



Investigating Officer Training

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References

- **MEARNG JAG IO SOP**
- **AR 15-6, Procedures for Administrative Investigations and Boards of Officers, 20160401 (Appendix C)**
- **AR 20-1, Inspector General Activities and Procedures, 20200323**
- **AR 600-20, Army Command Policy, 20200724**
- **Manual for Court Martials, 20190101**
- **The applicable regulation(s) that applies to the offense(s)**





Purpose: Develop a bench of trained, capable, and ready IO's that can conduct quality investigations in support of state requirements.

Terminal Learning Objectives

- 1. Ensure that potential IO's understand the investigative process and the necessary steps in order to conduct a thorough investigation.**
- 2. Ensure that potential IO's understand the intricacies of conducting interviews.**
- 3. Ensure that potential IO's understand the Privacy Act and Confidentiality.**
- 4. Ensure that potential IO's understand the importance of deadlines and understand the extension process.**
- 5. Ensure that potential IO's can write quality final investigatory reports.**





Types of Investigations

- **Inspector General Investigations**
- **AR 15-6 Investigations**
- **Commanders Inquiry**

- **Financial Liability Inspection of Property Loss (FLIPL)**
- **Special Investigations**





Definitions

- **Witness** - Someone who we believe has some knowledge to support or to refute an allegation (May be a subject-matter expert (SME))
- **Subject** - Someone against whom a non-criminal allegation is made
- **Suspect** - Someone against whom a criminal * allegation is made
- **Preponderance of Evidence** – Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.
- **Substantiated** – Conclusion drawn at the close of an investigative inquiry or investigation when the preponderance of credible information suggests that the subject or suspect actually did what was alleged.
- **Not substantiated** – Conclusion drawn at the close of an investigative inquiry or investigation when the preponderance of credible evidence suggests that the subject or suspect did not do what was alleged in the allegation.

***Violations of law (UCMJ & USC) are criminal offenses.**





Definitions

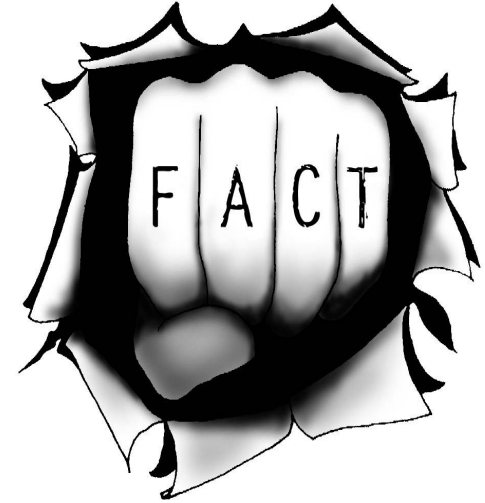
- **Reprisal** – The taking of (or threatening to take) an unfavorable personnel action or the withholding (or threatening to withhold) a favorable personnel action because the member made (or was thought to have made) a protected communication.
- **Retaliation** – Ostracism and acts of cruelty, oppression, or maltreatment
- **Restriction** – A form of reprisal. 10 USC 1034 prohibits anyone from restricting a member of the Armed Forces from making lawful communications to a Member of Congress or an Inspector General.
- **Fraud** - Any intentional deception designed to deprive the United States unlawfully of something of value or to secure from the United States for an individual a benefit, privilege, allowance, or consideration to which he or she is not entitled...The term also includes conflict of interest cases, criminal irregularities, and the unauthorized disclosure of official information relating to procurement and disposal matters.
- **Abuse** - Intentional misuse or improper use of Government resources. Examples include misuse of grade, position, or authority or misuse of resources such as tools, vehicles, or copying machines.
- **Waste** - The extravagant, careless, or needless expenditure of Government funds, or the consumption of Government property that results from deficient practices, systems, controls, or decisions. The term also includes improper practices not involving prosecutable fraud.





Fact *DEFINITIONS*

- Events that are known to have happened
- *Things that are known to be true*
- Can be a combination of testimonies, documents or physical evidence
- *Must independently agree on a single point*





Keys to Success

1. Read AR 15-6 Appendix C upon notification of responsibilities as an IO.
2. Ask questions and consult SJA office as much as needed and often.
3. Consult your state IG for assistance with investigation techniques or to utilize the interactive training module. **DO NOT TALK CASE SPECIFICS!**
4. Keep a chronological record of all actions taken, delays in report, etc...





Investigating Officers Duties

1. Ascertain and consider all evidence and facts regarding relevant issue(s).
2. Be thorough and impartial.
3. Make findings and recommendations driven by the evidence.
4. Comply with the instructions of the appointing authority.
5. Report the findings and recommendations to the approval authority.





Preliminary Matters

1. Preliminary Matters

- IOs should seek legal advice as soon as possible upon notification.
- The legal advisor can assist an IO by providing legal advice and assistance, but will not conduct your investigation for you
- Review the allegations to ensure you understand them
- Review appropriate regulations as they pertain to the allegations

2. Administrative Matters

- Begin tracking steps chronologically of everything that you have completed on the investigation.

3. Develop an Investigation Plan

- IO should develop an investigation plan that consists of:
- What information is already available?
- What additional information is required?
- Develop Witness list
- Develop initial questions

4. Obtain documentary and physical evidence

- Collect documentary and physical evidence
 - i.e. applicable regulations, existing witness statements, accident/police reports, video/audio evidence, and photos.

* Annotates not regulatory guidance, but helpful TTPs





Case Study

An anonymous "concerned Employee" made allegations against COL Brown in a letter received by State Inspector General (IG) on 30 November 2005. The anonymous letter alleged that COL Brown had an affair and that he sexually harassed female employees. Upon review the IG spoke to The Adjutant General (TAG) and recommended the command investigate the allegations. The TAG agreed and directed the Chief of Staff (CoS) to initiate a 15-6 investigation into the allegations.





Allegations

- **ALLEGATION 1: COL Brown conducted an adulterous relationship with his secretary in violation of Article 134, Uniform Code of Military Justice (UCMJ). (MCMJ §460 Prejudicial to Good Order and Discipline or discredit the Armed Forces)**
- **ALLEGATION 2: COL Brown sexually harassed female of Army Regulation (AR) 600-20, Army Command Policy. (MCMJ §460 Prejudicial to Good Order and Discipline or discredit the Armed Forces)**

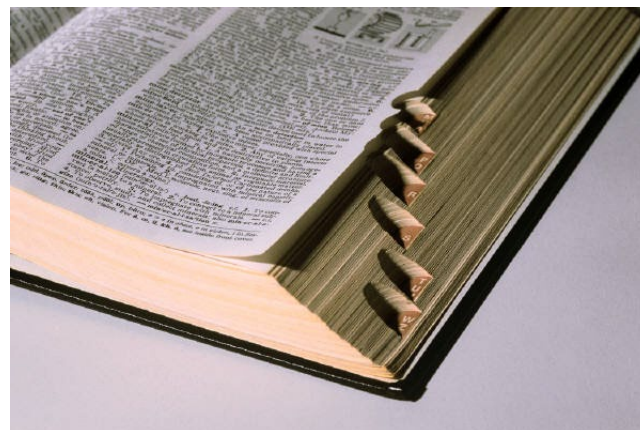




Elements of Proof

Words Have Meaning!

- Read what the standard says
 - *"don't read into it"*
- Conjunctions count
 - *And,*
 - *Or, Nor, For*
 - *But, Yet, So*
- Ask the JAG for interpretation and advice





Example of Elements of Proof

Manual for Courts Martial (2016 Edition) Article 134, Adultery

Article 134, (Adultery) UCMJ, states, “Text of statute. See paragraph 60.”

Elements.

- (1) That the accused wrongfully had sexual intercourse with a certain person;
- (2) That, at the time, the accused or the other person was married to someone else; **and**
- (3) That under the circumstances, the conduct of the accused was to the prejudice of good order and discipline





Example of Elements of Proof

Manual for Courts Martial (2016 Edition) Article 86 Absence without leave

Article 86, UCMJ, states, "Any member of the armed forces who, without authority -"

Elements.

- (1) fails to go to his appointed place of duty at the time prescribed;**
- (2) goes from that place; or**
- (3) absents himself or remains absent from his unit, organization, or place of duty at which he is required to be at the time prescribed**





Categories of Evidence *DEFINITIONS*



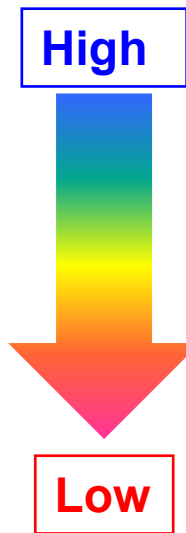
Recorded



Under oath



Documents



Testimony - Recorded under oath, transcribed or summarized! (sworn statement)

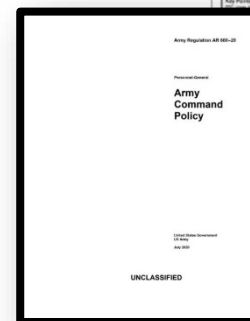
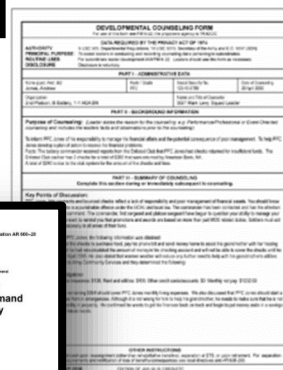
Physical - Objects; not common

Standard - Regulation, SOP, etc

Documents

Statements - Written

Personal Perspective - Stay Away!





Levels of Evidence

DEFINITIONS

High

Direct - First-hand knowledge

Circumstantial - Tends to prove or disprove an issue by inference

Hearsay - What one individual says another person said

Low

Opinion - A person's belief or judgment
(D - C - H - O)

Evidence is also characterized by its quality, detail, and credibility. Always conduct a credibility assessment.





Rules of evidence and proof of facts

- **Administrative proceedings governed by AR 15-6 generally are not subject to exclusionary or other evidentiary rules precluding the use of evidence, the following limitations do apply:**
 - **Relevance**
 - **Privileged Communication**
 - **Investigations related to sex offense cases**
 - **Polygraph tests**
 - **Off the Record statements**
 - **Statements regarding disease or injury**
 - **Ordering witness to testify**
 - **Involuntary admission**
 - **Bad faith unlawful searches**
 - **Adverse finding against a field grade officer**
 - **Recordings**
 - **Electronic Communications**





Rules of evidence and proof of facts cont...

- **Relevance:** Means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probably or less probably than it would be without the evidence. Witnesses will not be asked whether they believe a particular individual, because it is not relevant.
- **Privileged Communication:** Protects privileged communication with lawyers, clergy, spouses, psychotherapists, and victim advocates. Present or former IGs will not be required to testify or provide evidence regarding information that they obtained while acting as an IG.
- **Investigations related to sex offense cases:** With limited exceptions, evidence of an alleged victim's sexual behavior or sexual predisposition is not relevant. Therefore, evidence of an alleged victim's sexual behavior or predisposition will not be considered, unless the legal advisor determines that one of the exceptions in MRE 412 applies
- **Polygraph tests:** No evidence of the results of, or the taking or refusal to take, a polygraph test will be considered without the consent of the person to whom the test was administered.

MRE – Military Rules of Evidence





Rules of evidence and proof of facts cont...

- **Off the Record statements:** Findings and recommendations of the IO must be supported by evidence contained in the report. Accordingly, witnesses will not make statements “off the record” to the IO.
- **Statements regarding disease or injury:** IO will comply with provisions of AR 600-8-4, Line of Duty, Procedures, and Investigations, regarding warning a member that they need not make any statement related to their injury.
- **Ordering witness to testify:** No witness or respondents not subject to the UCMJ will be required to make a statement or produce evidence that would deprive them of their rights against self-incrimination under the 5th amendment or Article 31 UCMJ...The legal advisor will decide whether the witness may be ordered to answer if the reason for refusal is not based on the protection afforded by either 5th amendment or Article 31.
- **Involuntary admission:** A confession or admission obtained by unlawful coercion or inducement will not be accepted as evidence.
- **Bad faith unlawful searches:** Members of the Military (i.e. MP) violate an individuals 4th Amendment Rights against unreasonable search and seizure.
- **Adverse finding against a field grade officer:** If the IO contemplates making an adverse finding against a FGO, one must afford the officer the opportunity to be interviewed.
- **Recordings:** IO’s consult with JAG when in receipt of recorded conversations.
- **Electronic Communications:** IO’s consult with JAG to ensure evidence of electronic communication does not violate Electronic Communication Privacy Act (18 USC 2510, et seq).





Status

Who is required to cooperate & when?

Military?

Army Active Component? Always

Army Reserve? When in a duty status

Army National Guard? When in a duty status

Department of the Army Civilians? Always

Contractors? It depends on the contract

Other DoD Military / Civilian Personnel? Chain of command

Civilians not employed by the DoD? Never
(Civilian / Civilians)





Planning Tools for Organizing Investigations

- Investigation Plan
- Force Flow Diagram
- Evidence Matrix





Investigation Plan

- **Formulate a plan of how you will obtain facts and information pertinent to the allegations you have received.**
- **At a minimum, your plan should include: a witness list, the interview questions, and the itinerary for when and where interviews will take place.**
- **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.**
- **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.**





Force-Field Diagram

- A force-field diagram for each allegation is an invaluable tool for graphically depicting the assigned weight of evidence, determining facts, and assessing the preponderance of evidence.
- Next, divide your *evidence* or, more specifically, *facts* into two groups:
 - (1) evidence that tends to support substantiating the allegation and
 - (2) evidence that tends to support not substantiating the allegation.
- The resulting columns of evidence and facts are then weighed and compared against the elements of proof to determine a preponderance of credible evidence.





Force-Field Diagram

CUI

Allegation #1: COL Brown committed adultery in violation of Article 134, UCMJ.

Elements of Proof: One or more parties were married. Wrongful sexual intercourse transpired. Conduct was detrimental to good order and discipline.

Substantiate	Not Substantiate
<ul style="list-style-type: none"> • Enter evidence here that would indicate the subject / suspect <u>did</u> perform the alleged impropriety • Summarize the evidence and indicate its category and level 	<ul style="list-style-type: none"> • Enter evidence here that would indicate the subject / suspect <u>did not</u> perform the alleged impropriety • Summarize the evidence and indicate the category and level

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





Force-Field Diagram

Allegation: COL Brown committed adultery in violation of Article 134 (Adultery), UCMJ.

Elements of Proof: (1) One or more parties were married and (2) Wrongful sexual intercourse transpired, and (3) Conduct was detrimental to good order and discipline.

Substantiate	Not Substantiate
<ul style="list-style-type: none"> • (O) MAJ Jones stated COL Brown was having an affair. • (D) COL Brown DD 1172- was married to Diane Brown 4 June 1980. • (C) Mrs. Brown, wife of COL Brown, provided 7 love letters from unknown woman addressed to COL Brown expressing love for him. • (H / S) CPT Baker heard rumors that COL Brown was having an affair with Ms. Smith. Lost respect for COL Brown. • (D) Ms. Smith stated she had sexual intercourse with COL Brown on 4 January 2003. • (D) Ms. Smith provided photos, made with COL Brown's consent, of the sexual intercourse on 4 January 2003. • Fact – COL Brown had wrongful sexual intercourse, was married, and conduct was detrimental to good order and discipline. 	<ul style="list-style-type: none"> • (O) COL Brown stated his relationship with Ms. Smith was “platonic.” • (D) COL Brown refused to comment when asked about having sexual intercourse with Ms. Smith on 4 January 2003.

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

Figure II-1-2

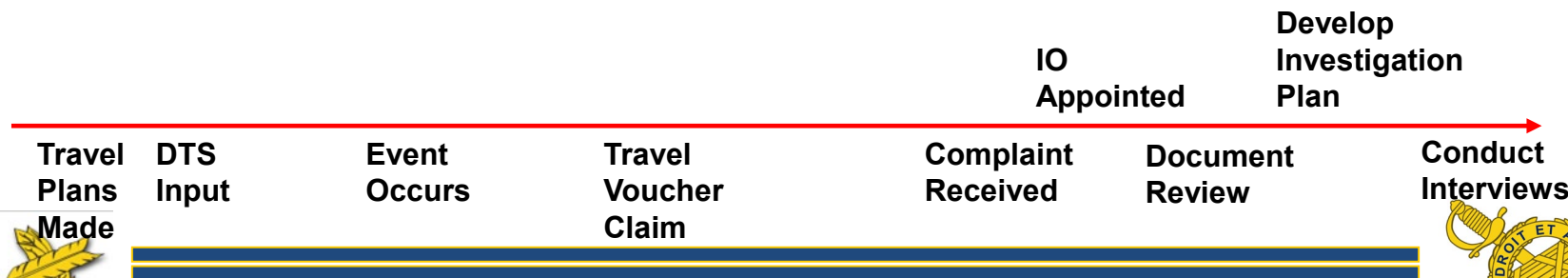




Evidence Matrix

Witness	Adultery	Sexual Harrass	Other	Due Outs
CPT Jones (CDR A Co)			How did you become aware of the allegations?	Talk to MAJ O'Reilly Talk to MAJ McDonald
MAJ O'Reilly (Asst G-1)				
Documents	- Hotel Receipts - Vehicle Dispatch Log	- DD Form 4072 for COL Brown	- Any Government Contracts?	
COL Brown (Suspect)				

organize your data early & often





Timeline Example 2

20190613 – Counseling by Chief of Staff (CoS)

**Counseled reference states decision to change direction with SM Position
Plan of Action – CoS acknowledged EFMP**

- Talked through process to initiate EFMP

*** At time of counseling SM did not have an approved EFMP ***

20190701 – Command directed him to move to fill position with Division Headquarters – **Would involve PCS**

20190808 – EFMP approved – Packet submitted 20190708 – After being directed to move and after counseling from CoS

-- ~45 Days post notification to move

-- Mrs Smith / CPT Doctor (DO) – FSGA EFMP Program manager

-- Did SM provide copy of approval letter to HRC or Division G1 as MFR from EFMP Office directed?

20191212 – Orders number 346-204 – Report to Division HQ





Interview Questions

- What are the standards and elements of proof?
- Determine the key facts necessary to address the elements of proof.

Who
What
When
Where
Why
How
How many / how much

W⁵ H²

WHAT IS A
FACT?





Interview Questions

(cont'd)

Weak interview:

- Do you and Ms Smith have a romantic relationship?
- Do others perceive your relationship with Ms Smith as inappropriate?
- Are you always performing your duties as required?

Stronger interview:

- Describe the nature of your relationship with Ms Smith.
- Describe when and where you must perform your duties away from your office and / or after normal duty hours.
- What additional information can you provide that will help the Command resolve this matter?





Interview Questions (cont'd)

Describe the nature of your relationship with Ms. Smith.

Q

We have an intimate and romantic relationship.

A

It is both professional and personal.

When did this intimate relationship begin?

Q

It's been a while.

A

After my divorce.

What about your relationship might others perceive as improper?

I don't know. Ask them.

A

We spend a lot of time together.

Be prepared to adjust and to change the focus of your questioning based on the answers.





Conduct the Investigation

1. **Obtain Witness Testimony**
 - Sworn Statements need to be legible
 - Privacy Act
 - Review Testimony
2. **Schedule Witness Interviews**
 - Based on witness testimony (sworn statements) and evidence, IO will determine who should be interviewed. Schedule witnesses to be interviewed in a logical order to save time and keep from backtracking.
3. **Conduct Witness Interviews**
 - Prepare for interview
 - Ensure witness privacy
 - Focus on relevant information
 - Let the witness testify in their own words
 - Protect the process
4. **Standard of Proof - Unless another specific regulation or directive states otherwise, AR 15–6 provides that findings must be supported by "a greater weight of evidence than supports a contrary conclusion."**
 - **i.e. Greater than 51%**
 - Rules of Evidence

* Annotates not regulatory guidance, but helpful TTPs





Successful Interviews

- Preparation & Rehearsal
- IO Attitude & Demeanor
- IO ability to:
 - Put the witness at ease
 - Maintain impartiality
 - Adapt to the unexpected
- LISTEN! *LISTEN!* LISTEN!
- OBSERVE!
- *No Surprises - No Trickery*
- IO must ask the questions necessary to uncover credible evidence that address elements of proof!





Interviews

AVOID:

- Being defensive / aggressive
- Interrupting the witness
- Asking:
 - Yes or No questions
 - Leading questions
 - Irrelevant questions

DO NOT:

- Lose control of interview
- Lose your temper
- Give advice or counsel
- Be intimidated





Sworn Statement Form DA 2823

- Preferred method of recording all witness testimony
- Any witness statement which supports a finding should be sworn
- Can utilize recording device to transcribe / summarize interview and memorialize it on this form.
- Show witnesses this form during interview and **read the privacy act statement at top.**
- Make sure to fill in (1) location of the interview; (2)(3) Date and time of interview; (5) Name of witness; (7) Grade / Status of witness; (8) Organization / Unit of witness if applicable.

SWORN STATEMENT			
For use of this form, see AR 190-45; the proponent agency is PMG.			
PRIVACY ACT STATEMENT			
AUTHORITY:	Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).		
PRINCIPAL PURPOSE:	To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.		
ROUTINE USES:	Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.		
DISCLOSURE:	Disclosure of your SSN and other information is voluntary.		
1. LOCATION	2. DATE (YYYYMMDD)	3. TIME	4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME	6. SSN	7. GRADE/STATUS	
8. ORGANIZATION OR ADDRESS			
9. I, _____, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:			
10. EXHIBIT	11. INITIALS OF PERSON MAKING STATEMENT		Page 1 of 3
ADDITIONAL PAGES MUST CONTAIN THE HEADING "STATEMENT OF _____ TAKEN AT _____ DATED _____ THE BOTTOM OF EACH ADDITIONAL PAGE MUST BEAR THE INITIALS OF THE PERSON MAKING THE STATEMENT, AND PAGE NUMBER MUST BE INDICATED.			
DA FORM 2823, NOV 2006		PREVIOUS EDITIONS ARE OBSOLETE.	





Sworn Statement Form DA 2823

- Put witness name in blank space in affidavit, and how many pages (including signature pages)
- When swearing the witness, they should be asked if their statement is “The truth, the whole truth, and nothing but the truth.”
- Get electronic signature with CAC (if possible) on signature line
- Sign electronically under “person administering oath” line
- Witnesses not necessary but preferred.

STATEMENT OF _____	TAKEN AT _____	DATED _____
AFFIDAVIT I, _____, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 3. I FULLY UNDERSTAND THE CONTENTS OF THE ENTIRE STATEMENT MADE BY ME. THE STATEMENT IS TRUE. I HAVE INITIALED ALL CORRECTIONS AND HAVE INITIALED THE BOTTOM OF EACH PAGE CONTAINING THE STATEMENT. I HAVE MADE THIS STATEMENT FREELY WITHOUT HOPE OF BENEFIT OR REWARD, WITHOUT THREAT OF PUNISHMENT, AND WITHOUT COERCION, UNLAWFUL INFLUENCE, OR UNLAWFUL INDUCEMENT.		
WITNESSES: _____ _____ _____ ORGANIZATION OR ADDRESS _____ _____ ORGANIZATION OR ADDRESS		_____ (Signature of Person Making Statement) Subscribed and sworn to before me, a person authorized by law to administer oaths, this _____ day of _____, at _____ _____ (Signature of Person Administering Oath) _____ (Typed Name of Person Administering Oath) _____ (Authority To Administer Oaths)
INITIALS OF PERSON MAKING STATEMENT		Page 3 of 3

DA FORM 2823, NOV 2006

APD AEM v1.04ES





Rights Advisement

Rights Advisement - All Soldiers and civilian personnel suspected of criminal misconduct must be advised of their rights before being questioned, utilizing a DA Form 3881. In other cases, however, an IO will become aware of the witness's involvement in criminal activity only after the interview has started and incriminating evidence is uncovered. In such case, rights warnings must be provided as soon as the IO suspects that a witness may have been involved in criminal activity.

RIGHTS WARNING PROCEDURE/WAIVER CERTIFICATE
For use of the form, see AR 15-6, the retention agency (15-6)

DATA REQUIRED BY THE PRIVACY ACT

AUTHORITY: Title 10, United States Code, Section 3012(g)

PRINCIPAL PURPOSE: To provide commanders and law enforcement officials with means by which information may be accurately identified.

ROUTINE USES: Your Social Security Number is used as an additional identifier means of identification to facilitate filing and retrieval.

DISCLOSURE: Disclosure of your Social Security Number is voluntary.

1. LOCATION 2. DATE 3. TIME 4. FILE NO.

5. NAME (Last, First, MI) 6. ORGANIZATION OR ADDRESS

7. SIGN 8. GRADE/STATUS

PART I - RIGHTS WARNING/WAIVER CERTIFICATE

Section A. Rights

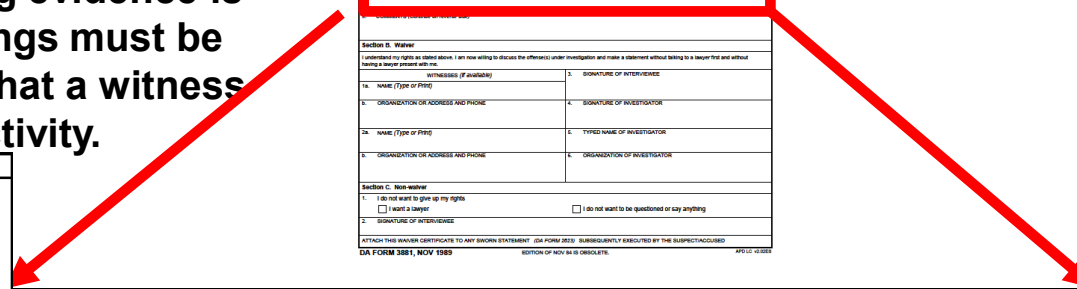
DO NOT SIGN OR SIGNATURE FOR SUSPECT OR WITNESS UNLESS YOU WANT IT

Instructions:
See Section A for any questions about the offense(s). However, he/she made it clear to me that I have the following rights:
Do not have to answer any question or say anything.
Anything I say or do can be used as evidence against me in a criminal trial.
If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.

Section B. Waiver
Understand my rights as stated above. I am now willing to discuss the offense(s) under investigation and make a statement without being in a lawyer that and without having a lawyer present with me.

Section C. Non-waiver
I do not want to give up my rights
 I want a lawyer
I do not want to be questioned or say anything

ATTACH THIS WAIVER CERTIFICATE TO ANY SHOWS STATEMENT USE FORM 2810. SUBSEQUENTLY EXECUTED BY THE SUSPECT/ACCUSED
DA FORM 3881, NOV 1989 EDITION OF NOV 89 IS OBSOLETE AFIC 11-2005



PART II - RIGHTS WARNING PROCEDURE

THE WARNING

1. **WARNING** - Inform the suspect/accused of:

- Your official position.
- Nature of offense(s).
- The fact that he/she is a suspect/accused.

2. **RIGHTS** - Advise the suspect/accused of his/her rights as follows: "Before I ask you any questions, you must understand your rights."

- "You do not have to answer my questions or say anything."
- "Anything you say or do can be used as evidence against you in a criminal trial."
- (For personnel subject to the UCMJ) "You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with you during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to you, or both."
- or -
(For civilians not subject to the UCMJ) You have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be one you arrange for at your own expense, or if you cannot afford a lawyer and want one, a lawyer will be appointed for you before any questioning begins."
d. "If you are now willing to discuss the offense(s) under investigation, with or without a lawyer present, you have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if you sign a waiver certificate."
Make certain the suspect/accused fully understands his/her rights.

THE WAIVER

"Do you understand your rights?"
(If the suspect/accused says "no," determine what is not understood, and if necessary repeat the appropriate rights advisement. If the suspect/accused says "yes," ask the following question.)

"Do you want a lawyer at this time?"
(If the suspect/accused says "yes," stop the questioning until he/she has a lawyer. If the suspect/accused says "no," ask him/her the following question.)

"At this time, are you willing to discuss the offense(s) under investigation and make a statement without talking to a lawyer and without having a lawyer present with you?" (If the suspect/accused says "no," stop the interview and have him/her read and sign the non-waiver section of the waiver certificate on the other side of this form. If the suspect/accused says "yes," have him/her read and sign the waiver section of the waiver certificate on the other side of this form.)

PART I - RIGHTS WAIVER/NON-WAIVER CERTIFICATE

Section A. Rights

The investigator whose name appears below told me that he/she is with the United States Army [redacted] and wanted to question me about the following offense(s) of which I am suspected/accused: [redacted]

Before he/she asked me any questions about the offense(s), however, he/she made it clear to me that I have the following rights:

- I do not have to answer any question or say anything.
- Anything I say or do can be used as evidence against me in a criminal trial.
- (For personnel subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. This lawyer can be a civilian lawyer I arrange for at no expense to the Government or a military lawyer detailed for me at no expense to me, or both.
- or -
(For civilians not subject to the UCMJ) I have the right to talk privately to a lawyer before, during, and after questioning and to have a lawyer present with me during questioning. I understand that this lawyer can be one that I arrange for at my own expense, or if I cannot afford a lawyer and want one, a lawyer will be appointed for me before any questioning begins.
- If I am now willing to discuss the offense(s) under investigation, with or without a lawyer present, I have a right to stop answering questions at any time, or speak privately with a lawyer before answering further, even if I sign the waiver below.





Privacy Act Statement

- The Privacy Act (5 U.S.C. 552a(e)(3)) requires all IOs to:
- inform each individual whom it asks to supply information, on the form which it uses to collect the information or on a separate form that can be retained by the individual—
 - **(A)**the authority (whether granted by statute, or by executive order of the President) which authorizes the solicitation of the information and whether disclosure of such information is mandatory or voluntary;
 - **(B)**the principal purpose or purposes for which the information is intended to be used;
 - **(C)**the routine uses which may be made of the information, as published pursuant to paragraph (4)(D) of this subsection; and
 - **(D)**the effects on him, if any, of not providing all or any part of the requested information;
- Appears right on top of sworn statement form,
- if not using a sworn statement form, have them sign separate memorandum

PRIVACY ACT STATEMENT

AUTHORITY:	Title 10, USC Section 301; Title 5, USC Section 2951; E.O. 9397 Social Security Number (SSN).
PRINCIPAL PURPOSE:	To document potential criminal activity involving the U.S. Army, and to allow Army officials to maintain discipline, law and order through investigation of complaints and incidents.
ROUTINE USES:	Information provided may be further disclosed to federal, state, local, and foreign government law enforcement agencies, prosecutors, courts, child protective services, victims, witnesses, the Department of Veterans Affairs, and the Office of Personnel Management. Information provided may be used for determinations regarding judicial or non-judicial punishment, other administrative disciplinary actions, security clearances, recruitment, retention, placement, and other personnel actions.
DISCLOSURE:	Disclosure of your SSN and other information is voluntary.





Check on Learning





You: IS THERE ANYTHING ELSE?



Soldier: YEA.. FORT HOOD DOESN'T REALLY GET OFF AT 1500 ON FRIDAY'S

memegenerator.com





You:

IS THERE ANYTHING ELSE?

Soldier:

YEA...FORT HOOD DOESN'T REALLY GET OFF AT 1500 ON FRIDAY'S. SO I DON'T KNOW HOW COL BROWN COULD BE OFF WORK AND AT THE HOTEL.





Practical Exercise





Conclude the Investigation

1. Prepare Findings and Recommendations

- The IO should consider the evidence thoroughly and impartially, make findings of fact supported by the evidence, make recommendations consistent with the findings, and comply with the instructions of the appointing authority.
- The IO **MUST** consider evidence on all sides of the issue, you will ultimately make a determination based on the credibility of evidence.

2. DRAFT Legal Review

- Present your findings and recommendations to Legal to ensure that all requirements of the investigation are complete.
- Ensures that you did not make unintended...

3. Prepare Submission to Appointing Authority

- After developing the findings and recommendations, the IO should complete the DA Form 1574–1 and assemble the packet in accordance with the IO SOP. A physical hard copy and digital copy must be submitted.

4. Legal Review

5. Closure of Investigation

* Annotates not regulatory guidance, but helpful TTPs





Investigation Report (ROI)

1. Provides a stand-alone document with all necessary administrative and evidentiary data (exhibits) that explains in plain English the allegation(s) under investigation
2. Lists all the people involved
3. Explains the fact-finding methodology used to determine the credible evidence in support of substantiation and the credible evidence in support of not substantiation
4. Provides an **objective analysis** of these facts in relation to the elements of proof listed in the valid standard allegedly violated
5. Presents findings based on these facts and, if necessary, lists other matters that the Directing (Appointing) Authority must address
6. Makes a clear recommendation regarding the findings listed in the report
7. Makes actionable recommendations to resolve each of the other matters identified during the investigation





Finding Allegation 1

- ALLEGATION 1: COL Brown conducted an adulterous relationship with his secretary in violation of Article 134, Uniform Code of Military Justice (UCMJ). Substantiated.
- SYNOPSIS: An anonymous complainant alleged that COL Brown had an adulterous relationship with his secretary, Ms. Sallie Smith, Secretary, DPCA, FVS. Article 134, UCMJ, prohibited adultery. The elements of proof were [the incidence of] sexual intercourse, [one or both were] married, and the conduct [was prejudicial to] good order and discipline. Ms. Smith testified that she and COL Brown had an adulterous relationship during March and April 2005. Other witnesses testified they believed the two were having an adulterous relationship because they saw them kissing, because of their “unusually familiar” behavior and demeanor, and because they occasionally arrived at work together when COL Brown's wife was out of town. Motel receipts and registration slips indicated COL Brown registered for a double room at the Notel Motel in Lynchburg, Virginia, with "Mrs. Brown" on 21 March, 27 March, and 15 April 2005. A witness saw COL Brown with a woman in the motel lobby on those dates. COL Brown denied the allegation. COL Brown testified that his wife, Jenny Brown, was out of town during March and April 2005. COL Brown testified that he stayed in the motel occasionally to avoid the stress of being in his house by himself and that the registration slips with "Mrs. Brown" registered were a mistake. COL Brown testified that he had dinner with Ms. Smith on the occasions he stayed in the motel but no more. Ms. Smith's testimony that she had sexual intercourse with COL Brown on multiple occasions, supported by documentary evidence and corroborated by witness testimony, was more credible than COL Brown's denials. The preponderance of credible evidence indicated that COL Brown violated Article 134, UCMJ.





Finding Allegation 2

- ALLEGATION 2: COL Brown sexually harassed female of Army Regulation (AR) 600-20, Army Command Policy. Unsubstantiated.
- SYNOPSIS: An anonymous complainant alleged COL Brown sexually harassed female employees within the DPCA, 66th ID. AR 600-20 prohibited sexual harassment. The elements of proof were "unwelcomed sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature," to include "telling sexual jokes," that threatened the individual's job or career. No witnesses testified that COL Brown harassed them. One witness testified that he saw COL Brown harassing others, but his testimony was not credible due to his personal grudge against COL Brown. Witnesses testified that COL Brown frequently used endearing terms ("Honey, Darling") to female employees but attributed this behavior to his age and background. Two female witnesses testified that they heard COL Brown tell a "mildly off-color" joke on one occasion, but they thought it was funny and were not offended. COL Brown admitted that he had a habit of referring to women as "Honey" and "Darling" and once told a "dirty" joke in the office, which he suggested was a lapse in judgment. He denied harassing anyone. None of the women in the office, or any credible witness, objected to either the use of terms of endearment or the joke or felt that their jobs or careers were threatened. The preponderance of credible evidence indicated COL Brown did not violate AR 600-20.





Wrap Up / Helpful Tips

- **An interview is nothing more than a conversation**
- **An interview is non-accusatory and non-threatening**
- **You as the IO need to remain Neutral and Objective**
- **Do not dominate the interview, but do not let the interviewee control the interview**
- **Continue to stress privacy with all interviewees**
- **Interview TTPs:**
 - **Are you on time?**
 - **Are you prepared?**
 - **How are you projecting to the interviewee?**





Wrap Up / Helpful Tips

- **Active listening – Do not just rush to the next question**
- **Listen to how things are said, not just what is being said**
 - The individual may be telling you something by what they **are** or **are not** saying
- **Start with easy information in order to put the other person at ease**
- **Formulate a game plan before starting to question**
- **Goal is to follow the facts and obtain certainty (“Truth”) in the information**
- **The truth may be what the person believes it to be**
 - Perception, expectations, etc...
- **If there are holes in the statement/story in reference to the allegation(s) that cannot be independently closed through the evidence, witness testimony, etc... You CANNOT substantiate the allegation. **CALL JAG!!****





Questions?

