
**The Secretary of the Air Force
Office of the Inspector General
Complaints Resolution Directorate**



***Commander-Directed
Investigation
(CDI)
Guide***

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FOREWORD

The Secretary of the Air Force, Complaints Resolution Directorate (SAF/IGQ) administers the Air Force Inspector General (IG) Complaints Resolution Program to resolve problems affecting the Air Force mission. When appropriate, the IG refers complaints to command channels for resolution. The commander may decide that a particular matter requires objective fact-finding in the form of a commander-directed investigation (CDI). At this time, there are no Air Force Instructions (AFIs) prescribing an investigative process; therefore, SAF/IGQ and AF/JAA developed this guide. The guide provides procedures commanders and their investigative teams can use to conduct prompt, fair and objective investigations.

If a user has a recommendation for changes to this guide, please contact SAF/IGQ (1140 Air Force Pentagon, Washington DC 20330-1140, DSN 425-1550).

CHAPTER 1. INTRODUCTION

1.1. **Guide Overview.** The intent of this guide is to provide commanders and their investigative team members the tools they need to conduct commander-directed investigations (CDI). This guide should not be cited as authority for conducting a CDI, and its use is not mandatory. IOs should consult with the commander directing the investigation as well as the legal office for specific guidance.

1.2. **Authority to Conduct CDIs.** Commanders appointed in accordance with (IAW) AFI 51-604, *Appointment to and Assumption of Command*, 4 April 2006, and AFI 38-101, Air Force Organization, 4 April 2006, (on G-series orders) have an inherent authority to conduct a CDI to investigate matters under their command, unless preempted by higher authority.¹ A CDI would normally be initiated by a squadron level or higher commander.

1.3. **CDI Purpose.** The CDI is a tool to gather, analyze and record relevant information about matters of primary interest to those in command. The CDI is an extension of the commander's authority to investigate and to correct problems within the command. As such, the CDI is internal to the command concerned. There are two reasons a commander may want to conduct a CDI; to investigate systemic (or procedural) problems or to look into matters regarding individual conduct or responsibility. CDIs are administrative investigations.

1.4. **Standard of Proof.** The standard of proof for a CDI is a *preponderance of the evidence*. A preponderance of the evidence is defined as "the greater weight and quality of the credible evidence," meaning the evidence indicates that one position is more probable than the opposing position. After weighing all the evidence, the IO may substantiate a finding when the greater weight or quality of the evidence points to a particular conclusion as more credible and probable than the reverse. While, the amount of evidence is something to consider, non-credible evidence will not trump a smaller amount of good evidence. Some additional things to consider when weighing the evidence are witness demeanor, opportunity for knowledge, bias, motive, intent, and the ability to recall and relate events. At all times, IOs may use their own common sense, life experiences and knowledge of the ways of the world to assess the credibility of witnesses they interview.

CHAPTER 2. GENERAL CONSIDERATIONS

2.1. **Matters Appropriate for a CDI.** Generally speaking, commanders investigate command matters when another investigative channel does not exist or is less suitable. For example, investigations into matters that will likely result in a court-martial or other judicial action would normally be referred to the Air Force Office of Special Investigations or Security Forces. Commanders should consult with the SJA regarding whether or not a CDI is the best means of investigating a matter. Command matters include all issues and circumstances involving people, processes and materials under their command.

2.1.1. **Standards of Conduct.** CDIs may be used to investigate whether an individual has violated a standard defined by law, regulation, or policy. For example, military members and civilian employees must abide by the Joint Ethics Regulation.² Air Force Instructions govern our use of government computers and our professional (or unprofessional) relationships.³ A

¹ Higher authority includes specific Air Force directives that delineate organizations responsible to address particular issues or to conduct specific investigations. (Refer to attachments 2 and 3)

² DoDD 5500.7-R, Joint Ethics Regulation, paragraph 2.2.6

³ AFI 36-2909, *Professional and Unprofessional Relationships*, 1 May 1999; AFI 33-129, *Web Management and Internet Use*, 3 February 2005,

CDI could be the appropriate tool to investigate whether conduct violated the applicable standard. Alternately, the law, regulation, or policy could provide the standard for an abuse of authority allegation.

2.1.2. **Abuse of Authority.** *Abuse of authority* is one example of a command matter.⁴ Anyone who holds authority over others has the potential to abuse that authority. For example, if a group commander directs one of his/her squadron commanders to deny an NCO's reenlistment, this would be an abuse of authority because it prevented the subordinate commander's free exercise of discretion.⁵ Another possible example of possible abuse of authority is an officer or senior NCO who practices favoritism. However, abuse of authority is not a "catch-all" standard for "unfair" actions. An "unfair" action may not rise to the level of abuse of authority. Attachment 4 includes a method of analyzing actions for abuse of authority. Commanders should work closely with their SJA and IG when considering a CDI to investigate allegations of abuse of authority.

2.2. **Matters Not Appropriate for a CDI.** Not every issue lends itself to a CDI. Below is a non-exhaustive list of issues that are not appropriate for a CDI and should or must be handled by other means.

2.2.1. **Issues Covered by Other Established Grievance or Appeal Channels.** In some instances, Air Force directives delineate organizations responsible for resolving particular issues or to conduct certain types of investigations. Refer to attachments 2 and 3 for assistance in determining if a complaint belongs in other channels. It is important to note that commanders are not permitted to take a complaint submitted to the IG and resolve it through a CDI.⁶ However, the IG may refer an issue to a commander that results in a CDI. Finally, as a general rule, commanders should not use a CDI to investigate matters such as Privacy Act violations that could expose the Air Force to civil liability. There are other authorities empowered to consider Privacy Act violations.⁷

2.2.2. **Reprisal, Restriction, and Improper Mental Health Evaluation (IMHE) Referral Allegations.** Congress has specifically designated the IG as the appropriate agency to investigate allegations involving reprisal, restriction and IMHE referrals.⁸ Only IGs can investigate reprisal, restriction or IMHE referral allegations. *A CDI is never appropriate for these allegations.*

2.2.2.1. Reprisal, a violation of 10 USC § 1034, DoDD 7050.06, and AFI 90-301, occurs when a commander or supervisor takes (or threatens to take) an unfavorable personnel action; or withholds (or threatens to withhold) a favorable personnel action, to retaliate against a member of the armed forces for making or preparing to make a protected communication.⁹ For example, a squadron commander who formally reprimands a

⁴ Although IGs may investigate Abuse of Authority, they may also refer such issues to commanders.

⁵ Since reenlistment is not a military justice matter, the higher commander's actions do not qualify as "unlawful command influence."

⁶ AFI 90-301, para. 1.43. IGs may, however, refer an IG complaint to the command for investigation.

⁷ AFI 33-332, *Privacy Act Program*, 29 January 2004 states that base-level Privacy Act Officers investigate allegations of Privacy Act violations.

⁸ See 10 USC § 1034, as implemented by DoD Directive (DoDD) 7050.606, *Military Whistleblower Protection*, 23 July 2007 and Public Law 102-484, Section 546, *National Defense Authorization Act for Fiscal Year 1993*, 23 October 1992, as implemented by DoDD 6490.1, *Mental Health Evaluations of Members of the Armed Forces*, 1 October 1997.

⁹ *All communications* to an IG or Congress are considered protected. Additionally, when members who reasonably believe they have evidence of a *violation of law or regulation* (even if they are not the victim), disclose this to an

member for reporting fraud, waste, or abuse to the Wing Commander has committed reprisal.

2.2.2.2. Military members may not be restricted or prohibited from making a *protected communication* to authorized recipients.¹⁰ Restricting access to Congress or the IG is specifically prohibited by 10 U.S.C. § 1034, DoDD 7050.06, and AFI 90-301.

2.2.2.3. Most IMHE referral investigations involve a commander or supervisor who pressured a military member to “volunteer” to go to Mental Health without following the procedures outlined in AFI 44-109, DoDD 6490.1 or DoDI 6490.4.¹¹ A commander may order a subordinate military member to obtain a mental health evaluation, but must follow the required process. Commanders and supervisors can never direct civilian subordinates to obtain a mental health evaluation unless it is part of a Fitness for Duty evaluation.¹² (Consult with your servicing civilian personnel office for advice regarding the latter.)

2.2.3. **Senior Official Misconduct.** Only SAF/IGS (Senior Official Inquiries) is authorized to investigate complaints against *senior officials* (O-7 select and above or an SES civilian).¹³ If there is an allegation against a senior official, a commander will not conduct a CDI into the matter, but rather will immediately report that allegation to SAF/IGS.¹⁴

2.2.4. **Self-Investigation.** Commanders should not investigate or direct a CDI into allegations pertaining to their *own* alleged misconduct. Self-investigation, or even the appearance of such, can create negative perceptions and adversely impact the effectiveness of command. Typically, the appropriate venue to address issues involving a commander will be the next higher echelon of command or an outside agency.

2.2.5. **Sexual Assault.** Allegations of sexual assault (rape, nonconsensual sodomy, indecent assault or attempts to commit these) trigger Air Force sexual assault response procedures.¹⁵ Upon receiving a report of sexual assault, commanders should immediately contact the Air Force Office of Special Investigations (AFOSI), the lead agency for investigating sexual assault allegations. AFOSI has a duty to contact the Sexual Assault Response Coordinator (SARC).

authorized recipient, it is a protected communication. Commanders, supervisors, first sergeants, law enforcement, and the Equal Opportunity Office, are examples of authorized recipients. For more information about reprisal, see AFI 90-301, *Inspector General Complaints Resolution* and DoD Directive (DoDD) 7050.06, *Military Whistleblower Protection*, 23 July 2007.

¹⁰ See DoDD 7050.06, para 4.2.

¹¹ Only commanders can “commander-direct” subordinates for an MHE.

¹² See 5 C.F.R. 339, Medical Qualification Determinations, 29 C.F.R. 203, Rehabilitation Act, EEOC Enforcement Guidance on Disability-Related Inquiries and Medical Examinations of Employees Under the Americans with Disabilities Act (ADA), July 27, 2000

¹³ AFI 90-301, para 3.2.1.

¹⁴ AFI 90-301, para. 3.2.2 and attachment 16.

¹⁵ The AF sexual assault policy provides for a “restricted reporting” option that enables victims to report allegations of sexual assault to specified personnel (health care providers and victim advocates) *without* triggering an investigation. Reports of sexual assault through other reporting channels (law enforcement, chain of command) constitute “unrestricted” reporting.

2.2.6. **Domestic Abuse.** The Air Force instituted response procedures for reports of adult domestic abuse or violence.¹⁶ Upon receiving a report of domestic abuse or violence, commanders should immediately contact law enforcement in accordance with local procedures.

2.3. **Matters in the Gray Area - Proceed with Caution.** Certain matters *may* be appropriate for a CDI, but should be carefully considered and closely coordinated with other agencies prior to investigation by command.

2.3.1. **Fraud, Waste, and Abuse (FWA).**¹⁷ FWA falls within the purview of several agencies, including the IG, AFOSI, and command. Once aware of FWA allegations, commanders should first coordinate with the IG, who may further coordinate with AFOSI. Essentially, the IG has the right of first refusal to investigate allegations of FWA.

2.3.2. **UCMJ Offenses.** Wrongdoing may rise to the level of a UCMJ violation. For example, an AFI violation could also be a violation of Article 92, UCMJ, *Failure to Obey Order or Regulation*. Usually law enforcement should investigate serious offenses for which the punishment is likely to be non-judicial punishment (NJP) or court-martial. Before launching a CDI into potential UCMJ offenses, commanders should consult with the SJA or Chief, Military Justice, about whether the matter would be better handled by Security Forces or AFOSI.

2.3.3. **Equal Opportunity (EO).** Commanders should inform the installation Equal Opportunity (EO) office upon receipt of any allegations of discrimination based on color, national origin, race, ethnic group, religion or sex, including sexual harassment. EO has the right of first refusal to investigate.

2.4. **Completion Timelines.** The commander should establish a specific suspense date to have the investigation completed and annotate the suspense in the Investigating Officer (IO) appointment letter (see attachment 5). Many CDIs are not complex and can be completed in as few as 10 duty days. Because lengthy investigations impact unit morale, IOs should request and justify their extensions in writing. The initiating commander has the sole authority to grant or deny extensions.

2.5 **Reporting Requirements.** Commanders must report all allegations of misconduct by a colonel (or civilian equivalent) to SAF/IGQ through the local IG.¹⁸ Additionally, AFI 90-301, table 4.2, requires personnel to provide copies of any material collected addressing colonel (or civilian equivalent) misconduct. Regardless of the subject's rank, commanders must report all allegations of reprisal, restriction, or IMHE to SAF/IGQ through the local IG.¹⁹

¹⁶ The AF initiated a “restricted reporting” option for adult victims of domestic violence. Any report of a domestic incident made through reporting channels such as the victim’s chain of command or law enforcement agency triggers “unrestricted” reporting. Disclosures of domestic violence of abuse to commanders are considered unrestricted.

¹⁷ “Fraud” is any intentional deception designed to unlawfully deprive the AF of something of value or to secure from the AF for an individual a benefit, privilege, allowance, or consideration to which he or she is not entitled. “Waste” is the extravagant, careless or needless expenditure of AF funds or the consumption of AF property that results from deficient practices, systems controls or decisions, as well as practices not involving prosecutable fraud. “Abuse” is the intentional wrongful or improper use of AF resources (misuse of rank, position or authority that causes the loss or misuse of resources such as tools, vehicles, computers or copy machines). AFI 90-301, Atch 1, Terms.

¹⁸ AFI 90-301, para. 4.3.1.1.

¹⁹ AFI 90-301, paras. 3.3; 4.6; 5.5; 6.5; 7.6.

CHAPTER 3. CDI TEAM – QUALIFICATIONS & RESPONSIBILITIES

3.1. CDI Team Overview. A successful CDI requires the efforts of several key players: the commander, the IO, the JAG, technical advisors (if needed) and administrative assistants (if resources permit).²⁰ This chapter addresses the qualifications and responsibilities of each CDI team member.

3.2. Commander (Appointing Authority). Squadron Commanders (or civilian equivalent), or higher, appointed IAW AFI 51-604 and AFI 38-101 (on G-series orders) have the ability to initiate a CDI. The initiating commander is the appointing authority. The commander initiates a CDI by appointing a qualified Investigating Officer (IO), in writing (see attachment 5).

3.2.1. The commander provides the IO:

3.2.1.1. An appointment letter (see paragraph 4.2 and attachment 5). The letter should not contain personal information such as the name of the subject or complainant.

3.2.1.2. Framed allegations, as an attachment to the IO appointment letter (attachment 5).²¹

3.2.1.3. Copies of any materials related to the investigation.

3.2.1.4. Suitable workspace, computers, administrative support and technical assistance.

3.2.1.5. Access to witnesses and documents within the commander's authority.

3.2.1.6. Oversight by keeping open lines of communication with the IO.

3.2.2. After consideration of the entire file, the initiating commander approves or disapproves the IO's findings, conclusions and recommendations and takes appropriate corrective action. See paragraph 6.1.10 for additional information.

3.3. The Investigating Officer (IO). If the investigation has individual subjects, the IO should be equal or senior in grade to the most senior subject and not in their chain of command. In all cases, the IO should be mature and experienced with good writing and critical thinking skills. Generally, the IO will be a senior captain or higher, a civilian equivalent, or senior NCO. With commander concurrence, the IO could be selected from a different unit. This may be prudent or necessary to ensure a fair and impartial investigation. IGs and their staff members are not eligible to be IOs for CDIs.²² The IO should also be fully available to conduct the CDI unhampered by leave, temporary duty, separation, retirement or other commitments that would detract from the investigation. In complex cases, the commander might consider appointing an Assistant IO. All IOs should be trained to conduct thorough, fair and objective investigations.²³ The IO has specific duties before, during and after the investigation.

3.3.1. Pre-Investigative Duties. Before beginning an investigation, the IO should:

3.3.1.1. Review this guide.

²⁰ While not a part of the CDI team, *per se*, the installation IG can provide the IO valuable guidance and training.

²¹ Commanders should work closely with their JAG in framing allegations. For more information on the commander's duties in initiating a CDI, including framing allegations, see Chapter 4.

²² AFI 90-301, para. 1.31.3.

²³ At a minimum, the CDI IO should be thoroughly familiar with this guide and the SAF/IGQ web-based Investigating Officer Toolkit on the Air Force Portal and the Investigating Officer Overview Course (<https://golearn.csd.disa.mil>) located under the "All Courses" and "AF Inspector General Training" tabs.

- 3.3.1.2. Review all materials provided by the appointing authority.
 - 3.3.1.3. Review the regulations, directives, instructions, manuals and guidance relating to the allegations.
 - 3.3.1.4. Formulate an investigative plan and proof analysis (see attachments 7 and 8) in conjunction with the legal advisor.
 - 3.3.1.5. Coordinate with the commanders of any necessary witnesses to arrange for witness availability.
- 3.3.2. **Investigative Duties.** Throughout the course of the investigation, the IO:
- 3.3.2.1. Thoroughly gathers all necessary facts, through witnesses, documents or other items of evidence, to help the commander make an informed decision.
 - 3.3.2.2. Stays on task by investigating only the items outlined by the commander in the appointment letter. If new or different issues come to light during the investigation, the IO has a duty to address these issues with the commander. The commander will decide if and how the additional issues will be treated (see paragraph 5.3).
 - 3.3.2.3. Consults with the assigned legal advisor when legal issues arise, such as whether to read Article 31 rights or how to approach a witness who refuses to testify. The IO should work closely with the legal advisor to refine the investigative plan and proof analysis.
 - 3.3.2.4. Is professional at all times. This requires the IO be objective, neutral and fair. IOs should adopt a friendly, but not familiar, attitude. IOs should not disclose witness identities or opinions; deceive, browbeat, threaten, coerce, or make promises; shout, argue, lose composure, or otherwise show emotion.
 - 3.3.2.5. Treats all information gathered as part of the CDI process as For Official Use Only.
- 3.3.3. **Post-Investigative Duties.** Once the IO has gathered the evidence, the IO:
- 3.3.3.1. Writes a fair and balanced report of investigation (ROI) that considers both sides of the issue, supports the “right” answer based upon the preponderance of the evidence, and sufficiently documents the deliberative process.
 - 3.3.3.2. Organizes the ROI case file. See chapter 6 and attachment 17 to this guide for the recommended format.
 - 3.3.3.3. Obtains a legal review of the ROI from the servicing legal office.
 - 3.3.3.4. Forwards the ROI case file to the commander who directed the investigation.
- 3.4. **The JAG.** JAGs play a critical role in the CDI process.
- 3.4.1. **The Legal Advisor.** Prior to the IO’s appointment, the legal advisor assists the commander in framing the allegations. After the IO is appointed; and before the investigation begins, the legal advisor meets with the IO to provide training (if necessary) and assist in formulating the proof analysis and interview questions. The legal advisor advises the IO during the investigation, as issues may arise.
 - 3.4.2. **Legal Sufficiency Review.** Commanders should receive a legal review on a CDI before reviewing the report of investigation and taking action. Legal reviews for CDIs will be accomplished in accordance with JA policy and procedures. The legal review should be a complete and thorough stand-alone document. See paragraph 6.1.9 below and attachment 9 for additional

information on legal sufficiency reviews.

3.5. **Technical Advisor.** It may be necessary for the commander to appoint a technical advisor (subject-matter expert) to consult with, or provide subject matter expertise for the IO. The commander should provide contact information for technical advisors in the IO's appointment letter or, if a later need arises, in a separate technical advisor appointment letter (see attachment 10). For example, if the allegation deals with improper official travel, experts in the servicing base finance office can identify and explain applicable provisions of the Joint Federal Travel Regulation (JFTR) or Joint Travel Regulation (JTR). Because technical advisors are part of the investigative team, they have an obligation to protect the privacy of all concerned parties (witnesses and subjects). Technical advisors can provide testimony like any other witness or, upon the IO's request, provide a separate written technical review of the case file after the IO writes the report of investigation (ROI) (see Attachment 11, sample Technical Review).

3.6. **Administrative Assistant.** Depending upon case complexity, the commander may wish to assign the IO one or more administrative assistants. Administrative assistants can facilitate witness interviews, copy necessary documents and even act as witnesses to testimony. The commander should consider maturity and judgment before detailing prospective assistants to the IO. As part of the investigative team, assistants have an obligation to protect the privacy of all concerned. The commander can detail these assistants verbally, in the IO appointment letter, or in a separate letter (see Attachment 12, sample Administrative Assistant Appointment Letter). The preferred practice is to provide the administrative assistant an appointment letter that delineates their obligations. During the CDI, administrative assistants should report to the IO.

CHAPTER 4: INITIATING THE CDI (COMMANDER'S JOB)

4.1. **Frame the Allegations.** Before appointing an IO, the commander will frame the allegations with assistance from JA. The allegations will be identified in an attachment to the IO appointment letter (attachment 5). Framing allegations is the **single most important factor** in the pre-investigative stage. Commanders and their legal advisors should carefully, clearly and concisely identify the specific processes to be reviewed and/or any laws, rules, or policies that an individual may have violated.

4.1.1. **Allegation Requirements.** The most common weakness in CDIs is that allegations are vague, poorly worded, or allege conduct that does not amount to wrongdoing. CDI allegations should precisely identify who, what, when, and how (if known). If a UCMJ offense is alleged, use the sample specification in the Manual for Courts-Martial (MCM).

4.1.1.1. **When.** The allegation, to the extent practicable, should precisely indicate the applicable dates of the alleged violations. Unless the IO is sure of the exact date of the incident, the date is written as "on or about." If the actions occurred during or between certain dates, use "between on or about XX May 20XX and XX Jul 20XX."

4.1.1.2. **Who.** When the CDI focuses on a person, indicate the subject's full name and rank (e.g., Senior Master Sergeant Jack Hammersmith). Include the subject's duty position if it is relevant to the alleged violation. When multiple subjects are alleged to have committed the same or similar misconduct, use a separate allegation for each subject. The allegation should not identify a complainant as the complainant. (e.g., "SMSgt X did whatever to SrA Y, *the complainant*".)

4.1.1.3. **How.** The allegation must provide sufficient notice of how a law, rule or policy was allegedly violated.

4.1.1.4. **What.** Allegations should identify a violation of law, policy or regulation (e.g., Article 93, UCMJ) or a broken process (e.g., tool accountability). If alleging a violation of law, regulation or policy, each allegation should address a violation of only one law, regulation or policy (e.g., not Article 93, UCMJ and abuse of authority). In other words, do not combine allegations; however, implementing instructions or regulations may be referenced or included. The law, regulation or policy cited in the allegation should be the correct citation (e.g., not “fraud, waste, and abuse” but DoDD 5500.7-R, *Joint Ethics Regulation*, paragraph X).

4.1.1.5. **Allegation Example.** On or about XX Nov 20XX, (**WHEN**), Master Sergeant Jack Hammersmith, Superintendent, 1st Contracting Squadron, (**WHO**), did maltreat Senior Airman Standup Guy, a person subject to his orders, by repeatedly using profanity towards him (**HOW**), in violation of Article 93, UCMJ. (**WHAT**)

4.2. **Notify SAF/IGQ.** If there is an allegation framed against an O-6, O-6 select, GS-15, or Pay Band 3, the commander must notify SAF/IGQ through their local IG. Upon completion of the CDI the commander must also provide a copy of the ROI, legal review, and any command actions to SAF/IGQ. (See paragraph 7.4.5.) Add that this is a requirement of 90-301

4.3. **Appoint the IO.** Once the commander decides an investigation is needed, he or she appoints an IO in writing. The commander should provide the IO a letter of appointment (see attachment 5). The appointment letter generally outlines the scope of the investigation, provides the name and contact information of the IO’s legal advisor and technical advisor (if any), authorizes the IO to collect evidence, requests recommendations if desired, establishes the CDI completion suspense date and states that the CDI is the IO’s sole duty until completion. The appointment letter is the IO’s authority to conduct an investigation; swear witnesses; and examine and copy documents, files, and other data relevant to the investigation. For purposes of the CDI, the IO is an extension of the appointing commander. Because the IO may need to show the appointment letter to other agencies to obtain their information, the commander should include the allegations to be investigated *as an attachment* to the appointment letter, thereby protecting the privacy of other parties.

4.4. **Arrange the Logistics.** Commanders initiating a CDI are responsible for providing the necessary manpower, supplies and funding support. To protect and secure investigative details, the IO will require a private office or work area from which to conduct the investigation as well as a dedicated computer (preferably a laptop), printer, phone and fax. In complicated cases the commander may also appoint an administrative assistant.

CHAPTER 5. CONDUCTING THE CDI (IO’S JOB)

5.1. **Preparation Tips.** The end result of a CDI typically reflects the amount of preparation and effort put into the investigation. The IO should meet with his or her legal advisor for any training and for assistance in forming an investigative plan, proof analysis and interview questions before initiating the investigation.

5.1.1. **Proof Analysis Matrix.** The proof analysis matrix is a tool for identifying the evidence needed to prove or disprove each allegation. It affords a reference outline for the analysis section of the ROI. The proof analysis matrix should be thoroughly developed and revised continuously throughout the investigation. As such, it will serve as a solid template for the ROI. The preferred practice is to build the proof analysis around the “elements” of the law, rule or policy violated, including its definitions. Definitions are a critical starting point to

determining whether a law, rule or policy was violated. For example, in a cruelty and maltreatment case (Article 93, UCMJ), the first element is that the alleged victim was “subject to the orders of the accused.” If the IO does not understand that “subject to the orders of the accused” includes not only those persons under the direct or immediate command of the accused but also *all persons who by reason of some duty are required to obey the lawful orders of the accused*, then the IO may reach incorrect conclusions. The same logic applies to any violation. Understanding the law, rule or policy is a prerequisite to determine whether it was violated. The legal advisor is invaluable in this area.

5.1.2. Question Formulation. IOs should work closely with their legal advisors when preparing interview questions for relevance, organization, thoroughness and form.

5.1.2.1. Relevance. The key to relevance is *whether the information sought might have an effect on the outcome of the case*. The interview questions should focus on the facts and circumstances surrounding, and leading up to, each allegation. Information that relates to the issues and concepts outlined in the proof analysis will always be relevant: when, who, to whom, how, and did what.

5.1.2.2. Organization. The best interviews start with background and build up to the pivotal question or issue. Ask pertinent background questions first. Work the witness toward the more difficult subjects. While there is no cookie-cutter method to ensure effective interviews, the recommended approach is to review events chronologically rather than by allegation (e.g., Thursday, then Friday, rather than allegation 1, then allegation 2). Jumping from allegation to allegation often results in skipping around in time and can be confusing. Using a chronology is helpful in keeping questions in a logical sequence.

5.1.2.3. Thoroughness. Thoroughness is required in all CDIs. IOs should look beyond who, what, where, when, and how. IO’s should also address “why,” whether or not motive has been specifically outlined as an element in a proof analysis. IOs need to:

5.1.2.3.1. Pursue an issue when there is an indication the witness has additional information.

5.1.2.3.2. Find the source of second-hand information so that first-hand information may be obtained.

5.1.2.3.3. Determine the basis for witness opinions (i.e., A: “In my opinion, he’s not a truthful person.” Q: “What leads you to believe that?” A: “He lied to me three times.” Q: “Explain”).

5.1.2.3.4. Ask for clarification when answers contain technical jargon, acronyms, slang or colloquial expressions.

5.1.2.3.5. Seek facts, not conclusions (i.e., A: “He was drunk”; Q: “What gave you that impression?” A: “He smelled like beer, his eyes were bloodshot, he was slurring his speech and couldn’t stand up without swaying”).

5.1.2.4. Form. Let the witness tell what happened and refrain from asking questions that suggest answers. Questions that either assume the answer or leave the witness no choice but to state a particular response (yes or no) are leading questions. Leading questions are generally less useful in getting at the truth. While IOs may want to ask leading questions when confirming known facts or when rephrasing an answer the witness previously provided, the end goal is for the witness to testify, not the IO. A sure sign of a leading question is the suffix, “Is that correct?” Also avoid compound questions. A compound

question is one that contains several questions in one. Compound questions can confuse the witness and often result in one answer, making it impossible later to determine which question the witness answered (e.g., Q: "Did you take Amn Smith to the store with you, or did you go alone?" A: "Yeah.").

5.2. Evidence Collection. IOs should seek evidence that is accurate and, where possible, from individuals with direct knowledge. Evidence can be testimonial, physical, or circumstantial. IOs should assess and evaluate evidence while collecting it. The most effective IOs update their proof analysis matrix continually throughout the investigation. Evidence collection often has a ripple effect -- the disclosure of one piece of evidence often drives the need to confirm it, or refute it, through other evidence.

5.2.1. Testimony. In CDIs, the majority of evidence is witness testimony. Testimony includes oral statements, written statements and IO summaries of witness interviews. Testimony can be powerful, as in the case of a hand-written confession. On the other hand, testimony is based on a person's memory, so it is often incorrect or incomplete. Before testifying, all witnesses should sign a Privacy Act statement (attachment 6).

5.2.1.1. Witness Availability. IOs should work through the owning commander to make the witness available for interviews. Most witnesses are willing to cooperate with an IO. In the case of the unwilling witness, the means and ability to require their cooperation will vary depending on the witness' status.

5.2.1.1.1. Active Duty Military. The witness' commander can order the witness to testify. Military witnesses have a duty to testify and can only refuse to answer questions that would incriminate him or her. If the witness invokes a right against self-incrimination, the witness can only be ordered to testify if given immunity from prosecution. Given the IO does not have the authority to grant immunity, the IO should never state or imply a witness will not be prosecuted for his or her testimony. (See paragraph 5.2.1.8 Immunity). If a witness refuses to testify, the IO should stop the interview and consult with the SJA or legal advisor to determine whether an order to testify is prudent and proper.

5.2.1.1.2. DoD Civilians. A DoD civilian employee's commander can direct the witness to testify. Like military witnesses, DoD civilians have a duty to testify and can only refuse to answer questions that would tend to incriminate him or her. If a civilian employee invokes a right against self-incrimination, the witness can only be ordered to testify if given immunity from prosecution. Given the IO does not have the authority to grant immunity, the IO should never imply or infer the witness will not be prosecuted (See paragraph 5.2.1.8 Immunity). If a DoD civilian witness refuses to testify, the IO should stop the interview and consult with the SJA or legal advisor to determine whether directing the witness to testify is prudent and proper.

5.2.1.1.3. Civilians. "Civilian" witnesses cannot be ordered or directed to testify. This includes contractor employees, dependents of active duty military, non-DoD affiliated civilians, and non-appropriated fund (NAF) employees. The IO can always invite civilians to testify, but if the person refuses, the IO has no power to make them testify. Refer to attachment 13 for a sample witness invitation letter.

5.2.1.1.4. Retirees. Retirees, unless they are recalled to active duty, cannot be compelled to testify. As in the case of civilian witnesses who are not employees, the IO can invite a retiree to testify, but if the person refuses, the IO can't force them.

Refer to attachment 13 for a sample witness invitation letter.

5.2.1.1.5. **Minors.** Minors fall into the category of “civilians,” and the same rules apply. Additionally, even if a minor agrees to testify, the IO must almost always obtain the consent of a parent or legal guardian. Consult with your legal advisor or SJA before interviewing a minor. If consent is required, a parent or legal guardian must be present for all interviews of minors. [Suggestion: the IO should have the parent or legal guardian co-sign any statement of a minor.]

5.2.1.1.6. **Air National Guard; Reserve Personnel.** Air National Guard or Reserve component members, not in a duty status, cannot be required to participate in a CDI interview. If a reserve component witness will not agree to participate while in a non-duty status, the IO can request the owning commander place the witness in a duty status by placing the witness on orders and ordering the witness to testify.

5.2.1.2. **Order of Witnesses.** Each witness must be interviewed individually. The recommended sequence is: (1) the complainant; (2) subject matter experts; (3) regular witnesses; (4) subjects or suspects. Interviewing the subject last ensures the IO has learned the necessary information to ask the right questions. This process can also enhance truth telling, as people are more likely to be truthful if they know the IO has information from others. If the interview is last, the IO can also challenge any statements that are inconsistent with other evidence. Finally, interviewing the subject last allows the IO to advise the subject of all adverse information against them and decreases the need to re-interview.

5.2.1.3. **Interview Locations.** Choosing the correct interview location in advance can prevent a myriad of problems. Choose a place that is private and secure. Some options are listed below.

5.2.1.3.1. **Local Options.** The IO has several options when interviewing local witnesses, including the witness’ duty location or a neutral location. The positive aspects of interviewing witnesses on their “turf” is that they may be more at ease and willing to share information and have ready-access to information, records, or documents. The downside of interviewing people in their own areas includes a lack of privacy (unwanted interruptions) and the possibility of generating rumors.

5.2.1.3.2. **Remote Witnesses.** If the witness is located at another installation or location, the IO has several options: (1) personally interview the witness at their location to observe demeanor and non-verbals, important indicators of truthfulness; (2) delay the interview until the witness returns, if their absence is temporary and time permits; (3) conduct a telephonic interview; (4) mail, e-mail or fax the witness written questions and have them provide a sworn, written response; or (5) ask the witness to provide a sworn statement.

5.2.1.4. **Testimony Format.** The IO can obtain testimony in a variety of formats, but all testimony should be under oath. Regardless of form, testimony should always include the full names, office designation, and unit for each witness. Refer to attachment 14 for an interview script.

5.2.1.4.1. **Under Oath.** All testimony should be taken under oath. It puts the witness on notice that the CDI is a serious matter and lets them know they could be criminally liable if they fail to tell the truth. Swearing or affirming (oath with phrase

“so help you God” deleted) witnesses is simple (see attachment 14). An IO is authorized to administer oaths in the performance of such duties under UCMJ, Article 136 (active duty military); 10 USC § 936 (Air National Guard and Air Reserve members performing inactive duty training); 5 USC § 303 (for civilian IOs); and as authorized by a state Code of Military Justice, a state statute, or a state regulation (IOs in Air National Guard in Active Guard Reserve (AGR) status performing AGR duty under Title 32).²⁴ If a witness, previously sworn, must be re-interviewed, the IO does not need to re-administer the oath, but can simply remind the witness that they are *still* under oath and obtain the witness’ acknowledgement that they understand.

5.2.1.4.2. **Summarized.** The IO may interview witnesses and prepare summaries of testimony. Interviews allow the IO to explore issues raised during the interview and evaluate witness credibility. It is best practice to summarize the testimony immediately following the interview and have the witness review and sign the summary that same day. The witness and the IO should sign the summarized statement, under oath, to certify its validity. (See Attachment 16, Summarized Testimony Format).

5.2.1.4.3. **Written Statements.** A witness’ sworn statement should either be written legibly or typed. The best practice is to document written statements on an AF IMT 1168, *Statement of Suspect/Witness/Complainant*. All witnesses should sign their statements under oath. The AF IMT 1168 contains the oath. The AF IMT 1168 also includes a rights advisement, which is critical to a military suspect interview. If the AF IMT 1168 is not used, then the IO may use the template located at attachment 15 to this guide. *Regardless of format used, if a witness makes any pen-and-ink changes to their written statement, the IO should have the witness initial the change.*

5.2.1.4.4. **Electronic Recording.** Unlike an IG investigation, *there is no requirement that the IO record witness testimony.* Considering the limited scope and purpose of most CDIs, recorded testimony will be the exception, not the rule. IOs should request permission from the commander-appointing authority prior to recording any witness interviews. There are pros and cons to recording witness testimony (to include a subject interview). Recorders, in good working order, accurately capture interview contents. On the other hand, being recorded makes most witnesses nervous, and the recorded files must be safely stored and transcribed.²⁵ Never allow witnesses to record interviews. In the rare case a witness records an interview, the IO should request the individual voluntarily delete the recording or relinquish the tape for inclusion in the official record. An IO is the agent of the commander; the release authority for CDI records rests with that commander. If the individual declines to provide the recording or erase the file voluntarily, the IO should give the person a lawful order (or, in the case of a civilian, the IO should direct the person) to surrender it, subject to disciplinary action if they further refuse. IO’s should consult with the legal advisor as needed.

²⁴ IOs performing AGR status in Title 32 should consult with their legal advisor to determine the source of their authority to administer oaths.

²⁵ IOs who electronically record witness testimony must work closely with the JAG regarding when and how to dispose of such recordings.

5.2.1.4.5. **Verbatim.** Verbatim testimony is testimony that has been transcribed word for word. Transcription will add significant time and expense to the investigation. If the witness' testimony was important enough to electronically-record, it follows that their testimony is important enough to be transcribed. When the IO seeks permission from the commander to tape-record witness interviews, also seek funding authorization for transcription services.

5.2.1.4.6. **Telephonic.** If the witnesses are unavailable for face-to-face interviews, but are critical to the CDI, the IO may want to arrange a telephonic interview through the witness's legal office. This allows a local JAG to administer the oath to and verify the identity of the witness. Any prepared statements, whether by the individual or the IO, can be faxed or e-mailed for signature.

5.2.1.5. **Rights Advisements.** Rights advisement for subjects, suspects or witnesses may become an issue. The IO should work very closely with the legal advisor whenever there is a question about whether an individual should be read their rights.

5.2.1.5.1. **Military.** The mere fact that someone is the subject of a CDI does not automatically trigger the need for a rights advisement. The test is whether the IO, at the time the active duty military subject is interviewed, either believes or reasonably should believe the individual committed an offense under the UCMJ or other criminal code. If so, then the subject or witness should be considered a *suspect*. The IO should advise suspects of their Article 31(b), UCMJ rights. Cases involving Guard and Reserve personnel are further complicated by their status at the time of the alleged conduct and the time of interview. Consult with the legal advisor in these cases.

5.2.1.5.2. **Civilian.** Even if suspected of an offense, a civilian witness or subject (including a civilian employee) need not be advised of their Fifth Amendment ("Miranda") rights when interviewed as part of a CDI. Such rights are only required in conjunction with *custodial* interrogations (i.e., interrogations in which the interviewee is not free to leave at will). CDI interviews do not meet the threshold requirement for a custodial interrogation. The lack of a requirement to advise civilian witnesses of their Fifth Amendment rights does not preclude them from invoking such rights and choosing to remain silent if circumstances warrant. (See paragraph 5.2.1.1.2 DoD Civilians and 5.2.1.8 Immunity). The IO should consult with the legal advisor or SJA and Civilian Personnel representative before directing a civilian employee to answer such questions.

5.2.1.6. **Third-Party Presence During Interviews.** An interview will normally only involve the IO and the witness. Sometimes a technical advisor or administrative assistant appointed to assist the IO will accompany the IO during interviews. For example, while interviewing witnesses of the opposite sex, the IO may want an assistant present to avoid any appearance of impropriety. Additionally, if the testimony of a particular witness is especially important to the investigation, the IO may want a third party present to take notes and act as a witness to what is said. Although the IO can have team members present during witness interviews, generally speaking witnesses cannot have third parties present. This section discusses how to proceed when a witness requests that a third party be present during their CDI interview.

5.2.1.6.1. **Labor Union Representatives.** If a DoD Civilian employee is a member of a bargaining unit, the labor organization (union) may have a right to be present

during the interview. The Civilian Personnel Office and legal advisor can help the IO navigate the unique labor law issues present at each base.²⁶

5.2.1.6.1.1 An IO must extend to a labor organization the opportunity to attend the interview of a collective bargaining unit employee, if the investigation concerns a *grievance* (complaint by an employee about any term or condition of employment) and the interview amounts to a *formal discussion* (employee attendance required, structured agenda, etc.). Presence by a union representative is an institutional right for protecting the bargaining agreement. The role of the labor organization is that of an interested observer. The union representative cannot answer questions for the member.

5.2.1.6.1.2 DoD civilian employees may request the presence of a bargaining unit representative during an Air Force *investigatory interview* when the employee reasonably believes discipline may occur as a result. This is commonly called “Weingarten” rights. To exercise this right, the employee must request representation. *Generally, there is no duty for the IO to advise the employee of this right. The one exception is if it is provided for in the collective bargaining agreement.* If the employee invokes Weingarten rights, the IO should consult with the legal advisor or SJA and civilian personnel before proceeding with the interview. Under these circumstances, the labor representative is a *personal representative* of the employee and may provide advice, consult with the witness, and suggest areas of inquiry, but may not obstruct the interview or instruct the witness not to answer legitimate questions.

5.2.1.6.2. **Attorneys.** Only a *suspect* has the right to have an attorney present during an interview. The attorney may not answer questions for the suspect. Witnesses and *subjects* may consult with their attorney, but are not permitted to have an attorney present during the interview.

5.2.1.6.3. **Other Personal Representatives.** As a general rule, third-party representatives for witnesses and subjects are not permitted to be present during CDI interviews. The IO should consult with the legal advisor when special circumstances arise, such as a request for a crime victim to have a Victim Witness Assistance Program (VWAP) representative present or the witness is a minor.

5.2.1.7. **Confidentiality.** Communications made to the IO during a CDI are not privileged or confidential. However, the IO’s disclosure of these communications (and the identity of the person who provided the information) will be limited to an official need-to-know. The CDI ROI will be marked “**For Official Use Only**” (FOUO) and will be released only in accordance with existing laws. (See paragraph 7.4 on CDI release)

5.2.1.8. **Immunity.** General Court-Martial Convening Authorities (GCMCAs) have the authority to grant military witnesses immunity from prosecution in exchange for providing testimony; Subordinate commanders and IOs do not have this authority. The Department of Justice or state/local prosecutors have authority to grant immunity to a DoD civilian employee. The IO should never make promises to any witness – military or civilian -- that could be interpreted as *de facto* immunity (e.g., “Don’t worry, you won’t

²⁶ See 5 USC Chapter 71; National Labor Relations Board v. Weingarten, Inc., 420 U.S. 251 (1975).

get in trouble.). An implied immunity can cause significant problems for military and civilian prosecutors. If a military or civilian employee witness requests immunity or some other protection as a condition to providing a statement, the IO will consult with the commander and SJA before proceeding.

5.2.1.9. Chief of Staff Hand-Off Policy. The CSAF's 26 November 2002 Policy for Investigative Interviews applies to CDIs. This policy requires a person-to-person hand-off of all subjects and suspects, and any distraught witnesses following an investigative interview. The hand-off must take place between the IO and the individual's commander or the commander's designated representative. The policy applies to everyone, regardless of rank or position. The IO needs to document the hand-off in the ROI, normally somewhere in the witness' testimony.

5.2.2. Physical Evidence. Physical evidence consists of documents, computer records, photographs, and objects (e.g., tools), to name a few. IOs must ensure evidence is properly collected, handled and secured. For more information, IOs should contact their legal advisor.

5.2.2.1. Objects. Occasionally, an IO will have to collect tangible items of evidence as part of a CDI. Consider an example of a tool accountability CDI. Assume several witnesses testified that they saw five torque-wrenches with government markings in Amn Simpson's car, and the IO ultimately locates the five wrenches.²⁷ The IO should work in tandem with the legal advisor and AFOSI or Security Forces to determine how to secure and store the evidence. The IO should obtain photographs of the wrenches to include in the ROI.

5.2.2.2. Documents. Documentary evidence may be in the form of handwritten notes, correspondence, reports, newspapers, inventories and computer records such as e-mails. Written documentation, if authentic, gives the IO a snapshot in time.²⁸ Anytime a witness discusses a particular document during testimony, the IO should ensure the testimony identifies the document (e.g., "my letter, dated X, subject line "quote"). If it would be helpful, the IO can create or have witnesses create documents to illustrate points in the investigation -- demonstrative evidence. For example, the IO can have the witness diagram a location where people were standing at a given time. Other examples of demonstrative evidence include: organizational wiring diagrams, chronologies²⁹ and maps. Demonstrative evidence should be labeled thoroughly and accurately.

5.2.3. Circumstantial Evidence. At times, the IO will need to prove the intangible, such as motive, intent or knowledge. Because the IO cannot read minds, the chance of finding "direct" evidence of such things is remote. Circumstantial evidence is evidence that tends to prove the existence of a fact. For example, Able may have seen Ben shoot Cain. Able could provide direct evidence about what he saw. On the other hand, Able may have walked into a room seconds after hearing a gunshot, seen Ben standing over Cain with a smoking gun, and heard Ben yell, "Die, scum!" The circumstantial case against Ben would include the gun, Ben's yell and maybe even a large insurance policy that Ben just took out on Cain's life. Circumstantial evidence can be as compelling as direct evidence.

²⁷ IOs considering searching and seizing evidence must consult their legal advisor.

²⁸ Identifying a document by its author is known as authentication. The IO should mention in the ROI when a witness authenticates a document.

²⁹ Building a timeline of events is a useful tool to visualize complex and interrelated events.

5.2.4. **Computer Evidence.** Occasionally, an IO may want to access a subject's or witness' e-mail or computer files for evidence of wrongdoing. Generally, real-time monitoring, such as intercepting e-mails *en route* to their destination, is not within the scope of a CDI. For the most part, searching information on local hard drives is not an option for an IO in a CDI. Where IOs believe a search of computer files is necessary, IOs should consult their legal advisors.

5.3. **Adding New Allegations.** Sometimes a CDI may raise additional allegations. This typically occurs during the investigation when a witness' testimony reveals additional misconduct, or when a later reviewer raises issues that were not addressed in the investigation.

5.3.1. **During the Investigation.** If a witness' testimony, or other evidence, raises the possibility of additional misconduct of the subject or another person, the IO should coordinate with the commander to determine whether the additional issues will be investigated separately or as part of the on-going investigation. If after consultation with the legal advisor, the commander expands the scope of the CDI, the appointment letter should be amended. Subjects must be advised of their alleged wrongdoing when they are interviewed. If a subject has already been interviewed, but has not been given adequate opportunity to respond to the substance of all misconduct under investigation, the subject should be informed of the new allegations and re-interviewed.

5.3.2. **Post-Investigation.** The more challenging scenario occurs when a later reviewer, such as the JAG conducting the legal review, discovers possible misconduct that was not addressed in the ROI. When this occurs, the reviewer should discuss with the IO whether the alleged misconduct was investigated, but just not documented in the case file. If such is the case, the IO can include a brief memorandum for record in the case file. If the alleged misconduct was not considered, the IO should consult with the commander to determine a course of action. If additional investigation is warranted, the commander will decide whether to reopen the CDI or consider the issue in a separate CDI. The CDI case file should include documentation as to the final disposition of the issue, typically in the ROI "Background" section.

5.4. **How Much Investigation is Enough?** An investigation into whether someone was absent from work may not require as much evidence as an investigation into the improper use of government funds to purchase high definition televisions. However, an IO needs enough evidence to feel confident of the conclusion, by a preponderance of the evidence, regardless of the seriousness of the allegation. At a minimum, IOs should interview all witnesses named by a complainant or subject, or document why not. Consult with your legal advisor on whether you need to interview additional witnesses or gather additional documentary evidence to satisfy the burden of proof.

CHAPTER 6. CDI REPORT WRITING

6.1. **Suggested CDI Investigative File Format.** The CDI ROI must be a stand-alone document. All essential facts, documents, portions of regulations, interviews, etc., must be included in the report so that a reviewer can arrive at a determination without reference to information outside the report. The IO should write as if the reader had no prior knowledge of the case. The following is the suggested format to ensure the CDI contains everything the commander will need to make an informed decision in the case. Attachment 17 to this guide provides an outline of the ROI sections described in detail below, and can be included as a Table of Contents, immediately after the title page. Refer to attachment 18 to view a sample ROI.

6.1.1. **Appointment and Tasking Letters.** Tab A. This tab immediately follows the Table of Contents. Under this tab, the IO includes the original letter of appointment with attachments, amendments, and any tasking letters received from higher authorities referring to the case.

6.1.2. **Authority and Scope.** Tab B. In this tab, the IO documents his or her source of authority to conduct the CDI and states the purpose of the CDI. In this section, the IO also lists the allegations investigated.

6.1.3. **Background and Allegations.** Tab C. The IO provides the factual background leading up to the alleged events. The most difficult part of report writing is to sort through all the information gathered, determine which facts are important and document them in a logical manner. In so doing, the IO must be careful to present both sides of the case, not merely those facts that support his ultimate conclusion. The IO should tie every statement in this section to at least one piece of evidence in the file, referencing its location (e.g., “MSgt Hammersmith called Amn Simpson a ‘pig’ and a ‘loser.’ (Tabs F-1, p.3; F-5, p. 6, and G-6)” The most helpful way to present facts is in chronological order. Those who read the CDI ROI will generally be limited to the facts within, so IOs must be thorough. The facts are the heart of any case. In this section, the IO also discusses any other issues that arose during the investigation (e.g., documenting why a requested witness was not interviewed).

6.1.4. **Findings, Analysis and Conclusion.** Tab D. IOs invest significant time and effort gathering facts. Much of this effort can go unnoticed if the facts are hidden somewhere in a poorly organized ROI. One helpful method for analyzing each allegation is to use the **IFRAC** method (**I**ssues; **F**acts; **R**ules; **A**pplication; **C**onclusion).

6.1.4.1. **“IFRAC” Method.**³⁰ This method of analytical writing simplifies the organization of the Findings, Analysis and Conclusion section of the ROI. Refer to attachment 18, the Findings, Analysis and Conclusion section for an example of IFRAC in action.

6.1.4.1.1. **Issue.** The allegations, as framed by the commander, are the issues that the IO must resolve. IOs must address each of the commander’s concerns separately. The IO should start analysis of each allegation by first typing out, word for word, the original allegation. The wording of the allegation drives the analysis. Do not combine allegations in an attempt to simplify the process. For example, a CDI involving maltreatment would begin as follows:

Allegation. On or about XX Nov 20XX, Master Sergeant Jack Hammersmith, Superintendent, 1st Contracting Squadron, did maltreat Senior Airman Standup Guy, a person subject to his orders, by using profanity towards him and calling him derogatory names, in violation of Article 93, UCMJ.

6.1.4.1.2. **Facts.** After identifying the issue, the IO should discuss the key facts, *relevant to the particular allegation at hand*, from the more comprehensive Background section. In most cases, there will be evidence to support two entirely different conclusions--substantiated and not substantiated. The IO must take great pains to present the full story. As noted above, the IO should tie every statement of

³⁰ Adopted from *Law for Air Force Officers Third Edition, 2003* (7th Print Run: Spring 2006), Faculty, Department of Law, United States Air Force Academy, pp. 1-16 – 1-17.

fact to at least one piece of evidence cited in the case file. (e.g., “MSgt Hammersmith called Amn Simpson a “pig” and a “loser.” (Tabs F-1, p.3; F-5, p. 6; and G-6)

6.1.4.1.3. **Rules.** Once the issue and facts have been identified, the IO must next focus on the applicable rules or “law” for guidance in resolving the issue. These rules come from sources such as regulations (AFIs, DoDDs, etc), laws (statutes, UCMJ, etc.), and policies (administrative decisions, local policy letters, etc). The IO should document the relevant portions of the rules. For example, if the allegation or issue involved an AFI violation, the IO should annotate the AFI number, name and effective date (e.g., AFI 36-2706, *Military Equal Opportunity and Treatment Program*, 1 December 1996). Generally, IOs will want to *quote* the applicable portions of the instruction, including any definitions, verbatim from the source. Summarizing rules can be dangerous, as many of them were carefully crafted so they would have the desired impact. In cases involving UCMJ offenses, the IO should document the elements of the offense, as found in the Manual for Courts-Martial (MCM).³¹ In our example involving MSgt Hammersmith, the report might look like this:

Article 93, UCMJ, Cruelty and Maltreatment, requires proof of two elements:

1. That a certain person was subject to the orders of the accused and
2. That the accused was cruel toward, or oppressed, or maltreated that person.

“Any person subject to his orders” means not only those persons under the direct or immediate command of the accused but extends to all persons, subject to the code or not, who by reason of some duty are required to obey the lawful orders of the accused, regardless whether the accused is in the direct chain of command over the accused.

The cruelty, oppression, or maltreatment, although not necessarily physical, must be measured by an objective standard. Assault, improper punishment, and sexual harassment may constitute this offense.... The imposition of necessary and proper duties and the exaction of their performance does not constitute this offense even though the duties are arduous or hazardous or both.

6.1.4.1.4. **Analysis.** In the analysis section, the IO takes the rules of law and applies them to the facts to resolve the issues. This requires analytical thinking. The IO considers the facts surrounding the issue, assesses preponderance of the evidence and explains *why* he sees it that way. The reader must be able to follow the IO’s thought process. When finished reading the ROI, the commander should feel comfortable that it is complete and that the conclusion follows from the facts presented. To ensure the ROI is thorough, fair and balanced, the IO should keep in mind the “Three C’s” of analytical thinking and writing: *credibility, corroboration, and clarity.* Analysis requires more than just listing the facts and leaping to a conclusion. It

³¹ DA Pam 27-9, *Military Judge’s Benchbook*, is another excellent source of UCMJ elements and definitions. IOs should consult with their JAG legal advisors on the best “rules” to use in UCMJ cases.

requires a window into the IO's mind. The reader needs to appreciate *why* the IO weighed some items of evidence more heavily than others.

- **Credibility.** When there are opposing sides of a story, in assessing the preponderance of the evidence, the IO must document a credibility determination. This may require the IO to assess, and comment upon:
 - Witness demeanor (hostile, at ease?)
 - Nonverbals (evasive?)
 - Bias (best friends with the subject or mortal enemies?)
 - Motive to lie (personal interest in the matter or disinterested?)
 - Knowledge (personal knowledge or second hand?)
 - Perception (located next to the person or vision partially blocked?)
 - Veracity (character for truthfulness or a reputed liar?)
 - Any other information that may affect credibility (corroboration is discussed below.)

Documenting credibility determinations cannot be overemphasized. Without further explanation, the reader only has testimony and exhibits to review. Only the IO will have the opportunity to assess the witness' appearance and behavior during the investigation. Refer to attachment 18 for an example of an IO's credibility assessment.

- **Corroboration.** When testimony is corroborated by other credible evidence or testimony, witness credibility is greatly enhanced. The IO should always discuss evidence that supports, or does not support, witness testimony. With substantial agreement of the evidence, the IO's conclusions have a sound basis.
- **Clarity.** Clarify contradictions before finalizing the investigation. Whenever abbreviations or terms are used for the first time, spell them out or explain them. Avoid the use of slang, unfamiliar jargon, or obscene and profane language unless it is necessary.

6.1.4.1.5. **Conclusion.** Each allegation should be answered in a separate finding that states whether it was substantiated or not substantiated. If the evidence is in conflict and cannot be reconciled, that simply means that the facts did not satisfy the proof by a preponderance of the evidence standard and therefore, the allegations could not be substantiated. The IO should wrap up by *briefly* stating the reasons for the conclusion. For example, the conclusion can state, "The preponderance of the credible evidence indicates that MSgt Hammersmith called Amn Simpson a "(bleep)ing pig" and a "dog" and hit him on the head five times during a staff meeting. I find Allegation 1 to be SUBSTANTIATED." The IO should also identify any mitigating or extenuating circumstances in this section of the report, especially if someone committed wrongdoing, but did so unintentionally. It would also be important to know if the individual already rectified the situation.

6.1.5. **Recommendations.** Tab E. If the commander desires recommendations for corrective action, the IO will be tasked in the appointment letter. Do not make recommendations unless specifically directed. If the IO was not tasked to provide recommendations, but feels it would

be appropriate to do so, the IO should discuss the issue with the commander and request permission to include recommendations.³² Recommendations should be tied to the findings and stated as succinctly and objectively as possible. IOs should not recommend specific punishments or administrative actions. Recommendations are not binding on the commander.

6.1.6. **Testimony.** Tab F. The IO should first include an index of witnesses and tab each witness' sworn testimony in the order as in attachment 17.

6.1.7. **Evidence.** Tab G. The IO should first include an index of evidence and tab each evidentiary item in the order listed in attachment 17.

6.1.8. **Technical Reviews.** Tab H. If no technical review was conducted, place a paper in this tab that says, "None." Otherwise, tab all technical reviews in the same order in which they are referenced in the CDI ROI. Refer to attachment 11 for a sample technical review.

6.1.9. **Legal Review.** Tab I. Prior to providing the final CDI case file to the commander for action, the IO should obtain a comprehensive written "legal sufficiency" review. Refer to attachment 9 for a sample legal review. The commander's servicing legal office will normally review the CDI. Reviews will be completed in accordance with JA policies and procedures. At a minimum, a legal review should include a discussion and assessment of whether

- Each allegation has been addressed
- IO applied preponderance of the evidence standard
- Findings of fact are supported by the evidence included in the report of investigation
- Conclusions are consistent with the findings of fact and supported by the preponderance of the evidence
- Errors or irregularities (if any) render the investigation legally insufficient³³

JAGs should not deem a ROI "legally insufficient" merely because they personally disagree with the IO's findings and conclusions. The reviewing JAG can, if necessary, document their disagreement, while still deeming the ROI "legally sufficient." JAGs should use great caution not to substitute their judgment for that of the IO, particularly in cases where the ROI contains thoroughly documented credibility determinations and the preponderance of the evidence could reasonably support the IO's findings. Where the reviewer concludes the preponderance of the evidence does not support the IO's findings, the reviewer should explain whether additional investigation could help the IO meet the burden of proof.

6.1.10. **Commander (appointing authority) Approval and Actions.** Tab J. Upon receipt and review of the entire CDI case file, including the legal review, the initiating commander either "approves" or "disapproves" the CDI, in writing. If the commander disagrees with one or more of the IO's findings and conclusions, the commander will document the rationale for the disagreement and final determination on the matter (substantiated or not substantiated) in writing. An "addendum" to the ROI is the best method of documenting disagreement, rationale, and final determination for the case file.

³² If the commander approves the IO's suggestion and permits recommendations, this fact should be documented in the report in some manner, possibly in the Background section.

³³ Based on OPJAGAF 1998/109, 22 Oct 98, Inspector General

6.1.11. **Administrative Documents.** Tab K. Include any documents that do not otherwise fall into one of the other tabs, such as witness invitation letters, delay requests and extensions, etc.

6.2. **Report Markings.** Mark *“For Official Use Only”* (FOUO) at the top and bottom of each page. Mark all documents provided by the complainant during the course of the investigation as **“COMPLAINANT PROVIDED”** in the lower right-hand corner of each page. Classify reports according to the policies and procedures contained in security regulations.³⁴ Control the number and distribution of copies. *IOs will not provide draft or final copies of the CDI ROI, or disclose the IO’s opinion, to complainants, subjects, suspects, or witnesses for any purpose.*

CHAPTER 7. POST-REPORT ACTIONS

7.1. **Closure With Subjects, Suspects, and Complainants.** Final notification of CDI results is exclusively the commander’s prerogative. The commander makes final notification of the CDI results to the complainant (if any) and subject, either verbally or in writing. Remember – the Privacy Act applies (see paragraph 7.4.1). A sample written case closure letter to the complainant is included at attachment 19.

7.2. **Use of Results in Adverse Administrative Actions.** The information obtained in a CDI, including an IO’s findings and recommendations, may be used in any administrative action against an individual, whether or not that individual was designated as a subject or suspect. Commanders should consult their JAG prior to notifying any employee, whether civilian or military, of contemplated adverse action.

7.3. **CDI “Appeals.”** There is no formal appeal process for a CDI. Any “appeal” is entirely within the discretion of the initiating commander and the next echelon of command. As a general proposition, the “appealing” party should provide additional information to justify a review. Simply disagreeing with the results does not ordinarily constitute sufficient justification for further review or additional investigation. Complainants and subjects may appeal a subsequent adverse administrative action or non-judicial punishment to the Air Force Board for Correction of Military Records pursuant to AFI 36-2603, *Air Force Board for Correction of Military Records*, for substantive relief. Active duty members may be able to use Article 138, *Complaints of Wrong*, to request redress from the commander and General Court-Martial Convening Authority. An “appeal” alleging reprisal must be referred to the Inspector General.³⁵

7.4. **CDI Records Release.** The initiating commander is the release authority for CDIs. Commanders should limit access to CDIs to offices and agencies within the AF with an official need to know. Release CDIs outside the AF only as required by existing laws. CDIs may not be released, reproduced, or disseminated in whole or in part, or incorporated into another system of records without the express permission of the initiating commander. Where documents or information is incorporated into the CDI from another system of records, permission from the owner of that system of records must be obtained prior to release of the pertinent document or information. IOs should consult with their legal advisor prior to incorporating information from another system of records (such as AFOSI reports, hospital records or civilian police reports) into the CDI. Commanders should coordinate any information release with their JAG.

7.4.1. **Applicability of Privacy Act.** The Privacy Act (PA) of 1974, 5 USC § 552a, applies to CDIs. In all correspondence relating to CDIs, including notification letters, commanders must

³⁴ DoDD 5200.1-R; AFD 31-4, *Information Security*, and AFI 31-401, *Information Security Management*.

³⁵ See 10 U.S.C. § 1034, DODD 7050.06, and AFI 90-301

refrain from using personal names, but may use the individual's duty title. This is to protect the privacy of individuals involved. Additionally, complainants, witnesses and others are not entitled to know what command action was taken against *subjects* or *suspects*. Commanders should consult their JAG with any questions relating to the PA and prior to authorizing release of a CDI to any person.

7.4.2. Retention of Records. The applicable systems notice (F051 AF JA I) requires commanders to destroy the CDI after a two-year retention period. This means if a CDI closes out (final approval) in Feb 2009, the commander would maintain it only until Feb 2011.

7.4.3. Member or Defense Counsel Requests. UCMJ actions have specific requirements for providing the subject or his defense counsel access to evidence. The commander should provide defense counsel access to a CDI, *through* trial counsel. Defense counsel (or the member) may request a copy of a CDI to respond to an administrative action. Depending on the type of action, the subject (or his counsel) may have the right to access the CDI. Other requests for access may be more appropriately treated as Freedom of Information Act (FOIA) requests. The commander should work closely with the JAG to determine what, if any, portions of the CDI may be releasable.

7.4.4. Freedom of Information Act (FOIA) Requests. Commanders may receive requests under the FOIA for copies of CDIs. If a commander receives a FOIA request directly, he should send it to the FOIA office for proper coordination. Once tasked by the FOIA office, the commander should work closely with the JAG to determine what, if any, portions of the CDI may be releasable. For more information about FOIA, see the AF FOIA website at: <http://www.foia.af.mil/>.

7.4.5. Obligation to Provide Adverse Information to IG. Where a CDI involves a colonel (or civilian equivalent), commanders will provide SAF/IGQ (through their local IG) a copy of the ROI, the legal review, any command actions (Article 15s, Letters of Reprimand (LOR), Letters of Counseling (LOC), Letters of Admonishment (LOA), or other records of corrective action) and any rebuttal or statement provided by the subject. (See 10 USC § 615 and AFI 90-301).

Attachment 1

GLOSSARY OF REFERENCES AND SUPPORTING INFORMATION

General:

AFI 90-301, *Inspector General Complaints Resolution*, 15 May 2008

Computer Searches:

18 USC § 2510, *Electronic Communications Privacy Act*, 21 October 1986

18 USC § 2511, *Federal Wiretap Statute*

18 USC §§ 2701-2711, *Federal Wiretap Statute*

AFI 33-119, *Air Force Messaging*, 24 January 2005

AFI 33-129, *Web Management and Internet Use*, 3 February 2005

Records Release:

DoD Regulation 5400.7/AF Sup, *DoD Freedom of Information Act Program*, 24 June 2002

DoJ *Freedom of Information Act Guide*, May 2004

AFI 33-332, *Privacy Act Program*, 29 January 2004

<https://afirms.amc.af.mil>

https://wwwmil.acc.af.mil/ja/civil_files/FOIA/foia.htm

<http://www.foia.af.mil>

<http://www.defenselink.mil/pubs/foi/index.html>

Other:

SAF/IGQ on the Air Force Portal:

<https://www.my.af.mil/afknprod/community/views/home.aspx?Filter=OO-OT-AF-82>

SAF/IGQ *Investigating Officer's Guide* (check the SAF/IGQ portal page)

AETC ADLS Website: <https://golearn.csd.disa.mil/>

Terms:

Abuse of Authority -- An *arbitrary or capricious* exercise of power by a military member or a federal official or employee that *adversely affects* the rights of any person or that *results in personal gain or advantage* to the abuser. Courts have interpreted the arbitrary and capricious standard in the context of government agency action under 5 USC § 706, the Administrative Procedure Act (APA). Attachment 4 provides a method of analyzing abuse of authority.

Colonel (or civilian equivalent) -- Any Regular Air Force active duty, Air Force Reserve, or Air National Guard officer in the grade of O-6; or an officer who has been selected for promotion to the grade of O-6, but has not yet assumed that grade; or an Air Force civil service employee in the grade of GS-15 or NSPS Pay Band 3. For purposes of this guide, these individuals will be referred to as *colonels (or civilian equivalent)*.

Evidence -- Information or data upon which a conclusion or judgment may be based. Evidence is simply information that tends to prove the existence of a fact.

Fact -- Facts are not conclusions, but rather information or data that have actual existence or occurrence.

Investigation Plan -- A statement of intent, which sets forth the IOs proposed course of action. Included in such a plan are the allegations to be investigated, a list of witnesses to be interviewed, a list of evidence to be collected, and an itinerary. The plan will include administrative matters such as

itinerary and personnel actions. The plan will also include a list of issues to be resolved and some preliminary questions which the IO intends to ask the key witnesses in the case.

Preponderance of the Evidence -- The standard of proof for commander directed investigations. A preponderance of the evidence is defined as “the greater weight and quality of the credible evidence,” meaning the evidence indicates that one position is more probable than the opposing position.

Proof Analysis Matrix -- A framework that helps the IO organize the case. Specifically, it provides a construct for identifying the evidence needed to prove or disprove an allegation. Additionally, the proof analysis matrix provides a reference outline for the analysis section of the Report of Investigation.

Protected Communication – See AFI 90-301. A protected communication is any lawful communication not conveying an admission of misconduct, to an Inspector General, member of Congress, or their staff members and any lawful communication not conveying an admission of misconduct, to a person or organization authorized to receive a protected communication under AFI 90-301, when the disclosing member reasonably believes he or she has evidence of a violation of law or regulation, including laws or regulations prohibiting sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. A protected communication also includes circumstances where the military member was preparing a lawful communication or complain that was not actually delivered, where the member did not actually communicate or complain but was believed to have done so by management officials, or cooperated with or otherwise assisted an IG, Member of Congress, or a member of a DoD audit, inspection, investigation or law enforcement organization by providing information that the military member reasonably believed evidenced wrongdoing.

Senior Official -- A Senior Official is defined as any active or retired Regular Air Force, Air Force Reserve, or Air National Guard (ANG) military officer in grades O-7 (brigadier general) select and above; Air National Guard Colonels with a Certificate of Eligibility (COE) as senior officials. Current or former members of the Senior Executive Service (SES) or equivalent; and current and former Air Force civilian Presidential appointees.

Attachment 2

REFERENCES, REFERRAL AGENCIES AND APPROPRIATE GRIEVANCE CHANNELS

Commanders initiating investigations should be aware of the various issues and complaints addressed by AFIs. The following matrix provides for appropriate referral to agencies with programs for the redress of these complaints. This matrix is not all inclusive of complaints that can be handled by other appeal channels. If a policy directive or instruction provides a specific means of appeal or redress of a grievance, the complainant should exhaust those appeal procedures.

R U L E	A	B
	Type of Issue	Appropriate Agency to Resolve the Issue
1	Appropriated Fund employees -- Conditions of employment (personnel policies, practices, and matters affecting working conditions) Equal Opportunity (EO) issues (discrimination based on age, race, color, gender, religion, disability, or national origin) or reprisal against a civil service employee or applicant.	<ol style="list-style-type: none"> 1. The servicing Civilian Personnel Flight (CPF) for action in accordance with civilian grievance system (either Administrative IAW AFI 36-1203, <i>Administrative Grievance System</i> or Negotiated IAW locally negotiated agreements). 2. EO Complaints should be referred to the local EO Director for processing IAW AFI 36-1201, <i>Equal Employment Opportunity Complaints</i> 3. For allegations of reprisal, direct the complainant to the Office of Special Counsel (www.osc.gov), or DoD Hotline (www.dodig.osd.mil/hotline/fwacompl.htm). There are some exceptions. For example, if a bargaining unit employee alleged reprisal for engaging in union activities, the appropriate forum is the civilian grievance system (see para 1 above). If an employee alleged reprisal for filing a complaint of discrimination, the appropriate forum would be EO (see para 2 above).
2	Nonappropriated Fund employees -- Conditions of employment and discrimination or reprisal	Servicing Nonappropriated AF Employment Office for conditions of employment or for reprisal allegations advise the complainant they can file their complaint directly with IG DoD (IAW DoDD 1401.3, <i>Reprisal Protection for Non-appropriated Fund Instrumentality Employees/Applicants</i>)
3	ANG Statutory tour program issues	See ANGI 36-6, <i>The Air National Guard Statutory Tour Program Policies and Procedures</i>
4	ANG Active Guard/Reserve (AGR) issues	See ANGI 36-101, <i>The Active Guard/Reserve (AGR) Program</i>
5	ANG incapacitation benefit program	Commander -- ANGI 36-3001, <i>Air National Guard Incapacitation Benefits</i>
6	ANG Administrative demotions	Commander -- ANGI 36-2503, <i>Administrative Demotion of Airmen</i>
7	ANG enlistment/reenlistment issues	Commander -- ANGI 36-2002, <i>Enlistment and Reenlistment in the Air National Guard and As a Reserve of the Air Force</i>

8	ANG retention matters	Commander -- ANGI 36-2606, <i>Selective Retention of Air National Guard Officer and Enlisted Personnel</i> ; ANGI 36-2607, <i>Air National Guard Retention Program</i>
9	National Guard Military Technicians (Excepted Civil Service under 32 USC § 709)	State Human Resources Office (HRO)
10	Air Force Reserve Assignment matters	HQ AFRC/A1 -- AFI 36-2115, <i>Assignments Within the Reserve Components</i>
11	Equal Opportunity Issues	Local EO Director -- AFI 36-2706, <i>Military Equal Opportunity (MEO) Program</i> . For ANG refer to NGR 600-22/ANGI 36-3, <i>National Guard Military Discrimination Complaint System</i> and ANGI 36-7, <i>Air National Guard Military Equal Opportunity Program</i>
12	Administrative Separations	Local Military Personnel Flight (MPF) -- AFI 36-3208, <i>Administrative Separation of Airman</i> ; AFI 36-3207, <i>Separating Commissioned Officers</i> ; AFI 36-3209, <i>Separation and Retirement Procedures for Air National Guard and Air Force Reserve Members</i>
13	Equal Opportunity in off-base housing	The Housing Referral Office -- AFPD 32-60, <i>Housing</i>
14	Landlord or tenant disputes	Commander -- AFI 32-6001, <i>Family Housing Management</i>
15	Claims against the Government	JA -- AFI 51-502, <i>Personnel and Government Recovery Claims</i>
16	Correction of military records	AFPC and VMPF web sites for appropriate processing via AFBCMR -- per AFI 36-2603, <i>Air Force Board for Correction of Military Records</i>
17	Appeal of an Officer Performance Report (OPR), Enlisted Performance Report (EPR), or Promotion Recommendation Form (PRF)	AFPC and VMPF web sites for appropriate processing via AFERAB -- per AFI 36-2401, <i>Correcting Officer and Enlisted Evaluation Reports</i> . For ANG: refer enlisted appraisals to local MPF or commander -- ANGR 39-62, <i>Enlisted Performance Appraisal</i>
18	Support of Dependents and Private Indebtedness	Refer to subject's commander or DFAS -- AFI 36-2906, <i>Personal Financial Responsibility</i>
19	The Air Force Innovative Development through Employee Awareness (IDEA) Program	Local IDEA POC -- AFI 38-401, <i>The Air Force Innovative Development Through Employee Awareness (IDEA) Program</i> . For ANG, refer to State POC per ANGI 38-401, <i>Suggestion Program</i>
20	Change to an Instruction/Regulation or current policy guidance	Appropriate OPR for the instruction or policy-- AFI 33-360, <i>Publications and Forms Management</i>
21	LOC, LOR (other than discrimination/reprisal)	Refer matter to commander; Refer member to Area Defense Counsel (ADC)
22	Punishment under UCMJ (court-martial, Article 15 non-judicial punishment)	Refer matter to commander and JA; For ANG refer to NGB; Refer member to ADC -- AFI 51-201, <i>Administration of Military Justice</i> ; AFI 51-202, <i>Nonjudicial Punishment</i>
23	ANG: Punishment under the State Code of Military Justice	State Staff Judge Advocate (SJA)

24	Article 138, UCMJ (Complaint of Wrong)	Commander, JA -- AFI 51-904, <i>Complaints of Wrongs Under Article 138, Uniform Code of Military Justice</i> ; refer member to ADC
25	Hazardous Working Conditions (unsafe or unhealthy)	Refer to commander -- AFI 91-301, <i>Air Force Occupational and Environmental Safety, Fire Protection, and Health (AFOSH) Program</i> and local Ground Safety Manager
26	Elimination From AETC Training	If elimination authority is squadron CC refer matter to the next higher CC. If elimination authority is the Group CC or higher, refer to AETC/IG
27	Elimination from other MAJCOM'S training courses	Appropriate MAJCOM
28	Medical Treatment	Surgeon General (SG) for Quality Assessment or Medical Incident Investigation (MII) -- AFI 44-119, <i>Medical Quality Operations</i>
29	TRICARE Complaints	TRICARE Benefits Services Office
30	Allegations of homosexual conduct	Refer to commander, JA -- AFI 36-3208 (Enlisted), AFI 36-3207 (Officers), AFI 36-3209 (Reserve and ANG)
31	Misuse or abuse of government vehicles	Base Transportation -- AFI 24-301, <i>Vehicle Operations</i> . For ANG: Refer to AFI 24-309 ANG SUP 1
32	Unprofessional Relationships/Adultery	Commander -- AFI 36-2909, <i>Professional and Unprofessional Relationships</i>
33	Sexual Harassment/Discrimination	Commander -- NGR 600-4, ANGP 30-02, <i>Prevention of Sexual Harassment</i> , local EO Director, AFI 36-2706, <i>Military Equal Opportunity (MEO) Program</i> and 36-1201, <i>Equal Employment Opportunity Complaints</i>
34	Allegations regarding non-AF organizations or agencies	Specific agency or Service IG or to Defense Hotline
35	Allegations of reprisal by DoD contractors	IG DoD
36	Allegations against Military Defense Counsel	Refer matter to Senior Defense Counsel or HQ AFLOA/JAJD (Trial Defense Division)
37	Anti-Deficiency Act violations	SAF/FM -- AFI 65-608, <i>Anti-deficiency Act Violations</i>
38	Commander-Directed Investigation (CDI)	Refer matter to commander, Refer member to ADC for CDI corrective action
39	Acquisition Issues	Issuing contract unit or SAF/AQC
40	Health Insurance Portability and Accountability Act (HIPAA) Issues	SG
41	Privacy Act complaints	Base Records Manager -- AFI 33-332, <i>Privacy Act Program</i>
42	Civil Air Patrol	Transfer to CAP

Attachment 3

ADMINISTRATIVE/CRIMINAL INVESTIGATIONS SUMMARY

In some instances, Air Force directives delineate responsible organizations to conduct certain types of investigations. Below is a list of the most common of these investigations.

SAFETY INVESTIGATIONS (SIB). AFI 91-204, *Safety Investigations and Reports*

ACCIDENT INVESTIGATIONS (AIB). AFI 51-503, *Aerospace Accident Investigations*

FRIENDLY FIRE INVESTIGATIONS (FFI). DoDI 6055.7, *Accident Investigation, Reporting, and Record Keeping*

FLYING EVALUATION BOARDS (FEB). **Authority:** AFI 11-402, *Aviation and Parachutist Service, Aeronautical Ratings and Badges*, chapter 4

REPORTS OF SURVEY (ROS). AFMAN 23-220, *Reports of Survey for Air Force Property*

LINE OF DUTY (LOD). AFI 36-2910, *Line of Duty (Misconduct) Determination*

INSPECTOR GENERAL (IG) INVESTIGATIONS. AFI 90-301, *Inspector General Complaints Resolution*

SECURITY FORCES OFFICE OF INVESTIGATIONS (SFOI). AFI 31-206, *Security Forces Investigations Program*

AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS (AFOSI). AFI 71-101, *Criminal Investigations*

Attachment 4

ABUSE OF AUTHORITY ANALYSIS

Courts have interpreted the arbitrary and capricious standard in the context of government agency action under 5 USC § 706, the Administrative Procedure Act (APA).

The best definition of the term is found in *Motor vehicle Manufacturers Association v. State Farm Insurance*, (463 U.S. 29, 42 (1983)). There, the U.S. Supreme Court agreed "A reviewing court may not set aside an agency rule that is rational, based on consideration of the relevant factors, and within the scope of the authority delegated to the agency."³⁶ Blending these sources results in the framework to analyze abuse of authority.

1) the action either adversely affected the rights of any person or resulted in personal gain or advantage to the responsible management official (RMO); **And**

2) the RMO did not act within the authority granted under applicable regulations, law or policy; *or* the RMO's action was not based on relevant data and factors; *or* the RMO's action was not rationally related to the relevant data and factors.

If Question 1 is answered "no," it is not necessary to consider Question 2. If either part of Question 1 is answered "yes", proceed to Question 2. *In answering Question 2, IOs should examine the RMO's action very narrowly, giving the RMO's decision substantial deference (great weight) without substituting one's judgment for that of the RMO.* In so doing, if the answer to all parts of Question 2 is "yes," the action should not be considered "arbitrary and capricious." If the answer to any part of Question 2 is "no," then the action was "arbitrary and capricious" (a clear error of judgment) and the action is indicative of an abuse of authority.

³⁶ The Supreme Court wrote,

The scope of review under the "arbitrary and capricious" standard is narrow and a court is not to substitute its judgment for that of the agency. Nevertheless, the agency must examine the relevant data and articulate a satisfactory explanation for its action including a "rational connection between the facts found and the choice made." *Burlington Truck Lines, Inc. v. U.S.* 371 U.S. 156, 168 (1962) ... Normally, an agency rule would be arbitrary and capricious if the agency has ... failed to consider an important aspect of the problem, offered an explanation for its decision that runs counter to the evidence before the agency, or is so implausible that it could not be ascribed to a difference in view or the product of agency expertise. The reviewing court should not attempt itself to make up for such deficiencies; we may not supply a reasoned basis for the agency's action that the agency itself has not given. *SEC v. Chenery Corp.*, 332 U.S. 194, 196 (1947). We will, however, "uphold a decision of less than ideal clarity if the agency's path may reasonably be discerned." *Bowman Transportation Inc. v. Arkansas Best Freight System, Inc.*, *supra* at 286. See also *Camp v. Pitts*, 411 U.S. 138, 142-143 (1973) (per curiam).

Attachment 5

IO APPOINTMENT LETTER

FOR OFFICIAL USE ONLY

On Commander's Letterhead

Date

(simulated 4 lines between date and header)

MEMORANDUM FOR MAJOR _____

FROM: ___/CC

SUBJECT: Commander-Directed Investigation (CDI) of the Accountability and Control of Maintenance Equipment, _____ Squadron (*Do not include the Complainant or Subject's names*)

1. You are appointed to conduct a CDI into all aspects of the facts and circumstances concerning *(give a brief listing of what is to be examined, but do not include the complainant or subject's names, e.g., the control of maintenance equipment belonging to the ___ squadron)*. This is your primary duty (no leave, temporary duty, or other duties) unless expressly discussed and permitted by me, until completion of this duty and submission of an acceptable report.
2. You are authorized to interview personnel, take sworn statements or testimony and examine and copy any and all relevant Air Force records, files, and correspondence germane to this investigation.
3. In conducting the CDI, follow the guidance in the *Commander-Directed Investigation Guide*. Prepare and submit to me a report of investigation in the format it describes. Submit the report to me by _____, unless I grant a written extension. (*Optional: Include recommendations you deem appropriate, in your report*).
4. You will meet with _____ (*JAG name and contact information*), your designated legal advisor for purposes of this CDI, prior to beginning your investigation. (*If applicable—You must also meet with _____ (Technical Advisor name and contact information), a person appointed by me to provide you technical advice on _____ (subject matter expertise)(If applicable—I have appointed (Administrative Assistant name and contact information) to provide you administrative assistance throughout your investigation.*)
5. You may not release any information related to this investigation without my prior approval. This letter and the attached documents are marked FOR OFFICIAL USE ONLY and contain information that must be protected under the Privacy Act.

(simulated 4 lines between last paragraph and signature block)

PHILIP STANTON, Colonel, USAF
Commander

FOR OFFICIAL USE ONLY

FOR OFFICIAL USE ONLY

Attachments:

1. Framed Allegations
2. Any evidence commander has for IO to review

cc:

(JAG name) ___ FW/JA

(Technical Advisor, if applicable)

(Assistant IO, if applicable)

(Administrative Assistant, if applicable)

FOR OFFICIAL USE ONLY

Attachment 6

PRIVACY ACT NOTICE

PRIVACY ACT STATEMENT

Policy	<p><i>The Privacy Act statement is required to be read and acknowledged by each witness at the beginning of the interview process.</i></p> <p><i>The IO is required to have each witness read this statement and document it in their Report of Investigation.</i></p>
Authority Principal purpose	<p><i>Title 10, United States Code, Sections 8013 and 8020, and Executive Order 9397.</i></p> <p>Information is collected during an inquiry or investigation to aid in determining facts and circumstances surrounding the allegations. The information is assembled in report format and presented to the Appointing authority as a basis for DoD or Air Force decision-making.</p> <p>The information may be used as evidence in judicial or administrative proceedings or for other official purposes within the DoD. Disclosure of Social Security number, if requested, is used to further identify the individual providing the testimony.</p>
Routine uses	<p>Routine uses include</p> <ul style="list-style-type: none">• Forwarded to federal, state, or military and local law enforcement agencies for law enforcement purposes.• Used as a basis for summaries, briefings, or responses to members of Congress or other agencies in the Executive Branch of the Federal Government.• Provided to Congress or other federal and state agencies when determined to be necessary.
Disclosure or non-disclosure	<p>FOR MILITARY PERSONNEL: Disclosing your Social Security number is voluntary. Disclosing other personal information relating to your position responsibilities is mandatory and failure to do so may subject you to disciplinary action.</p> <p>FOR DEPARTMENT OF THE AIR FORCE CIVILIANS: Disclosing your Social Security number is voluntary. However, failure to disclose other personal information in relation to your position responsibilities may subject you to adverse personnel action.</p> <p>FOR ALL OTHER PERSONNEL: Disclosing your Social Security number and other personal information is voluntary. No adverse action can be taken against you for refusing to provide information about yourself.</p>

SIGNATURE

Attachment 7

SAMPLE INVESTIGATION PLAN

Date

MEMORANDUM FOR XX/CC

FROM: Donald L. Smith, Major, USAF

SUBJECT: INVESTIGATION PLAN: Capt DEFOE

1. Mission: Investigate allegations of command accountability in the Systems Program Office at Other AFB, USA.

2. Facts Bearing on Investigation:

a. Background:

Ms Hedda Franzen is the former spouse of Air Force SRA Ben Watson, currently assigned to the Systems Program Office at Other AFB USA. Ms Franzen alleged on 28 Sep 08 SRA Watson attempted to kill her when he struck her with a hammer in her apartment in Any Town. SRA Watson was subsequently acquitted of attempted murder and failure to go charges by a general court-martial.

Ms Franzen later wrote the CSAF, General Tedrey Smith, complaining that SRA Watson's Flight Commander, Capt Defoe could have prevented the events of 28 Sep 08 from occurring. Ms Franzen related that Capt Defoe was aware of a pattern of alcohol abuse and unusual behavior by SRA Watson as early as November 2007 but elected not to intervene in what he perceived was a domestic dispute. Ms Franzen stated she requested assistance from Capt Defoe on at least three occasions between Nov 06 and Sep 08. She says the Other AFB Flight Surgeon, Lt Col Carey Hands, also advised Capt Defoe on three or four occasions of SRA Watson's behavior, but Capt Defoe refused to act, believing it would unnecessarily damage SRA Watson's career.

On 5 Apr 09 Colonel Kevin J Sullivan, XX/CC, appointed Major Donald L. Smith as the Investigation Officer for the apparent lack of action by Capt Defoe in these matters.

b. Chronology

- | | |
|------------|---|
| Nov/Dec 07 | Ms Franzen approaches Capt Defoe for the first time about her husband's alleged heavy drinking. |
| Dec 07 | SRA Watson allegedly admits to Capt Defoe he has a serious drinking problem. Capt Defoe allegedly enlists the assistance of the Flight Surgeon, Lt Col Carey Hands. |
| Dec 07 | SRA Watson allegedly admitted to Wright-Patterson Medical Center (WPMC) for emergency treatment. |
| Jan 08 | SRA Watson allegedly admitted to Alcohol Rehab Program at WPMC. |
| Feb 08 | SRA Watson allegedly released from Rehab Program at WPMC and placed in Other AFB Alcohol Rehab Program. |
| Apr 08 | Ms Franzen requests Capt Defoe do something about SRA Watson, her former husband. Reveals: <ul style="list-style-type: none">- Behavior is getting stranger.- Driving drunk. |

- Attempted to break-in to her apartment.
- Involved in a near fatal accident with his son in the car.
- Allegedly filed an anonymous OSI complaint to ruin her reputation at work.
- Capt Defoe orders SRA Watson to stay out of her work area.

Apr-Sep 08 Ms Franzen alleges on two occasions she spoke with Capt Defoe directly about her husband and his behavior, and on at least 3 or 4 other occasions Dr Hands spoke with Capt Defoe as well. Capt Defoe allegedly responded by stating he did not want to get involved in “a domestic dispute.”

c. Applicable Regulations and Reference Publications:

1. UCMJ

d. Commands Involved:

1. Systems Center, Other AFB USA
2. Systems Program Office

e. Staff Agencies Having Knowledge of Complaint:

1. XX/CC - 10 Apr 09 Tasking Letter
2. XX/JAA - SSS dated 12 Apr 09
3. XX/SG - Technical Advisor meeting with IO - 12 Apr 09

3. Evidence and Data Required:

a. Witnesses:

Allegation: Captain Turner Defoe, Flight Commander, 123rd MXS Squadron, who knew or should have known of his duties, between November 2007 to September 2008, was derelict in the performance of those duties in that he negligently failed to take corrective action (including a protective order for Ms. Franzen) when he had reason to suspect Staff Sergeant Ben Watson was using alcohol while he was participating in the Other AFB Alcohol Substance Abuse Program, in violation of Article 92, UCMJ.³⁷

1. Ms Franzen (complainant)
2. Complainant provided witnesses
3. Lt Col Carey Hands (Flight Surgeon)
4. Capt Charge (Sq Section Commander, XXXX)
5. SRA Watson
6. Capt Defoe (subject)
7. Subject provided witnesses

³⁷ This allegation follows the sample specification for Article 92, UCMJ, in the *Manual for Courts-Martial* (2008).

- b. Documents: (note: coordinate with legal advisor on HIPPA requests)
 - 1. SRA Watson's OPRs for period Nov 07 thru Sep 08
 - 2. Records of Treatment Committee Meetings for SRA Watson
 - 3. Mental Health Records for SRA Watson
 - 4. Outpatient Records for SRA Watson
 - 5. WPMC Inpatient Records for SRA Watson
 - 6. PRP documentation if applicable
 - 7. Security Clearance Related Documents
 - 8. OSI Report
- c. Interview Sequence:
- d. Preliminary Questions to Ask:
- 4. Administrative Matters:
 - a. Itinerary:
 - 1. Complainant interview - 17 Apr 09, Somewhere, USA
 - 2. Witness interviews - 18 Apr 09, Other AFB, USA
 - 3. Subject/Suspect interview - 19 Apr 09, Other AFB, USA
 - b. Notifications:
 - 1. XX/CC - 12 Apr 09
 - 2. Subject - 12 Apr 09
 - c. Personnel Actions:
 - 1. TDY orders complete 15 Apr 09
 - 2. Airline/Rental Car reservations complete 15 Apr 09
 - 3. Lodging Reservations complete 15 Apr 09

DONALD L. SMITH, Major, USAF

Investigating Officer

1st Ind, XX/CC

Date

This investigation plan is approved/disapproved.

KEVIN J. SULLIVAN, Colonel, USAF

XX/CC

ATTACHMENT 8

PROOF ANALYSIS MATRIX

Allegation: DERELICTION IN THE PERFORMANCE OF DUTY (ARTICLE 92)

Between November 2007 to September 2008, Captain Turner Defoe, Flight Commander, 123rd MXS Squadron, who knew or should have known of his duties, was derelict in the performance of those duties in that he negligently failed to take corrective action (including a protective order for Ms. Franzen) when he had reason to suspect Staff Sergeant Ben Watson was using alcohol while he was participating in the Other AFB Alcohol Substance Abuse Program, in violation of Article 92, UCMJ.

ELEMENTS	DEFINITIONS	EVIDENCE & LOCATION
(1) That Capt Defoe had a certain prescribed duty, that is: to take corrective action when he had reason to suspect SSgt Watson was using alcohol while he was participating in the Other AFB Alcohol Substance Abuse Program	A duty may be imposed by regulation, lawful order or custom of the service. A person is “derelict” in the performance of duty when he negligently fails to perform them or when he performs them in a culpably inefficient manner.	Ms Franzen (complainant) F-1 SSgt Watson F-3 Capt Hands (Flight Surgeon), F-4 Capt Defoe (subject), F-7 SSgt Watson’s OPRs, G-1 Mental health/social actions clinic records for SSgt Watson, G-2 Outpatient records for SSgt Watson, G-3 OMC inpatient records for SSgt Watson, G-4 ADAPT Program regulations and guidance, G-5 Records of treatment committee meetings for SSgt Watson, G-11
That Capt Defoe knew or reasonably should have known of the assigned duty; and	That an individual reasonably should have known of duties may be demonstrated by regulations, manuals, customs, academic literature or testimony of persons who have held similar or related position or similar evidence.	Maj Doright (Section CC) F-6 Capt Defoe (subject), F-7
That between November 2007 to September 2008 Capt Defoe was derelict in the performance of that duty, by failing (negligently) to take corrective action (including a protective order for Mrs. Franzen) when he had	“Dereliction” is defined as a failure in duty, a shortcoming, or delinquency. “Negligently” means an act or failure to act by a person under a duty to use due care which demonstrates a lack of care for the safety of others which a reasonably prudent person would have used under the same or similar circumstances.	Ms Franzen (complainant) F-1 SSgt Watson , F-3 PRP documentation, G-8 Security clearance related documents, G-9 Court-martial documents, G-10 Capt Hands (Flight Surgeon), F-4 Capt Defoe (subject), F-7 OSI report, G-6

reason to suspect SSgt Watson was using alcohol while he was participating in the Other AFB Alcohol Substance Abuse Program	“Culpably inefficient ” means inefficiency for which there is no reasonable or just excuse. It means a reckless, gross, or deliberate disregard for the foreseeable results of a particular act or failure to act.	
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Attachment 9

**LEGAL REVIEW OF CDI CASE FILE
(provided for JA use only)**

XX Month 200X

MEMORANDUM FOR APPOINTING AUTHORITY

FROM: (Unit)/JA

SUBJECT: Legal Review of CDI Concerning Allegations of (Maltreatment, Dereliction of Duty, etc. -- choose a term that summarize(s) the allegation(s))

1. We have reviewed the above referenced commander-directed investigation (CDI) report of investigation (ROI) and case file and find it to be legally sufficient. *(If not legally sufficient, briefly state why)* The case may be forwarded to the appointing authority for final action.
2. **BACKGROUND:** *Explain here the parties, allegations and IO's conclusions as well as all the relevant facts of the case.*
 - a. Complainant, *(Rank/Name)*, was a *(duty position)* assigned to *(unit and base of assignment)*. There were *(#)* subjects. The first subject, *(explain the rank/name(s) of subject(s), their unit(s), and base(s) of assignment and relationship to the complainant)*. Subject number two.... The complaint alleged *(summarize the allegations)*.
 - b. The investigating officer (IO) determined the allegations were as follows: *(summarize findings –either substantiated or not substantiated--may have to list these out in bullet format if several)*.
 - c. *This series of paragraphs should provide whatever background information a reader will need to understand the findings, analyses, and conclusions of the IO. Look to the applicable law to determine what facts are relevant. **IMPORTANT!!! Cite Section, Tab and page number in the ROI to support each fact.** (Section III, Tab D-2, p. 2)*
3. **STANDARDS:** *Briefly summarize the applicable legal standards here. (Note: As a style point, some JAGs prefer to include the legal standards in their Analysis or Discussion section, just prior to applying the relevant facts to that standard.)*
4. **ANALYSIS:** *This is an allegation-by-allegation review of whether the IO properly applied preponderance of the evidence standard to the facts to support IO's conclusions. The analysis should have subsections for each allegation in the ROI.*
 - a. **Allegation 1:** *(Type the allegation verbatim from the case file. This assists in finding discrepancies. Do this for each allegation.)*
 - b. *The degree of detail and analysis necessary will be driven by case complexity and thoroughness of the case file. If the JA simply disagrees with the IO's findings (and conclusions), then document the rationale in the legal review. A disagreement is not necessarily the same as "legal insufficiency." While conducting the legal review, JAGs must not substitute their judgment for that of the IO. Reasonable minds may differ in these cases. If the facts and circumstances reasonably support the IO's conclusion, even if the JAG disagrees, then the ROI is still legally sufficient.*
 - c. *Always include a conclusion for each allegation, such as: For all of these reasons, we concur with the IO's assessment that Allegation 4 should be **SUBSTANTIATED**.*

5. **ERRORS AND ANOMALIES:** *The legal review must ensure the investigative process was properly followed, the analysis of the facts and circumstances is reasonable, and the appropriate legal standards were applied to the facts. If the ROI is legally sufficient, but could have been more thorough in some respect, the JAG should provide this feedback to the IO in this section. Always include a statement about the effect of these errors on the overall legal sufficiency.*

6. **CONCLUSION:** The ROI is legally sufficient. The IO has complied with all applicable legal and administrative requirements in conducting this investigation. The report addresses all of the matters under investigation, and the findings are supported by a preponderance of the evidence. Conclusions reached are consistent with those findings. *(If the ROI is not legally sufficient, discuss what specific steps are needed for legal sufficiency. The IO should be able to take your legal review as a road map to correct his/her report.)*

7. **RECOMMENDATIONS:** As appointing authority, you can either approve or disapprove the CDI. If you choose to disapprove the CDI, you should document your rationale and ultimate findings (substantiated or not substantiated) in an Addendum. Recommend you approve the CDI findings and conclusions, as written.

NAME, Rank, USAF

Duty Title

1st Ind, Appointing Authority

MEMORANDUM FOR RECORD

I concur / nonconcur.

NAME, Rank, USAF

Staff Judge Advocate

Attachment 10

TECHNICAL ADVISOR APPOINTMENT LETTER

(Appointing Authority's Letterhead)

FOR OFFICIAL USE ONLY

Date

MEMORANDUM FOR LT COL _____

FROM: ___/CC

SUBJECT: Commander-Directed Investigation (CDI) of the Accountability and Control of Maintenance Equipment, _____ Squadron *(Do not include the Complainant or Subject's names)*

1. You are appointed as a technical advisor, in the area of _____ *(subject matter expertise: e.g., inventory control)* to assist Major _____ *(IO rank name)*, the appointed Investigating Officer (IO), in conducting a CDI into all aspects of the facts and circumstances concerning *(give a brief listing of what is to be examined, but do not include the complainant or subject's names, e.g., the control of maintenance equipment belonging to the ___ squadron)*. Your assistance includes, but is not limited to, consultation, expert witness testimony, and/or technical review of the final report of investigation, as directed by the IO.
2. The IO will obtain and provide you any materials necessary to assist him, such as sworn statements or testimony and relevant Air Force records, files, and correspondence germane to this investigation.
3. To perform your duties, you should become familiar with the guidance contained in the *Commander-Directed Investigation Guide*. Technical reviews should be written in the format contained therein.
4. Because you are part of the investigative team, you will be privy to sensitive information. You may not release any information related to this investigation without my prior approval. This letter and the attached documents are marked FOR OFFICIAL USE ONLY and contain information that must be protected under the Privacy Act.

PHILIP STANTON, Colonel, USAF
Commander

cc:
(IO)

FOR OFFICIAL USE ONLY

Attachment 11
TECHNICAL REVIEW

FOR OFFICIAL USE ONLY

Date

MEMORANDUM FOR IO

FROM: (OFFICE SYMBOL)

SUBJECT: Request for Technical Review, Commander-Directed Investigation (CDI) of the Abuse of Authority, Indefinite Grounding of Lt Col X, C-130 Pilot, _____ Squadron (*Do not include the Complainant or Subject's names*)

1. I have reviewed the above-referenced CDI report of investigation (ROI) and supporting case file. I concur with the findings and conclusions of the IO.

2. I believe the reasonableness of the actions *initially* taken against Lt Col X were correct in that sufficient managerial concerns over flight safety were justified. Additionally, the necessary management consultation and coordination were conducted to support the actions. That said, I also concur with the IO that proper procedures were not followed in removing the individual from the flying schedule for a protracted period of time. Had the original intent of not flying the individual for a few weeks been followed, I could have supported management in their position that this was a “reasonable” period of time. However, after several weeks had elapsed, the individual should have been formally grounded and appropriate administrative actions taken, to include a possible flying evaluation board.

3. In short, my technical review of the ROI and case file supports the IO. Should you have any additional questions, please contact me at DSN _____.

NAME, Rank, USAF
Regular Duty Title (e.g., Director of Operations)
CDI Technical Advisor

FOR OFFICIAL USE ONLY

Attachment 12

ADMINISTRATIVE ASSISTANT APPOINTMENT LETTER

(Appointing Authority's Letterhead)

FOR OFFICIAL USE ONLY

Date

MEMORANDUM FOR SSGT _____

FROM: ___/CC

SUBJECT: Commander-Directed Investigation (CDI) of the Accountability and Control of Maintenance Equipment, _____ Squadron (*Do not include the Complainant or Subject's names*)

1. You are appointed as an administrative assistant to Major _____ (*IO rank name*), the appointed Investigating Officer (IO), with respect to the above-referenced CDI. As such, throughout the duration of the CDI, you will report directly to, and provide requested support, to the IO. This is your primary duty (no leave, temporary duty, or other duties), unless expressly discussed and permitted by the IO or me, until completion of this duty.

2. Because you are part of the investigative team, you will be privy to sensitive information. You may not release any information related to this investigation without my prior approval. This letter and the attached documents are marked FOR OFFICIAL USE ONLY and contain information that must be protected under the Privacy Act.

PHILIP STANTON, Colonel, USAF
Commander

cc:
(IO)

FOR OFFICIAL USE ONLY

Attachment 13

WITNESS INVITATION LETTER³⁸

IOs can invite civilian (non DoD employee) witnesses, but they need not appear. The best practice is for the IO to personally telephone the witness and invite them to testify, using the language in this letter as a “script.” Otherwise, the IO can provide the witness an invitation letter, recommended sample below.

_____/CC (Commander’s Office Symbol)

Address

City/State/ZIP

Mr./Ms. _____

Address

City/State/ZIP

Dear Mr./Ms.

I have been appointed by _____ (same CC organization block as above) to conduct a Commander-Directed Investigation involving allegations of _____ (*insert general information such as “maltreatment of subordinates.” Do NOT use identifying names or positions, e.g., maltreatment of subordinates by 34 ABW/CCF*). You are invited to appear as a witness as your participation will significantly contribute to the investigation. You are requested to appear at the Office of the Staff Judge Advocate (*or other interview location*) _____, Other AFB, at _____ a.m. on _____. Please contact me by _____ to let me know whether you can appear on this date, or need to arrange another mutually convenient time for your interview. My phone number is _____. Thank you for your assistance. I look forward to our meeting.

Sincerely

NAME, Rank, USAF
Investigating Officer

³⁸ Derived in large part from sample invitation letter, *AFLSA/JAJM Article 32 Investigating Officer’s Guide*.

Attachment 14

INTERVIEW SCRIPT

Do not read portions in italics or bold. Read only applicable portions. *IOs should fill out this script prior to each interview.*

INTRODUCTION

My name is _____. I have been appointed by _____ (*appointing authority*) to investigate allegations that:

For Subject or Suspect Interview: you may have _____ (read all allegations word-for-word.) If you desire, during this interview, you may comment on this information to give your side of the story. You may also show me evidence to contradict or explain allegations.

For Witness Interview: _____ (*Subject*) name) did _____ (*summarize the nature of the allegation or allegations, e.g., On or about DATE, Col X abused his authority when he indefinitely grounded Lt Col Y.*)

ADMINISTRATIVE MATTERS

a. Privacy Act Statement

During the course of this interview, I will ask you to furnish information about yourself. The Privacy Act of 1974 requires that I inform you of the authority for this requirement. The statement, which I am now handing you, serves this purpose (*hand statement, attachment 6, to witness.*) Please read and sign the statement.

(IO takes signed statement from witness and says:) Thank you. This statement will become part of the official case file.

b. Statement Format

If the Witness statement will be summarized:

I will take notes of your interview and summarize your statement. After I prepare a summary of your testimony, I will ask you to read it carefully to be sure it is accurate. You may make any changes you think are necessary to accurately reflect your testimony. You will then sign the summary under oath. Your summarized statement will be included in my written report to _____ (name of appointing authority.)

If the Witness is providing a written sworn statement:

I will take notes of your testimony, but at the conclusion of our interview, I would like you to provide a written, sworn statement. Your statement will be included in my written report to _____ (name of appointing authority.)

If the Witness' testimony will be recorded and transcribed verbatim:

Your testimony will be recorded and transcribed so that a written report can be made available to the appointing authority, _____ (name of appointing authority). Please answer each question verbally, as the tape recorder cannot pick up any nods or gestures. Additionally, all of your statements will be on-the-record, whether the tape recorder is turned on or not.

OATH

Before we continue, I want to remind you how important it is to give truthful testimony. It is a violation of federal law to knowingly make a false statement under oath. I will now administer the oath. *(The IO may wish to ascertain whether the witness would prefer to affirm; use one or the other)* Please raise your right hand.

Swear. Do you solemnly 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?

OR

Affirm. Do you solemnly affirm that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth?

REQUIRED BACKGROUND INFORMATION

If Not Recorded. I am documenting for my notes, the time, which is _____ on _____ (day, month, year). [We are the only persons present for this interview] **or** [Also present for the interview are: _____ (name, duties in reference to CDI, e.g., the technical advisor)].

Could you please tell me your full name: *(spell it out if unsure)*

Rank: *(Active, Reserve, Retired)*

Position:

Organization:

Social security number: *(voluntary)*

Address: *(home or office)*

If Recorded. The time is now _____ on _____ (day, month, year.) Persons present are the witness _____, the investigating officer(s) _____ [recorder(s) (if present)]

[And (others) (if present)] _____

We are located at _____.

Please state your:

Full Name: *(spell it out)*

Rank: *(Active, Reserve, Retired)*

Position:

Organization:

Social security number: *(voluntary)*

Address: *(home or office)*

RIGHTS ADVISEMENT

Before the interview, the IO must consult with the Legal Advisor to determine what, if any, rights advisement is required.

Witnesses/Subjects: *For Individuals To Whom the IO Does Not Intend to Read "Rights."* At this time, you are **NOT** suspected of any offense under the Uniform Code of Military Justice (UCMJ),

federal, or local law. Therefore, you are not authorized to have legal counsel present, and I am not advising you of your Article 31 rights.

Suspects.

Before we begin our discussion, I want to make it clear that you have the following rights:

(1) For active duty personnel and USAFR/ANG personnel subject to the UCMJ:

Under Article 31 of the UCMJ: You may remain silent, that is say nothing at all; any statement you make, oral or written, may be used as evidence against you in a trial by court-martial or in other judicial or administrative proceedings; you have the right to consult a lawyer and to have a lawyer present during this interview; you have the right to military legal counsel free of charge; in addition to military counsel, you are entitled to civilian counsel of your own choosing, at your own expense; you may request a lawyer at any time during this interview; if you decide to answer questions without a lawyer present, you may stop the questioning at any time.

Do you understand your rights?

Do you want a lawyer?

Are you willing to answer questions? *(If yes, the IO proceeds to the Oath, above; If no, the IO concludes the interview: Because you have invoked your rights, this interview is concluded. You are free to leave the interview, but I must hand you off to your commander, first sergeant or a person designated by them. Please do not provide any further information while we wait for the person to arrive.)*

(2) If the interviewee is NOT subject to the UCMJ at the time of the interview (e.g., DOD Civilian employees, civilians, and USAFR/ANG personnel (depending on status), etc.):

For civilian employees and USAFR/ANG personnel depending on status. See paragraphs 5.2.1.1.2 and 5.2.1.8 above. Regardless of whether a collective bargaining agreement applies, ALL civilians, Reserve, and Air National Guard personnel should be advised of the following:

This is a non-custodial interview. While you have a duty to assist in this investigation, you will not be kept here involuntarily. You have a right not to answer questions that are self-incriminating. You also have a right to be fully informed of any allegations that have been made against you.

Are you willing to answer questions? *(If yes, the IO proceeds to the Oath, above; If no, the IO concludes the interview: This interview is concluded. You are free to leave.)*

If the employee invokes Weingarten rights, the IO should consult with the legal advisor or SJA and civilian personnel before proceeding with the interview. There is no duty for the IO to advise the employee of this right unless specifically provided for in the collective bargaining agreement. If a labor representative is present in the interview, and is a personal representative of the employee, he or she may provide advice, consult with the witness, and suggest areas of inquiry, but may not obstruct the interview or instruct the witness not to answer legitimate questions.

INTERVIEW

Proceed with questions necessary to obtain all direct knowledge of matters under investigation

Suspected Crimes. *If during an interview the IO suspects a witness of having committed criminal offense(s): (a) Stop the interview but inform the witness he or she may be recalled; (b) Consult with the Legal Advisor regarding whether the witness should be read rights based on gathered information and what offenses to cite during the rights advisement; (c) Recall the individual.*

Recalling Witnesses

(1) Whose Status Has Not Changed (e.g., need for clarification interview). If it becomes necessary to recall an individual whose status as a witness remains unchanged, simply advise the individual that he or she was placed under oath previously and is still under oath.

(2) Whose Status Changed (e.g., need for rights advisement). If it becomes necessary to recall an individual whose status has changed from subject or witness to suspect, advise the individual that he or she was placed under oath previously and is still under oath and then restart the script from the rights advisement portion.

Suspected False Statements or Representations. *If during the course of the interview the IO has reason to believe that the witness is providing false testimony, take a break and consult with the Legal Advisor. If applicable, the IO will read the appropriate statement to the witness as listed below.)*

(1) For active duty personnel or USAF/ANG personnel subject to the 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, or makes any other false official statement, knowing the same to be false, may be subject to action under the provisions of article 107, UCMJ. Additionally, under the provisions of article 134, UCMJ, any person subject to the UCMJ who makes a false statement, oral or written, under oath, not believing that statement to be true, may be punished as a court-martial may direct.

Do you understand?

(2) For USAFR/ANG personnel not subject to the UCMJ, civilian employees, and civilians:

I consider it my duty to advise you that under the provisions of Section 1001, Title 18, US 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 any trick, scheme, or device, a material fact, or makes any false fictitious, or fraudulent statements or representations, shall be fined or imprisoned for not more than 5 years, or both. Additionally, any person who willfully and contrary to his or her oath testifies falsely while under oath may be punished for perjury under 18 USC § 1621.

Do you understand?

Fact-Finding Wrap-Up

End every interview with the following:

Do you have any further information, statements, or evidence, which you wish to present concerning the matters we have discussed?

Do you know of anyone else who can provide further information concerning these issues?

CONCLUDING REMARKS

Information Protection

This is an official investigation. It is protected in the sense that my report will be made to the appointing authority or higher authority for such use as deemed appropriate.

Non-Disclosure

(1) For active duty personnel and USAFR/ANG personnel subject to the UCMJ:

You are ordered not to divulge the nature of this investigation or the questions, answers, or discussions included in this interview with anyone except a chaplain, or your counsel if you have one until case closure or unless approved by me, the appointing authority, or higher authority.

(2) Civilian employees and USAFR/ANG personnel (depending on status), etc.):

You are "directed" (for non-employees, "requested") not to divulge the nature of this investigation or the questions, answers, or discussions included in this interview with anyone except a chaplain, (*for civilian employees represented by a union only*, add: a union representative), or your counsel (if you have one) until case closure or unless approved by me, the appointing authority or higher authority.

All witnesses, regardless of status: If anyone should approach you regarding your testimony or the matters discussed here, you are required (for non-employees, "requested") to report it immediately to me or _____ (state the name of the appointing authority.)

Information Release

I, as the investigating officer, am prohibited from providing a copy of your testimony to you. However, you may submit a request in writing for the report or any part thereof to the appointing authority or the Freedom of Information Act office. The release authority will evaluate your request under both the Freedom of Information Act and the Privacy Act, and provide the releasable information to you. *For military members and DOD Civilian employees add:* If this report becomes the basis of an adverse action against you, you (or your counsel) may be entitled to access to the report. You may submit any such request for access to your commander.

Post-Interview Evidence

You may submit additional relevant information for my consideration, but if you wish me to consider the additional information before my investigation closes, I must receive that information on or before _____ (*insert date.*)

CSAF HAND-OFF POLICY

For subjects, suspects or distraught witnesses only.

In accordance with the CSAF Hand-off policy, I must personally refer you to your commander or designee, civilian leading an organization designated as a unit IAW AFI 38-101 or designee, first sergeant, or supervisor at the conclusion of this interview. I have coordinated this requirement with your commander. _____ (state the name of the individual who will accomplish the person-to-person hand-off) will meet you here as we conclude the interview.

*Note: If a military interviewee invokes his/her right to remain silent, the IO must inform the person receiving the hand-off **not** to violate this right by discussing any aspect of the*

investigation with the interviewee. The IO must document the hand-off within the ROI

Final Remarks

Do you have any questions?

The time is _____. This interview is concluded. Thank you.

Attachment 15

WITNESS STATEMENT FORMAT

You may use the AF Form 1168, *Statement of Suspect/ Witness/Complainant* <http://www.e-publishing.af.mil/shared/media/epubs/AF1168.xfdl> for suspect, subject, and witness statements. This form is particularly effective for documenting rights advisement under Article 31(b) UCMJ rights advisement during suspect interviews. Alternatively, the IO may use the following format for an Affidavit. Consult with your legal advisor during your investigation plan to determine the best means of recording a statement. *If a suspect, subject or witness makes any corrections to their statement, the IO should have them initial the change on the AF Form 1168 or Affidavit.*

AFFIDAVIT

I am SSgt Beth Jones, 123rd MXS Squadron, Other AFB, USA. I have been SSgt Ben Watson's co-worker for three years. We work together every day. We occasionally socialize off-duty, maybe twice a month. Capt Turner Defoe is our Flight Commander. SSgt Watson told me that Capt Defoe gave him a stay-away order in April 2008. Capt Defoe supposedly told SSgt Watson not to visit Ms. Franzen at the Family Support Center anymore. I, personally, was confused by the need for such an order. I worked with SSgt Watson every day and did not see any evidence of alcohol abuse and unusual behavior. I know Ms. Franzen and have known her for the entire time I knew SSgt Watson. Ms. Franzen, in my opinion, is not a very truthful person. I believe she was upset with SSgt Watson because, in their divorce, he got the house and the dog. Ms. Franzen ginned up some charges against SSgt Watson, said he hit her with a hammer on the head. It was bogus. SSgt Watson was court-martialed and acquitted. The doctor in the court-martial said the hammer wounds were self-inflicted. That's just sick. I think Capt Defoe is the best commander on the planet.

I hereby voluntarily and of my own free will make this statement without having been subjected to any coercion, unlawful influence, or unlawful inducement. I swear (or affirm) I have read this statement and it is true and correct to the best of my knowledge.

/s/ Beth Jones
BETH JONES, SSgt, USAF

Subscribed and sworn to before me, a person authorized to administer oaths, this ___ day of ___, 20__.

Investigating Officer *(signature)*

Attachment 16

SUMMARIZED TESTIMONY FORMAT

SUMMARIZED TESTIMONY OF SSGT BETH JONES

SSgt Beth Jones appeared at the investigation, was sworn, and testified substantially as follows:

I am SSgt Watson's co-worker in the 123rd MXS Squadron. I have known SSgt Watson for three years. We work together everyday. We occasionally socialize, off-duty, maybe twice a month. Capt Turner Defoe is our Flight Commander. SSgt Watson told me that Capt Defoe gave him a stay-away order in April 2008. Capt Defoe supposedly told SSgt Watson not to visit Ms. Franzen at the Family Support Center anymore. I, personally, was confused by the need for such an order. I worked with SSgt Watson every day and did not see any evidence of alcohol abuse and unusual behavior. I know Ms. Franzen and have known her for the entire time I knew SSgt Watson. Ms. Franzen, in my opinion, is not a very truthful person. I believe she was upset with SSgt Watson because, in their divorce, he got the house and the dog. Ms. Franzen ginned up some charges against SSgt Watson, said he hit her with a hammer on the head. It was bogus. SSgt Watson was court-martialed and acquitted. The doctor in the court-martial said the hammer wounds were self-inflicted. That's just sick. I think Capt Defoe is the best commander on the planet.

I declare under penalty of perjury that the foregoing is true and correct. Executed at _____ Air Force Base, _____, on _____ 20____.

/s/ Beth Jones
BETH JONES, SSgt, USAF

I declare under penalty that the foregoing in a true and correct summary of the testimony given by the witness. Executed at _____ Air Force Base, _____, on _____ 19____.

(signature)
Investigating Officer

Attachment 17

REPORT OF INVESTIGATION (ROI) SAMPLE FORMAT

(Sample Table of Contents)

A CDI case file is a compilation of documents relevant to an investigation. CDI case files should be standardized. The figure below shows a table of contents similar to other administrative investigation reports. This format ensures the IO's report includes all necessary documentation. .

Tab A: Appointment and Tasking Letters

Tab B: Authority and Scope

Tab C: Background

Tab D: Findings, Analysis and Conclusion

Tab E: Recommendations (if applicable)

Tab F: Testimony

Index of Witnesses

F(1) Complainant's Testimony

F(2) Subject's Testimony (list other subjects F(3), F(4) etc.)

F(#) Witness Testimony

Tab G: Evidence

Index of Exhibits

G(1) – G(#) – All exhibits

Tab H: Technical Reviews (if applicable)

Tab I: Legal Review

Tab J: Appointing Authority Approval and Actions

Tab K: Administrative Documents: Witness Invitation Letters, Memos, Progress Reports, or any other documents that do not fall neatly into Tabs A-J above.

Attachment 18

REPORT OF INVESTIGATION

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**COMMANDER DIRECTED
REPORT OF INVESTIGATION**

PREPARED BY

MAJOR JAMES M. SPARKY

INVESTIGATING OFFICER

CONCERNING

ABUSE OF AUTHORITY & OTHER MISCONDUCT

XX JULY 20XX

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TABLE OF CONTENTS

Tab A: Appointment and Tasking Letters

Tab B: Authority and Scope

Tab C: Background

Tab D: Findings, Analysis and Conclusion

Tab E: Recommendations (if applicable)

Tab F: Testimony

Index of Witnesses

F(1) Staff Sergeant Roger Smith

F(2) Technical Sergeant James Johnson

F(3) Chief Jones

F(4) *Would continue listing all other witnesses*

Tab G: Evidence

Index of Exhibits

G(1) MAJCOM UCI Report, dated X

G(2) *Would continue listing all exhibits*

Tab H: Technical Reviews (Not applicable)

Tab I: Legal Review

Tab J: Appointing Authority Approval and Actions

Tab K: Administrative Documents (None)

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Authority and Scope (*Authority and Scope will be included, immediately following the placement of any Appointment and Tasking letters, in Tab B*) Commanders have the inherent authority to conduct a CDI to investigate matters under their command, unless preempted by higher authority. Pursuant to this authority, (*Commander's rank, name, and duty title*) appointed (*Investigating Officer's rank and name*) on (*date of the appointment letter*) to conduct the Investigation into (*type verbatim from the synopsis in the IO appointment letter, paragraph 1*). The CDI was conducted from (*date*) to (*date*) at (*location*).

The IO investigated the following allegations: (*Type allegations verbatim from Attachment to IO appointment letter*)

Allegation. Between 1 March 2006 and 30 March 2006, CMSgt Jones, 123rd MSS Superintendent, improperly used federal government personnel for unofficial purposes, in violation of DoDD 5500.7-R, paragraph 2-301 and 3-305.b., by using members of the Mission Support Flight to help him plant shrubbery at his personal residence, during duty hours.

(*Simulated Page Break*)

Background (*This is a sample Background, which would be included under Tab C*) This case involved two complainants, Staff Sergeant Roger Smith and Technical Sergeant James Johnson. (Tabs F-1 and F-2) During the relevant timeframe, both were assigned to the Mission Support Flight, 123rd Mission Support Squadron (123 MSS), Any Air Force Base, Pickastate. (Tabs F-1, p. 2; F-2, p. 2)

The allegations involved one subject -- Chief Master Sergeant Roger Smith, the newly assigned Superintendent. (Tab F-3, pp. 2-3) CMSgt Smith arrived at Any AFB in late July 2005. (Tab F-3, p. 2)

In March 2006, Chief Smith asked two subordinates, SrA Ima Hoskins and A1C Will Fallon, to help him with a home-improvement project at his on-base residence. Specifically, Chief Smith asked these Airmen to help him plant new shrubbery around the perimeter of his home. The Airmen agreed. (Tabs F-26, p. 14; F-28, p. 18) As will be discussed more fully below, the testimony conflicted on whether the project occurred on a Friday morning or over a weekend. (Tab D)

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Findings, Analysis and Conclusions. *(The below is a sample Findings, Analysis and Conclusions Section, which would be included under Tab D)*

Allegation. Between 1 March 2006 and 30 March 2006, CMSgt Jones, 123rd MSS Superintendent, improperly used federal government personnel for unofficial purposes, in violation of DoDD 5500.7-R, paragraph 2-301 and 3-305.b., by using members of the Mission Support Flight to help him plant shrubbery at his personal residence, during duty hours. **SUBSTANTIATED**

Facts. *(Can cut and paste applicable facts out of Background section here).*

Sometime in March 2006, Chief Smith asked two subordinates, SrA Ima Hoskins and A1C Will Fallon, to help him with a home-improvement project at his on-base residence. Specifically, Chief Smith asked these Airmen to help him plant new shrubbery around the perimeter of his home. The Airmen agreed. (Tabs F-26, p. 14; F-28, p. 18)

The witness testimony conflicted on whether the project occurred on a Friday morning or over a weekend. Chief Smith and the two involved subordinates, SrA Hoskins and A1C Fallon testified that all involved in the project did so voluntarily and that the shrubbery planting occurred on a Saturday. (Tabs F-3, p. 14; F-26, p. 14; F-28, p. 18) Two other witnesses, TSgt Whistle and SSgt Strathen, indicated that the activity occurred at 1030 on a Friday. (Tabs F-10, pp. 16-17; F-13, pp. 24-25) TSgt Whistleblower, in particular, remembered it was a Friday, because he had asked the Chief to attend his wife's prenatal appointment, the Chief said no, and then left the building with SrA Hoskins and A1C Fallon in his truck, loaded with shrubs. (Tab F-10, p. 16) TSgt Whistle felt this was a huge "foul" and wrote a memo for record (MFR) for his own personal file, which he provided to the IO. (Tab G-7)

I found the testimony of TSgt Whistle and SSgt Strathen more believable than that of the subject and his two Airman cohorts, for several reasons. TSgt Whistle's MFR was very convincing in that it documented the activity immediately when it occurred. Additionally, I found the testimony of Chief Smith to be questionable. When I interviewed Chief Smith, he answered most questions in a clear voice, leaning slightly forward in his seat. When presented with direct questions regarding the shrubbery incident, I observed Chief Smith's face flushed, he paused and appeared to gather himself prior to answering the question, like he was deciding what to say. He also avoided answering several questions by redirecting the question back to me or answering with unrelated material. (Tab F-3, pp. 13-16) When he did answer questions about the shrubbery, he leaned back, lowered his voice and looked down at the floor. SrA Hoskins and A1C Fallon had similar demeanors during their interviews. On the other hand,

TSgt Whistle and SSgt Strathen appeared forthright and had no apparent bias or motive to provide untruthful testimony about the Chief. In fact, the Chief submitted TSgt Whistle as a UCI top performer and the TSgt was so recognized. For all of these reasons, I find that the shrubbery planting occurred on a Friday, a duty day, and not on the weekend.

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Applicable Rules.

DoDD 5500.7-R (“Joint Ethics Regulation” or JER), paragraph 2-301, *Use of Federal Government Resources*, paragraph b. states, in part:

b. Other Federal Government Resources. Other than the use of Federal Government communications systems authorized in accordance with subsection 2-301.a. of this Regulation, above; the use of Federal Government resources as logistical support to non-Federal entity events in accordance with subsection 3-211 of this Regulation, below; and the use of Federal Government time authorized in accordance with subsection 3-300 of this Regulation, below; ***Federal Government resources, including personnel, equipment, and property, shall be used by DoD employees for official purposes only, except as follows...***³⁹

(2) The use of personnel for non-Federal purposes is regulated by subsections 3-211⁴⁰ and 3-305 of this Regulation, below.

Paragraph 3-305.b. states:

b. Prohibited Uses. ***Because of the potential for significant cost to the Federal Government, and the potential for abuse, DoD employees, such as secretaries, clerks, and military aides, may not be used to support the unofficial activity of another DoD employee in support of non-Federal entities, nor for any other non-Federal purposes, except as provided in subsections 3-211 and 3-300.b. of this Regulation, above.***⁴¹

Analysis. SrA Hoskins and A1C Fallon, as USAF members, are considered federal government personnel, and therefore, government resources. Regardless of whether or not the Airmen “volunteered” for this “duty,” Chief Smith used these Airmen for unofficial purposes by having them plant shrubbery at his on-base residence. As mentioned above, although the testimony conflicted on whether or not the shrubbery project occurred on a duty day, I found that it did. Specifically, the shrubbery planting occurred on Friday, 13 March 2009, at 1030 in the morning. (Tabs F-10, pp. 16-17; F-13, pp. 24-25 and G-7) The shrubby project was not an official project. It was not approved by command or otherwise mission-related. (Tab F-5, p. 7) Because the Chief engaged in non-Federal activities during the duty day, and employed government personnel to assist him, he violated the JER.

Conclusion. The preponderance of the evidence shows that between 1 March 2009 and 30 March 2009, CMSgt Jones, 123rd MSS Superintendent, improperly used federal government personnel for unofficial purposes, in violation of DoDD 5500.7-R, paragraph 2-301 and 3-305.b., by using members of the Mission Support Flight to help him plant shrubbery at his personal residence, during duty hours. I conclude this allegation is **SUBSTANTIATED**.

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³⁹ Bolded portions of the JER constitute punitive sections.

⁴⁰ DoDD 5500.7-R, paragraph 3-211. titled, “*Logistical Support of Non-Federal Entity Events*,” is not applicable.

⁴¹ DoDD 5500.7-R, paragraph 3-300.b. is titled, “*Professional Associations and Learned Societies*.” It also does not apply.

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Recommendations. *(The below is a sample Recommendations Section, which would be included under Tab E—ONLY if the commander requested recommendations in the IO appointment letter)*

Recommend:

- Appropriate disciplinary action for Chief Smith
- Unit training on the JER.
- Close monitoring of any unfavorable personnel actions generated by the Chief against complainants or witnesses as possible reprisal.

(IO Signature Block)

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Not included in this sample ROI—Testimony (Tab F), Evidence (Tab G), Technical Review (Tab H), Legal Review (Tab I).

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(This is a sample Appointing Authority Approval and Action, which would be included under Tab J)

Date

MEMORANDUM FOR RECORD

FROM: __ /CC

SUBJECT: Appointing Authority Approval

I have reviewed the commander-directed investigation completed by investigating officer Major David Schucky, and the subsequent legal review regarding allegations that *(summarize allegations here, e.g., Chief Jones violated the Joint Ethics regulation by using federal personnel for unofficial purposes)*. I concur with the findings and conclusions of the investigating officer.

(Commander's Signature Block)

Note: Also include in this tab any final command action, such as Letter of Reprimand, Charge Sheet, memo of counselings etc.)

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Attachment 19

CASE CLOSURE LETTER

____/CC
(CC Official Duty Address)

(Complainant's Home Address)

Dear SSgt X,

This is to notify you of the disposition of your allegations concerning use of federal government personnel for unofficial purposes by the 123rd MSS Superintendent (*never use names or ranks, just the duty title*), Any AFB, Pickastate. To fully address your concerns, I ordered a commander-directed investigation (CDI) into the following allegation:

Allegation. Between 1 March 2009 and 30 March 2009, the 123rd MSS Superintendent (*never use names or ranks, just the duty title*), improperly used federal government personnel for unofficial purposes, by using members of the Mission Support Flight to help him plant shrubbery at his personal residence, during duty hours, in violation of DoDD 5500.7-R, paragraph 2-301 and 3-305.b. **SUBSTANTIATED.**

The finding was found to be legally sufficient before I personally reviewed and approved it as the appointing authority. Appropriate action has been taken against the individual who displayed the inappropriate behavior. I consider this matter closed.

If you are not satisfied with the final determination concerning your allegations, you may request further review by me, in writing, by no later than _____ (*insert reasonable date, 90 days is sufficient*). Your request must provide additional or new information that was not otherwise available during the CDI; simply disagreeing with this determination will not be sufficient for further review.

You also have the right to petition the Air Force Board for Correction of Military Records (AFBCMR) for correction of any adverse personnel actions (regardless of the findings of this case). Refer to the virtual MPF for assistance in petitioning AFBCMR. If you petition the AFBCMR, you would inform them that records exist pertaining to your request.

Sincerely,

(Commander Signature Block)