary to replace them. She opined that she thought she would be able to make it back to the conference in time for the 1300 seminar.

(5) (*Analysis of All Evidence*) Witness testimony and review of conference seminar attendance sheets verify that Ms. Walker was not at the required 1300 leadership seminar on 21 April 2010. While she did attend the 1500 seminar that afternoon, Ms. Walker was absent from required training for a period of two hours.

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Further, Ms. Walker admitted to being absent from her official place of duty from 1300 to 1500, 21 April 2010. The preponderance of evidence indicated that Ms. Walker misused two hours of official time in violation of 5 C.F.R., Part 2635.705(a).

c. **Conclusion:** The allegation that Ms. Walker misused official time in violation of 5 C.F.R., Part 2635.705(a) **was substantiated.**

### 3. OTHER MATTERS:

a. Prior to commencing this investigation, the Air Force Personnel Center was contacted to verify that Colonel Sturdevant was not a Colonel Promotable which would necessitate referring the allegations to DODIG Senior Official Investigations. Confirmation was received and authority was given to proceed with any action directed by the TRICOM Commander.

b. Ms. Walker attributes her absence from the conference as necessary so that she could purchase a pair of shoes to replace ones she damaged when she tripped on the stairs at the conference center. This matter should be referred to the organizational safety officer for compliance with Joint Base Andrews Instruction 6055.1 (Safety and Mishap Reporting).

### 4. RECOMMENDATIONS:

a. Approve the report and close the case.

b. The safety officer contact Ms. Walker to document the incident in which she tripped on the stairs at the National Conference Center on 21 April 2010.

c. Ms. Rachael Walker be charged annual leave to cover the period of time that she was not performing official duties per 5 C.F.R. Part 2635.705(a).

*Pam Murphy*

PAM MURPHY  
COL, IG  
Investigating Officer

*Christal McFarland*

CHRISTAL MCFARLAND  
LtCol, Deputy IG  
Investigating Officer

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CONCUR:

*Hollis Mann*

HOLLIS MANN  
COL, IG  
Inspector General

NO LEGAL OBJECTION:

**Amanda Hendricks**

AMANDA HENDRICKS  
CDR, JAG  
Staff Judge Advocate

APPROVED:

*Norman Davidson*

NORMAN DAVIDSON  
MG, U.S. AIR FORCE  
Commander

DATE APPROVED: June 28, 2010

Encl  
Exhibit List

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## LIST OF EXHIBITS

<b><u>EXHIBIT</u></b>	<b><u>DESCRIPTION</u></b>
<b>A</b>	<b>Directive and Complaint</b>
A-1	TRICOM Directive Ser 0672 of 17 May 2010
A-2	Complaint of 29 April 2010
A-3	TRICOM SJA legal review of 26 June 2010
<b>B</b>	<b>Testimony</b>
B-1	Mr. Jonathan Taylor, Joint Base Andrews Real Property Division, 24 May 10
B-2	Ms. Rachael Walker, Asst. Director, Joint Base Andrews Facilities Department, 27 May 10
B-3	Colonel John David, Joint Base Andrews, Chief of Staff, 26 May 10
B-4	RADM John Kelley, Commander, Joint Base Andrews, 26 May 10
B-5	Colonel Mitch Sturdevant, Director, Joint Base Andrews Facilities Department, 27 May 10
B-6	Ms. Bonnie LeClair, Joint Base Andrews Security Manager, 25 May 10
B-7	Mr. Carl Brominator, Joint Base Andrews Director of Operations, 25 May 10
B-8	Mr. Steven Catherman, Joint Base Andrews Executive Assistant, 25 May 10
<b>C</b>	<b>Standards</b>
C-1	UCMJ, Article 86
C-2	5 C.F.R. Part 2635.705(a)
<b>D</b>	<b>Documents</b>
D-1	TEMADD orders ICO Colonel Sturdevant of 15 Apr 10
D-2	TEMADD orders ICO Ms. Rachael Walker of 13 Apr 10
D-3	Joint Base Andrews ltr 1000 Ser 10-074 of 15 Mar 10
D-4	National Conference Center Registration Record of 20 Apr 10
D-5	Training Session Sign-in Sheets for 21 Apr 10
D-6	Washington Headquarters Staff (WHS) BRAC Meeting Minutes of 21 April 10

(The names in this example are fictitious and used for illustration purposes only.)

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## Section 9.5

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### Modified ROI/ROII with Command Product

During the course of a Joint IG investigation/investigative inquiry, circumstances will arise that cause the investigator to refer allegations/issues to the chain of command or another investigating officer within the Department of Defense (DoD) for their action as appropriate. The physical results of these command actions are called Command Products. The IG must ensure that the follow-on Investigating Officer understands what allegation(s) are to be investigated/issue(s) are to be addressed. Once the command product is complete, the Joint IG reviews it for due process in accordance with the applicable regulation(s) that address the issue(s)/allegation(s). If the investigating officer afforded due process in accordance with the governing regulation, the Directing Authority signed the product (document), the SJA performed a legal review (if required), and the IG concurred with the finding(s), then the IG can use the Command Product as a piece of evidence to close out the allegation in the Joint IG system. However, the conclusion of the IG investigating officer (substantiated/not substantiated) contained in the approved ROI/ROII will go in the IG database. If the IG does not concur with the conclusion because the Command Product was flawed, then the IG will request a legal review. If due process was in accordance with the governing regulation, but the IG still does not agree with the finding(s), then his or her finding(s) will be captured in a modified ROI/ROII and the IG database (see Figure 9.5.1.)

#### Figure 9.5.1 Example of a Modified Report of Investigative Inquiry Using a Command Product (OTR 05-XXXX)

**EXECUTIVE SUMMARY:** (An EXSUM is not needed due to the straightforward and uncomplicated nature of this case)

1. **INTRODUCTION:** The complainant, CW5 Frank F. Turmoil, USA, a warrant officer assigned to JTF, submitted an IG complaint to the COCOM JCIG via fax on 11 March 2005, 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.

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a. **Evidence:** Completed Army Regulation (AR) 15-6 investigation, dated 10 June 2005. The Office, Chief, Army Reserve (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 transferring CW5 Turmoil and not CW4 Rhines, CW5 Webster made several assumptions that he failed to research fully and follow-up. (EXHIBIT A)

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 OCAR, DAAR-HR, dated 4 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 evidence indicated that CW5 Webster violated the OCAR AGR PCS policy.

**[IO Note:** After careful consideration of all the evidence presented, the documents and testimonies provided during the AR 15-6 investigation are in fact 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:** This office concurs with the findings and recommendations of the investigation IAW AR 15-6 by the OCAR IO. This office 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 investigation report had a legal review with an attached opinion.

4. **RECOMMENDATIONS:** Approve the report and close this case.

WALLY HEAD  
SMSgt, IG  
Investigating Officer

BOB E. JONES  
MAJ, IG  
Investigating Officer

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CONCUR:

NO LEGAL OBJECTION:

CHEVY CHASE  
LTC, IG  
Inspector General

CHONNY ROCHRAN  
LTC, JA  
Staff Judge Advocate

APPROVED:

FRANKLIN LEATHERNEX  
MG, USMC  
Commander

Encl  
Exhibit List

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## Example of an Army AR 15-6 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 2005. (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 the COCOM JCIG via fax on 11 March 2005, 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, 3 and 4, 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."

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### 3. Testimony

a. On 7 June 2005, 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 2005, 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 for CW5 Turmoil indicated he (CW5 Turmoil) was reassigned to 2nd Brigade in Los Alamitos, CA, with a report date of 22 May 2005. (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. 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. The sworn statements of CW5 Turmoil, CW4 Rhines, and CW5 Webster are consistent with the facts of the case and appear 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' 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.

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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, the JCIG 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 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.

Encls  
List of Exhibits  
Legal Review

/s/  
DUANE J. LONG  
MAJ, FA  
Investigating Officer

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## Section 9.6

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### Obtain Approval

1. **Investigative Inquiry.** There is no formal process prescribed for approval of investigative inquiries. Ensure that the JCIG is informed and approves of the cases the investigator believes should be worked. Consequently, the investigator should brief the Joint IG when these cases are completed. If the investigative inquiry substantiated allegations, the investigator must obtain a written legal review from the servicing SJA's office as well as the Directing Authority's approval to ensure the IG conclusions receive a responsible level of scrutiny. On a case-by-case basis, the investigator or the IG may need a written legal review for ROIs with not substantiated allegations. The investigator should use her/his best judgment. When in doubt, obtain a legal review.

2. **Investigation.** Before taking the ROI to the commander, investigators must obtain a written legal review from the servicing SJA. 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 commander 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 conclusions or the recommendations. A Directing Authority, or other individual, should never compromise the investigator's 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 of the investigation. However, the commander can request that the investigator gather more evidence to support a finding. The commander is not bound by the investigator's findings, conclusion, opinions, or recommendations. Commanders may act as they see fit. Experience has shown that having the SJA's concurrence and recommendations will greatly enhance the case's chances of approval.

4. **Actions by Higher Authorities.** Investigators should 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 the COCOM IG or Joint Staff IG to IG, DoD, for final approval. DoD IG also has the final review of MHE and Restriction cases.



## Section 9.7

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### Actions if Directing Authority Disapproves ROI/ROII

1. **Disapproval.** There are several actions the Directing Authority can take with the ROI/ROII. He or she is not bound by the investigator's conclusions or recommendations and may approve or disapprove the report in part or in its entirety, to include modifying the recommendations. If the Directing Authority agrees with the conclusions and recommendations, then normally he or she will sign and approve the report. But what should the investigator do 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 JCIG. If the JCIG authorized the investigative inquiry, then the commander/Directing Authority is not required to approve the ROII if it contains no substantiated allegations. On the other hand, approval by the commander/Directing Authority is required if the investigator has a substantiated allegation.

3. **Investigation.** A formal investigation 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. Whistleblower reprisal, restricted access to the IG, and Improper Mental Health Evaluation referral cases are exceptions to this rule since the COCOM or Joint Staff IG is the office of record and IG, DoD, is the final approving authority.

4. **IG Response.** Responding to the disapproval of the investigator's recommendations is usually less difficult than resolving the disapproval of the investigator's 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 should never recommend punitive, adverse, or disciplinary action. To do so compromises their status as a fair and impartial fact-finder. There are several reasons why the Directing Authority may not agree with the recommendation(s). For example, the investigating officer 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 Investigating Officer himself/herself. Coordination with the SJA and a clear understanding of commander's guidance will help 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, the investigator should take the SJA with them when they brief the Directing Authority. Let the SJA lead any discussion on the appropriate type of follow-on investigation.

5. **Additional Fact Finding.** In some cases the Directing Authority may disapprove the investigator's recommendation to close the case if he or she feels that the investigator did not include certain documents or interview a key witness. 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, then re-submit the final report to the Directing Authority.

**6. IG's Conclusions.** What if the Directing Authority disapproves of the Investigating Officer's conclusion of either substantiated or not substantiated? The Directing Authority should never compromise the Investigating Officer'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 investigator gather more evidence to support a particular finding. Additionally, the Directing Authority may find that the discussion does not flow logically. Most investigators will find that when they work directly on a case and write the report, they become so familiar with the issues that they make 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. Joint IG tech channels are another source for help, especially with complex cases. In any case, the Joint commander is not bound by the investigator's conclusion and may act as he or she sees fit. For further guidance consult the next higher organizational level IG.

## Section 9.8

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### Common Pitfalls

- 1. Lack of Evidence to Support Conclusions.** The investigator may not have provided sufficient credible evidence to support the conclusions that he/she reached. Continue to investigate in this situation. The investigator may have gathered sufficient evidence to support a conclusion but did not introduce it in the evidence subparagraph. If this is the case, correct the report.
- 2. Inconsistent Conclusions.** Investigators 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 their recommendations, erode the integrity of the IG system, and subject the investigator 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. Investigators should base all recommendations on their conclusions.
- 4. Interjection of Investigating Officer Opinions.** Investigators may use notes to clarify information for the reader in the evidence subparagraph of an allegation. Avoid interjecting opinions in the evidence sections of the ROI. Naturally, investigators must exercise judgment as they evaluate evidence in the discussion subparagraphs of the ROI. Investigators must write out the rationale for their judgments in a logical and cogent manner so that they transcend mere opinions. If investigators are in doubt regarding any aspect of the ROI, do not hesitate to use technical channels and call either the COCOM IG; the Joint Staff IG; IG, DoD; or the faculty at the Joint IG School as appropriate. They will discuss the case with the investigator and maintain the required confidentiality.



# Chapter 10

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## Post Fact-Finding Actions

Section 10.1 Post-Investigation Notifications

Section 10.2 Other Post Fact-Finding Actions

Section 10.3 Closing the Case

Section 10.4 Common Pitfalls, Issues, and Problems



# Section 10.1

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## Post-Investigation Notifications

1. **Overview.** Post-investigation notifications (Step 5 of the JIGAP) are different from the initial notifications (Step 3 of the JIGAP). Normally, initial notifications of the subject or suspect and a commander are done verbally. But Joint IGs will make post-investigation notifications in writing after completing the case and following the Directing Authority's approval of the report. Sample close-out letters are in Figures 10.1.1, 10.1.2, 10.1.3, and 10.1.4. Joint IGs may use these letter formats for both investigative inquiries and investigations.

2. **Persons Notified Pertaining to Results of an IG Investigation or Investigative Inquiry.** Joint IGs must notify the following individuals:

a. **Subjects/Suspects.** In an investigation/investigative inquiry, formally notify the subject or suspect in writing after the case is completed and approved (see Figure 10.1.1). Type and underline the words "Exclusive For" on the envelope. 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 the investigator to comment on actions that the command may contemplate other than the appointment of a follow-on investigating officer.

**NOTE:** If the IG Office of Record (usually a COCOM IG) referred an allegation to a subordinate IG office for investigation or investigative inquiry, the "Office of Inquiry" (usually an IG) should provide all of the information gathered during the investigation or investigative inquiry to the IG Office of Record for their final report. At this time, 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.

b. **Subordinate Commanders/Supervisors.** At the conclusion of an investigation/investigative inquiry, formally notify any commanders or supervisors whom the investigator initially notified. Use the format shown in Figure 10.1.2. Notify the incumbent in the command position of an individual who departs from command when the case is in progress or has a need to know the outcome of the case when completed.

c. **Complainant.** In both investigations and investigative inquiries, the Joint IG must notify the complainant of the approved results of the investigation or investigative inquiry in writing (as part of Step 7 of the JIGAP). The approved investigation or investigative inquiry results are those issues and allegations directly pertaining to, or made by, the complainant. In most cases, the Joint IG will only notify the complainant of the results if it is deemed that the complainant was personally wronged (the victim of adverse actions related to the alleged misconduct by the subject/suspect). Third-party complainants (which include 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 as he or she deems appropriate (see Figures 10.1.3 and 10.1.4).

**FIGURE 10.1.1**

**Letter Format: Subject or Suspect Notification of Results from an  
IG Investigation or Inquiry**  
*(Letterhead)*

March 23, 2006

Office of the Inspector General

Subject's Name  
Address  
Address

Dear (Name):

The JTF Inspector General received an allegation that you (improperly did something in violation of a regulation/Command Policy Letter (clearly state the allegation per the format in Section 5.3). 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, we will maintain the results in the Joint IG database.

If you would like to receive a redacted copy of the report of investigative inquiry (or investigation), you may request a copy from the COCOM or Joint Staff 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: (include address and contact telephone numbers).

Sincerely,

(SIGNATURE BLOCK)\*  
Commander, US Navy  
Inspector General

\*Normally the Joint Command IG or Directing Authority.

**NOTE:** Type and underline the words "Exclusive For" on the envelope.

**FIGURE 10.1.2**

**Memorandum Format: Commander/Supervisor  
Results of Investigation Memorandum**

Office Symbol

3 May 2006

MEMORANDUM FOR Commander, JTF Iraq

SUBJECT: Results of Investigation

1. The COCOM 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 failed to properly manage government contracts in violation of The Joint Ethics Regulation during January through May 2000 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)\*  
COL, IG  
Inspector General

\* Normally the Joint Command IG or Directing Authority.

**NOTE:** Type and underline the words "Exclusive For" on the envelope.

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### FIGURE 10.1.3

#### Letter Format: Final Response Letter to Complainant (Injured Party)

*(Letterhead)*

December 21, 2007

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, 2007, letter to the JTF 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 it in the same order that the complainant listed it in his or her initial letter/phone call.)

This office will take no further action pertaining to the allegations.

Sincerely,

(SIGNATURE BLOCK)\*  
CAPTAIN, US Navy  
Inspector General

\* Normally the Joint Command IG or Directing Authority.

**NOTE:** Type and underline the words "Exclusive For" on the envelope.

**FIGURE 10.1.4**

**Letter Format: Final Response Letter to Complainant (Third Party)**

*(Letterhead)*

May 25, 2008

Inspector General

Mr. Feels A. Victim  
1776 Tun Tavern Place  
Philadelphia, PA xxxxx

Dear Mr. Victim:

The JTF Inspector General has concluded an investigation of an allegation you made against an officer assigned to your former unit in Afghanistan.

The Commander, JTF Afghanistan, approved the report of investigation on May 21, 2008, 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)\*  
Colonel, USMC  
Inspector General

\* Normally the Joint Command IG or Directing Authority.

**NOTE:** Type and underline the words "Exclusive For" on the envelope. Also, Joint IGs may use this same general format, with some minor adjustments, if notifying in writing a witness who provided sworn, recorded testimony that an IG investigation or investigative inquiry is complete.



## Section 10.2

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### Other Post Fact-Finding Actions

1. **Post Fact-Finding Actions.** The investigator's actions do not end once he/she has made the notifications at the completion of the case. The nature of the case drives the post fact-finding actions, and those actions are independent of the fact-finding process used.

2. **Follow-up.** The investigator should return to Steps 6 and 7 of the JIGAP once fact-finding is complete. Follow-up actions are frequently extensive. Even if the investigator handed-off corrective actions to a proponent staff agency, he/she will probably have to follow-up to ensure that problems are fixed.

#### 3. **Disposition of Documents/Physical Evidence**

a. Investigators 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 are kept beyond the ROII/ROI. 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 the ROII/ROI and case file and return all other materials to their sources. Remember to dispose of all files in accordance with COCOM or Joint Staff policies as appropriate. Joint IGs are not authorized to keep any files beyond their destruction date.

b. When the investigator has completed a case, he/she should purge the files of unnecessary notes, logs, internal memoranda, personal observations concerning the credibility of witnesses, etc. The final action is to erase magnetic recording tapes/digital files used to record testimony once a transcript or summarized testimony has been received and the case is closed.



## Section 10.3

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### Closing the Case

1. In addition to any paper documents maintained, investigators must ensure that the case is closed in any electronic IG database maintained by the Joint IG. The case notes, at a minimum, should reflect those key actions by the investigating officer such as notifications, interviews, important documents received, etc. If an electronic database is used, the case 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 IG database anytime in the future and understood by the IG reading it. It should answer the questions Who, What, When, Where, Why, How, and How Many?
2. Each allegation should be clearly written in the correct format (who, did what in violation of a standard and when) with the conclusion of **substantiated** or **not substantiated** clearly displayed for each allegation.



## Section 10.4

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### Common Pitfalls, Issues, and Problems

1. **Overview.** Occasionally, investigators will encounter problems when conducting investigative inquiries or investigations. To assist investigators, commonly encountered problems and possible courses of action are discussed below.

2. **Refusal of a Commander to Cooperate.** From time to time, commanders may not be fully cooperative. In most cases, the best course of action is 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 are open to the investigator:

a. Advise the commander that the matter will be referred to the next higher commander or the Directing Authority. Then contact the Joint IG office and request that action be taken to inform the appropriate commanders, or the investigator may call the commander. 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 JCIG or Directing Authority. Ensure the written report contains protective markings IAW JSM 5711.01D.

### 3. Request to Have Others Present During an Interview

a. Allowing third-party individuals in the interview is not a preferred practice. 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 person being interviewed has a right to the third party's presence, such as; right to a lawyer for a suspect or a union representative for a member of a collective bargaining unit.

b. In cases where the person being interviewed has requested the presence of an unauthorized observer or lawyer, the investigator should weigh whether the presence of such a person will facilitate or inhibit communications. If the person's presence will make the interviewee more comfortable, the investigator may want to 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 and DoD 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 within the DoD, although the psychotherapist – patient privilege might apply to the

circumstances. However, the rules for each differ, and investigators should check with an SJA if a military witness claims one of the exemptions.

b. The commander or supervisor may order DoD employees or service members who refuse to answer questions to respond.

**Remember:** you cannot compel any witness to incriminate him or herself.

Allow the witnesses to explain why they feel they should not testify before taking action to require them to do so. This approach provides the investigator a basis for determining whether they want to force the issue. Joint IGs confronted with a service member or DoD employee witness who refuses to answer questions should consult with their SJA. IGs should explain the obligation to testify and not order a witness because they will jeopardize their role as a impartial Investigating Officers. Failure to cooperate is an offense punishable under applicable regulations. Possible punishments include dismissal from Federal service.

c. **DoD contractor witnesses may cooperate with an investigation or investigative inquiry.** If the witness is reluctant to cooperate, the investigating officer should attempt to gain the witness' cooperation. As a last resort, the investigating officer should request the contractor's support in obtaining the DoD contractor witness' cooperation to provide testimony.

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 investigator alone determines if a question is relevant to the investigation, and should advise the witness accordingly.

f. If the investigator has a reluctant witness whom they believe has information concerning a felony, the investigator may read that person Title 18, United States Code, Section 4 (Misprision of felony, i.e., concealing a felony), to convince him or her to discuss the issues. 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 DoD employees may rightfully refuse to testify on the basis that the investigator has no authority to make them do so. The investigator's personal appeals 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. Therefore, the investigator should be cautious about using this warning.

**5. False Testimony by a Witness.** False testimony knowingly given to an investigator under oath by an individual subject to the Uniform Code of Military Justice may constitute false swearing. False testimony by a civilian witness may constitute an offense under Title 18, USC, 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 (Article 107) is a criminal offense.

**6. Requests for Advice from an Investigating Officer.** A witness may ask for or seek the investigator's advice, but the investigator must tell the witness that they cannot give 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 or not they should consent to release of their testimony if they make a FOIA request.

## **7. Intimidation of Witnesses**

a. If an investigator believes there has been tampering or interference with a witness, they 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. Investigators should make a full record of such action and that the pertinent details appear in the ROI/ROII.

b. Fear of retribution for testifying about their superiors or supervisors may be intimidating for a witness. 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 investigating officer, 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 Joint IG system. Therefore, avoid this practice whenever possible.

**8. Request by Witness or Lawyer to Record an Interview.** Normally, persons providing testimony are discouraged from taping interviews in order to preclude compromising testimony and other evidence. Follow the procedures outlined below when a request is received to record an interview.

a. **Service Members or Federal Employees.** Inform the witness that Joint IG investigation procedures discourage the witness from recording the interview. If an investigator allows a witness to tape record, they surrender control of potentially sensitive information regarding an official IG investigation. If a witness expresses a desire to tape-record, offer a copy of the transcript and/or tape instead. If the witness persists, admonish him/her regarding the sensitivity of the investigation and proceed with the interview. Investigators must state in their on-tape introductory remarks that the witness is also recording the interview. At the conclusion of the interview, investigators should ask the witness to allow them to secure the tape until the case is complete. If the witness is uncooperative and refuses to testify because the investigator denied him or her permission to record the interview, the investigator may have a commander order the person to testify.

b. **Non-Federal Civilian Witness.** If a Non-Federal civilian witness puts a condition on his or her cooperation such as refusing to testify unless allowed to record the session, the investigator can persuade that person not to do so, to honor the request, or to forgo receiving his or her testimony. Investigators cannot require a Non-Federal civilian witness to testify. If a Non-Federal civilian witness is allowed to record

an interview, attempt to retain the tape until the investigation is complete to avoid compromising the investigation or consider interviewing all other witnesses before allowing a Non-Federal civilian witness to record an interview.

**9. Request for a Copy of the ROI/ROII.** Individuals involved in a Joint IG investigation or investigative inquiry will not have access to the ROI/ROII. ROI/ROIIs and accompanying testimony are released only as authorized by Chapter 4, The Joint IG Concept and System Guide and the Freedom of Information Act (FOIA).

#### **10. Request for Results of an Investigation**

a. Follow the guidelines in Chapter 4, The Joint IG Concept and System Guide. The Directing Authority may direct that the investigator provide ROI/ROIIs or summaries within the DoD for official purposes; however, investigators need to take several precautions:

(1) Comply with all provisions of Chapter 4, The Joint IG Concept and System Guide.

(2) Make sure that the protective markings are included on 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 the Joint IG's 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 an ROI transmittal letter is at Appendix D.

**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 the investigation, include them in the case – but the investigator may need to expand the Directive. If unsure, the investigator should brief the Directing Authority. If an unrelated issue surfaces, take it through the seven-step JIGAP 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. The investigator should discuss the witness's concerns, attempt to dispel them, and encourage the witness to allow them to record the information. While the investigator can make a MFR of off-tape discussions, the witness may later contend that the investigator modified or misunderstood what she/he said. It is best to have the witness put off-tape answers in the recorded testimony. When taping is resumed, ask the witness to summarize what she/he told the investigator off tape.

### **13. Refusal to Swear or to Affirm Testimony**

a. Investigators cannot make individuals who are not subject to UCMJ or who are not DoD employees testify under oath or affirmation. If a witness refuses to be sworn or refuses to affirm her/his testimony, let the record reflect her/his refusal and continue to interview.

b. Individuals subject to the UCMJ or Federal employees can be required to testify under oath or affirmation. If a witness refuses to swear, the investigator may continue with an unsworn interview, or consult with the legal advisor and then ask the witness' commander or supervisor to direct the witness to swear or affirm to the testimony or reverse any inaccuracies prior to swearing/affirmation.

**14. Locating Civilian Witnesses.** If the investigator has difficulty locating essential civilian witnesses, the first choice is to seek help through Joint IG technical channels. When not practical, sources such as the local Provost Marshal (or equivalent position), local military law enforcement organization, 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 the investigative inquiry or investigation -- or any inquiry or investigation an IG is conducting in the Joint IG office. Should the investigator find himself/herself in a position where someone might question their impartiality in an investigative inquiry or investigation, they should consider disqualifying themselves to the JCIG or Directing Authority. Even if the investigator thinks they can be impartial, what others think is what matters. The Joint IG may have to hand-off the case to a higher Joint IG such as the COCOM IG; Joint Staff IG; or IG, DoD.

**16. Amending Directives.** Occasionally, investigators may find their Directive to be inadequate for the investigation either because they misinterpreted the original information or found new information outside the scope of the original Directive. If this situation occurs, have the Directive amended, or prepare a new Directive and an MFR explaining the circumstances. Do not confuse this situation with the discovery of matters not appropriate for investigation. Refer those inappropriate matters to the agency having jurisdiction for action.

### **17. Requests for Interim Reports**

a. Joint IG investigations often take several weeks or months to complete. Investigators may use an executive summary as an interim report to keep the JCIG or the Directing Authority informed of their 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 investigator, the commander, or a higher Joint IG for the progress (or the results) of an investigation before the Directing Authority has approved the results. 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, do not allow the complainant 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 Directing Authority has approved the case. The weight of evidence may change, or the commander may not agree with the investigator.

**18. Using Joint IG Technical Channels.** Some of the tasks investigators typically would ask a Joint IG from another headquarters to perform are:

a. Notify the Joint IG's commander of the investigation. Never notify the commander if the allegations are against the investigator's commander.

b. Schedule and arrange locations for interviews.

c. Assist with lodging and transportation requirements and with administrative support.

d. Assist in gathering documents and other physical evidence.

e. Assist with, or conduct, interviews by being part of the interview team. The investigator can assist by administering the oath; conducting the pre-tape, read-in, and read-out to a witness; or assist by actually conducting the interviews. Do not put another Joint IG into the position of investigating or appearing to investigate his or her own boss (either commander or senior Joint IG). This situation creates a conflict of interest and may jeopardize the Joint IG's working relationship with his or her boss.

**19. Courtesy Calls.** Because of the confidential nature of Joint IG investigations, investigators 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 discussion to the minimum information the commander needs to do his/her job, usually the information in the Directive. The same guidelines apply to exit interviews; limit discussion to the Directive and the support rendered by the command.

**20. Shifting from Investigative Inquiry to Investigation.** Shifting from an investigative inquiry to an investigation is not a significant problem. Frequently, Joint IGs will begin an investigative inquiry and later determine that an investigation is more appropriate. The information from the investigative inquiry is the basis for the background paragraph in the Action Memorandum. Once the commander signs the Directive and the investigator begins the investigation, he/she must formally notify the chain of command and the subject or suspect (even if the investigator advised the person that they were conducting an investigative inquiry). Investigators can use the evidence gathered during the investigative inquiry as evidence for the investigation. Investigators do not have to conduct formal interviews with witnesses they previously interviewed informally. However, they might do so if they need to document their findings fully, the case is complex, or they have conflicts in evidence.

# Chapter 11

## **Special Topic IG Preliminary Inquiries (PI)/Investigations**

- Section 11.1 Service Member Whistleblower Reprisal PI/Investigations
- Section 11.2 Allegations of Whistleblower Reprisal Submitted by DoD Appropriated Fund, Non-appropriated Fund, and Defense Contractor Employees
- Section 11.3 Whistleblower Reprisal PI Format and Example
- Section 11.4 Improper Referral for Mental Health Evaluation Investigations
- Section 11.5 Example Mental Health Evaluation ROI



## Section 11.1

### Service Member Whistleblower Reprisal Preliminary Inquiries/Investigations

1. Section 1034 of Title 10, United States Code (10 USC 1034), "Military Whistleblower Protection Act (MWPA)," provides whistleblower protection for members of the Armed Forces. The MWPA prohibits taking (or threatening) retaliatory personnel actions against military members for communicating with members of Congress or IGs. It also prohibits retaliatory actions for reporting allegations of violations of law or regulations to designated DOD officials, including a military member's chain of command. The protections under the MWPA include IG, DoD investigation, or oversight of service IG investigations of reprisal allegations.

2. DoDD 7050.06, "Military Whistleblower Protection," implements the MWPA within DoD and provides policies and procedures for investigating whistleblower complaints. The MWPA does not require investigation of a reprisal complaint that was submitted more than 60 days after the complainant became aware of the unfavorable personnel action(s). However, IG, DoD policy is to allow more time flexibility to military members when submitting complaints, particularly in extenuating circumstances such as deployments and permanent change of station moves.

3. The MWPA defines a **protected communication (PC)** as:

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; or any other person designated** pursuant to regulations or other established administrative procedures to receive such communications.

4. Under the provisions of DoDD 7050.06, DoD Component IGs (other than military department IGs) should forward reprisal complaints to IG, DoD for determination of whether investigation of the reprisal complaint is warranted. However, IG, DoD has allowed COCOM and Joint Staff IGs to process military reprisal allegations under the procedures prescribed for the service IGs in DoDD 7050.06. This allowance continues and will be reflected in the next revision of DoDD 7050.06. In accordance with DoDD 7050.06, IG, DoD is the final approving authority for cases involving allegations of Whistleblower reprisal.

5. As outlined above, DoDD 7050.06 requires service IGs to notify IG, DoD **within 10 work days** of receiving a reprisal allegation. After that notification, service IGs are required to expeditiously conduct a Preliminary Inquiry (PI) to determine whether sufficient evidence exists to conduct an investigation of the reprisal allegations. In addition, reprisal allegations made against senior officials must be reported **within five work days** to IG, DoD under the guidelines of DoDD 5505.06, "Investigations of Allegations Against Senior Officials of the Department of Defense."

6. If a military member makes a reprisal allegation that appears to meet the criteria outlined in 10 USC 1034, the Joint IG who receives the allegation will advise the IG, DoD via the COCOM IG or Joint Staff IG (as applicable) within 10 working days using the Whistleblower Reprisal Advisement format in Figure 11.1.1.

7. When a military member makes a reprisal complaint, the Joint IG should consider the following questions when discussing it with the complainant and when reviewing any documentation provided by the complainant.

- a. What PC(s) does the military member claim that he or she made or prepared?
- b. To whom were they made?
- c. When (date) were they made?
- d. What matters were addressed in the PC (i.e.; violation of law or regulation, gross mismanagement, waste, etc.)?
- e. What were the unfavorable personnel actions alleged by the military member?
- f. Who was/were the responsible management official(s) (RMOs) alleged by the military member to have taken or threatened the personnel action? Allegations against senior officials (i.e.; COL/CAPT (P), General Officer, SES-grade civilian) must be reported to IG, DoD within five work days.
- g. When were the personnel actions against the military member taken or threatened?
- h. When did the military member first become aware of the personnel actions?

8. The Joint IG will also provide a letter to the military member acknowledging receipt of the complaint and advisement that the complaint was referred to the COCOM IG or Joint Staff IG for further review. The Joint IG will open a case and document all action taken. The Joint IG will take no further action unless directed by the COCOM IG or Joint Staff IG.

9. Upon receipt of the Whistleblower Reprisal Advisement and the complaint documentation, the COCOM IG or Joint Staff IG will evaluate the information and determine if the allegations meet the criteria for a reprisal investigation. The COCOM IG or Joint Staff IG will then refer the case to the appropriate Joint IG for PI. The complaint will be referred using the Referral Memorandum example in Figure 11.1.2.

10. A PI can only result in one of two recommendations: there is sufficient evidence to warrant a full investigation; or, there is insufficient evidence to warrant an investigation (i.e.; declination). The PI is based on documentary evidence and the complainant's testimony (RMO(s) should not be interviewed for a PI) (See Figure 11.1.3).

11. When conducting a PI for a reprisal allegation, the following issues must be addressed.

a. **Question 1.** Did the military member make, prepare to make, or was thought to have made a communication protected by the MWPA?

b. **Question 2.** Did the RMO(s) know about the PC?

c. **Question 3.** Did the RMO(s) subsequently take or threaten an unfavorable personnel action, or withhold or threaten to withhold a favorable action that affected or has the potential to affect the Service member's current position or career?

d. **Question 4.** Does a preponderance of the evidence establish that the unfavorable personnel action would have been taken absent the protected communication?

12. If any of the answers to these questions is "No," the PI recommendation would be there is insufficient evidence to warrant an investigation. A declination recommendation could also result from an untimely submission of the complaint.

13. If during the PI stage of the investigation, the investigating officer determines the answers to the first three questions are "Yes," or if an answer to question four cannot be determined from documentation and the complainant's testimony, the PI recommendation would be to investigate the case. The PI will be documented using the format in Section 11-3.

14. If the PI recommends declination, the Joint IG will submit the PI with supporting evidence and testimony to IG, DoD via the COCOM IG or Joint Staff IG. IG, DoD will notify the COCOM IG or Joint Staff IG of concurrence or non-concurrence with the PI recommendation.

15. If the PI recommends investigation, the Joint IG will submit the PI with supporting evidence and testimony to the COCOM IG or Joint Staff IG. If the COCOM IG or Joint Staff IG concurs with the PI recommendation, they will notify the Joint IG to investigate the case. The Joint IG conducting the investigation will use IGDG 7050.6, "Guide to Investigating Reprisal and Improper Referrals for Mental Health Evaluations," as a reference during the investigation. The ROI will be documented using the format in IGDG 7050.6, Appendix C.

16. The ROI will be submitted to the COCOM IG or Joint Staff IG for a quality review, then forwarded to IG, DoD. IG, DoD will review the ROI and notify the COCOM IG or Joint Staff IG of concurrence or non-concurrence with the ROI findings.

17. Notification to the complainant of a declined reprisal complaint or of investigation findings will include an advisement that the military member may request a review of the matter by a Board for Correction of Military Records.

Figure 11.1.3

## Timeline Evaluation

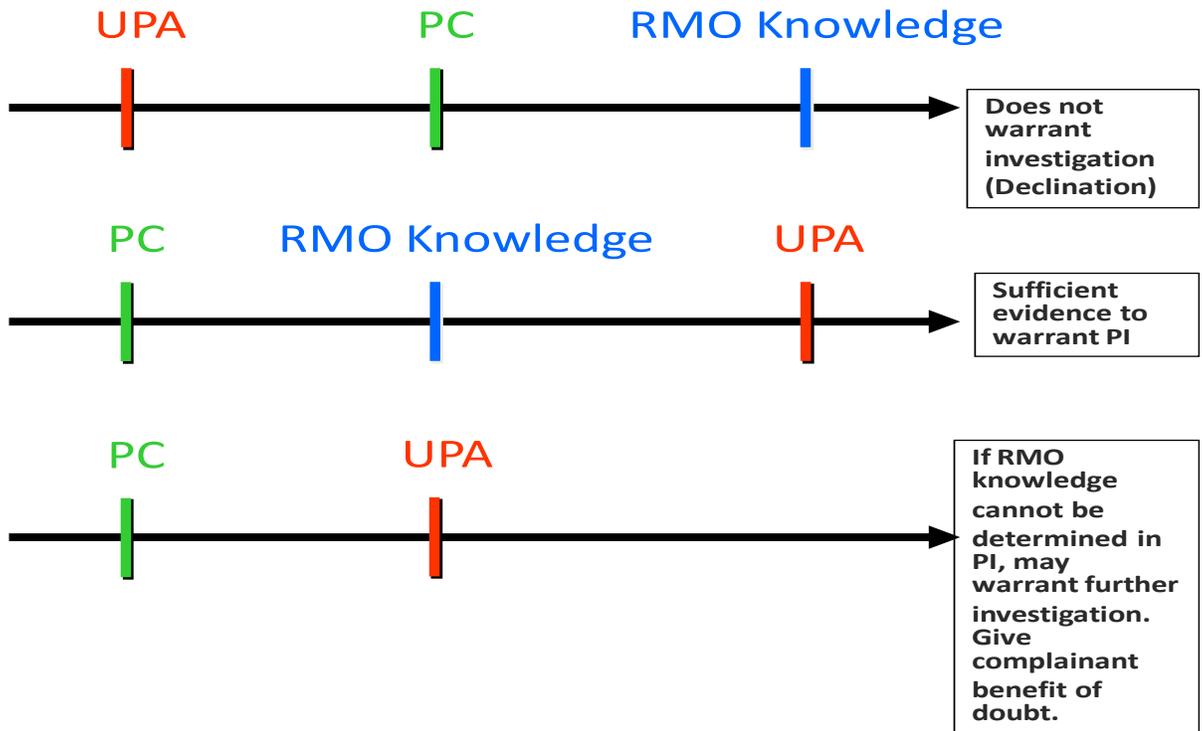


FIGURE 11.1.1

**Whistleblower Reprisal Advisement Format**

**Letterhead**

Date

MEMORANDUM FOR IG, DOD, DIRECTOR, MILITARY REPRISAL INVESTIGATIONS  
THROUGH **COCOM IG or Joint Staff IG**

SUBJECT. Advisement of 10 USC 1034 Reprisal Allegations (Case #)

1. In accordance with DoDD 7050.06, we provide the enclosed allegation(s) of 10 USC 1034 reprisal.
  - a. Complainant Info. **Name, rank, duty title, unit, home address, phone number**
  - b. Complaint Received. **Date IG received complaint**
  - c. Protected Communication(s). **List PC(s) and date(s)**
  - d. Personnel Actions. **List all personnel actions**
2. Responsible Management Official(s). **List RMO(s) name, rank, duty title, and unit. If RMO(s) 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 attached. If you have questions regarding the complaint, please contact (name, phone number, email).

Signature Block  
LtCol, IG  
COCOM

Attachment.  
Complaint and Complainant Provided Documentation

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FIGURE 11.1.2

Example COCOM IG or Joint Staff IG Referral Memorandum

Letterhead

24 August 2008

MEMORANDUM FOR INSPECTOR GENERAL, XXXXXX

SUBJECT. Referral of 10 USC 1034 Reprisal Allegations for Preliminary Inquiry (PI)  
(Case #)

1. SSG Christina Dill alleged to the Inspector General, Department of Defense that she received an unfavorable Non-commissioned Officer Evaluation Report in reprisal for her protected communication (PC) with her Command Sergeant Major. The attached complaint and complainant provided information is provided for your PI into SSG Dill's allegations. You should review DoDD 7050.06, "Military Whistleblower Protection," for policies and procedures relevant to 10 USC 1034 reprisal allegations, and review the Joint IG Investigations Guide, Chapter 11.

2. You should obtain all documentation relevant to the complaint (e.g., EO complaint, adverse fitness report and preceding reports, reassignment information).

3. You must interview the complainant to clarify the allegations and issues. When you set up the interview, ask the complainant to furnish any documentation that she has that establishes that she prepared or made a PC and any documentation she has regarding the personnel action. **A questionnaire filled out by the complainant does not replace an interview.** You must record the interview for your case file 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 personnel action or made the threat? Whom did you tell about making or preparing a PC? Who can testify or provide documents to show the RMO(s) were aware of the PC?

4. A PI can only result in one of two recommendations. there is sufficient evidence to warrant a full investigation; or, there is insufficient evidence to warrant an investigation (i.e., declination). The PI is based on documentary evidence and the complainant's testimony (RMO(s) should not be interviewed for a PI). When analyzing whistleblower reprisal complaints, the following issues must be addressed.

a. Question 1. Did the military member make or prepare a communication protected by 10 USC 1034?

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b. Question 2. Did RMO(s) subsequently take or threaten an unfavorable personnel action, or withhold or threaten to withhold a favorable action that affected or has the potential to affect the Service member's current position or career?

c. Question 3. Before taking the unfavorable personnel action, did RMO(s) know about the PC?

5. If any of the answers to these three questions is "No", the PI recommendation would be there is insufficient evidence to warrant an investigation. A declination recommendation could also result from an untimely submission of the complaint. Was the reprisal complaint submitted within 60 days of when the complainant first became aware of the unfavorable personnel action? (Consider each case based on merit, e.g., a military member on 179-day deployment may exceed the 60-day window vs. a military member who waits one to two years to file a reprisal complaint.)

6. If the answers to all three questions are "Yes", or if an answer to any of the questions cannot be determined from documentation and the complainant's testimony, the PI recommendation would be to investigate the case.

7. The PI will be documented using the format in the Joint Investigation Guide, Chapter 11, Section 11-3. Attach all evidence and the testimony and forward to the COCOM IG. The COCOM IG will review the PI and if it recommends declination, submit it to IG, DoD for final approval. When IG, DoD approves the recommendation for declination, the COCOM IG will notify you of the decision. If the PI recommends investigation, and the COCOM IG concurs with the PI recommendation, you will be notified to investigate the case.

8. Your suspense for completing the PI and forwarding all evidence and testimony to the COCOM IG is not later than 30 days from the date of receipt of this referral memorandum.

9. If any senior officials (COL/CAPT selected for promotion, General Officer, or SES) are identified as RMO(s), contact the COCOM IG within two work days.

10. This memorandum is not a directive for the conduct of a Joint IG investigation. If an investigation is required as a result of the PI, the investigating officer will be provided an investigation directive signed by the proper Directing Authority.

11. The COCOM IG is the office of record. Enter this case as a referred case in your database. Reference the case number in all complaint correspondence.

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12. The point of contact at the COCOM IG office is the undersigned at DSN xxx-xxxx, commercial (xxx) xxx-xxxx, or email xxxx.xxxx@cocom.mil.

Signature Block  
LtCol, Assistant Inspector General  
COCOM

Attachment:  
Complaint and Complainant Provided Documentation

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## Section 11.2

### **Allegations of Whistleblower Reprisal Submitted by DoD Appropriated Fund, Non-appropriated Fund, and Defense Contractor Employees**

1. In addition to whistleblower protection for members of the Armed Forces, the following statutes and directives provide whistleblower protection for other categories of DoD employees.

- a. Civilian Appropriated Fund Employees. 5 U.S.C. 2302(b)8
- b. Civilian Non-appropriated Fund Employees. 10 U.S.C. 1587 and DoDD 1401.3
- c. Defense Contractor Employees. 10 U.S.C. 2409 and FAR, Subpart 3.9

2. Procedures for processing reprisal complaints for the categories of personnel included above:

a. Inform the **appropriated fund civilian employee** of the right to submit the reprisal allegation to the **Office of Special Counsel (OSC)** or to **IG, DOD Civilian Reprisal Investigations**.

b. Advise **NAF employees that whistleblower reprisal complaints should be sent to the IG DoD**, for consideration in accordance with DoDD 1401.3. The IG may assist the NAF employee in forwarding the complaint to IG, DoD.

c. Inform **DoD contractor employees** that they should forward reprisal complaints to the **IG, DoD** under 10 USC 2409.

3. If the employee elects not to present a reprisal complaint to the OSC or IG, DoD, but still wants to present the complaint to an IG, obtain that decision in writing and coordinate with the SJA and the commander to determine which type of IG action is appropriate, if any.



## **Section 11.3**

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### **Whistleblower Reprisal Preliminary Inquiry (PI) Format**

1. The format and detailed instructions for Whistleblower Reprisal Preliminary Inquiries is shown in Figure 11.3.1 and Figure 11.3.2.
2. The Record of Preliminary Inquiry is shown in Figure 11.3.1. The format and detailed instructions for a Preliminary Inquiry in which an investigation is recommend is contained in Figure 11.3.2.

**FIGURE 11.3.1**  
**Record of Preliminary Inquiry Case #**

**Complainant Name/Rank or Grade/Service.**    Name  
   Rank, Status (if applicable)/Service

**Job Title and Duty Location.**                    Duty Title (position when allegations were made)  
   Unit  
   Base or City, State

**Protected Communications (PC).**

- List only actual PCs under the appropriate U.S.C. (Include disposition of each directly under each PC as shown below. [Sequence of Key Events (SKE) x {cite pertinent SKE(s)}])

Disposition. Succinct description of the disposition of the PC. (Can further elaborate on disposition in the SKEs). [SKE x]

- If you determine the complainant has not made a PC as defined by U.S.C., insert the following. None.

*If complainant alleges other communications resulted in unfavorable personnel actions, but are not PCs as defined by U.S.C., mention them in a separate paragraph in this section. You must state reason for not considering, i.e.; not to designated official under 10 U.S.C. 1034, disagreement with leadership and not gross mismanagement, does not evidence Fraud Waste and Abuse, etc.*

*Do not list PCs after last unfavorable personnel action.*

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**Unfavorable Personnel Action(s)/Responsible Management Officials/Prior Knowledge**

Date. Unfavorable Personnel Action(s) (UPA)	Responsible Management Official(s) (RMO)	RMO knowledge of PC(s) before taking UPA Ans. Yes, No, or Unknown

*Only UPAs as determined by the investigator should be placed in the table. Add any action that does not meet the criteria of a UPA, as per DoDD 7050.06, under the table. Explain why the action does not meet the criteria of a UPA.*

*Regarding RMO knowledge, add a note under the table, or footnote the evidence that leads us to believe that the RMO did, or did not, have knowledge of any PC before he/she took the action.*

**Analysis**

**Unfavorable Action (date)** (Use for each UPA with separate recommendation section for each UPA)

- If there is no PC, insert the following statement, “Absent a protected communication, there is insufficient evidence to warrant further investigation under 10 U.S.C. 1034.”
- Bullets will reference facts in the SKE to provide justification either for or against investigating the case. Information included in the analysis must be corroborated by testimony or documentation. You may use information gleaned from previous investigations, official personnel files, previous congressional responses, and other official correspondence (email, separations packages).
- Do not cut and paste information from SKE. Combine items such as counseling sheets, Letters of Reprimand, documented incidents, etc. [SKE 2, 4, 6]
- Any additional significant information that might influence the determination of whether the allegations warrant investigation or closure. *Questions below are only ticklers and should not be included as written in your final PI.*
  - Did the adverse personnel action occur within a short time following the PC? Or, a long time after the PC? (Any triggering event?)

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## **Sequence of Key Events (SKE) Complainant's Rank/Name/Service**

*The following information is derived from documents provided by (complainant's name) and other sources. Much of the chronology also reflects (complainant's name) verbal and written accounts of events, which has not been corroborated by other individuals with knowledge of the events at issue.*

The purpose of the sequence of key events is to chronologically tell the story (clearly and concisely) and document the facts as identified in the preliminary process (documents and complainant interview). The bullets may contain more information than the RPI. This document should be referenced in your RPI as you analyze each unfavorable action. Style is as follows.

1. On date, 20xx, such and such. (Facts must be supported by documents or testimony. Previous official statements (i.e., investigation into PC) may be used as facts if the statements were officially recorded.)
  
2. According to xx, such and such. (Statements by the complainant or witnesses must be identified as such. Statements should demonstrate or support a fact, not an opinion.)

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**FIGURE 11.3.2**  
**Example Preliminary Inquiry (Investigation Recommended)**

**Record of Preliminary Inquiry Case #**

**Complainant Name/Rank /Service.** Staff Sergeant (SSG) Christina Dill  
 United States Army (USA)

**Job Title and Duty Location.** Military Police Officer, Charlie Company (C CO), 323rd  
 Military Police (MP) Battalion (BN), CJTF 24

**Protected Communications (PC).**

According to SSG Dill, on July 16, 2008, she made a verbal complaint to Command Sergeant Major (CSM) John Greenage, 323rd MP BN CSM, that her senior rater, First Sergeant (1SG) Ronald Stoddard, C CO 1SG, and a female subordinate were having an inappropriate relationship. [SKE 2]

**Disposition.** CSM Greenage stated that the unit conducted a “preliminary inquiry” into SSG Dill’s allegation and found no credible evidence of an inappropriate relationship.<sup>1</sup> [SKE 8]

**Unfavorable Personnel Action(s)/Responsible Management Officials/Prior Knowledge**

Date. Unfavorable Personnel Action(s) (UPA)	Responsible Management Official(s) (RMO)	RMO knowledge of PC(s) before taking UPA Ans. Yes, No, or Unk
September 18, 2008. Unfavorable Non-commissioned Officer Evaluation Report (NCOER) (May 10 through September 7, 2008)	Sergeant First Class (SFC) Dallas Holland, C CO Platoon Sergeant (rater)  1SG Stoddard (senior rater)  Captain (CPT) Reginald Montgomery, C CO Commander (reviewer)	Yes <sup>2</sup>  Yes <sup>3</sup>  Yes <sup>4</sup>

<sup>1</sup> The Fort Yellowstone IG told MRI there was no record of a documented inquiry or investigation into SSG Dill’s allegation against 1SG Stoddard.

<sup>2</sup> SFC Holland mentioned SSG Dill’s complaint in a counseling document dated August 2008.

<sup>3</sup> SSG Dill testified 1SG Stoddard told her in August 2008 that he was aware of her complaint against him.

<sup>4</sup>SSG Dill testified CPT Montgomery asked her in August 2008 to provide him her complaint information.

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## Analysis

### **Unfavorable NCOER (September 18, 2008)**

- On May 10, 2008, SSG Dill was assigned as a military police officer to C CO. [SKE 1]
- According to SSG Dill, on July 16, 2008, she made a verbal complaint to CSM Greenage that 1SG Stoddard and a female subordinate were having an inappropriate relationship. [SKE 2]
- According to SSG Dill, after July 16, 2008, SFC Holland' attitude toward her changed for the worse. She stated that between July 20 and August 14, 2008, SFC Holland called her "crazy," and a "sinking ship," and told other MPs that she was "off her medication."<sup>5</sup> [SKE 3, 13]
- SSG Dill stated that on August 8, 2008, CPT Montgomery told her that another company commander informed him about her complaint to CSM Greenage. SSG Dill said that CPT Montgomery asked her to provide him with all the information she gave CSM Greenage when she made her original complaint. [SKE 4]
- During this preliminary inquiry the investigator obtained a copy of a counseling, dated August 11, 2008, that SFC Holland wrote and signed, but never gave to SSG Dill. In the counseling, SFC Holland called SSG Dill's complaint against the 1SG "insubordination," and stated that SSG Dill defamed the 1SG's character without proof. SFC Holland wrote, "You have proven to me that you have no loyalty to your unit/organization."<sup>6</sup> [SKE 5]
- According to SSG Dill, on August 14, 2008, 1SG Stoddard told her that he knew she had complained to CSM Greenage about his relationship with the female subordinate and that the "investigation was unfounded." SSG Dill stated that 1SG Stoddard asked her repeatedly if she knew what "unfounded" meant, belittled her, and chided her about using her "little Sergeant Major card." [SKE 7]
- According to SSG Dill, on August 20, 2008, CSM Greenage told her "the unit conducted a preliminary inquiry . . . and found no credible evidence of an inappropriate relationship." SSG Dill also stated that CSM Greenage told her

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<sup>5</sup> SSG Dill was previously diagnosed and treated for Post Traumatic Stress Disorder (PTSD) that manifested after three combat deployments.

<sup>6</sup> There was also a hand-written note from SFC Holland indicating that he was unable to give SSG Dill the counseling because she was unavailable. Also, SSG Dill testified that SFC Holland never counseled her verbally or in writing concerning the topics addressed in this counseling statement.

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that she “was imagining things” and that “there was something wrong” in her head. [SKE 8]

- On September 18, 2008, SSG Dill was given an unfavorable NCOER by SFC Holland, 1SG Stoddard, and CPT Montgomery. SFC Holland gave SSG Dill a “No” for “Loyalty,” and wrote, “failed to properly utilize the chain of command, insistently utilizing upper echelons to address unit concerns that should have been resolved at the unit level.” SFC Holland gave SSG Dill four “Success” ratings, one “Excellence” rating, wrote positive comments about her accomplishments and rated her overall as “Fully Capable.”<sup>7</sup>

1SG Stoddard, the senior rater, gave SSG Dill a “2” for “Overall Performance,” and a “2” for Overall Potential.”<sup>8</sup> 1SG Stoddard wrote, “Soldier’s overall performance may have been adversely affected by existing medical circumstances stemming from experiences in combat.” [SKE 10]

- SSG Dill testified that 1SG Stoddard and SFC Holland treated her professionally and were understanding about her PTSD before her PC, but after making her PC, 1SG Stoddard and SFC Holland made derogatory comments about her character and medical condition.

SSG Dill stated that she did not believe CPT Montgomery had a motive to reprise against her when he concurred with SFC Holland’s’ and 1SG Stoddard’s NCOER ratings. [SKE 13]

**Recommendation.** Further investigation. The investigator found no evidence that SSG Dill was counseled during the rating period for her performance or conduct that would warrant SFC Holland rating her “No” for “Loyalty.” SFC Holland also cited SSG Dill in her NCOER for not using her chain of command properly and “utilizing upper echelons to address unit concerns that should have been resolved at unit level,” possible references to her PC. Also of concern is that SFC Holland described SSG Dill’s complaint against 1SG Stoddard, in a counseling statement, as “insubordination.”

**Final Recommendation.** Further investigation of SSG Dill’s unfavorable NCOER.

**Other Matters.** SSG Dill alleged to CSM Greenage that 1SG Stoddard was having an inappropriate relationship with a female subordinate. According to CSM Greenage, the unit conducted a “preliminary inquiry” into SSG Dill’s allegation and determined there

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<sup>7</sup> A “Fully Capable” rating is the middle of three possible ratings for “Overall Performance” (one higher rating and one lower rating. Army Pamphlet 623-3, “Evaluation Reporting System,” states that NCOs who receive “Fully Capable” are “NCOs who have demonstrated a good performance and strong recommendation for promotion should sufficient allocations be made available.”

<sup>8</sup> Army Pamphlet 623-3 states that a “2” rating in “Overall Performance,” and “Overall Potential” represents “a very good, solid performance and is a strong recommendation for promotion.”

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was no credible evidence to substantiate any allegation. However, the investigator found no record of a documented inquiry or investigation into SSG Dill's allegation.

Accordingly, we recommend the Joint IG refer SSG Dill's underlying allegation regarding 1SG Stoddard's inappropriate relationship with a female subordinate to the DoD IG Hotline for referral to the Department of the Army IG for action they deem appropriate.

Investigator	_____	_____
	LTC Scott Price	Date
Joint IG	_____	_____
	COL Glenn Haas	Date

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## **Sequence of Key Events Staff Sergeant (SSG) Christina Dill United States Army (USA)**

*The following information is derived from documents provided by SSG Dill and other sources. Much of the chronology also reflects SSG Dill's verbal and written account, which has not been corroborated by other individuals with knowledge of the events at issue.*

1. On May 10, 2008, SSG Dill was assigned as a military police officer to Charlie CO (C CO), 323rd Military Police (MP) Battalion (BN), CJFT 24. SSG Dill's rater was Sergeant First Class (SFC) James Holland, C CO Platoon Sergeant, her senior rater was First Sergeant (1SG) Ronald Stoddard, C CO ISG, and her reviewer was Captain (CPT) Reginald Montgomery, C CO Commander.
2. According to SSG Dill, on July 16, 2008, she made a verbal complaint to Command Sergeant Major (CSM) John Greenage, 323rd MP BN CSM, that 1SG Stoddard and a female subordinate assigned to C CO were having a personal and inappropriate relationship and that 1SG Stoddard gave the subordinate preferential treatment.
3. According to SSG Dill, between July 20 and August 14, 2008, SFC Holland called her "crazy," and a "sinking ship," and told others that she was "off her medication."<sup>9</sup> SSG Dill stated that SFC Holland also stated that he was tired of SSG Dill's "drama" and warned other soldiers to stay away from her.
4. According to SSG Dill, on August 8, 2008, CPT Montgomery told her that he found out about her complaint against 1SG Stoddard from another company commander. SSG Dill said that CPT Montgomery asked her to provide him with all the information she gave CSM Greenage when she made her original complaint.
5. During this preliminary inquiry, the investigator obtained a copy of a counseling, dated August 11, 2008, that SFC Holland wrote and signed, but never gave to SSG Dill.<sup>10</sup> In the counseling, SFC Holland called SSG Dill's complaint against the 1SG "insubordination," and stated that SSG Dill defamed the 1SG's character without proof. SFC Holland wrote, "you have proven to me that you have no loyalty to your unit/organization." He also cited SSG Dill for circumventing the chain of command by making a complaint directly to the BN CSM and opined that SSG Dill should be moved to another unit based on her allegations against the 1SG and

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<sup>9</sup> SSG Dill was previously diagnosed and treated for Post Traumatic Stress Disorder (PTSD) that manifested after three combat deployments.

<sup>10</sup> There was also a hand-written note from SFC Holland indicating that he was unable to give SSG Dill the counseling because she was unavailable.

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“perceived reprisal.”<sup>11</sup> SFC Holland also cited SSG Dill for being late for duty, improperly using her cell phone during rifle range operations, and for having an argument over an administrative matter with the same female subordinate mentioned in her complaint to CSM Greenage. SFC Holland attributed these events to SSG Dill’s emotional instability and PTSD.

6. According to SSG Dill, on August 13, 2008, 1SG Stoddard instructed C CO personnel not to have any contact with her.
7. SSG Dill stated that on August 14, 2008, she met with 1SG Stoddard and SFC Holland. SSG Dill said that 1SG Stoddard told her that he knew she had complained to CSM Greenage about his relationship with the female subordinate. SSG Dill stated that 1SG Stoddard told her that the “investigation was unfounded,” asked her repeatedly if she knew what “unfounded” meant, belittled her, and chided her about using her “little Sergeant Major card.”
8. According to SSG Dill, on August 20, 2008, CSM Greenage told her “the unit conducted a preliminary inquiry . . . and found no credible evidence of an inappropriate relationship.”<sup>12</sup> SSG Dill stated that CSM Greenage told her that CPT Montgomery informed 1SG Stoddard that “an unsubstantiated allegation” had been made against him. SSG Dill also stated that CSM Greenage told her that she “was imagining things” and that “there was something wrong” in her head.
9. On September 18, 2008, SSG Dill received an unfavorable Non-Commissioned Officer Evaluation Report (NCOER) from SFC Holland, 1SG Stoddard, and CPT Montgomery.

SFC Holland gave SSG Dill a “No” for “Loyalty” in the evaluation’s “Army Values/Attributes/Skills/Actions” section and wrote, “failed to properly utilize the chain of command, insistently utilizing upper echelons to address unit concerns that should have been resolved at the unit level.” SFC Holland gave SSG Dill four “Success” ratings, one “Excellence” rating and wrote positive comments regarding her accomplishments. SFC Holland gave SSG Dill an overall rating of “Fully Capable.”<sup>13</sup>

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<sup>11</sup> SSG Dill testified that SFC Holland never counseled her verbally or in writing concerning the topics addressed in this counseling statement.

<sup>12</sup> There is no record of the unit’s investigation into SSG Dill’s allegation against 1SG Stoddard and the female subordinate.

<sup>13</sup> A “Fully Capable” rating is the middle of three possible ratings for “Overall Performance” (one higher rating and one lower rating. Army Pamphlet 623-3, “Evaluation Reporting System,” states that NCOs who receive “Fully Capable” are “NCOs who have demonstrated a good performance and strong recommendation for promotion should sufficient allocations be made available.”

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1SG Stoddard gave SSG Dill a “2” for “Overall Performance,” and a “2” for Overall Potential.<sup>14</sup> 1SG Stoddard wrote, “Soldier’s overall performance may have been adversely affected by existing medical circumstances stemming from experiences in combat.”<sup>15</sup> CPT Montgomery, SSG Dill’s reviewer, concurred with SFC Holland’s and 1SG Stoddard’s evaluations.

10. On October 8, 2008, SSG Dill made a complaint to the CJTF 24 Inspector General (IG) that SFC Holland placed counseling dates on her NCOER that never occurred. SSG Dill also complained that 1SG Stoddard wrote a prohibited comment on her NCOER about her medical condition.<sup>16</sup>
11. On October 14, 2008, SSG Dill made a complaint to the CJTF 24 IG that SFC Holland, 1SG Stoddard and CPT Montgomery reprised against her by giving her an unfavorable NCOER because of her protected communication to CSM Greenage.
12. On January 7, 2009, the Preliminary Inquiry investigator interviewed SSG Dill concerning her reprisal complaint. SSG Dill testified that.
  - From May 10 until July 16, she had a professional relationship with SFC Holland and 1SG Stoddard, who showed support and understanding for her PTSD and frequent medical appointments;
  - After she complained to CSM Greenage, SFC Holland’s and 1SG Stoddard’s attitude toward her changed for the worse. They made derogatory comments about her character and medical condition and 1SG Stoddard taunted her about her “unfounded” allegation and using her “little Sergeant Major card;”
  - She believed SFC Holland was referring to her protected communication when he gave her a “No” rating for “Loyalty,” because her complaint to CSM Greenage was the only “unit concern” she raised outside her chain of command;
  - She did not believe CPT Montgomery had any motive to reprise against her when he concurred with SFC Holland’ and 1SG Stoddard’ NCOER ratings; and
  - She was never counseled in writing while assigned to C CO.

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<sup>14</sup> Army Pamphlet 623-3 states that a “2” rating in “Overall Performance,” and “Overall Potential” represents “a very good, solid performance and is a strong recommendation for promotion.”

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<sup>15</sup> Army Regulation 623-3, “Evaluation Reporting System,” prohibits NCOER comments regarding mental incapacitation unless substantiated by a completed command or other official investigation.

<sup>16</sup> SSG Dill stated that she sought legal assistance from the CJTF 24 Judge Advocate and is in the process of appealing her NCOER.

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## Section 11.4

### Improper Referral for Mental Health Evaluation Investigations

1. DoD Directive 6490.1, "Mental Health Evaluations of Members of the Armed Forces" and DoD Instruction 6490.4, "Requirements for Mental Health Evaluations 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 of risk for potentially dangerous behavior. The directive prohibits the use of referrals by commanding officers for mental health evaluations (MHE) in reprisal against whistleblowers for disclosures protected by 10 USC 1034 and DoDD 7050.06. DoDD 6490.1 establishes procedures to protect the rights of service members referred by commanding officers for mental health evaluations, including whistleblower protections.
2. DoDI 6490.4 requires the military departments notify IG, DoD within 10 working days after receipt of allegation(s) involving improper referral for an MHE in violation of DODD 6490.1. Joint IGs receiving allegations of improper referral for MHE will notify the IG, DoD via the COCOM IG or Joint Staff IG in writing within 10 working days. This notification will include: the rank, name, and duty location of the service member making the complaint; a copy of the complaint, or if not available, a synopsis of the specific allegation(s); any supporting data received by the Joint IG; the rank, name, duty location, and contact information of the proposed investigator; and any other information required during notification in accordance with DoDI 6490.4. All allegations of improper referral for MHE should be analyzed for possible reprisal in accordance with DoDD 7050.06. If as a result of the initial review by the Joint IG a possible violation of DoDD 7050.06 cannot be ruled out, then the Joint IG will also include this information when reporting to IG, DoD.
3. The Joint IG will open a case file and provide a notification letter to the complainant of the action taken. The Joint IG will initiate and complete an investigation of the allegations within the timelines specified in DoDI 6490.4.
4. The Joint IG will provide IG, DoD a copy of the final ROI (see Section 11.5 for format) within one week of completion. The ROI will be submitted to IG, DoD via the COCOM IG or Joint Staff IG. The COCOM IG or Joint Staff IG will conduct a quality review of the ROI prior to submission to IG, DoD. IG, DoD will review the ROI and notify the COCOM IG or Joint Staff IG if it concurs or non-concurs with the ROI findings.



## Section 11.5

### Example Mental Health Evaluation ROI

Figure 11.5.1. is a sample ROI format that will be used for MHE investigations.

#### FIGURE 11.5.1

#### REPORT OF INVESTIGATION – MENTAL HEALTH EVALUATION (MHE) (Case #)

##### EXECUTIVE SUMMARY.

**NAME/POSITION.** CPT Byron Banks, HHC, TF Lion, MNC-I, Camp Victory, Iraq, APO AE 09342.

**AUTHORITY.** In accordance with AR 20-1, paragraph 8-4c.

**BACKGROUND.** On 13 Sep 07, SSG Charles Wells, HHC, TF Lion, MNC-1 complained to the MNC-I IG office that he had been improperly referred for a MHE by his Company Commander, CPT Banks. SSG Wells stated that on 12 Sep 07, SSG(P) Paul Horn, Company HQ section, approached him and told him that he was being ordered to undergo a mental evaluation. SSG Horn escorted SSG Wells to the Camp Victory clinic where he was interviewed by COL Gene Frye. However, COL Frye refused to conduct an evaluation of SSG Wells because he did not have the proper referral paperwork.

**SUBSTANTIATED ALLEGATIONS.** The allegation that CPT Byron Banks improperly referred SSG Charles Wells for an MHE in violation of DoDI 6490.4 was substantiated.

**SYNOPSIS.** COL Frye sent SSG Wells back to his unit with the requirements for a proper MHE. Until he received this example of the proper paperwork, CPT Banks was unaware of proper MHE referral procedures. CPT Banks admitted his error to SSG Wells and dismissed him until the next morning. On 13 Sep 07, CPT Banks properly counseled SSG Wells and notified him that he had an MHE appointment on 15 Oct 07. The preponderance of credible evidence indicated this was a procedural error by CPT Banks, which he promptly admitted and corrected. Appropriate MHE checks and balances outlined in DoDI 6490.4 worked in this incident; however, an improper MHE did occur. SSG Wells received a proper MHE on 15 Sep 07. There was no evidence that this referral was a reprisal and no adverse action has been taken against SSG Wells during the process.

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**REPORT OF INVESTIGATION – MENTAL HEALTH EVALUATION (MHE)  
(Case #)**

**INTRODUCTION**

a) On 13 Sep 07, SSG Charles Wells, HHC, TF Lion, MNC-1 complained to the MNC-I IG office that he had been improperly referred to a Mental Health Care Provider by his Company Commander, CPT Byron Banks. SSG Wells stated that on 12 Sep 07, SSG(P) Paul Horn, Company HQ section, approached him and told him that he was being ordered to undergo a mental evaluation. SSG Wells was referred for the MHE based upon guidance from the TF Lion Commander as part of an on-going AR 15-6 investigation.

b) SSG Horn escorted SSG Wells to the Camp Victory clinic where he was interviewed by COL Gene Frye. However, COL Frye refused to conduct an MHE of SSG Wells because he did not have the proper referral paperwork. SSG Horn and SSG Wells returned to the unit area and provided CPT Banks with copies of the proper formats for an MHE. CPT Banks realized his mistake and then properly counseled SSG Wells using a checklist based upon guidance in DoDI 6490.4. SSG Wells received a proper MHE on 15 Sep 07.

**CONSIDERATION OF ALLEGATION**

1) **Allegation.** That CPT Byron Banks improperly referred SSG Charles Wells for an MHE in violation of DoDI 6490.4.

a) **Evidence**

i) **Complaint.** That on 12 Sep 07, CPT Byron Banks improperly referred SSG Wells for an MHE, thus failing to meet established DoD standards.

ii) **Standard.** DoDI 6490.4, dated 28 Aug 97.

iii) **Documentary Evidence.** Memorandum, subject. Notification of Commanding Officer Referral for Mental Health Evaluation, FICI-HC, dated 13 Sep 07. (Exhibit A)

iv) **Complainant's Evidence.** See DA Form 1559 (IGAR) dated 13 Sep 07; submitted by SSG Wells. (Exhibit B)

v) **Witness Evidence.**

(1) Sworn statement of SSG Horn, dated 18 Sep 07. (Exhibit C)

(2) Sworn statement of CPT Banks, dated 18 Sep 07. (Exhibit D)

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**b) Discussion**

i) As part of the preliminary analysis, LTC Mark Magness, Deputy MNC-I IG, telephonically interviewed COL Frye. COL Frye acknowledged the accuracy of SSG Wells' complaint and that he had been referred for an MHE without proper referral paperwork. COL Frye stated he did not examine SSG Wells, but instead sent him back to his unit with the requirements for a proper MHE.

ii) Until he received the proper paperwork from COL Frye, CPT Banks was unaware of the proper MHE referral procedures. Realizing his mistake, CPT Banks admitted his error to SSG Wells and dismissed him until the next morning. In their sworn statements (Exhibits C, D), CPT Banks and SSG Horn acknowledged SSG Wells' account and identified measures to correct the action. On 13 Sep 07, CPT Banks properly counseled SSG Wells and notified him he had an appointment on 15 Sep 07 (Exhibit A).

iii) On 14 Sep 07, LTC Magness interviewed CPT Banks and verified the account listed above. LTC Magness conducted teaching and training with CPT Banks and made him further aware of the significance of the proper MHE procedures. The preponderance of credible evidence indicated that this was a procedural error by CPT Banks which he promptly admitted and corrected. Appropriate MHE checks and balances outlined in DoDI 6490.4 worked in this incident, but an improper MHE did occur. There was no evidence that this referral was a reprisal and no adverse action has been taken against SSG Wells during this process.

c) **Conclusion.** The allegation that CPT Byron Banks improperly referred SSG Charles Wells for an MHE in violation of DoDI 6490.4 **was substantiated.**

**Issues.** That teaching and training be conducted with MNC-I Company Commanders and First Sergeants on proper MHE procedures IAW DoDI 6490.4.

**Legal Review.** This ROI was reviewed and found to be legally sufficient. (Exhibit E)

**Recommendations.** That the IG concur with this report and the case be closed.

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# Chapter 12

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## IG Records

Section 12.1 Overview

Section 12.2 Nature of IG Records

Section 12.3 Use of IG Records for Adverse Action

Section 12.4 Official Use of IG Records within DoD

Section 12.5 Release of IG Records for Official Purposes Outside DoD

Section 12.6 Release of Records for Unofficial (Personal) Use

Section 12.7 Release of Information to Follow-on Investigating Officers

Section 12.8 Release of Transcripts

Section 12.9 Media Requests

Section 12.10 Response to Subpoena or Court Order

Section 12.11 Requests Under the Privacy Act to Amend IG Records

Section 12.12 Disposition of Reports of Investigation and Investigative Inquiry

Section 12.13 Investigation Records Retention



## Section 12.1

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### Overview

Joint IGs frequently receive requests for information and records. Provisions for handling such requests are covered in The Joint IG Concept and System Guide. The most common situations investigators will face are discussed here. Investigators must be thoroughly familiar with the procedures for safeguarding Joint IG information as the potential exists for the compromise of confidentiality should records be inappropriately released. Study The Joint IG Concept and System Guide, and refer to it when requests for information are received. If investigators have any questions, they should consult with the COCOM IG or Joint Staff IG.



## Section 12.2

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### Nature of IG Records

Joint IG records are the property of the COCOM commander, including those IG records generated at the JTF-level. The records frequently contain sensitive information and advice. ROIs/ROIs almost always contain sensitive information. Rarely will anyone but the investigator, the legal advisor, and the commander review a complete copy of a ROII/ROI and then only with proper authorization. Release of Joint IG records should be in accordance with The Joint IG Concept and System Guide. These rules apply to the release of Joint IG records to other IGs.



## Section 12.3

### Use of IG Records for Adverse Action

1. Joint IG records may be used for adverse action (see The Joint IG Concept and System Guide). But by authorizing them for such purposes, the COCOM commander (or his designated representative) could inadvertently compromise the confidentiality built into the Joint IG fact-finding process.
2. Under legal due process, the suspect or subject will receive copies of the evidence used to support the adverse action, including Joint IG records if they are used as the basis for adverse action. Under certain circumstances (cost, administrative burden, pending separation of the subject/suspect, transfer of witnesses, etc.), the commander may wish to use the records to support an adverse action. In those cases, investigators must request COCOM approval for release of the record. Requests must state why a follow-on investigation would be unduly burdensome, unduly disruptive, or futile.
3. Send the records-release request to the COCOM IG describing precisely what IG records are required, why they are required, and the adverse action that is contemplated. Likewise, Joint IG records may be used (and are often used) as the basis for an adverse action against a senior official with service IG's approval. The adverse action must ultimately afford the senior official due-process protection.



## Section 12.4

### Official Use of IG Records within the Department of Defense

1. Many requests for Joint IG records and information are for official use within DoD. Joint IG records and information can be used without redaction within DoD for official purposes. Joint IGs should advise witnesses of this provision during the Pre-tape and Read-in for interviews. Investigators are authorized with certain restrictions to release portions of their records for official purposes. During the course of investigations or investigative inquiries, investigators will frequently uncover systemic problems that need to be fixed. These issues/problems should be documented in the ROII/ROI in the "Other Matters" paragraph and propose a corrective action with the investigator's recommendations. In such cases, investigators will initiate the release of information and records through an extract from their files to the agency or subordinate commander who will actually fix the problem.
2. Restrictions that apply are as follows:
  - a. Joint IG records may not be used for adverse action without COCOM IG approval.
  - b. Joint IG records are not to be used to compare commands or commanders.
  - c. Joint IG records are not to be cited in evaluation reports, performance appraisals, award recommendations, or other evaluations maintained in personnel records.
  - d. Joint 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 or the COCOM commander if necessary.
  - e. The contents of an ROII/ROI are not to be released to subjects/suspects (unless otherwise noted in this guide), or witnesses named in the report (except for their own testimony as discussed below).
  - f. Joint IG records must be safeguarded and marked per JSM 5711.01D.
3. After coordination, provide the minimum records and information to satisfy the official requirement. Ensure that you properly mark all records and extracts.
4. Ensure that the agency receiving the records understands that they are not to reproduce the records without the Joint IG's permission and that they must return them to the Joint IG when the records have served their purpose. **Emphasize that the records are Joint IG records "on loan" and should not be incorporated into another system of records that is subject to the Privacy Act without approval of the COCOM IG (or COCOM commander if necessary).**

**Remember:** Only the COCOM commander or her/his designated representative can approve the release of Joint IG records outside DoD for any purpose.



## Section 12.5

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### Release of IG Records for Official Purposes Outside the Department of Defense

1. The COCOM commander is the release authority for records outside the COCOM. Joint IGs forward requests from other Federal Government agencies for Joint IG records for official purposes along with **one copy** of the requested information to the COCOM IG. Coordinate with the COCOM IG prior to sending the records.
2. Investigators from Government Accounting Office (GAO); Office of the Special Counsel (OSC); or the Merit Systems Protection Board (MSPB) have a statutory right to obtain IG records if they are relevant to one of their ongoing investigations or audits.
3. These agencies must request copies of the records in writing and include the reason that they require copies. Forward these requests to the COCOM IG. The COCOM IG 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 12.6

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### Release of Records for Unofficial (Personal) Use

1. The Freedom of Information Act (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 investigators understand how to process requests for information 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 FOIA Office respond to the request. The requester should send the request to the COCOM FOIA Office.
3. If someone submits his or her records request directly to the Joint IG office instead of the FOIA Office, respond to the requester in writing within 10 working days that the Joint IG Office received the request and that it has been referred to the FOIA Office for search and direct reply. Simply acknowledge receipt of the request. **Do not inform the requester that the Joint IG Office has the records and are forwarding them to the FOIA Office.**
4. **Forward the original FOIA request, one copy of the requested records, and a forwarding memorandum to the COCOM FOIA office within 10 working days.** Advise the COCOM IG of any concerns the Joint IG or the commander have concerning the release of the records. Also indicate the source of any non-IG records being forwarded. Avoid retaining extraneous documents, notes, or comments in the case files. Once the Joint IG receives a FOIA request, the file is frozen and cannot be purged. It is a violation of Federal law to purge files after a FOIA request is received. When a FOIA request is received, forward all requested documents to the COCOM FOIA office for their review (even if the files are potentially embarrassing to the command).
5. The FOIA office processes the requested records for COCOM IG approval. As part of the FOIA office's responsibilities, they review the records, apply FOIA exemptions, redact exempted information, coordinate with the requester regarding processing fees, obtain COCOM commander (or his designated representative) approval for release, and then mail the released records to the requester.



## Section 12.7

### Release of Information to Follow-on Investigating Officers

1. If facts develop in a case that indicate the allegations are going to be substantiated, then consider whether referral to another agency for investigation is appropriate. If the Joint commander elects to resolve the allegation, then the Joint IG may provide the follow-on command investigating officer with the following:

a. **An oral briefing or written summary of the nature of allegations or matters the Joint IG office examined.** Be careful to avoid revealing findings, conclusions, or recommendations. The referring IG wants the follow-on investigating officer to conduct an unbiased investigation -- don't prejudice him or her with opinions.

b. **Commonly available documents.** Release evidence readily available that the investigator did not receive in confidence. Under this category, documents may be released such as vehicle dispatches, personnel and pay records, travel documents, hotel receipts, etc. that DoD personnel can obtain in the course of their 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.** Investigators can provide a written or verbal list of witnesses and a verbal summary of their testimony. Avoid revealing the identity of the complainant where possible.

2. Do not allow a follow-on investigating officer to read a referring investigator's transcripts. Limit the information released to the minimum the investigating officer needs to start his or her task, readily available documents and a summary. The most important facet of communications to a follow-on investigating officer is ensuring that the impartiality of that investigating officer is preserved. Be careful not to be judgmental about the allegations, the credibility of the witnesses, or to reveal findings.



## Section 12.8

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### Release of Transcripts

1. **Records-Release Requests.** Witnesses, as well as subjects or suspects, commonly request copies of their testimony. Individuals who provide statements or submit a complaint to the Joint IG that is documented, must submit a FOIA request to the Joint IG office of record to obtain a copy of their own testimony or statement. Upon receipt of the written FOIA request, the Joint IG office of record must forward one collated copy of the requested records to the COCOM IG (if appropriate) for action. Joint IG records will only be released after case closure.

2. **Transcript Review by Witnesses.** Investigators may allow witnesses, subjects, or suspects to read their transcript or summarized testimony in the Joint IG's office while the case is in progress. It is in the investigator's best interest to allow persons to review their own testimony. Investigators can be open and forthright with the individual. The threat to the confidentiality of the case is low since these individuals already know the questions 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, investigators can conduct a recall interview on the spot.

**A word of caution:** If the investigator prepared an MFR summarizing an interview, ensure that it contains only the evidence the witness provided. Ensure that any opinions or observations the investigator has about the witness or witness's credibility are contained in a separate MFR (since the MFR is internal Joint IG information, do not show it to the witness).



## Section 12.9

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### Media Requests

Do not discuss specific investigations or investigative inquiries with media representatives. **Refer them to the 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 12.10

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### Response to Subpoena or Court Order

1. **Joint IGs and Joint IG records are sometimes subpoenaed. Do not ignore a subpoena or court order.** The Staff Judge Advocate or the Command Civilian Counsel are the proponents for litigation involving DoD personnel. Should Joint IGs receive a subpoena, a court order, or have reason to believe either is imminent, immediately contact the local SJA, Command Civilian Counsel, or Legal Advisor. Official information shall be made available to Federal or State courts; however, the COCOM commander (or his/her designated representative) is the release authority for Joint IG records outside the COCOM, including Joint IG records requested by courts.



## **Section 12.11**

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### **Requests Under the Privacy Act to Amend IG Records**

The local Joint IG can amend facts in a record such as a misspelled name, an incorrect Social Security Account Number, or an address. Only the COCOM IG can amend records pertaining to areas of judgment such as IG opinions, conclusions, and recommendations. Contact the COCOM IG if a Joint IG record must be amended.



## Section 12.12

### **Disposition of Reports of Investigation and Investigative Inquiry**

1. **Overview.** Joint IG records include ROIs, extracts of ROIs and other supporting records and summaries. All Joint IG records regardless of where initiated are the property of the Secretary of Defense.

a. As an advisor to the commander, it is imperative that Joint IGs maintain the confidentiality of reports. However, under some conditions, IGs may provide some information contained in Joint IG reports to commanders or a 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** for the following reasons:

(1) The ROI contains recommendations made in confidence by a subordinate (the Joint IG) to a superior (the Directing Authority);

(2) The ROI contains allegations or accusations that may be substantiated by IG standards but may not meet the standard of proof 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 the investigator's comments and conclusions and may contain the personal opinions or the conclusions of witnesses. **Therefore, whenever practicable investigators 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 COCOM**

a. Joint IGs will not furnish Joint IG reports, including any witnesses' testimony and exhibits, to any agency or individual outside COCOM unless approved by the COCOM commander or his/her designated representative.

b. Requests for complete or partial Joint IG records are forwarded to the COCOM IG.

### 3. Use of Reports For Official Purposes Within the COCOM

a. Distribution of ROIs/ROIs is restricted to the absolute minimum consistent with the effective management of the COCOM. ROIs/ROIs will be used within COCOM.

b. When a commander or the Joint 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 COCOM. Joint IGs will use information summaries whenever practicable (see below). Use the transmittal format letters in Appendix B 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 the COCOM, 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 Joint 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 12.13

### Investigation Records Retention

1. Investigative records including Reports of Investigation and Investigative Inquiries, correspondence, notes, attachments and working papers will be maintained in accordance with DoDD 5015.02, DoD Records Management Program, CJCSI 5760.01A, Records Management Policy for the Joint Staff and Combatant Commands, CJCSM 5760.01 Vol II, Joint Staff and Combatant Command Records Management Manual: Volume II—Disposition Schedule, and other local and service component policy.
2. The following information is provided to assist Joint IGs in their investigative records management program. If the Joint IG is unsure of the possible congressional, media, or public interest involved in a particular case file or record, they should consult their SJA or the COCOM.
3. Some general guidelines and examples include:
  - a. Investigative records with significant media or public interest, effect on policy and procedures, or with high visibility litigation should be kept permanently.
  - b. Investigative records with information or allegations not related to a specific allegation, anonymous or vague not warranting an investigation, or those referred to other activities or agencies should be retained for five years, then destroyed.
  - c. Other investigative case files, excluding those that are unusually significant for documenting major violations of criminal law or ethical standards by agency officials or others should be maintained for 10 years, then destroyed.

NOTE: Records retention standards apply to both hardcopy and electronic form.



# Appendix A

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## Glossary

**Admission.** Statement against self-interest that falls short of a complete acknowledgement of guilt.

**Adverse Action.** Any administrative or punitive action that takes away an entitlement, results in an entry or document added to the affected person's official personnel records that could be considered negative by boards or superiors, or permits the affected person to rebut or appeal the action.

**Allegation.** An allegation is a statement or assertion of wrongdoing by an individual formulated by the IG. An allegation contains five essential elements: Who, improperly did What, to Whom, in violation of What order, regulation, or policy, and When. The IG refines allegations based upon evidence gathered during the course of an investigation or inquiry. The findings resulting from an inquiry or investigation are expressed as follows:

1. **Substantiated Allegation.** An allegation in which the preponderance of credible evidence leads to a conclusion that a violation of a law, regulation, or accepted standard occurred.

2. **Not Substantiated Allegation.** An allegation in which the preponderance of credible evidence leads to a conclusion that a violation of a law, regulation, or other accepted standard did not occur.

**Article 15/Nonjudicial Punishment/Captain's Mast.** Nonjudicial punishment (NJP) is a disciplinary measure more serious than administrative corrective measures such as; counseling, admonitions, reprimands, exhortations, disapprovals, criticisms, censures, reproofs, rebukes, extra military instruction, and administrative withholding of privileges but less serious than a trial by court-martial. Administrative corrective measures are not punishment and they may be used for acts or omissions that are not offenses under the code and for acts or omissions that are offenses under the code.

**Article 32 Investigation.** No charge or specification may be referred to a general court-martial for trial until a thorough and impartial investigation of all the matters set forth therein has been made. This investigation shall include inquiry as to the truth of the matter set forth in the charges, consideration of the form of charges, and recommendation as to the disposition that should be made of the case in the interest of justice and discipline. The commander directing an investigation under Article 32 details a commissioned officer as investigating officer who will conduct the investigation and make a report of conclusions and recommendations.

**Assistance.** The process of receiving, inquiring, recording, and responding to complaints or requests either brought directly to the Joint IG or referred to the Joint IG for action.

**Assistance Inquiry.** An informal fact-finding process used to address or respond to a complaint involving a request for help or information and not allegations of impropriety or wrongdoing.

**Board for Correction of Military Records (BCMR).** Any board empowered under Section 1552 of Title 10 USC to recommend correction of military records to the Secretary of the Military Department concerned.

**Chain of Command.** For the purposes of this guide, includes not only the succession of commanding officers from a superior to a subordinate through which command is exercised, but also the succession of officers, enlisted members or civilian personnel through whom administrative control is exercised, including supervision and rating of performance.

**Circumstantial Evidence.** Tends to prove or disprove facts by inference. Given less weight than direct evidence.

**Commander's Inquiry.** In accordance with the Manual for Courts-Martial, Rule 303, upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses. The preliminary inquiry is usually informal. It may be an examination of the charges and an investigative report or other summary of expected evidence. In other cases a more extensive investigation may be necessary. Although the commander may conduct the investigation personally or with members of the command, in serious or complex cases the commander should consider whether to seek the assistance of law enforcement personnel in conducting any inquiry or further investigation. The inquiry should gather all reasonably available evidence bearing on guilt or innocence and any evidence relating to aggravation, extenuation, or mitigation.

**Command Investigation.** A formal or informal investigation conducted by an officer or board of officers under the authority of the commander conducted in accordance with service regulations. The Investigating Officer or Board of Officers conveys the findings of a formal command investigation to the commander. A commander is not bound or limited to the investigating officer's or board's findings or recommendations and may direct findings or take lesser action other than otherwise recommended by the investigation. The commander may use the results of a command investigation for adverse action against the subject or suspect.

**Command Products.** The term is a generic reference to the reports generated by command investigations or inquiries.

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

**Complaint.** An expression of dissatisfaction, resentment, discontent, or grief.

**Conclusion.** A reasoned judgment or inference that leads to the final decision.

**Confession.** A complete acknowledgement of guilt.

**Corrective Action.** Any action deemed necessary to make the complainant whole; changes in Agency regulations or practices; administrative or disciplinary action against offending personnel; or referral to the US Attorney General or court-martial convening authority of any evidence of criminal violation.

**Criminal Investigations:** The DoD's Defense Criminal Investigative Service (DCIS), the Army's Criminal Investigation Command (CID), the Navy's Naval Criminal Investigative Service (NCIS), and the Air Force's Office of Special Investigations (OSI) are the major criminal investigative organizations within DoD. The military law enforcement and criminal investigative organizations supporting Joint commands must investigate allegations of criminal activity in which the DoD is, or may be, a party of interest. Criminal Special Agents and military law enforcement personnel conduct criminal investigations onto activities that range from death to fraud on and off military reservations and, when appropriate, with local, state and other Federal investigative agencies. Criminal Investigating Officers are responsible for investigating felonies, complex misdemeanors, and property-related offenses when the value is greater than \$1,000.00. Military law enforcement personnel normally investigate less serious offenses, including misdemeanors and property-related offenses when the value is less than \$1,000.00. Criminal Investigating Officers and military law enforcement personnel do not normally investigate allegations of adultery and fraternization unless the allegations are tied to greater offenses. The results of a criminal or military law enforcement investigation can be used for adverse action against the subject or suspect of the investigation.

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

**Directing Authority.** Any DoD official who has the authority to direct the conduct of an IG investigation or inspection is a Directing Authority. Within the Joint communities, the Directing Authorities are the Secretary of Defense (SECDEF); the Director Joint Staff/Joint Staff IG; Combatant Commanders; Joint Commanders; and Joint Command IGs. Joint Commanders who are authorized IGs on their staffs may direct IG investigations and inspections within their commands. The SECDEF, Director of the Joint Staff, Joint Staff IG, and COCOM Commanders may direct IG investigations and inspections within subordinate commands as necessary.

**Direct Evidence.** First-hand knowledge or observation that tends to directly prove or disprove a fact. Direct evidence should be verified or corroborated by other evidence, if possible.

**Disciplinary Action.** An adverse action against an offending employee or military member using the applicable adverse action procedures; or referral to the US Attorney General of any evidence of criminal violation.

- A person subject to Chapter 47 of Title 10 USC is punishable under Section 892 (Article 92) of Title 10 USC.
- Civilian appropriated fund employees of the Department of Defense are subject to disciplinary or adverse actions under Chapter 43, 75 or 99 of Title 5 USC.
- NAFI employees of the Department of Defense are subject to disciplinary or adverse actions pursuant to DoD 1401.1-M.

**Emergency.** A situation in which a service member is threatening imminently, by words or actions, to harm himself, herself or others, or to destroy property under circumstances likely to lead to serious personal injury or death, and to delay a mental health evaluation to complete administrative requirements in accordance with DODD 6490.1 or 6490.4 could further endanger the service member's life or well-being, or the well-being of potential victims.

**Evidence.** Something that furnishes proof; something submitted to or secured by an IG to ascertain the truth of a matter. In Joint Inspector General investigations, evidence includes testimonial, documentary evidence, and physical evidence.

**Extract.** A verbatim quotation from a report of an inspection or investigation.

**Fact.** Events or things that are known to have happened or to be true.

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

**Gross Waste of Funds.** Unnecessary expenditure of substantial sums of money or a series of instances of unnecessary expenditures of smaller amounts.

**Hearsay.** A form of circumstantial evidence. This is when one person quotes what another person has said or told them. Investigators should attempt to verify hearsay by contacting the person being quoted.

**IG Records.** Any written or recorded Joint IG work product created during the course of an inquiry, investigation or inspection to include; documents, case notes, files, electronic files, digital/tape recordings, video recordings, photos and working papers.

**Impropriety.** The quality or condition of being improper, incorrect, or inappropriate.

**Inference.** A conclusion logically derived from facts or premises; implies arriving at a conclusion by reasoning from evidence.

**Information On Which To Base A Reply.** Those facts, judgments, and/or opinions submitted to the requester that will permit preparation of a comprehensive and responsive reply on the matter of concern. The information may be based on an IG report of investigation and may be obtained by more informal means, depending upon the complexity and sensitivity of the issue.

**Inquiry.** An informal fact-finding process. An assistance inquiry or investigative inquiry conducted by an IG (see assistance inquiry and investigative inquiry).

## **Investigation**

a. An investigation is a formal fact-finding examination by a Joint IG into allegations, issues, or adverse conditions to provide the Directing Authority a sound basis for decisions and actions. IG investigations normally address allegations of wrongdoing by an individual and are authorized by written directives. IG investigations involve the systematic collection and examination of evidence that consists of testimony; documents; and, in some cases, physical evidence. Joint IGs report the results using the Report of Investigation (ROI) format addressed in Chapter 9 of this guide.

b. IG investigations are characterized by:

(1) An investigation directive issued by the commander providing written authority to examine the issues or allegations in question.

(2) A 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 format for documenting the results in the form of a Report of Investigation (ROI).

### **Investigative Inquiry**

a. An investigative inquiry is an informal fact-finding process to gather information needed to address allegations of impropriety against an individual that can accomplish the same objectives as an IG investigation. Joint IGs normally use this investigative process when the involvement of the directing authority is not foreseen. However, this fact does not preclude directing authorities from directing an investigative inquiry. Joint Command IGs typically direct the investigative inquiry and provide recommendations to their commanders or to subordinate commanders as appropriate.

b. IGs conduct investigative inquiries to gather information needed to respond to a request for assistance or resolve allegations or issues concerning alleged misconduct on the part of an individual(s). An IG investigative inquiry may be necessary when investigative techniques are appropriate but circumstances do not warrant an IG investigation. An investigative inquiry has no requirement for a written directive from the commander. Investigators may employ investigation techniques (for example, sworn and recorded testimony) when conducting investigative inquiries. These techniques enhance the thoroughness of the fact-finding process. Joint IGs report the results using the Report of Investigative Inquiry (ROI) format addressed in Chapter 9 of this guide.

### **Investigation versus Investigative Inquiry**

- Investigations are more formal and require a directive from the commander
- Investigative Inquiries are informal and do not require a directive
- Both are thorough
- Both are fair and impartial
- Both support a decision
- Both are properly documented
- Investigation recommendations – a Joint IG makes recommendations to the Directing Authority if requested
- Investigative Inquiry recommendations – a Joint IG may make recommendations to subordinate commanders and/or the Directing Authority

Joint IGs frequently conduct investigative inquiries in response to allegations of impropriety. They conduct investigations less frequently. Both forms of fact-finding have the common characteristics of fairness, impartiality, confidentiality, and thoroughness.

**Interrogation.** Any formal or informal questioning in which an incriminating response either is sought or is a reasonable consequence of such questioning.

**Interview.** The questioning of a person who has or is believed to have information of interest. In an interview, the person questioned usually gives in his/her own words and manner an account of the incident or person under investigation. After the person gives his/her account, the investigating officer should review it with him/her and amplify certain points and clearly explain matters not previously mentioned, depending on the elements of the allegation under investigation.

**Investigating Officer.** A Joint IG assigned the responsibility to conduct an IG investigation.

**Issue.** An issue is a complaint, request for information, or request for assistance to a Joint IG that does not list a who as the alleged violator of a standard or policy.

**Joint Inspector General Action Process (JIGAP).** JIGAP refers to the seven-step process used to resolve issues and allegations.

**Joint Inspector General Action Request (Joint IGAR).** Joint 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 Joint IG or referred to the Joint IG for action. Joint IGs record this information on a Joint Inspector General Action Request form (see The Joint IG Assistance Guide).

**Member of Congress.** In addition to a Senator or Representative, or a member of a Senator's or Representative's staff or of a congressional committee, includes any Delegate or Resident Commissioner to the Congress.

**Mental Health Evaluation.** A clinical assessment of a service member for a mental, physical, or personality disorder, the purpose of which is to determine a service member's clinical mental health status and/or fitness and/or suitability for service.

**Mental Healthcare Provider.** A psychiatrist, doctoral-level clinical psychologist or doctoral-level clinical social worker with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for DoD components.

**Mismanagement.** Wrongful or arbitrary and capricious actions that may have an adverse effect on the efficient accomplishment of the Agency's mission.

**NAFI Employee.** A civilian employee who is paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps Exchanges, or any other instrumentality in the US under the jurisdiction of the Armed Forces, that is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces. Such term includes a civilian employee of a support organization with the DoD or a Military Department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties.

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

**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 IG's sphere of activity. The OoR must address all issues and fulfill all IG responsibilities.

**Opinion.** A person's belief or judgment and may be used as evidence. Clearly identify such statements.

**Preponderance.** Defined as superiority of weight when evaluating credible evidence in an investigation. 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.

**Personnel Action.** Any action taken on a person that affects, or has the potential to affect, that person's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under DODD 6490.1; and any other significant change in duties or responsibilities inconsistent with the person's position/grade.

### **Protected Communication**

(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; 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.

**Protected Disclosure.** A disclosure of information by an employee, former employee, or applicant that the employee or applicant reasonably believes evidences a violation of any law, rule or regulation; mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if the information is not specifically

required by or pursuant to Executive Order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

A disclosure by an employee, former employee, or applicant to any civilian employee or member of the Armed Forces, designated by law or the Secretary of Defense, to receive disclosures of information described in DoDD 1401.03, which the employee, former employee, or applicant making the disclosure reasonably believes evidences a violation of any law, rule, or regulation; mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety.

**Preliminary Analysis (PA).** An initial review and analysis conducted by a Joint IG of a particular allegation, situation, or condition to determine if the circumstances of the case are of sufficient magnitude, seriousness, or validity to warrant either an IG inquiry or investigation or some other form of action.

**Referral.** The process of transferring issues or allegations to another agency or command for resolution.

**Referral Memorandum.** A memorandum used by Joint Staff or COCOM IGs to refer Joint IGARs to field IGs.

**Report Of Investigation/Investigative Inquiry (ROI/ROI).** Report of Investigation or Inquiry is a written report used by IGs to address allegations, issues, or adverse conditions to provide the Directing Authority a sound basis for decisions. The Directing Authority approves the ROI. The ROI format is addressed in Chapter 9 of this guide.

**Reprisal.** Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication.

**Restriction.** Preventing or attempting to prevent a person from making or preparing to make lawful communications to Members of Congress and/or an IG.

**Request For Assistance.** Matters presented to IGs by individuals who are seeking information, advice, or assistance.

**Requester.** A person who asks for IG help in resolving an issue.

**Responsible Management Official.** An individual who has the authority to take an unfavorable personnel action, or withhold a favorable personnel action, or have the potential to affect a military member's career. This includes individuals who take the action; influence or recommend the action be taken or withheld; sign correspondence regarding the action, or approve, review, or endorse the action.

**Senior Official.** Active duty, retired, Reserve, or National Guard military officers in grades O-7 and above, or selected for promotion to grade O-7 whose name is on the O-7 promotion board report forwarded to the Military Department Secretary; current or former members of the Senior Executive Service (SES); other current and former DoD civilian employees whose positions are deemed equivalent to that of a member of the SES (e.g., Defense Intelligence Senior Executive Service employees, Senior Level

employees, and nonappropriated fund senior executives); and current and former Presidential appointees.

**Statement.** A written or verbal assertion of facts pertinent and material to an investigation, made to an IG by a witness, subject, or suspect, generally without an oath. Statements are of lesser value when compared to Testimony.

**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.

**Summarized Testimony/Statement.** A paraphrased version of testimony or a statement. Normally, it includes only those items directly related to the matters under investigation or inquiry.

**Suspect.** A person against whom criminal allegations have been 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.

**Systemic Issue.** A failure of an established process to function as designed; does not entail an allegation of impropriety against an individual. See [The Joint IG Inspections Guide](#).

**Testimony (Also Sworn Testimony).** Any oral, written, or recorded response made under oath or affirmation to tell the truth in response to prepared questions asked by an IG.

**Verbatim Testimony.** A word-for-word transcript of a recorded testimony (questions and answers).

**Whistleblower.** For the purpose of this guide, a person who makes or prepares to make a protected communication.

**Witness.** Any person who provides information to an IG during the conduct of an investigation or investigative inquiry or who has some knowledge to support or refute an allegation is considered a witness. 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.



# Appendix B

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## References

1. **Purpose:** This section lists the principal references that apply to Joint IG investigations.

Civil Service Reform Act 1978, (October 13, 1978, Public Law 95-454)

CJCSI 5760.01A, Records Management Policy for the Joint Staff and Combatant Commands

CJCSM 5760.01 Vol II, Joint Staff and Combatant Command Records Management Manual: Volume II—Disposition Schedule

Council of Inspectors General Integrity and Efficiency (CIGIE) Quality Standards for Investigations, dated December 2003 [formerly President's Council on Integrity & Efficiency]. Standards may be found online at <http://www.ignet.gov/pande/standards1.html>.

DoDD 1401.3, Reprisal Protection for Nonappropriated Fund Instrumentality Employees /Applicants

DoDD 2311.01E, DoD Law of War Program

DoDD 5015.02, DoD Records Management Program

DoD 5500.7-R, Joint Ethics Regulation

DoDD 5500.07, Standards fo Conduct

DoDD 5505.06, Investigations of Allegations Against Senior Officials of the Department of Defense

DoDD 6490.1, Mental Health Evaluations of Members of the Armed Forces

DoDI 6490.4, Requirements for Mental Health Evaluations of Members of the Armed Forces

DoDI 7050.01, Defense Hotline Program

DoDD 7050.06, Military Whistleblower Protection

DoD 7000.14R, Financial Management Regulation (DoDFMR)

DoD 1400.25-M, DoD Civilian Personnel Manual

DoD 1401.1-M, Personnel Policy Manual for Nonappropriated Fund Instrumentalities

Federal Acquisition Regulation (FAR)

Freedom of Information Act (FOIA)

IGDG 7050.6, Guide to Investigating Reprisal and Improper Referrals for Mental Health Evaluations

Joint Travel Regulations (JTR)/ Joint Federal Travel Regulations (JFTR)

Joint Staff Manual (JSM) 5711.01D, Joint Staff Correspondence Preparation

Manual for Courts-Martial, 2008 Edition

Public Law 100-504, October 18, 1989, Inspector General Act Amendments, Section 107, Oath Administration Authority

The Joint Inspector General Concept and System Guide

United States Code

Title 5, Government Organization and Employees

Title 10, Armed Forces

Title 18, Crimes and Criminal Proceedings

Title 32, National Guard

Title 37, Pay and Allowances of the Armed Forces

Title 41, Public Contracts

2. **Service Policy and Doctrinal Publications:** The following service-specific policy and doctrinal publications provide insight into the rules and doctrine that will assist Joint IGs in the conduct of their duties:

a. **Army:**

(1) Army Regulation 20-1, Inspector General Activities and Procedures

(2) The Assistance and Investigations Guide

b. **Navy:**

Navy IG Investigations Manual

c. **U.S. Marine Corps:**

IGMC Assistance and Investigations Manual with Change One

d. **U.S. Air Force:**

(1) Air Force Instruction 90-201, Inspector General Activities

(2) Air Force Instruction 90-301, Inspector General Complaints Resolution

CJCSI: Chairman of the Joint Chiefs of Staff Instruction

DoDD: Department of Defense Directive

DoDI: Department of Defense Instruction

IGDG: Inspector General Guide

JSM: Joint Staff Manual

# **Appendix C**

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## **Interview Guides**

1. Witness (Telephone) Pre-Tape Script (page C -2)
2. Suspect (Face-to-Face) Pre-Tape Script (page C-6)
3. Witness Interview Script (page C-9)
4. Witness (Recall) Interview Script (page C-12)
5. Subject Interview Script (page C-14)
6. Subject (Recall) Interview Script (page C-17)
7. Suspect Interview Script (page C-19)
8. Suspect (Recall) Interview Script (page C-22)



## WITNESS (TELEPHONE) PRE-TAPE SCRIPT

1. Hello, this is \_\_\_\_\_. Are you still available for this interview? Can you speak freely and privately on this line? Great. Let's proceed. Today I'm being assisted by \_\_\_\_\_, who is with me now. We're communicating with you on a speakerphone so that we can take notes and tape record this interview. Although we haven't started the tape recorder, we're still on the record. We'll tell you when the tape recorder is started. Again, we've contacted you because we believe you may have information pertaining to the matter under inquiry. You are considered a witness in this inquiry, are not suspected of any wrongdoing, and are not the subject of any unfavorable information. Throughout this interview we'll be reading from standardized scripts designed to ensure that we follow approved procedures.

2. This will be a four-part interview. We're now in Part 1, which provides you an explanation of the process and procedures we'll follow and is designed to ensure that you understand your rights pursuant to the Privacy Act of 1974 and the Freedom of Information Act. Part 2, the formal read-in, is a tape-recorded preliminary session that will include an oath of truthfulness. Part 3 is a tape-recorded questioning session. Part 4, the formal read-out, is a tape-recorded conclusion.

3. Joint Inspectors General are confidential fact-finders for the Directing Authority. Our Directing Authority for this inquiry is \_\_\_\_\_. IGs collect and examine all pertinent evidence and make complete and impartial representation of all evidence to the Directing Authority. IGs have no authority to make legal findings, impose punishment, or direct corrective action. In investigations and inquiries, IGs establish the truth of allegations or establish that allegations are not true.

4. While one of our most important tenets is to protect the confidentiality of everyone involved, we cannot guarantee it. In order to protect the confidentiality of everyone involved, we do not reveal our sources of information. Accordingly, we will not tell other witnesses or the subject/suspect with whom we have spoken or with whom we plan to speak. Finally, we will not tell you the specific allegations.

5. The following rules apply during this interview:

- a. We'll take sworn and taped testimony, which later will be transcribed verbatim.
- b. All of your answers must be spoken since the tape recorder will not record non-verbal responses.
- c. For accuracy, we'll ask you to spell any names or abbreviations you use.
- d. We cannot discuss classified information during the interview on this telephone line. If it becomes necessary for you to discuss classified information, tell us and we'll make arrangements to interview you using secure communications.
- e. We can go off tape for breaks, but when we're back on tape, we'll introduce questions pertaining to any off-tape remarks you make.
- f. Regardless of whether we're on or off tape, we are never off the record. Everything you say will become part of the interview record.

6. When conducting an interview in person, always provide the witness a copy of the attached Privacy Act notice before beginning the interview. When conducting a telephone interview, mail, FAX, or email a copy of the notice to the witness before beginning the interview. If you are unable to provide a copy of the Privacy Act notice to the witness in advance, verbally advise the witness of the Privacy Act and send him or her a copy after the interview.

### **VERBAL ADVISEMENT**

We are authorized to collect information and create and maintain records pursuant to our responsibilities under the IG Act of 1978. The reason I have contacted you is to gather information regarding allegations of wrongdoing (gather facts and circumstances regarding \_\_\_\_\_).

Under the provisions of the privacy act, I must inform you that what you tell me in our interview today may be made part of an official IG record and used within the Federal Government for official purposes.

Additionally, IG records, like other Federal Records, may be released outside the Federal Government for unofficial purposes under the provisions of the Freedom of Information Act, or FOIA.

### **RESPONSE TO QUESTIONS**

Q. I thought that the Privacy Act says I don't have to provide information about the issues mentioned?

A. Disclosure of your social security number is voluntary. However, I am not going to ask you for that. Military personnel, DoD civilian employees, and DoD contractor employees may be subject to adverse action for failure to disclose information relating to their official responsibilities. Other persons are not subject to adverse action for refusal to provide information.

Q. What uses can be made of my testimony?

A. As I told you, we are investigating allegations relating to . . . Evidence, such as that which you may provide, is usually summarized in our report. Our reports may be provided to management officials for appropriate corrective action. In addition, we may provide information to law enforcement agencies, to Congress, or to other agencies for uses such as counterintelligence, for example. Finally, we can provide you a copy of your testimony.

Q. If you have to release the information I provide, how do you protect me from reprisal?

A. It is unlawful for your supervisors to reprise against you for providing information to an IG. In our reports we do not identify witnesses, other than senior officials. When our records are requested under the provisions of the FOIA, we apply the exemptions provided by law, which includes, in most cases, the redaction of names and other personal information.

If taping the interview, remember to ask the witness to acknowledge the Privacy Act notification during the introduction phase of the interview. If you are not taping the interview, note in the memorandum for record memorializing the interview that you provided the advisement.

7. Because we need to ask you for your social security number and other personal information, we're required to ensure that you understand your rights pursuant to the Privacy Act of 1974. To ensure you do, I'll now read you a short explanation of the Privacy Act.

**READ** PRIVACY ACT STATEMENT.

AUTHORITY: Title 5 US Code, Section 552a.

PRINCIPLE PURPOSE(S): Information is collected during an inquiry 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 as a basis for Department of Defense 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 identify further the individual providing the testimony.

ROUTINE USES: The information may be --

- a. Forwarded to Federal, State, or local law-enforcement agencies for their use.
- b. 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. Provided to Congress or other Federal, State, and local agencies when determined necessary by the COCOM Inspector General.

MANDATORY OR VOLUNTARY DISCLOSURE AND THE IMPACT ON THE  
INDIVIDUAL FAILING TO PROVIDE THE INFORMATION

**For Military Personnel:** The disclosure of the 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 Defense Civilians:** The disclosure of the social security number is voluntary. However, failure to disclose other personal information in relation to your position and responsibilities may subject you to adverse personnel action.

**For All Other Personnel:** The disclosure of your 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.

Do you understand the Privacy Act?

8. During the read-in phase, \_\_\_\_\_ will administer to you an oath to obtain your pledge to provide truthful testimony. Unless you prefer the word “affirm,” we’ll use the word “swear.” Do you have a preference? Do you object to the use of the phrase “so help me God?”

9. This inquiry is an administrative procedure and not a court of law. We are interested in what you know about the matters under inquiry regardless of whether your knowledge is direct, hearsay, or opinion. However, it’s important that you make the source of your information clear to us, so we’ll ask you if it is not.

10. To keep this matter as confidential as possible, we ask that you not discuss your testimony with anyone without our permission except your attorney if you choose to consult one. Again, you are a witness in this inquiry and are not suspected of any wrongdoing nor are you the subject of any unfavorable information.

11. Would you please confirm your present status?

12. Unless you have any questions, we’re now turning on our tape recorders, and \_\_\_\_\_ will start the read-in.

## SUSPECT (Face-to-Face) PRE-TAPE SCRIPT

1. Thank you for coming in today. I'm \_\_\_\_\_, and this is \_\_\_\_\_. These are our ID cards and credentials, if you would like to look at them, and this is our Directive for the investigation. (Present ID cards, credentials, and Directive to the suspect for review.)
2. At this time let me go over the interview process. This will be a four-part interview. We're now in Part 1, which provides you an explanation of the process and procedures we'll follow and is designed to ensure that you understand your rights pursuant to the Privacy Act of 1974 and the Freedom of Information Act. Part 2, the formal read-in, is a tape-recorded preliminary session that will include an oath of truthfulness. Part 3 is a tape-recorded questioning session; and Part 4, the formal read-out, is a tape-recorded conclusion.
3. Although we haven't started the tape recorder, we're still on the record. We'll tell you when the tape recorder is started. During the read-in and read-out, we'll be reading from standardized scripts designed to ensure that we follow approved procedures.
4. Joint Inspectors General are confidential fact-finders for the Directing Authority. Our Directing Authority for this inquiry/investigation is \_\_\_\_\_. We collect and examine all pertinent evidence and make complete and impartial representation of all evidence to the Directing Authority. IGs have no authority to make legal findings, impose punishment, or direct corrective action. In investigations and inquiries, IGs establish the truth of allegations or establish that allegations are not true.
5. While one of our most important tenets is to protect the confidentiality of everyone involved, we cannot guarantee it. In order to protect the confidentiality of everyone involved, we do not reveal our sources of information. Accordingly, we will not tell you or other witnesses with whom we have spoken or with whom we plan to speak.
6. Now, I'd like to go over the ground rules that apply during this interview:
  - a. We'll take sworn and taped testimony, which later will be transcribed verbatim.
  - b. All of your answers must be spoken since the tape recorder will not record non-verbal responses.
  - c. For accuracy, we ask that you spell out any proper names or abbreviations you use.
  - d. If classified information comes up, please let us know. We will pause the tape and discuss it off tape first.
  - e. We can go off tape for breaks, but when we're back on tape, we may introduce questions pertaining to off-tape remarks you make. Regardless of whether we're on or off tape, we are never off the record. Everything you say will become part of the interview record.

f. (If the suspect has an attorney present, remind the suspect that brief consultation with the attorney is permitted; but, if a more lengthy discussion is required, we will pause the interview until the discussion is complete.)

7. When conducting an interview in person, always provide the witness a copy of the attached Privacy Act notice before beginning the interview. When conducting a telephone interview, mail, FAX, or email a copy of the notice to the witness before beginning the interview. If you are unable to provide a copy of the Privacy Act notice to the witness in advance, verbally advise the witness of the Privacy Act and send him or her a copy after the interview.

### **VERBAL ADVISEMENT**

We are authorized to collect information and create and maintain records pursuant to our responsibilities under the IG Act of 1978. The reason I have contacted you is to gather information regarding allegations of wrongdoing (gather facts and circumstances regarding \_\_\_\_\_).

Under the provisions of the privacy act, I must inform you that what you tell me in our interview today may be made part of an official IG record and used within the Federal Government for official purposes.

Additionally, IG records, like other Federal Records, may be released outside the Federal Government for unofficial purposes under the provisions of the Freedom of Information Act, or FOIA.

### **RESPONSE TO QUESTIONS**

Q. I thought that the Privacy Act says I don't have to provide information about the issues mentioned?

A. Disclosure of your social security number is voluntary. However, I am not going to ask you for that. Military personnel, DoD civilian employees, and DoD contractor employees may be subject to adverse action for failure to disclose information relating to their official responsibilities. Other persons are not subject to adverse action for refusal to provide information.

Q. What uses can be made of my testimony?

A. As I told you, we are investigating allegations relating to \_\_\_\_\_. Evidence, such as that which you may provide, is usually summarized in our report. Our reports may be provided to management officials for appropriate corrective action. In addition, we may provide information to law enforcement agencies, to Congress, or to other agencies for uses such as counterintelligence, for example. Finally, we can provide you a copy of your testimony.

Q. If you have to release the information I provide, how do you protect me from reprisal?

A. It is unlawful for your supervisors to reprise against you for providing information to an IG. In our reports we do not identify witnesses, other than senior officials. When our records are requested under the provisions of the FOIA, we apply the exemptions

provided by law, which includes, in most cases, the redaction of names and other personal information.

If taping the interview, remember to ask the witness to acknowledge the Privacy Act notification during the introduction phase of the interview. If you are not taping the interview, note in the memorandum for record memorializing the interview that you provided the advisement.

8. Because we need to ask you for your social security number and other personal information, we're also required to ensure that you understand your rights pursuant to the Privacy Act of 1974. Please review this copy of the Privacy Act. (Pause and provide copy to suspect.) Do you understand the Privacy Act?

9. Another form we use is the Testimony Information Sheet to record proper names, abbreviations, acronyms, and the like to aid in preparing an accurate transcript. Please verify the information on the form. (Slide form across the table for review.) Thank you.

10. Would you please tell us your current status?

11. Next, since you are considered a suspect in this matter, we will go over the Rights Warning/Waiver Certificate. *Follow the guidance in Section 7-8 of the guide, including signature in the appropriate block.*

12. Lastly, to sum up the pre-tape portion of the interview, this is an administrative procedure, not a court of law. We can accept and use both hearsay and opinion. Also, confidentiality is one of the tenets of the Joint IG system; however, we cannot guarantee confidentiality. To keep this matter as confidential as possible, we will ask that you not discuss this case with anyone without our permission, except for your attorney, if you choose to consult with one.

13. Unless you have any questions, we'll turn on our tape recorders and begin the read-in.



## 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. A Joint 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 explain about requests for release of your testimony but not your personal identifying information such as name, social security number, home address, or home phone number, if requested by members of the public pursuant to the Freedom of Information Act (FOIA).

3. Since I will ask you to provide your social security 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? (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. 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  
Social Security Number (voluntary)  
Address (home or office)  
Telephone number (home or office)

(END READ-IN)

XX

7. Question the witness.

NOTE: (1) If during this interview the witness suggests personal criminal involvement, the witness must be advised of his or her rights using a Rights Warning Procedure/Waiver Certificate. 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:

7.a. **For active-duty, reserve, or National Guard 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.")

7.b. **For reserve, National Guard, 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.")

XX

(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 Joint 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:** Advise others who are also present 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 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. If there is such a request, your testimony may be released, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels. Do you understand this? (Individual must state "yes" or "no.")

12. Do you have any questions? The time is \_\_\_\_\_, and the interview is concluded. Thank you.

XX

(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 witness that the report will be properly classified, and advise the witness of security clearances held by IG personnel. Instruct the witness to identify classified testimony.

2. You were previously advised of the role of an Inspector General, of restrictions on the use and release of Joint 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
- Social Security Account Number (voluntary)
- Address/Telephone (home or office)

(END READ-IN)

5. Question the witness.

**NOTE:** During this interview, if the witness suggests personal criminal involvement, you must advise the witness of his or her rights using a Rights Warning Procedure/Waiver Certificate. Unless the witness waives his or her rights, the interview ceases. During the interview, if you believe the witness has become a subject, advise him or her that he or she need not make any statement that may be self-incriminating. See the Witness Read-In Script for dealing with false statements.

XX

(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:** Advise others who are also present against disclosing information.

9. In our first interview, I advised you that your testimony 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. If there is such a request, your testimony may be released, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels. Do you understand this? (Individual 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)

XX

## 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) \_\_\_\_\_. \_\_\_\_\_ directed this (investigation/inquiry) concerning 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. A Joint 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 explain about requests for releasing your testimony, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels by members of the public pursuant to the Freedom of Information Act (FOIA).

3. Since I will ask you to provide your social security number to help identify you as the person testifying, I provided you a Privacy Act Statement. (If telephonic, it may be necessary to 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. 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 Number (voluntary)  
Address/Telephone (home or office)

(END READ-IN)

XX

7. Question the subject.

**NOTE:** (1) If during this interview the individual suggests personal criminal involvement, you must advise the individual of his or her rights using the appropriate service Rights Warning Procedure/Waiver Certificate. Unless the subject waives his or her rights, the interview ceases.

**NOTE:** (2) During the interview, if it becomes necessary to advise a subject about making false statements or other false representations, read the following statement to the subject:

7.a. **For active-duty, reserve, or National Guard 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? (Subject must state "yes" or "no.")

7.b. **For reserve, National Guard, and civilian personnel not subject to UCMJ:**

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.")

XX

(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 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. If there is such a request, your testimony may be released, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels. Do you understand this? (Individual must state "yes" or "no.")

12. Do you have any questions? The time is \_\_\_\_\_, and the interview is concluded. Thank you.

(END READ-OUT)

XX



**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 Joint 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. I am reminding you that 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 Number (voluntary)
- Address/Telephone (home or office)

(END READ-IN)

XX

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.

XX

(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 Joint 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 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. If there is such a request, your testimony may be released, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels. Do you understand this? (Individual 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)

XX

## 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) \_\_\_\_\_ directed this (investigation/inquiry) concerning 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. A Joint 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 explain about requests to release your testimony, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels if requested by members of the public pursuant to the Freedom of Information Act (FOIA).

3. Since I will ask you to provide your social security 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 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. 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 Number (voluntary)
- Address/Telephone number (home or office)

(END READ-IN)

XX

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.

8.a. **For active-duty, reserve, or 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.”)

8.b. **For reserve, National Guard, 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.

XX

(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 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. If there is such a request, your testimony may be released, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels. Do you understand this? (Individual must state "yes" or "no.")

13. Do you have any questions? The time is \_\_\_\_\_, and the interview is concluded. Thank you.

XX

(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 form in which you consented to answer questions. I will show you that form now. You are reminded that it is a violation of Federal law to knowingly make a false statement under oath.

**NOTE:** Show the form 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 the form. 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 Number (voluntary)
- Address/Telephone (home or office)

(END READ-IN)

XX

7. Question the suspect.

XX

(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:** Advise others who are also present 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 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. If there is such a request, your testimony may be released, but not your personal identifying information such as name, social security number, home address, or home phone number, outside official channels. Do you understand this? (Individual 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)

# **Appendix D**

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## **Transmittal Memorandums**

1. Transmittal of Report of Investigation to Subordinate Commander (page D-2)
2. Transmittal of Report of Inquiry to Staff Agency (page D-3)
3. Transmittal of Summary of Report of Investigation (page D-4)



## Transmittal of Report of Investigation to Subordinate Commander

Office Symbol

<Date>

MEMORANDUM FOR COMMANDER, JTF Afghanistan

SUBJECT: Transmittal of Joint IG Report of Investigation

1. This Joint Inspector General (IG) Report of Investigation (or applicable portion) is forwarded for action as deemed appropriate.
2. This Joint IG document contains privileged information and will be protected in accordance with the provisions of The Joint IG Concept and System Guide, Section 4.3. 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 DoD agencies is not authorized without the written approval of the COCOM IG. Use of Joint IG records as a basis for adverse personnel action or attachment of IG records as exhibits or enclosures to records of other DoD offices or agencies is not authorized without written approval of the COCOM IG.
3. This report must be returned to the Joint IG office when it has served its purpose.

Enclosure

ALBERT R. RIGHTWAY  
COL, 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 Joint Inspector General (IG) Report of Inquiry (or applicable portion) is forwarded for action as deemed appropriate.
2. This Joint IG document contains privileged information and will be protected in accordance with the provisions of The Joint IG Concept and System Guide, Section 4.3. 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 Joint IG records as exhibits or enclosures to records of other DoD agencies is not authorized without the written approval of the Joint 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 DoD offices or agencies is not authorized without written approval of the Joint Inspector General.
3. This report must be returned to the IG office when it has served its purpose.

Enclosure

ALBERT R. RIGHTWAY  
COL, 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 The Joint IG Concept and System Guide, Section 4.4, you are provided, for official purposes, a summary of an Joint Inspector General (IG) Report of Investigation into allegations of \_\_\_\_\_.
2. This Joint IG document contains privileged information and will be protected in accordance with the provisions of The Joint IG Concept and System Guide, Section 4.3. 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 Joint IG records as exhibits or enclosures to records of other DoD agencies is not authorized without the written approval of the Joint IG. Use of Joint IG records as a basis for adverse personnel action or attachment of Joint IG records as exhibits or enclosures to records of other DoD offices or agencies is not authorized without written approval of the Joint IG.
3. The report must be returned to this office upon completion of your review.

Enclosure

ALBERT R. RIGHTWAY  
COL, IG  
Inspector General



# Appendix E

## Adverse Personnel Actions

1. Adverse actions are 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 boards or supervisors could consider negative, or permits the affected person to rebut or appeal the action. Adverse action includes "unfavorable information" administrative actions governed by service regulations; UCMJ action; or, with regard to civilian employees, personnel or disciplinary action as defined in 5 USC 2302.

2. 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 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
- Letter of Reprimand
- Financial Liability Investigations of Property Loss
- Line of Duty Investigation
- Conscientious Objection

- Academic Evaluation Report

**b. Officer Personnel**

- Special Adverse OER
- Relief from Command
- Elimination from Service
- Resignation for Good of the Service
- Removal from Promotion, School, or Command List

**c. Enlisted Personnel**

- Elimination for Alcohol / Drug Abuse
- Elimination for Unsatisfactory Performance
- Elimination for Good of the Service
- Entry-Level Separation
- Elimination for Misconduct
- Administrative Reduction
- Bar to Reenlistment
- Military Occupational Specialty Reclassification
- Special Adverse Non-Commissioned Officer Evaluation Report
- 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)

5. 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 F**

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## **Mental Health Evaluation Document Formats**

1. Commanding Officer Request for Routine (NON-EMERGENCY) Mental Health Evaluation (page F-2)
2. Service Member Notification of Commanding Officer Referral for Mental Health Evaluation (page F-4)
3. Memorandum from Mental Health Care Provider to Service Member's Commanding Officer (page F-7)
4. Guidelines from Mental Health Evaluation for Imminent Dangerousness (page F-10)



**Commanding Officer Request for Routine (NON-EMERGENCY)  
Mental Health Evaluation**

Office Symbol

<Date>

MEMORANDUM FOR (Name of Medical Facility 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 health care provider) at (name of Medical Facility 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 Facility 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 health care provider prior to this referral is (was) not possible because (give reason; e.g., geographic isolation from available mental health care 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 in 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 to have a mental health care provider of your own choosing evaluate you at your own expense if reasonably available. Such an evaluation by an independent mental health care 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 health care 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 health care provider) at (name of Medical Facility 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 THROUGH COMMANDING OFFICER, (Name of Subject's Command)

FOR COMMANDING OFFICER, (Medical.....)

THROUGH: COMMANDING OFFICER, (Medical Facility or Clinic)

SUBJECT: Health Evaluation in the Case of (Service Member's 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 health care 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 Facility 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 Medical Facility or mental health clinic) with (rank/title and name of privileged mental health care 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 Health Care 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 or 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 6490.4 (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 inpatient 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 health care provider via the Medical Treatment Facility commanding officer to the service member's commanding officer within one business day after the evaluation is completed.



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