MARINE CORPS INSPECTOR GENERAL PROGRAM INVESTIGATIONS GUIDE

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Marine Corps
Inspector General Program
Investigations Guide

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Introduction

The Inspector General Program Investigations Guide

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

2. **The IG Investigations Guide:**

a. Investigations are one of the five specific IG functions. An investigation is a fact-finding examination into allegations of impropriety by an individual or an adverse condition that affects the warfighting capability of a command. The Command IG (CIG) may investigate any violation of law, policy, or ethical standards, including, but not limited to, allegations of fraud, waste, abuse, and mismanagement. The CIG is also responsible for conducting investigations into allegations of restricting access to the IG. CIGs will report allegations of statutory Whistleblower Reprisal, and Improper Mental Health Referrals involving military members, civilians, non-appropriated fund employees, and contractors to the Inspector General of the Marine Corps (IGMC) and be prepared to investigate if directed by the IGMC. The CIG will report allegations against senior officials to the IGMC. Senior official investigations are not appropriate for CIG action.

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

c. IG investigations are administrative in nature. As such, the IG will investigate criminal allegations by exception only. Depending on the circumstances, the CIG may refer allegations of criminal activity to the commander, the IGMC, or the Naval Criminal Investigative Service (NCIS) . If the alleged criminal activity involves the commander or deputy commander, the `CIG should refer the matter to the IGMC.

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

4. **Questions and Comments:** For questions or comments concerning this guide, please contact the Director, Assistance & Investigations Division, Office of the IGMC.

INSPECTOR GENERAL
OF THE MARINE CORPS

Marine Corps Inspector General Program Investigations Guide

August 2009

This Guide has been approved by the IGMC

BGen K. J. LEE

Marine Corps Inspector General Program
Investigations Guide
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Chapter 1

Overview

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Section 1-1

Introduction and Purpose

1. **Purpose:** The purpose of this section is to provide IGs with an overview of the recommended procedures and techniques for implementing the requirements for IG investigations and investigative inquiries in accordance with the Marine Corps Inspector General Program Concept and System Guide.

2. **Scope:** If, in the process of resolving Inspector General Action Requests (IGARs), preliminary analysis reveals possible wrongdoing by an individual, the fact-finding process will either be an investigative inquiry or an investigation. In this section, we describe the principles and philosophies of IG investigative inquiries and investigations as well as the techniques used to conduct them. The techniques discussed are based on field experience and are effective but cannot be applied inflexibly. Every case you encounter will be unique -- the facts and circumstances will differ. Consequently, you must apply sound judgment based upon your training, experience, knowledge of the case at hand, and the desires of your commander.

3. **Caution:** Before conducting an investigation or investigative inquiry, you should review Chapter 5 to ensure that you are familiar with the requirements of an investigation and an investigative inquiry.

Section 1-2

Definitions

1. **Allegation.** An allegation is a statement or assertion of wrongdoing by an individual formulated by the IG. An allegation contains five essential elements: Who, improperly did What, to Whom, in violation of What order, regulation, or policy, When. The IG refines allegations based upon evidence gathered during the course of an investigation or inquiry.

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

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

4. **Command Investigation.** A formal or informal investigation conducted by an officer or board of officers under the authority of the commander conducted IAW the Manual of the Judge Advocate General (JAGMAN). The Investigating Officer or Board of Officers conveys the findings of a formal command investigation to the commander. A commander is not bound or limited to the investigating officer's or board's findings or recommendations and may direct findings or take lesser action other than otherwise recommended by the investigation. The commander may use the results of a command investigation for adverse action against the subject or suspect.

5. **Command Products.** The term is a generic reference to the reports generated by command investigations or inquiries.

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

7. **Complaint.** An expression of dissatisfaction or discontent with a person, process, or system.

8. **Criminal Investigations:** The Naval Criminal Investigative Service (NCIS) is the is the major criminal investigative organizations within DON. The military law enforcement and criminal investigative organizations supporting commanders must investigate

allegations of criminal activity in which the DON is, or may be, a party of interest. Criminal Special Agents and military law enforcement personnel conduct criminal investigations that range from death to fraud on and off military reservations and, when appropriate, with local, state and other Federal investigative agencies. Criminal investigators are responsible for investigating felonies, complex misdemeanors, and property-related offenses when the value is greater than $1,000.00. Military law enforcement personnel normally investigate less serious offenses, including misdemeanors and property-related offenses when the value is less than $1,000.00. Criminal Investigators and military law enforcement personnel do not normally investigate allegations of adultery and fraternization unless the allegations are tied to greater offenses. The results of a criminal or military law enforcement investigation can be used for adverse action against the subject or suspect of the investigation.

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

10. **Directing Authority.** Any DON official who has the authority to direct the conduct of an IG investigation or inspection is a Directing Authority. Within the DON, the Directing Authorities are the Secretary of the Navy (SECNAV); the Commandant of the Marine Corps (CMC) / the IGMC; and Commanders with a CIG. Commanders who are authorized IGs on their staffs may direct IG investigations and inspections within their commands. The SECNAV, CMC, IGMC, and Commanders may direct IG investigations and inspections within subordinate commands as necessary.

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

12. **IG Investigation.**

a. An IG investigation is a fact-finding examination by an IG into allegations, issues, or adverse conditions to provide the Directing Authority a sound basis for decisions and actions. IG investigations normally address allegations of wrongdoing by an individual and are authorized by written directives. IG investigations involve the systematic collection and examination of evidence that consists of testimony; documents; and, in some cases, physical evidence. IGs report the results using the Report of Investigation (ROI) format addressed in Chapter 9 of this guide. Occasionally, IG investigations may lead to an examination of a systemic issue, especially when the possibility of further wrongdoing exists. For example, you might investigate an allegation that the development of a weapon system is fraught with fraud, waste, and abuse.

b. IG investigations are characterized by:

(1) An investigation directive issued by the commander providing written authority to examine the issues or allegations in question.

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

(3) A format for documenting the results in the form of a Report of Investigation (ROI).

13. **IG Investigative Inquiry.**

a. An IG investigative inquiry is an informal fact-finding process to gather information needed to address allegations of impropriety against an individual that can accomplish the same objectives as an IG investigation. IGs normally use this investigative process when the involvement of the directing authority is not foreseen. However, this fact does not preclude directing authorities from directing an investigative inquiry. CIGs typically direct the investigative inquiry and provide recommendations to their commanders or to subordinate commanders as appropriate.

b. IGs conduct investigative inquiries to gather information needed to respond to a request for assistance or resolve allegations or issues concerning alleged misconduct on the part of an individual(s). An IG investigative inquiry may be necessary when investigative techniques are appropriate but circumstances do not warrant an IG investigation. An investigative inquiry has no requirement for a written directive from the commander. You may employ investigation techniques (for example, sworn and recorded testimony) when conducting investigative inquiries. These techniques enhance the thoroughness of the fact-finding process. IGs report the results using the Report of Investigative Inquiry (ROII) format addressed in Chapter 9 of this guide.

Investigation versus Investigative Inquiry

- Investigations are more formal and require a directive from the commander
- Investigative Inquiries are informal and do not require a directive
- Both are thorough
- Both are fair and impartial
- Both support a decision
- Both are properly documented
- Investigation recommendations – an IG makes recommendations to the Directing Authority if requested
- Investigative Inquiry recommendations – an IG may make recommendations to subordinate commanders and / or the Directing Authority

c. IGs frequently conduct investigative inquiries in response to allegations of impropriety. They conduct investigations less frequently. Both forms of fact-finding have the common characteristics of fairness, impartiality, confidentiality, and thoroughness.

14. **Issue.** An issue is a complaint, request for information, or request for assistance to an IG that does not list a "who" as the alleged violator of a standard or policy.

15. **Inspector General Action Process (IGAP).** IGAP refers to the seven-step process used to resolve issues and allegations.

16. **Inspector General Action Request (IGAR).** IGAR is the term used to refer to the process of receiving, inquiring into, recording, and responding to complaints or requests either brought directly to the IG or referred to the IG for action. IGs record this information on the Inspector General Action Request form (see Appendix A, The Inspector General Program Assistance Guide).

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

18. **Office of Record (OOR).** Normally the IG office that receives the complaint. This office may request to refer the office-of-record status to another IG office if the case falls under another IG's sphere of activity. The OOR must address all issues and fulfill all IG responsibilities.

19. **Subject.** Any person against whom an allegation of misconduct is alleged that is not criminal in nature.

20. **Suspect.** Any person against whom sufficient evidence exists to create a reasonable belief they have engaged in criminal misconduct.

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

Section 1-3

Rights and Protections

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

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

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

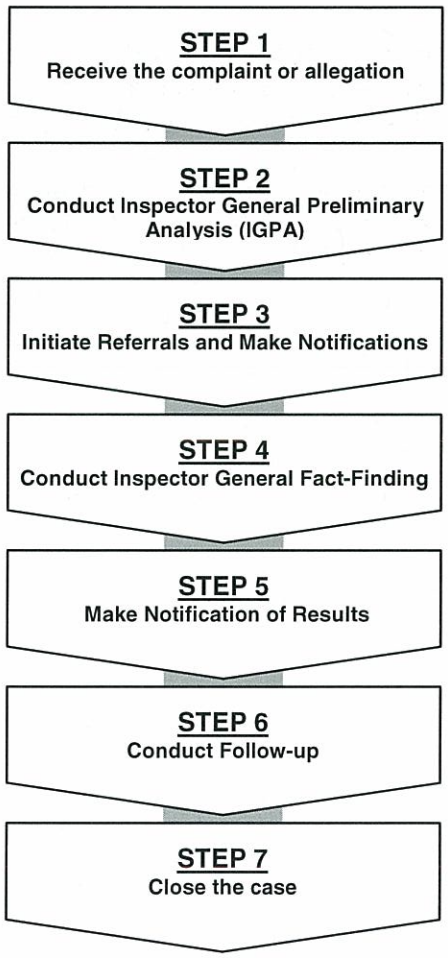
3. **IG's Dual Role.** Whether conducting an investigative inquiry or an investigation, the dual role of the IG is to protect the best interests of the DON and protect the rights and confidentiality of all individuals involved.

Section 1-4

Inspector General Action Process (IGAP)

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

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



Section 1-5

Applicable References

1. **Purpose:** This section lists the principal references that apply to IG investigations.

2. **Department of Defense (DoD) Directives and Instructions:** The following DoD policy documents apply to the IGP:

a. DoDD 1401.3, Reprisal Protection for Nonappropriated Fund Instrumentality Employees / Applicants

b. DoDD 2311.01E, DoD Law of War Program

c. DoDD 5505.6, Investigations of Allegations Against Senior Officials of the Department of Defense

d. DoDD 6490.1, Mental Health Evaluations of Members of the Armed Forces

e. DoDI 6490.4, Requirements for Mental Health Evaluations of Members of the Armed Forces

f. DoDI 7050.01, Defense Hotline Program

g. DoDD 7050.06, Military Whistleblower Protection

3. **Department of the Navy (DON) Instructions:**

a. SECNAVINST 5370.5B, DON Hotline Program

b. SECNAVINST 5370.7C, Military Whistleblower Reprisal Protection

c. SECNAVINST 5430.57G, Mission and Functions of the Naval Inspector General

d. SECNAVINST 5430.92B, Assignment of Responsibilities to Counteract Acquisition Fraud Waste and Related Improprieties Within the DON

e. SECNAVINST 5800.12B, Allegations Against Senior Official of the DON

4. **Marine Corps Orders and Policy Manuals:**

a. MCO 1700.23E, Request Mast

b. MCO 3800.2B, Oversight of Intelligence Activities

c. MCO 5040.6H, Marine Corps Readiness Inspections and Assessments

d. MCO 5370.8, Marine Corps Hotline Program

e. MCO 5430.1, Marine Corps Inspector General Program

f. NAVMC 1700.23F, Request Mast Procedures

g. NAVMC 5040.6H, Marine Corps Readiness Inspections and Assessments

h. Marine Corps Inspector General Program Concepts and Systems Guide

i. Marine Corps Inspector General Program Inspections Guide

j. Marine Corps Inspector General Program Assistance Guide

k. Marine Corps Inspector General Program Intelligence and Oversight Guide

5. **Other Guidelines or Standards:**

a. Quality Standards for Federal Offices of Inspectors General (President's Council on Integrity and Efficiency)

b. Quality Standards for Inspections (President's Council on Integrity and Efficiency)

c. Quality Standards for Investigations (President's Council on Integrity and Efficiency)

Chapter 2

Preliminary Analysis (PA)

Section 2-1 - IGAP: Preliminary Analysis

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Section 2-10 - Common Pitfalls

Section 2-1

IGAP: Preliminary Analysis

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

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

Section 2-2

Issues

1. **Definition.** Issues are defined as a point in question of law or fact. Simply stated, an issue is something a person states in a complaint into which an IG must inquire. It may be a rationale for why something has transpired or an allegation of wrongdoing by someone or some organization. Issues can become allegations when all five parts of an allegation are present.

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

Section 2-3

Allegations

1. **Overview.** Complainants do not normally write allegations in a manner that is useful for fact-finding purposes; this responsibility falls to the IG. The IG must take the information from the complainant, research the standards for each issue raised by the complainant, and write a concise allegation that contains five elements (Five Ws): Who, improperly did What, to Whom, in violation of What order, regulation, or policy, When. The IG must consider each of the five elements of an allegation.

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

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

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

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

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

e. Identify the "**WHEN**" or time period covered by the alleged acts or omissions at the end of each allegation. If you have a specific date or dates, include the date in the allegation. For example: on or about 20 March 20xx. If the allegation covers a period of time, you would normally express it as follows. . . during the period June through December 20xx.

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

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

h. You may encounter a situation where you are unable to determine a standard, but systemic problems are evident. In such cases, you may elect to inspect, teach and train, or recommend corrective action rather than inquire or investigate.

i. There are situations when you identify systemic problems during your inquiry or investigation that violate a standard but do not indicate misconduct (an allegation) on the part of any individual. You may address the systemic issue in the other matters paragraph of the Report of Investigation (ROI) or Report of Investigative Inquiry (ROII).

j. It may be necessary for you to interview experts to determine the applicable standards. For example, should you receive allegations of wasteful official travel, you might interview personnel from your servicing finance office to gather information on the provisions of the Joint Federal Travel Regulation (JFTR) (applicable to uniformed Service members) and the Joint Travel Regulation (JTR) (applicable to DoD civilian employees). When discussing standards with experts other than your legal advisor, always be aware of the need to maintain confidentiality. Protect the identity of your complainant as well as the identity of the subject or suspect. Describe to the expert the general nature of the allegation and allow the expert to describe how regulations apply. Record the results of the interview as summarized testimony and continue with your own research of the cited regulations.

2. When writing the allegation, be concise, focusing on a specific type of impropriety. Combining two or more improprieties compounds the elements of proof necessary to substantiate or refute the allegation and inhibits your ability to provide a clearly stated conclusion. For example, combining the improprieties of conducting civilian commercial

business using a government computer during duty hours and the improper solicitation of gifts from subordinates will entail use of different standards and consequent elements of proof. Should sufficient credible evidence exist to substantiate one impropriety but not the other, what would be your conclusion? "Partially substantiated" is not an acceptable IG conclusion. Write another properly formatted allegation for each act of impropriety.

3. Review the allegation and consult with your legal advisor. If you intend to recommend that your commander direct an investigation, ***ensure you coordinate with your legal advisor***. It is often helpful to ask your legal advisor what facts you need to substantiate a violation of a standard. Talking to your legal advisor is particularly vital when dealing with criminal standards. You must always establish whether any of the allegations violated a criminal standard. If they did, the IG must treat the individual as a suspect rather than a subject.

4. When you formulate the allegations, do not be afraid to tackle complex, technical cases simply because you have no previous experience in that area. Remember: you can call experts as witnesses or make experts temporary assistant IGs for your case. Gather the facts and compare them against the information gleaned from the experts and regulations. IGs without previous technical experience in a specific functional area often conduct excellent inquiries and investigations. You will find that by carefully studying and becoming "smart" in the area you are investigating, you will become extremely knowledgeable.

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

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

6. Writing accurate allegations takes practice. Do not hesitate to ask for help from other IGs in your office or through IG tech channels, or consult your legal advisor. ***When in doubt, don't punt – huddle!***

Section 2-4

Examples of Violations of Standards

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

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

- Expensive meals from contractors.
- Expensive departure and retirement gifts.

b. Use of government equipment and employees in violation of the JER.

- Requiring dining facility personnel to cater social functions.
- Using government property or personnel to support private organizations.
- Using dining facility food for change-of-command receptions or award ceremonies.
- Requiring a secretary to make personal vacation travel arrangements.
- Using a driver for personal errands.

c. Personal conduct in violation of Service regulations, the UCMJ, or the JER.

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

d. Procurement activities in violation of the JER.

- Committing the government to an acquisition without contract authority.
- Improperly influencing the acquisition process.
- Giving "inside information" to selected contractors.

e. Use of aircraft or vehicles in violation of the U.S. Code or the JER.

- Domicile-to-duty transportation.
- Unauthorized use by spouses.
- Use of sedan or aircraft for personal errands.
- Transporting personal items on military aircraft.
- Supporting private organizations without authority.

f. Use of government funds in violation of the U.S. Code or the UCMJ (coordinate with your criminal investigative representative prior to looking at these allegations).

- Using appropriated funds for unauthorized purposes.
- Diverting government funds for personal use.
- Claiming pay for duty not performed (drill).
- Going TDY principally to conduct personal business or private association business.
- Claiming POV mileage when transported by government sedan.
- Claiming *per diem* when not in TDY status.

g. Abuse of position or authority in violation of the JER.

- Inadequate or improper response to a subordinate's impropriety, i.e., cover-up or whitewash (failure to take action).
- Coercion (or the perception of coercion) to join a private organization.
- Disregarding regulatory requirements for hiring, assigning, and firing subordinates.
- Using inappropriate language (cursing) directed toward, or in the presence of, subordinates.

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

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

a. **Allegations Against Senior Officials.** IGs must refer all allegations made against senior officials to the IGMC by confidential means without delay in accordance with MCO 5370.8. As you continue to gather facts and evidence in an investigative inquiry, you must continually evaluate whether the new allegations or issues are appropriate for your continued involvement. As an example, if you developed senior-official allegations during an investigative inquiry or investigation, you are required to notify the IGMC. When in doubt, call the IGMC (IGA) for guidance. If the senior official is your boss, you may be concerned about confidentiality and the possible damage that could occur to your relationship with your commander. Make the IGMC aware of your concerns. The IGMC will take every reasonable step to protect the relationship between you and your boss. ***You are not authorized to do any preliminary analysis into allegations against senior officials***.

(1) You may inform your commander of the general nature of the allegations against other senior officials in the command. Should you receive an allegation against your general / flag officer commander, contact the IGMC (IGA) for guidance prior to

informing your commander. Past experience has shown that IGs who have attempted to "protect" their bosses by informing them of the allegations and / or conducting their own "preliminary analysis" or "preliminary inquiry" have actually exposed the commander and themselves to allegations of reprisal and regulatory violations. The best method of protecting your boss is to report immediately the allegation in accordance with MCO 5370.8. The IGMC will provide you information on what, if anything, to tell your boss.

(2) If the IGMC is conducting an investigation within your command, the IGMC will normally inform your commander. The IGMC may not inform you of the investigation, however. Even if you are aware of an investigation, the IGMC will not inform you of the specific allegations unless the IGMC deems that you have a need to know.

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

d. **Questionable Intelligence Activity (QIA).** IGs must report allegations involving Marine Corps G-2 civilian personnel in accordance with MCO 3800.2B and the Marine Corps Inspector General Program Intelligence Oversight Guide. The investigating IG will provide a copy of an issued report involving G-2 civilian personnel to the IGMC.

e. **Criminal Activities.** IGs will report criminal allegations to the commander and the Staff Judge Advocate and refer them to the IGMC, or the NCIS for action.

Section 2-5

IG Appropriateness

1. **Overview.** As a general rule, the following issues and allegations are not appropriate for IG involvement:

a. Allegations of **serious criminal misconduct** such as murder, rape, and grand theft are normally outside the purview of the IG. Furthermore, allegations constituting a felony offense are not appropriate for a IG. However, certain allegations pertaining to acts or omissions that could constitute dereliction of duty, violations of regulations, or conduct unbecoming an officer ***are not precluded from IG involvement***. IGs frequently inquire into and investigate these types of allegations. Consult your legal advisor for advice if you are uncertain in this area.

b. When **other means of redress** are available (see Table 2-5), IGs should advise complainants to exhaust the prescribed redress or remedy first. IG involvement should include a review of the situation to determine if the complainant was afforded the due process provided by the applicable law or regulation. For example, if a civilian contractor alleged to an IG that a government contract was improperly awarded, the IG would ask the complainant if he or she had appealed the contract in accordance with the Federal Acquisition Regulation (FAR). If the complainant had not made the appeal, you would advise him or her as to the procedure for redress and deem the complaint not IG appropriate.

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

2. **Chain-of-command action.** If the chain of command decides to address the issues and allegations made by a complainant, you should afford subordinate commanders the opportunity to conduct a commander's inquiry. ***IGs try to give the command an opportunity to address problems first.***

3. **Misconduct by Military and Civilian Lawyers.** Allegations involving professional misconduct by military or DON civilian lawyers are not IG appropriate. Refer these allegations through the IGMC to the SJA to CMC for judge advocates or Counsel for CMC for general counsels for disposition.

4. **Misconduct by Judge Advocate Legal Service members.** Allegations involving mismanagement by members of the Judge Advocate Legal Service serving in a supervisory capacity are not IG appropriate. Refer these allegations through the IGMC to the SJA to CMC for disposition.

Table 2-5. Established Redress and Resolution Paths

	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 Employment Opportunity (EEO) issues (discrimination based on age, race, color, gender, religion, disability, or national origin), or reprisal against a civil service employee or applicant	The servicing Civilian Personnel Office EEO Complaints go to the local EEO Offfice for processing 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)
2	Nonappropriated Fund employees -- Conditions of employment and discrimination or reprisal	Servicing Nonappropriated Employment Office for conditions of employment or for reprisal allegations. Advise the complainant he or she can file the complaint directly with IG DoD IAW DoDD 1401.3, Reprisal Protection for Non-appropriated Fund Instrumentality Employees / Applicants, or take the complainant's information and forward it to IG DoD (IAW DoDD 1401.3).
3	Reserve Assignment matters	M&RA or MARFORRES
4	Military Equal Opportunity Issues	Request Mast or EOA; IG is alternate means
5	Administrative Separations	M&RA or command
6	Equal Opportunity in off-base housing	Service Housing Referral Office
7	Landlord or tenant disputes	Commander
8	Claims against the Government	SJA
9	Correction of military records	Board for Correction of Naval Records (BCNR)
10	Appeal of Performance Reports, Fitness Evaluations, and Promotion Recommendations	M&RA or command
11	Support of Dependents and Private Indebtedness	Subject's commander or DFAS
12	Change to an Instruction / Regulation, or current policy guidance	Appropriate proponent of subject instruction / regulation, or current policy guidance
13	Letter Of Counseling, Letter Of Reprimand, or Article 15 (other than discrimination / reprisal)	Commander or Area Defense Counsel (ADC)
14	Punishment under UCMJ	Area Defense Counsel
15	Article 138, UCMJ (Complaint of Wrong)	Command legal channels
16	Hazardous Working Conditions (unsafe or unhealthy)	Command safety channels
17	Elimination From Training	MARCOR Training Command or local command

18	Medical Treatment	Medical Command
19	TRICARE Complaints	TRICARE Benefits Services Office
20	Allegations of homosexual conduct	Commander
21	Misuse or abuse of government vehicles	Base transportation or commander
22	Unprofessional Relationships / Adultery	Commander
23	Sexual Harassment and Discrimination	Request Mast Commander, or command EOA; IG is an alternate means
24	Allegations of reprisal by DoD contractors	IG DoD
25	Allegations against Military Defense Counsel	SJA to CMC
26	Anti-Deficiency Act violations	Commander or SJA
27	Health Insurance Portability and Accountability Act (HIPAA) Issues	Surgeon General
28	National Guard Title 32 matters	Army IG
29	Commander-Directed Investigations	Commander
30	Third-Country Nationals, contractors, or non-DoD civilians	SJA for advice on proper course of action
31	Sexual Assault	Commander / SJA / law enforcement and SARC.

Section 2-6

Course of Action Development

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

a. Commanders have several options available to resolve allegations of wrongdoing. After considering the allegation, they may elect to take no further action, pass the allegations to a subordinate commander, refer the case to another investigative venue, or conduct either an IG investigative inquiry or investigation. The least desirable option is to do nothing. This option could result in an allegation against both you and your commander for failing to take appropriate action.

b. The decision whether to conduct IG fact-finding or to conduct a non-IG investigation rests with the commander and is usually based on the recommendations of the CIG and the SJA. Ensure you coordinate your recommendations with the SJA before you bring allegations to your commander for a decision.

c. In some cases your fact-finding may begin as an assistance inquiry, which is often the case when the subject / suspect is not known or the complaint made is so fragmentary that the IG must inquire just to determine if there is an actual allegation. It is important that you understand your commander. There are certain types of allegations that your commander will want to know about immediately. Also, your commander will probably want to know immediately when allegations are made against key individuals in the command. On the other hand, your commander may permit you to inquire into some allegations without informing him or her in advance. Many commanders provide either verbal or written guidance to their IGs concerning those topics on which the IG can initiate investigative inquiries without prior approval. As your relationship with your commander evolves, you will gain a better understanding of those issues important to him or her. The key point here is to avoid "blind-siding" your commander.

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

a. After you formulate the allegations and determine IG appropriateness, you must determine whether you will conduct an investigative inquiry or recommend that your commander direct an investigation. There are no hard and fast rules to guide you in making this determination. Every case is different. Deciding which cases to bring to him or her may appear to be a high-risk venture, but as your relationship with your commander develops, you will gain an appreciation for the types of issues of personal interest to him or her. During your initial in-brief with your commander, you should ask for his or her guidance on this subject. Factors to consider when deciding whether to recommend an investigation or an inquiry are:

(1) **Seriousness of the Allegations.** The allegations are serious and, if substantiated, could result in adverse personnel action or criminal charges against the suspect.

(2) **Appropriate Level for Command Decision.** Determine which command level the allegations involve for adjudication. Sometimes referring the allegation to a

subordinate commander may be appropriate. If your recommendation to investigate is appropriate for your commander, then an IG investigation may be appropriate.

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

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

(5) **Need to Document.** Have the allegations surfaced at a higher level or might surface at a higher level (to include Members of Congress, for example), and is there a requirement for a formal report? CIGs document all investigations and investigative inquiries in the ROI / ROII format.

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

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

(8) **Protection of Confidentiality and Rights.** Are the issues and their potential impact such that there is an increased concern for protection of an individual's confidentiality and administrative due process? IG investigations and inquiries protect the rights of all persons involved.

(9) **"Glass-House" Allegations.** Does the level of responsibility and visibility of individuals against whom allegations are made put them in the "glass house?" These are individuals who may have allegations made against them because of their position rather than because of wrongdoing.

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

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

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

a. **Fair and Impartial.** Your commander will base decisions on the facts you present. Therefore, you must thoroughly investigate and make an accurate, timely, impartial, and complete report. As an impartial fact-finder, you must also report both sides of the story, not just the evidence that supports your conclusion. Additionally, IG investigations and investigative inquiries are always conducted in an overt manner; covert methods are not appropriate for IGs. However, IGs conducting investigative inquiries or investigations are always concerned with confidentiality and must be discreet in the conduct of investigative inquiries and investigations.

b. **Limited Distribution of Information.** Many allegations by their very existence, whether substantiated or not, have the potential of being disruptive and having a traumatic effect upon the individuals or units concerned. You can minimize these effects by maximizing your protection of confidentiality and limiting distribution of information about the investigation to only those who need to know.

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

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

e. **No Recommendations for Adverse Action.**

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

(2) IGs assess facts, draw conclusions, and make recommendations. As stated above, should you conclude that allegations of wrongdoing are substantiated, you might recommend that the commander refer the case to a follow-on investigator. Prior to rendering a report to the commander, you should request a legal review the ROI and, in some cases, an ROII for legal sufficiency. Accordingly, the legal advisor may then provide specific recommendations to the commander regarding subsequent action.

(3) IG records may be used as the basis for adverse personnel action only with concurrence of the individual's commander and the approval of the commander (or his or her designated representative). IGs should advise the commander on the possible consequences such action may have on the perceived confidentiality of the IG system. Should IG records be approved for use in adverse action, the records may have to be released to the individual against whom the action is taken. The confidentiality normally afforded to witnesses may be reduced or eliminated.

(4) Subjects and suspects of IG investigations should not have favorable personnel actions suspended as this could compromise confidentiality. If personnel actions are pending, the CIG should inform the commander of the allegations and status of the investigation so the commander can make an appropriate decision regarding the personnel action.

f. **IGs Identify Problems.** If during an investigative inquiry or investigation, you discover issues or problems not specifically related to the allegation, you can initiate corrective action by bringing the issues to the attention of the commander or the appropriate staff agency. This communication should not compromise confidentiality. An acceptable method would be an extract of pertinent data without revealing protected information. As an example, after investigating allegations of travel-claim fraud, the CIG determined that travel claims are not properly processed within the command. The CIG could alert the commander and provide the local Finance and Accounting Officer an extract of the pertinent information without revealing confidential information.

Section 2-7

Allegations Often Resolved by an IG Investigative Inquiry or Investigation

1. **Overview.** Experience has shown that IGs normally look at three classes of allegations: violations of established policy, Standing Operating Procedures (SOPs), and standards; violations of regulatory guidance (non-punitive); and violations of law (UCMJ / US Code) or of punitive standards within regulations.

2. **Criminal Allegations.** IGs normally do not investigate criminal offenses (generally defined as offenses punishable by fine or imprisonment) that traditionally fall in the category of felonies. However, there are certain violations of criminal law that criminal investigators typically do not investigate but do reflect on the credibility of the command. Therefore, you may find that your commander directs you to investigate these allegations.

3. **Administrative and Standards of Conduct Violations.** Violations of Standards of Conduct are among the most typical allegations investigated by IGs. The JER is our standard for ethical conduct. The JER specifically charges DoD component IGs with investigating ethics matters within their respective components. All violations of punitive regulations are normally treated as criminal although IGs frequently investigate them.

4. **Exceptions.** IGs may investigate some UCMJ violations. Adultery and dereliction of duty are typical examples of allegations not normally investigated by NCIS even though they are criminal violations of the UCMJ. You should coordinate with law enforcement officials and the SJA in cases where you receive allegations that are criminal in nature.

Section 2-8

Comparison of Investigative Inquiries and Investigations

1. **Overview.** While investigative inquiries are an informal fact-finding process and investigations are formal, the two are actually very similar. In both, the IG must analyze the situation at hand, decide if standards have been violated, determine what evidence he or she must gather, gather the evidence, analyze the evidence, draw conclusions, and recommend appropriate action. The differences between the two processes rest chiefly in the requirement for a signed directive and transcribed verbatim testimony as required by formal investigations. IGs frequently begin fact-finding using an investigative inquiry and transition to an investigation if the situation warrants it.

a. **Purpose**. IG investigative inquiries and investigations are processes designed specifically to look at allegations of wrongdoing on the part of a person. Both provide a sound, factual basis for decision-making.

b. **Thoroughness**. Investigative inquiries and investigations are equally thorough and correct. A common misperception is that investigations are more thorough than investigative inquiries. The nature of the case determines the detail with which you gather and evaluate evidence, not the fact-finding process you select. If you conduct each investigative inquiry and investigation in accordance with the procedures in this guide, you will ensure that you are thorough as well as fair and impartial.

c. **Difficulty**. Some IGs believe that conducting investigations is inherently more difficult. It is true that an investigation entails more administrative details, e.g., one must prepare an action memorandum with a directive and arrange for the verbatim transcription of testimonies. However, the documentation required for an investigative inquiry might be equally voluminous. In some cases, conducting an investigation is actually easier. The commander's authority, as evidenced by the signed directive, "energizes" the command.

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

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

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

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

them to assist throughout the investigative inquiry or investigation, the IG may appoint them as Temporary Assistant IGs (TAIGs), and limit their duties to their areas of expertise.

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

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

Section 2-9

Obtain Authority

1. **Overview.** Gaining authority for an IG investigation or investigative inquiry is a simple but sometimes misunderstood process. IGs do not conduct investigations or investigative inquiries without obtaining the authority to do so.

2. **Investigative Inquiries**. If you determine that an investigative inquiry is the appropriate fact-finding process, a written directive is not required. The CIG can direct an investigative inquiry. The lack of requiring a directive does not, however, relieve the CIG of responsibility to keep the commander informed. Local CIG office procedures will provide guidance on the conduct of your investigative inquiries. IGs should not begin an investigative inquiry without a directive from the CIG. The CIG may provide either a written or oral directive.

3. **Investigations**. Should you recommend that an investigation is appropriate, there are formal steps required to obtain the authority to begin. Your commander is the only individual who is authorized to "direct" you to conduct an investigation. Your tool to obtain a Directive is the Action Memorandum.

a. **Action Memorandum**. After you determine an IG investigation is necessary, prepare an Action Memorandum (an example is shown below or use another locally acceptable format) for your commander. The Action Memorandum is an internal administrative document and should be included in the final ROI (ROII if appropriate). It defines the scope and limits of what you and your commander decided to investigate. As a document prepared in conjunction with an IG investigation, the Action Memorandum is For Official Use Only (FOUO) and must be marked accordingly. It is also protected from release under FOIA. The Action Memorandum:

- Forwards a Directive for the commander's signature.
- Gives a brief background of how the allegations were received, who made the allegations, and against whom they are made (since this memorandum is prepared for the commander, it contains names and specific details)
- Outlines the allegations that need to be investigated.
- Contains a summary of your inquiry / PA if appropriate.
- Summarizes the SJA's legal opinion for the commander.
- Recommends that the Directive for Investigation be signed.

b. The **Directive for Investigation** is your authority to investigate the specific allegations outlined in the Action Memorandum. While the Action Memorandum is very specific, the directive is very general. ***Do not disclose the names of individuals involved or the precise nature of the allegations in the Directive***. This lack of disclosure helps maintain confidentiality. The Directive is prepared by you, signed by your directing authority, and addressed to the directing authority's IG (you). If you issue the initial Directive orally, write a Memorandum For Record (MFR) that outlines your instructions and secure a signed Directive as soon as practicable. Ensure that the SJA concurs with your approach and recommendation for an IG investigation.

c. The example Directive appears on the next page:

- Is a historical record of authority to investigate (it becomes part of the ROI).
- Is used as the basis for notifications.
- Is shown to witnesses to establish your investigative authority.
- Is quoted in the formal read-in of witnesses.
- Gives you the authority to require the presence of military and DA civilians at interviews and the authority to secure documents and other pertinent evidence.

4. The Directive and the Action Memorandum together define the scope and limits of the investigation. The IG may not initiate, expand, or terminate an investigation on his own volition. The Directive and Action Memorandum ensure that there is a clear, mutual understanding between the IG and Directing Authority concerning what the IG should investigate.

5. Any commander who is authorized a CIG may direct an IG investigation. Only the IGMC may direct an investigation of a senior official.

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

EXAMPLE ACTION MEMORANDUM

MEMORANDUM FOR COMMANDER

SUBJECT: Action Memorandum

1. Purpose. To obtain a directive to conduct an Inspector General investigation.

2. Background. (Briefly describe what you plan to investigate. Include the source of the allegation(s), from whom you received it, and the full names and organizations of the subjects or suspects.)

3. Allegation(s). (State the allegation(s) you intend to investigate.)

4. Proposed Scope of the Investigation. (Outline the specific issues you intend to investigate.)

5. Discussion. (Provide other information such as the SJA's opinion.)

6. Recommendation. That you sign the directive at Tab A.

Encl

JOHN E. APPLESEED
Col, USMC
Command Inspector General

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EXAMPLE DIRECTIVE

MEMORANDUM FOR THE INSPECTOR GENERAL

SUBJECT: Directive for Investigation

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

2. Submit your report to me as soon as possible, but protect the rights of all persons involved and ensure the investigation is complete and accurate.

W. R. GREEN
Major General, USMC
Commanding

NOTE: Do not use the name(s) of subjects or suspects in the Directive. Remember: this is the document you will show the witness. PROTECT CONFIDENTIALITY.

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Section 2-10

Common Pitfalls

1. **Overview.** The greatest problem with IG preliminary analysis (PA) is improperly developing allegations. Poorly worded allegations that do not address the complaint frequently appear in IG investigations. Allegations are sometimes too broad in scope, combining two or more allegations. Standards used are frequently either wrong or not dated with the time of the alleged impropriety.

2. Another common failing is to use the wrong form of investigation for the nature of the allegations presented by the complainant. Specifically, ***when allegations are presented that are criminal (or punitive) in nature, IGs should use formal proceedings (investigation) to ensure that the suspect's rights are fully protected.***

3. Frequently, IGs will receive complaints that generate multiple allegations against multiple individuals. The sheer volume of analysis can overwhelm you. In such situations, your best course of action is to break the allegations into small groups based upon the identity of the individual suspected of the misconduct and investigate each one separately.

4. Lastly, ***never work cases on General / Flag Officers, SES personnel, or Colonels / Captain (USN) selected for promotion***. Refer these cases to the IGMC without delay via the most secure and confidential means possible. ***Do not open an IGAR, and do not conduct IGPA!***

Chapter 3

Referrals and Initial Notifications

Section 3-1 - Referring Allegations

Section 3-2 - Initial Notifications

Section 3-3 - Use of Command Products

Section 3-1

Referring Allegations

1. **Referral to Another IG.** If, after preliminary analysis, you determine that the case is not appropriate for your CIG office but is appropriate for a higher, lower, or adjacent-level IG, refer the case to that office using the Online Database and Inspector Network (ODIN). Once the case is accepted on the other end, you can close out the referral in ODIN. If the local CIG is maintaining office-of-record status, keep the case open until the office of inquiry completes the report and forwards it to you for review, approval, and close-out.

2. **Referral to the Chain of Command**. The chain of command has the responsibility and the authority to address complaints. Where appropriate, you should refer matters to the chain of command, monitor the case to ensure the chain of command takes appropriate action, write an executive summary of investigation using the command product as a piece of evidence, and then complete steps five through seven of the IGAP to close out the case.

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

b. If the commander refuses to give you a copy of his inquiry or investigation, explain to the commander that the IG is authorized a copy of the inquiry or investigation. If you request that the Directing Authority intervene, and the Directing Authority refuses, contact the IGMC for guidance before proceeding. If you are conducting an inquiry or investigation and then discover that a commander is conducting an inquiry or investigation on the same case, contact the commander and request a copy of the command product. If the commander complies, complete the case in the same manner stated above. If the commander does not comply, contact the IGMC for guidance before proceeding. Table 3-1 shows when to transfer a complaint to another IG; however, this table is not all-inclusive. Table 3-2 explains how to transfer a complaint to another IG.

Table 3-1 When to Transfer a Complaint to Another IG

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

Table 3-2 How to Transfer a Complaint to Another IG

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

3. **Referral to other agencies.** You may elect to refer allegations to the appropriate agency on behalf of the complainant, but be mindful of confidentiality concerns. Provide the necessary information to the agency and determine whether to monitor the action until completion. For example, if an individual alleges criminal activity, you should refer the information to the local criminal investigations field office and request that that office follow up with the individual and advise you of the results. The IG should retain a copy of the complaint. The local criminal investigations field office may not accept it, and you may need to refer the allegation to the chain of command for inquiry or investigation. If you refer the allegation to civil authorities, be mindful that they may choose not to comply with your request for action or for a copy of their investigation. Table 3-3 shows how to refer the complainant to that person, agency or organization.

Table 3-3 How to Refer a Complaint

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

4. An example transfer/referral memorandum and notification letter used to transfer/refer allegations as described above is as follows:

Memorandum Format: Complaint Referral for Investigation to a Commander

Office Symbol
2 Feb 08

MEMORANDUM FOR Commander (unit referred for action)

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

1. The Command Inspector General received complaints alleging misconduct by members of your command. In accordance with the Marine Corps Inspector General Program Investigations Guide, we are referring the matters to your command for appropriate action.

2. Request that you provide a complete copy of your investigation / inquiry to this office when completed. We will use the results of your action as the basis for our response and notification to the subject(s) of the investigation / inquiry.

3. If an Investigating Officer is appointed, contact your local SJA office prior to beginning the investigation / inquiry to exchange relevant information and discuss / clarify the allegations of concern.

4. Request that your investigation / inquiry address, at a minimum, the following allegations and issues: (MAKE SURE YOU IDENTIFY ALL ALLEGATIONS AND ISSUES / CONCERNS OF THE COMPLAINANT IAW the Marine Corps Inspector General Program Investigations Guide.)

a. Allegation 1: Grade Name (Specify the NAME of the alleged subject) improperly made false statements concerning the scoring of another NCO's PFT score in violation of Article 107, False Official Statements, UCMJ, on or about 10 July 2____.

b. Allegation 2: Grade Name (Specify the NAME of the alleged subject) improperly attempted to obstruct an IG inquiry by influencing and intimidating subordinates in violation of (regulation) on 29 July 2____.

5. This Inspector General document contains privileged information and will be protected IAW DON regulations. Please restrict dissemination of the document to the absolute minimum consistent with your requirement to provide a reply, and return it to this office when your action is complete. Unauthorized retention or reproduction of IG documents is strictly prohibited.

6. Your point of contact is (IG's name) at DSN (IG's phone #) or CML (IG's phone #) .

IG Signature Block

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Letter Format: Notification Letter to the Commander of a Subject / Suspect Referral of Allegation to a Subordinate Command

(Letterhead)

August 25, 2008

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

Dear Grade _____

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

In accordance with the Marine Corps Inspector General Program Investigations Guide, we referred the allegations to the chain of command for appropriate action. We will notify you of the results after the chain of command has completed its action and we have completed our report.

Sincerely,

(SIGNATURE BLOCK)
Grade, Service
Inspector General

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

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Section 3-2

Initial Notifications

1. Notifications are required when you conduct an investigative inquiry or an investigation. IGs will make notifications and document them using one of the notification formats described below. The IG must include a copy of the notifications in the ROI / ROII.

2. After obtaining authority for the investigation or inquiry, you should notify the subject / suspect's commander / supervisor before you contact any other witnesses or gather further evidence. Notification of the commander involved ensures their cooperation and understanding. The IG will notify the subjects or suspects, if appropriate, of the nature of the allegations prior to conducting interviews or taking statements. This notification provides for their due-process right to know that there are allegations against them and allows them to seek legal counsel. Notification is also appropriate as IGs do not operate covertly. Do not confuse this notification requirement with your acknowledgment of the case to the complainant. Complainants, if personally wronged by the impropriety, are not entitled to know any information concerning the case other than that the allegation was substantiated or not substantiated. Third-party complainants, those not directly wronged by the impropriety, are not entitled to any information other than the acknowledgment of receipt and closure of the case. Your communication with the complainant is a separate action and not a part of the notification step of the investigative process.

a. Command Notifications:

(1) **Chain of Command.** Normally, the IG will notify the first commander or supervisor in the chain of command of the individual whom the IG is investigating. Use the notification formats at the end of this chapter to make these notifications. You, the directing authority, or someone designated by the Directing Authority may make these notifications. How much information you provide, how deep in the chain of command you make notifications, and whether you give the notified commander the option to inform other members of the chain of command will vary. You need to consider the nature of the allegations, your commander's guidance, and the personalities of the commanders or supervisors involved. In sensitive cases, you might not provide any detail except that there is an ongoing investigation. At other times, you may choose to provide the names of subjects or suspects and specific allegations or some combination thereof. Also, consider the possibility of commander involvement in the allegations or that the commander has condoned the actions. For example, you have sensitive allegations against a battalion commander that your commander directs you to investigate. Your commander believes the regimental commander should be informed of the investigation but is concerned that this notification may needlessly damage the battalion commander's reputation in the eyes of the regimental commander. Therefore, you may choose only to provide the regimental commander with the general information contained in the directive. Should the facts indicate that the allegations will be substantiated and that the regimental commander was knowledgeable and condoned the misconduct, you may need to investigate the regimental commander.

(2) **Visited Commands.** You may have to visit organizations or staff sections to obtain information and interview witnesses when there are no individuals in that organization who have allegations against them. It is your decision whether or not to notify the commanders of those organizations where you are conducting an investigation. Normally, you only need to provide other commands with the general information contained in the directive.

(3) **Higher Commands.** Your higher commands are not automatically notified of your investigations. Notify higher commands of an investigation based on the nature of the investigation, the rank or grade of the person whom the IG is investigating, or as requested by higher headquarters or directed by your commander. Use your judgment and your commander's guidance to determine when to notify higher commanders.

b. **Subject / Suspect Notification**

(1) Always notify the individuals against whom the allegations are made. Failure to do so may jeopardize their due-process rights. The IG should notify the person as either the subject or suspect. Determining their status in the case is your responsibility; although in a difficult case, you may want to consult with your legal advisor if you have any questions about the proper status. Making the proper distinction is important since the rights afforded vary with the individual's status. More procedural safeguards apply to suspects than to subjects. If the standard allegedly violated is criminal in nature, then the person is a suspect. To interview someone about criminal allegations without first informing that person of his or her rights is a violation of the individual's rights. This fact is true even if you decide to question the individual concerning only non-criminal matters. See the explanation of rights earlier in this guide. Remember: military personnel who have criminal or punitive allegations leveled against them must be treated as suspects.

(2) **What do you tell the subject or suspect?** An IG investigation is not an adversarial proceeding. Therefore, you do not have to notify the subject or suspect of the specific allegations at the time of notification, but you must tell the person what appears in the Directive. However, under most circumstances, you will inform the subject or suspect of the specific allegations at the time of notification. This approach is especially important for suspects since they are more likely to seek the advice of a lawyer. Before deciding, consider whether or not informing the subject or suspect of the specific allegations would reveal the source of the complaint. You must avoid any act that may jeopardize confidentiality. You must be concerned with the possibility of retribution and a cover-up. The subject or suspect might talk to, or influence, the complainant or potential witnesses and thereby hamper your investigation. ***Do not tell the subject / suspect with whom you have talked (other than commander / supervisor, if notified) or with whom you plan to talk.***

(3) You should understand that if you do not give a suspect the specific allegations during notification, then once you give that person the specific allegations during the interview, he or she may ask to see an attorney. This situation may slow your investigation, but it is the suspect's right to seek legal advice. Sample Notification Formats for subjects and suspects follow this section.

c. **Who makes the Notifications?** Who makes the notifications will be based on your standing operational procedures (SOP) and will vary with the grade of the person against whom the allegations are made. There are several advantages for you, as the

investigating officer, to make the subject or suspect notification. It gives you the opportunity to begin to develop a rapport with the individual. You may be able to anticipate from this conversation whether that person will be cooperative or not, and you can prepare yourself accordingly.

d. **How do you make Notifications?** IGs may make notifications in person or by telephone. Experience has shown that telephonic notifications are best. Chain-of-command notifications made over the telephone are discreet and minimize disruption to the unit. In-person notifications with a subject or suspect can be very difficult to control and will eliminate non-verbal communications that can hinder a proper notification. Other than restating the allegations, when notifying a subject or suspect, you should avoid discussing the facts surroundings the allegations. The rights warning contained in the suspect notification format is not considered legally sufficient for questioning an individual suspected of a criminal offense. You may provide the allegations to their attorney. Remember that experience has shown that the best course of action is to interview the subject or suspect last -- after you have conducted most of your investigation and know the facts. The notification memorandums are for your files and should be included in the ROI / ROII. Do not send the memorandum or give it to the individuals you notify.

e. **New Allegations / New Subjects / New Suspects.** During the investigation, you may develop new allegations unrelated to the original allegations or unrelated to the subjects or suspects. You must brief or send a memorandum to your Directing Authority to expand the investigation by explaining the additional allegations and / or new subjects or suspects. Prior to completing the investigation, the IG must inform the subject or suspect and give him or her the opportunity to present his or her side of the story. If the allegations are against someone not originally defined as a subject or suspect, then the IG should notify and interview that person. Remember: subjects / suspects have the right to know and comment on the allegations against them and any unfavorable information.

COMMANDER / SUPERVISOR NOTIFICATION FORMAT

To: (Rank and Name)_____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the _____ IG office. I am calling to inform you that (Directing Authority) _____ has directed this office to investigate / inquire into allegations that: (as stated in Action Memorandum)*

_____
_____
_____

*Note: Generally, commanders need to know exactly what you are investigating, and you should state the allegations as written in the Action Memorandum. If you believe you should be less specific, use the more general language in the Directive.

2. ( ) It may be necessary to interview members of your organization regarding these matters. _____(Investigating Officer) from my office will arrange witness interviews.

3. ( ) (You may / may not) (I will / will not) notify intermediate commander(s) / supervisor(s).

4. ( ) To help protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them, we ask that you not discuss this matter with anyone.

5. ( ) _____ was (telephonically / personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

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SUBJECT NOTIFICATION FORMAT
(For Non-Punitive / Non-Criminal Allegations)

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the_____ IG Office. _____ (Directing Authority) has directed us to investigate / inquire into allegations that you: (as stated in Action Memorandum)
_____
_____
_____

2. ( ) It will be necessary to interview you regarding these matters. (Choose a or b)

a. (Investigating Officer(s)) will contact you_____ _____ to make necessary arrangements; or
b. We want to interview you at (time) _____ on (date) ____ at (location) _____. Our telephone number is _____.

3. ( ) You are a subject in this investigation / inquiry. Although the allegation(s) against you is / are non-criminal / non-punitive, you do not have to answer any questions that may potentially incriminate you. The investigators will give you an opportunity to respond to the allegation(s). You have the right to consult with an attorney before questioning, but you do not have the right to have an attorney present during the interview.

4. ( ) _____ has been notified of this investigation.

5. ( ) We are required to protect the confidentiality of IG investigations / inquiries and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation / inquiry. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney, if you choose to consult one.

6. ( ) _____ was (telephonically / personally) notified of the above at _____(time) on _____ (date).

_____
(Signature of Notifying Official)

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SUSPECT NOTIFICATION FORMAT
(Punitive / Criminal Allegations)

To: (Rank and Name) _____
Position and Organization: _____
Phone number: _____

(CHECK WHEN DONE)

1. ( ) _____, this is _____ from the _____ IG Office. _____ (Directing Authority) has directed us to investigate / inquire into allegations that you: (as stated in Action Memorandum)
_____
_____

2. ( ) It will be necessary to interview you regarding these matters. (Choose a or b)

a. (Investigating Officers) will contact you _____ _____ to make necessary arrangements; or
b. We want to interview you at (time) _____ on (date) ____ at (location) _____. Our telephone number is _____.

3. ( ) You are a suspect in this matter. Therefore, you do not have to answer any questions or say anything. Anything you say or do can be used as evidence against you in a criminal trial. You have the right to talk to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. The lawyer can be a civilian you arrange at no expense to the government. (If suspect is subject to UCMJ, add the following): or a military lawyer detailed for you at no expense to you, or both.

4. ( ) We have notified _____ of this investigation.

5. ( ) We are required to protect the confidentiality of IG investigations / inquiries and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation / inquiry. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney, if you choose to consult one.

6. ( ) _____ was (telephonically / personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

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Section 3-3

Use of Command Products

1. **Overview.** IGs may use command products to resolve allegations presented to the IG but which the IG later referred to the command for resolution. But since the allegation started with the IG, the IG must also resolve the matter within the Inspector General Program (IGP). Existing policy allows IGs access to all documents and other evidentiary materials (such as command products) needed to discharge their duties.

2. **Definition.** Command products include, but are not limited to, commander's inquiries and formal and informal investigations conducted under the provisions of Service Regulations. Most commonly, questions arise pertaining to an IG's use of command investigative reports, particularly when the report is already completed before the IG receives a related complaint.

3. **Why use Command Products in an IG Investigation or Investigative Inquiry?** IGs must resolve all allegations that enter the IGP -- even if the IG referred that allegation to the command for resolution. The IG may use the results of the command's investigation (in the form of a command product) to resolve the allegation and capture the results in ODIN. The use of command products avoids duplication of investigative effort. Additionally, it is more appropriate for commanders to investigate some command matters, notably when disciplinary action is a likely outcome of the investigation. By regulation, command products used or considered by IGs to support IG findings, conclusions, recommendations, or resolution actions become part of the IG's record. In the case of command investigation findings and reports, the commander that initiated the investigation makes the determination whether it should be released.

4. **Cautionary Note.** IGs should use caution when using command products to support their inquiries and investigations. Command products are simply administrative tools used by commanders to assemble facts. They are not binding upon, nor do they limit, a commander's actions. The directing commander may use or reject the findings and recommendations of the product in part or in full. Command products are not subject to appeal and have no remedy or redress -- though the commander may use the product as a basis for action that is subject to appeal with remedy or redress. Because a command product may not afford due process, the IG review of a command product simply determines the extent to which the product addressed the issues and whether the product and process were fair and impartial.

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

6. **Analysis of Command Products by an IG.** It is a misconception that when an IG receives a complaint and determines that a related command product has already been completed, the IG's role is simply to conduct a "due-process review" of the product and to handle the complaint as an assistance case. This approach is the proper course of action when the complaint is against the command product or the investigative process (e.g., a complaint that a command investigation was not conducted properly). In this instance, the "due-process review" is handled and reported as *assistance*. However, this approach does not preclude the IG from conducting a "due-process review" as part of the analysis of a referral that led to a command product via an IG investigation or investigative inquiry. As a matter of prudence and thoroughness, the IG should conduct a "due-process review" of all command products. The IG must be prepared to branch into other issues or allegations that may warrant inquiry or investigation, and these issues or allegations may be beyond the scope of the command product. Inspectors General should follow the Inspector General Action Process (IGAP) with each complaint received, beginning with *preliminary analysis* to determine IG appropriateness and the course of action. Command products are appropriately used by IGs in the *fact-finding* phase of the IGAP -- *after* the IG has decided whether a matter is IG appropriate, what the allegations or issues are, and the appropriate course of action (inquiry or investigation) to take. The pre-existence of a command product does not "lock-in" an IG course of action (assistance, inquiry, or investigation) -- and certainly not the outcome. The command product is simply a piece of evidence available to the IG during fact-finding.

7. **SJA Coordination and Command Products.** When an IG receives a complaint and a commander's inquiry -- or command investigation is either already underway or not yet initiated, the IG should coordinate with the Staff Judge Advocate and the appropriate command to ensure the command product properly addresses the IG issues and allegations. Without some coordination between the CIG and the SJA / command, the final product will likely not fully address the issues and allegations presented to the IG by the complainant.

8. **Sample ROI / ROII.** This guide contains a description and an example of a modified Report of Investigation / Report of Investigative Inquiry (ROI / ROII) using a Command Product.

9. **Summary.** Command products do not provide an alternative to an IG investigation / investigative inquiry, and the pre-existence of a command product does not pre-determine how an IG must handle a complaint. If an allegation starts with the IG, it must (if IG appropriate) end with the IG. Even though the IG may refer the allegation to the command for action, the IG must still make a final determination of the matter using the ROI / ROII. The command product becomes a major piece of evidence in this final determination. In addition, the CIG must ensure that each issue and allegation presented in the complaint is addressed in a fair and impartial manner while retaining flexibility to delve into new issues and allegations that may emerge during fact-finding. As the eyes, ears, voice, and conscience of the commander, the CIG must be prepared to question the adequacy of the command product and to look beyond its bounds.

Chapter 4

Rights, Non-Rights, and Witness Cooperation

Section 4-1 – Categories of Individuals

Section 4-2 – Rights of Individuals Involved in IG Investigations

Section 4-3 – Non-Rights of Individuals Involved in IG Investigations

Section 4-4 – Duties of Individuals Involved in IG Investigations

Section 4-1

Categories of Individuals

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

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

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

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

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

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

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

b. Punitive provisions must be more than mere policy statements or administrative guidelines. Such provisions must impose a specific duty on military personnel to perform or refrain from certain acts. These provisions and regulations cannot require further implementation from subordinates. The President, Secretary of Defense, Secretary of the Navy, a general officer in command, or a general courts-martial convening authority must also have promulgated the regulation before any portion of it becomes "punitive."

c. The DoD / DON / Marine Corps / Commands almost always delineate their punitive regulations, or the punitive portions of regulations, by stating this fact on the title page of the regulation and by indicating in the text that military personnel who violate the subject provision will be subject to disciplinary action under the UCMJ.

Section 4-2

Rights of Individuals Involved in IG Investigations

1. **Opportunity to Comment.**

a. Administrative due process in IG investigative inquiries and investigations afford a suspect or subject the opportunity to know and comment on unfavorable information that may result in adverse information included in the ROI / ROII. This administrative due process should not be confused with legal due process, which occurs during a criminal proceeding in which the accused has a right to face his accuser. The subject or suspect in an IG investigative inquiry or investigation does not have the right to know who made the allegation.

b. In an investigation or investigative inquiry, ensure that you afford the suspect or subject the opportunity to know and comment on the allegations made against him or her. At a minimum, if you develop substantiated allegations in an investigative inquiry that you will make a matter of IG record, you must inform subjects or suspects of the nature of the allegations and provide them the opportunity to comment. Individuals have the right to know the allegations against them and to tell their story during an IG investigative inquiry or investigation.

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

2. **Right to Counsel.**

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

b. At your discretion, lawyers may be present during witness or subject interviews. Experienced IGs, comfortable with the IG investigations process and with conducting interviews, may allow a lawyer to be present. It usually makes the interviewee more comfortable and cooperative. Remember that the lawyer's only function in an IG investigative inquiry or investigation is to advise the client. Do not allow the lawyer to answer questions for the interviewee or control your interview. You should explain these

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

3. **Right to Union Representation.**

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

b. The Civil Service Reform Act does not require an IG to advise an employee of the right to union representation before an interview. The act merely requires management to inform its employees annually of this right. This advice is frequently communicated through an installation's daily bulletin. However, some local union contracts have been negotiated wherein the management of an installation has agreed to provide notice before each interview. **Therefore, if you are not sure, consult with your legal advisor before interviewing Federal employees to ensure that you are not violating the terms of a local contract**. Additionally, your installation may have more than one collective bargaining agreement or union contract. Find out before your interview.

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

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

4. **Right of Individuals to Confidentiality.**

a. IGs always strive to provide confidentiality to protect privacy, maintain confidence in the IGP, and minimize the risk of reprisal. Confidentiality is a key component of the IGP because it encourages voluntary cooperation and willingness to present complaints for resolution. Protecting the identities of all persons involved from unnecessary disclosure as well as protecting the nature of their contact with the IG maintains confidentiality. However, as an IG, you must ensure that people who seek your help understand that while protecting confidentiality is a concern, you as the IG cannot guarantee it. Legal or policy requirements may result in the disclosure of the identities of individuals and the information they provide. The commander or his designated representative may also disclose this same information if necessary. IGs

also cannot guarantee confidentiality because the Freedom of Information Act (FOIA) allows members of the public to request government records for unofficial purposes. IGs should inform individuals of the provisions of the FOIA as it applies to the release of IG inquiries and investigations.

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

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

Section 4-3

Non-Rights of Individuals Involved in IG Investigations

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

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

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

3. **Tape Record or Take Notes.** In an investigative inquiry or investigation, individuals do not have the right to take notes during an interview or to record their testimony. Should an individual request to take notes or record the interview, stress the importance of confidentiality. Any notes taken during the interview become IG records that must remain with the IG.

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

Section 4-4

Duties of Individuals Involved in IG Investigations

1. **Military Service Members and Federal Employees.** Military Service members and DON Federal employees must cooperate in IG investigations and inquiries. Commanders and supervisors may order those who refuse to cooperate to do so. However, witnesses, suspects, and subjects may not be compelled to make incriminating statement or disclose privileged information. Before interviewing anyone from outside your organization, make sure you coordinate with the individual's commander or department supervisory chain if you have any doubts about the individual's obligation to cooperate. Do not order individuals to cooperate. To do so is to put yourself in an adversarial position with the individual whom you desire to interview. **Seek assistance from the individual's supervisor or commander and your legal advisor when necessary**.

2. **Non – Federal Civilians.**

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

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

c. Since non-federal civilians are not required to cooperate, you have limited recourse should they request to take notes, record interviews, or have friends present. As with military Service members, your best approach is to convince them of the need for confidentiality. As with military Service members and DON employees, you may offer non-federal civilians the opportunity to read their testimony while the case is ongoing or receive a copy of their testimony after the case is complete. Some IGs have convinced interviewees to allow them (the IGs) to hold an interviewee's tapes until the case was completed. If a non-federal civilian refuses to interview without taping or having a friend present, then you must decide whether the individual's testimony is crucial enough to warrant conducting the interview under those conditions. Even though non-federal civilians are not required to cooperate with you, it is a violation of Federal law under Title 18, US Code, Section 1001, for them knowingly to give you false testimony under oath.

3. **Department of the Navy Defense Contractor Witnesses.** DON Contractor personnel are considered to be civilians. However, they may have an obligation to cooperate with IG investigations and investigative inquires if the contract employing them with the Government requires them to cooperate. In these situations, contact your contracting office and work through the Contracting Officer's Representative (COR) to obtain witness cooperation. Do not reveal the allegations or provide any IG records to the COR.

4. The chart below summarizes rights and witness cooperation requirements for all IG investigations and investigative inquiries.

Status at Time of Interview	Role in Investigation	Subject to UCMJ	Required to Testify	Lawyer Present	Union Representation
Active Duty Military	Witness	Yes	Yes	No	NA
	Subject	Yes	Yes	No	NA
	Suspect	Yes	Yes (1)	Yes	NA
Reserve on any Official Status	Witness	Yes	Yes	No	NA
	Subject	Yes	Yes	No	NA
	Suspect	Yes	Yes (1)	Yes	NA
Reserve Not on Duty	Witness	No	No	No	NA
	Subject	No	No	No	NA
	Suspect	No	No	Yes (2)	NA
DON Federal Employees	Witness	No	Yes	No	Yes (3)
	Subject	No	Yes	No	Yes (3)
	Suspect	No	Yes (1)	Yes (2)	Yes (3)
Non-Federal Civilians, including Family members	Witness	No	No	No	No (3 & 4)
	Subject	No	No	No	No (3 & 4)
	Suspect	No	No	Yes (2)	No (3 & 4)
DON Contractor	Witness	No	Yes (5)	No	NA
	Subject	No	Yes (5)	No	NA
	Suspect	No	Yes (5)	Yes (2)	NA

Table 4-1
Interviewee Status, Rights, and Non-Rights

NOTES:

(1) A suspect may be required to testify but may not be compelled to incriminate him/herself.
(2) Must be civilian lawyer at own expense or as appointed by law.
(3) Only applicable if a collective-bargaining agreement covers the civilian employee's position. The employee does not have to be a member of a union.
(4) Normally, a Non-Federal civilian will not be either a subject or suspect in an IG investigation. Consult with your SJA.
(5) Check with Contracting Officer for applicable wording in contract requiring cooperation. Consult with your SJA.

Chapter 5

IG Fact Finding

Section 5-1 – Overview

Section 5-2 – Comparison of IG Fact-Finding Methodologies

Section 5-3 – Plan the Investigative Inquiry or Investigation

Section 5-1

Overview

As with all forms of intellectual endeavor, an IG investigative inquiry or investigation requires significant forethought in order to resolve the issues and allegations brought forward by the complainant. Rarely can an IG jump into an investigation without investing a significant amount of time and effort into planning. All investigations, even the simplest investigative inquiries, should proceed from a written plan. Planning will maximize the likelihood of successfully completing the investigation while concurrently minimizing the resources (time, materiel, and labor) consumed in the process.

Section 5-2

Comparison of IG Fact-Finding Methodologies

1. **Overview.** Investigative fact finding is the process of obtaining information and deriving facts throughout the conduct of an investigative inquiry or investigation. The process is broken down into a series of sequential and interrelated steps to gather and assess logically information pertaining to the issues and allegations presented for investigation.

2. Figure 5-1 below depicts the steps which maybe used in the IG investigative fact-finding process (within the seven-step IGAP). Refer to this chart throughout this section.

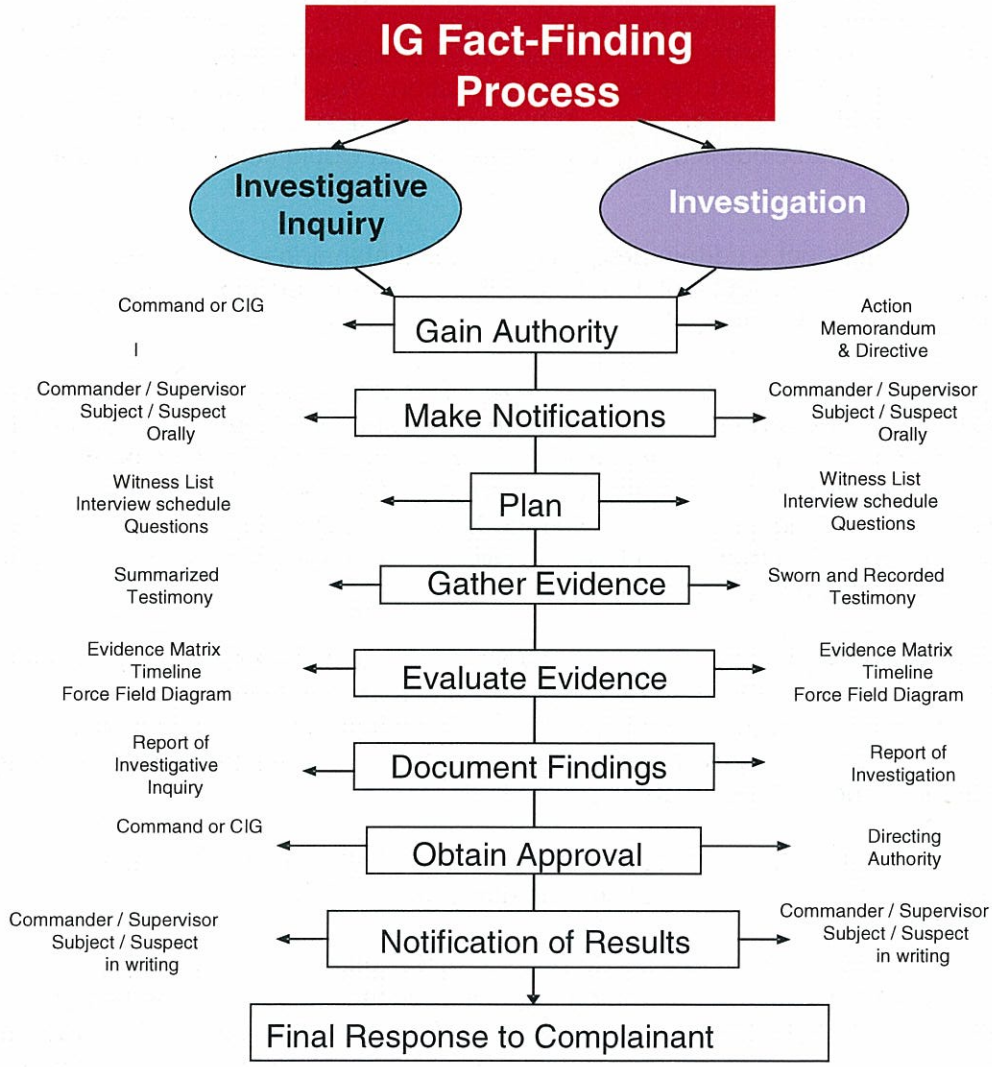

Figure 5-1
IG Fact-Finding Process

Section 5-3

Plan the Investigative Inquiry or Investigation

1. As in any military operation, planning is a critical element leading to the successful achievement of the objective. You formulate a plan of how you will obtain facts and information pertinent to the allegations you have received. The planning process for investigative inquiries and investigations is the same.

2. The planning process begins with your assessment of the facts you must gather to substantiate or refute the fact that a violation of a standard occurred as alleged. This assessment occurs through a careful examination of the standard violated and the essential elements of that standard (e.g., the elements of proof). Next, you must determine where you go to gather those facts. Generally, this step involves deciding whom you must interview (witnesses) to gather and corroborate those facts and the questions you must ask to elicit the required information. You then develop a logical sequence for conducting the interviews. At this point, you also assess what documentary or physical evidence might be available that would contribute to your investigation.

3. You must also conduct a certain amount of logistical planning – court-reporter availability, tape recorder with blank tapes, travel orders, hotel arrangements, rental car, airline tickets, interview location, etc.

4. A suggested format for a plan is shown below. ***The plan should include a list of the witnesses (also complainant, subjects, and suspects) in the order you want to interview them, where you will interview them, and for how long.*** List the witnesses and documents needed for each allegation separately. This technique will prevent you from unexpectedly coming up short on evidence for a particular allegation. Often, this information appears in the form of an Evidence Matrix. An example is shown at Figure 5-2. Items usually found in a good plan are:

a. **Background.** Keep a record of how the allegations were received, who has been informed of them or otherwise has knowledge of them, and who should be informed. This record may include a list of individuals, commands, or commanders and supervisors. This list will help when writing a final report. Experienced IGs have found it helpful to develop and maintain a chronology of events.

b. **Specific Allegations / Issues.** List the specific allegations you have developed to this point (from your Action Memorandum).

c. **Evidence Required.** In order to plan an investigative inquiry or investigation properly, you must have an understanding of the evidence required to establish the facts that will either substantiate or refute the allegation. Generally, the applicable standards regarding the conduct at issue will help one identify necessary facts. For example, if you are investigating allegations of adultery, you must establish that the suspect had wrongful sexual intercourse, that either the subject or the other party was married to someone else, and that the conduct was either prejudicial to good order or discipline or discreditable. Under the Manual for Courts-Martial, these items address the elements of proof for the standard.

5. You should also have a feel for the evidence you will realistically be able to gather in your case (as you see it at that point in time). For example, in the adultery case, documentary evidence might establish that one of the parties was married, but verbal statements would probably provide the bulk of the evidence regarding intercourse (and most might be circumstantial). It is not premature during planning to develop a sense of what your standard of proof in the case will be (how much evidence will you need to establish a preponderance of credible evidence).

6. **Develop a Witness List** (includes complainants, witnesses, subjects, and suspects). There are three areas on which you should focus: Whom are you going to interview? In what sequence are you going to conduct the interviews? What type of interview are you going to use?

a. **Whom are you going to interview?** Selecting whom you should interview can seem very difficult until you have had some practice. Plan to interview the minimum number of witnesses necessary to ascertain the facts in the case. Remember: IGs are always concerned with confidentiality. There is no set rule for establishing the minimum number required. The particular circumstance of each case determines the number of appropriate witnesses. Ultimately, investigators must apply their judgment to determine when they have reached a preponderance of evidence. Keep in mind that you want to verify all important facts and that you do not accept something as factual or true just because someone of a higher rank says it is so. Each fact must have at least one source such as testimony or documentation. You must always appreciate the effect of talking to someone about allegations against someone else, especially someone in the same unit (i.e., the effect on confidentially, unit cohesion, and morale). People often assume the worst when an IG is asking questions. Where possible, you may want to gather information from agencies outside the subject's or suspect's workplace. As an example, the local finance office may be able to give you information concerning whether an individual was on leave or temporary duty (TDY) for a certain period. This information may have less negative impact than going directly to the unit to find out. Where possible, use IG tech channels to get information. Often the complainant (if known) may be able to provide you names of witnesses, but do not limit yourself to what complainants provide. You will also need to develop your own witness list since the complainant is not likely to give you names of people who could provide another side of the story.

b. **In what sequence are you going to conduct your interviews?** You will normally interview the complainant first followed by any expert witnesses, the witnesses, and the subject or suspect last. Under some unusual circumstances, such as a vague or anonymous allegation, you might elect to interview the subject or suspect first.

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

7. **Additional Items.** Additional items that you must include in your plan are the elements of proof from the standard. Consult your SJA to ensure you have the correct focus and interpretation of the standard. Also, list those areas requiring discussion with

proponents or subject-matter experts. List the regulations and other publications necessary for the conduct of the investigation and make extracts for your report. Detail any other requirements such as travel arrangements and coordination required with external agencies. If you use an evidence matrix as an information-management tool, you can also use it as a planning tool to assist describing the information each witness or document may contribute to your investigation of the allegations. The Evidence Matrix is discussed in more detail later in this chapter.

8. **Schedule Witnesses.** Schedule and interview the minimum number of witnesses consistent with thoroughness (i.e. to reach a preponderance of evidence). This minimum number of witnesses will protect the integrity of your investigation. Additionally, ensure you interview all the witnesses provided by the complainant and the suspect / subject that have material evidence concerning the allegations. Consider these points when scheduling witnesses:

a. Provide the witness only with the information contained in the Directive. Avoid revealing the details of the allegations. Occasionally, you may need to provide a witness with additional information so that that person can prepare for the interview. For example, if you need a witness to bring documents related to a case to the interview, you will need to provide him or her enough information to identify the documents. Use caution. At times, you may be able to ask for several documents of the same type to protect the identity of the individuals involved in the investigation.

b. Protect the confidentiality of the witness and the confidentiality of others. Do not reveal the names of other witnesses, complainant, or subjects and suspects.

c. Follow the scheduling format except for answering administrative questions (like location and direction to interview location). During the scheduling call, the witness may begin to provide information concerning the case. Avoid this discussion until you are prepared to conduct the interview. However, on occasion you may decide to question a witness during the scheduling process to determine if that person is the correct witness. Again, you should be concerned about confidentiality. Be careful if a witness whom you believe to have information important to your case attempts to convince you otherwise. It is often difficult to judge over the telephone whether a witness is misleading you to avoid being involved.

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

e. As the investigating officer, you will benefit from personally making the scheduling calls rather than having someone else make them for you. You are the most knowledgeable person concerning the case and why the witness is important to the fact-finding process. Should a witness prove reluctant to participate, you are the most likely person to persuade him or her to cooperate. Do not attempt to compel (order) a witness (Service member or Federal employee) to participate. If a witness is refusing to cooperate, contact the witness's supervisor or commander. The witness's supervisor or commander should compel the individual to cooperate, not the IG. This approach will maintain your IG impartiality. Remember: regardless of whether a person is required to cooperate or not, willing cooperation will yield the greatest benefit. On occasion, other IGs in tech channels or members of the witness's chain of command can schedule the person for you. Ensure that you give them specific instructions concerning

confidentially, location, and time of the interview. If a witness is from another command, consider contacting that command's IG before you contact the witness or the witness's commander.

Investigative Inquiry and Investigation Plan Format Outline

MEMORANDUM FOR RECORD

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

1. Mission. (Information should be similar to that stipulated in the first paragraph of your investigation Directive.)

2. Facts bearing on mission.

a. Background and Allegations. (Information should be similar to that contained in the second paragraph of the Action Memorandum. However, the allegations should be specific enough to describe adequately the scope of the investigation. Note when the Directing Authority signed the Directive, and refer to any relevant correspondence to or from VIPs.)

b. Applicable Standards and Reference Publications. (List those applicable regulations / publications that apply to the allegation(s). For example, if the allegations pertained to procurement irregularities, the Federal Acquisition Regulation (FAR) would probably be a reference. Ensure the referenced regulation was in effect at the time of the alleged incident.)

c. Commands involved. (List the various commands that might be involved. For example, if the allegation pertained to an incident in a unit in Okinawa, Japan, the commands could include such organization as follows: III Marine Expeditionary Force (MEF), 3rd Marine Division (MARDIV); 1st Marine Aircraft Wing (MAW); 3rd Marine Logistics Group (MLG); Marine Corps Base Camp (MCB) Butler; and, possibly, Marine Corps Bases Japan.

d. Staff Agencies Having Knowledge of Case. (Include any staff agencies made aware of the allegation(s) and how they were informed. Identify any staff agency that may be a proponent for regulations or guidelines that could be related to the allegation(s).)

3. Evidence and Data Required.

a. Witnesses. (From information available to you, list the names of witnesses that you want to interview for each allegation. Remember: the number of witnesses and, possibly, the allegations within the scope of the directive may change. You may not need to question all witnesses about every allegation.)

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

(a) Witness #1

(b) ....

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

(a) Witness #1

(b) ....

b. Documents. (List documents and records you need to substantiate or refute the allegation. These documents and records may include SOPs, training records, contracts, and more.)

c. Physical evidence. (List any required physical evidence).

4. Administrative Matters.

a. Itinerary: (When, where, and how you plan to conduct the investigation. The list should include: courtesy calls, transportation requirements, lodging requirements, interview locations, and witness interview sequence.)

b. Notifications. (Identify commanders and Subject(s) / Suspect(s) who should be notified IAW this guide and the Directing Authority's guidance.)

(1) Command(s).

(2) Subject(s) / suspect(s).

c. Travel Requirements. (TDY orders, passports, car rentals.)

List of Enclosures
that may be relevant

INVESTIGATOR'S SIGNATURE

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Witness Notification Format

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

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

*NOTE: Use the general wording from the Directive. If you need to be more specific, use the wording from the Action Memorandum, but don't tell the witness more than he or she needs to know!

2. ( ) We do not suspect you of wrongdoing but believe you have information relevant to the investigation and need to interview you as a witness. We would like to interview you at (time) _____ on (date) _____ at (location) _____. The investigators are _____ and _____. Our telephone number is _____.

3. ( ) _____ has been notified of the investigation. (Can omit for civilians.)

4. ( ) We are required to protect the confidentiality of IG investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone without permission of the investigating officers except your attorney, if you choose to consult one.

5. ( ) _____ was (telephonically / personally) notified of the above at _____ (time) on _____ (date).

_____
(Signature of Notifying Official)

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9. **Planning Tools.** Aside from the use of the Investigation Plan format, there are several tools that can aid you in both planning and resolving the investigation. A matrix can be used to help organize your planning efforts. You can use a Force-Field diagram to assist you in concluding your findings. The Force-Field Diagram is explained in detail in Sections 6-5 and 9-3. Shown below are examples of both tools.

Investigation Matrix

Witness	Allegation #1	Allegation #2	Allegation #3	Other	Due Outs
Ms. Smith (Complainant)	X	X	X	How did she become aware of the allegations? W5H2	
Capt Jones (CO, Co A)	X	~	_		
Maj Brown (Asst G-1)	_	X	X		
Documents	Hotel Receipts Vehicle Dispatch Log	DD Form 4072 for COL Andrews	Any Government Contracts?		
Col Andrews (Suspect)	X	X	X		

Timeline — Complaint Received

X – Primary witness – Discuss if knowledgeable ~ Do not discuss

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Figure 5-2
Sample Investigation Matrix

Force-Field Diagram

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

Substantiate	Not Substantiate
• Enter evidence here that would indicate the subject / suspect did perform the alleged impropriety • Summarize the evidence and indicate its category and level (see Chapter 6)	• Enter evidence here that would indicate the subject / suspect did not perform the alleged impropriety • Summarize the evidence and indicate it's category and level (see Chapter 6)

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

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Figure 5-3
Sample Force-Field Diagram

Chapter 6

Evidence

Section 6-1 – Overview

Section 6-2 – Categories of Evidence

Section 6-3 – Levels of Evidence

Section 6-4 – Facts

Section 6-5 – Evaluating Evidence

Section 6-6 – Military Rules of Evidence

Section 6-1

Overview

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

Section 6-2

Categories of Evidence

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

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

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

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

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

b. Most physical evidence will not be included with the ROI / ROII because of size, perishability, monetary value, or other reasons. Photograph, sketch, or describe these objects in a memorandum for record (MFR) that contains the information and attach it as an exhibit to the ROI / ROII.

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

a. **Testimony.**

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

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

b. **Statements.**

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

(2) If you are unable to obtain an oath, you must evaluate whether administering the oath is necessary or appropriate. Some considerations are the nature of the allegations or issues and the expected evidence the witness might provide. Swearing the witness adds formality to the interview and may enhance the accuracy of the information presented by the interviewee. The oath emphasizes to the witness that he or she must be truthful. For military Service members, a false official statement (sworn or not sworn) is a criminal offense. For Federal employees and civilians, false sworn statements are a violation of Federal law. When evaluating evidence, sworn statements may be given more weight than unsworn statements.

(3) Individuals may present written statements to you. Examples include e-mails and written material dated and signed by the person making the statement. In certain situations this form of evidence is acceptable for inclusion in an ROI / ROII. Examples

include statements from subject-matter experts that are used to establish standards or accepted SOP practices that have bearing on the allegation. But be warned – your best form of oral evidence is sworn and recorded testimony. Always strive to obtain the highest quality of oral evidence.

c. **Personal Observation.**

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

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

Section 6-3

Levels of Evidence

1. **Overview.** Evidence generally falls into one of four types: direct, circumstantial, hearsay, and opinion. A credibility assessment is applied to each category of evidence to establish its relative merit. Together, these characterizations enable the IG to weigh the evidence collected and reach a conclusion in the investigation.

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

3. **Circumstantial Evidence.** Circumstantial evidence tends to prove or disprove facts by inference. The statement, "I saw the subject's car parked in front of the headquarters on day x at time y," without any other corroborating evidence, is circumstantial evidence that the subject was inside the headquarters at that time. Circumstantial evidence is given less weight than direct evidence and is often used when there is little or no direct evidence. It may not have the weight of direct evidence, but it is still valid evidence. It can be used with direct evidence to establish a fact. Direct evidence seldom establishes some issues such as command climate and unit morale. Frequently, circumstantial evidence alone establishes them.

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

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

Section 6-4

Facts

IG investigations and investigative inquiries constitute fact-finding. Facts include events that are known to have happened and things that are known to be true. Some matters are easily established as facts while others are difficult. In solving a disputed issue, use judgment, common sense, and your own experience to weigh the evidence, consider its probability, and base your conclusions on what is the most credible. A general guide in establishing facts is to obtain the testimony of two or more sworn, competent witnesses who independently agree on a single point. A fact is also established by a combination of testimony, documentary evidence, and physical evidence that all agree on a single point.

Section 6-5

Evaluating Evidence

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

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

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

4. The rules of evidence that apply in a court of law do not bind the IG; in other words, an IG does not have to prove an allegation beyond a reasonable doubt. But the process of evaluating evidence is not easy. Few cases are black and white; most are gray. Thoroughness, objectivity, and good judgment are critical aspects of an IG's evaluation process in every investigation or investigative inquiry.

5. **Force-Field Diagram. A force-field diagram** (shown below) is an invaluable tool for graphically depicting the assigned weight of evidence, determining facts, and assessing the preponderance of credible evidence in any investigation or investigative inquiry.

Begin by first writing your allegation and elements of proof at the top of the chart. Next, divide your evidence into two groups – (1) evidence that tends to support substantiating the allegation or (2) not substantiating the allegation and write it on the chart. Indicate the level of each piece of evidence (direct, circumstantial, hearsay, opinion). Similarly, make a notation if un-sworn testimony is provided (i.e. statement) versus sworn testimony. Look for multiple citations in the evidence to establish any facts, and enter the facts as a separate line in either or both of the columns. The IG investigator then weighs the resulting columns of evidence to determine a preponderance of evidence. Three entries of direct evidence weigh greater than three entries of hearsay evidence. Finally, assess the evidence as a whole and make a determination of substantiated or not substantiated.

Force-Field Diagram

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

Substantiate	Not Substantiate
(O) Maj Jones stated Col Smith was having an affair. (D) Col Smith (DD 1172) was married to Diane Smith as of 4 June. (C) Mrs. Smith, wife of Col Smith, provided 7 love letters from unknown woman addressed to Col Smith expressing love for him. (H/S) Capt Baker heard rumors that Col Smith was having an affair with Ms Anderson. Lost respect for Col Smith. (D) Ms Anderson stated she had sexual intercourse with Col Smith on 4 January 20xx. **Fact - Col Anderson had wrongful sexual intercourse and was married. His conduct was detrimental to good order and discipline.**	(O) Col Smith stated his relationship with Ms Anderson was "Platonic." (D) Col Smith refused to comment when asked about having sexual intercourse with Ms Anderson on 4 January 20xx.
Key - (O) Opinion; (H/S) Hearsay; (C) Circumstantial; (D) Direct	

Figure -6-1
Sample Force-Field Diagram

Section 6-6

Military Rules of Evidence

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

Chapter 7

Interviews

Section 7-1 – Overview

Section 7-2 – Preparation for Interviews

Section 7-3 – Interview Types and Modes

Section 7-4 – Witness Availability and Cooperation

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Section 7-6 – Status of Individuals During Interviews

Section 7-7 – Interview Sequence and Conduct

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Section 7-9 – Break Procedures

Section 7-1

Overview

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

Section 7-2

Preparation for Interviews

1. **Overview.** As with most activities, interview preparation is vital to success. Interview preparation falls into three areas: witness scheduling, administrative considerations, and substantive issues. Determining the sequence in which you will conduct interviews is a key step in the planning process. It is strongly recommended that after the completion of the interview, to have someone to hand-off witnesses, subjects and/or suspects. This hand-off may prevent irrational or unwanted behaviors.

a. **Witness Scheduling.** Experience has shown that the best sequence is to interview the complainant first; then the subject-matter experts followed by other witnesses; and, finally, suspects or subjects. Naturally, the sequence of interviews will vary based on the nature of the allegations and on the availability of the witnesses, subjects, or suspects. Many inexperienced investigators are inclined to resolve cases quickly by talking to subjects or suspects first. Avoid that pitfall by following the recommended sequence that will:

- Give you information needed to ask the right questions of the subject or suspect.
- Enhance truth telling (i.e., people are more likely to be truthful if they know you have done your homework).
- Enable you to challenge immediately statements that are inconsistent with other evidence or that appear untrue.
- Allow you to advise subjects or suspects of all unfavorable information against them and allows them an opportunity to comment. You may have more unfavorable information at the end of an investigation than at the beginning. Remember: you must allow the subject or suspect to comment on all unfavorable information that you intend to use in your report!
- Decrease the likelihood for a recall interview. An interview conducted too early in the investigative inquiry process increases the likelihood of the need for a recall interview and may unnecessarily consume more of your time.
- Protect the legal rights of all persons involved -- witnesses, subjects, and suspects. For example, as you become more knowledgeable about the case, you are less likely to interview someone as a witness when you should have treated that person as a subject or suspect.

You should also consider the order in which you will interview similar witnesses. Frequently, investigators will group witnesses by the evidence the IG expects the witness to provide. For example, the IG might interview sequentially all witnesses who observed a specific event.

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

- You have anonymous allegations and cannot readily identify any witnesses.

- You have vague or anonymous allegations that the subject may be able to clarify. The subject or suspect may provide you the names of witnesses.

- The subject or suspect has information not readily available elsewhere that you need early in the inquiry.

- The subject or suspect is about to retire or depart via permanent change of station (PCS) to a distant location and flagging is not appropriate.

- You believe this is one of those rare occasions when the need for speed justifies the risk.

c. **Administrative Preparation.** Ensure that you have the proper administrative details completed prior to the interview. These details include selecting the right interview guide from Appendix H and filling in the blank spaces with information from the Action Memorandum and Directive. If you are going to request a social security number, have a copy of the Privacy Act Statement available. If taping, set up and test your tape recorders; have extra batteries and a sufficient number of blank tapes on hand. Use AC power whenever possible; use batteries only as a back-up power source. Digital recorders may also be used in place of tape recorders. (As a matter of routine, once you complete a case, erase your tapes, remove the old labels, and affix new blank labels.)

(1) **Time Factors.** Another key planning consideration is the time it will take to conduct each interview. There are no hard and fast rules -- some interviews move along quickly, others become lengthy. At a minimum, you should plan time for the following:

(a) Rapport Building. Set aside a minute or two to put the witness at ease before you begin your interview.

(b) Pre-tape or Introduction. Plan to spend 5-15 minutes covering the points of your pre-tape. More time is required if you must execute a rights warning certificate.

(c) Questions and Answers. Always consider the possibility of unexpected issues or allegations arising during the interviews and allow a few extra minutes.

(d) Protect Confidentiality. Provide adequate time to allow one witness to leave and another to arrive without violating confidentiality. As a contingency, you should plan on what to do when you have a witness in your interview room and another waiting outside to be interviewed. Many IGs take a break and leave their interviewee in the interview room while they move the person waiting outside to another location.

(e) Administration. Plan time for you and your partner to compare notes, prepare for the next interview, and take care of personal needs. Experience has shown that an interview that turns out being shorter than planned is far better than an interview that takes more time than scheduled.

(2) **Location Considerations.** You can conduct interviews almost anywhere. The major consideration in choosing a location is privacy. Some locations, however, offer other advantages as well.

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

(b) **Witness's Workplace.** Another choice is to conduct the interview at the suspect's, subject's, or witness's office. The advantages are that the interviewee may be more at ease, more willing to cooperate, and more willing to share information. Often, your willingness to come to the witness's location for the interview can help establish rapport with a reluctant or defensive witness. The witness may also have ready access to information, records, or documents. The disadvantages are that many people at that office may find out that you are there, and rumors could result. Additionally, you have little control over privacy and probably cannot prevent unwanted interruptions. Subjects or suspects may want you to conduct the interview in their office because they feel more in control. If you have interviewed the proper witnesses, gathered the facts, and prepared for the interview, it will make little difference.

(c) **Hotel or Motel.** There will be times when you may need to travel, and your interviews may have to be conducted at a motel or hotel. These interviews can be effective if you plan ahead. When possible, arrange for a neutral interview location (have your orders cut authorizing you to rent a conference room, extra room, or business suite). When notifying someone that you will interview him or her at a motel, set up an initial meeting in a public place such as the lobby. There you can properly identify yourself and make the interviewee more at ease. While you are not prohibited from interviewing one-on-one, even if the interviewee is of the opposite sex, having a partner while interviewing may make the interviewee more comfortable and provide everyone involved with a measure of protection from possible allegations of misconduct.

(d) **Other Installations.** If you must travel to another installation, you can request that the local IG provide you an interview room. You need to ensure that the local IG is aware of your needs and requirements. Additionally, consider asking the local IG to make witness notifications for you. The local IG is known in the command, knows the local environment, and can possibly enhance the confidentiality of your inquiry or investigation. Consider using a Reserve Center as an interview location if there is no installation nearby. Coordinate with the local IG.

(e) **Witness's Home.** At times you may have to interview a witness (usually a civilian) at his or her home. This situation can be undesirable because you lack control. Interviews conducted in a home are fraught with distractions. Additionally, the physical characteristics of the site may not be good. In all cases you want your interview location to be private enough to ensure that you can protect confidentially of witnesses and preclude unnecessary disclosure of the details of the case.

d. **Substantive Issues.** Prepare an interrogatory (list of questions) for the interview. The process of building an interrogatory begins with the standards / elements of proof and your assessment of the evidence you believe the witness possesses. You then write questions to gather that evidence. War-game possible answers the interviewee might provide. The interrogatory provides you a road map for the interview and helps ensure that you do not forget to ask questions on all key points. If you plan to have the interviewee comment on documentary evidence, ensure that you have the documents at hand in the order that you plan to introduce them during the interview. (See Interviewing Techniques in Chapter 8 in this guide for additional information.)

2. **Pre-Interview Rehearsal**. You should also consider rehearsals during your interview preparation. Set up all of your required materials in the location you plan to use for the interview. Ask for other IGs in your office to role-play the part of the witness you plan to interview. Test your recorders and telephone (if required) for sound quality while practicing your read-in and read-out procedures. Ask your role-playing witness the draft questions and refine your interrogatory. Good IG interviews don't just happen through wishful thinking. Remember the old adage -- practice, practice, practice!

Section 7-3

Interview Types and Modes

1. **Interview Types.** There are three types of IG interviews: Witness Interviews, Subject Interviews, and Suspect Interviews. Each interview type has its own unique set of considerations for planning and conduct and are addressed in this section and in Chapter 8.

2. **Interview Modes.**

a. **Face-to-Face.** This is the most efficient method of communication and is the ideal method for conducting IG interviews for both investigative inquiries and investigations. Face-to-face interviewing allows you to observe the non-verbal reactions of the individual, enhancing your ability to establish and maintain rapport and ask effective follow-up questions. You should always attempt to interview your key witnesses and the subject or suspect face to face. Chapter 8 describes the non-verbal aspects of face-to-face interviews.

b. **Telephonic Interviews.**

(1) You may obtain both a statement and testimony over the telephone. A telephonic interview is an excellent time and money-saving method for interviewing witnesses who reside or work at a distant location. While you cannot observe the witness's non-verbal communications, you can often gain insights from the witness's inflection or tone of voice.

(2) Normally, you must contact witnesses in advance to schedule telephonic interviews. Many witnesses are not prepared to devote the required time to you when you first contact them. Also, you must be concerned about confidentiality. If you call them at work, they may not have the desired degree of privacy in their office. Always ask a telephone interview witness if he or she is in a location where he or she can speak freely and privately before conducting the interview. You should always strive to interview the witness in a location that provides a confidential setting in which the witness feels free to speak openly during the interview.

(3) Consider having a local IG at the witness's location and set a time for the interview. This approach may help put the witness at ease and establish your identity. The local IG may also provide a private location in his or her office for the witness to speak with you during the telephonic interview.

(4) If you are conducting a formal interview, just prior to calling, have the IG at the witness's location conduct a read-in on tape using the appropriate interview guide from Appendix H. Once the call is placed, the IG who administered the read-in script can verify the witness's identification and the fact that the witness has been properly sworn and advised of his or her rights. If you do not have an IG present at the witness's location, you may administer the oath and read-in over the telephone. Close the interview using the script in the appropriate interview guide (witness / subject / suspect). Either IG can conduct the read-out.

(5) In some cases, you may want the local IG at the witness's location to remain in the room or even on the telephone with the witness. The IG can later provide you feedback on the non-verbal reactions of the witness to your questions. In other sensitive cases, you may want the IG to give the witness complete privacy for the interview.

(6) A detailed list of questions prepared in advance is essential for a successful telephone interview. Try to anticipate the witness's answers and have follow-on questions prepared. It helps to have another IG participate in the interview using an extension telephone. Make sure you inform the witness of all parties on the telephone at your location.

(7) If you record a telephonic interview, you must inform all parties that you are recording the call. Taping telephone conversations without the knowledge of all parties can violate Federal and / or State law. You can purchase simple devices through the supply system that allow your tape recorder to adapt to a telephone. You may also use a speaker telephone if available. This technology allows you to record the conversation and aids in the process when another IG is present. You are not required to ask whether someone consents to a recorded telephone interview. If the individual seems uncomfortable with the telephonic interview process, regardless of whether that person is required to cooperate, you have a problem you must overcome. When recording a telephonic interview using a speaker telephone, ensure the microphone is not voice-activated. Voice-activated microphones will cause the first one or two words in a sentence not to be recorded, which could change the entire meaning of someone's testimony.

c. **Interviews by Others.** In some cases you may coordinate via tech channels for another IG to interview witnesses for you. You must provide the interrogatories and enough background information so that the IG can conduct informed interviews. It is helpful to provide the IG with anticipated answers that you might expect from each witness. Also provide the IG a copy of your Directive as well as copies of any documentary evidence he or she may need during the interview. After the interviews are completed, the assisting IG sends you the tapes or copies of the transcripts. After you have acknowledged receipt of the testimony, the assisting IG destroys all file material.

Section 7-4

Witness Availability and Cooperation

1. **Department of the Navy (DON) Witnesses**. DON personnel assigned to Marine Corps commands are required to cooperate with IGs. If you have a witness who is reluctant to cooperate in either an investigation or an investigative inquiry, the best course of action is to persuade that person that cooperation is in his or her (and the organization's) best interest. If unsuccessful, you should seek the assistance of the witness's commander or immediate supervisor, who can order or direct the individual to cooperate. Do not order or direct the individual yourself as it could cause you to lose your IG impartiality.

2. **Witnesses from other Services.** It is not uncommon for Navy military personnel to be assigned to Marine Corps units or to be members of tenant commands located on Marine Corps Installations. Accordingly, it is not uncommon for IGs to interview Navy personnel. When Marine Corps organizations are assigned to Joint organizations, you may be required to interview witnesses from other branches of the Armed Forces.

3. **Non-Federal Civilians.** You cannot compel civilians to cooperate with you. You have no authority (to subpoena) over Non-Federal civilian witnesses. Contact your Legal Advisor for advice in situations regarding Non-Federal civilian witness cooperation.

4. **Department of the Navy Contractor Witnesses.** DON Contractor personnel are considered to be civilians. However, they may have an obligation to cooperate with IG investigations and investigative inquires if the contract employing them with the Government requires them to cooperate. In these situations, contact your contracting office and work through the Contracting Officer's Representative (COR) to obtain witness cooperation. Do not reveal the allegations or provide any IG records to the COR.

5. **Control of Witnesses.** It is difficult to conduct an investigation if the witnesses talk to each other about the case. Ensure you inform each witness of the requirement not to reveal to anyone the questions or topics discussed during the interview. Appendix A details specific language you must use to enhance IG confidentiality during interviews.

Section 7-5

Other Participants in Interviews

1. **Court Reporters.** If a court reporter not assigned to your IG office is used to record testimony, you must instruct the reporter on his duties and responsibilities. Caution the reporter about the privileged nature of the investigation. Provide instruction for taking the testimony, and direct the reporter to make a verbatim record of the testimony. Have the court reporter set up the equipment neatly but inconspicuously. The court reporter should test any recording devices before you begin interviewing. Require the reporter to save notes and give them to you with the verbatim transcripts.

2. **Interpreters.** If an interpreter is required, caution him on the privileged nature of the investigation.

3. **Attorneys.**

a. Suspects have a right to have an attorney present during their interview. You may choose to allow witnesses or subjects who request the presence of a lawyer during an interview to do so; however, they have no right to demand the presence of a lawyer. Remember: the purpose of a lawyer in an IG interview is only to advise the witness, subject, or suspect. You must caution a lawyer from answering questions for the suspect or to advise you on how to conduct the interview. We do not allow anyone other than transcribers to record or take notes during IG interviews. If you encounter difficulties with an attorney during an interview, take a break and contact SJA for advice. It is always best to explain the ground rules to both the suspect and the attorney during the pre-tape. This approach often precludes problems later during the interview.

b. If a witness or subject demands his right to have a lawyer present during the interview, what should you do? Explain that a IG interview is not a court of law and the proceedings are administrative in nature. Additionally, they do not have a right to have a lawyer present because they are not a suspect and do not have criminal allegations against them. You may allow the individual to have a lawyer present during the interview. Should a witness or subject request to see a lawyer during an interview, it is again your choice. In most cases it is best to allow them to do so. Not allowing them to do so might make them defensive and reluctant to answer questions.

4. **Friends.** Persons you interview may request to have friends present. No one has a right to have a friend present. If you choose to allow a friend to be present, you must advise the friend about IG interview procedures. The friend is there for the moral support of the witness only and must remain silent. Inform the friend of confidentiality, and ask that he or she not reveal any information discussed during the interview.

5. **Union Representatives.** Some Federal employees may have the right to have a union representative from your installation present during their interviews. Others may request a union representative even if it is not their right if they are considered a member of the collective-bargaining agreement established between the union and the government. It is your responsibility to control a union representative at your interview whether that person is there by right or with your permission. In most cases, the role of the union representative is to observe and advise the witness. Union representatives do

have the right to comment on the record but may not speak for their represented employee. Check with SJA regarding the collective-bargaining agreement at your installation, post, camp, or base.

Section 7-6

Status of Individuals During Interviews

Table 7-1 below summarizes the status, rights, non-rights, and interview guide formats to use during IG interviews.

Military Status at the Time of Interview	Role in Investigation	Subject to UCMJ	Required to Testify	Lawyer Present	Union Representation	Version of Read-In / Out (page)
Active Duty Military	Witness Subject Suspect	Yes Yes Yes	Yes Yes Yes (1)	No No Yes	NA NA NA	A-7 A-12 A-17
Reserve on any Official Status	Witness Subject Suspect	Yes Yes Yes	Yes Yes Yes (1)	No No Yes	NA NA NA	A-7 A-12 A-17
Reserve Not on Duty	Witness Subject Suspect	No No No	No No No	No No Yes (2)	NA NA NA	A-7 A-12 A-17
DON Federal Employees	Witness Subject Suspect	No No No	Yes Yes Yes (1)	No No Yes (2)	Yes (3) Yes (3) Yes (3)	A-7 A-12 A-17
Non-Federal Civilians, including Family Members	Witness Subject (5) Suspect (5)	No No No	No No No	No No Yes (2)	No (3 & 4) No (3 & 4) No (3 & 4)	A-7 A-12 A-17
DON Contractors	Witness Subject Suspect	No No No	Yes (5) Yes (5) Yes (5)	No No Yes (2)	NA NA NA	A-7 A-12 A-17

Table 7-1
Status of Individuals During Interviews

NOTES:

(1) A suspect may be required to testify but may not be compelled to incriminate him/herself.

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

(3) Only applicable if a collective bargaining agreement covers the DON Federal employee's position. The employee does not have to be a member of the union.

(4) Normally a Non-Federal Civilian will not be either a subject or a suspect in an IG investigation. Consult with your SJA.

(5) Check with Contracting Officer for applicable wording in contract requiring cooperation. Consult with your SJA.

Section 7-7

Interview Sequence and Conduct

1. Depending on the nature of the allegations, sensitivity of the case, and location of witnesses, your interview may be anything from a very brief, informal telephone call (documented in a MFR summary) to a formal, recorded session lasting several hours.

a. **Investigative Inquiry versus Investigation.** Most of your interviews in an investigative inquiry will be informal. In an investigative inquiry, formal, recorded interviews are not the rule; but, in certain situations, they may be the best way to proceed. Generally, the more serious the issue, the more formality is appropriate. Sworn and recorded interviews are also useful in situations when you have conflicting evidence from different sources or when the allegations and issues are complicated. The sworn verbatim transcript will provide an accurate record of what was said. During investigations IGs take sworn testimony. There are circumstances, however, when sworn, tape-recorded testimonies are not required such as interviews with reluctant civilian witnesses or with subject-matter experts.

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

2. **Pre-Tape Concept.** The pre-tape briefing shown below is an informal briefing given by you to the interviewee and serves several purposes. It familiarizes the witness with the interview process and helps to put him or her at ease (most witnesses have never been involved in an investigation or investigative inquiry). It provides you an opportunity to establish a dialogue with the witness. A skillful interviewer uses the pre-tape briefing to assess demeanor and to condition the witness to respond to questions. Most importantly, the pre-tape briefly explains key information, outlines administrative details, and answers any questions the interviewee may have concerning the interview process off tape, thus saving transcription time and expense. The pre-tape briefing includes:

- Advising the witness of the Privacy Act. (Required when you ask for personal identifying information such as the witness's social security number, home address, or home telephone number.)

- Advising the witness of the FOIA and that his testimony may be requested for unofficial purposes.

- Emphasizing confidentiality but not guaranteeing it. Witnesses must understand that their testimony can be used for official purposes.

- Advising suspects of their rights.

3. **Pre-tape Briefing Outline.** Use the pre-tape outline as a guide, become familiar with the contents, and brief the witness in your own words. Ensure that you can explain the reasons for each item. This briefing comes easily with experience and provides you

the opportunity to establish rapport with the witness and condition him or her to respond to your questions. The following paragraphs amplify the outline contained below.

a. Introduce yourself and show your credentials. Your credentials include a Letter of Identification and your ID card. An example of an IG Letter of Identification is at the end of this section. Many IGs reduce this letter to ID card size and laminate it.

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

c. Explain your role as a confidential fact-finder and that both "hearsay" and "opinion" evidence are acceptable in testimony. You may have to define those terms for the person whom you are interviewing.

d. Explain how the IG System protects the confidentiality of the witness but that law or regulation may in some instances result in the release of the testimony. For example, a court may order the release of an IG record, or the commander may want to use the case file for adverse action that would result in the release of the testimony to the suspect and the chain of command.

e. State that you will conduct the interview while the witness is under oath or affirmation and that you will record the session. Do not ask the witness whether he or she wants to be recorded or take the oath. If the witness raises the question, explain the importance of taking sworn, recorded testimony.

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

g. Explain that you will ask questions and give the witness time to respond.

h. Explain that at the end of the interview, you will again read from a prepared script, and you will give the witness an opportunity to present additional material that pertains to the investigation.

i. Tell the witness that because the interview is recorded, all responses must be verbal; not to speak while anyone else is speaking; and to avoid actions such as tapping on the table, which might obscure words in the recording.

j. Caution the witness to discuss classified information only if necessary and to identify any classified information given. Instruct the witness to ask you to turn off the tape recorder prior to discussing classified information so that you can determine whether the information is necessary to the case and for the transcript. If any portion of the tape contains classified information, then the tape must be classified. Likewise, if you use any classified information in your report, the report also must be classified and protected as appropriate.

k. Explain that the final product of the investigation will be a report to the directing authority.

l. Explain that FOIA allows members of the public (anyone) to request any government record. These requests include IG records such as the transcript of the interview or the report of this investigation. Explain that IG records (testimony and any information extracted from testimony and included in the ROI / ROII) can be protected from a FOIA release if the witness wants it protected. Explain that at the end of the interview, as part of the Read-out script, you will ask the witness whether or not he or she consents to release. A "yes" will mean the witness consents to release and a "no" means they do not consent to release. Should there be such a request, you will forward the entire record to CIG because the command is the lowest level release authority for IG records for unofficial purposes (FOIA requests are unofficial). You should explain that while IG records are protected from unnecessary release, the records could be used for official purposes as necessary throughout the Federal government.

m. Provide the witness a copy of the Privacy Act Statement summary (attached at the end of this section) and allow the witness to read it. Ask if the witness has any questions. This procedure will save time after you start the interview. If there are questions, tell the witness that the purpose of providing the summary is to explain our authority to request personal information and that the release of his or her social security number is voluntary. This statement is not a consent to release to a third party and does not have to be signed. You will refer to it in the Read-in.

n. Have the witness complete the applicable information on a Testimony Information Sheet (header sheet) (attached below). Explain that the header sheet is designed to assist whomever does the transcribing. During the interview, record correct spellings of proper names and acronyms on this sheet. The person transcribing often has difficulty with those items. After the interview, fold the header sheet and secure it around the interview tapes with a rubber band. This technique organizes your tapes and ensures the transcription is not attributed to the wrong witness's testimony.

o. Explain that you can turn off the recording devices and discuss points off tape but that everything said is on the record, and you may use it in the investigation even if the tape recorder is off. Explain that you can turn the tape recorders off for any breaks as required, but anything said off tape is still on the record, and you may introduce it later on tape.

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

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

r. If you are interviewing a <u>suspect</u>, execute the Rights Warning Procedure / Waiver Certificate during the Pre-tape briefing. You will refer to it during the Read-in. If possible, ensure your Legal Advisor reviews it for legal correctness. (See also Section 7-8.)

(1) Use the Rights Warning Procedure / Waiver Certificate to advise suspects and witnesses who incriminate themselves of their rights. Consult your SJA concerning its proper use. The general procedures are to have the suspect read the front side, Part I, which you will have completed in advance. Then read the backside, Part II, aloud

while the suspect reads a copy. Ask the suspect the four waiver questions. If the suspect chooses to waive his rights, have the suspect sign the waiver in Section B. You must also sign the appropriate block in Section B. Ensure that the name of any witness of the waiver's execution appears in the appropriate block in Section B.

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

4. **Read-in Script.** The Read-in is a formal script used to begin the interview. Appendix H contains initial and recall interview guides for witnesses, subjects, and suspects. Before an interview, select the correct interview guide and fill in the blank spaces with the correct personal data from the investigation's Action Memorandum and Directive. If you are conducting an investigative inquiry and have no Action Memorandum or Directive, fill in the allegations about which you are inquiring. During the interview, complete the Pre-tape briefing, turn on the tape recorder, and read the Read-in script verbatim. This technique ensures -- as a matter of record -- that you fully and correctly advised the witness, subject, or suspect of the process and his or her rights. The Read-in and Read-out scripts were carefully prepared to ensure that they are technically correct. Do not paraphrase the material in them. The only modifications you should make are if an individual advises you that he will neither swear nor affirm (you indicate that the testimony is not sworn) or if you are conducting a recall interview and the previous testimony was not sworn (add the oath to the recall Read-in).

5. **Questioning.** The questions are the meat of an interview. During preparation, develop an interrogatory (a set of questions) to elicit the anticipated evidence from the witness. Once the interview begins, be flexible. You may have to alter the questions or the order in which you ask them based upon the topics introduced by the witness, the mood of the witness, and variances in the information actually presented. A detailed list of questions is essential for a good interview. Try to anticipate the witness's answers and have follow-on questions prepared. It helps to have another IG participate in the interview. Your partner should ensure the witness answers the questions clearly and completely. You must be prepared to ask difficult or embarrassing questions in a calm, forthright, and professional manner. The elements of proof from your standards will guide your question development. When interviewing a subject or suspect, you must ask questions that allow the subject or suspect to comment on the allegations and all adverse information that will appear in the report -- even if only to deny the allegations.

6. **Read-out Script.** The Read-out is a formal script that closes the interview. Read-outs follow Read-ins in the interview guides at Appendix H. A key portion of the Read-out is advising the witness of the FOIA and having that person respond "yes" or "no" on tape to indicate whether or not he or she consents to release of his or her testimony. Another key item is the admonition to the witness regarding confidentiality.

7. **Statements**. Informal interviews consist of three phases: an introduction, questioning, and a closing.

a. **Introduction**. The introduction is very similar to the Pre-tape briefing for taking testimony. In fact, you may wish to use all or part of the outline at Appendix H to guide your introduction when obtaining a statement. Using the standard outline helps to ensure that each witness gets the same information, that you cover all essential topics, and that your presentation is smooth and confident. At a minimum, you should discuss the investigation / investigative inquiry process, the IG role, Privacy Act, FOIA, and rights warning (if required).

b. **Questions.** There is no difference between questioning when taking a statement and questioning when taking testimony. The evidence that you expect to gather affects the questions you draft in your interrogatory. The information you receive and the demeanor of the witness affects how you actually ask the questions. These factors are independent of the type of interview you conduct. Remember: both are equally as thorough.

c. **Closing.** Once you complete your questioning, you must close out the interview. You should close out with some type of statement that allows the individual to know what to expect. Be candid. If you don't think you will ever contact the witness again, say so. If you sense that the witness fears retribution for cooperating with the IG, tell the witness to contact you or your office if he or she becomes the target of reprisal (IGs would treat that situation like any allegation we receive). When conducting an interview, do not speculate on the outcome of a case or commit yourself to a milestone for its completion. Ask the witness whether he consents to release his testimony in response to unofficial requests under the FOIA (see the READ-OUT portion of the investigations interview guide.). If you do not ask the question, and there is a request for the record, the information he provided must be treated as releasable. Finally, you should request that the individual not discuss the case with anyone except an attorney should he or she choose to consult one.

PRE-TAPE BRIEFING OUTLINE

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

1. **Identify yourself as the Investigator(s)** -- Show Military ID and IG Credential / Detail Card

2. **Show the Directive**

3. **Explain the Investigative Procedure** - "This is a four-part interview..."

    1. PRE-TAPE briefing (we are doing this now).
    2. Formal READ-IN. (a formality designed to ensure that the rights of the individual are fully explained and legal requirements are met.)
    3. Questioning.
    4. Formal READ-OUT.

4. **Explain IG investigator's role** - "IGs are..." or "We are..."

    - Confidential fact-finders for the Directing Authority.
    - Collect and examine all pertinent evidence.
    - Make complete and impartial representation of all evidence in the form of a written report.
    - No authority to make legal findings, impose punishment, or direct corrective action.
    - Dual Role of IG:
        - Protect best interests of the Department of the Navy.
        - Establish the truth of the allegations or that the allegations are not true and clear a person's good name. Anyone can make allegations.
    - IG confidentiality:
        - Protect the confidentiality of everyone involved but do not guarantee that protection.
        - Will not reveal sources of information.
        - Will not tell you with whom we have talked.
        - Will not tell you specific allegations being investigated (except for subjects and suspects).

5. **Explain the Interview ground rules**

    - We normally take sworn and recorded testimony. Recorders improve accuracy. (Ask if the witness objects to swearing; some people would prefer to affirm.)
    - All answers must be spoken. Tape recorder cannot pick up nods or gestures.
    - Classified information: If classified information comes up, we will discuss that information off tape first.
    - Break procedures: We can go off tape at any time, but...
    - We never go off the record.

6. **Release of your testimony**

- The last question we ask you during the READ-OUT is whether you consent to release of your testimony to members of the public under the FOIA.
- FOIA allows members of the public to request government records for unofficial purposes. It is your choice whether you want to protect your testimony from release outside the Federal government.
- I will ask you to decide at the end of the interview if you consent to the release of your testimony (we do not infer anything from your answer).
- "NO" = Do not consent. "YES" = Do consent.
- Our report, including your testimony, will be used as necessary for official government purposes.

7. ***Privacy Act of 1974** (Privacy Act pertains to U.S. citizens only unlike FOIA, which applies to the world.)

- Disclosure of SSN is voluntary.
- Describes authority to ask for personal information.
- Please read the Privacy Act. Will refer to it during the formal READ-IN.

8. ***Testimony Information Sheet (Header Sheet)**

- Individual fills out first four (4) lines (name, rank, address, phone, SSN). Note: SSN is voluntary per the Privacy Act of 1974.
- Used by investigators for notes, acronyms, proper names, etc.
- Aids in preparing an accurate transcript.

9. **Confirm Witness Status**

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

11. **Wrap-up**

- This is an administrative procedure; not a court of law.
- We can accept and use hearsay and opinion.
- We protect everyone's confidentiality to the maximum extent possible but *do not guarantee* confidentiality.
- To keep this case a confidential as possible, I will ask you not to discuss your testimony with anyone except your attorney, if you choose to consult with one, without our permission.

* Provide interviewee with appropriate document.

IG CREDENTIAL / DETAIL LETTER - EXAMPLE

COMMAND ADDRESS

(DATE)

TO WHOM IT MAY CONCERN:

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

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

/s/
JOHN J. BLUE
MajGen, USMC
Commanding

/s/
IRA M. MARINE
LtCol, IG

PRIVACY ACT INFORMATION

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

AUTHORITY: Title 5 US Code, Section 552a.

PRINCIPAL PURPOSE(S): Information is collected during an investigation to aid in determining facts and circumstances surrounding allegations / problems. The information is assembled in report format and presented to the official directing the inquiry / investigation as a basis for Department of the Navy / Marine Corps / command. The information may be used as evidence in judicial or administrative proceedings or for other official purposes within the Department of of the Navy. Disclosure of Social Security Number, if requested, is used to further identify the individual providing the testimony.

ROUTINE USES:

a. The information may be forwarded to Federal, State, or local law-enforcement agencies for their use.

b. May be used as a basis for summaries, briefings, or responses to Members of Congress or other agencies in the Executive Branch of the Federal Government.

c. May be provided to Congress or other Federal, State, and local agencies when determined necessary by the commander.

MANDATORY OR VOLUNTARY DISCLOSURE AND THE EFFECT ON INDIVIDUALS FOR NOT PROVIDING THE INFORMATION:

For Military Personnel: The disclosure of Social Security Number is voluntary where requested. Disclosure of other personal information is mandatory, and failure to do so may subject the individual to disciplinary action.

For Department of the Navy Civilians: The disclosure of Social Security Number is voluntary. However, failure to disclose other personal information in relation to your position or responsibilities may subject you to adverse personnel action.

For All Other Personnel: The disclosure of Social Security Number, where requested, and other personal information is voluntary, and no adverse action can be taken against you for refusing to provide information about yourself.

TESTIMONY INFORMATION SHEET

INFORMATION FOR HEADING OF TESTIMONY TRANSCRIPT

To be completed in each interview, including recall witnesses.

Testimony of (Full Name):_____
(FIRST) (MI) (LAST)
SSN:_____ Rank / Grade:_____
Position / Title:_____ Organization: _____
Address:_____ ZIP:_____ Phone: _____

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

(Completed by IG)

Testimony taken at:_____, Date: _____
From:_____(hrs), To:_____(hrs).
By:_____and _____

Does this witness consent to release under the FOIA? _____Yes _____No

Section 7-8

Self-Incrimination and Rights Warning / Waiver Certificate Procedures

1. **Overview.** You must always be alert for the witness or subject who, while testifying, implicates himself or herself as a suspect. The admission of possible criminal wrongdoing need not be related to the case you are investigating. This point also applies to suspects who may implicate themselves in an area outside the scope of your investigation. If an individual implicates himself or herself in criminal activity; stop **and consult with your legal advisor.**

2. The Rights Warning Procedure / Waiver Certificate procedures for the Marine Corps appear on the next page:

MARINE CORPS - RIGHTS WARNING / WAIVER CERTIFICATE

ARTICLE 31 RIGHTS WARNING FORM SUBJECT (SUSPECTED OF WRONGDOING)

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

Rights Warning

_____ 1. You are suspected of violating Article ( ), UCMJ, ..., in that, ...

_____ 2. You have the right to remain silent.

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

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

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

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

Rights Waiver

1. Do you want a lawyer? Yes_____ No_____

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

Lawyer Name _____

Lawyer Signature_____

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

Yes_____ No_____

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

Yes_____ No_____

Date:

Name (print)_____ Signature_____

Rank_____ SSN_____

MARINE CORPS - RIGHTS WARNING / WAIVER CERTIFICATE

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

This form is issued to Rank, Name, SSN/MOS, Component as part of IGMC
Investigation into allegations that: _____
You are the Subject of this investigation, however, you are not suspected of wrongdoing at this time.

Rights Warning

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

_____ 2. You have the right to remain silent.

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

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

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

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

Rights Waiver

1. Do you want a lawyer? Yes_____ No_____

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

Lawyer Name _____

Lawyer Signature_____

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

Yes_____ No_____

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

Yes_____ No_____

Date:

Name (print)_____ Signature_____

Rank_____ SSN_____

MARINE CORPS - RIGHTS WARNING / WAIVER CERTIFICATE

ARTICLE 31 RIGHTS WARNING FORM WITNESS (POTENTIAL WRONGDOING)

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

Rights Warning

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

_____ 2. You have the right to remain silent.

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

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

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

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

Rights Waiver

1. Do you want a lawyer? Yes_____ No_____

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

Lawyer Name _____

Lawyer Signature_____

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

Yes_____ No_____

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

Yes_____ No_____

Date:

Name (print)_____ Signature_____

Rank_____ SSN_____

Section 7-9

Break Procedures

Taking Breaks. Should you or the witness need to take a break for any reason while recording testimony, state for the record (on tape) the circumstances and time before shutting off the recorders. When ready to resume the interview, turn on the recorders and state the time and whether or not the people in attendance are the same. If someone has departed or someone new is present, give his or her name and briefly and explain the reason for the change. Remember: during the Pre-tape portion, you advised the witness that anything said during a break can and will be introduced on tape. You must be mindful of off-tape conversations.

Chapter 8

Interviewing Techniques

Section 8-1 – Overview

Section 8-2 – Formulating Questions

Section 8-3 – Establishing Rapport

Section 8-4 – Active Listening

Section 8-5 – Non-Verbal Communications and Body Language

Section 8-6 – Interview Guidelines and Witness Control

Section 8-7 – Interviewing Civilians

Section 8-8 – Interviewer Observations

Section 8-9 – Memorandum For Record

Section 8-10 – Polygraph Use

Section 8-11 – Common Pitfalls

Section 8-1

Overview

1. The basis for the resolution of many IG cases is intelligent, careful questioning that requires skill, preparation, and experience. The nature of IG business involves dealing with perceptions and the reason why things occurred. Therefore, IGs normally conduct interviews as a question-and-answer session rather than taking written statements. The previous section focused on the process of conducting interviews. This section focuses more on the **art** of interviewing.

2. The results of a good IG interview are directly related to the amount of planning put into the effort. You must be clearly focused on obtaining facts directly pertinent to the matters under investigation. What are the issues and allegations? What standards are you using against which to compare your evidence? What events have transpired up to the point of the interview? What evidence do you already possess, and what evidence do you still require? Have you constructed your interrogatory while keeping the above questions under consideration? Have you consulted with your Staff Judge Advocate? If you have considered the above, you will be mentally ready for the interview.

3. Aside from the administrative considerations (interview location, tape recorder acquisition and preparation, and necessary paperwork needed) and the preparation of the interrogatory, most IGs still feel unprepared for the actual interview. The art of facing another human being and having to ask the hard questions drains most people. You are no exception. How can you quickly and pleasantly begin, and then conduct, the interview? This chapter will discuss the tactics and techniques used during the IG interview.

Section 8-2

Formulating Questions

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

2. **Getting to the Point**. At the appropriate time during the interview, you must directly address the issues and allegations. Asking the hard questions at the correct time is a genuine art form. You need to establish background information and put the witness at ease before getting into difficult areas that could cause the witness to become defensive. The best approach is to begin by asking background questions that are pertinent but not controversial and then work your way toward the more difficult subjects. A defensive witness may not want to answer your questions, and a defensive suspect may invoke his right not to incriminate himself. Waiting too long can appear to be "beating around the bush" or "fishing," which can be just as bad.

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

4. **Be Methodical**. Ask one question at a time, then patiently wait for the answer. If the witness hesitates, don't immediately start rephrasing the question -- he or she simply may need time to think. In many instances, a witness starts to answer a question and one or both investigators interrupt with another question for clarification before the witness has completed answering the original question. Write a note, and ask the question when the witness finishes the answer. Usually, if a witness does not understand a question, he will ask for clarification.

5. **Avoid Leading Questions**. Avoid making detailed statements followed by, "Is that correct?" Do not put words into the mouth of a witness such as, “You really didn’t use the Government sedan to go hunting, did you?” However, it may be appropriate to summarize to the witness what you think he said. You can say, “Let me get this straight. You are telling me that the Government sedan was inoperable on the day you were alleged to have been out hunting?”

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

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

8. **Sketches and Diagrams**. Should you ask about locations or positions, it is frequently helpful to have the witness draw a rough diagram or sketch. You can attach the diagram or sketch to the ROI as an exhibit where it can help a reader to understand the testimony.

Section 8-3

Establishing Rapport

1. **Barriers to Communication.** The goal of all IG interviews is to gather evidence from people via oral statements. However, most people feel intimidated and nervous when talking to an IG. You face a daunting task in removing this barrier to effective communications during your interview. Establishing rapport aids greatly in achieving a more open environment and is vital in conducting an IG interview.

2. **Techniques**. Rapport is an ongoing process that should continue throughout the interview. Your first step is to greet your witness / subject / suspect warmly with appropriate military courtesy. Begin some casual conversation prior to going into the pre-tape outline to establish rapport. Establish rapport from the onset by clearly stating your name, your title, and the purpose of the interview. Ensure that the person whom you are interviewing understands that an allegation has been made, that anyone can make allegations, and that IGs inquire into allegations for the commander. The pre-tape outline is designed to help build rapport.

3. **Application.** Your efforts to build rapport must appear to be genuine and not contrived, or it will be counterproductive to your goal of enabling your witness / subject / suspect to answer your questions freely. Furthermore, rapport offers you the opportunity to discern what is important to the witness / subject / suspect and to determine the most effective interviewing and questioning strategy or style to employ. Rapport can be nothing more than a firm handshake, a smile, professional demeanor, or even the smooth and controlled way you explain procedures during the pre-tape briefing. Rapport sets the conditions and tone for the witness / subject / suspect to speak with the IG and establishes a secondary, non-verbal method of communication.

Section 8-4

Active Listening

1. **Importance.** As your witness / subject / suspect discusses matters under investigation, you should employ good active-listening skills. Active listening is an important interviewing skill. It is a good technique for improving communication skills in any context, but it is critical for interviewing because you do not always have the opportunity to interview key witness / subject / suspects a second time. Active listening is much more than simply concentrating on what the other person is saying because it frequently requires you to test the accuracy of your own perceptions.

2. **Techniques.** Active listening begins by putting witness / subject / suspects at ease and letting them know that what they say is important. Good IGs minimize their own speaking while reacting positively to witness / subject / suspect comments. Head nods; body language that suggests interest; and brief statements like "yes," "I see," "go on," etc. let witness / subject / suspects know that you understand what they are saying and consider it important. These techniques encourage them to keep speaking.

3. **Questioning for Clarification and Feedback**. Paraphrasing, or putting into your own words what the other person seems to be communicating to you, is the central skill in active listening. This technique enables witness / subject / suspects to know whether or not their point is getting through, or whether you have misunderstood and need further explanation. Paraphrasing minimizes the potential for the witness / subject / suspect to take exception to your subsequent record of the interview.

4. **Know your Witness.** You must remember that most witness / subject / suspects have not developed the skill of active listening and may misinterpret what you are asking them, even when you skillfully phrase the question. Consequently, witness / subject / suspects often give an answer that does not respond to the question. Unfortunately, IGs who are not good active listeners do not realize that they never received an answer to their question until they try to write a synopsis of the interview. Non-responsive answers can be important and useful because they may reveal what truly concerns the witness / subject / suspect and provide a useful basis for follow-up questions. However, you must also be sure to get the answer to the question.

5. **Keep an Open Mind.** To be able to paraphrase effectively, the IG must keep an open mind and avoid making assumptions or judgments, both of which are distracting. Active listening tests your own ability to perceive accurately and demonstrates that you must share in the responsibility for the communication.

6. **The Two-Person Rule.** The proper interpretation of a witness / subject / suspect's body language is an important part of the skill of active listening and is another reason why, when possible, two people should conduct interviews. While one person takes notes, the other concentrates on watching the witness / subject / suspect to ensure that the witness / subject / suspect's body language (non-verbal communication) is consistent with what the witness / subject / suspect is saying. Body language may reveal that a verbal denial is really a silent admission. Your eyes can tell you how to listen.

Section 8-5

Non-Verbal Communications and Body Language

1. **Overview.** IGs use their eyes to listen. Non-verbal communications (i.e., the body language displayed by a witness / subject / suspect) can reveal much about what a person is attempting to convey to you. Most people can control their verbal communications better than their non-verbal ones. We may think before we talk, but our non-verbal communications, or body language, may say more about what we really mean. This fact is particularly true during an interview. For example, some witness / subject / suspects will hesitate or pause before or during a response to certain questions in order to think about and formulate the answer. Such hesitation may indicate an attempt to think of a deceptive answer, but it also could be an attempt to give a controlled response to a sensitive question or area of concern. During the pause in the verbal communication, the witness / subject / suspects may engage in patterns of non-verbal communications that are unconscious and therefore uncontrolled. These spontaneous reactions generally are more reliable indicators than the verbal response that accompanies or follows the body language. Thus, the good IG reads body language to give context to verbal communication. **But remember:** Unless you are formally trained in the use of body-language assessment, your observations should only be used to facilitate more in-depth questioning. Do not enter your observations of witness / subject / suspect body language into an ROI / ROII unless you are fully trained and certified to make such an assessment.

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

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

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

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

b. There are a number of psychological factors that have a direct bearing on interviewing techniques and influence the reliability of the information obtained. The IG should ascertain the existence of such factors in the witness / subject / suspect and, in some cases, reduce or heighten them. Some of the more important emotional factors are anger, fear, and excitement. Such factors are readily recognizable through their physical and verbal manifestations.

- Witness / subject / suspects who become angry may resist the IG emotionally. In most cases, the IG must suppress this anger. In some cases, however, anger may cause the witness / subject / suspect to make truthful admissions that he or she might have otherwise withheld. IGs must always keep their own anger in check.

- Fear is aroused through any present or imagined danger. The fear associated with interviews is not fear of physical danger but of psychological danger associated with job and financial security. This emotion may be beneficial when interviewing a hostile witness / subject / suspect. When attempting to elicit information from a friendly witness / subject / suspect, IGs should attempt to minimize its influence.

Excitement tends to heighten perception and may leave false impressions. However, neutral excitement means the witness / subject / suspect is merely prepared to meet whatever may arise and may also affect the perception of the witness / subject / suspect. This neutral excitement could develop into fear or anger with their attendant changes in mental attitude. Usually, neutral excitement is aroused when people are aware of a potential danger not specifically directed at them as would be the case in a witness / subject / suspect interview. IGs may eliminate the supposed danger by adequate assurances to the witness / subject / suspect that they are not threatened by the situation. Tell the witness / subject / suspect that you are interviewing him or her because he or she may have pertinent information to the matter under investigation or that he or she is not the target or subject of the inquiry.

3. **How to Read Body Language.** There are a number of general observations about mood and veracity that you may draw from specific body-language responses. A few of them appear in the following paragraphs.

a. Failing to exhibit any facial expression or exhibiting fear may indicate deception, false allegations or intimidation of the process. By contrast, an expression of anger probably indicates truthfulness. A defiant expression, especially when coupled with crossed arms and / or legs, indicate deception as does an expression of acceptance (sad expression, eyes dropped, or hand across the mouth). Indications of pleasure (including cocky or challenging attitudes) are typical expressions of deception (an exception may apply to juveniles).

b. Changes in facial color may be revealing. Blanching, an indication of fear, may also indicate deception. Blushing is more likely to mean embarrassment than deception.

c. Normal eye contact is maintained 30 to 60 percent of the time between two persons engaged in conversation. IGs have greater freedom in maintaining or breaking eye contact than witness / subject / suspects, and a long gaze by a witness / subject / suspect may be interpreted as a challenge. Truthful persons look at you longer during

the interview than do deceptive persons. Truthful eyes are direct, but not overly so; are open with a good portion of the whites showing; and are attentive and looking at you. Deceptive witness / subject / suspects tend to avert their gaze and avoid direct eye contact. They range from evasive to a cold stare; they may appear tired or have a glassy look.

d. A body movement such as shifting the torso shows internal conflict when the movement is consistently in time with the questioning. Deceptive people unconsciously retreat from a threatening situation. In those cases, witness / subject / suspects actually move their chair away from you or toward a door or window.

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

Truthful Body Posture	**Deceptive Body Posture**
Open, upright, and comfortable	Slouched in chair, preventing the IG from getting close
Aligned frontally to face the IG directly	Unnaturally rigid
Leaning forward with interest	Lacking frontal alignment
Relaxed, casual, with some nervousness or excitement	Tending to retreat behind physical barriers
Smooth in its changes with no pattern	Erratic in its changes (can't sit still)
	Closed (elbows close to sides, hands folded in their lap, legs and ankles crossed)
	A "runner's position" (one foot back ready to push off)
	Exhibiting head and body slump

f. Supportive and symbolic gestures may indicate:

- **Sincerity**, with open arms, palms up;
- **Disbelief**, with hands to chest (who me?);
- **Denials**, by head shaking;
- **Accusation**, by pointing a finger (usually by a truthful person);
- **Threats**, by pounding or slamming the fist (usually by a truthful person);
- **Disgust**, by turning the head away and sighing (indicative of an untruthful person);
- **Agreement**, by nodding the head and dropping eye contact to indicate an admission;

- **Lack of interest**, with head or chin in hand and head cocked;
- **Interest**, with head or chin in hand and head straight;
- Closed posture (**deception**) by crossing of arms, legs, and ankles; or by hiding hands, feet, mouth, or eyes.

g. Grooming gestures are exhibited because the body needs stress and tension relievers. Grooming gestures keep the hands busy and allow the witness / subject / suspect to delay answering questions. These gestures usually occur when the witness / subject / suspect is lying and are inappropriate for the situation. Grooming gestures include tie straightening, sleeve or skirt tugging, head or hair combing or scratching, clothes sweeping, etc.

h. Some general observations of verbal patterns indicating truthful and deceptive persons may include the following:

- **Deceptive** persons tend to deny their wrongdoing specifically while the truthful person will deny the problem in general.
- **Deceptive** persons tend to avoid realistic or harsh language while the truthful do not.
- **Truthful** persons generally answer specific inquiries with direct and spontaneous answers. The answers are on time with no behavioral pause.
- **Deceptive** persons may fail to answer or delay answers. They may ask to have the question repeated or repeat the question asked. This tactic allows them time to think of an answer. "Could you repeat the question?"
- **Deceptive** persons may have a memory failure or have too good a memory. "I don't remember the specifics of that." "I don't recall."
- **Deceptive** persons tend to qualify their answers more than truthful persons. "I was not involved in an adulterous relationship in December of 2003."
- **Deceptive** persons may evade answering by talking off the subject. "Hey, enough of this stuff. How about those Yankees?"
- **Deceptive** persons may support their answers with religion or oaths. The truthful rarely employ this tactic. "May God strike me dead..."
- **Deceptive** persons tend to be overly polite, and it is more difficult to arouse their anger.
- **Deceptive** persons may feign indignation or anger initially but will quit as the interview continues. "Is that all you have on me – this trivial issue?"

Section 8-6

Interview Guidelines and Witness Control

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

- **Greet** the person the IG will interview in an appropriate manner.
- Open the interview in accordance with this guide and the Pre-tape outline.
- **Define or state the purpose** of the interview.
- Establish and maintain **rapport.**
- **Maintain control** - don't let the witness / subject / suspect interview you.
- **Don't argue** with each other or with the witness / subject / suspect.
- Try to **evaluate each piece of information or allegation on its own merit**; the witness / subject / suspect may present many allegations that are patently untrue but may also make an allegation that has great significance or import (IGs who stop listening will miss the latter).
- **Refrain from trying to impress the witness / subject / suspect** unless you are using such action specifically as an interviewing technique.
- **Maintain strict impartiality** and keep an open mind, receptive to all information regardless of its nature – **be a fair and impartial fact-finder.**
- **Listen before taking action.**
- Take your time -- **don't hurry.**
- **Be a good listener.**
- **Accept the witness / subject / suspect's feelings.**
- Ensure you **understand** what **the speaker** is trying to convey.
- Use **appropriate questioning techniques** based upon the witness / subject / suspect's demeanor.
- **Make perception checks** to ensure you understand what the witness / subject / suspect means.
- **Use silence** when it is appropriate to force a response.

- **Do not try to solve the problem during the interview**, but do mention the types of subject-matter experts (personnel specialist, counsel, etc.) that may be of assistance.

- **Review your notes** and information to ensure **you and the witness / subject / suspect agree on what you both said.**

- **Ask what the complainant or witness / subject / suspect expects or wants to happen** as a result of the information provided.

- **Allow your IG peer to ask questions.**

- **Make no promises.**

- **Ask** if there is **any other issue or information the IG should know** or anything else the witness / subject / suspect would like to add.

- Set up time for continuation, if necessary. **When in doubt, don't punt – HUDDLE!**

- **Extend your appreciation.**

- Close the interview in accordance with this guide.

Section 8-7

Interviewing Non – Federal Civilians

1. You do not have the authority to require the appearance or testimony of Non-Federal civilian witnesses. Your techniques in dealing with Non-Federal civilians will frequently determine if you can gain their cooperation and testimony. Consider these techniques when dealing with Non-Federal civilian witnesses.

a. Adopt an objective, empathetic attitude.

b. Explain the procedures that you will follow and the rationale because some Non-Federal civilians may not understand your role or may view the investigation more as an inquisition. Anticipate potential problems. Do not use military jargon and acronyms.

c. Attempt to conduct all interviews at your location. If the witness does not agree to this request, then conduct the interview at a neutral place like a hotel or motel conference room. If the witness still refuses, you may conduct the interview where the witness suggests. However, make sure you take appropriate measures to avoid the appearance of impropriety. Be aware of the impact you and your partner have, as IGs, when you go to a person's place of business to conduct an interview. There may be rumors that adversely affect the witness. If you make witnesses aware of these potential problems, they will often change their minds about interviewing at the place of work. Civilian clothes could be appropriate when interviewing Non-Federal civilian witnesses at their home or workplace.

d. Explain the IG concept of confidentiality and the methods used to protect the rights of all those involved in the investigative process.

e. Should the witness be reluctant to participate in a formal interview, explain the emphasis on the IG process of sworn, recorded testimony. If the witness remains reluctant, then continue the interview without recording the session. Complete a written summary of the information provided immediately following the interview.

2. Consider other alternatives if the witness continues to be reluctant to testify after repeated explanations. For example, if a witness refuses to give oral testimony, ask for a written statement. Ask yourself if this witness's testimony is critical to your investigation. Can you obtain this information from another source? A decision not to interview a reluctant witness is sometimes best.

Section 8-8

Interviewer Observations

Your observations are of value when developing follow-on questions and may be of value when weighing the evidence or credibility of a witness. During the questioning, continuously evaluate the mannerisms and emotional state of the witness. Hesitation, evasive answers, body movements, and fidgeting may indicate the witness is not telling the truth or is concealing information. Such behavior may only mean that the witness is nervous with the interview process. Your ability to put the witness at ease becomes very important in these instances. You are better able to judge when a specific question causes the witness obvious discomfort. It may be worth rephrasing the question, or it may be appropriate to direct your question to their discomfort. For example: "I sensed a change in your voice when I asked that question. Why?" When appropriate, write a Memorandum For Record that describes physical mannerisms. Use caution, however, in interpreting physical mannerisms, and avoid attaching undue or unfounded significance to them.

Section 8-9

Memorandum For Record

1. A Memorandum For Record (MFR) is a suitable way to record your observations, to identify exhibits, or to record other information important to the investigation. An MFR can also be used to document a summary of witness testimony. Remember: when you include an MFR with your observations in your report, you become a witness in your case.

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

3. The MFR should contain:

   a. What was observed (who, what, when, where, and how, if applicable).

   b. Why the action was recorded.

   c. What was found.

   d. Explanatory notes, comments, or comparisons.

   e. The signature of at least one investigating officer.

Section 8-10

Polygraph Use

The polygraph, commonly known as a lie detector, is not an appropriate method for gathering evidence in an IG inquiry or investigation. An investigation that requires the use of the polygraph has gone beyond the scope of what is appropriate for an IG. If you need to use a polygraph, then consult with your SJA and consider turning the case over to a criminal investigator.

Section 8-11

Common Pitfalls

1. Successful IGs use their personal traits but must be able to adjust their own dispositions to harmonize with the traits and moods of the witness / subject / suspect. There are many errors that an IG can make while making this adjustment. Some of the most blatant are:

- **Showing personal prejudice** or allowing prejudice to influence the conduct of the interview - destroys IG objectivity and credibility;
- **Lying** - destroys the IG's credibility and encourages similar behavior from the witness / subject / suspect;
- **Hurrying** - encourages mistakes and omissions and leads to the IG improperly evaluating the veracity of the information provided;
- **Making assumptions**, drawing unconfirmed inferences, and jumping to conclusions - may result in important information not being requested or may allow false or unverifiable information to be introduced into the investigation;
- **Making promises you can't keep** - destroys the IG's credibility and reputation and may cause the witness / subject / suspect to react negatively to other investigative personnel in the future (note: the only promise IGs legitimately can make to a person involved in wrongdoing is, "I will bring your cooperation to the attention of the appropriate officials");
- **Looking down at, or degrading, the witness / subject / suspect**, or showing a contemptuous attitude - may anger witness / subject / suspect and encourage unnecessary emotional barriers;
- **Placing too much value on minor inconsistencies** - allows the interview and the IG to get 'hung up' on minor or irrelevant issues;
- **Bluffing** - destroys the IG's credibility and may allow the witness / subject / suspect to take charge of the interview;
- **Anger** - results in control of the session reverting to the witness / subject / suspect; it serves as a relief to the witness / subject / suspect and is a distraction from the information-gathering process; and
- **Underestimating the mental abilities of witness / subject / suspect** especially by talking down to him or her - antagonizes the witness / subject / suspect and invites the person to trip up the IG.

2. **Summary.** Conducting interviews using procedurally correct IG witness / subject / suspect interviews is important to the investigative process. However, the information, facts, and subsequent evidence gleaned from the interview are the ultimate goal of the

proceeding. IGs set the stage for success through detailed planning and careful interrogatory development. They build upon this planning during the interview by establishing and maintaining rapport with the witness / subject / suspect, by understanding and compensating for psychological factors, and by practicing active listening by using both verbal and non-verbal means. Use these techniques when you conduct your interviews. Your interviews will benefit greatly.

Chapter 9

Evaluating Evidence and Documenting Findings

Section 9-1 – Overview

Section 9-2 – Findings Standard

Section 9-3 – Evidence Matrix and Force-Field Diagram Evaluation

Section 9-4 – Report of Investigation and Report of Investigative Inquiry

Section 9-5 – Modified ROI / ROII with Command Product

Section 9-6 – Obtain Approval

Section 9-7 – Actions if Directing Authority Disapproves of ROI / ROII

Section 9-8 – Common Pitfalls

Section 9-1

Overview

As you gather evidence in your case, you must evaluate it and determine if you have obtained a preponderance of credible evidence that is sufficient to allow you to draw a conclusion. This is a complex, intellectual process. Your effectiveness depends upon your skill and experience, your knowledge of the categories and levels of evidence, the quantity of evidence you gathered, and your assessment of the credibility of each item of evidence. **After you evaluate the evidence, you must decide whether the allegations are substantiated or not substantiated.** You then document your findings, conclusions, and recommendations for your Directing Authority in a ROI or ROII. This section will guide you through this entire process.

Section 9-2

Findings Standard

IG investigations and investigative inquiries make conclusions based on the **preponderance of the credible evidence available and *not* on proof beyond a reasonable doubt**. Consult with other IGs or with your SJA if you have questions when you evaluate evidence. You will use a finding statement of "**SUBSTANTIATED,**" "**NOT SUBSTANTIATED,**" or **UNFOUNDED** for each allegation addressed in your ROI / ROII.

Section 9-3

Evidence Matrix and Force-Field Diagram Evaluation

1. **Overview.** When you are conducting an investigative inquiry, your evaluation of evidence may be a mental process -- particularly if the case is simple. For more complex investigations, useful tools for evaluating evidence such as a matrix and force-field diagram (discussed during the planning step) will help you perform a mental evaluation of the evidence and reach a conclusion.

2. **Evidence Matrix.** The matrix lays out the evidence spatially and helps you see whether you have enough evidence to support a conclusion. Once you have enough evidence to conclude that an allegation is substantiated or not substantiated, you should interview the subject / suspect. The subject / suspect may introduce new evidence that you need. Once you have collected all the evidence necessary to draw your conclusions, write your report, coordinate your evaluation with your legal advisor, and close out your case. If, however, you cannot get a preponderance of credible evidence, you may have to conclude that the allegation was not substantiated. With experience, you will be able to use the evidence matrix as both a control chart for your investigation and as an indicator of the weight of credible evidence.

3. **Timeline.** A timeline graphically depicts the relationship of events over a given period of time. The timeline summarizes evidence over a period of time, and you can use it to establish a frequency of occurrence, probable cause-and-effect relationships that demonstrate premeditation, or an inability to be at a specific place in time or perpetrate an improper act.

4. **Force-Field Diagram.** A force-field diagram (shown in Figure 9-1) is an invaluable tool for graphically depicting the weight of evidence, determining the facts, and measuring the preponderance of evidence. Begin by first writing your allegation and elements of proof at the top of the chart. Next, divide your evidence into two groups – evidence that tends to support substantiating the allegation or evidence that tends to support not substantiating the allegation. Write this information on the chart. Indicate your value assessment levels of each piece of evidence (direct, circumstantial, hearsay, opinion). Similarly, make a notation if un-sworn testimony is provided (i.e. a statement) versus sworn testimony. Look for multiple citations in the evidence to establish any facts and enter the facts as a separate line in either or both of the columns. You then weigh the resulting columns of evidence to determine a preponderance of evidence. Three entries of direct evidence weigh greater than three entries of hearsay evidence. Finally, assess the evidence as a whole and make a determination of substantiated or not substantiated.

5. **Translating the Force-Field Diagram into the ROI.** The evidence entered into the force-field diagram can be directly written into your ROI / ROII discussion paragraph by formatting specific subparagraphs that address evidence "supporting substantiation" and "not supporting substantiation." Formatting your discussion of the evidence in this manner clearly details a preponderance of evidence to your reader (CIG or Directing Authority).

Force-Field Diagram

Col Smith improperly participated in an adulterous affair in violation of Article 134, UCMJ One or more parties were married. Wrongful sexual intercourse transpired. Conduct was detrimental to good order and discipline.	
Substantiate	**Not Substantiated**
▪ (O) Maj Jones stated Col Smith was having an affair. ▪ (D) Col Smith DD 1172 – was married to Diane Smith as of 4 June 1980. ▪ (H/S) Capt Baker heard rumors that Col Smith was having an affair with Ms. Anderson. Lost respect for Col Smith. ▪ (D) Ms. Anderson stated she had sexual intercourse with Col smith on 4 January 2003.. ▪ **Fact – Col Anderson had wrongful sexual intercourse, was married, and conduct was detrimental to good order and discipline.**	▪ (O) Col Smith stated his relationship with Ms. Anderson was "Platonic." ▪ (D) Col Smith refused to comment when asked about having sexual intercourse with Ms. Anderson on 4 January 2003.
Key = (O) Opinion; (H/S) Hearsay; (C) Circumstantial (D) Direct	

Figure 9-1

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Section 9-4

Report of Investigation and Report of Investigative Inquiry

1. **Documenting the Findings.** Once you have completed your investigative inquiry or investigation, you need to document the findings (substantiated and not substantiated) in an ROI / ROII. The ROI / ROII format (shown on page 9-11) provides a logical, disciplined approach for presenting the case to an uninformed reader. Exceptions to using the standard ROI format exist for the following: the Hotline Completion Report (HCR) format is used for DoD Hotline complaints; the modified ROI / ROII format is used when using a command product as the primary piece of evidence; and the format in Section 11-4 is used to resolve allegations of Whistleblower Reprisal because that format incorporates the "acid test."

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

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

2. The ROI / ROII is a very important document. It gives the Directing Authority the facts, your conclusions, and your recommendations. The report provides the basis for the Directing Authority's decision in the case. It may affect the future of the person under investigation or result in policy changes in your command. Your findings may also be used in the personnel screening process for centralized selection boards and can impact a military member's career.

3. The ROI / ROII is the official record of the case. It documents your authority to conduct the investigation, contains all pertinent testimony and evidence, and makes provisions for the Directing Authority to approve the report. Keep the approved report with its exhibits on file in accordance with records disposition instructions. The summary transcribed into the IGARS database must be concise, complete, and able to stand alone long after the paper file is destroyed.

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

5. **Evidence.**

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

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

c. Testimony is difficult evidence to analyze. Usually, only a few witnesses provide vital testimony. Witnesses often provide fragments of information that you must piece together to present a picture of what took place. In these cases, you may summarize the testimony of the witnesses who provided pieces of information, but be careful not to omit important points. Use care in summarizing the testimony of a witness who lacks knowledge of certain events. The lack of knowledge may be genuine, but it may also indicate that the witness was not candid. In complex cases (or those with many witnesses), developing a system for identifying what each witness said about each allegation is helpful. A matrix, an outline, or file cards may also be helpful. Whatever system you use, reference the testimony. This technique will also help eliminate unneeded testimony. A sample of an evidence matrix is in Chapter 5.

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

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

6. **Discussion**.

a. In the discussion subparagraph, merely restating evidence already presented is not sufficient. Your discussion should lead an uninformed reader logically through the evidence to obvious conclusions. If the facts and evidence already presented lead to

obvious conclusions, this section need only be a brief statement leading to the conclusions. You may offer your opinion; however, experience has shown that unsupported opinions often weaken a report. For example, if, in your opinion, a unit had poor morale and discipline, you should support that statement with evidence (appearance of military personnel, comments you overheard, etc.). However, you are now a witness in the case, which may detract from your impartial fact-finding role. It is best to present evidence from witnesses who testify or state that, in their opinion, the unit had poor morale and discipline. The witnesses should give examples. This procedure strengthens the analysis of the case by the objective or impartial investigator.

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

7. **Conclusion**.

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

b. Your conclusions must be consistent with the allegations, evidence, and discussion. If you have properly presented your discussion, the conclusions need no further explanation. It should follow logically from your discussion that an allegation is substantiated or not substantiated. Remember: a substantiated allegation must always indicate an impropriety.

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

d. Make sure your conclusions are complete. You may determine that an individual's behavior violated a regulation, but extenuating or mitigating circumstances existed which your directing authority may want to know about. These circumstances are normally worded as follows: "However, the evidence indicated that a concern for his subordinates and not self-interest motivated the suspect's actions." You could also conclude that an allegation was not substantiated but include the comment, "However, the suspect's actions led many in the unit to believe that the suspect was involved in an impropriety."

8. **Other Matters**.

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

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

9. **Recommendations**.

a. You should always close your ROI with your recommendations for action by the Directing Authority, i.e., that the report be approved; that the case be closed; and, possibly, that the ROI or portions of it be forwarded to the appropriate commander or staff section for action**. Do not make recommendations of any punitive, adverse administrative, or disciplinary action concerning the subject or suspect.** To do so compromises your status as an impartial fact-finder. However, administrative action to correct a mistake (for example, recovery of an improper TDY payment) may be part of an IG investigation recommendation. You may also recommend that allegations be turned over for investigation by another investigating officer or another criminal investigative agency. IGs do not recommend a specific type of follow-on investigation such as a Commander's Inquiry, a Command Investigation, or Article 32 investigation -- and **never make any recommendation concerning adverse action against individuals or organizations.**

b. Your commander, by approving your recommendation to close a case, implicitly tells you to monitor any required actions taken such as implementing letters, forwarding the ROI / ROII to a higher headquarters, and closing the file without further referral to the Directing Authority. However, if the follow-up action appears inappropriate, you should advise the Directing Authority.

c. **If you identify systemic problems and noted them in Other Matters, your recommendations should address the general corrective action you anticipate.** For example, "An extract of the report identifying the problem be provided the commander / director of _____." You may recommend that the commander sign and forward a letter (prepared by you) describing a generic problem that the subordinate command needs to address. If you should determine that teaching and training is required, recommend a specific office or agency to execute the necessary action.

10. **Addressing Issues in a ROI / ROII.** Issues are complaints or requests for information or assistance to a IG that do not identify a "who" or alleged violator of a standard or policy. You can address separately in the ROI / ROII issues brought forth by the complainant in conjunction with allegations. Address these issues in the same format used for allegations. Issues are either **Founded** or **Unfounded**. You would

describe the issue, state the standard, detail and explain your evidence, compare the evidence to the standard, and make a conclusion. For example, a complainant stated that he lost his Government contract to another bidder who did not possess the necessary equipment to perform the contract. During your investigation, you determined that the contracting standards that pertained to contract awards in The Federal Acquisition Regulation (FAR) did not require a bidder to actually possess the equipment to win the contract. Witness testimony and documentary evidence indicated the contracting personnel deemed the new bidder to be responsible and reasonable and awarded the contract in accordance with the FAR. You determined, therefore, that the issue was *not founded*. You would document this evidence in the ROI / ROII and state in your discussion paragraph that:"The complainant contended that another bidder was awarded a contract even though he did not possess the necessary equipment to perform the contract. In accordance with The Federal Acquisition Regulation, paragraphs…, an official bidder for a Government contract needed only to possess lines of credit to acquire requisite equipment to be considered a responsive and responsible bidder. The preponderance of evidence indicated that contracting personnel deemed that the winning bidder was reasonable and responsive and was most advantageous to the Government. The contract was properly awarded." You would then conclude: "The issue was **unfounded** (or **founded**)."

Report Format: Report of Investigation / Investigative Inquiry

REPORT OF INVESTIGATION / INVESTIGATIVE INQUIRY

(Case #)

EXECUTIVE SUMMARY

The executive summary must be written as a stand-alone document. It should be concise and, when possible, limited to one or two pages. Do not assume the reader has any knowledge of the case.

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

AUTHORITY: Cite the authority for the investigation (usually the Directive). Include the date of the Directive and the names and organizations of the investigating officers. Cite any changes in the scope of the investigation (e.g., new allegations) that may have occurred after the Directive was signed. Include a copy of your Directive and any changes to it as EXHIBIT A of your ROI.

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

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

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

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

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

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

(In succeeding paragraphs list the remaining allegations that you did not substantiate each followed by its synopsis.)

FOR OFFICIAL USE ONLY (FOUO)

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

INTRODUCTION

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

CONSIDERATION OF ALLEGATIONS

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

(Note: If you omit the introduction, the first allegation becomes paragraph one of the body of the ROI.)

a. **Evidence.** In the evidence subparagraph for an allegation, introduce all the evidence pertaining to that single allegation. Normally, you will use succeeding subparagraphs for each item of evidence beginning with the complaint and followed by the standard or standards, documentary evidence, testimony, and statements (with the complainant's testimony first and the subject's or suspect's testimony last).

(1) **Standard.** In this and succeeding subparagraphs, cite and describe the standards. Summarize (if the standard is lengthy) or quote verbatim the guidance contained in regulations, policies, or the UCMJ. If you summarize the standard, the complete standard will always appear as an exhibit for more detailed reference. Also, describe the elements of proof contained in the standard. Attach extracts of the regulations, polices, or UCMJ to your report as exhibits. Ensure that the standards you use were in effect at the time the misconduct allegedly occurred by indicating the standard's date since personnel and travel regulations change frequently.

(2) **Documentary Evidence.** In succeeding subparagraphs, introduce each item of documentary evidence. The first item of documentary evidence is a description of the allegation initially made by the complainant. It can be the IGAR or letter signed by the complainant. Describe each item of documentary evidence by identifying the document and describing the evidence it contains. Example: "(n) Travel Voucher or Subvoucher, Control # XXXXXXXX, dated 4 January 20XX, showed that COL Smith claimed reimbursement for 400 POC miles pursuant to official travel from XXXXX to XXXXX on 5 through 8 June 20XX." Append all documents to your ROI as exhibits.
Note: Address physical evidence like documentary evidence. Identify the object and describe its relevance. Since you will usually not maintain the object with the ROI / ROII, explain where it is stored. Frequently, you may have documentary evidence in lieu of physical evidence (e.g., an accident report instead of a damaged vehicle).

(3) **Testimonial Evidence**. Conduct the complainant's interview early in the investigation. Your complainant is often the primary source of evidence against the suspect. Also, the complainant is frequently able to identify other witnesses. The ROI will flow more easily if you introduce your complainant's evidence first. You should introduce evidence provided by all witnesses for this allegation in separate subparagraphs -- one for each witness. There is no prescribed order for the witnesses or for the detail you must provide unless you interviewed a witness who is a subject-matter expert (SME). List the SME witness first because the SME often explains the policy, process, procedure, or standard involved in the case. Introduce the evidence in a manner that is logical and understandable for a reader who is not familiar with the details of the case. Paraphrase and summarize what witnesses said rather than quoting them directly. Append the transcripts or summarized testimony to the ROI / ROII as exhibits. When you interview the suspect or subject, you should provide him the opportunity to comment on all unfavorable information you will use in the ROI / ROII (this rationale leads you to interview the subject or suspect after all witnesses).

NOTE: As an exception to providing separate subparagraphs for each witness, and in the event that you have several witnesses who provided the same evidence, you may combine that evidence into a single subparagraph (e.g.; "(n) SSG Jones, SSG Smith, and SSG Taylor, squad leaders in 3rd Platoon, Company B, all testified...").

(4) **Other Evidence**. Describe and / or enter physical evidence in this paragraph. Attach rendering of physical objects if necessary when inclusion of an actual object into the ROI / ROII is impractical. Enter any IG observations here in memorandum-for-record format.

b. **Discussion:**

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

(2) The discussion paragraph must clearly describe your findings for an allegation. The burden is upon you to lay out logically and clearly the evidence you gathered so that your commander will understand the case and draw the same conclusions you did. You must explain why you reached your conclusion in a logical, step-by-step method. Your reasoning and writing skills are key. Remember: your job is to remain impartial and tell both sides of the story. Begin the paragraph by restating the allegation then summarize the standard(s) used. Next, summarize the key evidence that would tend to substantiate the allegation. Follow with a similar discussion of key evidence that tended to not substantiate the allegation. Then focus the reader on the facts that the evidence revealed. Conclude your discussion with a finding statement that states, "The preponderance of credible evidence indicated (name) (did) or (failed to do) (something)."

c. **Conclusion:** The allegation that (name) improperly (did or failed to do something) in violation of (standard) (was / was **not**) **substantiated.**

The conclusion is a concise statement of your determination that it is more likely than not that the allegation did or did not occur. State the allegation exactly as written in the beginning of the paragraph and the executive summary (who, improperly, the alleged misconduct, the standard, and the time period) followed by ". . . was substantiated"or ". . . was not substantiated." Neither / nor conclusions are not used.

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

a. **Evidence:** Frequently, witnesses will provide evidence on more than one allegation. You must sort through their testimony and enter the evidence where appropriate in the ROI / ROII. For clarity, you may cite specific pages where the evidence can be found. Example: "(n) Sgt Jones testified that he and PFC McSpivit . . . (EXHIBIT B-7, p. 5-6, 11)." If evidence entered for a previous allegation is pertinent to this allegation, refer to it again in summary. Example: "(n) Cpl Smith, as previously indicated, testified that . . . (EXHIBIT B-9, p. 7)."

b. **Discussion:** Discuss evidence entered for this allegation only.

c. **Conclusion:** The allegation that (name) improperly (did or failed to do something) in violation of (standard) (was / was **not**) **substantiated.**

4. **Issue 1:** State the issue as presented by the complainant.

a. **Evidence:** . . .

b. **Discussion:** . . .

c. **Conclusion:** The issue that _____ was (Founded / Unfounded).

OTHER MATTERS

5. During the course of investigations, you will often uncover situations that, while not pertinent to the allegations, require your commander's attention. These situations may be systemic problems that require correction by a staff agency or perhaps an inspection by your own office. Document these situations in separate paragraphs in the "Other Matters" paragraphs (one paragraph for each issue). For example, an "Other Matters" might read: "During the course of the investigation, we determined that the procedures for verifying travel vouchers outlined in the JTR were not being followed in XX Division. This situation was evident in the documents examined (EXHIBITS E-1 through E-17) and the testimony of LtCol Smith and Maj Doe (EXHIBITS B-7 and B-3)."

RECOMMENDATIONS

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

7. Any other recommendations. If you have documented other matters, **you must include** a recommendation for each of them. Ensure that your recommendations are appropriate for the issues that you raise. These recommendations are normally written like an IG inspection report recommendation (Who will fix it and how to fix it) found in the Marine Corps Inspector General Program Inspections Guide. Coordinate in advance with the agencies you specify in the recommendations (the proponents) as the ones you think should fix the problem as a professional courtesy. Keep in mind, however, of your guidelines for release of information and the need to maintain confidentiality.

Investigator's
signature block

Investigator's
signature block

CONCUR:

APPROVED:

Inspector General's
signature block

Directing Authority's
signature block

Encl
Exhibit List

DATE APPROVED:_____

FOR OFFICIAL USE ONLY (FOUO)

EXHIBITS

1. Attach exhibits to your ROI / ROII or include them in separate volumes if you have several exhibits. Identify exhibits by letter. Attempt to arrange exhibits in the order they appear in the report. The Directive for investigation is normally EXHIBIT A, testimony is normally EXHIBIT B (with sub-numbers such as B-1, B-2, etc. for each witness), standards are EXHIBIT C, and documents are EXHIBIT D (with sub-numbers such as D-1, D-2, etc. for each document.) Other exhibits are marked alphabetically continuing into double and triple letters as necessary (e.g. AA, AB, AC). If an exhibit is several pages long, but only one page pertains to the investigation, consider including only that one properly identified page with the ROI / ROII. An exhibit list precedes EXHIBIT A. This list identifies each exhibit and its letter designation.

2. The testimony list (normally EXHIBIT B) should gives the last name and rank / title and indicate consent to (or denial of) release of testimony IAW FOIA. List all persons who testified, including those whose testimony you summarized and those who provided statements.

STYLE NOTES

1. The first time you refer to an individual, include his grade, full name, and position. Thereafter, simply refer to him by grade and last name. If an individual has changed grade, name (marriage, for instance), or duty position, you should indicate it in your report. (e.g.: "Maj Jane Smith, Deputy Commander, H&S Battalion (formerly Capt Jane Jones, Company Commander, Truck Company, testified . . ."

2. Spell out all acronyms the first time they are used. Abbreviate after that.

3. Use the word "alleged" in your report when referring to the matters under investigation.

4. Do not alter the text or verb tense of standards cited directly from the source text. Doing so increases the likelihood of unintentionally changing the meaning of the standard.

5. Write your report (and any summarized standards) in the **past tense**. The document is a "snapshot" of a particular time, and standards may have changed.

CLASSIFICATION REQUIREMENTS

1. Classify and safeguard ROI / ROIIs that contain classified defense information IAW, SECNAVINST 5216.5d, Naval Correspondence Manual.

2. Mark an ROI / ROII which does not contain classified defense information IAW, SECNAVINST 5216.5d, Naval Correspondence Manual. Place "FOR OFFICIAL USE ONLY (FOUO)" at the bottom of each page containing FOUO information, on the front cover (if any), and on the outside of the back cover (if any).

3. ROIs transmitted outside IG channels should be handled and marked in accordance with instructions contained in SECNAVINST 5216.5d, Naval Correspondence Manual.

ROI / ROII REVIEWS

1. **Internal (Peer) Review**. While your ROI is in draft, have as many IGs as practical review the document to ensure that it is complete, correct, and understandable. You will find that when you work directly on a case and write the ROI, you become so close and familiar with the issues that you will make mental connections that are not apparent to your reader. Your peers can point out these problems, as well as grammatical errors, faulty logic, and gaps in evidence. Accept peer criticism in a positive manner and don't be defensive. Evaluate all comments with an open mind. Make sure the evidence supports your discussion points and that your conclusions flow logically from the discussion.

2. **Command IG Approval.** Once the peer review process is complete and the ROI assembled, you and your partner IG should sign and submit the report through your CIG. The CIG can concur with your report and forward it or return it to you with recommended changes. Your CIG will want to know the SJA's opinion prior to sending the report to the Directing Authority.

3. **SJA Review.** Ask the SJA to review your report while in draft form (after an internal peer review but before you send it to your CIG). This allows you to correct any possible problems before you finalize the ROI. The SJA should review the ROI for any legal objectives and that a preponderance of credible evidence supports your conclusions before the CIG reviews and approves the document. You should also ask for your SJA's opinion concerning whether you have properly interpreted laws, regulations, and policy. Remember: if you expect the SJA to do a good job, this should not be the first time he or she has seen the case. The SJA should have agreed with your initial analysis of how to handle the case and should be pre-briefed before each update or decision briefing to the Directing Authority. An excellent tool for keeping the SJA abreast of the case is to use your evidence matrix. Depending on the nature of the allegations and whom the allegations are against, the SJA may want to accompany you when you brief the Directing Authority.

ROI / ROII COPIES

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

EXAMPLE REPORT OF INVESTIGATION
(CASE OTR 05-0019)

EXECUTIVE SUMMARY

NAME / POSITION: Captain (Capt) Robert E. Brown, Assistant Chief of Staff (AC/S) G-4, X MarDiv.

AUTHORITY: Commanding General , X MarDiv, Directive, dated 25 August 20xx. (EXHIBIT A)

BACKGROUND: An anonymous "concerned Employee" made allegations against Capt Brown in a letter received by the Commanding General on 10 August 20xx. (EXHIBIT B)

SUBSTANTIATED ALLEGATION: Capt Brown improperly conducted an adulterous relationship with a female employee at X MarDiv in violation of the Uniformed Code of Military Justice (UCMJ), during March and April 20xx.

SYNOPSIS: An anonymous complainant alleged Capt Brown improperly had an adulterous relationship with Ms Smith, his secretary. Article 134, UCMJ, prohibited adultery. Ms Sallie Smith, Secretary, X MarDiv, G-4, testified that she and Capt Brown had an adulterous relationship during March and April 2008. Other witnesses testified they believed the two were having an adulterous relationship because of their "unusually familiar" behavior, demeanor, and that they occasionally arrived at work together when Capt Brown's wife was out of town. Motel receipts and registration slips indicated Capt Brown registered for a double room at the Notel Motel in (city), (state or country), with "Mrs. Brown" on 21 March, 27 March, and 15 April 2008. Witnesses saw Capt Brown with a woman in the motel lobby on those dates. Capt Brown denied the allegation. Capt Brown testified that his wife, Jenny Brown, was out of town during March and April 2008. Capt Brown testified that he stayed in the motel occasionally to avoid the stress of being in his house by himself. Capt Brown testified the registration slips with "Mrs. Brown" registered were a mistake. Capt Brown testified that he had dinner with Ms Smith on the occasions he stayed in the motel but no more. The preponderance of evidence indicated Capt Brown violated Article 134, UCMJ.

NOT SUBSTANTIATED ALLEGATION: Capt Brown sexually harassed female employees in violation of MCO 1000.9A, Sexual Harrassment.

SYNOPSIS: An anonymous complainant alleged Capt Brown sexually harassed female employees within the X MarDiv, G-4. MCO 1000.9A prohibited sexual harassment. No witnesses testified that CaptT Brown harassed them or that they had seen Capt Brown harassing others. Witnesses did observe that Capt Brown frequently used endearing terms ("Honey, Darling") to female employees but attributed this behavior to his age and background. Two female witnesses testified that they heard Capt Brown tell a "mildly off-color" joke on one occasion, but they thought it was funny, appropriate for the setting (standing around the office coffee pot), and they were not offended. Capt Brown admitted that he had a habit of referring to women as "Honey" and "Darling" and once told a "dirty" joke in the office (he suggested that this was

probably a mistake in judgment). He denied ever harassing anyone. The preponderance of evidence indicated Capt Brown did not violate MCO 1000.9A.

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

CONSIDERATION OF ALLEGATIONS

1. Allegation #1: Capt Brown improperly conducted an adulterous relationship in violation of Article 134, UCMJ, during March and April 2008.

a. **Evidence**:

(1) The X MarDiv commanding general received an undated, anonymous letter on 10 August 20XX from a "Concerned Employee." In the letter, the anonymous complainant alleged misconduct on the part of Capt Brown. The anonymous complainant alleged Capt Brown conducted an adulterous relationship with Ms Smith, his secretary, during March and April 20XX. (EXHIBIT A-2)

(2) Article 134, UCMJ, Manual for Courts-Martial 2003, prohibited adultery. The stated essential elements of adultery were: "That the accused wrongfully had sexual intercourse with a certain person; at the time the accused or the other person was married to someone else; and that, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces." (EXHIBIT C-1)

(3) Capt Brown's Officer Qualification Record (OQR), verified by him on 23 January 20XX, indicated that he was married to Mrs. Jennifer Coggins Brown. (EXHIBIT D-1)

(4) Registration entries and receipts for the Notel Motel, (city), (state or country), indicated Mr. David E. Brown and his wife were registered at the property on 21 March, 27 March, and 15 April 2008. The receipts were on a Visa card in the name of David E. Brown. (EXHIBIT D-2)

(5) MSgt Jane A. Gray, Logistics Chief, G-4, testified on 4 October 20XX that she believed Ms Smith and Capt Brown were having an adulterous relationship because she overheard Capt Brown used endearing terms toward Ms Smith. MSgt Gray saw Capt Brown and Ms Smith embracing and kissing in the Xerox room. Ms Smith confided in her that she (Ms Smith) was having an "affair" with Capt Brown and hoped to marry him once Capt Brown divorced his present wife. (EXHIBIT B-1)

(6) Mr. Thomas P. Groom, Budget Analyst, G-4, testified on 4 October 20XX that he believed Capt Brown and Ms Smith were having an adulterous relationship. They frequently went to lunch together and seemed "unusually familiar." On several occasions during the spring, he saw their cars pull into the parking lot at the same time. This series of events seemed unusual to him because Capt Brown normally preceded Ms Smith to work by approximately 45 minutes. (EXHIBIT B-2)

(7) Mr. Harold H. Hanson, desk clerk at the Notel Motel, testified on 5 October 20XX that he registered a Mr. and Mrs. Brown at the motel on 21 March, 27 March, and 15 April 20XX. The two did not register together, but he saw them walking through the lobby and eating in the restaurant together. (EXHIBIT B-3)

[IO NOTE: Mr. Hanson identified Capt Brown and Ms Smith as Mr. and Mrs. Brown from photographs provided by the investigating officers.]

(8) Ms Smith testified on 8 October 20XX that she and Capt Brown were having an "affair" and that Capt Brown had promised to marry her once his divorce from his present wife was finalized. They (Ms Smith and Capt Brown) had engaged in sexual intercourse on seven occasions -- four times in her apartment when her roommate was away and three times at the Notel Motel in (city) during March though April 20XX. The "affair" ended when Capt Brown told her he and his wife had "patched things up" and were not going to get divorced. (EXHIBIT B-4)

(9) Capt Brown testified on 10 October 20xx that he did not have an adulterous relationship with any woman assigned to G-4 or anywhere else. He suggested that some people might think there was something "going on" between him and Ms Smith since they were friends and socialized together on several occasions. He acknowledged there had been problems in his relationship with his wife. He and his wife had undergone a trial separation in March and April, but they were now back together. On a few occasions during that time, he stayed in the Notel Motel to avoid the stress of being in his quarters by himself. He met Ms Smith at the motel "once or twice" for dinner because she would cheer him up. He denied having spent any of those nights together with Ms Smith. He denied ever having sexual intercourse with Ms Smith. He believed he mistakenly registered at the motel as Mr. and Mrs. Brown out of habit. He recalled once giving Ms Smith a "brotherly" hug in the Xerox room, but he denied kissing her. He admitted referring to Ms Smith as "Honey" and "Sweetie" but claimed he referred to all women in a similar manner. He recalled no circumstances when he and Ms Smith arrived to work at the same time; he normally preceded her by at least 30 minutes. (EXHIBIT B-5)

b. **Discussion**.

(1) (*Restated Allegation)* An anonymous complainant alleged Capt Brown improperly had an adulterous relationship with Ms Smith, his secretary, in violation of Article 134, UCMJ, during March and April 20XX.

(2) *(Summarized Standard)* Article 134, UCMJ, prohibited adultery. The elements of proof for this offense were that the accused wrongfully had sexual intercourse with a certain person; that at the time, the accused or the other person was married to someone else; and that under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

(3) (*Evidence Supporting Substantiation)* Ms Smith testified that her relationship with Capt Brown was adulterous. Other witnesses supported Ms Smith's

testimony. Personnel in the G-4 noted that there was something between the two by their "unusually familiar" behavior and demeanor toward one another. However, one witness testified seeing Capt Brown and Ms Smith kissing in the Xerox room. Hotel receipts and witness testimony placed Capt Brown and Ms Smith meeting at a local motel where Capt Brown registered as a couple when his wife was out of town.

(4) *(Evidence Supporting Not Substantiation)* Capt Brown testified that he socialized with Ms Smith, but denied ever having sexual intercourse with her. He stayed in the Notel Motel to avoid the stress of being in his quarters by himself. He met Ms Smith at the motel "once or twice" for dinner because she would cheer him up. He believed he mistakenly registered at the motel as Mr. and Mrs. Brown out of habit.

(5) *(Analysis of All Evidence)* Documentary evidence and witness testimony indicated Capt Brown's relationship with Ms Smith went beyond the innocent social activity described by Capt Brown. The preponderance of credible evidence indicated that there was an improper sexual relationship between Capt Brown and Ms Smith.

c. **Conclusion**: The allegation that Capt Brown improperly conducted an adulterous relationship in violation of Article 134, UCMJ, during March and April 20XX **was substantiated**.

2. Allegation #2: CAPT Brown sexually harassed female employees in violation of MCO 1000.9A.

a. **Evidence**.

(1) In the anonymous letter, the "Concerned Employee" alleged Capt Brown created a hostile work environment for female employees in the G-4 by sexually harassing them. The anonymous letter writer stated that Capt Brown used vulgar and abusive language; referred to women in demeaning and sexist terms; and, through innuendoes, solicited sexual favors from female subordinates. (EXHIBIT A-2)

(2) MCO 1000.9A refers to Sexual harassment as a type of sexual discrimination. It stated that sexual harassment violated acceptable standards of integrity and impartiality required of all military personnel and interfered with mission accomplishment and unit cohesion. One example cited was deliberate or repeated verbal comments or gestures of a sexual nature that are offensive to the person to being addressed. (EXHIBIT C-2)

(3) Mrs. Tillie Locks, Administrative Specialist, G-4, testified on 5 October 20XX that she did not know if Capt Brown harassed anyone, but that she had not seen Capt Brown harassing others. She once heard Capt Brown tell a "mildly off-color" joke, laughed without reservation at the joke, and did not think anything of it later. (EXHIBIT B-6)

(4) MGYSgt Conrad Mack, Noncommissioned Officer In Charge (NCOIC), G-4, testified on 5 October 20XX that Capt Brown frequently used endearing terms ("Honey, Darling") to female employees but attributed this behavior to his age and background. (EXHIBIT B-7)

(5) Capt Megan O'Reilly, Embarkation Officer, G-4, testified on 6 October 20XX that she heard Capt Brown tell a questionable joke pertaining to male / female anatomy. She thought it was funny, appropriate for the setting (standing around the office coffee pot), and was not offended. (EXHIBIT B-8)

(6) Ms Smith testified on 6 October 20XX that although she and Capt Brown had an "affair," it was personal and kept separate from their working relationship. He never used his position in the G-4 to influence her or coerce her. She always thought he was a "perfect gentleman" in the office. She never observed actions she considered to be sexual harassment. (EXHIBIT B-4)

(7) Capt Brown testified on 8 October 20XX that he admitted he had a habit of referring to women as "Honey" and "Darling" and once told a "dirty" joke in the office (he thought that this was probably a mistake in judgment). He denied ever harassing anyone. (EXHIBIT B-5)

b. **Discussion**:

(1) *(Restated Allegation)* An anonymous complainant alleged Capt Brown sexually harassed female employees in violation of MCO 1000.9A.

(2) *(Summarized Standard)* MCO 1000.9A refers to sexual harassment as a type of sexual discrimination. It stated that sexual harassment violated acceptable standards of integrity and impartiality required of all military personnel and interfered with mission accomplishment and unit cohesion. One example cited was deliberate or repeated verbal comments or gestures of a sexual nature that are offensive to the person being addressed.

(3) *(Evidence Supporting Substantiation)* No witnesses testified that Capt Brown harassed them or that they had seen Capt Brown harassing others. Witnesses did observe that Capt Brown frequently used endearing terms ("Honey, Darling") to female employees but attributed this practice to his age and background. Two female witnesses testified they heard Capt Brown tell a "mildly off-color" joke on one occasion, but they thought it was funny, appropriate for the setting (standing around the office coffee pot), and they were not offended.

(4) *(Evidence Supporting Not Substantiation)* Capt Brown admitted that he had a habit of referring to women as "Honey" and "Darling" and once told a "dirty" joke in the office (he opined that this behavior was probably a mistake in judgment). He denied ever harassing anyone.

(5) *(Analysis of All Evidence)* Witness testimony indicated Capt Brown's alleged inappropriate behavior did not constitute sexual harassment. No witness testified that Capt Brown ever sexually harassed any person. Female employees did not consider Capt Brown's use of endearing terms and "mildly off-color" jokes as offensive. The preponderance of credible evidence indicated that Capt Brown did not violate DoD Directive 1350.2.

c. **Conclusion**: The allegation that Capt Brown sexually harassed female employees in violation of MCO 1000.9A was **not substantiated**.

3. OTHER MATTERS: There was a lack of understanding of the concept of sexual harassment and unfamiliarity with Marine Corps Policy on the subject. Several witnesses could not define the terms sexual harassment, sexual discrimination, or gender discrimination found in Marine Corps policies and regulations. No witness could recall seeing or reading the CG's Policy Memorandum #3, Sexual Harassment.

4. RECOMMENDATIONS:

a. Approve the report and close the case.

b. SJA brief sexual harassment policy as a topic of discussion in an upcoming commander's call and redistribute the X MarDiv Commander's policy memorandum on the subject.

D. V. SHARP
MSgt, USMC
AIG

B. J. WONDER
Maj, USMC
AIG

CONCUR:

NO LEGAL OBJECTION:

I. M. MARINE
Col, USMC
CIG

SHERLOCK HOLMES
LtCol, USMC
SJA

APPROVED:

DATE APPROVED:_____

J. O. BLUE
MajGen, USMC
CG

Encl
Exhibit List

LIST OF EXHIBITS

EXHIBIT	DESCRIPTION	FOIA RELEASE
A	**Directive and Complaint**	
A-1	Directive	
A-2	Complaint	
A-3	Legal review	
B	**Testimony**	
B-1	MSgt Gray	NO
B-2	Mr. Groom	YES
B-3	Mr. Hanson	NO
B-4	Ms Smith	NO
B-5	Capt Brown	YES
B-6	Mrs. Ickes	NO
B-7	SgtMaj Mack	NO
B-8	Capt O'Reilly	YES
C	**Standards**	
C-1	UCMJ, Article 134	
C-2	DoD Directive 1350.2	
D	**Documents**	
D-1	Copy of Dependants Form, OQR, Capt Brown	
D-2	Notel Motel Receipts and Entries	

Section 9-5

Modified ROI / ROII with Command Product

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

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

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

1. INTRODUCTION: The complainant, CWO-5 Frank F. Turmoil, a Chief Warrant Officer assigned to X MAW, submitted an IG complaint to the X MAW CIG via fax on 11 March 20XX requesting an explanation as to why he was being required to accept a PCS assignment after another fully qualified Marine was allowed to decline the same assignment. CWO-5 Turmoil was seeking an answer as to why one Marine was allowed to decline this assignment while he was not afforded the same opportunity. CWO-5 Turmoil stated that he had been at his present duty station for only 19 months whereas the other qualified Marine, CWO-4 Louis Rhines, had been at his duty station for over 10 years.

CONSIDERATION OF ALLEGATION

2. **Allegation:** CWO-5 Donald R. Webster improperly required an individual to accept an assignment in violation of MCO 1300.8R, Marine Corps Personnel Assignment Policy.

a. **Evidence:** Completed command investigation, dated 10 June 20XX. The IO determined in the investigative report (ROI) that: "CWO-5 Webster decided not to force

the PCS on CWO-4 Rhines due to single parent-status, children in school, unit mobilization, and the [Service member's] intent to retire." The ROI also found that: "If CWO-5 Webster had fully researched the situation and followed the Marine Corps PCS policy, he should have selected CWO-4 Rhines for the PCS to HQMC] before CWO-5 Turmoil. Although CWO-5 Webster had valid reasons for issuing PCS orders to CWO-5 Turmoil and not CWO-4 Rhines, CWO-5 Webster made several assumptions that he failed to research fully and follow up. (EXHIBIT A)

b. **Discussion:** CWO-5 Donald R. Webster improperly required an individual to accept an assignment in violation of MCO 1300.8R. An investigation was initiated in accordance with the JAG Manual to determine if MCO 1300.8R, was violated. The IO conducted an informal investigation IAW the JAG Manual, and all of the documents gathered during the investigation were relevant and accurate with regard to the allegation. It was further determined that the sworn statements of CWO-5 Turmoil, CWO-4 Rhines, and CWO-5 Webster were consistent with the facts of the case and are considered to be credible. The preponderance of credible evidence indicated that CWO-5 Webster violated MCO 1300.8R PCS policy.

[IO Note: After careful consideration of all the evidence presented, the documents and testimonies provided during the JAG Manual investigation are in fact relevant and accurate with regard to the allegation.**]**

c. **Conclusion:** The allegation that CWO-5 Donald R. Webster improperly required an individual to accept an assignment in violation of MCO 1300.8R, **was substantiated.**

3. OTHER MATTERS: This office concurs with the findings and recommendations of the command investigation IAW the JAG Manual. This office conducted a thorough due-process review of the ROI product and determined that due process was served in accordance with that regulation. Also, the iROI had a legal review with an attached opinion.

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

W. HEAD
MSgt, USMC
AIG

B. B. JONES
Maj, USMC
AIG

CONCUR:

NO LEGAL OBJECTION:

CHEVY CHASE
Col, USMC
CIG

CHONNY ROCHRAN
LtCol, USMC
SJA

APPROVED:

F. R. LEATHERNEX
MajGen, USMC
Commanding General

Encl
Exhibit List

Section 9-6

Obtain Approval

1. **Investigative Inquiry**. There is no formal process prescribed for approval of investigative inquiries. Ensure that your CIG is informed and approves of the cases you believe should be worked. Consequently, brief the CIG when you complete these cases. If your investigative inquiry substantiated allegations, you must obtain a written legal review from the servicing SJA's office as well as your directing authority's approval to ensure the IG conclusions receive a responsible level of scrutiny. On a case-by-case basis, you or your CIG may need a written legal review for ROIIs with not substantiated allegations. Use your own best judgment. When in doubt, obtain a legal review.

2. **Investigation.** Before taking the ROI to the commander, you must obtain a written legal review from the servicing SJA. Once the SJA has deemed the ROI legally sufficient, present the ROI to the commander. Normally, the ROI is hand-carried to the commander for approval. If appropriate, give the commander an oral briefing in the form of a decision brief.

3. **Actions by the Directing Authority**. The Directing Authority approves, modifies, or disapproves the recommendations and directs any actions to be taken. The Directing Authority may not agree with either the conclusions or the recommendations. A Directing Authority, or other individual, should never compromise your independence by suggesting that any particular conclusions or recommendations should appear in the report or that any conclusion should be changed. This kind of influence degrades the objectivity of your investigation. However, the commander can request that you gather more evidence to support a finding. The commander is not bound by your findings, conclusion, opinions, or recommendations. Commanders may act as they see fit. Experience has shown that having the SJA's concurrence and recommendations will greatly enhance your case's chances of approval.

4. **Actions by Higher Authorities**. You should not transmit ROIs from subordinate commands to a higher authority unless the investigation is requested by, or is of interest to, a higher headquarters or involves other commands. If the higher authority requests the investigation, that authority reviews the conclusions and recommendations, monitors action taken by the subordinate command, and then determines if further action is required. Final approval rests with the Directing Authority of the IG office of record. If the case is referred to a higher authority because other commands are involved, that headquarters takes any necessary action only when the other commands are within its jurisdiction. If not, the case is referred to the next higher headquarters. Unless requested, exhibits are not normally transmitted with the ROI to the higher headquarters. In Whistleblower reprisal investigation cases, the Directing Authority must concur or non-concur with the ROI. The ROI, including all exhibits, must be sent to the IGMC for concurance. The IGMC will provide the ROI to theDoDIG, for final approval.

Section 9-7

Actions if Directing Authority Disapproves ROI / ROII

1. **Disapproval.** There are several actions your Directing Authority can take with your ROI / ROII. He or she is not bound by your conclusions or recommendations and may approve or disapprove the report in part or in its entirety, to include modifying your recommendations. If the Directing Authority agrees with your conclusions and recommendations, then normally he or she will sign and approve the report. But what do you do if your Directing Authority disapproves your ROI / ROII's conclusions?

2. **Investigative Inquiry.** First of all, an investigative inquiry – less formal than an investigation – is normally authorized by the CIG. If the CIG authorized the investigative inquiry, then the commander / Directing Authority is not required to approve the ROII if it contains no substantiated allegations. On the other hand, approval by the commander / Directing Authority is required if you have a substantiated allegation.

3. **Investigation.** A formal investigation, however, requires a written directive from your Directing Authority; therefore, approval of the report will usually come from the same level, regardless of whether the allegations are substantiated or not substantiated. A Whistleblower reprisal and Improper Mental Health Evaluation referral cases are exceptions to this rule since the CIG is the office of record and the DoDIG, is the final approving authority.

4. **IG Response.** Responding to the disapproval of your recommendations is usually less difficult than resolving the disapproval of your conclusions. Common recommendations in the ROI / ROII include approving the report; filing and closing the case; and, if appropriate, a recommendation for a follow-on investigation or forwarding to a subordinate commander for action. The IG investigating officer (IO) should never recommend punitive, adverse, or disciplinary action. To do so compromises your status as a fair and impartial fact-finder. There are several reasons why the Directing Authority may not agree with your recommendation(s). For example, the IO may recommend in the report to forward the allegations to a subordinate commander for appropriate action, but the Directing Authority may favor appointing a follow-on investigator himself / herself. Coordination with your SJA and a clear understanding of commander's guidance will help you out in these cases. The key is to find out exactly why the Directing Authority disagrees with the recommendation(s). Resolving these differences in a face-to-face discussion with the Directing Authority when the IG submits / briefs the report is the best approach. If your report contains substantiated allegations, take the SJA with you when you brief the Directing Authority. Let the SJA lead any discussion on the appropriate type of follow-on investigation.

5. **Additional Fact Finding.** In some cases the Directing Authority may disapprove your recommendation to close the case if he or she feels that you did not include certain documents or interview a key witness. The standard course of action in that case would be to conduct the additional fact-finding and update the report accordingly. Get a new legal review from your SJA, then re-submit the final report to the Directing Authority.

6. **IG's Conclusions.** What if the Directing Authority disapproves of the Investigating Officer's (IO's) conclusion of either substantiated or not substantiated. The Directing

Authority should never compromise the IO's independence by suggesting that any particular conclusions appear in the report or that any conclusion be changed. This kind of influence degrades the objectivity of the investigation. However, the Directing Authority may request that you gather more evidence to support a particular finding. Additionally, the Directing Authority may find that your discussion does not flow logically. You will find that when you work directly on a case and write the report, you become so familiar with the issues that you make mental connections that are not apparent to your reader. A good IG peer review (from someone who did not work as closely on the case) will help. Peers can point out faulty logic, gaps in evidence, and grammatical errors. IG tech channels are another source for help -- especially with complex cases. In any case, the commander is not bound by your conclusion and may act as he or she sees fit. For further guidance consult the IGMC.

Section 9-8

Common Pitfalls

1. **Lack of Evidence to Support Conclusions.** You may not have provided sufficient credible evidence to support the conclusions that you reached. Continue to investigate in this situation. If the evidence does not exist, you may have to alter your conclusion. You may have gathered sufficient evidence to support your conclusion but did not introduce it in the evidence subparagraph. If this is the case, correct your report.

2. **Inconsistent Conclusions.** You may draw incorrect conclusions by misreading or misinterpreting the evidence gathered, not wording allegations correctly, or by not having the fortitude to be candid. This in turn will adversely affect your recommendations, erode the integrity of the IG system, and subject you to an allegation of bias. A thorough peer review will help avoid this problem.

3. **Recommendations Not Synchronized With the Conclusions.** Common errors are recommendations in the ROI / ROII not supported by a conclusion or a conclusion that requires a recommendation and none is presented. You should base all recommendations on your conclusions.

4. **Interjection of Investigating Officer (IO) Opinions.** You may use IO notes to clarify information for the reader in the evidence subparagraph of an allegation. You may also enter your personal observations as evidence if they are pertinent. Avoid interjecting your opinions in the evidence sections of your ROI. Naturally, you must exercise judgment as you evaluate evidence in the discussion subparagraphs of your ROI. You must write out the rationale for your judgments in a logical and cogent manner so that they transcend mere opinions. If you are in doubt regarding any aspect of your ROI, do not hesitate to use tech channels and call either the IGMC. They will discuss your case with you and maintain the confidentiality you require.

Chapter 10

Post Fact-Finding Actions

Section 10-1 – Post-Investigation Notifications

Section 10-2 – Other Post Fact-Finding Actions

Section 10-3 – Closing the Case

Section 10-4 – Common Pitfalls, Issues, and Problems

Section 10-1

Post-Investigation Notifications

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

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

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

b. **Subjects / Suspects:** In an investigation / investigative inquiry, formally notify the subject or suspect in writing after the case is completed and approved. Type and underline the words "Personal For" on the envelope. If the subject or suspect desires more information, he or she must request it under the provisions of the Freedom of Information Act. In both inquiries and investigations, it is not appropriate for you to comment on actions that the command may contemplate other than the appointment of a follow-on investigator.

NOTE: If the IG Office of Record (usually a IGMC) referred an allegation to a subordinate CIG office for investigation or investigative inquiry, the "Office of Inquiry" (usually a CIG) should provide all of the information gathered during the investigation or investigative inquiry to the IG Office of Record for their final report. At this time, the IG Office of Inquiry is not required to notify the subject / suspect that the investigation / investigative inquiry has gone back to the IG Office of Record. However, if asked, the IG could tell the subject / suspect (verbally or in writing) that the final reply would come from another IG office.

c. **Complainant.** In both investigations and investigative inquiries, you must notify the complainant of the approved results of the investigation or investigative inquiry in writing (as part of Step 7 of the IGAP). The approved investigation or investigative inquiry results are those issues and allegations directly pertaining to, or made by, the complainant. In most cases, you will only notify the complainant of the results if you deem the complainant to be personally wronged (the victim of adverse actions related to the alleged misconduct by the subject / suspect). The DoDIG, has expanded the definition of personally wronged parties to include family members of an injured party in some cases. Third-party complainants (which include spouses in adultery cases) are only entitled to know that the investigation or investigative inquiry was completed and that the commander will take appropriate action as he or she deems appropriate.

Letter Format: Subject or Suspect Notification of Results from an IG Investigation or Inquiry

(Letterhead)

March 23, 20XX

Office of the Command Inspector General

Gunnery Sergeant (Subject's Name)
Address
Address

Dear Gunnery Sergeant (Name):

The Command Inspector General received an allegation that you (improperly did something in violation of a regulation / Command Policy Letter -- clearly state the allegation IAW the format in Section 5-3). We conducted an inquiry (or investigation) and determined that the allegation against you **was (or was not) substantiated**. (Indicate your conclusion[s] for additional allegations, if any.)

The case is closed; however, we will maintain the results in the IG database.

If you would like to receive a redacted copy of the report of investigative inquiry (or investigation), you may request a copy from the Command Inspector General under the Freedom of Information Act (FOIA). Specify that you want a copy of case number_____ (enter your case number) in which you were the subject / suspect. To initiate the process, send a written request to the following address: (include address and contact telephone numbers).

Sincerely,

(SIGNATURE BLOCK)*
Colonel, USMC
Command Inspector General

*Normally the CIG or Directing Authority.

Memorandum Format: Commander / Supervisor
Results of Investigation Memorandum

Office Symbol 3 May 20XX

MEMORANDUM FOR Commanding General, 2nd Marine Logistic Group

SUBJECT: Results of Investigation

1. The Command Inspector General completed the investigation into allegations of impropriety against (name), a member of your command. The investigation concluded that (List all allegations and findings pertaining to the individual(s) in the command against whom the allegations were made):

a. The allegation that LtCol Blank failed to manage properly government contracts in violation of The Joint Ethics Regulation during January through May 20XX was not substantiated.

b. The allegation that LtCol Blank ... was substantiated.

2. The Inspector General completed the investigation and will take no further action pertaining to these allegations.

(SIGNATURE BLOCK)*
COL, USMC
Command Inspector General

* Normally the CIG or Directing Authority.

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

FOR OFFICIAL USE ONLY (FOUO)

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

(*Letterhead*)

December 21, 20XX

Office of the Command Inspector General

Captain John Doe
3030 Anywhere Lane
Anywhere, VA 22060

Dear Captain Doe

This letter is in response to your December 1, 20XX, letter to the II Marine Expeditionary Force Command Inspector General concerning the alleged misconduct of Major Rodney Ward.

We conducted a thorough inquiry into your allegations. Our inquiry determined that the allegations were not substantiated. (If more than one allegation was provided, address it in the same order that the complainant listed it in his or her initial letter / phone call.)

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

Sincerely,

(SIGNATURE BLOCK)*
Colonel, USMC
Command Inspector General

* Normally the CIG or Directing Authority.

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

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

(*Letterhead*)

May 25, 20XX

Command Inspector General

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

Dear Mr. Victim:

The Command Inspector General has concluded an investigation of an allegation you made against on officer assigned to your former unit at Marine Corps Base Camp Pendleton, California.

The Commanding General, 1st Marine Logistic Group, approved the report of investigation on May 21, 20XX, and will take action as he deems appropriate. My office will take no further action pertaining to the allegation at this time.

Sincerely,

(SIGNATURE BLOCK)*
Colonel, USMC
Inspector General

* Normally the CIG or Directing Authority.

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

Section 10-2

Other Post Fact-Finding Actions

1. **Post Fact-Finding Actions.** Your actions do not end once you have made your notifications at the completion of your case. The nature of the case drives your post fact-finding actions, and those actions are independent of the fact-finding process you used.

2. **Follow-up**. You should return to Steps 6 and 7 of the IGAP once fact-finding is complete. Follow-up actions are frequently extensive. Even if you hand-off corrective actions to a proponent staff agency, you will probably have to follow-up to ensure that problems are fixed.

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

a. You should maintain and file the ROII / ROI as required by the appropriate regulations governing the maintenance of records and files. Consider carefully which case materials you keep beyond the ROII / ROI. You should maintain only case-related materials needed for factual documentation. As a general rule, eliminate any extraneous working papers such as draft reports, administrative notes, or other items not needed for your ROII / ROI and case file and return all other materials to their sources. Remember to dispose of all files in accordance with IGMC policies as appropriate. You are not authorized to keep any files beyond their destruction date.

b. When you have completed a case, you should purge your files of unnecessary notes, logs, internal memoranda, personal observations concerning the credibility of witnesses, etc. Your final action is to erase magnetic recording tapes used to record testimony once you have a transcript or summarized testimony and the case is closed.

Section 10-3

Closing the Case

You must ensure that the case is closed in ODIN. The case notes, at a minimum, should reflect those key actions by the investigating officer such as notifications, interviews, important documents received, etc. The synopsis must be a clear, concise summary of the complaint; the allegations investigated; the evidence analyzed; the conclusion reached by the investigating officer; and the actions taken by the command. The synopsis must be a stand-alone document that can be retrieved from the ODIN database anytime in the future and understood by the IG reading it. It should answer the questions Who, What, When, Where, Why, How, and How Many? Each allegation should be clearly written in the correct format (Who improperly did what in violation of a standard and when) with the conclusion of **substantiated** or **not substantiated** clearly displayed for each allegation.

Section 10-4

Common Pitfalls, Issues, and Problems

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

2. **Refusal of a Commander to Cooperate**. From time to time, commanders may not be fully cooperative. In most cases, the best course of action is for you to convince the commander that it is in his or her interest to cooperate fully. If a commanding officer (subordinate to your Directing Authority) will not allow his or her subordinates to testify or make them available for you to interview, two courses of action are open to you:

a. Advise the commander that you will refer the matter to the next higher commander or the Directing Authority. Then contact your office and request that action be taken to inform the appropriate commanders, or call the commander yourself. Frequently, the mere statement that you will notify the higher commander is sufficient to persuade a commander to cooperate.

b. Submit a written report to the CIG or Directing Authority. Ensure the written report contains protective markings IAW SECNAVINST 5216.5d.

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

a. Allowing third-party individuals in the interview is not a preferred practice. These individuals are anyone other than the witness, the investigators, a stenographic secretary, court reporter or interpreter, union or collective-bargaining representative, and counsel when authorized. Third-party personnel include friends, spouses, assistants, physicians, nurses, and union representatives. Privacy promotes confidence; third parties do not. While the presence of third parties is discouraged, the final decision is up to the investigating officer.

b. In cases where the person you are interviewing has requested the presence of an unauthorized observer or lawyer, you should weigh whether the presence of such a person will facilitate or inhibit communications. If the person's presence will make the interviewee more comfortable, you may want to consider making an exception. Indicate in the record the presence of all parties to an interview. If a witness requests the presence of another person, offer to have the other person located in a nearby room and admitted to the interview only if needed.

4. **Refusal of a Witness to Testify**.

a. Military members and DON civilians are required to answer all questions related to an investigation except questions that may be self-incriminating or, in the case of military personnel, those that are privileged communications as defined in Section V, Rule 501-513, Military Rules of Evidence of the Manual for Courts-Martial. Lawyer-client, husband-wife, and certain communication with clergy members are privileged. The military doctor-patient relationship is not considered privileged communication within

the DoD. However, the rules for each differ, and you should check with a legal advisor if a military witness claims one of the exemptions.

b. The commander or supervisor may order DON employees or Service members who refuse to answer questions to respond (Remember: you cannot compel any witness to incriminate himself or herself). Allow the witnesses to explain why they feel they should not testify before you take action to require them to do so. This approach provides you a basis for determining whether you want to force the issue. IGs confronted with a Service member or DON employee witness who refuses to answer questions should consult with their SJA or legal advisor. IGs should not order a witness to testify because they will jeopardize their role as a impartial investigators. Failure to cooperate is an offense punishable under applicable regulations. Possible punishments include dismissal from Federal service.

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

d. A witness may also refuse to answer because the response may reveal classified information. If the IG involved does not have the proper clearance, he or she should obtain it or request assistance from an IG who does have the proper clearance.

e. The witness may not refuse to testify on the basis that the question is not relevant. You alone determine if a question is relevant to the investigation, and you should advise the witness accordingly.

f. If you have a reluctant witness whom you believe has information concerning a felony, you may read that person Title 18, United States Code, Section 4, to convince him or her to discuss the issues with you. This law provides that any person having knowledge of a felony and who does not make this information known to civil or military authority is subject to a fine or imprisonment.

g. Civilian witnesses who are not DON employees may rightfully refuse to testify on the basis that you have no authority to make them do so. Your personal appeals may help obtain their testimony. Title 18, United States Code, Section 4, is applicable. You must realize, however, that the possibility of a civilian being taken to court for refusing to cooperate with an IG is remote. Therefore, you should be cautious about using this warning.

5. **False Testimony by a Witness**. False testimony knowingly given to you under oath by an individual subject to the Uniform Code of Military Justice constitutes false swearing. False testimony civilian witness constitutes an offense under Title 18, USC, Section 1001. Appropriate advisements that may be read to individuals who provide false testimony are contained in applicable read-in scripts. Remember: a false official statement made by someone subject to the UCMJ is a criminal offense.

6. **Requests for Advice from an Investigating Officer**. A witness may ask for or seek your advice, but you must tell the witness that you cannot give any advice except as to rights, duties, and procedures regarding the interview. Do not advise witnesses whether

or not they should consult with counsel. Do not advise witnesses whether or not they should consent to release of their testimony if they make a FOIA request.

7. **Intimidation of Witnesses.**

a. If you believe there has been tampering or interference with a witness, you should immediately report this information to the witness's commander and request that these practices cease immediately. If the commander does not cooperate, or if the commander is suspected of being a party to this irregularity, advise the Directing Authority and request that appropriate action be taken. Make sure you make a full record of such action and that the pertinent details appear in the ROI / ROII.

b. Fear of retribution for testifying about their superiors or supervisors may be intimidating for a witness. There have been instances where individuals were called as witnesses and gave testimony that implicated their commanding officer. Despite the assurance given to these witnesses by the investigator, reports have occasionally been forwarded to the same commander for necessary action. These referrals present the possibility of adverse or discriminatory action against the witnesses. The effect of such action is to destroy the confidence of witnesses in the integrity of the IGP. Therefore, avoid this practice whenever possible.

8. **Request by Witness or Lawyer to Record an Interview**. Normally, persons providing testimony are not allowed to tape interviews in order to preclude compromising testimony and other evidence. Follow the procedures outlined below when you receive a request to record an interview.

a. **Service Members or Federal Employees**. Inform the witness that IG investigation procedures prohibit the witness from recording the interview. Should this advisement not resolve the issue, you may offer him or her the opportunity to read the testimony in your office upon request. Also, upon request, you may provide the witness a copy of his testimony after the Directing Authority approves the ROI. Both these requests must be in writing. If the witness is uncooperative and refuses to testify because you have denied him or her permission to record the interview, you may have a commander order the person to testify.

b. **Non-Federal Civilian Witness**. If a Non-Federal civilian witness puts a condition on his or her cooperation such as refusing to testify unless allowed to record the session, you can persuade that person not to do so, to honor the request, or to forgo receiving his or her testimony. You cannot require a Non- Federal civilian witness to testify. If you allow a Non-Federal civilian witness to record an interview, attempt to retain the tape until the investigation is complete to avoid compromising the investigation or consider interviewing all other witnesses before allowing a Non-Federal civilian witness to record an interview.

9. **Request for a Copy of the ROI / ROII**. Individuals involved in anIG investigation or investigative inquiry will not have access to the ROI / ROII. ROI / ROIIs and accompanying testimony are released only as authorized by Chapter 4, Marine Corps Inspector General Program Concept and System Guide.

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

a. Follow the guidelines in Chapter 4 Marine Corps Inspector General Program Concept and System Guide. The Directing Authority may direct that you provide ROI / ROIIs or summaries within the DoD for official purposes; however, you need to take several precautions:

(1) Comply with all provisions of Chapter 4, Marine Corps Inspector General Program Concept and System Guide.

(2) Make sure that you include the protective markings on each page of the report and attached testimony.

(3) Prohibit reproduction.

(4) Prohibit subsequent transfer to another agency.

(5) Attempt to satisfy the request for an ROI by permitting the report to be used in your office.

(6) Provide for return of the report to the IG office as soon as the action desired is completed.

b. The purpose of these restrictions is not to hinder operations but to limit access to IG records. An example of an ROI transmittal letter is at Appendix B.

11. **New Allegations Received During an Interview**. It is not uncommon to receive new allegations from an interviewee during an interview. If these allegations are related to your investigation, include them in your case – but you may need to expand your Directive. If you are unsure, brief your Directing Authority. If an unrelated issue surfaces, take it through the seven-step IGAP process. It could result in a separate investigative inquiry or investigation.

12. **Off-the-Tape Discussions**. If the witness appears to be withholding information or is uneasy talking about a subject, consider turning off the recording devices and discussing the apparent problem. Although the tape recorders are off, the discussion is still on the record and official. You should discuss the witness's concerns, attempt to dispel them, and encourage the witness to allow you to record the information. While you can make a MFR of off-tape discussions, the witness may later contend that you modified or misunderstood what he said. It is best to have the witness put off-tape answers in the recorded testimony. When you resume taping, ask the witness to summarize what he told you off tape.

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

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

b. You can require individuals subject to the UCMJ or Federal employees to testify under oath or affirmation. If a witness refuses to swear, you may continue with an unsworn interview, or you may consult with your legal advisor and then ask the witness's commander or supervisor to direct the witness to swear or affirm to the testimony.

14. **Locating Civilian Witnesses**. If you have difficulty locating essential civilian witnesses, the first choice is to seek help through IG technical channels. When not practical, sources such as the local Provost Marshal (or equivalent position), local military law enforcement organization, or the designated liaison official for the local police or other law-enforcement agency can be helpful.

15. **Gifts and Social Activities**. Do not accept gifts or be involved in any social activities that might give the appearance of a conflict of interest with anyone involved in your investigative inquiry or investigation -- or any inquiry or investigation an IG is conducting in your office. Should you find yourself in a position where someone might question your impartiality in an investigative inquiry or investigation, consider disqualifying yourself to the CIG or Directing Authority. Even if you think you can be impartial, what others think is what matters. If you are the CIG, your office may have to hand off the case to a higher IG such as the MEF or IGMC.

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

17. **Requests for Interim Reports**.

a. IG investigations often take several weeks or months to complete. You may use an executive summary as an interim report to keep your CIG or the Directing Authority informed of your progress. The executive summary must contain protective markings. Be careful not to speculate on the results of the investigation too early in the investigative process because subsequent evidence and legal reviews may alter those premature conclusions.

b. Complainants may ask, write, or call you, the commander, or a higher IG for the progress (or the results) of an investigation before the Directing authority has approved the results. Do not provide any information other than to state that their complaint has been received and appropriate action is being taken. Do not release any other information such as the tentative conclusions stated in an interim report. Even when the case is complete, you cannot allow the complainant to have any information except that which applies directly to him or her.

c. Never fall into the trap of leading a subject or suspect to believe that the allegations will be not substantiated before your Directing Authority has approved the case. The weight of evidence may change, or the commander may not agree with you.

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

a. Notify the CIG's commander of the investigation. Never notify the commander if the allegations are against your commander.

b. Schedule and arrange locations for interviews.

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

d. Assist in gathering documents and other physical evidence.

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

19. **Courtesy Calls**. Do not routinely make courtesy calls with commanders. Because of the confidential nature of IG investigations, you cannot normally discuss details of a case beyond what is provided in the Directive. This need for confidentiality applies to investigative inquiries as well. If a commander desires a courtesy call, exercise tact and restraint. Limit your discussion to the minimum information the commander needs to do his job -- usually the information in the Directive. The same guidelines apply to exit interviews; limit discussion to the Directive and the support rendered by the command.

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