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EXHIBIT 1

17 October 2007

MEMORANDUM THRU Director, Civilian Personnel Advisory Center, APG, MD
Building 305, ATTN: PECP-NER-G

FOR Commander, 20th Support Brigade, APG, MD

SUBJECT: Grievance of Personnel Actions Involving David M. Penhollow

1. The purpose of this memorandum is to grieve personnel actions taken against me pursuant to an AR 15-6 investigation which began 17 January 2007.
2. I respectfully request that the battalion commander's final decision be set aside and I be returned to my previous supervisory position and duties immediately; that my record be expunged of all personnel actions and documentation pertaining to the investigation, decision and punishment; and that the three-days' pay lost during the suspension be restored.
3. This grievance and remediation request is based on the following:
 - a. 5 USC 7701(c)(2)(A)-(C) (Tab D to Enclosure 3); Notwithstanding paragraph (1), the agency's decision may not be sustained under subsection (b) of this section if the employee--:
 - 1) shows harmful error in the application of the agency's procedures in arriving at such decision; or
 - 2) shows that the decision was based on any prohibited personnel practice described in section 2302(b) (Tab A to Enclosure 3) of this title
 - b. 5 USC 7701(c)(1)(B): Subject to paragraph (2) of this subsection, the decision of the agency shall be sustained under subsection (b) only if the agency's decision is supported by a preponderance of the evidence.
4. Substantial substantive and procedural error prejudiced my rights and LTC Terrell's decision.
 - a. Enclosure 1 contains a detailed discussion of statutory and regulatory substantive due process requirements for AR 15-6 proceedings and civilian adverse personnel actions. In short, the investigating officer's conduct during the investigation was so egregious and procedural due process violated so much that I could not possibly have received a fair evaluation of the allegations or disposition thereof. As a result, in accordance with AR 15-6 paragraph 2-3.c.(3)(c) (Tab A to Enclosure 1), the appointing authority may not use the affected part of the investigation as the basis for adverse action; no part of the investigation was unaffected by the substantive errors.

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SUBJECT: Grievance of Personnel Actions Involving David M. Penhollow

b. The significant harmful errors led to decisions and disciplinary actions that would not have occurred had the investigation and handling of the information obtained been accomplished in accordance with statutory and regulatory requirements.

5. 5 USC 2302(b)(2) (Tab A to Enclosure 3) states "Any employee who has authority to take, direct others to take, recommend or approve any personnel action, shall not, with respect to such authority...solicit or consider any recommendation or statement, oral or written, with respect to any individual who requests or is under consideration for any personnel action unless such recommendation or statement is based on personal knowledge or records of the individual providing it." As discussed in Enclosure 2, MAJ Hyman's frequent solicitation of exactly such information was in direct violation of this requirement. Despite Mr. Crouch's email assertion (see Tab B to Enclosure 5) that LTC Terrell did not use any of MAJ Hyman's conclusions or recommendations in making his final decision with regards to my case, the Notice of Proposed Removal, on which the final decision was based, relied upon information from the statements MAJ Hyman collected during the investigation, as direct quotation in one place.

6. 5 USC 2302(b)(12) states that it is a prohibited practice to "...take or fail to take any other personnel action if taking of or failure to take such action violates any law, rule, or regulation implementing, or directly concerning, the merit system principles contained in section 2301 or this title." 5 USC 2301(b)(2) states, "All employees...should receive fair and equitable treatment in all aspects of personnel management without regard to ...race, color...sex, age,...and with proper regard for their privacy and constitutional rights."

a. My final disciplinary action was not equitable to the actions taken with respect to other supervisors and senior personnel committing the same or similar offenses during LTC Terrell's command.

(1) Tab AI to Enclosure 6 is the statement of a peer supervisor in B Company. In it he states that he knew it was sex doll and that it was inappropriate. He also reveals that he did not remove it from the company area. I did not even know what it really was and was suspended for three days just for displaying it. Mr. Griffin knew exactly what it was and nothing has come of his admission, and the command's subsequent knowledge thereof, that he took no active steps to rectify the situation.

(2) It is common knowledge in the battalion that 1SG Davison was found guilty of making a racial slur against one of his subordinates. There was no question of his harassment. Not only was he not temporarily removed from his position during the investigation, the only action taken against him was a local letter of reprimand. In addition, he was given an award upon his departure.

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(3) Mr. Miller, currently in the ARD Analytical Branch, was found guilty of accessing pornographic websites on his government computer. He received a one-day suspension and return to duty.

b. As established in Enclosure 1, MAJ Hyman's conduct of his fact finding was in gross violation of my constitutional rights, as was LTC Terrell's failure to remain impartial in his evaluation of all of the evidence.

7. Preponderance of evidence is based on the more convincing evidence and its probable truth or accuracy; facts or a clearly knowledgeable witness outweigh opinions or speculation. In this investigation the predominance of the witness statements are hearsay or emotionally charged opinions. What to believe became a matter of credibility. In his findings report, the investigating officer, MAJ Hyman, presented the results of his credibility analysis and applied those results to his evaluation of the witnesses' statements and mine. Though he did not specifically state his criteria, his discussion makes clear what he considered valid and convincing in determining who was credible.

8. Enclosure 2 contains a review of MAJ Hyman's credibility analysis with respect to the seven factors established in *Hillen v. Department of the Army* (35 MSPR 458) and in light of Merit Systems Protection Board (MSPB) case law (*USAF, 60th Air Mobility Wing, Tab B to Enclosure 2*) (*US Department of Commerce, National Oceanic and Atmospheric Administration, National Ocean Service, 54 FLRA 987, 1007 (1998), Tab C to Enclosure 2*).

a. Much like MAJ Hyman's analysis, in *Redschlag v. Department of the Army* (89 MSPR 589, Tab A to Enclosure 2) the credibility analysis "...generally included a finding that the witnesses who testified on behalf of the agency were credible because their testimony was straightforward, consistent, and articulate...also generally discredit[ed] the testimony of any witnesses who testified on [my] behalf on the basis of bias. However, the [agency] cannot discount testimony solely on the potential bias of a witness."

b. The *Redschlag* Board determined "...because the administrative judge's credibility findings in this case were abbreviated, based on improper considerations, and often unsupported by the record, we find that they are not entitled to deference," (i.e., the testimony in question was not credible).

c. In addition to restoring my credibility, applying this finding to MAJ Hyman's analysis raises doubts as to the credibility of most of the statements and renders the following witness statements not credible: Mssrs. Aviles, Bauld, Budzinski, Hawkins, Marks, Martinez, Pino, Pulliam, Rodriguez, Steele, Versino, Griffin and Ms. Jensen.

d. If there is no credible evidence, there is no preponderance of evidence.

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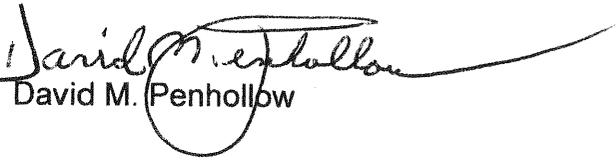
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9. I reiterate the remedies requested in paragraph 2 above. As described in paragraphs 4 - 6, the conduct of the investigation and the resulting actions meet two statutory thresholds for not sustaining the decision. In addition, the collection and analysis of the evidence does not meet the standard to establish the credibility of the witnesses over that of the accused. Without credible evidence to support the allegations, there is no preponderance of evidence to support them; therefore, the decision also fails to meet the statutory threshold to sustain. Setting aside all of the findings and restoring my employment status and conditions is the legally correct and only acceptable remedy.

10. I have not filed an EEO complaint, an appeal or any other grievance concerning this or a similar matter.

11. My personal representative in this matter is Ms. Victoria Kost; 132 Talton Drive, Delta, PA 17314; (h) 717-456-5883; (w) 443-402-9293.

12. Thank you for your consideration in this matter.


David M. Penhollow

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5. Supporting Documents

6. FOIA Request Documentation,
FOIA Packages (in order received)

ENCLOSURE 1

ENCLOSURE 1 Statutory and Regulatory Substantive Due Process Requirements for AR 15-6 Proceedings and Civilian Adverse Personnel Actions

1. AR 15-6, paragraph 1-5 (Tab A to this enclosure) defines an investigation under this regulation as an administrative fact-finding procedure. Paragraph 1-6 states, "It is the duty of the investigating officer to ascertain and consider the evidence on all sides of each issue, thoroughly and impartially, and to make findings and recommendations that are warranted by the facts and that comply with the instructions of the appointing authority.

a. By its very nature, hearsay cannot stand as fact without corroborating factual or credible evidence. Yet in many of his interviews, MAJ Hyman solicits at least one instance of hearsay—a very common questioning method he used was to ask the interviewee, "What have you heard about...?" or "Has anyone ever told you about...?" With almost equal consistency, he allows the interviewees to present hearsay, sometimes third- and fourth-hand information, and later treats that hearsay as credible evidence. He rarely received or requested substantiating information for hearsay or personal allegations, nor did he seek out existing records that could confirm or deny allegations, such as performance appraisals, documented personnel actions, training records and TDY records.

b. MAJ Hyman presented only six facts in his findings and recommendations memorandum. The fifth item he presents is factually incorrect. I know personally that Mr. Swinson has never been pulled over for a DUI while driving a vehicle owned, leased or rented by the government. According to Mr. Swinson, the incident in question was actually dropped and his record expunged.

c. His sixth fact is misleading in that he did not ask all of the interviewees about the working environment, nor did he ask all of them about their professional experience and credentials. And he did not ask me, or the other two accused, about our professional experience or credentials. In addition, the conclusions he is presenting as fact are actually compilations of carefully selected opinions.

d. He presented no other facts to support his follow-on findings and recommendations. He does rely upon unsupported hearsay (see Enclosure 2) to make a number of factually incorrect or otherwise unfounded conclusions. Again, an impartial search for all of the facts would have led him to the factual evidence of record that provides the full context of many of the historical incidents, to include refuting the improprieties to which some of them allude, and refutes some of his eventual conclusions.

2. AR 15-6, paragraph 2-1. b., the commander must appoint an investigating officer. Whether oral or written, the appointment must specify clearly the purpose and scope of the investigation and the nature of the findings and recommendations required. As mentioned above, his findings and recommendations must comply with the appointing authority's instructions. MAJ Hyman's appointment orders (see Tab AC to Enclosure 6) include:

a. "Purpose: To investigate allegations of supervisory misconduct against Mr. Albert White, Mr. Michael Penhollow and Mr. Thomas Swinson. These allegations include, but are not limited to: theft of US government property, nepotism, threatening subordinates with loss of employment if the subordinate lodges complaints and intimidation. You are to make findings and recommendations for any disciplinary action and make other appropriate recommendations as necessary.

(1) "Include, but not limited to" is neither specific nor clear with regards to establishing the scope of the investigation.

(2) Short of specific allegations, reverting to CSM Rodriguez' 11 January 2007 memorandum (Tab AD to Enclosure 6) provides the only command-level stated allegations in the record: "1) Steals unit property, 2) Uses intimidation to get things done, 3) Gives the best jobs and bonus to the folks he likes, 4) Falsifying his time sheets, 5) Has very little leadership abilities, and is a bad manager, 6) Is not fair when recommending bonus, 7) Does not care or takes care of only the workers he likes."

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(3) MAJ Hyman's investigation did not address or make any finding on allegations 3 and 6. He attempted to address the other issues; however, his reliance on unsubstantiated hearsay (see Enclosure 2) and failure to seek and evaluate available factual, recorded evidence caused him to fall short of being able to make any warranted conclusions or recommendations. As a result, he did not comply with the appointing authority's instructions.

b. Special instructions: (1) In your investigation, all witness statements will be sworn, (2) You will use informal procedures under 15-6, (3) ... you must provide all witnesses a Privacy Act statement before soliciting any personal information, (4) Statements obtained during the course of your investigation will be administered on DA Form 2823."

(1) Only my first statement was recorded on a DA Form 2823 (Tab AK to Enclosure 6), but the statement was not sworn, nor did I sign it. MAJ Hyman failed to properly close out that statement—he did not sign it and he did not record why I did not sign it (I told him his paraphrased written answers did not accurately reflect my verbal answers). I was not afforded the opportunity to review the second one for completeness and correct representation of my comments or to sign it.

(2) Despite soliciting personal information from many of the interviewees, there is no record of Privacy Act statements in the record of the investigation. I was not provided one before either interview.

(3) Only one of my statements was recorded on a DA Form 2823.

c. Paragraph 1.c. established the duration of the assignment to be 30 days. Paragraph 3 required the investigation be completed and the findings be presented by 16 February 2007.

(1) The DA Form 1574 and MAJ Hyman's findings and recommendations memorandum support the investigation was closed and findings presented on 16 February 2007.

(2) MAJ Hyman interviewed the three accused in March 2007 and three other witnesses provided additional statements in April 2007. Those interviews are all included as exhibits in the final record of the investigation. As such, the investigation did not end on 16 February, though there is no record of an amendment extending MAJ Hyman's appointment as Investigating Officer beyond 16 February or appointing a new investigating officer after MAJ Hyman departed the unit in mid-March 2007.

3. AR 15-6, 3-7.c.(5)(b) states that no witnesses or respondents not subject to the UCMJ will be required to make a statement or produce evidence that would deprive them of rights against self incrimination under the Fifth Amendment. Subparagraph (d) requires an investigating officer to explain a witness' rights whenever it appears appropriate and advisable. Paragraph 4-3 states that no respondents will be designated in an informal investigation. Furthermore, both the commander and his investigating officer are subject to UCMJ. As such, they are expressly prohibited from compelling self-incriminating statements from the accused. "No person subject to this chapter may interrogate, or request any statement from an accused or a person suspected of an offense without first informing him of the nature of the accusation and advising him that he does not have to make any statement regarding the offence of which he is accused or suspected and that any statement made by him may be used as evidence against him," UCMJ, Subchapter 6, 813 Art. 31.(b).

a Though not officially notified that I was a respondent, the appointment orders clearly designate me as a person suspected of wrongdoing. The nature and conduct of MAJ Hyman's questioning of witnesses further develops me as a suspect—the entire line of questioning with every witness, including me, centered on me and the other two accused and allegations of our wrongdoing. As I was one of the last people to be interviewed, the content of all of the statements MAJ Hyman had taken understandably gave him reasonable cause to suspect me of wrongdoing. In fact, he stopped Mr. Gary Ford's 19 January interview (Tab I to Enclosure 6) twice after Mr. Ford's answers to questions about my conduct—an action AR 15-6 directs an investigating officer take if s/he suspects criminal misconduct. And MAJ

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Hyman did submit to CID certain elements of his investigation related to allegations against me. There is no doubt that he considered me a suspect at the outset of our first interview, 29 January.

b. Though it was appropriate and advisable to explain my rights to me at the outset of our first conversation (Tab AK to Enclosure 6), MAJ Hyman chose not to. In fact, in his record of our first conversation, MAJ Hyman recorded, "Mr. Penhollow then expressed he was not aware of any of the rights he has.... MAJ Hyman replied that he had the right to have an attorney present during this and any other interview." What he did not record was that after telling me I had the right to have an attorney, he added that I still had to answer the questions. I was never read my rights throughout the course of the investigation. As such, MAJ Hyman did not just fail to comply with his AR 15-6 responsibilities, he violated the UCMJ rights warning requirement.

4. AR 15-6, 3-8.c.(2) directs that care must be taken to ensure that the statement is phrased in the words of the witness. The interviewer must scrupulously avoid coaching the witness or suggesting the existence or nonexistence of material facts. AR 15-6, paragraph 3-8. d. states, "Witnesses may not be precluded from discussing any relevant matter with the recorder, respondent, or counsel for a respondent."

a. At the close of our first interview, MAJ Hyman printed the first page of the statement and asked me to review and sign it. When I read it I saw that he had not recorded the answers as I had said them. He stated that he was paraphrasing them. I told him that I felt he was taking too much liberty in how he was paraphrasing my answers—his written version did not accurately reflect my spoken response—and I refused to initial that page or sign the statement. He did not record the reason for my refusal to sign in the signature section of the form, as is required.

b. My original Detail to Unevaluated Duties memorandum (Tab A to Enclosure 5), states, "This means you shall not speak with or question anyone, directly or indirectly, regarding their participation in this investigation. This includes asking individuals whether they have met with or been asked to meet with the Investigating Officer (IO), ..." That wording and the verbal directive that I was to have no contact with the members of B Company, to include going to the company area during duty hours, made it clear to me I could not speak with anyone except the IO and the chain of command as to the allegations, nor they with me.

c. MAJ Hyman's questioning technique consisted primarily of questions that began with "What can you tell me about..." "Have you ever heard about..." and then he would describe a specific incident mentioned in someone else's statement. Or, he would lead you to provide the answer he wanted to hear—"Have you ever seen a sheep sex doll on display?" If the person has seen the doll, regardless of knowing its possible purpose, he will answer yes; to say no would be lying.

d. He continued to suggest facts not in evidence throughout his findings and opinion statement by choosing qualitative adjectives that grossly misrepresented the actual number of statements he had that supported the point he was trying to make.

5. AR 15-6, paragraphs 3-9 through 3-11 address changing the scope, findings and recommendations.

a. 3-9 directs that if something happens that could cause the appointing authority to consider enlarging the proceedings or otherwise modifying any instruction in the original appointment, the investigating officer will report this to the appointing authority.

(1) As the sheep doll was not mentioned during the command climate survey, the IG sensing session or the CSM's personal interviews, it could not possibly have been included in whatever scope LTC Terrell had in mind, yet, that was one of MAJ Hyman's major findings and the only one LTC Terrell upheld and for which I was disciplined. There is nothing in the record indicating MAJ Hyman brought what he considered a new offense to the attention of the appointing authority or that the appointing authority approved expanding the scope of the investigation to include the item in question.

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(2) The original appointment orders directed the investigation close by 16 February. The DA Form 1574 confirms the investigation closed on 16 February. Yet, there are at least six statements dated beyond 16 February.

(3) There is no record of communication in the record to explain why MAJ Hyman conducted interviews in March, to include whether it was on his accord or by the direction of the appointing authority.

(4) There is nothing in the record to indicate who requested and took the statements made in April—MAJ Hyman was no longer with the unit at that time—or why they were requested.

b. 3-10 defines a finding as “a clear and concise statement of fact that can be readily deduced from evidence in the record. It is directly established by evidence in the record or is a conclusion of fact by the investigating officer. The investigating officer will normally not exceed the scope of findings indicated by the appointing authority. Findings will be stated to reflect clearly the relevant facts established by the evidence and the conclusions thereon of the investigating officer.

(1) Even a cursory review of MAJ Hyman’s collected statements shows that he did not seek confirming factual evidence of the claims made by most of the witnesses.

(2) A 15-6 investigation is a fact-finding mission. The credibility analysis in Enclosure 2 shows that MAJ Hyman found very few facts, and he presented even fewer in his findings document. The one offense for which I was eventually disciplined was not supported by objective, factual evidence—essentially, it was a sex doll because Mr. Pulliam declared it as such and MAJ Hyman continued to refer to it as such for the rest of the questioning. Of particular import, missing from MAJ Hyman’s record of facts is the number of Battalion and Brigade command officials (to include LTC Terrell), external command officials and DAIG inspectors who have visited and conducted inspections of the company and my team area since the doll was given to me, seen the sheep doll and said nothing about it, least of all been offended by it.

(3) An analysis of his findings and recommendations further demonstrates that MAJ Hyman did not have relevant, record facts to support the allegations made against me or the conclusions he was drawing with regards to me. This is borne out by LTC Terrell’s removal of two of the charges against me upon receiving the full context and all of the facts during my rebuttal to Ms. Jensen’s Notice of Proposed Removal memorandum. (Tabs AP and AQ to Enclosure 6)

c. 3-11 directs that investigating officers “make their recommendations according to their understanding of the rules, regulations, policies, and customs of the service, guided by their concept of fairness both to the Government and to individuals.

(1) MAJ Hyman’s failure to remain impartial is clear in his findings and recommendations memorandum and the opinion statement he presented at the conclusion of his investigation (Tab B to Enclosure 6). It is also clear in his selection of interviewees and the manner in which he questioned them.

(2) MAJ Hyman’s failure to comply with even the basic requirements of an investigating officer and in the conduct of a 15-6 investigation indicate that his actions were not guided by the concept of fairness, particularly to the individual.

6. AR 15-6, paragraph 3-15 requires “all significant letters and other papers that relate to administrative aspects of the investigation that are not evidence will be numbered consecutively..., including such items as these: e. Privacy Act statements and f. Explanation by the investigating officer of any unusual delays, difficulties, irregularities or other problems encountered.”

a. As noted above, at least six statements were taken well after the official close of the investigation, yet there is not amendment to the appointment orders. There is no explanation or

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documentation of the reopening of the investigation. And there is absolutely no documentation to explain or support the April statements—the original investigating officer was not with the organization when they were taken.

b. As noted above, there is no documentation supporting the expansion of the scope to include the sheep doll.

c. There are no Privacy Act statements in the record.

7. AR 690-700, Chapter 751, 1-4(c) states that aggravating factors on which the agency intends to rely for imposition of enhanced penalties (such as offense committed by a supervisor) should be included in the notice of proposed discipline so the employee has the opportunity to respond. CPOL guidance "Notice of Proposed Suspension" (Tab B to this enclosure) calls for a detailed factual description (dates, times, places, people involved...) of the incidents, to include a statement on how the efficiency of the service is adversely affected by the conduct.

a. The Notice of Proposed Removal (Tab AP to Enclosure 6) did not contain any details as to what factors would be relied upon to determine the final disciplinary action.

b. The proposal memorandum does provide all of the requisite detail for one of the offenses that LTC Terrell dismissed. It only contained the name and the items allegedly stolen in the description of the other offense LTC Terrell dismissed. The remaining offense for which I was disciplined is described in very scant detail, to include lacking the names of anyone who was offended or even impacted by the item in question. In addition, it does not offer a statement as to how the efficiency of the service was affected by my alleged conduct. As the investigation provided no factual or subjective evidence of mission failure or incomplete mission accomplishment (most notably, failures of or comments on inspections in this particular instance), the "efficiency of the service" to be gained by the proposed discipline is not clear or intuitive. The fact that numerous chain of command and external leadership observers found nothing wrong, improper or disgraceful about the item leaves the connection to the efficiency of the service even more tenuous.

c. The proposal provided no explanation as to what about the item "[left] no question in an observer's mind that it is a sex doll." LTC Terrell demonstrated a failure to remain impartial by suggesting his own facts not in evidence in his completion to the Douglas Factors analysis (Tab AR to Enclosure 6). Perhaps to make the offense seem more severe, he embellished his description of the sheep doll with details that not only were nowhere in any of the statements, but were not even true. There are no "red orifices" in the doll and the orifices discussed by MAJ Hyman are not both located on the rear of the toy. While I still do not recognize the item as more than a blow-up child's toy, I had no opportunity to address what information was used to make the determination of its other possible use, and I certainly could not have addressed the "facts" upon which LTC Terrell based his decision as they were not even in the record.

c. The employee's right to respond becomes meaningless if employees are not given full, complete and specific notice of the reasons to be considered by the deciding official (Department of Homeland Security Customs and Border Protection US Border Patrol, El Paso, TX (61 FLRA No. 2, 2005), Tab C to this enclosure).

8. 5 USC 7503(b) lays the groundwork for the minimum due process to which an employee is entitled. This includes a written decision and the specific reasons therefore at the earliest practicable date. AR 690-700, Chapter 751, 1-3.b.(3) states that decision notices should contain information demonstrating the deciding official considered all available information, aggravating and mitigating (e.g., "I have considered" aggravating and mitigating Douglas factors). The official must explain what weight was given to the aggravating factors in reaching the final decision.

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a. The final decision memorandum provides no specific reasons for LTC Terrell's final decision and I did not receive his Douglas Factors analysis until 9 October, when I received my FOIA request packet.

b. While he alludes to a Douglas Factors analysis, he does not mention the actual mitigating or aggravating factors that led to his final conclusion, nor did he mention any other aggravating or mitigating factors that may have impacted his decision. As no factors were listed, no weights for the aggravating factors were provided either.

c. Though LTC Terrell's Douglas Factors analysis does state that I lost the trust and confidence of my subordinates, this is not supported by objective evidence in the record.

(1) It was one of my employees who actually brought the item onto post and displayed it in my personal vehicle.

(2) Neither the IG Survey and Sensing Session results (Tab AA to Enclosure 6) or CSM Rodriguez' battalion- and B Company-level surveys (Tab AD to Enclosure 6) make any mention of a sheep sex doll, let alone provide any feedback from individuals stating they had lost their trust and confidence in me because of the presence of such an item in the company area.

(3) Only five of the 30 witness statements, which does not include those of the accused, even mention the doll. Only one person brings the doll up on his own accord, the other four were asked about it. One of those is a fellow supervisor who admits he knew what it was but did not remove it (Tab AI of Enclosure 6). Three of the personnel only referred to it as a sex doll in the sense that MAJ Hyman asked if they'd seen the sex doll and they answered yes.

d. As discussed in 7.b. above, the final decision memorandum does not provide the required explanation of nexus between the disciplinary action and the efficiency of the service. As the investigation provided no factual or subjective evidence of mission failure or incomplete mission accomplishment, the "efficiency of the service" gained by the discipline is not clear or intuitive, nor is any damage to the Army's reputation.

e. What is clear in LTC Terrell's Douglas Factors analysis is that he did not conduct it with an impartial view to and evaluation of all of the facts in evidence.

9. As discussed above, very little of the actual AR 15-6 investigation was done correctly, and at times it was in direct violation of my constitutional rights. Other statutory and regulatory requirements were violated as well. The investigation is over. I have served and continue to serve the actions prescribed in the Notice of Final Decision. Nothing can be done at this point to correct the substantial errors committed during this investigation. AR 15-6, 2-3.c.(3)(a) states, "Substantial errors are those that have a material adverse effect on an individual's substantial rights." Subparagraph (c) states, "If the error cannot be corrected,...the appointing authority may not use the affected part of that investigation as the basis for adverse action against that person."

TAB A

TAB B

TAB C

ENCLOSURE 2

ENCLOSURE 2 Credibility Analysis

1. According to *Hillen v. Department of the Army* (35 MSPR 458), to resolve credibility issues. One must identify the factual questions in dispute, summarize the evidence on each disputed question, state which version he believes, and explain in detail why he found the chosen version more credible, considering such factors as:

- a. witness's opportunity and capacity to observe the event or act in question,
- b. the witness's character,
- c. any prior inconsistent statement by the witness,
- d. witness bias, or lack of bias,
- e. contradiction of the witness's version of events by other evidence or its consistency with other evidence,
- f. the inherent improbability of the witness's version of events, and
- g. the witness's demeanor

2. Because of MAJ Hyman's questioning technique, much of the information provided in the witness statements is hearsay. *Borninkhof v. Department of Justice*, 5 MSPR 77 (1981) provides a standard by which to evaluate hearsay evidence:

- a. supported by firsthand information,
- b. consistency with other information, internal consistency, consistency with others,
- c. corroboration in the record,
- d. contradictory evidence, and
- e. credibility of the declarant.

3. According to MAJ Hyman's Investigating Officer Statement (Tab L to Enclosure 6), he considered the following criteria when determining credibility:

a. "I was able to speak with a number of people, and based on their statements, I was able to draw accurate conclusions as to the credibility of those statements... I found most of these statements to be credible due to the fact that many of them accurately described the same incident. Furthermore the detail of the incidents recalled is consistent with what a person could reasonably be expected to recall.

b. However, when several other people describe the same event accurately, I am left with no choice but to believe that the statements are credible.

c. In stark contrast to the detailed answers given by other employees, the answers given by Mr. Swinson and Mr. Penhollow were purposely vague and evasive. Several times for instance, they claimed to not know or remember something, then after several more questions admit that they had or did.

d. ...they did not give specific denials, rather vague answers of 'I can not recall' or 'I'm not sure.'...a reasonable person should be able to answer yes or no.

e. No attempt was made to provide any information to help lend credibility to the denial. For instance, why just say no or never when it would seem reasonable to add information as to why the

ENCLOSURE 2 Credibility Analysis

allegation was not true.... An example would be no, I do not do that, you can verify this with Mr. X, he knows I am not that type,...

f. Mr. Swinson and Mr. Penhollow denied knowing..., it is not reasonable to believe them.

g. ...they all asked me questions like 'why is this investigation being conducted?' What they did not do at any time is tell me that they were innocent.

h. During the interviews...they used terms like 'them' or 'one' to describe their employees. This coupled with the long list of incidents lends credibility to the statements of the other employees."

4. MAJ Hyman does not appear to have applied any standard criteria for determining credibility beyond if more than one person said the same thing it must be true, unless it was one of the three people being investigated. MAJ Hyman presents their testimony as inherently incredible unless they could prove otherwise, which he demonstrates to be virtually impossible unless they agree with his/others' allegations.

a. MAJ Hyman based his credibility analysis on the fact that so many people recalled almost exactly the same thing; therefore, they must be credible. According to multiple legal research sources, persons experienced in evaluating testimony commonly consider a witness's opportunity to observe an event and the possibility of his bias on the subject. Where different witnesses give identical testimony about the same event, skeptics look for evidence of collusion among them or for other witnesses who could contradict them.

(1) MAJ Hyman did not request substantive support of multiple allegations made by Msrs. Aviles, Bauld, Budzinski, Hawkins, Marks, Martinez, O'Connell, Pino, Pulliam, Steele, Versino, and Griffin.

(2) MAJ Hyman did not seek available record evidence to support or refute allegations of wrongdoing for which such evidence must exist (e.g., training records, promotion records, TDY records). As a result, almost none of the negative assertions made by the other employees interviewed is supported by existing records or documents.

(3) MAJ Hyman did not seek contradictory evidence by interviewing or re-interviewing personnel who might provide a more complete context of the situation. To wit, Mr. Pulliam made his allegations about the sheep doll at 0810 on 24 January (Tab R to Enclosure 6); however, MAJ Hyman interviewed at least 18 more people after that. He only asked four of those 18 about the doll. The next person he asked about it (Crouse, Tab U to Enclosure 6) explained it was a gag gift from an employee. He asked for no explanation, or confirmation of Crouse's, from the other three personnel he questioned about it.

(4) Raising further doubt as to the soundness of MAJ Hyman's credibility standard, in his AR 15-6 Findings and Recommendations memorandum (Tab B to Enclosure 6), he "found credible evidence that supports allegations of criminal misconduct by Mr. Penhollow" and turned that evidence over to CID for further investigation. CID did not investigate MAJ Hyman's allegations. Mr. Dave Crouch, CPAC, informed me that it was due to a lack of evidence.

b. Raising further doubt as to MAJ Hyman's credibility analysis, he finds it undeniably credible when several people "describe the same event *accurately*," not similarly, but accurately. His word choice indicates a predisposition to what he considers the truth, and therefore inherently credible.

c. At no time during the investigation or the interview process was I told that I was suspected of any specific charge. When MAJ Hyman questioned me, he made statements out of context and asked me to respond. Some of the incidents went back several years. Having had no prior knowledge of what he was going to ask me, I did not have immediate recall of everything, especially when he did not provide any contextual information to clarify. It only stands to reason that the more he asked and the more time I had to think about it, the more I would actually remember. Furthermore, what he characterizes as

ENCLOSURE 2 Credibility Analysis

evasive, sometimes even contradictory, is actually because of my confusion as a result of the way he asked his questions.

d. In addition to the vagueness of his initial questions and how long ago some of the incidents occurred impacting immediate recall, I did not want to say I did recall something in an exact way when I did not or could not. I was trying to be completely honest and provide the details I remembered. And when I did remember exact details I did provide an explicit response.

(1) During our first interview (Tab AK to Enclosure), I provided the complete details in answer to a question about using a government vehicle for personal business, to include the fact that Mr. White told me I was wrong and directed I return to the company area immediately.

(2) During our second interview (Tab C to Enclosure 6), I responded to a question with: "First and foremost, I do not yell, I have never yelled at an employee. My boss would have my head on a platter for yelling. So I refute that entirely. I may have said something to the effect that I wanted him to use his chain of command; but I deny emphatically yelling or saying he blindsided me."

e. Paragraph 3.e. above is not a true statement based on MAJ Hyman's own documented statements. See 4.d. above.

f. MAJ Hyman provided no further explanation or circumstance for disbelieving me other than I denied knowing the information about which he asked. In addition, he did not provide explanation or factual evidence as to why it is not reasonable to believe I, or anyone else, may not have known it was a sex toy. If I do not lead the kind of lifestyle that uses them, as would be expected of a supervisor, why would I have any reason to have recognized it as anything more than a blow-up toy?

g. MAJ Hyman's write-up confirms that I did not know for what or why I was being investigated. Neither he, nor anyone else had read me my rights or told me I had been officially charged with anything. I was completely unaware of any need or requirement to proclaim my innocence. He also fails to provide any connection between my failure to proclaim innocence and the credibility of my statements in general.

h. MAJ Hyman failed to provide an explanation as to how referring to my employees with third-person pronouns by itself, or in conjunction with the long list of incidents makes the other employees' statements more credible.

5. *Redschlag v. Department of the Army* (89 MSPR 589, Tab A to this enclosure), provides several key determinations in its evaluation and ultimate impeaching of an official's credibility analysis:

a. "The credibility analysis included in the initial decision rarely included discussion of other factors that the Board considers relevant in resolving credibility issues. See *Hillen*, 35 MSPR 458.

b. Given the lapse of time, we find nothing inherently suspect in the fact that the appellant may have been somewhat uncertain about the exact nature and timing of the event. ...even if the appellant was not credible with respect to [that] event, it does not necessarily mean that the remainder of [the] testimony lacked credibility.

c. It is error for a fact finder to rely on a witness's demeanor to find that [the] testimony is untrue without explaining anything about [the] manner and appearance that warranted that conclusion. This conclusion was based on the fact that:

(1) the official made a credibility finding against the appellant based on 'nervous demeanor... and the generally elusive, evasive nature of [the] testimony,

(2) the official did not point to specific testimony by the appellant that he found elusive and evasive,

ENCLOSURE 2 Credibility Analysis

(3) the Board [did not find] that the appellant's testimony [could be] accurately characterized as 'generally elusive and evasive.'

d. The credibility analysis '...generally included a finding that the witnesses who testified on behalf of the agency were credible because their testimony was straightforward, consistent, and articulate...also generally discredit[ed] the testimony of any witnesses who testified on [my] behalf on the basis of bias. However, the [agency] cannot discount testimony solely on the potential bias of a witness.'

e. The official's credibility findings [were] not supported by the record."

6. The Board determined "...because the administrative judge's credibility findings in this case were abbreviated, based on improper considerations, and often unsupported by the record, we find that they are not entitled to deference."

7. Applying the same standards and level of concern to the statements taken during this investigation, the following witness statements are not entitled to an assumption of credibility:

a. Due to lack of substantive support of allegations: Mssrs. Aviles, Bauld, Budzinski, Hawkins, Marks, May, Pino, Pulliam, Steele, Versino, Griffin and Ms. Jensen.

b. Due to factual error or contradiction with fact: Mssrs. Budzinski, Martinez, Pino, Pulliam, Rodriguez and Versino.

8. Neither MAJ Hyman nor the other employees provided factual evidence to impeach my credibility. The credibility of many of the statements against me is undermined and that of the remaining statements left highly suspect if MAJ Hyman's analysis and determination is held to the *Hillen* and *Redschlag* standards.

9. Without credible or substantive evidence, there is no preponderance of evidence to support the allegations, or any disciplinary actions taken in response to them.

TAB A

TAB B

TAB C

ENCLOSURE 3

TAB A

TAB B

TAB C

TAB D

ENCLOSURE 4

ENCLOSURE 5

TAB A



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
U.S. ARMY 22D CHEMICAL BATTALION
5183 BLACKHAWK ROAD, BLDG E1942
ABERDEEN PROVING GROUND MD 21010-5424

AFCB-CFT-CO

17 January 2007

MEMORANDUM FOR Mr. Michael Penhollow, B Company, 22d Chemical Battalion
(Technical Escort), 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21010-5424

SUBJECT: Detail to Unevaluated Duties Pending the Resolution of an AR 15-6
Investigation

1. Effective this date and pending the resolution of an AR 15-6 Investigation you are hereby detailed to the Battalion S-3 and will perform unevaluated duties.
2. You will no longer engage in your normal supervisory duties until notified in writing by me or my successor in command. During this detail your security access will be suspended and you are temporarily disqualified from the Personnel Reliability Program (PRP).
3. You are not to impede, obstruct or otherwise interfere with this investigation. This means you shall not speak with or question anyone, directly or indirectly, regarding their participation in this investigation. This includes asking individuals whether they have met with or been asked to meet with the Investigation Officer (IO), what they would say if asked or attempt to influence in any way what they would say. If anyone other than the IO approaches you about this investigation, you are not to address their inquiry or answer their questions. You are to inform them you cannot discuss the investigation.
4. This detail is not intended as an adverse administrative action nor should it be construed as such. Should the bases of the AR 15-6 Investigation prove unfounded, you will have all rights and privileges restored and no negative inference will be drawn from the fact this investigation occurred.


CHADWICK T. BAULD
Major, CM
Acting Commander

ajwhite41@Verizon.net

17 January 2007

MEMORANDUM FOR David M. Penhollow

SUBJECT: Temporary Disqualification

1. The purpose of this memorandum is to notify you in writing of my decision to temporarily disqualify you from the Chemical Personnel Reliability Program (CPRP) as of 17 January 2007. This temporary disqualification is a result of a 15-6 investigation.
2. You have been removed from your assigned chemical surety duties and access restricted; however you will remain under continuing evaluation.
3. After reviewing all circumstances concerning this disqualification a decision will be made to either reinstate you to your chemical surety duties or to permanently disqualify you from the CPRP. You will be notified when a decision has been made.


CHADWICK T. BAULD
MAJ, CM
Commanding

I acknowledge receipt of this memorandum temporarily disqualifying me from the CPRP. I understand I will not be allowed to perform any duties that involve chemical surety materiel and I remain under continuing evaluation.

NAME David M. Penhollow

Signature David M. Penhollow Date 1-25-07

Mr. Mike Penhollow
Unclassified Duties for S3 Detail
22 January 2007

- Review and write work plans,
- Plan SCANS and remediation missions,
- Develop equipment requirements and justification for RRT, AUGTDA, etc, and
- Other duties as assigned.

Submit your timesheet to MAJ Bauld to sign/certify. MAJ Bauld will forward it to E Company for entry into ATAAPS. Mrs. Jensen or CPT Miller will certify in ATAAPS.

TAB B

Kost-Swinson, Victoria A.

From: Kost-Swinson, Victoria A.
Sent: Tuesday, September 04, 2007 12:38 PM
To: 'Swinson, Thomas R Mr ARD 20TH SUPPORT COMMAND'
Subject: FW: FOIA packet received 28 Aug. (UNCLASSIFIED)

Attachments: CPAC Resp Missing FOIA Docs.doc



CPAC Resp Missing
FOIA Docs.do...

Mr. Crouch,

This is to follow up on the voicemail message I left this afternoon (our phone conversation this afternoon), I would like to know the status of this missing information and the likelihood of Mr. Penhollow receiving his FOIA package this afternoon or tomorrow morning. Unfortunately, it looks as though we will need another extension. Thanks.

Tom Swinson

-----Original Message-----

From: Kost-Swinson, Victoria A.
Sent: Thursday, August 30, 2007 5:35 PM
To: 'Crouch, David P Mr USAGAPG'
Cc: 'Penhollow, David M Mr ARD 20TH SUPPORT COMMAND'; Swinson, Thomas R Mr ARD 20TH SUPPORT COMMAND
Subject: RE: FOIA packet received 28 Aug. (UNCLASSIFIED)

Thank you for your patience, Mr. Crouch. The attached file addresses your response to Mr. Swinson's original request, as well as a few additional concerns created by a more thorough review of the FOIA package.

The problem with Mr. Swinson's e-mail has been fixed.

Victoria Kost-Swinson

-----Original Message-----

From: Crouch, David P Mr USAGAPG [mailto:David.P.Crouch@us.army.mil]
Sent: Wednesday, August 29, 2007 2:30 PM
To: Kost-Swinson, Victoria A.
Subject: FW: FOIA packet received 28 Aug. (UNCLASSIFIED)

I received failed mail from Tom's address. Also I will be sending your info through the FOIA process, but as noted you'll already get it from Mike's and hopefully we won't need to reschedule the date again with the COL..

dave

david.p.crouch@apg.army.mil
CPAC
410-278-8987

Kost-Swinson, Victoria A.

From: Penhollow, David M Mr ARD 20TH SUPPORT COMMAND [david.m.penhollow@us.army.mil]
Sent: Thursday, October 11, 2007 5:13 PM
To: Crouch, David P. NECPAC
Cc: Kost-Swinson, Victoria A.; Penhollow, David M Mr ARD 20TH SUPPORT COMMAND
Subject: FW: FOIA Information Needed (UNCLASSIFIED)
Signed By: Verifying the signature. Click the icon for details.

Classification: UNCLASSIFIED
Caveats: NONE

Dave,
I'm just now getting all the paper work in order and it seems everything was a little out of place and that I'm missing a few things.

1. There is a memorandum from Major Hyman titled Background Interviews with Mr. Brooke (29 Jan 07) and Mr. Mackeprang (6 February 07). Where is the paper work associated with those interviews?

2. Where is the paper work that Major Hyman sent CID regarding me and the final CID report?

3. I don't have Mr. Martinez or Mr. Mays statements?

4. Major Hyman refers to an e-mail Mr. West sent him regarding me which was used to base part of his findings yet I don't have it neither?

5. The Douglas Factors paper work which LTC. Terrell based his decision on wasn't signed nor dated?

Lastly how much time do I have to put this all together and have it back to you for your review?

Classification: UNCLASSIFIED
Caveats: NONE

Classification: UNCLASSIFIED
Caveats: NONE

ENCLOSURE 6

TAB A



DEPARTMENT OF THE ARMY
22d CHEMICAL BATTALION (TECHNICAL ESCORT)
5183 BLACKHAWK ROAD, BLDG E1942
ABERDEEN PROVING GROUND, MARYLAND 21010-5424

REPLY TO
ATTENTION OF:

AFCB-CFT-CO

01 February 2007

MEMORANDUM FOR Commander, 22nd Chemical Battalion (TE) (AFCB-CFT-CO) Bldg
1942, Aberdeen Proving Ground, Edgewood Area, MD. 21010-5424

SUBJECT: AR 15-6 Investigation Findings and Recommendations

1. References:

- a. AR 600-20 Army Command Policy
- b. DA Pam 600-68 "The Bedrock of our Profession" Whitepaper 1998
- c. Sworn statements from selected individuals

d. Technical advice from selected Subject Matter Experts (SMEs)

- (1) CPT Crisp, Jonathon 20th Support Command Legal advisor

2. Background Information:

a. On 17 January, 2007, I was instructed to report to my battalion commander (LTC Patrick R Terrell) He informed me that I had been tasked to conduct an investigation IAW AR 15-6 into the allegations of supervisory misconduct of three Civilian supervisors.

b. I received clear, specific guidance indicating that I was the investigating officer (IO) and the questions that the commander wanted me to answer in the course of my investigation both spoken, and written in the form of an appointment letter:

- (1) Determine the validity of the allegations
- (2) Use sworn statements whenever possible

c. I had extensive conversations with CPT Jonathon Crisp the legal advisor for the 20th support command who explained to me that not all workplace guidelines are codified in regulations. He further stated that many of these especially with respect to the civilian workforce are tied case law.

3. Facts, findings, and recommendations.

a. Facts:

- (1) On 16 October 2006, Soldiers and civilians of the 22D TE participated in a sensing session. The results of the sensing session were made available to the 22D TE Battalion Commander on 8 January 2007.
- (2) Further sensing sessions were conducted from 11 to 13 December 2006. Those results were made available to the 22D TE Battalion Commander on 8 January 2007.
- (3) The RDECOM IG conducted a web based survey as well. Those results were also made available to the 22D TE Battalion Commander on 8 January 2007.
- (4) The 22D TE Battalion Commander reviewed the results of the surveys. The 22D TE Battalion Commander developed a concern about the command climate of one companies in particular based on the comments contained in the surveys. The 22D TE Battalion Commander initiated an investigation ~~under AR 15-6 on 17 January 2007 in order to ascertain the validity of the~~ comments made in the surveys that identified a potential problem.
- (5) Both Mr. Swinson and Mr. Penhollow have been pulled over for DUI while driving vehicles owned, leased, or rented by the government.
- (6) The people interviewed for this investigation had varied employment ~~backgrounds prior to being hired by the 22d TE. The experience ranges from~~ retired U.S. Army Sergeant Majors and 1SGs to a person with only three years employment experience after graduate school. All interviewees asked stated that the environment created by and the behavior of Mr. Swinson and Mr. Penhollow would never have been tolerated at any of the other places they have worked. Further they stated that they believed that Mr. Swinson and Mr. Penhollow should be fired. Additionally when employees with prior senior management experience were asked, they stated that Mr. White should be fired.

b. Findings:

- (1) The preponderance of the evidence gathered for this investigation supports the following findings and recommendations:

Preface:

The IO finds that Mr. White, Mr. Swinson, and Mr. Penhollow have engaged in activities that can reasonably be characterized as supervisory misconduct. In fact, the IO was surprised by volume, variety, and detail of the incidents described by the interviewees.

a. Mr. Thomas Swinson displays a pattern of supervisory misconduct and does not possess the basic writing skills necessary to be effective in his position as a supervisor. Additionally, Mr. Swinson's behavior toward subordinates and others has resulted in his being removed from worksites. (EXHIBITS D, M, R) Mr. Swinson's misconduct can be divided into 4 categories: 1. Verbal abuse of subordinates. In some cases, Mr. Swinson completely loses control of 2. Physical or threats of physical abuse of subordinates 3. Subordinates suffering due to Mr. Swinson's inability to complete paperwork. 4. Denying leave to subordinates.

1. Verbal abuse of subordinates:

~~The IO finds that there is sufficient evidence to conclude that Mr. Swinson has been verbally abusing subordinates for years. The results of this abuse range from employees taking other jobs at reduced pay or leaving with no other job, (EXHIBITS D, H, V,) to the perception of a hostile workplace. Almost every single subordinate interviewed for this investigation indicated that Mr. Swinson regularly verbally abuses and humiliates subordinates. (EXHIBITS D,E,G,I,J,L,M,N,R,S,T,U,X,Y,Z,AD,AE) Most interviewees called Mr. Swinson a "bully".~~

In fact when asked to describe a specific incident, most prefaced their specific recollections with a statement to the effect of "it happens so often, it is hard to distinguish any particular event." (EXHIBITS D,E,G,I,J,L,M,N,R,S,T,U,X,Y,Z,AD,AE) The IO finds the above two allegations to be credible based on the sheer number of interviewees making almost identical statements.

The IO asked Mr. Swinson if he ever yelled and cursed at subordinates. He was very evasive in his answer, in fact the IO recorded that he never actually answered the question. (EXHIBIT AG) At one point in his statements, Mr. Swinson stated that there are time "when immediate corrections are needed" the IO believes that Mr. Swinson was trying to intimate that there were times when he yelled, but only to stop an unsafe act. However several interviewees have described incidents where Mr. Swinson was verbally abusive to employees who he perceived to be moving to slow, even though moving faster increased the risk of an accident.

Almost every single interviewee was able to describe in detail at least one instance where they had either witnessed or been the victim of Mr. Swinson's

verbal abuse and humiliation. Two Specific egregious instances of verbal abuse cited by interviewees include:

An incident described by several individuals (EXHIBITS G, T, N) occurred while Mr. Swinson was leading a convoy of vehicles back from the CP Sibert jobsite to Edgewood. Two of the vehicles needed fuel and pulled off the highway at a gas station, the rest of the vehicles followed the two low fuel vehicles. Mr. Swinson was leading the convoy, so he had to turn around and drive back to the gas station to meet up with the other vehicles. He became so angry that he began yelling profanities at the top of his lungs, hanging out the window of the vehicle he was driving, swinging his arm wildly through the air. Mr. Swinson's behavior was so outside the normal that one of the interviewees (a retired Army 1SG) said that at that point he felt that Mr. Swinson "had mental problems." The IO finds the description of this event to be credible due to the consistent descriptions the individuals who were in a position to observe the behavior. When the IO asked Mr. Swinson about this incident, he was vague, stating that he had no recollection of that event. The IO does not find Mr. Swinson's answer to be credible due to his vague reply. A reasonable person would be able to answer emphatically yes or no to a question like that. Dates may be hard to recall, but whether or not a significant event actually occurred should not be in doubt.

Another specific instance described by two individuals occurred in 2005. Two subordinates were patching a tent while working on the Spring Valley jobsite. The subordinates finished the patch and Mr. Swinson came to inspect their work. Mr. Swinson was not satisfied with their work. One of the employees tried to explain the work they had done. Mr. Swinson then became very angry and yelled and cursed at the employee, displaying very unprofessional conduct. Later, when that employee tried to resolve the situation with Mr. Swinson, Mr. Swinson again reacted by yelling and cursing at the employee. (EXHIBITS R, X) The IO finds the statements describing this event to be credible again due to the consistency of the two separate statements. Mr. Swinson when asked was not able answer the question "Do your employees agree with the statement that you do not yell and curse at your employees?" (EXHIBIT AG)

2. Physical, or threats of physical abuse:

The IO finds that sufficient evidence exists to support the conclusion that Mr. Swinson communicates threats of physical abuse to subordinates, and has initiated unwanted physical contact with subordinates.

Three specific events described by several subordinates include:

Last month Mr. Swinson wanted an employee to move from one area of the room to another, and sign for some vehicle keys from another subordinate. He told the employee to move, or he would break his legs. (This subordinate appears to the IO to be about 60 years old, and is not a robust individual) Due

to his past experiences with Mr. Swinson, the subordinate took the threat at face value. The subordinate complied with Mr. Swinson's directive, however, he told Mr. Swinson to "go ahead and try" Mr. Swinson left the room stating that he "could break his legs if he wanted to." (EXHIBITS R, S) The IO finds the descriptions of this incident to be credible due to the fact that the two employees giving statements were very clear as to the events, and they each had a slightly different perspective due to their different locations as the incident unfolded.

Three subordinates described an incident that occurred about six months ago. (EXHIBITS L, P, AB) Two males and one female employee were standing out in an area near the BN HQ building talking and smoking. Mr. Swinson approached the female (a WG-7) from behind. He then touched or grabbed her hair, and made a sexually explicit remark. The two male subordinates witnessing the event gave very credible identical descriptions of the incident. The female victim did not want to describe the incident, and seemed very embarrassed that the IO was questioning her about it. Mr. Swinson denied any involvement. Mr. Swinson was for the first time during the interview process very clear and emphatic with his claims of non involvement. However, the female subordinate has no stake in this investigation, she is not a direct subordinate of Mr. Swinson, she did not deny the occurrence of the incident;

however, she was very upset and did not want to talk about it. The two male witnesses gave very credible accounts of the incident.

Another incident described by several subordinates occurred in 2004. Mr. Swinson grabbed a subordinate by the neck during a disagreement. (EXHIBITS L,) The IO finds the description of these events to be credible due to their consistency, and the fact that the victim no longer works for the organization and has nothing to gain by making a false accusation about Mr. Swinson.

3. Subordinates suffering due to Mr. Swinson's inability to complete paperwork.

During interviews with subordinates, most of the interviewees stated that they felt that Mr. Swinson was illiterate, and did not do any paperwork. Further interviews revealed that none of Mr. Swinson's direct subordinates had ever been promoted as a result of a packet submitted by Mr. Swinson. (EXHIBITS G, N, R, S,) The subordinates that have been promoted were promoted as a result of other supervisors submitting the promotion packets. Mr. Swinson indicated that he "could not recall" if he had ever filled out any promotion packets. Furthermore, he was unable to recall who filled out the promotion packets for the last two of his subordinates to be promoted; he was vaguely aware that he did not fill them out. (EXHIBIT AG)

Additionally, the IO has concluded the Mr. Swinson's wife writes the evaluations for Mr. Swinson's subordinates. This finding is supported by the statement of one subordinate who stated the Mr. Swinson admitted that fact to

him. The IO finds this statement to be credible due to the fact that when the IO questioned Mr. Swinson on that subject, he gave answers that were evasive. He admitted to his wife playing a role in writing the evaluations, but he refused to clearly characterize just what that role is.

The IO has attached several e-mails sent by Mr. Swinson. They support a conclusion that Mr. Swinson is at best a functional illiterate.

Additionally Mr. Swinson is unsure as to the status of his subordinates, stating that "he could not be aware of every school one had or the last TDY one had" He used the term "one" to describe a subordinate, not the word "person" or "employee" his tone was that of contempt for the people he was describing. Mr. Swinson has performed in his current capacity for many years, he directly supervises 6 people. The IO submits that it is reasonable for a supervisor of many years to be very familiar with the status of his subordinates—especially if he only has 6.

4. Denying leave to subordinates.

Several of the subordinates interviewed described Mr. Swinson's "leave banking program" (EXHIBITS M, R, S, Y) This is an invention of Mr. Swinson. Apparently when a new member comes to the team, Mr. Swinson informs them that they "are on the leave banking program, and Mr. Swinson is the banker" They stated that Mr. Swinson will not allow an employee to take annual leave until he has saved up enough leave. They state that "enough to Mr. Swinson is anywhere from 200-240 hrs. The IO finds these statements to be credible based on the consistency of the descriptions. When the IO asked Mr. Swinson about denying leave to a particular person he responded with "he had only 8 or 10 hours of leave" then caught himself and stated that the reason he denied leave to the employee was due to a need to resource a response team. (The employee wanted to take 8 hours of annual leave) (EXHIBIT AG) Mr. Swinson's initial answer supports the allegation of denying leave to employees based on an arbitrary (his) standard of accrued leave.

b. Mr. Michael Penhollow also displays a pattern of supervisory misconduct. Again, all of the interviewees asked stated that Mr. Penhollow's misconduct can be divided into 5 categories: 1. Criminal misconduct to include theft of government property and falsifying timecards. 2. Prejudicial treatment of subordinates based on their vocation. 3. Unauthorized use of government vehicles. 4. Maltreatment of subordinates. 5. Displays of inappropriate material.

1. Criminal Misconduct:

During the course of this investigation, the IO found credible evidence that supports allegations of criminal misconduct by Mr. Penhollow. The IO turned

the evidence over to the U.S. Army Criminal Investigation Command (CID) for further investigation.

2. Prejudicial treatment of subordinates based on their vocation.

Several of the subordinates interviewed stated that Mr. Penhollow creates an atmosphere that while is hostile to all employees, is much more hostile to UXO employees. The interviewees stated that Mr. Penhollow made the following statements: 'The UXO Position Description (PD) is bogus.', "The days of UXOs getting 1s on their evaluations are over." "UXOs do not bring anything to the table." (EXHIBITS G, L, Z,) The IO finds these statements to be credible based on the volume and similarity of the statements. When the IO asked Mr. Penhollow stated that he "did not recall" making any statements like that. (EXHIBIT AF) The IO believes that MR Penhollow's statements are not credible based on the vague nature of his replies.

The IO believes that it is reasonable for a person to recall whether or not they made several statements on a particular topic.

3. Unauthorized use of government vehicles.

A large number of the interviewees stated that they "knew" that Mr. Penhollow was using a government leased vehicle for his own personal use. The incidents cited by the individuals are many and varied. However, four people in particular gave very detailed descriptions of incidents that lead a reasonable person to conclude that Mr. Penhollow has used government vehicles for his own personal use. (EXHIBITS H, J, L, R, U, Y) Most of the incidents surround the Spring Valley worksite from 2005-2006. The IO finds these statements to be credible due to their similar recollection of events. When the IO asked Mr. Penhollow if he had ever taken a government vehicle home for the weekend, he stated that he was authorized and does in fact rent a vehicle to drive home from the airport when he does not have a ride. When asked if he had ever driven a vehicle home from a jobsite, he admitted that he had done it "once several years ago." (EXHIBIT AF)

4. Maltreatment of subordinates

During the course of the interviews conducted in support of this investigation several interviewees stated that Mr. Penhollow purposely subjected employees to extreme environmental conditions of heat and cold even though there was no operational need to do so, and in spite of the safety risk these conditions imposed. (EXHIBITS Z, AD) The IO finds these statements to be credible due to the vivid recollection of the heat by one employee and the fact that the other is another supervisor with extensive management experience who is in a position to assess the conditions objectively.

5. Displays of inappropriate material.

Several of the interviewees stated that Mr. Penhollow displayed a "Sheep sex doll" in his team room for several months. They stated that this doll was visible from the hallway and very visible while in the room shared by all members of the team. This item was on display until it deflated, at that time; Mr. Penhollow brought it into his office. (EXHIBITS E, T, W, Z, AD) The IO finds these statements to be credible due to their sheer number, and matching description. Additionally the IO has viewed this item and found that any reasonable person would instantly identify the item as a sex doll, or something designed to look like a sex doll. (EXHIBIT AF, PHOTO) Mr. Penhollow was evasive when asked about this item. He could not recall how long the item was on display in his team room. He also stated that he was not aware that the item was a sex doll and that he did not display it as such. (EXHIBIT AF) The IO does not find Mr. Penhollow's statements to be credible due to his vague answer and his statement that he did not know what the item was.

c. Mr. White displays a pattern of supervisory misconduct as well. Mr. White's misconduct can be divided into 4 categories: 1. Abdication of his duties to subordinate supervisors. 2. Failure to correct the pattern of supervisory misconduct of his subordinate supervisors. 3. Encouraging the prejudicial treatment of subordinates due to their vocation 4. Failure to enforce basic supervisory methods.

1. Abdication of his duties to subordinate supervisors.

While questioning interviewees about Mr. White; the IO paid particular attention to responses of personnel with experience as senior managers. One such person (a retired CSM with 24yrs Army service) is a subordinate supervisor with the same rank as Mr. Swinson and Penhollow. He reported that he had been instructed by Mr. White to resolve a dispute between Mr. Swinson and a subordinate. (EXHIBITS AD) The IO finds this statement credible because it is supported by other statements made by several other interviewees. (EXHIBITS R, X) When asked about this incident, Mr. White was unclear as to if it happened, when I mentioned that I had several statements attesting to its occurrence, his memory improved slightly. He recalled that there was a disagreement, but he thought that perhaps it had been resolved on its own by the time he spoke to the individuals involved. The IO does not find Mr. White's statements to be credible due to his vague recollection of the incident and later statements that contradicted evidence so credible that the IO feels it to be factual.

2. Failure to correct a pattern of supervisory misconduct of his subordinate supervisors.

The IO finds that Mr. Swinson and Mr. Penhollow engaged in actions that can be characterized as supervisory misconduct. Furthermore, the IO finds that Mr. White had a responsibility to be aware of these activities. Additionally, the IO finds that Mr. White was aware of these activities and chose not to take action to correct them. Many interviewees from all levels gave credible statements that support these findings. Almost all of the interviewees stated that they were sure that Mr. White was aware of the activities of his subordinate supervisors. (EXHIBITS G, L, R, Z, AD) One individual stated the following "I do not spend much time in the building with Mr. Swinson, Mr. White, and Mr. Penhollow. However, even during my short visits I can almost always see and or hear Mr. Swinson and Mr. Penhollow verbally abusing their subordinates. If I can see it so easily, it is perfectly reasonable to expect Mr. White to be aware of it." Additionally, many stated that they have gone to Mr. White with issues related to the actions of Mr. Swinson, and Mr. Penhollow, to no avail. The IO finds these statements to be credible due to the volume and detail of the statements. Mr. White denied that anyone had ever come to him with issues relating to Mr. Swinson, and that only one person had ever come to him about Mr. Penhollow. Mr. White has been the section chief of E. CO for over 13 years, it does not seem reasonable that in that time no one would have had an issue with either of those supervisors. Additionally the volume of statements to the contrary by the other interviewees, caused IO to find that Mr. White's statements were not credible. The IO described some of the incidents related by other interviewees. Mr. White then began to "remember" those specific incidents.

3. Encouraging the prejudicial treatment of subordinates due to their vocation

The IO finds that Mr. White was not only aware of Mr. Penhollow's prejudicial treatment of UXO employees, he encouraged it. One supervisor stated that he was present at a meeting with Mr. White, Mr. Swinson, and Mr. Penhollow. In that meeting, Mr. White made statements to the effect that all four subordinate supervisors were to encourage a hostile work environment for UXO employees. (EXHIBITS AD) The IO finds this statement to be credible for several reasons: 1. The person making the statement is not subject to the hostile work environment. 2. All other statements made by the individual were found to be credible because they were supported by many other statements. Additionally, another individual stated that he heard Mr. White say that he thought "the UXO PD in bogus" and "UXO will always be second fiddle" and UXO "was not part of the company mission" (EXHIBITS Z, AB) Mr. White denied that he was aware of, or encouraged an environment hostile to UXO employees.

However, during the interview, Mr. White made the statement "The UXOs do not fit into, well they fit into the company mission, but I do not have my hands on them" The IO had not mentioned the statement made by an employee that recalled Mr. white stating "UXO "was not part of the company mission" This particular statement coupled with the credibility of the statements to the contrary cause the IO to find Mr. White's statements to have no credibility.

3. Failure to enforce basic supervisory methods.

Most of the interviewees made statements to the effect that Mr. Swinson and Mr. Penhollow (both WS-14s) almost deploy to jobsites to supervise any more, they simply pick a WG-11 or WG10 on their team to deploy and supervise the site. This creates issues as there may be other personnel who have the same or higher rank than the supervisor. They also stated that Mr. White does not hold company training meetings, and that he withholds information from subordinates. Also, all of the interviewees asked stated that there is no written Order of Merit Listing for any schools, TDY's or promotions. Again, the volume of the statements convinced the IO that these statements are credible. Mr. White admitted that he does not hold training meetings at the time he specifies on his training calendar. He was not very clear as to exactly when or how he holds training meetings. Additionally, Mr. White stated that he did not have any OMLs for schools, TDY's or promotions. This supported the credibility of the statements made by subordinates.

c. Procedural Recommendations:

(1) Recommend that the Section Chief of E Company immediately codify all favorable actions e.g. schools, promotions, TDY schedules etc. using written OMLs or a similar system. This will remove any impressions of favoritism among the employees.

(2) Recommend that the Section Chief of E Company begin to hold Company Training meetings.

(3) Recommend that the Section Chief work with all personnel to ensure the time of all employees is maximized performing the tasks and duties that most closely fit the Position Descriptions (PDs) they were hired under. Again, this will remove any impressions of favoritism from among employees.

(4) Recommend that the section chief of E Company endeavor to send his senior subordinate supervisors to jobsites to supervise. This will go a long way to resolving issues that may arise on jobsites.

4 POC for this request is the undersigned @ (410) 436-8522

AFCB-CFT-CO

SUBJECT: AR 15-6 Investigation Findings and recommendations

WAYNE S. HYMAN
MAJ, OD
Executive Officer



DEPARTMENT OF THE ARMY
22d CHEMICAL BATTALION (TECHNICAL ESCORT)
5183 BLACKHAWK ROAD, BLDG E1942
ABERDEEN PROVING GROUND, MARYLAND 21010-5424

REPLY TO
ATTENTION OF:

AFCB-CFT-CO

7 February 2007

MEMORANDUM FOR RECORD

SUBJECT: Investigating Officer (IO) Statement

1. During the course of my investigation I was surprised by the statements given by the employees of E Company.
2. I interviewed 24 employees of E Company; this does not include the three people who are the principals of my investigation. Of those 24 employees, 19 were able to clearly recall at least one specific instance that a reasonable person would characterize as supervisory misconduct. I found most of these statements to be credible due to the fact that many of them accurately described the same incident. Furthermore the detail of the incidents recalled is consistent with what a person could reasonably be expected to recall.
3. Of the statements I took. I was surprised at the events that were described. Some of the statements at first seemed too fantastic to be credible. However, when several other people describe the same event accurately, I am left with no choice but to believe that the statements are credible. There were several times during interviews that I said to myself that the event being described was in fact too strange to have been made up.
4. One of the allegations made by many subordinates was one of favoritism. Interviewees singled out a few employees as being the recipients of favoritism. Another surprising discovery was the fact that several of those people admitted that they probably had been the recipients of preferential treatment, and went on to describe instances of misconduct by the three supervisors against other employees. This is one of the factors that I considered when evaluating the credibility of some of the statements.
5. Another factor lending to the credibility of employee statements is the statements given by the three principals in this investigation.
 - a. In stark contrast to the detailed answers given by other employees, the answers given by Mr. Swinson, and Mr. Penhollow were purposely vague and evasive. Several times for instance, they claimed to not know or remember something, then after several more questions admit that they had or did. When questioned about specific events, they did not give specific denials, rather vague answers of "I can not recall" or "I'm not sure" When a person is asked weather he has ever lost his temper so badly that he hangs out the window of his vehicle in a public place,

shouting obscenities at the top of his lungs while swinging his arm wildly through the air, a reasonable person should be able to answer yes or no. "I can not recall" implies that he might have in fact done that or something like that, but can not remember the event clearly. Mr. White's answers were sometimes direct denials of allegations; however those denials were limited to statements of like no, or never. No attempt was made to provide any information to help lend credibility to the denial. For instance, why say just no or never when it would seem reasonable to add information as to why the allegation was not true. En example would be no, I do not do that, you can verify this with Mr. X, he knows I am not that type, or, no, I was not there, I was somewhere else, etc.

- b. Mr. Swinson and Mr. Penhollow both made several unsolicited comments during my interviews with them. For instance Mr. Penhollow was asked about specific events. He would give a vague answer. Then, a few minutes later while I was typing and preparing my next question would make quiet comments to the effect of "well if they want to bring that to bear" or "those were years ago" and "they are really reaching" This suggests that Mr. Penhollow had some sort of internal conflict that was coming out by mistake. Also, Mr. Penhollow refused to sign a sworn affidavit attesting to the truth of his statement.

~~Additionally, when I asked Mr. Swinson if there were other incidents where he yelled and cursed at his employees and did not remember, he answered "yes probably" then thought about it for a little while and said "I mean no" However at the conclusion of our interview. Mr. Swinson stated that he probably would forget what he said during the interview "five minutes from now" These statements seemed to me to be consistent with a person who is truing to distance themselves from a lie they have told in order to allow some "wiggle room" later on if it becomes necessary.~~

- c. As previously stated, almost all of the employees of E CO described at least one specific event. As you can imagine, by the end of the investigation, I had quite a large list of incidents. This list was large enough to be confusing at times. During my interviews with Mr. Swinson and Mr. Penhollow for instance, I would ask a question about a topic that had been mentioned during prior interviews with subordinates. A couple of times, they answered by describing yet another incident, not realizing that I had not yet heard of the one they were describing. This caused me to believe that there were so many incidents over such a long time, that they had trouble distinguishing events that stood out in subordinates minds.

- d. The Sheep sex doll turned out to be the most important factor in determining the credibility of statements. Every single person questioned except for the three principals stated that they saw the doll. Every single person questioned except for the principals stated that they were sure that the purpose of the doll was a sex doll. Mr. Penhollow admitted to placing it right where every single person said it was. I saw the doll there is no doubt in my mind as to its purpose; I agree with every single person

questioned except for the three principals, it is a sex doll. Mr. Swinson and Mr. Penhollow denied knowing that the doll was a sex doll, it is not reasonable to believe them. Mr. White denied that he even saw the doll. Again it is not reasonable to believe him.

6. Mr. Swinson and Mr. Penhollow seemed to feel that this investigation was brought about by a desire of the Battalion Command team to attack them. They all stated several times that they did not know why the command was doing this to them. They could not be more wrong. This investigation was brought about by information given to the command by subordinates. The command of this Battalion took immediate steps to protect the supervisors, and initiated an investigation to ascertain if any of the allegations were true or not. It is the credible statements made by subordinates and co workers that I am using as the basis of my findings, not anything said by the command. In fact during the course of this investigation, I have recorded several credible statements that demonstrate that previous command teams had knowledge of the misconduct and chose not to correct it. Additionally, because of the prior command team's influence on this command team's initial opinions, they do not expect what they will be told at the conclusion of this investigation. Mr. White's demeanor tried to convey that he was a puzzled innocent victim of circumstance who had no idea why anything like this was happening to him. However, I believe that he lied to me when questioned about the sheep doll. Everyone else in the company to include Mr. Penhollow and Mr. Swinson admitted that the doll was there, sitting prominently on a cabinet at waist height in the middle of Mr. Penhollow's Training room. Mr. White told me that he regularly inspects the building (2Xs weekly) for cleanliness and to ensure no employees are "hiding and playing video games or surfing the internet." He stated that he examined the top surface of the cabinet as a part of his cleanliness inspection. He claimed never to have seen any doll or anything else on the cabinet. Since he displayed such a willingness to tell a lie that was completely unbelievable in view of the evidence to the contrary. Since he displayed such a willingness to tell a lie that was completely unbelievable in view of the evidence to the contrary removes all credibility from any other statement that Mr. White made during the interview. Every question I asked Mr. White was developed as a result of several credible statements made by others in his company that supported specific allegations. I can therefore give no credibility to his denials of those allegations.
6. Throughout my dealings with Mr. Swinson, Mr. Penhollow, and Mr. White, they constantly asked me questions relating to technical matters of the investigation. They gave me the impression that they felt that even though they had in fact done all of the things they were accused of doing. But if they could "get off on a technicality" they could somehow escape any sort of corrective action.
 - a. They were very concerned about specific allegations. They gave the impression that they felt that if they could narrow the investigation down to a few specific incidents, they would be able to mount a defense against them, and even though

the other events occurred, they would not have to worry about them, because those events were not part of the investigation.

- b. When I interviewed Mr. Swinson, Mr. Penhollow, and Mr. White, they all asked me questions like "why is this investigation being conducted?" and "Why didn't you come and speak to me first?" What they did not do at any time is tell me that they were innocent.
7. During the interviews I had with Mr. Swinson, and Mr. Penhollow they used terms like "them" or "one" to describe their employees. Their tone indicated that they truly did not consider their employees to be worth caring for. This coupled with the long list of incidents lends credibility to the statements of the other employees.
8. Several times during the investigation process subordinate employees thanked me for finally coming down and doing this investigation. They did express fear of retribution by the three principals; however they seemed confident that once their statements had been evaluated, they would not have to deal with that fear. Also many of the employees told me that since the three supervisors had been detailed elsewhere, they now did not dread coming in to work, were not burning leave in order to avoid the office, and that the atmosphere was much better.

9. Another surprising thing I discovered during this investigation was the integrity of the process. I was able to speak with a number of people, and based on their statements, I was able to draw accurate conclusions as to the credibility of those statements. It did not matter whether I spoke to Mr. Swinson first, last, or in the middle. All I had to do was ask people to describe any incidents that stood out in their minds. If one individual brought up an incident that another individual had knowledge of, I was able to go back and ask the other individual about that incident.

WAYNE S. HYMAN
MAJ, OD
Investigating Officer



DEPARTMENT OF THE ARMY
22d CHEMICAL BATTALION (TECHNICAL ESCORT)
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ABERDEEN PROVING GROUND, MARYLAND 21010-5424

REPLY TO
ATTENTION OF:

AFCB-CFT-CO

7 March 2007

MEMORANDUM FOR Record

SUBJECT: Record of conversation

1. On 7 March 2007 at approximately 1115, I met with Mr Penhollow in MRS Jensen's office to discuss additional questions relating to the 15-6 investigation I have been ordered to conduct.

2. We spoke about the following:

Q. Did you tell Mr. Ford and Mr. Hawkins they had to return early from Hawaii because of a medical appt and range?

A. Yes

Q. Did you tell Mr. Griffin "fuck those two" they need to come back?

A. Mr. Griffin was in SMPT school. He called back and asked me about it and I told him not to worry about it; they had to come back. I do not recall telling him fuck those two, they have to come back. I talked to him later and told him to never call me and ask about his employees issues while he is in school. My boss told me that one had a urinalysis that was due; the other one was going to fall out of the PRP, so my boss told me to make arraignments for them to come back.

Q. Why do you seem to have so much conflict with the UXOs?

A. I do not have any conflict with the UXOs.

Q. Why are you the only supervisor that requires all rental car keys be turned into you at night while your are supervising worksites?

A. That's false, that has never happened. Now, go back to when MAJ Gillem was the company commander; that was an internal policy he had and instituted. That was 8 years ago. When he left, that policy was rescinded. None of these employees except for maybe Mr. Young has ever fallen under that policy.

Q. Why did you say to a group of employees that you are "a soldier by default because have family members that served"

A. I do not recall that, I have never hid the fact that I have both sides of my family in the service, but I have never said that I was a soldier by default.

Q. Did you tell a group of employees that you did not want to deploy to Iraq?

A. Taken out of context, I said truth be told I have no aspirations to go over there. But I will go over and do as I was told. The WGs were asked to volunteer, I was not asked to volunteer. I wanted them to understand that they would be in a war zone; if they had any reservations about going, they should rethink volunteering. This is all perception; people hear what they want to hear. This is bullshit.

Q. Did you show Mr. West's evaluation to Mr. Versino?

A. I showed him a draft copy of one from a couple years prior; it was never a real one. It never had no dates or names on it, it was a template that I used to show the ordnance people how they were supposed to fill out their evaluations. I may have said that this was something I was working on for Mr. West, but I never showed a real evaluation to anyone.

Q. Did you yell at and accused Mr. West of "blindsiding" him to battalion about his work status (ref the 23 MAR 2006 incident)?

- A. First and foremost, I do not yell, I have never yelled at an employee. My boss would have my head on a platter for yelling. So I refute that entirely. I may have said something to the effect of that I wanted him to use his chain of command; but I deny emphatically yelling or saying he blindsided me.
- Q. Did you place the rescue team out in the sun during MAY/JUN 2005 when there was shade available stating that you wanted to "acclimate them to the heat and make sure they wouldn't fall asleep"?
- A. No, totally out of context.
- Q. Did you ever tell Mr. Griffin "I don't need any fucking advice from you, I will run it the way I want to run it, and I will tell the employees when I want to tell the employees" in reference to the Washington state mission?
- A. I do not remember saying anything like that to him; I do not know what context. I would have to put my thinking cap on. There are so many conversations supervisors have. Just because Mr. Griffin says it happened, does not mean it happened. This is coming down to he said, she said and perception rather than what was actually said. If I am running the mission, I have to take all the necessary factors into account. I try always to be fair. If supervisors butt heads, you do not try to tell people about things too early, otherwise they might make plans and then the plans would change.

Mr. Penholow then told the investigating officer that he felt that it was sad and frustrating that based on the above questions he was able to figure out exactly who made the accusations, and that they were just trying to twist his words and use them against him.

WAYNE S. HYMAN
MAJ, OD
Investigating Officer



DEPARTMENT OF THE ARMY
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REPLY TO
ATTENTION OF:

AFCB-CFT-CO

7 March 2007

MEMORANDUM FOR Record

SUBJECT: Record of conversation

1. On 7 March 2007 at approximately 1200, I met with Mr Swinson in MRS Jensen's office to discuss additional questions relating to the 15-6 investigation I have been ordered to conduct.
2. We spoke about the following:

Q. Did you ever threaten to break Mr. Baldeo's legs?

A. No, there was a discussion about ROE training, we talked about how you could kick a guy in his knee, and break his knee, and he said you couldn't.

~~Q. Did you deny people overtime when you kept them late and do you know the Bn's policy on overtime?~~

A. I did not deny anybody overtime, I asked for volunteers to say late recently, Mr. Barney had a shipment coming in it took two forklifts. I think Mr. Barney said the load belonged to the 20th. We had no codes to charge it to. It was not anticipated that there would be over time. When it became apparent that there would be, I asked for volunteers stating that they would be compensated with time off rather than monetarily. Yes, if they work it they get paid or they can get compo time.

Q. Do you have a "leave banking program"?

A. No

Q. When you deny leave, do you use the OPM Form 71?

A. The leave form? And the written comments? I may have over the years, I have also denied leave prior to the leave form being turned in, and I have also had to call people in off of leave.

Q. Maynard won't let you past the range control gate because of testing is there any other reason?

A. No, He has never told me of any other reason.

Q. Tell me about the incident in MAY 2006 when you had an incident with Mr. Budzinski, cursing and yelling at him over the phone, and continuing with it when he returned to the company headquarters I understand that you and he then went down into Mr. White's office, what happened?

A. Not really, I really don't remember it.

Q. Why do you seem to have so much conflict with the UXOs?

A. I do not know that I do.

Q. Why do you routinely call individuals "crackhead"?

A. I call them sweet heart, schleprock, just little joking names in a more social kind of reference. It's not meant to be demeaning?

Q. Do you call LTC Terrell or Mr. White by those names?

A. I use the term crackhead for like the term bonehead, I may have referred to Mr. White as a crackhead; not LTC Terrell.

Q. Have you ever been required to attend an anger management class?

A. Yes

Q. When?

A. I do not know, I think it was like 2003.

Q. Why?

AFCB-CFT-CO

SUBJECT: Letterhead Blank

- A. I do not know exactly specifically why.
- Q. Did you ever grab Mr. Smith by the neck?
- A. Not that I can remember, it certainly would not have been in any kind of anger.
- Q. Have you ever been asked to leave, or asked not to return to the Spring Valley worksite?
- A. No
- Q. Did you yell at Mr. Steele in OCT or NOV 2006 because he did not have his leave approved by Mr. Swinson as the "senior supervisor" rather than by Mr. O'Connell since Mr. Griffin was deployed?
- A. No, I do not recall that.

WAYNE S. HYMAN
MAJ, OD
Investigating Officer

TAB B



DEPARTMENT OF THE ARMY
22d CHEMICAL BATTALION (TECHNICAL ESCORT)
5183 BLACKHAWK ROAD, BLDG E1942
ABERDEEN PROVING GROUND, MARYLAND 21010-5424

REPLY TO
ATTENTION OF:

AFCB-CFT-CO

6 March 2007

MEMORANDUM FOR RECORD

SUBJECT: Record of Conversation

1. On 6 March 2007, I called Mr. Al White on his home phone [REDACTED]
2. The purpose of my call was to ask him some additional questions regarding the 15-6 investigation I am conducting.
3. We spoke about the following:

Q. ~~Do you have any written counseling on Mr. Swinson and Mr. Penhollow?~~

A. No, I only have one for Mr. Swinson from the incident resulting in his receiving a letter of reprimand at the CASEY yard.

Q. Why did it take 5 years for Mr. Marks to go to J5 School?

A. Initially they were not the priority for J5. They were the over hires; they were initially hired to work Lauderick creek. After that job was over, they occupied slots in the company; however, they were still not the priority. This was due to the command's philosophy they were then worked in to the available slots.

Q. ~~Did your attitude to change towards Mr. Steele when he was pulled off the list to attend MINICAMS class?~~

A. Ah, I did not have an attitude change towards him, his work ethic changed; he took a lot of leave; even when he was here, he was not here. He was constantly sitting out on the dock, talking on the phone. I finally talked to his supervisor. Who told me Mr. Steele had a personal problem. When Mr. Steele missed the first day of the class, I spoke to him about it. I told him that we do not get those slots that often, and that it was important for us to not let those seats go unfilled. He told me that the reason he did not make it was because there was a storm and "things were falling down all around his house" I was not aware of a storm that severe having stuck in our area, so I asked him if there were things falling just around his house, or over a broader area. He said "fine, next time I have an issue like this, I will call you for help directly."

Q. He came later to apologize?

A. Yes

Q. Did you yell at him at that time?

A. I am not a hollerer, I never holler at anybody.

Q. Have you ever made a statement to the effect of "if you have a problem with your supervisor, do not come to me, I will just send you back to your supervisor"?

A. No, that is not what I said, what I said was if you come to me with a problem without first talking to your supervisor. Some people have selective hearing. I wanted to ensure that the chain of command would be followed. I said that I will listen to you, but if you have not spoken to your supervisor first, I will take no action other than to ask your supervisor about it. If you do not encourage the chain of command, it will not be used. Of course I told them that they could come directly to me if they had a problem with their chain.

AFCB-CFT-CO
SUBJECT: Record of Conversation

WAYNE S. HYMAN
MAJ, OD
Investigating officer

TAB C

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: Bldg 4220, APG-EA, MD. 21010
2. DATE (YYYYMMDD): 2007/01/24
3. TIME: 0810
4. FILE NUMBER
5. LAST NAME, FIRST NAME, MIDDLE NAME: Pulliam, Adam K.
6. SSN: [REDACTED]
7. GRADE/STATUS: [REDACTED]
8. ORGANIZATION OR ADDRESS: HHC 22d Chem BN (TE) Bldg 1942 APG-EA, MD.21010

I, Adam Pulliam, WANT TO MAKE THE FOLLOWING STATEMENT UNDER OATH:

Q. Have you ever seen or been the victim of any instances of threats, intimidation, favoritism, or theft of government property by Mr. White, Mr. Swinson, or Mr. Penhollow?

A. Yes

Q. Would you please elaborate?

A. I have never worked on a site with Mr. Penhollow, my only dealings with him are here at the company either in passing or during his meetings when he is the only supervisor present.

On 19 April 2004, I was supposed to go TDY on a job with Mr. Swinson, he and Mr. Penhollow were the only supervisors present. They told me and the other person with me (I believe it was Mr. Brewer) that our working hours had been changed ready because they did not have the time to give two weeks notice, even though the TDY trip had been planned for at least a month. I told him that We (the civilian employees) had at that time been trying to explain to Mr. Swinson and Penhollow that the union agreement that covers us stated that we were required to have at least two weeks prior written notification any time our working hours were scheduled to change (unless there was an emergency situation requiring immediate response.) Mr. Penhollow's reply was " get over it, if you can't deal with it, you can stay here and sit around the company all day doing nothing" I believe that this was a threat, and he was implying that if we did not comply, we would not be able to go on the TDY and would not receive the Per Diem, overtime and hazard pay that go along with the TDY.

A memo was then created on the 20th of April 2004 indicating an effective date of 2 May 2004; the memo was then distributed on the 21st of April, 2004.

While working on the jobsite, on the 21st of May 2004, Mr. Swinson informed us that our working hours were changing back to their original schedule effective the next day.

This is one example of many when Mr. Swinson, and or Penhollow failed to give proper notice when planning a project or TDY. They have plenty of time to inform their employees of changes, they simply choose not to. When anyone speaks to them about it, they respond with threats and intimidation.

Q. Did you or anyone else speak to him about the union agreement again?

A. I did not, and I do not believe anyone else did.

Q. Why not.

A. I felt that bringing the subject up again would have resulted in more threats and possible retaliation.

Q. Have you ever seen or been the victim of retaliatory actions by Mr. Swinson or Mr. Penhollow?

10. EXHIBIT

11. INITIALS OF PERSON MAKING STATEMENT

PAGE 1 OF 5 PAGES

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.

STATEMENT OF Adam Pulliam TAKEN AT Bldg 4220 DATED 2007/01/24

.. STATEMENT (Continued)

A. It is very difficult to prove. Mr. Swinson has never told me that the reason he chooses someone for extra overtime etc is in retaliation for my informing him of the procedures he is supposed to follow. There have been many times, while working on a job site that Mr. Swinson would select people for extra time or better jobs these people always seem to be the ones who do not try to inform him of proper procedures, mistakes, etc.

Q. Have you noticed or been the victim of Mr. Swinson, cursing, yelling at or belittling you?

A. Yes One time around the spring of 2005. An entire convoy, two tractor trailers, one Ryder truck, and one ford six passenger truck with trailer was driving from Sibert back to APG-EA. I and Mr. Budzinski had told Mr. Swinson that it was a bad idea to leave that day because there were mechanical problems with some of the vehicles. We told him that the trailer for the six passenger ford had inoperative lights (which is illegal) the trailer has two axles and must ride level in order to safely distribute the load among both axles, however, the tow vehicle's hitch was too high, placing an unsafe amount of weight on the rear axle. There were other mechanical issues with other vehicles that I was not fully aware of. However other people had informed Mr. Swinson of these issues. When we told Mr. Swinson about these issues, his response was "Don't worry about it, get in to the truck, we are leaving" Mr. Swinson was driving the Ryder truck, it broke down within the first hour. It was towed to the Ryder facility where it was repaired over the course of several hours. While the Ryder was being repaired I voiced my concerns about the trailer lights on the ford that I was driving to Mr. Ammehauser who used to be a mechanic. We went in to the Ryder facility and borrowed tools from them to fix the trailer lights. We did not tell Mr. Swinson that we were doing this, because he had told us "It is better to drive cross country with no god damn trailer lights than to have one of you fucking crackheads break something." We fixed the lights. A little farther down the trip. We ran into a problem with the tractor trailers becoming very low on fuel and needing to find a gas station. Mr. Swinson had said when we first started that everyone was to follow him during the trip. The drivers of the tractor trailers were concerned enough about their fuel state that they pulled off the highway to fill up. All of the vehicles except for Mr. Swinson's Ryder pulled off with the tractor trailers. When Mr. Swinson caught back up with all of us at the gas station, he began leaning out the window of the Ryder truck while it was moving, beating the side of the truck and yelling at the top of his lungs "I told you fucking crackheads to follow me, and when I say follow me, that fucking means fucking follow me!" he continued to beat the side of the truck the whole time he was yelling. He then got out of the truck and spent the whole 15-20 minutes required to fill the tractor trailers yelling at the drivers.

Q. Why do you think he yelled at the truck drivers, was it to belittle them?

A. Definitely. I have never seen Mr. Swinson talk to anybody who works for him without belittling them, or at least trying to.

Q. Have you ever worked anywhere else besides this job?

A. Yes, I served 12 years in the Army.

Q. Have you had several supervisors in that time?

A. Yes, I have had many supervisors.

Q. Have you ever had a supervisor that treats people as badly as Mr. Swinson?

A. No even close.

Q. Do you feel that Mr. Swinson would be allowed to work in any of the other places you have worked if he treated those people as you have seen him treat you and other employees of the 22d TE?

A. I do not feel that any Infantry commander would put up with the way he treats his subordinates, and I know for a fact that no EOD unit would allow it.

Q. Do you feel that Mr. Swinson should be allowed to continue to work for the 22d TE?

A. No, I feel that he should have been removed from his position when I found out that he had been kicked off the Spring Valley work site, and removed from the 1 ton Casey yard project. When outside agencies see how badly a person treats his subordinates, and how badly he mismanages his project, and they refuse to allow him to return, our organization should fire him.

INITIALS OF PERSON MAKING STATEMENT APD

PAGE 2 OF 5 PAGES APD

STATEMENT OF Adam Pulliam TAKEN AT Bldg 4220 DATED 2007/01/24

J. STATEMENT (Continued)

Q. Can you please tell me what you know about Mr. Swinson being kicked off the Spring Valley and Casy projects?

A. I was told by two of the Corps of engineers representatives at the Spring Valley site that the Corps of Engineers would no longer allow Mr. Swinson to work on the site.

Q. Did the representatives tell you why Mr. Swinson had been kicked off the site?

A. No

Q. Can you tell me what you know about the Casy site?

A. One of my fellow employees told me that he was no longer allowed to work there, I have never seen him work there.

Q. Is there anything else you would like to add about Mr. Swinson?

A. Yes, on the 3rd of February, 2006, he denied me sick leave.

Q. Why?

A. Everyone who was not TDY at the time had spent the morning sitting around the company area with no particular project to work on. I was not feeling well, I asked Mr. Swinson if I could take sick leave for the afternoon to rest and try to feel better. He told me that I could not and instructed me to work for the rest of the afternoon moving boxes.

Q. Why do you think he refused to let you take sick leave?

A. He wanted to have as many people on hand as possible that afternoon to move boxes.

Q. What happened after that?

A. It was a Friday; I went home after work, rested and got better over the weekend.

Q. Is it legal for a supervisor to deny sick leave to an employee?

A. No

Q. Did you raise that issue with Mr. Swinson at that time?

A. Yes, I looked at him and said "so you are telling me you are denying me sick leave?" He replied, "Yes, get to the warehouse."

Q. Did you comply with Mr. Swinson's directive?

A. Yes

Q. Is there anything else you would like to add?

A. Yes,

1. Mr. West told me that at the beginning of his rating period, he was told by Mr. Penhollow that he would not be allowed to receive "1's" on his evaluation anymore. This impossible because it was the very beginning of the rating period.

2. Mr. Versino told me that both Mr. Penhollow and Mr. Swinson had gone to Mr. Griffin and Mr. O'Connell and tried to coerce them into giving lower evaluation ratings to their own UXO employees. This was in an effort to not look bad for being the only ones to rate their UXO employees lower than they should have.

3. I was told that Mr. White brought Mr. Griffin into his office one time and told him to "get on board" with trying to "bring down" the UXO employees.

Q. What do you mean by "bring down"?

A. Mr. White does not want UXO employees under him. He tries to encourage his subordinate supervisors to make the work environment hostile enough that the UXO employees will leave. He then has no plans to hire any replacement UXO employees.

INITIALS OF PERSON MAKING STATEMENT 

PAGE 3 OF 5 PAGES 

STATEMENT OF Adam Pulliam TAKEN AT Bldg 4220 DATED 2007/01/24

2. STATEMENT (Continued)

Q. Can you tell me anything about Mr. Penhollow?

A. I have always tried to avoid him because it is very obvious that he belittles and threatens his employees.

Q. Can you give me any examples when he has either belittled or threatened his employees?

A. It is very hard to recall a specific incident. Almost every day, I witness him berating, belittling or yelling and an employee. I do not work directly for him, so I just avoid him. He thought it was funny to have an inflatable sheep sex doll sitting in the middle of his team room. This sheep had a hole in the rear end made for sexual intercourse.

Q. Have you or anyone else ever told Mr. Penhollow that you find the sheep doll offensive?

A. I have not, I do not know if anyone else did.

Q. In any of the places you have ever worked, have you ever had a supervisor that displayed a sheep sex doll in the workplace?

A. No. I have never worked anywhere that any kind of sexually explicit material was allowed to be displayed.

Q. Do you think it is reasonable to assume that a supervisor should know with out being told that it is improper to display a sheep sex doll in the workplace?

A. Definitely.

Q. Was Mr. White aware of the sheep sex doll display?

A. I can not say for sure, however, the doll was so prominently displayed that even when you walk down the hallway if you glance into the room the doll is clearly visible.

Q. How long was the sheep sex doll displayed in the team room?

A. At least a few months.

Q. Do you know why it was removed?

A. I believe that someone put a hole in it so it deflated, and was removed.

Q. Have you ever seen or heard of any instances of theft or misuse of government equipment by Mr. Penhollow.

A.

1. I was told that Mr. Penhollow would drive the government leased truck to his residence for the weekends.

2. I was also told that there were a couple of pay periods while Mr. Penhollow was working the Spring Valley Site. The average amount of overtime employees were earning during a pay period was 15 hours. However, He was receiving between 70 and 80 hours of overtime during that period. I know that no other supervisor has ever put in that much extra time working after hours. When other supervisors are on site, there is a lot more parity in overtime hours. It is my belief that he fraudulently claims extra hours in order to get more pay.

Q. Is there anything else you would like to add?

A. Not at this time

~~Nothing follows~~

INITIALS OF PERSON MAKING STATEMENT AMP

9. STATEMENT (Continued)

ADP *ADP*
NOTHING *FOLLOWS*
NOTHING *FOLLOWS*
ADP *ADP*

AFFIDAVIT

I, Adam Pulliam, HAVE READ OR HAVE HAD READ TO ME THIS STATEMENT WHICH BEGINS ON PAGE 1, AND ENDS ON PAGE 5. 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.

Adam Pulliam
(Signature of Person Making Statement)

WITNESSES:

Subscribed and sworn to before me, a person authorized by law to administer oaths, this 24rd day of January, 2007 at Bldg 4220

Wayne Hyman
(Signature of Person Administering Oath)

ORGANIZATION OR ADDRESS

Wayne Hyman MAJ, OD
(Typed Name of Person Administering Oath)

ORGANIZATION OR ADDRESS

AR-15
(Authority To Administer Oaths)

INITIALS OF PERSON MAKING STATEMENT *ADP*