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Office of Special Counsel File Number DI-10-1952

Anniston Army Depot Security Force Operations

Army Report and Exhibits

September 9, 2011

(Redacted)

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DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
MANPOWER AND RESERVE AFFAIRS
111 ARMY PENTAGON
WASHINGTON, DC 20310-0111

SEP -9 2011

The Honorable Carolyn Lerner
The Special Counsel
U.S. Office of Special Counsel
1730 M Street, N.W., Suite 300
Washington, D.C. 20036-4505

Re: Whistleblower Investigation—Department of
the Army, Anniston Army Depot (ANAD),
Anniston, Alabama – (Office of Special Counsel
File Number DI-10-1952)

Dear Ms. Lerner:

In accordance with Title 5, United States Code (USC), section 1213(c) and (d), the enclosed Report is submitted in response to your referral of the information requesting an investigation of allegations and a report of findings in the above referenced case.

The Secretary of the Army (SA) has delegated to me his authority, as agency head, to review, sign and submit to you the Report required by Title 5, USC, Section 1213(c) and (d) [TAB A].

The Department of the Army (DA) has enclosed two versions of its Report. The first version of the Report contains the names and duty titles of military service members and civilian employees of the DA. This first version is for your official use only, as specified in Title 5, USC, Section 1213(e); we understand that, as required by that law, you will provide a copy of this first version of the Report to the whistleblower, the President of the United States and the Senate and House Armed Services Committees for their review. Other releases of the first version of the Report may result in violations of the Privacy Act¹ and breaches of personal privacy interests.

The second version of the Report has been constructed to eliminate references to privacy-protected information and is suitable for release to all others as well as the regulations

¹ The Privacy Act of 1974, Title 5, USC, Section 552a.

that require protection as noted above. We request that only the second version of the Report be made available on your web-site, in your public library, or in any other forum in which it will be accessible to persons not expressly entitled by law to a copy of the Report.

INFORMATION INITIATING THE INVESTIGATION

By letter dated June 29, 2010, the Office of Special Counsel (OSC) referred to the Secretary of the Army allegations submitted by an anonymous whistleblower at Anniston Army Depot (hereinafter "ANAD", "Anniston," or "the Depot"), a Department of the Army installation located in Anniston, Alabama. The OSC had concluded that there existed a likelihood that information provided by the whistleblower revealed that employees at the Depot had violated a law, rule or regulation concerning the assignment of duties and training for Security Guards and Police as well as the appropriateness of Security Guards wearing the uniform for Police Officers. On July 16, 2010, the Secretary of the Army forwarded the OSC referral to the Commander, U.S. Army Materiel Command (AMC), for action.²

The anonymous whistleblower identified the following alleged violations:

1. The Director of Emergency Services (DES) and Deputy DES allow the division of work assignments between Security Guards in the General Schedule (GS)-0085 series and Police Officers in the GS-0083 series to be in violation of Army Regulation (AR) 190-56, *The Army Civilian Police and Security Guard Program*, particularly by assigning the majority of the Depot's law enforcement work to Security Guards, and allowing Security Guards to arrest suspects, place suspects in handcuffs, and transport them to the CID, and assign Police Officers to perform almost solely protective services, including guarding buildings and property and controlling access to the Depot by employees, visitors and residents.

2. The Depot does not have a Field Training Program for newly-hired Police Officers and that the only training provided to newly-hired Police Officers who have successfully graduated from a police academy is having them accompany a Security Guard on a "ride-along." That involves going on patrol for one or two days with a Security Guard. The whistleblower asserts that this "ride-along" does not constitute a Field Training Program as required by AR 190-56.

3. The Director of Emergency Services () and the Deputy Director of Emergency Services () are violating AR 190-56 by allowing Security Guards to wear uniforms identifying them as Police so that both the Police Officers and Security Guards both wear the same uniform and both have the word "Police" on their badges, hats, and shoulder insignia.

² The ANAD installation falls under the general jurisdiction of AMC, an Army major command. The Director of Emergency Services (DES), located on ANAD, is under AMC's functional command responsibility.

CONDUCT OF THE INVESTIGATION

By letter dated July 16, 2010, the Secretary of the Army, through the Army Office of General Counsel (OGC), forwarded the OSC-referred allegations to the U.S. Army Materiel Command (AMC).

AMC forwarded the Secretary's referral memorandum to U.S. Army TACOM Life Cycle Management Command (TACOM LCMC) On August 31, 2010, CG, TACOM LCMC, appointed The initial IO as an Investigating Officer (IO) [TAB B],³ under the provisions of AR 15-6, *Procedures for Investigating Officers and Board of Officers*, with a mandate to investigate the allegations forwarded by OSC.⁴ [TAB C]. The IO was later changed to The IO. [TAB D].⁵ The TACOM LCMC General Law Division (GLD) and Red River Army Depot Legal Office provided legal counsel to CG, TACOM LCMC and The IO.

BACKGROUND

In order to understand the context and details surrounding the allegations and the resultant findings and conclusions, the following background information is provided relating to the Depot's history, its current mission, and the organizational structure and functions of the ANAD security force.

³ This footnote prescribes the citation convention that will be employed throughout this Report with a view to facilitating the reader's understanding of, and reference to, the specific document from which facts or assertions set forth herein are drawn. Tabs or Exhibits referenced in this Report are referenced as "[TAB x or Exhibit 'x']". Additionally, there are extensive references made to documents or information referenced as "ROI". The term "ROI" refers to the Army Regulation (AR) 15-6 Report of Investigation (ROI) (and its exhibits) undertaken to investigate the allegations referred by OSC to the SA. References made to the memorandum that the Investigating Officer prepared to accompany the assembled ROI and its exhibits is referenced as "ROI". Hence, references identified as "Exhibits" area documents that were assembled as part of the ROI. References identified as "Tabs" that contain no reference to ROI documents were created or gathered after the ROI and are documents that were not included as part of the record documents for the ROI. They were assembled for purposes of this document which is the final Army Report to the OSC. Suffice it to say that given the shortness of The initial IO's assignment as the Investigating Officer (IO), the ensuing AR 15-6 investigation was conducted by The IO. Therefore, references to "the IO" refer to The IO.

⁴ AR 15-6 promulgates guidelines for Army administrative investigations. Army commands and organizations frequently appoint investigating officers under provisions of AR 15-6 to investigate all manner of allegations and concerns [TAB B].

⁵ The initial IO, , and the Director of Emergency Services, , were both GS-14s. AR 15-6 para 2-1 c(3) states the IO will be senior to the any person whose conduct or performance of duty may be investigated. Director of Emergency Services, ANAD was specifically mentioned in the letter from OSC to the Secretary; "The whistleblower maintains that the Director of Emergency Services (DES) ... [is] violating AR 190-56 by assigning the majority of the Depot's law enforcement work to Security Guards..." Subsequently it was determined that since The initial IO did not outrank Director of Emergency Services, ANAD , and when The initial IO received active duty activation orders, he should not serve as the IO. The IO, who does outrank Director of Emergency Services, ANAD , was then appointed as the IO on September 22, 2010.

ANAD History

In March 1940, the War Department began planning construction of an Army Ordnance Depot in northeast Alabama. An initial 10,640 acre tract was acquired on November 7, 1940. This and subsequent land acquisitions increased the depot to its present size of 15,000 acres. ANAD occupies more than 25 square miles of land, encompassing more than 15,246 acres of woodland, and 10 acres of lakes and streams.

In February 1941, construction began on the first 500 ammunition storage igloos, along with 6 standard magazines, 20 warehouses, and several administrative buildings. The installation was officially designated the Anniston Ordnance Depot (AOD) in accordance with War Department General Order No. 11, dated October 14, 1941.

In 1952, the depot was assigned a maintenance mission for the overhaul and repair of combat vehicles. This mission continued to expand until it covered the repair, overhaul and modification of anti-aircraft and mobile artillery, including the 280mm cannon, fire control material, and the many and varied aspects of the tank repair program.

With the advent of the '60s, the depot was involved with the M47, M48, M48A1 and M48A2C tank programs. Reconditioning programs also included the M48A1, M56, M59, M42, M19, M47 and the M38A1-D vehicles. In 1962, the installation was renamed Anniston Army Depot (ANAD), a Class II installation under the jurisdiction of the Army Materiel Command (AMC).⁶

The maintenance and storage of chemical munitions began in 1963 and will continue until all the munitions are disposed of in accordance with the Chemical Weapons Convention (CWC) later in 2011.

Beginning in the early 1970s, overhaul of the M551 Sheridan tank commenced. In 1975, ANAD was selected to overhaul and convert the M48A1 to the M48A5 model, and in 1979 the depot started the M60A1 to M60A3 conversion program.

Because of ANAD's highly industrialized operations, it also generates a significant amount of hazardous materials. Long before many of today's environmental regulatory requirements were put into effect, the Depot, of its own volition, began to seek more environmentally safe ways of doing business. In recent years, over \$60 million dollars has been spent on environmental restoration and environmentally-improved facility projects and programs. Substantial additional dollars will be spent in the years ahead.

As the decade of the 1980s began, missile maintenance was an added mission, as was the M1 Abrams tank – the newest addition to the Army's inventory.

⁶ Although ANAD remains under the jurisdiction of AMC, over time, ANAD, along with the other Army depots, has been re-aligned to several Major Subordinate Commands (MSC's) reporting to AMC. HQ AMC was relocated to Huntsville, Alabama pursuant to a 2005 Base Realignment and Closure Commission recommendation. In 1976, ANAD became a part of the U.S. Army Depot System Command (DESCOM). In 1995, DESCOM was abolished and ANAD was placed under the Industrial Operations Command (IOC). In October of 1998, ANAD became a part of the Tank-automotive and Armaments Command (TACOM), subsequently re-named the TACOM Life Cycle Management Command, to which it reports currently.

Beginning in 1993, public partnerships with private contractor efforts (known as “P3” or “public-private partnerships”) were undertaken with ANAD becoming the forerunner in this new business relationship throughout the Department of Defense (DoD). Today, workload partnerships involve the M1 family of vehicles as well as the M58, M109, M113, M577 and M1064 family of vehicles.

In 2001, ANAD and the Alabama Department of Education collaborated to support the ANAD Career Academy. ANAD leadership developed the academy to provide local high school students with the academic coursework and on-the-job training required to become viable employees for the Depot in recognition of the need for educated and skilled workers at the depot and within the community.⁷ In the fall of 2007, ANAD realized a long-held goal of providing child care services to its employees with the opening of a new Child Development Center (CDC).⁸

As noted, ANAD reports through the TACOM LCMC to AMC. Other organizations (tenants) on the installations have different reporting chains of command but are subject to the local Commander’s installation authority, including law enforcement and security requirements. These tenants include:

- Defense Distribution Depot, Anniston (DDAA), under the command of the Defense Logistics Agency (DLA), established in August 1992, assuming ANAD’s general supply function.
- Center of Military History (CMH) Clearing House was established in August, 1994;
- Anniston Chemical Activity (ANCA) established in April 1995 to assume chemical weapons operation;⁹
- Anniston Munitions Center (ANMC) established in October, 1998 to assume ANAD’s conventional ammunition mission; in June 2004, the name was changed to the Anniston Defense Munitions Center (ADMC).¹⁰

⁷ The Career Academy has undergone many changes but remains a viable recruitment source for the Depot. When vacancy opportunities exist, the Career Academy stands ready to offer students on-the-job training in the trade areas of mechanics, welding, hydraulics/pneumatics, electronics and machining. This provides the depot with a well-trained candidate pool for potential vacancies. The Career Academy partners with both secondary and post-secondary education in the State of Alabama to provide training opportunities for these students.

⁸ CDC offers a 161-child capacity to service dependents of the depot’s military members and employees as well as its tenants and contractor personnel. Its 18,078 square feet of floor space accommodates approximately 18 infants/pre-toddlers, 24 toddlers, 40 preschool children and 75 school age children. It features a large multi-purpose gymnasium area, age-appropriate playgrounds and a state-of-the-art computer lab.

⁹ ANCA reported to the Chemical and Biological Defense Command (CBDCOM); today it and the Anniston Chemical Disposal Facility (ANCDF) report to the Chemical Materials Agency (CMA). All of these entities are under the command and control of AMC.

¹⁰ Also, the 722nd Ordnance Company (Explosive Ordnance Disposal) relocated from Fort McClellan, Alabama, to ANAD in August 1998. It has since been relocated to another installation. ADMC is under the command and control of the Blue Grass Army Depot, another AMC entity. Blue Grass Army Depot is located in Lexington, Kentucky.

In addition to these Federal tenant organizations, there is substantial contractor presence on ANAD. While the numbers fluctuate on a daily basis, there are approximately 2000 - 2400 contract employees working on ANAD. Some of the major contractors who have a permanent presence on the installation are General Dynamics Land Systems (approximately 200 employees); BAE (approximately 40 employees); Honeywell (approximately 50 employees) Eleit Technology (approximately 50 employees); on-going construction contracts administered by the Mobile Corps of Engineers (approximately 250 employees), and various small contractors.

Significantly, ANAD is a "closed post" which means that access to the installation is limited through certain Access Control Points (ACP's), with fencing surrounding the installation perimeter. Employees and security cleared personnel¹¹ must have background checks and identification badges. Visitors must present identification and have an official need to enter the post, and they are issued a visitor pass that may or may not require an escort depending on the nature of the visit. A second set of fences delineates an ammunition restricted area which requires greater security measures, and a third set of fences is inside the second perimeter of fencing which limits access to the Chemical Limited area; the use of deadly force is authorized for this most sensitive area.

Current ANAD missions

ANAD is the designated Center of Industrial and Technical Excellence (CITE) for combat vehicles (tracked and wheeled),¹² artillery (self propelled and towed),¹³ bridging systems (60-Ton Bridge, 70-Ton Bridge, Assault Bridging), and small caliber weapons (individual and

¹¹ These individuals are not employees at ANAD but because they are on post frequent enough, for their convenience, they are issued access badge after the appropriate background checks have cleared them.

¹² The 1.5-million-square-foot Nichols Industrial Complex, located in the eastern area of the depot, has both the capacity and capability to completely overhaul any combat vehicle. This process consists of completely disassembling a battle-damaged or worn vehicle, repairing or replacing any or all components, and reassembling the vehicle to a like-new condition, at a fraction of the cost of a new vehicle. The combat vehicles worked on at ANAD are: the M1 Family of Vehicles; the M88 Recovery Vehicle; the Assault Breacher Vehicle; the Armored Vehicle Launched Bridge; the Stryker Family of Vehicles; the M113 Family of Vehicles; the Paladin/FAASV Vehicles; and the M9 Bulldozer.

¹³ ANAD is now the Army's Towed Howitzer Overhaul Facility for the M198 Medium Towed Howitzer. As such, ANAD has overhauled M198 weapons and secondary items for the M198 stock system for the Army, U.S. Marine Corps, and the National Guard since 1997. The depot was certified to overhaul the M102 Light Howitzer and related secondary items in February 2002. Certification to rebuild the M119 Light Howitzer was accomplished in January 2003. Currently, ANAD is in the certification process to overhaul the M119 Howitzer and all of its related components. This certification process should be complete soon. ANAD is also performing a pilot overhaul of the M777A2 Lightweight Howitzer to develop overhaul capabilities for the entire weapons system. In addition, ANAD is the Army's Center for Technical Excellence for the M109A6 Paladin 155mm self-propelled Howitzer and its Ammunition Carrier, the M992A2 Field Artillery Ammunition Support Vehicle (FAASV). ANAD is the Army's sole Certified Installation for performing overhaul or conversion on the Paladin Vehicle System.

crew served).¹⁴ ANAD performs depot level maintenance on vehicles including the 70 ton M1 Abrams Tank, the M113 Family of Vehicles, the M88 Recovery Vehicle, and the M9 Armored Combat Engineering vehicle. Major components of each vehicle are also overhauled and returned to stock, such as reciprocating and turbine engines.¹⁵ ANAD personnel are deployed around the world in direct support of our nation's war fighters providing fielding services and repairs in the field. Combat and battle damage repairs are currently being accomplished both at home and abroad.¹⁶

ANAD's posture as a leader in the defense industry is most readily demonstrated by the use of its computerized manufacturing capabilities. On the leading edge of technology, two high-tech manufacturing capabilities – Flexible Computer Integrated Manufacturing (FCIM) and Rapid Acquisition of Manufactured Parts (RAMP) - serve as models in the defense industry. FCIM RAMP - integrated, not simply connected - permits systematic utilization of state-of-the-market hardware, software and communication.¹⁷

¹⁴ ANAD is the primary Small Arms Rebuild Center within the Department of Defense and overhauls weapons for all branches of the Armed Forces. The rebuild criteria used in the overhaul processes parallel, and often exceed, that of the original manufacturer. ANAD's experience ranges from small component repair to complete weapon disassembly, repair, modification, conversion, reclamation, refinishing, reassembly, functional testing and target accuracy testing. Its small arms journeymen employ the latest technology to provide only the safest and most reliable weapons to its customer... the Soldier in the field. Employees handle the following weapons in the Rebuild Center: M1 Series Rifle; M2 Series Machine Gun; MK19 40mm Machine Gun; M9 Pistol; M16 Series Rifle; M60 Series Machine Gun; M134 Mini Gun; M240 Series Machine Gun; M249 Squad Automatic Weapon; M1911 Pistol M230 Chain Gun; Grenade Launchers; Mortars; Gun Mounts; and Shotguns.

¹⁵ Employees repair, reclaim, modify and overhaul some of the world's largest, most sophisticated reciprocating engines. Ranging from a six-cylinder turbocharged engine that generates up to 275 hp to a powerful 12-V that produces as much as 1,050 hp, these engines are capable of powering vehicles as large as 60 tons. Reciprocating engines are critical to the operation of the Department of Defense ground combat legacy vehicles: M113, M88, Paladin, AVLB, FAASV and M9ACE. Employees also inspect, repair, reclaim and overhaul complete turbine engines as well as their associated components.

¹⁶ ANAD's commitment to providing the best possible support to the warfighter extends well beyond its base location in Anniston, Alabama. Its support and services are extended on-site to military units and other locations throughout the United States and beyond. ANAD teams work in 42 locations throughout the continental United States and have locations in six countries around the world. Small Arms Readiness Evaluation Teams (SARET) provide inspection and repair for pre and post deployment, supporting both CONUS (continental U.S.) and OCONUS (outside CONUS) military units, bringing small arms weapons to fully mission capable status. Fielding Team and Rapid Repair Support handle M1, M88 and Paladin vehicle repair and hand-off. Forward Repair Activity/OCONUS perform any activity coming through the doors - engines, transmissions, generators, welding and fabrication, anything the Soldier needs to get equipment operational. ANAD has an on-site locomotive unit at Hill Air Force Base in Utah, where locomotives are inspected, repaired and rebuilt for the Army and other customers. ANAD currently has two Mobile Parts Hospitals in Kuwait and one in Afghanistan, which are self-contained machine shops with the capability to build any small parts a warfighter needs. ANAD also has M1 TIGER Field Service Reps (FSRs) which repair AGT 1500 turbine engines on-site.

¹⁷ FCIM RAMP forms an extremely responsive and powerful enterprise. It focuses on the "above-the-shop floor" activities by integrating the engineering, production planning, tracking, monitoring and fabrication functions through a multilayered computer architecture. It also allows ANAD to produce difficult-to-procure items and one-of-a-kind, normally high cost, items at a reduction in price.

Under partnership agreements, a wide range of vehicle conversions, upgrades, and new vehicle manufacturing are currently underway. Additionally, worldwide distribution of stocks and the maintenance and storage of conventional ammunition and missiles, are significant parts of ANAD's overall missions and capabilities. Also, the Department of Defense's only missile recycling center is located on the Depot.¹⁸

Under a partnership agreement between ANAD and General Dynamics Land Systems (GDLS), production of the Army's latest combat vehicle – the Stryker – began on April 1, 2001. These eight-wheeled, highly-mobile armored vehicles have proven invaluable to light infantry units serving in Iraq, especially in urban areas, providing them with transportation equipped with fire support and armored protection.

As an Army and Department of Defense leader in public-private partnership efforts since 1993, ANAD has established more than 80 different partnerships with industry leaders utilizing agreements such as direct sales, work share and facility use.¹⁹

In August 2003, the Army began the safe and secure destruction of ANAD's obsolete stockpile of chemical munitions at the Anniston Chemical Disposal Facility (ANCDF). Since the early 1960s, the Army has safely stored approximately seven percent of the nation's original chemical weapons stockpile at ANAD. The chemical weapons originally stored at ANAD consisted of various munitions and chemical agents, containing GB or VX nerve agents or HD blister agent. In March 2006, Anniston completed destruction of GB nerve agent followed by the complete destruction of VX nerve agent munitions in December 2008. Currently, the only remaining munitions of the original stockpile left to be destroyed at the ANCDF are approximately 2,000 mustard munitions - three tenths of a percent of the original total stockpile.

In December 2003, in support of Operation Iraqi Freedom (OIF), ANAD (along with other TACOM installations) was given the task of fabricating the Armor Survivability Kits (ASK) for installation on HMMWVs to better protect the military members using these vehicles in the OIF conflict against improvised explosive devices and other dangers encountered on that battleground.

¹⁸ Obsolete TOW Missiles are processed at Anniston's Defense Munitions Center (ADMC) whose tactical missile demilitarization and recycling program is the only one of its kind. The program began in 2003 with a partnership between the Army and Huntsville-based Amtec Corporation. It takes missiles that were previously destroyed in an open burn/open detonation operation and disassembles them. The energetic components of the missiles are then remotely processed. The work is carried out at Anniston's 34,000-square-foot Missile Recycling Center (MRC) by about 20 ADMC employees and three Amtec employees. The MRC was conceived by Army scientists at the Aviation and Missile Research, Development and Engineering Center at Redstone Arsenal who collaborated with Amtec and the Army's Aviation and Missile Command in the research, development, and testing of missile component recycling. To date, ADMC and Amtec workers have processed more than 60,000 missiles through the MRC program. About 98 percent of all TOW missile components are recycled or reused, and the program has saved taxpayers and private industry stakeholders millions of dollars. The MRC process generates the sale of reused components to avoid the costs of new tooling by the manufacturers.

¹⁹ Examples of current partners/programs include General Dynamics Land Systems (Stryker, M1 vehicles and components), BAE Systems (M113, M88, PIM), Honeywell (M1 Turbine Engines, Egyptian Turbine Engines) and RTI International (M1 Turret Trainers).

In October 2006, ANAD was designated as the U.S. Army's organic depot maintenance facility for the Stryker Family of Vehicles (FOV). The combined total inventory of ANAD and its tenant activities amounts to over \$7.6 billion and includes the shipping and receiving of over 500,000 tons of supplies, equipment and ammunition and the production of over 600 combat vehicles annually.

ANAD's quality program, based on ISO 9001:2000, is structured for customer satisfaction through process improvement. All production operations within ANAD are currently certified to the ISO 9001:2000 Quality Standard.²⁰

ANAD's yearly economic impact on the local community is estimated to be about \$1.1 billion which indirectly supports a total of 18,346 jobs in the area. Its estimated operating budget for this fiscal year is \$1+ billion.

ANAD Directorate of Emergency Services Structure

ANAD's combination of road, rail, and air access; its technical resources and broadly skilled workforce; the variety of assigned weapon systems and missions; and its tenant and contractor organizations and their missions make it one of the most important logistics assets in TACOM Life Cycle Management Command and within AMC as a whole. Those factors, along with the access and security issues referred to above, influence the structure and mission of the Directorate of Emergency Services (DES) mission. Simply put, the mission of ANAD's DES is to ensure the successful protection of employees, soldiers, facilities, equipment, munitions, and chemical munitions within the safe and secure confines of ANAD.

The IO stated that AMC's mission drives ANAD's civilian Guard and Police job descriptions and daily tasks. He concluded that historically, more policing type work was available at larger installations rather than at ANAD. At ANAD, the IO observed that while individual assignments are rotated daily among the DA civilian Guards and Police [Exhibit 1], there are very few posts that perform pure Police functions. There are only two patrols per shift in the industrial area that have a more traditional policing function (vehicle stops, responding to incidents, thefts, altercations, speed traps, etc.).

The security and policing missions are substantially different from other installations based on the population that works on ANAD and the functions that are performed at ANAD. For example, Fort Bragg has a large transient active duty population (rotations for deployments and/or permanent changes of station every 2-4 years) with a significant number of young soldiers, a large dependent population, and a large retiree population that makes use of Morale, Welfare and Recreation (MWR), post exchange (PX), Commissary, and hospital facilities. As a

²⁰ ANAD's Field Artillery Ammunition Support Vehicle (FAASV) assembly process was a recipient of a 2007 Shingo Silver Medallion. AGT 1500 Turbine Engine's entire process from disassembly to final test was a recipient of a 2007 Shingo Bronze Medallion. In 2008 ANAD received the Department of the Army Lean Six Sigma Award for an M1 Abrams vehicle assembly project. (Note: Lean Six Sigma is a business tool to accelerate Business Transformation within the Army by creating an innovative culture of continuous, measurable improvement that eliminates non value-added activities and improves quality and responsiveness for Soldiers, civilians, Army families and the Nation).

consequence policing functions (traffic control, Driving Under the Influence, drug busts, responding to petty thefts, shoplifting, domestic abuse, rapes, assaults, etc.) would be more prevalent and take precedent over security and guard type functions at Fort Bragg. Additionally, at Fort Bragg, many Guard type functions in specific areas (motor pools, barracks, special facilities, etc.) are performed by soldiers and not a DA Civilian Police/Guard force.

In contrast, at ANAD, the IO found that it only has a day care center, a small shopette, a campground, a small club, no government housing, and 15-16 soldiers (includes all tenants). He also found that the work force at ANAD is made up of Army and DoD civilians and contractors, many of whom have worked there for a long time. He concluded that "traditional policing functions are very limited, but the security mission protecting the chemicals, bulk weapons and ammunition, and large and unique industrial facilities is huge."

Traditional Security Guard Force at ANAD. Consistent with the IO's observations, ANAD traditionally had a security workforce of only civilian Guards (General Schedule (GS) series 0085). Security, however, was increased at ANAD after the 9/11 attacks because of its chemical storage and chemical demilitarization missions. At that time and for several years thereafter, DES received company size active duty, National Guard, or US Army Reserve Force augmentations. HQDA then replaced that augmentation force with armed contract security guards (CSG) under an Installation Management Command (IMCOM) contract, which assisted in access control at ANAD's external installation access control points (security gates). Some of those CSG positions were subsequently converted to DA civilian Guard (GS-0085 series) positions at ANAD.

ANAD Special Reaction Team. The Depot also has a Special Reaction Team (SRT) as a part of its security organization and has had such a team for at least the past 20 years in accordance with AR 190-58. [Exhibit 2, Glossary, Section II, page 13; Exhibit 3, Statement of Director of Emergency Services, ANAD]. Generally, the SRT is a specially trained and equipped team of civilian personnel serving as the installation commander's principal response force in the event of a major disruption or threat situation on the installation. The SRT's purpose is to be deployed to preserve human life and to restore normal activity on the installation.

In accordance with Field Manual (FM) 3-19.11, page 1-1, [Exhibit 4], the SRT is an elite organization that is tasked with force protection and control of special threat situations; SRT personnel must be a well-trained, disciplined team that meets the needs of the installation commander. The SRT's operational priorities include protecting lives; securing the safe release of hostages; isolating and containing an incident; gathering information and intelligence; protecting property and equipment; preventing escape; apprehending offenders, stopping and/or eliminating a threat by precision direct fire and/or assault; and conducting an assault or an entry.

It should be noted that this SRT mission contains both protective (protecting lives, protecting property and equipment) and law enforcement (gathering information and intelligence, apprehending offenders, stopping and/or eliminating a threat by precision direct fire and/or assault, conducting an assault or an entry) functions.

Situations involving the SRT's deployment may include barricaded criminals and mentally disturbed persons with or without hostages, sniper incidents, threatened suicides, combating terrorism operations, drug raids, warrant apprehensions of dangerous individuals and

protective service missions. At ANAD the SRT, which works a day shift and is on call during the rest of the day, on weekends and holidays, is the only security force that does not have an assigned geographic static post or roving patrol. As such, and given the fact that it is the best trained security element and is also equipped with specialized equipment, personnel from the SRT are the response force of choice to deal with most security or police actions in the ANAD cantonment and industrial area. [TAB E].

SRT has also assumed the responsibility for assisting with operating weapons ranges and presenting aspects of the local DES Security Training (160 hours and recurring annual training). According to the ANAD SRT supervisor, (ANAD Supervisory Security Guard, SRT Leader, the SRT is the first response of choice for any violence in the work place. It conducts a daily mobile active law enforcement patrol, it detains and transports personnel, it responds to traffic incidents, establishes traffic control points, runs radar, issues citations, enforces traffic regulations, writes tickets, processes accident related cases, and also conducts random antiterrorism measures and vehicle searches at access control points [Exhibit 5, Statement of ANAD Supervisory Security Guard, SRT Leader, answers to questions 22, 23, 24]. These tasks reflect a mix of traditional law enforcement/police and security guard/service functions.

Appendix B to FM 3-19-11 states an SRT must be organized with the correct mix of individuals. The organization of an SRT and the selection of its personnel are crucial to mission success. There are no absolutes for selecting SRT members; however, there are organizational indicators, tests, and trends that help commanders identify potential SRT members. Candidates for an SRT must be carefully screened. The rigorous training program and the great personal risk in special situations require high motivation and the ability to learn a variety of skills. [Exhibit 6, paragraph 1-15, pps. 1-4, 1-5].

Policy and doctrine does not limit the participation of either DA civilian Guards or DA civilian Police on an SRT. The OPM Grade Evaluation Guide for Police and Security Guards Positions in Series GS-0083/GS0085, TS-87 (April 1988) states:

"Either security guards or police officers may perform as members of special reaction or special weapons and action teams (SRT, SWAT, or other names and acronyms), This work requires the employee to use knowledge of counter-terrorist tactics, methods, and procedures and maintain proficiency in specialized weapons and tactics for defending against and/or repelling terrorists. Proficiency is maintained and demonstrated in drills, simulations, and refresher training as a function of normal security patrol and protection duties...."

[Exhibit 7, page 15].

DA civilian Police and Guards actively seek to fill these "highly coveted" SRT position vacancies because of their slightly higher grade level (usually one grade level higher than rank and file), training opportunities, and non standard security missions.²¹

²¹ The current ANAD Director of Emergency Services describes SRT positions as "highly coveted," and he states that the SRT "is the only flexibility that the Commander truly has to respond to incidents and special situations." He further describes their unique status in that they "are highly trained in special weapons and tactics far above the

Conversion of Security Guards to Police Officers. In 2006,²² the ANAD Commander decided to convert the current DA civilian Guard force to a DA civilian Police force through attrition, i.e., new hires would be Police Officers and retiring Guards would be replaced by Police Officers [Tab F, Declaration of Director of Emergency Services, ANAD, dated September 6, 2011]. This was done in order to restructure the security force in anticipation of future mission changes (such as when the Chemical Treaty requirements are met when all the chemicals have been destroyed and the chemical demilitarization facility has been dismantled). The then-Commander, Former ANAD Commander, August 2004 – August 2007, felt that a more robust and responsive security force would be needed and that police officers would be better suited to address those concerns. The current DES Director summarized Former ANAD Commander, August 2004 – August 2007's rationale:

The changing of the mission at ANAD with the Chemical Munitions mission ending combined with the increase in force protection requirements were a major consideration.

[Exhibit 3, Statement of Director of Emergency Services, ANAD].

That rationale is consistent with the 2006 version of AR 190-56 which was designed in part to “[e]nhance the professionalism, quality, and effectiveness of civilian police and security guards.” [Exhibit 8, paragraph 1-5(b)].

At the time Former ANAD Commander, August 2004 – August 2007 made the decision to convert (through attrition) Guards to Police in 2006, there was no contemporaneous briefing or documentation to either memorialize the rationale or perform a job classification analysis. Although the ROI cites to a 2008 decision brief [Exhibit 9], that briefing only addressed the organizational alignment of personnel; no discussion or analysis took place to confirm that the conversion from Security Guards to Police Officers was in accordance with applicable OPM classification standards. Further, although the Civilian Personnel Advisory Center Chief approved the plan, there is no indication that a classifier participated in the discussion of converting Guard positions to Police Officers. [TAB G]. When the Commander's decision was implemented by Director of Emergency Services, ANAD in his request to implement the reorganization, the only given for the change is that the “[c]urrent DES organizational structure and TDA are dysfunctional; both do not support neither the operational nor the administrative mission and lack the capability for span of control supervision of widely dispersed personnel

average police officer. SRT members in the Army must attend a two week school at Fort Leonard Wood for their phase 1 requirement. After that, those with precision rifle shooting skills attend the 1 week phase 2 Marksman/Observer course. Although we don't normally have a lot of turnover (established positions), when openings occur people apply. Here, we also utilize the officers in traffic enforcement and traffic accident investigation. Many of the SRT members have attended specialized traffic accident investigation courses because of the position they hold. SRT because of its tactical mission have the latest and best equipment possible.” [TAB F, Declaration of Director of Emergency Services, ANAD, dated September 6, 2011].

²² The ROI erroneously states the decision was made in 2008. Former ANAD Commander, August 2004 – August 2007 actually made the decision in 2006. A subsequent commander, Former ANAD Commander, August 2007- August 2010, approved the reorganization plan that actually authorized the spaces. It is this reorganization plan the IO cites in the ROI. [Exhibit 9; TAB G].

resources.” [TAB H]. There is no rationale provided as to any change to the “mix” of Security Guards to Police Officers.

On May 28, 2008, the Former ANAD Commander, August 2007- August 2010, informed the local union, AFGE Local 1945, that conversion from a Guard force to a Police force would be done through attrition without negative impact upon those currently employed as Guards. She also stated that, consistent with labor relations law and regulation, no changes would be made until negotiations with the union were complete. [Exhibit 10].

As a result of that decision, hiring of Police Officers began in October of 2008. Currently there are 108 DA civilian Guards (GS-0085 series) and 44 DA civilian Police Officers (GS-0083 series) for a total security force of 152 personnel.²³ [Exhibit 11]. This is one of the largest security forces within HQ AMC for a medium size installation.

Included within these numbers are the SRT personnel. The SRT is comprised of DES civilian guards and civilian police.²⁴ Current SRT staff is at full strength. The SRT has ten positions, 6 filled by DA civilian guards (1 GS-0085-08 supervisory lieutenant and 5 GS-085-07 guards) and 4 DA civilian police (GS-083-07).²⁵

Based on submitted retirements, the current overall DES workforce will reduce to 95 Guards and 44 Police Officers by the end of September 2011. The size of the SRT is not expected to change. The size of the Guard/Police force at ANAD will continue to draw down when the Chemical Treaty requirements are met in 2011/2012 if all the chemicals have been destroyed and the chemical demilitarization facility has been dismantled.

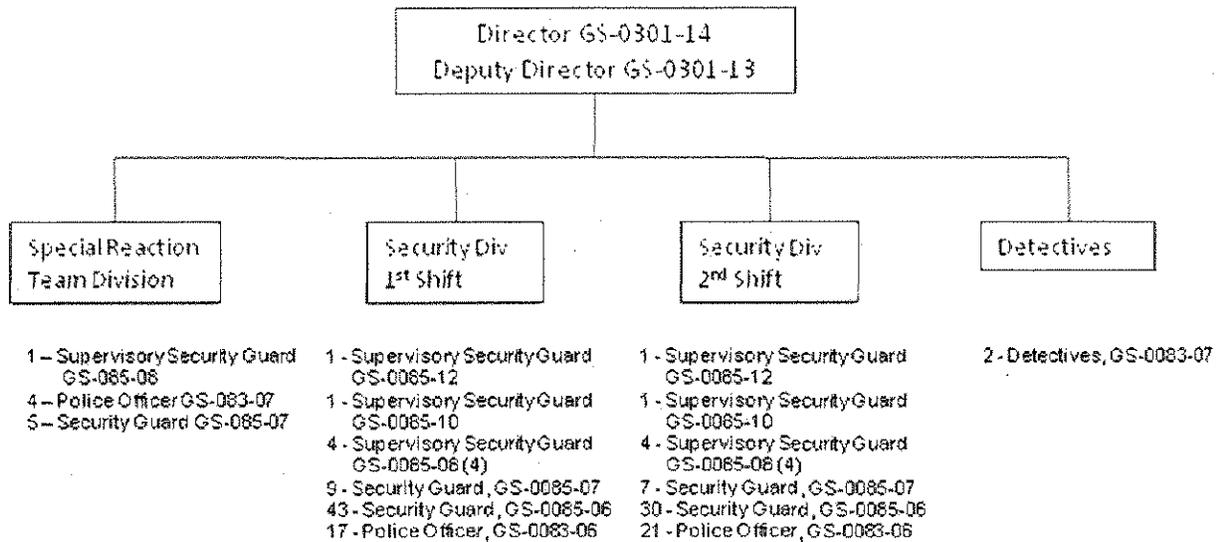
Because the DA civilian Guards in DES were hired before the DA civilian Police hiring began, the Security Guards hold all of the leadership positions in DES and most of the Special Reaction Team (SRT) positions. [Exhibit 12]. As DA civilian Guards depart and vacancies occur, they are scheduled to be replaced with DA civilian Police.

²³ These numbers are current as of August 8, 2011. Several Security Guards retired during the course of this investigation. The whistleblower alleged that ANAD currently employs approximately 180 Security Guards, OPM job series 0085, and approximately 41 Police Officers, OPM job series 0083.

²⁴ Military personnel are not used because they are not available.

²⁵ This is an increase of 3 DA civilian Police positions since the AR 15-6 investigation was initiated. All Police Officer positions were filled beginning with October 2008 and afterward.

The current force structure²⁶ is as follows:



REGULATIONS GOVERNING SECURITY GUARD AND POLICE ASSIGNMENTS, TRAINING, AND UNIFORMS

Although the whistleblower cites to Army Regulation 190-56 in his complaint, that regulation is only a part of the regulatory scheme that covers the law enforcement organization at the Depot. Also relevant are the Office of Personnel Management job classification standards applicable for Security Guards (job series GS-0085) and Police Officers (job series GS-0083) as well as statutory provisions governing Federal labor relations.

Army Regulation (AR) 190-56 and Increased Emphasis on Professionalism of Security Guards and Police Officers

Increasingly since the 1980s, the Department of Defense and the services, including the Army, have placed a high priority on ensuring that our national security is protected and defense installations are properly secured and protected from disruptions to their mission be it from crime or terrorist activities. One of those aggressive measures has been for the Army to dramatically change how it trains and utilizes its law enforcement team of military police and civilian Security Guards and Police Officers. The Army Office of the Provost Marshal General (OPMG) is

²⁶ DES also administers fire and protective services and internal physical security missions; those organizations are not relevant to the OSC complaint and, therefore, are not included in the organizational structure depiction. Also not included are administrative personnel and other jobs series unrelated to the Security Guards and Police Officers series that are the subject of this Report.

responsible for developing Army's program to support that mission as embodied in its push to professionalize its Security Guards and Police Officers through the provisions of its primary regulation in its 2006 version of AR 190-56 and its subsequent revisions.

In response to the OSC referred allegations, the OPMG provided subject matter expertise support to the IO during the ROI process as well as to the Army OGC in the development of the subject Army Report to OSC. Program Manager, OPMG, Program Manager for the Army's Civilian Police and Security Guards (DACP/SG) and Contract Security Guards captured this evolutionary process when he stated the following:

Senior Commanders have an inherent responsibility to protect Army personnel, their Families, equipment, information, and critical facilities. Trained and proficient Department of the Army Civilian Police and Security Guards (DACP/SG) provide commanders a credible resource that can be integrated with law enforcement and force protection efforts to reinforce ongoing protection, antiterrorism, physical security and law enforcement missions. As professional first responders, DACP/SG provide a proactive deterrent to criminals and terrorists targeting Army installations, personnel, and facilities. This was validated in November 2009 at Fort Hood when two Army Civilian Police Officers responded to an active shooter situation and incapacitated the shooter within minutes. Additionally, in September 2010, a DA Security Guard neutralized an active shooter at Fort Bliss, TX.

[Tab I, Statement of Program Manager, OPMG, paragraph 2].

Over the years, the impact of implementing, at the local level at Anniston, the agency wide regulation, AR 190-56, *The Army Civilian Police and Security Guard Program*, and its several revised versions²⁷ has been affected by the dynamics created as a result of the application of the statutory scheme for Federal labor relations rights and responsibilities that govern the working relationship between local management and the exclusive bargaining union at the Federal workplace. Hence, an awareness of this workplace background will provide the foundation upon which to apply the governing rules and regulations at play for addressing the OSC referred allegations.

It should be noted that this Report addresses the OSC referred allegations by applying the requirements imposed by the 2006 version and the 2009 version of AR 190-56 [Exhibits 8 and 13]. Neither regulation was fully implemented at ANAD, however, due to a negotiation impasse. As noted later in this report, ANAD and the local union have since reached verbal agreement and are finalizing the implementing documents. Upon execution, ANAD will be able to implement the 2009 version of AR 190-56.

²⁷ Since the initial issuance of AR 190-56 in 1986, AR 190-56 has been revised in 2006 and 2009, and a third revision is planned for issuance in 2011. Additionally, given the lengthy lead time needed to staff regulatory revisions, the Army issued policy guidance in 2002 and 2003 affecting the shoulder sleeve insignia and badge for the Department of the Army Security Guards uniform that revised the requirements found in the 1995 version. [TABS L-1 and L--2].

Regarding the 3 primary areas that are the subject of the OSC referred allegations--job assignments, uniforms and training—there are no textual differences between the relevant provisions for job assignments in the AR 190-56 versions for 2006 and 2009. Regarding the uniform issue, though there were no substantive changes made in the uniforms provisions under either version of AR 190-56, it wasn't until the parties entered into an agreement in August 2011 to use the 2009 version that the 2009 provisions became operative at ANAD. [See further discussion of the uniform matter on pps. 24 and 36-38].

By way of background, the first version of AR 190-56 was issued on September 10, 1986. The 1986 inaugural issuance was superseded by the 1995 version. The 1995 version stated that its purpose was “To improve the management of Army civilian and contract security guards, the U.S. Army Military Police Operations Agency developed Army Regulation 190-56, The Army Civilian Police and Security Guard Program. Published on 10 September 1986, this regulation assigns responsibilities and prescribes policy, standards, and procedures for effective implementation of the program. Besides covering selection, employment, training, and professional development, the regulation initiates the Individual Reliability Program for civilian employees and contract guards.”

Since 2003, OPMG has been working to increase the professionalism of Department of the Army Civilian Police and Security Guards (DACP/SG). The catalyst was two-fold: 1) the increasing reliance on DACP/SG at U.S. Army installations due to the deployment of Military Police (MP) to Afghanistan and Iraq and 2) a report by the Department of Defense (DoD) Inspector General that described the training and fitness of police and guards in the Department as substandard and not uniform. [Tab I, Statement of Program Manager, OPMG, paragraph 3].

In 2006, the Army published a revision to the 1995 version of AR 190-56 which dramatically altered the Army regulatory framework for its security and law enforcement personnel. The Army established minimum standards for training, fitness, and management of DACP & SG and enhance the professionalism, quality, and effectiveness of civilian police and security guards. The Army intended to facilitate the overall security of Army installations and activities by employing civilian personnel to perform security and law enforcement services in the absence of MPs. [Tab I, Statement of Program Manager, paragraph 3]. Additionally, the 2006 version required that DACP/SGs meet Office of Personnel Management qualification standards for the 0083/0085 series and certain prescribed conditions of employment in appendix B (paragraph 2-2a).²⁸

²⁸ The 2006 version also established use of condition of employment statements in appendix B (paragraph 2-2a); required diagnostic physical agility testing for all employed DACP/SGs and for new hires within 30 days of being medically cleared (paragraph 2-2c); required the Lautenberg Amendment to the Gun Control Act of 1968 as part of the pre-employment screening for applicants (paragraph 2-3c); required DACP & SG successfully graduate from a USAMPS accredited academy (paragraph 4-2a); provided conditions and processes for waiver of new hires and exceptions for current 0083/0085s for completion of the USAMPS accredited academy (paragraph 4-2a); established initial and in-service training requirements while authorizing additional training to meet specific local training requirements (paragraph 4-3); required semi-annual weapon qualification (paragraph 4-3c); authorized DACP to carry only standardized credentials with authority limits as outlined in Chapter 5 (paragraph 5-2e); required installation/activity owning commanders to document specific authority and jurisdiction to DACP/SG (paragraph 5-3a); and required installation/activity owning commanders to issue written instructions on police and security guards' authority and jurisdiction (paragraph 5-3a).

Further refinements were made to the regulation when it was updated in 2009 with policy requirements for DACP/SG that included the mandate to successfully graduate from a U.S. Army Military Police School (USAMPS) accredited academy (paragraph 4-2a),²⁹ Which is located at Fort Leonard Wood, Missouri.

Although the academy started the nine week program with the inaugural session in Summer 2007, the concept plan was submitted by USAMPS in 2009 to obtain official recognition by Headquarters Department of the Army (HQDA) and the U.S. Army Training and Doctrine Command (TRADOC) of this critical training mission to provide standardized law enforcement and security initial training for all DACP/SG and approval for execution of the proposed resourcing plan. The concept plan was approved by TRADOC and HQDA in 2010 although resourcing is still currently being provided by OPMG and USAMPS rather than the concept plan's resourcing scheme due to funding constraints in the Army. [Tab I, Statement of Program Manager, OPMG, paragraph 5].

When fully operational at the Fort Leonard Wood location, the USAMPS 's curriculum includes a Police academy with police centric training, a Security Guard academy with Security Guard centric training, and shared or joint courses that the Security Guards and the Police Officers will also be able to attend. Though the Guard academy start up is still to be determined, the Police academy has already been established at Fort Leonard Wood, Missouri, and has the capacity to train up to 360 new students annually. It obtained accreditation by the Federal Law Enforcement Training Accreditation Agency in 2010 and is the only one of its kind in DoD. The academy is a world-class law enforcement training center that includes modern facilities, ranges, key doctrinal support structures and professional outreach opportunities. Its facilities are considered state of the art and all instructors are certified by TRADOC. [Tab I, Statement of Program Manager, OPMG, paragraph 5].

Job Duties and Assignments Pursuant to AR 190-56 and OPM Classification Standards

AR 190-56³⁰ distinguishes between Security Guards and Police Officers, but it provides very little clarification to explain or implement that distinction. Further guidance to supervisors and employees is provided through job descriptions issued pursuant to OPM rules. Pursuant to AR 190-56, Security Guard and Police Officer duties are detailed as follows, with differences underlined:

²⁹ Other 2009 changes included consolidating training requirements (chapter 4); requiring the installation/activity commander to issue written instructions on the authority and jurisdiction of police and security guards (paragraph 5-3); providing guidance on the limitation of authority to deputize Department of Defense uniformed law enforcement personnel by state and local governments (DODI 5525.13); and revoking any existing cases of deputization of Army uniformed law enforcement personnel by state and local governments that have not been approved by the Secretary of the Army (paragraph 5-4).

³⁰ Again, there is no textual difference between the 2006 and 2009 AR 190-56 provisions related to job duties and assignments.

Guard	Police Officer
<p>Para. 5-2a</p> <p>May apprehend any persons found on the installation/activity for offenses committed on post that are felonies, misdemeanors, breaches of the peace, a threat to property or welfare, or detrimental to good order and discipline. Such apprehension authority is limited to issuing citations and turning the subject over to the appropriate civilian or military authorities.</p>	<p>Para 5-2a</p> <p>May apprehend any persons found on the installation/activity for offenses committed on post that are felonies, misdemeanors, breaches of the peace, a threat to property or welfare, or detrimental to good order and discipline. Such apprehension authority is limited to issuing citations and turning the subject over to the appropriate civilian or military authorities.</p>
<p>Para. 5-2c</p> <p>Army security guard authority and jurisdiction to perform <u>force protection tasks</u> on their installation/activity are valid while performing these duties during their work hours only. An on-post apprehension conducted by an Army security guard in an off-duty status is a detention by a private citizen.</p>	<p>Para. 5-2d</p> <p>Army civilian police authority and jurisdiction to perform <u>law enforcement tasks</u> are valid while performing these duties during their work hours only. An on-post apprehension conducted by Army civilian police in an off-duty status is a detention by a private citizen.</p>
<p>Glossary</p> <p>Department of the Army Guard, GS-0085</p> <p>This series includes positions with the primary duty <u>of protective services work in guarding federally-owned or leased buildings and property; protecting Government equipment and material; and controlling access to Federal installation/activities by employees, visitors, residents, and patients. The purpose of guard work is to protect and prevent loss of materials or processes that are important for national defense, for public health or safety, or as national treasures.</u></p>	<p>Glossary</p> <p>Department of the Army Police Officer, GS-0083</p> <p>This series includes positions with the primary duty of law enforcement work in <u>the preservation of the peace; the prevention, detection, and investigation of crimes; the arrest or apprehension of violators; and providing assistance to citizens in emergency situations, including the protection of civil rights. The purpose of police work is to assure compliance with Federal, state, county, and municipal laws and ordinances, and agency rules and regulations pertaining to law enforcement work.</u></p>

It is clear that the Army intends there to be some distinction between Guards and Police. The distinction, however, is phrased in terms of the purpose of their duties, not on specific tasks or duties performed day to day.

Significantly, AR 190-56 did not undertake to dictate to local commanders how their security force would be structured. Paragraph 1-4 of AR 190-56 is even more clear on the policy that local commanders will assess local conditions and make the determination of how the force will be structured and what localized training will be presented:

Installation/activity/stand-alone owning commanders and commanders of tenant activities or subordinate units employing DACP/SGs (for example, airfields) will ... [i]mplement and ensure compliance with this regulation in a manner appropriate for their activities [and] [i]dentify training needs and allocate necessary resources to meet their needs ... Paragraph 1-4i(1), AR 190-56 [Exhibit 8].

The IO found that OPM rules also allow for guard and police to perform the same physical day to day tasks. He cited to a digest from an OPM case:

"The Office of Personnel Management recognized that the distinction between guard and police work is sometimes difficult to make. Both guards and police officers wear uniforms, display badges of authority, and carry sidearms. Both are organized along military lines. Both may serve in stationary posts or patrol either on foot or in a vehicle. Despite the similarities, there are four indicators which can be used to determine the proper series. The first indicator is the basic mission of the organization. Guard organizations are established primarily to protect Government property, and secondarily, to protect persons in and around the property. Police organizations primarily exist to enforce law and order, preserve peace, and protect life and civil rights; and secondarily, to protect property. The second indicator is the arrest authority. Police officers are designated by public law, statute, or other official act, as agency or local enforcement officers. They enforce a wide variety of Federal, State, county, or local laws. Guards, however, usually have arrest authority consistent with that of a private citizen. In some cases, they may have the same power as sheriffs and constables. The third indicator is training. The primary emphasis of police training is the techniques, methods, and principles of law enforcement work. Stress is placed on preservation of law and order, protection of human life and civil rights, court procedures, crowd control, accident investigation, and arrest procedures. The primary emphasis for guard training is on the principles, methods, and techniques involved in protecting Government property. Stress may be placed on methods for detecting efforts to breach a security system and means for preventing espionage and sabotage. Guards who exercise police-type authority may receive advanced training in arrest procedures, investigation procedures, crowd control or riot procedures, rights of suspects, and any other specialized training related to their assignments. The fourth indicator is patterns of work. Essentially, guards are oriented toward protection of property; police officers are oriented toward maintaining law and order. However, the orientation of guard positions located at large installations tends to broaden to encompass and include a law enforcement emphasis. This is particularly true in those situations in which the guard organization is not only responsible for protection of valuable property, but also for control of large acreage containing various facilities. Typically, such an installation is

populated by large numbers of persons and vehicles necessitating a law enforcement effort to some degree....”

[Exhibit 14].

A review of the ANAD position descriptions for Security Guards and Police Officers contain significant overlap, but they each quote the purpose of each job classification that essentially determines whether the position series should be for a Police Officer or a Security Guard. All of the Security Guard position descriptions cite the purpose that a Security Guard performs duties for the “protection of property, materiel, equipment, and personnel” [Exhibit 19]. On the other hand, all of the Police Officer position descriptions contain the purpose that the Officer “enforces safety regulations as necessary to enforce Federal laws.” [Exhibit 25].

Job descriptions are classified pursuant to OPM rules, using what are known as “classification standards.” The IO concluded that pursuant to those standards, “police” and “guard” responsibilities are best described as follows basing his comments on OPM’s classification descriptions contained in OPM Grade Evaluation for Police and Security Guards in Series GS-0083/0085, TS-87, April 1988. [Exhibit 7, pps. 4-8]:

-“The primary mission of police officers in the Federal service is to maintain law and order. In carrying out this mission, police officers protect life, property, and the civil rights of individuals. They prevent, detect, and investigate violations of laws, rules, and regulations involving accidents, crimes, and misconduct involving misdemeanors and felonies. They arrest violators, assist in the prosecution of criminals, and serve as a source of assistance to persons in emergency situations....Within their jurisdictions, police officers enforce a wide variety of Federal, State, county, and municipal laws and ordinances, and agency rules and regulations relating to law enforcement. They must be cognizant of the rights of suspects, the laws of search and seizure, constraints on the use of force (including deadly force), and the civil rights of individuals....Arrest and apprehension authority includes the power to formally detain and incarcerate individuals pending the completion of formal charges (booking); requesting and serving warrants for search, seizure, and arrest; testifying at hearings to establish and collect collateral (bond); and/or participating in trials to determine innocence or guilt. Police officers carry firearms or other weapons authorized for their specific jurisdictions. They wear uniforms and badges, use military style ranks, and are commonly required to refamiliarize themselves with authorized weapons periodically and demonstrate skill in their use....Most police officers are engaged in patrol duties and/or traffic control. In performing patrol duties, they serve as a deterrent to crime and other violations of laws, rules, and regulations. Crime prevention is enhanced by the presence of uniformed officers in an area and by their being continually alert in observing, inspecting, and investigating circumstances or individuals which appear unusual and suspicious. Police officers regulate pedestrian and vehicular traffic; prevent accidents, congestion, and parking problems; give warnings; issue citations for traffic violations; and make arrests if necessary. They conduct preliminary investigations of crimes, investigate accidents, dispose of complaints, recover

stolen property, counsel adults and juveniles, and assist persons needing help. Typically, investigations that remain incomplete at the end of an assigned shift are turned over for completion by detectives or criminal investigators....They also search prisoners and remove weapons and articles which could cause injury or be used in escape attempts. They maintain records and prepare reports covering activities and events occurring over the course of a shift.”

- “The primary mission of security guard programs is to protect Federal property from hazards such as sabotage, espionage, trespass, theft, fire, and accidental or willful damage and destruction. Security guards are employed in Government-owned or controlled buildings, hospitals...manufacturing plants, warehouses, military installations, and other facilities. Security guards wear uniforms, display badges of authority, and may carry weapons. They are often organized along military lines and make use of military ranks and working titles (i.e., sergeant, lieutenant, etc.). Security guards apprehend and detain violators of laws, rules, and regulations and turn them over to Federal or civil police or other law enforcement officers for arrest and/or posting of collateral. Security guards serve at fixed posts or patrol assigned areas on foot or by vehicle and perform a variety of protective duties. They enforce pertinent administrative rules and regulations governing traffic control, parking, building or other facility access, and breaches in physical security controls (locks, fences, gates, or other barriers). When enforcing rules and regulations established to accomplish the protective mission, guards control the movement of persons and protect lives and personal property in and around the Federal property being protected....Security guards carry out related duties such as escorting persons and valuables, driving emergency vehicles, detecting and reporting potential fire and accident hazards, making preliminary checks of violations, conducting canine operations to detect explosives or illegal drugs, and preparing reports of incidents or security conditions. Some security guards may be assigned "control desk" duties; i.e., monitoring various alarm systems, closed circuit television systems, and telephone and radio networks....Security guards exercise their authority most often by administering rules and regulations, rather than laws, totally within the confines of Federally owned or controlled property under exclusive jurisdiction....Testimony as complaining witnesses, issuance of citations, and detention of individuals are generally recognized as valid performance of security guard duties by a variety of Federal and civil courts....The primary emphasis in security guard training is typically directed to the methods and techniques involved in protecting specific Government property. Though much of the training may be given on the job, specifically tailored to local installation requirements, some security guards may receive formal training similar to that given to police officers. In some work environments where special security procedures are in effect, training may stress specialized methods for detecting and interdicting efforts to breach the security systems and means for preventing espionage and sabotage. Training for specialized security conditions may include developing

proficiency in military tactics for small unit operations and qualifying with automatic and other military weapons....

Based upon this summary, it is apparent that the differences between a “Security Guard” and “Police Officer” are subtle. This is especially true since, although it is not clear from the ROI, in accordance with AR 190-56, Police Officers at Anniston Army Depot do not have arrest authority beyond “citizen’s arrest” powers; they may only detain, the same as Guards. [See paragraphs 5-2c, 5-2d, AR 190-56 (citizen-arrest authority only), Exhibit 8]. Therefore, in theory, although the distinction is easily stated – the primary mission of Police Officers is to maintain law and order and the primary mission of security guard programs is to protect Federal property from hazards, in reality – the methods and means of accomplishing their respective missions, and therefore the duties performed by each, are often similar.

The IO also identified the job descriptions that apply to line Guards and Police Officers at the Depot.³¹ Insofar as relevant to this Report, two job series are involved - the General Schedule (GS) 0085 series for Guards and the GS 0083 series for Police Officers. Positions are further divided within the job series by grade, thereby determining the level of responsibility and pay for the incumbent.

At ANAD, Guards are assigned as either a grade 6 (GS-0085-06) or as a member of the Special Reaction Team (SRT) as a grade 7 (GS-0085-07). Police Officers are assigned as either a grade 6 (GS-083-06) or as a member of the Special Reaction Team (SRT) as a grade 7 (GS-0085-07).³² The ROI contains the job descriptions of the GS-06 and GS-07 Guards and Police Officers.³³ [Exhibits 15-28b].

³¹ The whistleblower’s complaint relates to the assignment of duties to “line” guards and police, not to supervisors. Therefore, the analysis and findings in the Report is limited to non-supervisory guard and police officer positions.

³² The ROI notes that police officers are also assigned to a grade 7 Detective position in the GS-0083 Police Officer series. There is no indication the whistleblower alleges that the Detectives are being assigned “Guard” duties, and comparing their position description, [Exhibit 26] with the other job descriptions of Guards [Exhibits 15-19] and Police Officers [Exhibits 25, 27, 28a, and 28b], it is clear their duties differ markedly from those of GS-06 Guards and Police Officer and grade 7 SRT member, whether Guards or Police. The Detective positions, therefore, are not further addressed in this Report except to note that they have been assigned to perform duties consistent with the rules. Additionally, it should be noted that there is a finding and recommendation concerning their badge and credentials.

³³ The ROI notes that multiple job descriptions exist for each of the grade levels for Guards [Exhibits 15-19] and police [Exhibits 25-28b]. Upon review, there is not a meaningful difference between any of the positions descriptions within the same grade in terms of major duties except gGuard positions cite to “protection of property, materiel, equipment, and personnel” [See, e.g., Exhibit 19] and police positions cite to “enforces safety regulations as necessary to enforce Federal laws.” [See, e.g., Exhibit 25].

Training Rules

The whistleblower alleges that the Depot is in violation of law, rule, or regulation in its application of the Field Training Program (FTP) for newly-hired Police Officers. He also alleged that the Police Officers are receiving inadequate training. Police officer training in general and the FTP in particular are addressed in Chapter 4, AR 190-56 [Exhibit 8].

In discussing the training for the Security Guards and Police Officers, the IO began his discussion by citing to the provisions of AR 190-56, paragraph 3-2 by stating the following:

“personnel who are assigned to DACP/SG positions will be required to maintain a high standard of conduct at all times. The protection of installations, activities, and facilities particularly those storing classified and sensitive material (both occur at ANAD) depends heavily on these individuals. Personnel engaged in DACP/SG duties work with relatively little supervision, and frequently in isolated locations. This remote and isolated nature of security work is important because here again the whistle blower has raised this issue in his/her complaint, but DA acknowledges that it is part of the normal security environment. Paragraph 3-2.c (Exhibit 4, Sep 2006) further states, that security guards performing duties associated with chemical surety material will comply with the Personnel Reliability Program (PRP) criteria and procedures contained in AR 50-6. AR 50-6 identifies additional security and training tasks that apply to DACP/SG, DES, ANAD personnel because of ANAD's chemical storage and chemical demilitarization missions. It should be noted that DA civilian police and guards who have not completed their PRP certification for the chemical mission, are not permitted to serve at static posts or roving patrols that are associate with protecting the chemical storage and processing areas.”

Against that backdrop of the esprit d 'corps that binds the Security Guards and Police Officers given the nature of their job environment, they must undergo the appropriate training to prepare them for their dangerous duties and responsibilities.

In summary, the 2006 version of AR 190-56 [Exhibit 4, particularly paragraphs 4-2 a and c, and paragraphs 4-3 a, b and d] provides that upon successful graduation from an accredited training academy, police officers must successfully complete a Field Training Program (FTP). The FTP consists of:

- “a 264-hour program with five separate phases which allow the [Field Training Officer] and the [Director of Emergency Services] to determine if the probationary officer (PO) is satisfactorily progressing and able to apply those skills, knowledge, and abilities required for the installation's mission before proceeding to the next phase;
- “annual in-service training conducted at each installation/activity to ensure [Police Officer and Security Guards] maintain proficiency in their law enforcement and guard skills and remain current in state-of the-art doctrine;
- “specific local training programs, in addition to the annual in-service requirement, to identify and address local security/law enforcement issues (such as specific responses to

local priority resources, unique physical security issues, and so forth). These additional training requirements will be determined by specific assigned duties. Lesson plans for these training requirements will be written and approved annually by the [Director of Emergency Services] and must contain measurable standards for training success. These local training requirements will be documented and maintained by the installation/activity and made available for inspection.” [Exhibit 8].

These requirements were in force when DES, ANAD first began hiring DA civilian police officers in mid to late 2008 and were not changed until the publication of and updating of AR 190-56 in October 2009 (Exhibit 5). [Exhibit 13]. The 2006 version of AR 190-56 required that a police officer serve as Field Training Officer (FTO) for Police Officers [Exhibit 8], whereas the 2009 version only requires that “senior personnel” serve in that capacity. The FTO is someone appointed or hired by the agency to train new hires upon completion of an academy. The 2009 version of AR 190-56 was effective November 15, 2009. [Exhibit 13].

Uniform Rules

Until 2006, rules and guidance for wearing uniforms was set forth in AR 670-10 [Exhibits 48 and 3, Statement of Director of Emergency Services, ANAD). As noted in the ROI, that regulation addressed uniforms and uniform allowances for various groups of Army employees, including guards. With regard to Guards, it provided that for “Civilian Guard Uniforms” it is proper to wear the “police/guard insignia and badge” [Exhibit 48] and that, for caps and insignia, “the words Guard or Police will appear.” [Exhibit 48]. At ANAD, the IO found that based on AR 670-10, for over thirty years, successive ANAD commanders and DES Directors had cited the provisions of AR 670-10 as the appropriate authority for Security Guards to wear DA civilian police insignia and badges based on AR 670-10, paragraph 2-25 that states “Commanders may substitute the word “Police” for “Guard on should insignia...when such is considered appropriate for a the duties performed.” Consequently, the IO concluded that the Commander determined that all DES uniformed personnel would wear “Police” insignia regardless of their job series.

With the publication of revised AR 190-56, on September 27, 2006, the uniform requirements changed substantially. As noted in the ROI, Guards and Police Officers have separate and distinct badge and insignia requirements. The previous regulation, AR 670-10, however, was not rescinded but was listed as a “related publication.” [Exhibit 8]. Accordingly, AR 670-10 addressed uniforms for other types of employees and is controlling for those types of employees. However, with respect to Guards and Police Officers, the terms of AR 190-56 are controlling for Guard and Police personnel.

Labor Relations Rules and Obligations Impact on Security Guard and Police Officer Working Conditions

Prior to the issuance of the September 2006 version of AR 190-56, management was operating under certain working conditions, including the uniform requirements of AR 670-10. At the time, in the case of ANAD, there was no distinction required between the uniforms of the civilian Guards and Police. However, with the issuance of the 2006 and 2009 versions, Army made dramatic changes to numerous working conditions for Army's Security Guards and Police Officers. Hence, before implementing them, management had to fulfill its labor relations obligations under the Federal Labor Relations Statute. Of particular concern was the impact these 2006 and 2009 changes would have on the Security Guard and Police Officer uniforms.

Therefore, by way of illustration, to bring about a change in uniform policy – which impacts the working conditions of the bargaining unit employees – management had to first fulfill its labor relations obligations. In accordance with 5 United States Code 7111, *et seq.*, Labor relations obligations in the Federal sector require the following:

- Prior to issuing a formal policy/regulation which impacts on civilians' working conditions, management must fulfill its national consultation obligations as provided for in 5 USC § 7113. This requirement provides that an agency, when issuing a substantive change in conditions of employment (which AR 190-56 did), must first inform all of its national consultation unions of the proposed change and afford the unions reasonable time to present any views and recommendations. Any submitted views/recommendations must be considered by the agency before the final policy/regulation is issued.
- Once the final policy is issued, activity (local level) management officials (such as at ANAD) must notify their affected local union(s) of the change and afford it an opportunity to request bargaining. If a timely request to bargain is made, the agency cannot implement the change until bargaining has been completed, to include any impasse resolution, if requested. One exception for implementation during the negotiation period of a proposed change is for the necessary functioning of the agency. This is a difficult standard to demonstrate. The Federal Labor Relations Authority will be the final administrative adjudicator.
- If the union does not make a timely request to bargain, management may implement the proposed change. While there are no statutory timelines, they may be addressed in the parties' negotiated agreement or a "reasonable" standard should be used. This determination is subject to third-party review.
- If the parties enter into negotiations and cannot reach an agreement through bi-lateral negotiations, the parties can bring in a mediator, typically from the Federal Mediation and Conciliation Service. (See 5 USC § 7119). If the mediator cannot help the parties resolve their dispute, either party can raise the impasse to the Federal Service Impasses Panel (Panel). The Panel is authorized to dictate contract language and thus resolve the impasse. Once the Panel renders its decision, the parties can implement the negotiated changes.
- As stated above, until this entire negotiation process has been completed, management is typically not authorized to implement its proposed change and must honor whatever past practice has been established.

When the September 2006 version of AR 190-56 was issued, the union at ANAD, Local 1945, American Federation of Government Employees, invoked its right to negotiate any changes in working conditions. Within Army, 14 installations are still negotiating with its unions over the implementation of AR 190-56. Until recently, ANAD was one of the 14.³⁴

Nevertheless, on August 5, 2011, ANAD entered into an agreement with the local Union on the issue of Guard and Police uniforms which will bring ANAD into compliance with the uniform requirement of AR 190-56. [TAB J]. That agreement provides that ANAD will purchase "guard" patches and will include additional funds in the first uniform allowance in FY12 to have the patches sewn on. Once that is accomplished, it will be a violation of AR 190-56 for a Guard to wear Police insignia on his/her uniform.

METHODOLOGY OF THE AR 15-6 INVESTIGATION

The IO assembled a voluminous amount of documentary and testimonial evidence during his investigation. His ROI consisted of 100 exhibits, including relevant Army regulations on Army Police Officers, Security Guards, and Special Reaction Teams; training materials, plans, and manuals; standards operating procedures and Post Operating Instructions; correspondence with DES, ANAD leadership to clarify and verify information; MP Blotter Reports; tickets written at ANAD; DES job descriptions and job announcements for Security Guards and Police Officers; briefings; photographs; OPM classification guidance; collective bargaining related documents including the union contract; and previous security related inspections between 1996 to 2011. Additionally, he conducted two surveys with DES personnel that included 93 DES, ANAD personnel who participated in the initial 5-page survey on 15 October and 19 November 2010 [Exhibit 30], and 129 DES, ANAD personnel who participated in the handcuffing survey conducted on 21-26 April 2011. Also, he collected 16 interviews and sworn statements from the DES leadership, Security Guards and Police Officers, and Training Officers.

In an effort to assess the nature of the issues (uniforms, training, and operations), and identify potential individuals to interview, a survey was developed and coordinated with the ANAD legal office and a representative of the AFGE Local 1945 union who represents the ANAD DA civilian Security Guards, Police Officers and Firemen during a meeting that broadly outlined the nature of the AR 15-6 investigation and the proposed survey questions. The IO requested Union membership cooperation with the survey [Exhibit 30] and the AR 15-6 investigation.

According to the ROI, the first survey was conducted during a shift change on October 15, 2010 and individuals had the option to either sign or not sign the survey. The survey had a

³⁴ Because the negotiations between the ANAD management and the Local 1945 reached an impasse, the parties engaged the services of a mediator in an attempt to resolve the impasse. Utilizing the impasse mediation procedures, verbal agreement was reached on August 24, 2011, and the paperwork to memorialize the agreement is being finalized. Once that agreement is signed, all provisions of the 2009 issuance of AR 190-56 will be implemented. It should be noted that the subjects that led to the impasse were not related to the 3 primary subjects that were covered by the OSC referred allegations, specifically job assignments and duties, training, and uniforms.

high participation rate (59%) given the fact that one third of the security force was on their day off. Ninety-one surveys were collected on October 15, 2010, and two additional surveys were collected on November 19, 2010. Of the estimated 158 security personnel (116 DA civilian Security Guards and 42 DA civilian Police Officers) that were assigned to DES ANAD, fifty nine of the DA civilian Security Guards (or 51%) and thirty DA civilian Police Officers (or 71%) of the assigned personnel participated in the survey. Based on the request and comments of a union steward that additional DES, ANAD personnel would like to participate in the survey, a second survey was conducted during a shift change on November 19, 2010. However, only 2 additional DA civilian Police Officers requested to complete the survey.

Regarding the handcuffing survey, since there is no regulatory requirement to record when a suspect has been handcuffed as a result of an interaction with a DA civilian Security Guard or Police Officer (this information is not listed in the Blotter reports), and data was needed to answer an AR 15-6 question on handcuffing incidents, a second survey involving a one-page questionnaire was initiated between April 21-16, 2011. One hundred and twenty-nine DES, ANAD personnel participated in the survey.

SUMMARY OF THE EVIDENCE OBTAINED FROM THE INVESTIGATION

The whistleblower made the following allegations that were subsequently referred by OSC to the SA:

OSC-Referred Allegation 1: The division of work assignments between Security Guards in the GS-0085 series and Police Officers in the GS-0083 series are not in accordance with Army Regulation (AR) 190-56.

The whistleblower identifies four examples of improper division of work:

- **Director of Emergency Services, ANAD and Deputy Director of Emergency Services, ANAD are violating AR 190-56 by assigning the majority of the Depot's law enforcement work to Security Guards, and allowing Security Guards to arrest suspects;**
- **The majority of the law enforcement work is performed by the Special Reaction Team (SRT).³⁵ According to the whistleblower, the SRT performs the majority of traffic stops, responds to possible crimes, issues federal citations, and arrests and transports suspects to the Depot's Command Investigation Division (CID);³⁶**
- **Security Guards make arrests, place suspects in handcuffs and transport them to the CID;**

³⁵ The whistleblower stated the SRT is comprised of 10 Security Guards and 1 Police Officer; it is actually composed of 6 Guards and 4 Police Officers.

³⁶ The whistleblower refers to Anniston's local criminal investigating unit as the "CID." This should not be confused with the U.S. Army Criminal Investigation Command, also known as "CID".

- **Forty (40) police officers who are not members of the SRT perform almost solely protective services, including guarding buildings and property and controlling access to the Depot by employees, visitors and residents.**

Conclusion as to Allegation 1: The allegation is not substantiated as there is no violation of AR 190-56. The regulation does not limit or dictate the assignment of day-to-day duties, as those actions are controlled by job descriptions and OPM guidance. Given the significant allowable overlap in duties performed by guards and police as set forth in applicable OPM classification standards, the assignment of day-to-day tasks was not in violation of OPM standards or applicable job descriptions. No personnel – Guard or Police – have arrest authority and no arrests were made. [Exhibits 8 and 13]. The duties of the SRT are a mix of protective and law enforcement duties, and both Guards and Police on the SRT have participated in all SRT functions. Given the significant allowable overlap in duties performed by Guards and Police as set forth in applicable OPM classification standards, the assignment of day-to-day tasks was not in violation of OPM standards or applicable job descriptions. It is true that both Guards and Police perform traffic stops, respond to possible crimes, issue federal citations, and detain and transport suspects to the Depot's Command Investigation Division (CID), guard buildings and property and control access to the Depot by employees, visitors and residents. Both Guards and Police Officers have handcuffed personnel incident to a detention action. Since there are more guards than Police Officers, guard activity in each area is greater than that of Police Officers. Given the significant allowable overlap in duties performed by Guards and Police as set forth in applicable OPM classification standards, the assignment of day-to-day tasks was not in violation of OPM standards or applicable job descriptions.

Given that there is a significant allowable overlap in duties between Security Guards and Police Officers, it does appear, however, that the ANAD management team has not reviewed the ANAD security mission in a meaningful and deliberate manner subsequent to 2006³⁷ such that it can be said that jobs are properly classified as either "Guards" or "Police." Moreover, the rationale for moving to an "all-police" force has not been articulated well or documented to assess the true needs of Anniston Army Depot and especially if there have been any significant changes to the ANAD mission that may support having both Security Guards and Police Officers and the appropriate mix of the two groups. Appropriate corrective action is noted at the conclusion of this Report.

Discussion: The allegation that both ANAD civilian Guards and civilian Police are improperly performing a mixture of security and law enforcement functions which is inconsistent with AR 190-56, the written job descriptions, and OPM guidance is not substantiated. Pursuant to AR 190-56, Police Officers have the primary duty of law enforcement work in the preservation of the peace, including the prevention, detection, and investigation of crimes; the arrest or apprehension of violators; and assisting citizens in emergencies. In contrast, the primary duty of Security Guards is to provide protective services work in guarding federally owned or leased buildings and property; protecting Government equipment and material; and controlling access to Federal installation/activities by employees, visitors, residents, and patients.

³⁷ The decision to hire Police Officers was made in 2006 and was implemented beginning in 2008.

As noted above, AR 190-56 does not lay out for local commanders the day-to-day duties and work assignments of guards and police. Rather, AR 190-56, paragraphs 5-2a and 1-4i(1), delegates to local commanders with significant discretionary authority to make such calls based on their own unique local mission requirements.

At ANAD, the local commander decided in 2006 that due to impending changes in the Depot mission such as when the Chemical Treaty requirements are met in 2011/2012, he believed that a transition to more Police Officers was appropriate. [TAB F, Statement of Director of Emergency Services, ANAD, dated September 6, 2011]. That decision was entirely consistent with authority given to him by AR 190-56.³⁸ Further, once that decision was made, though the commander was required to abide by the AR 190-56 provisions related to such matters as training, doctrine, and uniform requirements, AR 190-56 did not, however, stipulate what day-to-day assignments should or must be made. Accordingly, with respect to the appropriate assignment of duties for ANAD's Security Guards and Police Officers, there are being performed in accordance with AR 190-56. Therefore, there is no violation of AR 190-56 in this area.

The IO further looked into whether the assignment of duties was consistent with the Guard and Police job descriptions for the personnel. Based upon the job descriptions [Exhibits 15-28b], he found that both Guards and Police could issue tickets, detain suspects, make traffic stops, perform fixed and mobile patrols, interview witnesses and subjects, and various other installation security measures. In a very detailed and analytical manner, he also reviewed OPM standards and case digests to determine if assignment of those duties was proper. He properly found that it was – because of the overlap allowed by OPM standards, Guards and Police can perform many if not all of the same day-to-day duties.³⁹ A summary of the Investigator's findings regarding individual types of activities performed by Guards and Police shows the following:

Activity	Guard	Police	SRT
Patrol (vehicle/foot) ⁴⁰	X	X	X
Protect Government property	X	X	X
Deter theft	X	X	X

³⁸ Paragraph 1-4(i)(1), AR 190-56 [Exhibit 8] provides that installation commanders will implement and ensure compliance with the regulation in a manner appropriate for their activities.

³⁹ It must be noted that every single one of the duties raised by the whistleblower as illustrative of "Police" work was performed by a GS-085 Security Guard prior to the first Police Officer being hired in the 2008 timeframe at ANAD.

⁴⁰ The categories of activity are drawn from Exhibits 31, 32, 33, and 34; an "X" in the column reflects that the noted category of employee performs that function.

Activity	Guard	Police	SRT
Conduct initial/long-term Investigations	X	X	X
Respond to directed calls	X	X	X
Desk Control Officer	X	X	
Dispatch	X	X	
Monitor alarms	X	X	
Report writing	X	X	X
Conduct search of person/property	X	X	X
Interview witnesses	X	X	X
Interrogate suspects	X	X	X
Identify/protect/collect evidence	X	X	X
Wear uniforms	X	X	X
Carry firearms	X	X	X
Operate emergency vehicles	X	X	X
Operate communications equipment	X	X	X
Write/issue citations	X (1383) ⁴¹	X (34)	X
Operate radar	X	X	X
Testify in court	X	X	X
Conduct access control	X	X	
Issue passes/badges	X	X	
Enforce regulations/laws	X	X	X
Apprehension authority	X	X	X
Response force	X	X	X
VIP Protection			X

⁴¹ The number in parentheses represents the number or reported times an activity was conducted by either police or guard. The ROI did not break out "SRT" separately when counting incidences of activity. Incident frequency was reported in Exhibits 32, 33, and 34.

Activity	Guard	Police	SRT
Augment quick reaction force			X
Conduct raids			X
Sniper/counter sniper operations			X
Screen operations (surveillance/intel/over-watch)			X
Threatened suicide incidents			X
High-level entry			X
Apprehension of dangerous suspects			X
Drug raids			X
Mission where ROE prohibits collateral damage			X
Search and rescue operations			X
Handcuff persons	X (22)	X (2)	X
Respond to calls	X (222)	X (79)	X

It is evident from this summary that both guards and police perform the same day to day functions. It also shows that guards have issued more citations, handcuffed more individuals, and responded to more calls than police. Since guards represent over 71% of the total force, that result is not surprising. Since both guard and police job descriptions cover all of the activities noted, there is nothing improper about the assignment of work or the lack of clear distinction in allocation of workload.⁴² Again, OPM rules allow for Guards and Police to perform a large range of functions listed above.

The data also shows that the Guards and Police Officers who are members of the SRT do have a discrete set of duties, unlike other Guards and Police Officers. As noted, the SRT is made up of both Guards and Police Officers. Consequently, the assignment of SRT-related tasks is based on SRT membership, not based on whether one is a Guard or Police officer assigned to SRT. As noted in the ROI, this is consistent with OPM rules.

⁴² Although the assignment of work has been proper, the ROI notes the “traditional rivalry” between Guards and Police Officers, and several witnesses [Statement Exhibits 35 ANAD Guard 1 and Training Officer), 36 (Deputy Director of Emergency Services, ANAD), 37 (ANAD Police Officer 1), 38 (ANAD Former DES Guard and Training Officer), 39 (ANAD Guard 2), 40 (ANAD Police Officer 2), and 41 (ANAD Police Officer 3)], including that of the current director [Exhibit 3, Statement of Director of Emergency Services, ANAD], note an adverse morale and work environment due to the assignment of work issue. Although not a part of the OSC complaint, corrective action is noted at the conclusion of this report to address this concern. That corrective action should also improve communication which may reduce friction between and complaints from members of these two groups.

It is equally evident from the ROI, however, that although the local commander in 2006 decided to hire Police based on changing mission needs, to date, there is no evidence gathered in the ROI that reflects that any of ANAD's commanders since 2006 have articulated what mission changes support a shift to Police Officers being hired with a phasing out of Security Guards and why there has been a continued movement to an end state for an exclusive Police Officer security/law enforcement force rather than a blend between Security Guards and Police Officers.

Certainly, the Army's Office of the Provost Marshall, through its revisions to AR 190-56, has endeavored to create a security/law enforcement force whereby Army's Security Guards and Police Officers are groomed to be more professional, competent, and proficient than their predecessors. Hence, what has been missing from all of the documentary and testimonial evidence gathered by the IO is any indicia that there has been a meaningful or deliberate assessment to determine if the hiring of Police Officers continued to meet mission needs.⁴³ Put another way, since OPM standards require an employee to be placed into either a Guard (0085 series) or Police (0083 series) position based on "the primary duty" of being either "protective service" (Guard) or "law enforcement" (Police Officer), based on the evidence gathered, there has been no review of the actual security mission in the intervening years to determine what "primary duties" would be performed by new employees.

This conclusion is compelled by the IO's observation that law enforcement work at ANAD is limited and protective workload is the principal mission. At first blush, that might lead to a conclusion that a security force of "Guards" is more appropriate than the then Commander's 2006 decision to move to an all-Police force.

It is entirely possible, however, that a commander, exercising his prerogative under AR 190-56, may determine that the purpose of a security force may be better focused on law enforcement matters, thereby justifying the "police" designation so long as proper OPM classification rules are applied. There is no documentation, however, that any such review has taken place.

The expectation is that a decision to have all Police, all Guards, or a mix would be supported by a meaningful review of the security mission elements at ANAD, with a rigorous analysis of the primary purpose of each security position and whether it should be tied to either a law enforcement or protective mission. This analysis's foundation should be based on the proper application of the appropriate OPM classification rules and regulations such that a position is classified as either "Police Officer" or "Security Guard" based on the expected job duties and responsibilities. The evidence reflects that this analysis is missing, both in 2006 when the decision to "convert" to Police Officers was made, and at any time since that decision. Indeed, the rationale for an all-Police security force is not well-articulated in light of what the IO determined was a predominantly "protective" and thus "guard"-type mission.

Unlike some larger Army installations with a large Police presence, ANAD has limited "law enforcement" functions – one child care center, a small shopette, a campground, a gym and a small club, but no government housing, sizeable military personnel presence, housing area,

⁴³ No Guards have been hired since 2008 and all new security force personnel since then have been Police in the GS-0083 series.

commissary, hospital, or large dependent and retiree population that utilizes MWR facilities. The work force is made up of Army and DoD civilians and contractors, many of whom have worked there for a long time. The IO also found that traditional policing functions are very limited, but the security mission at ANAD is principally protecting the chemicals, bulk weapons and ammunition, and large and unique industrial facilities.

One area where a “law enforcement” emphasis might be present is the SRT mission. As the current DES Director notes, “the SRT is the only flexibility that the Commander truly has to respond to incidents and special situations.” He notes the SRT members “are highly trained in special weapons and tactics far above the average police officer.” He also notes that at Anniston they “utilize the officers in traffic enforcement and traffic accident investigation [and] many of the SRT members have attended specialized traffic accident investigation courses because of the position they hold.” [Tab F, Statement of Director of Emergency Services, ANAD, dated September 6, 2011]. As found during the investigation, however, 6 of the 10 SRT members are Guards in the GS-085 series. There is no documented analysis to explain this apparent contradiction, and the general assignment of work of Guards and Police Officers irrespective of job series applies to the SRT as well. This matter is addressed in the corrective action section.

There is nothing in the ROI to indicate that a meaningful analysis was performed in 2006.⁴⁴ Although the commander at the time concluded a police force was needed, and although that decision may indeed have been proper, there is no documented review of security mission, job functions, and applicable classification standards by a personnel classification specialist to support the classification of all future hiring for “police officer” positions.

Currently, daily work assignments are made irrespective of whether an employee is a Guard or Police Officer. [Exhibits 1, 31, 32, and 33; and TAB F, Declaration of Director of Emergency Services, ANAD, dated September 6, 2011]. There is no evidence that any review of the security mission has taken place to determine which functions, if any, is primarily “law enforcement” or “protective” in nature such that an employee’s job is properly classified as either a “Guard” or “Police Officer” based on major duties performed. At ANAD, work is assigned to Guards and Police alike supported by no documented analysis of the functions performed as compared to the relevant classification standards.

Contrary to the intent of the 2006 change to a Police-oriented force to create a “more professional” workforce, the change has resulted in no change to how work is assigned or what duties are assigned to personnel. According to the Director, Director of Emergency Services, ANAD, the change has had “[n]o impact on operations, **the 085s [guards] have excelled in the performance of the law enforcement mission....**” He further stated that “the DA Police want to only do Police work even though their job description and job announcement clearly outlined the security and police duties. **Our low crime rate limits police work to routine and infrequent police actions.**” [Exhibit 3, Statement of Director of Emergency Services, ANAD, page 10, emphasis added]. These comments seem to contradict the forecasted need for police officers stated in 2006.

⁴⁴ Subsequent to the completion of the ROI, OGC requested a copy of any decision brief or other documentation from 2006 when Former ANAD Commander, August 2004 – August 2007 made the decision to convert Guard to Police through attrition. ANAD, through its Director of Emergency Services, stated that no such documentation existed.

Although the IO performed a review of job descriptions, job evaluation criteria, and actual job assignments, there is no evidence that a trained classifier made any review of the actual mission and duties performed to make a classification recommendation. Although it is entirely possible all jobs are properly classified, the lack of a documented analysis and work assignment pattern is a weakness and leads to complaints such as the one giving rise to the OSC referred allegations. Based on this weakness, corrective action will be undertaken to address this matter.

OSC-Referred Allegation 2: The training of Civilian Police and Security Guards is not in accordance with AR 190-56. The whistleblower asserts that (1) the Depot does not have a Field Training Program (FTP) for newly-hired Police Officers. Pursuant to AR 190-56, the DES is required to institute a FTP to ensure that DACP/SGs are capable of individually performing mission tasks. The DES is required to ensure that each DACP/SG has completed a FTP specific to their career series prior to assignment of duties, and is to authorize DACP/SGs to perform duty assignments only after successful completion of the FTP; and (2) that the only training provided to newly-hired Police Officers after successfully graduating from a police academy is having them accompany a Security Guard on a “ride along.” According to the whistleblower, these “ride alongs” involve going on patrol for one or two days with a Security Guard. The whistleblower maintains that the Security Guards do not train the Police Officers during these patrols and that after one or two days the Police Officer is assigned to solo patrols. The whistleblower claims that these patrols do not constitute a FTP.

Conclusion as to Allegation 2: Allegation 2 is partially substantiated. It is true that there was a delay in implementing the FTP from March 2009⁴⁵ until August 2010⁴⁶ due to ANAD not having a qualified person to serve as Field Training Officer (FTO) despite efforts to hire a qualified FTO. However, Allegation 2 is not substantiated as to any other matter. No Police Officer was enrolled in an FTP with an unqualified FTO. The FTP is administered in accordance with AR 190-56, and all other training requirements are tailored to meet local needs as required by AR 190-56. The Depot did not have any police officers until October 26, 2008 and no Police Officer completed the required academy training until March of 2009 [TAB K]. Efforts to hire qualified personnel were not successful, and the requirement to have a Police Officer serve as FTO was abolished by the revision of AR 190-56, effective November 15, 2009. Since that date, a qualified FTO (lieutenant as “senior personnel”) has served and administered training in accordance with the regulation. No police officer began the FTP prior to November 2009. Hence, no police officer has been administered an FTP in violation of the regulation.

Discussion: The first civilian Police Officer was hired in October 2008. At that time, the 2006 version of AR 190-56 required that a senior Police Officer serve as a Field Training Officer (FTO)⁴⁷ for police officers. This implementation was delayed at ANAD for several reasons. Initially, ANAD didn't have any senior personnel in the Police Officer series (0083).

⁴⁵ The first Police Officers graduated from the Academy on March 10, 2009 [TAB K], and an FTP should have been administered upon completion of that requirement in accordance with paragraph. 4-2c., AR 190-56 [Exhibit 8].

⁴⁶ The first FTP was administered beginning August 6, 2010. [TAB K].

⁴⁷ AR 190-56, 27 Sep 2006, paragraph 4-2.a, 4-2.c, and 4-2.d(1)

ANAD then recruited for and filled the position but the Police Officer DES hired as a FTO performed the function unsatisfactorily.⁴⁸

The 2009 version of AR 190-56, which became effective November 15, 2009, changed the requirement that FTOs for Police Officers had to be in the same career field (0083) and stated that "senior personnel" would be assigned as FTOs. [Exhibit 13]. That change allowed DES to designate a number of senior DES civilian Guards to serve as FTOs. ANAD thereupon designated the DES Lieutenants as FTOs on July 6, 2010. [Exhibit 42]. The first Police Officer completed her academy training in March of 2009, and began her FTP in August of 2010, [TAB K], a delay of nearly 17 months.

Significantly, no Police Officer was administered an FTP with an unqualified FTO. Also, since August of 2010, the FTP has been administered completely in accordance with AR 190-56.

Contrary to the whistleblower's remaining allegations of a lack of training, the Depot provides significantly more training than simply "riding along" with a senior coworker. ANAD has had a published Training Plan since 2003. This is three years before there was a requirement for an FTP in the 2006 version of AR 190-56 and it has had a published and structured FTP since Fiscal Year (FY) 2009.

While not designated as part of the "formal" FTP, DES provided 160 hours of training to all new DES civilian Police hires within the first two weeks they were hired, even before they went to the USAMPS Police Academy at Fort Leonard Wood, Missouri. This program covers 59 subject areas during the 4-week period. Fifty-one subjects, or 86% of the material, is subsequently covered at the Police Academy. DES's local security training program uses USAMPS Police Academy's POIs.

The DES Training Program is updated annually and includes USAMPS Police Academy, and ST-19-083, Subject: Department of the Army Civilian Police Field Training Manual, 17 June 2009 [Exhibit 43], tasks; and local, chemical security, and FTP tasks. DES added a specific FTP Annex [Exhibits 44 and 45] to the DES, Security Training Program in FY 2009 and FY 2010. The IO developed a chart comparing the training subjects. [Exhibit 46].

DES's FTP is conducted after a DA police officer returns from the USAMPS Police Academy, or after he/she receives a waiver, and it covers 27 subjects, 14 of which were covered at the USAMPS Police Academy. DES's local Security Training Program, which uses the USAMPS Police Academy POIs, and its FTP, which uses the ST 19-083 Civilian Police Field Training Manual when combined, cover 64 of the USAMPS Police Academy's 88 subject areas or 73% of the USAMPS Police Academy's curriculum.

While the whistleblower has raised training concerns and would like to receive more Police related training, DES's Training Program is tailored and focused for trainees to complete

⁴⁸ Two individuals were actually selected, but only one individual (Former ANAD Field Training Officer) accepted the position. He held it from March 2009 - March 2010 but was unable to present the FTP training or qualify on his weapon. He left ANAD to accept a position elsewhere.

security and law enforcement tasks relevant to ANAD (see paragraphs 6.b.(4); 6.c.(4)(a)-(b); and 8.a.(19) of the 15-6 Investigation Report). This is entirely consistent with AR 190-56, which specifically requires local commanders to tailor “specific local training programs, in addition to the annual in-service requirement, to identify and address **local security/law enforcement issues**” Paragraph 4-5d, AR 190-56. [Exhibit 8, emphasis added].

The ROI contains ample evidence that very specific training is provided, including a detailed summary of training for new officers [Exhibit 46]. The annual training plans include site-specific standards and orientation/training. [Exhibit 44 and 45]. Training is also conducted during guard mounts and shift changes. Records are maintained by shift leaders/training officers. There are hard copy training records and some electronic records on each DA civilian police officer and guard employee. Security posts have specific Standard Operating Procedures (SOPs) or list of duties. New employees in most cases are paired with other personnel familiar with the duties of that security post prior to being assigned to that post on their own.

Although a Police Officer’s training desires may not match the curriculum, it is totally inaccurate to claim that the only training provided to newly-hired Police Officers is having them accompany a Security Guard on a “ride-along.” In summary, there is an FTP Program and the DES 160-hour new hire training program covers all local tasks needed to man most access control points, static posts, and the roving patrols. Additionally, on a quarterly basis, all DES civilian Guards and Police Officers receive recurring training [Exhibits 44, 45 and 46].

OSC-Referred Allegation 3: Security guards at ANAD to wear uniforms identifying them as Police rather than Guards which is not in accordance with AR 190-56.⁴⁹ The whistleblower alleges that Director of Emergency Services, ANAD, and Deputy Director of Emergency Services, ANAD, are violating AR 190-56 by allowing security guards to wear uniforms identifying them as police. The whistleblower states that Police Officers and Security Guards both wear the same uniform and both have the word "Police" on their badges, hats, and shoulder insignia. The whistleblower states that AR 190-56, Chapter 6, provides that the DACP/SG uniform will have a badge, cap insignia, and shoulder insignia and that the badge is to be inscribed either "Guard" or "Police" according to whether the employee is a Police Officer or Security Guard, as are the hat and shoulder insignia.

Conclusion as to Allegation 3: Allegation 3 is substantiated. Guards continue to wear “Police” insignia. Implementation of the uniform insignia requirement was delayed, however, pending completion of labor-relations obligations. On August 5, 2011, an agreement was signed between ANAD and AFGE, Local 1945, to change civilian Guard insignia to reflect their status as required by AR 190-56. ANAD will acquire the requisite insignia patches and pay to have the insignia affixed to the current uniform in place of the Police insignia (an additional \$16 per Guard with the first uniform allowance amount for FY12). The agreement further states that after the date the Guard insignia is affixed, it will be a violation of AR 190-56 for any Guard personnel to wear the Police insignia and vice versa. [Exhibit J].

⁴⁹ Although the whistleblower did not make specific reference to two DA Civilian police officers serving as Police detectives who have the word "Detective" on their badge, that is also a violation that the IO addressed in the ROI as there is no authorization for wearing such a badge in AR 190-56 or AR 190-30. [Exhibits 47, 8, and 13]. That violation will be corrected with the other insignia corrective actions noted later in this Report.

Discussion: The allegation that DA civilian Guards are wearing DA civilian patches and badges identifying them as “Police” rather than “Guards” is substantiated as a violation of AR 190-56. DES civilian Guards have been wearing that same “Police” badge for over 30 years. Successive ANAD commanders and DES Directors have cited the provisions of AR 670-10 [Exhibit 48, paragraph 2-25] to authorize Security Guards to wear DA civilian Police insignia and badges. It states in part, "Commanders may substitute the word 'Police' for 'Guard' on shoulder insignia (fig 2-12) when such is considered appropriate for the duties performed." It would appear this language would have been totally unnecessary if the intent was to only have Guards wear “Guard” badges.⁵⁰ Both the DES leadership and civilian Guards believed AR 670-10 gave them the flexibility to make the substitution and their job descriptions do include some law enforcement type functions.

In addition, many civilian Guards, prior to serving at ANAD, had served as Police Officers (while on active duty, on a civilian Police force, or as a DA civilian Police Officer at another location), and they did not see the wearing of the DA civilian Police badges and insignia to be inconsistent with their past practices, irrespective of their current DA civilian Guard job series. It is clear that the whistleblower and other DA civilian Police have taken exception to DA civilian Guards wearing badges and insignia they feel are reserved for only GS-0083 DA civilian Police [Statement Exhibits 51 (ANAD Police Officer 4), 52 (ANAD Police Officer 5), 37 (ANAD Police Officer 1), 38 (ANAD Former DES Guard and Training Officer), 40 (ANAD Police Officer 2), 41 (ANAD Police Officer 3), and 53 (ANAD Police Officer 6)].

The authority to substitute “Police” insignia for “Guard” insignia as provided for in AR 670-10 has now been superseded by the uniform requirements contained in 2006 and 2009 versions of AR 190-56 that is now controlling in this matter. [Exhibits 8 and 13]. Also, the Office of Provost Marshal General, HQDA, has stated that U.S. Army civilian Guards will wear DA civilian Guard insignia, patches, and badges, and that U.S. Army civilian Police will wear U.S. Army civilian Police badges, patches, and Insignia [Exhibit 18],⁵¹ unless waivers or exceptions “that permit deviations from the uniform standards and specifics prescribed in the regulation will be granted [but] only in unusual circumstances (mission unique uniforms).” [AR 190-56, paragraph 6-2b].

⁵⁰ The Special Reaction Team (SRT) has a unique uniform and equipment [Exhibit 49: SRT Duty Uniform and Equipment]. All SRT members (both DA civilian Guards and DA civilian Police) wear an SRT uniform which is in accordance with AR 190-58, paragraph 4-3.

⁵¹ At ANAD, despite multiple annual inspections (at least 35 between 1996-2011) by multiple headquarters and organizations (DAIG, HQ AMC, HQ TACOM LCMC, CMA, and SBCCOM), the issue of DA guards wearing DA Police badges and insignia has apparently only surfaced once during an AMC Chemical Surety Inspection reportedly in 2005 [Exhibit 3, Statement of Director of Emergency Services, ANAD, page 3]. While actual documentation could not be recovered, Director of Emergency Services, ANAD recalls that during an AMC Chemical Surety Inspection in 2005, the issue of ANAD civilian Guards wearing civilian Police insignia and badges was raised by one of the inspectors. The inspector was shown AR 670-10, paragraph 2-25 and apparently agreed that the installation commander had the flexibility to make that decision. It is unknown whether the inspector was shown or was aware of the OPMG policy issued in 2002 and 2003 that prescribed a different shoulder sleeve insignia and badge for Army Security Guards requirement than AR 670-10 requirements and which were incorporated into the 2006 and 2009 versions of AR 190-56. [Exhibits 8 and 13]. In any event, the IO noted that despite the frequency and number of external inspections, the badge, insignia, and patch issue was not documented as a deficiency or observation in any of the inspection results.

When Police Officers were hired beginning in 2008, the continued wearing of the civilian police badges and insignia by the civilian guards after October 2008 was based on the precedent that had been established, consistent with the labor relations rules summarized above. The ANAD Commander notified the local union that all AR 190-56 changes would be negotiated with the local union prior to implementation. [Exhibit 10].

As stated above, on August 5, 2011, an agreement was signed between ANAD and AFGE, Local 1945, to resolve one of the issues between the parties regarding the implementation of AR 190-56. [Tab J]. The parties acknowledged that AR 190-56 changed the requirement regarding uniforms for DES personnel at ANAD and required that Guards (0085s) and Police (0083s) wear distinctive uniforms, a change in the current practice in DES. The parties agreed that after August 8, 2011, all Guards and Police who enter on duty will wear their distinctive Guard or police uniform as prescribed in AR 190-56. Also for current Police, no change is required as they are already wearing Police uniforms and insignia in accordance with AR 190-56. The parties further agreed to comply with AR 190-56 and all agreements between themselves regarding Police uniforms and insignia. ANAD agreed to acquire the requisite insignia patches and pay to have the insignia affixed to the current uniform in place of the Police insignia (an additional \$16 per Guard with the first uniform allowance amount for FY 2012). The agreement further stated that after the date the Guard insignia is affixed, it will be a violation of AR 190-56 for any Guard personnel to wear the Police insignia and vice versa. [TAB J].

Although the whistleblower did not address the issue of detectives at ANAD, the IO found that detectives, who are the police officer (GS-083) series, are carrying badges displaying the title "detective." AR 190-56 does not authorize "detective" badges; if they wear badges, they must be "Police" badges. Another regulation, AR 190-30 at paragraph 3-1, prescribes the credentials for detectives, and those credentials are limited to DA Form 3837 and DA Form 3837-1. [Exhibit 47. Since AR 190-30 limits credentials, the detectives at ANAD are not authorized to carry badges, [Exhibit 54]. OPMG Law Enforcement Branch (proponent for AR 190-30) and I agree that Detectives carry credentials and no badge. Badges are authorized for wear on the uniform while DA Civilian Police are working (as DACPs) or traveling to/from work. The badge must be marked "Police"; the term "Detective" is not authorized to be engraved or otherwise written on the badge. Hence, individuals who wear uniforms also are authorized to wear badges. Since the detectives at ANAD wear civilian (street) clothes, they are not authorized to wear badges but to carry credentials. [TAB I, Statement of Program Manager, OPMG, paragraph 7].

IO's FINDINGS, RECOMMENDATIONS AND CONCLUSIONS

The IO made the following recommendations:

1. That no administrative or disciplinary actions be taken against the current and former DES Directors or ANAD commanders because there was no intentional violation of US law, rules, or procedures, but instead local decisions were based on a misunderstanding of rapidly changing and in some cases vague regulatory guidance.

2. That the Commander, ANAD submit a waiver request to continue the wearing of DA civilian police badges, patches, and insignia by DA civilian guards at ANAD, or absent a waiver, purchase the DA guard badges, patches, and insignia and pay to sew the patches on DA civilian guard uniforms. It is highly unlikely that OPMG, HQDA would approve such a waiver.

3. That rank insignia be removed from the DA civilian police and security guard ball caps in accordance with AR 190-56, paragraph 6-13.g(2).

4. That the word "Detective" be removed from the two police officers' badge and it be replaced with "Police."

5. That AR 190-56 should be updated and the following changes be made:

a. The acronym *DACP/SG* be used more selectively to reflect when provisions only apply to both DA civilian police (DACP) and DA civilian security guards (DACSG).

b. Definitively state that DA civilian security guards will not wear DA civilian police badges, patches, or insignia and that the only provision of AR 670-10 that applies is the legislative authorization to reimburse security force personnel for uniforms.

c. Definitively state what DA civilian badge, patches, and insignia (police or guard) will be worn by a non GS-0083 or non GS-0085 leader, when the individual carries a different career designation (GS-301, etc.) and the security force includes DA civilian security guards and DA civilian police.

d. Definitively state that an individual will wear the badge, patch, and insignia for his current duty position as reflected on his SF 50 and the organizational IDA. Therefore, an individual serving in a DA civilian security guard position will wear the DA civilian security guard badges, patches, and insignia and will not be entitled to wear a DA civilian police badge, or patch, even if he/she previously served as a DA civilian police officer.

e. Update the FTP provisions or AR 190-56 and clearly state that once weapons qualification and local security orientation training (POI and SOPs) have been completed DA Civilian police and DA civilian guards are permitted to perform limited security functions. No installation can afford not to use a security professional until the individual has attended a USAMPS Police Academy or received a waiver and then completed the labor intensive FTP. Operational requirements and scheduling delays make this impractical.

Upon review of the ROI and the IO's recommended changes, Program Manager, OPMG stated that with respect to the IO's numerous recommended changes to AR 190-56, he would consider the them in the next issuance of AR 190-56. However, with respect to the issue of Detectives carrying badges, Program Manager, OPMG did not agree with the IO's

recommendation that "the word "Detective" be removed from the two police officers' badge and it be replaced with "Police." [TAB I, Statement of Program Manager, OPMG]. Program Manager, OPMG stated that the only authorized badge is the "Police" badge. "Detective" badges are not authorized by regulation. Accordingly, he stated that OPMG Law Enforcement Branch (the proponent for AR 190-30) and he agreed that Detectives carry credentials and no badge. Badges are authorized for wear on the uniform while DA Civilian Police are working (as DACPs) or traveling to/from work. The badge must be marked "Police"; the term "Detective" is not authorized to be engraved or otherwise written on the badge. This is in accordance with AR 190-56, paragraph 6-13d(1) that states that with respect to Badge and hat insignia:

"(1) The DA badge, as approved by the U.S. Army Institute of Heraldry, is the required badge for wear by all DACP/SG...No other badge is authorized. Sergeants and above will wear gold in color badges that will identify the rank of the individual and be marked either "Guard" or "Police." Other DACP/SG personnel will wear silver in color badges, with assigned badge number and be marked either "Guard" or "Police." Directly underneath the DA scroll will be the name of the installation/activity/stand-alone facility. The badge will be worn on the left breast of the outer garment."

LISTING OF VIOLATIONS OR APPARENT VIOLATIONS OF LAW, RULE, OR REGULATION

OPM Grade Evaluation for Police and Security Guard Positions in Series GS-0083, GS-0085, TS-87, April 1988 [Exhibit 7]: Although there is no violation of law, rule, or regulation, there is a weakness identified in the Anniston Army Depot's review of its security mission in that ANAD management has not reviewed the security mission in a meaningful and deliberate manner to ensure a match of duty assignments and primary function with OPM classification standards. This lack of analysis also includes the composition of the Special Reaction Team. Corrective action is necessary.

AR 190-56 dated September 27, 2006 [Exhibit 8], paragraph 4-2c, and AR 190-56 dated October 15, 2009, paragraph 4-2d [Exhibit 13], require the Army to afford a newly-hired police officer a Field Training Program upon completion of academy training requirements. Due to lack of a qualified employee to serve as Field Training Officer, there was an approximate 17 month delay in enrolling police officers into an FTP. That violation ceased upon appointment of proper FTO's in July of 2010 and beginning an FTP program in August of 2010.

AR 190-56, dated October 15, 2009 [Exhibit 13], paragraphs 6-13(d) and (e), requires guards to wear "guard" insignia on badges, hats and shoulders and requires police to wear "police" insignia on badges, hats and shoulders. Guard personnel are wearing "Police" insignia rather than the designated Guard insignia. The wearing of Police insignia was a term or condition of employment that was subject to bargaining with the local union in accordance with the Federal Labor relations statute 5 United States Code 7111. By agreement dated August 5, 2011, the union and ANAD have made arrangements to come into compliance with the

regulatory requirement. Corrective action is necessary to monitor compliance with the agreement.

AR 190-30, paragraph 3-1, prescribes the only credentials for Detectives, DA Form 3837 and 3837-1. Detectives at ANAD are currently carrying badges that identify them as a “detective” in violation of that regulation.

CORRECTIVE ACTIONS UNDERTAKEN

1. With respect to the violation of uniform requirements of AR 190-56, the following is required:

a. The ANAD Commander will ensure that employees who are currently on Detective positions are issued credentials as required by paragraph 3-1, AR 190-30, and that those employees are not permitted to carry a badge of any kind. The ANAD Commander will report to the Commanding General, TACOM LCMC not later than 15 October 2011 to verify compliance.

b. As noted in the report, ANAD has reached agreement with the local union on correcting the improper badging and insignia for guards, i.e., the Depot will add money to each guard’s uniform allowance for payment in the first quarter of FY12 and require insignia (provided by the Depot) to be affixed to their existing uniforms. The ANAD Commander will report to Commanding General, TACOM LCMC, not later than 30 March 2012 to verify compliance with the uniform requirements of AR 190-56.

c. The Office of Provost Marshal General, as proponent for AR 190-56, will review current policy governing the Civilian Police and Security Guard program and make adjustments, where necessary, to further clarify the distinction between police and guard uniforms and insignia.

2. With respect to the identified weakness in ensuring classification standards have been properly applied to DES personnel, the Anniston Army Depot Commander will be directed to complete the following:

a. review the various elements of the security mission to determine whether each element is primarily “protective work” or “law enforcement” work;

b. review the security mission, with the assistance of classification personnel from the servicing CPAC and other staff elements, to ensure guard and police personnel are provided with job descriptions that are properly classified given each employee’s primary responsibility as discussed in this report, and ensure each current guard or police officer is provided with an accurate and properly classified position description;

c. in reviewing job descriptions and classification, specifically determine the mission and role of the Special Reaction Team (SRT) with regard to “police” or “guard” work to ensure proper classification and assignment of work;

d. make a determination with appropriate staff advice on whether to continue to hire only police officers for applicable DES vacancies, and document the decision-making process;

e. so long as both guards and police officers work in DES, ensure a staffing plan is developed, with staff assistance, to document assignment of work consistent with the primary function of either guards or police officers, understanding there may be some degree of overlap;

f. communicate the results of the foregoing reviews along with relevant portions of this Report with the ANAD DES workforce and the local union to mitigate adverse morale and effects noted in the ROI and enhance the esprit d ‘corps within the Security Guard and Police Officer.

g. The ANAD Commander will report to Commanding General, TACOM LCMC, not later than 30 March 2012 to verify compliance.

final

CONCLUSION

The Department of the Army takes very seriously its responsibility to address in a timely and thorough fashion the concerns of the OSC. This investigation revealed that one of the allegations was substantiated (concerning Guards wearing "Police" insignia), another allegation was only partially substantiated (concerning the training of Civilian Police and Security Guards), while the third allegation concerning the assignment of duties for Anniston's Security Guards and Police Officers was not substantiated. However, regarding the assignment of duties, although there is no violation of law, rule, or regulation, the evidence reveals that there is a weakness identified in the Anniston Army Depot's review of its security mission in that ANAD management has not reviewed the security mission in a meaningful and deliberate manner to ensure a match of duty assignments and primary function with OPM classification standards for Anniston's Security Guards, Police Officers, and also the right workforce mix or composition of its Special Reaction Team. Hence, this meaningful analysis and corresponding adjustment to its workforce composition will be taken as a corrective action to this recognized weakness. The Army will review current policy governing the Civilian Police and Security Guard program and make adjustments, where necessary, to further clarify the distinction between police and guard uniforms and insignia.

In summary, the Department of the Army has taken appropriate action to remedy or correct all inappropriate actions that occurred in this matter. In addition, the Army has, and will continue to take action to prevent such events from occurring in the future.

This letter, with enclosures, is submitted in satisfaction of my responsibilities under Title 5, USC, Sections 1213(c) and (d). Please direct any further questions you may have concerning this matter to [REDACTED] [REDACTED]

Sincerely,



Thomas R. Lamont
Assistant Secretary of the Army
(Manpower and Reserve Affairs)

Army Report Documents
Anniston Army Depot
Anniston, Alabama
OSC File Number DI-10-1952

Tab/Exhibit

Description

- TAB A** Secretary of the Army (SA) delegation to the Assistant Secretary of the Army (Manpower & Reserve Affairs) his authority, as agency head, to review, sign, and submit to Office of Special Counsel the report required by Title 5, USC, Sections 1213(b), (c), and (d), dated March 18, 2011
- TAB B** Appointment Memorandum for The initial IO.
- TAB C** Army Regulation (AR) 15-6, *Procedures for Investigating Officers and Boards of Officers*, dated October 2, 2006
- TAB D** Appointment Memorandum for The IO.
- TAB E** ANAD Regulation 10-2 (Excerpt) – Mission and Function of Special Reaction Team
- TAB F** Declaration of Director of Emergency Services, ANAD dated September 6, 2011
- TAB G** Decision Paper, dated September 16, 2008, subject: Directorate of Emergency Services (DES) Reorganization
- TAB H** Memorandum dated September 16, 2008, subject: Request Reorganization of the Directorate of Emergency Services (DES)
- TAB I** Statement of Program Manager, OPMG, dated September 9, 2011
- TAB J** Memorandum of Agreement dated August 5, 2011, between Anniston Army Depot and Local 1945, American Federal of Government Employees, regarding uniform insignia of guards.
- TAB K** Declaration of Deputy Director of Emergency Services, ANAD with attachment-Guard and Police Officer Listing –Field Training Program training as of 03 March 11

TAB L L-1--Memorandum, Subject: Shoulder Sleeve Insignia and Badge for Department of the Army Security Guards, dated 4 June 2003

L-2--Memorandum, Subject: Shoulder Sleeve Insignia and Badge for Department of the Army Civilian Police, dated 10 December 2002

TAB M Witness Listing for Army Report – DI-10-1952

AR 15-6 Report of Investigation Exhibits:

Exhibit 1 DES, ANAD X4000 and X6000 Job Assignments 1 October 2009-14 May 2010

Exhibit 2 Army Regulation (AR) 190-58, *Personal Security*, 22 March 1999

Exhibit 3 Sworn Statement #15 (DA Form 2823): Director of Emergency Services, ANAD (GS-301-14; Director, DES, ANAD), 20 November 2010, 0930 hours

Exhibit 4 FM 3-19.11 *Military Police: Special Reaction Teams*; given the nature of the publication, only the cover page is provided for purposes of this report. The following restricted note is on the cover page of the subject FM 3-19.11: "*NOTE: THE DISTRIBUTION OF THIS PUBLICATION IS RESTRICTED TO U.S. GOVERNMENT LAW-ENFORCEMENT ACTIVITIES AND ARMY SPECIAL OPERATIONS FORCES ONLY.*"

Exhibit 5 Sworn Statement #8 (DA Form 2823): ANAD Supervisory Security Guard, SRT Leader (GS-0085-08; DA Guard Police Officer and SRT leader, DES, ANAD), 18 November 2010, 1445 hours

Exhibit 6 FM 3-19.11 *Military Police: Special Reaction Teams*, Appendix B, SRT Equipment and Weapons; given the nature of the publication, only the cover page is provided for purposes of this report. The following restricted note is on the cover page of the subject FM 3-19.11: "*NOTE: THE DISTRIBUTION OF THIS PUBLICATION IS RESTRICTED TO U.S. GOVERNMENT LAW-ENFORCEMENT ACTIVITIES AND ARMY SPECIAL OPERATIONS FORCES ONLY.*"

Exhibit 7 U.S. Office of Personnel Management (OPM) Grade Evaluation for Police and Security Guard Positions in Series GS-0083/GS-0085, TS-87, April 1988 and U.S. Office of Personnel Management, Digest of Significant Decisions and Opinions, NO.8, April 1986

Exhibit 8 Army Regulation (AR) 190-56, *The Army Civilian Police and Security Guard Program*, 27 September 2006

Exhibit 9 Decision Brief on DES Proposed Reorganization, 2 September 2008

Exhibit 10 Office of the Commander, ANAD Memorandum, SUBJECT: No Subject

Letter to AFGE Union Local 1945 on Implementation of new AR 190-56, 27 May 2008

- Exhibit 11 E-mail from DES, ANAD, Deputy Director of Emergency Services, ANAD SUBJ: FW: Security Guards and Police Officers, 5 January 2011
- Exhibit 12 DES, ANAD Line and Block and Organizational Chart
- Exhibit 13 Army Regulations (AR) 190-56, *The Army Civilian Police and Security Guard Program*, 15 October 2009.
- Exhibit 14 Digest of Significant Classification Decisions & Opinions, No 8., April 1986, Intended Use of Police Series, GS-0083, vs. Guard Series, GS-0085
- Exhibit 15 PD: AH148493, Security Guard, GS-0085-06, 7 April 2003
- Exhibit 16 PD: AH148494, Security Guard, GS-0085-06, 7 April 2003
- Exhibit 17 PD: AH146464, Security Guard, GS-0085-06, 1 May 2003
- Exhibit 18 PD: AH143988, Security Guard (Desk Control Officer), as-0085-07, 7 April 2003
- Exhibit 19 PD: AH143983, Security Guard, GS-0085-07 (Special Reaction Team), 7 April 2003
- Exhibit 20 PD: AH146458, Lead Security Guard, GS-0085-08, 1 May 2003
- Exhibit 21 PD: AH146460, Supervisory Security Guard, GS-0085-10, 1 May 2003
- Exhibit 22 PD: AH146446, Supervisory Security Guard, GS-0085-12, 5 May 2003
- Exhibit 23 PD: AH298548, Supervisory Security Guard, GS-0085-08/YN-0085-01, 13 November 2008
- Exhibit 24 PD: AH324166, Supervisory Security Guard (SRT), GS-0085-8/YN-0085-01, 7 July 2009
- Exhibit 25 PD: AH262165, Police Officer GS-0083-06, 20 September 2007
- Exhibit 26 PD: AH324185, Detective, GS-0083-07, 7 July 2009
- Exhibit 27 PD: AH353302 (Replaced: AH298646), Police Officer (Field Training), GS-0083-07, 19 July 2010
- Exhibit 28a PD: AH334817, Police Officer (SRT), GS-0083-07, 21 January 2010
- Exhibit 28b PD: AH334490, Police Officer (Desk Control Officer (DCO)), GS-0083-07, 1 February 2010
- Exhibit 29 PowerPoint: DES Town Hall Meeting, 26 July 2010

- Exhibit 30 Survey: Questions for Police and Guards at Anniston Army Depot as of 14 October 2010
- Exhibit 31 Police/Guard/SRT Functions: PowerPoint Slides: DES, 2010-10-21 Special Functions and DES Police/Guard Position Manning, 12 October 2010
- Exhibit 32 DES Ticket Count for 15-6 (1408 and 1805 Tickets): PowerPoint Slides
- Exhibit 33 15-6 Blotter Information: DES 20101-10-20 DES Blotter Activity (2).pptx.
- Exhibit 34 E-mails and Survey on Handcuffing Incidents
- Exhibit 35 Sworn Statement #2 (DA Form 2823): ANAD Guard 1 and Training Officer (GS-0085-08, DA Guard and Training Officer, DES, ANAD), 17 November 2010, 1030 hours
- Exhibit 36 Sworn Statement #3 (DA Form 2823): Deputy Director of Emergency Services, ANAD (GS-301-13; Deputy Director, Directorate of Emergency Services (DES), ANAD) 17 November 2010, 1330 hours
- Exhibit 37 Sworn Statement #6 (DA Form 2823): ANAD Police Officer 1 (GS-0083-06; DA Police Officer, DES, ANAD), 18 November 2010, 0815 hours
- Exhibit 38 Sworn Statement #7 (DA Form 2823): ANAD Former DES Guard and Training Officer (GS-0085-08/GS 1712-12; DA Guard and DES Training Officer, ANAD), 18 November 2010, 1000 hours
- Exhibit 39 Sworn Statement #10 (DA Form 2823): ANAD Guard 2 (GS-0085-06; DA Guard, DES, ANAD), 18 November 2010, 1930 hours
- Exhibit 40 Sworn Statement #12 (DA Form 2823): ANAD Police Officer 2 (GS-0083-06; DA Police, DES, ANAD), 19 November 2010, 1015 hours
- Exhibit 41 Sworn Statement #13 (DA Form 2823): ANAD Police Officer 3 (GS-0083-06; DA Police and Union Steward, DES, ANAD); 19 November 2010, 1300 hours
- Exhibit 42 TAAN-ES Memorandum, Subject: Appointment of Field Training Officers, 6 July 2010
- Exhibit 43 ST 19-083, *Department of the Army Civilian Police Field Training Manual*, 17 June 2009; given the nature of the publication, only the cover page is provided for purposes of this report. The following restricted note is on the cover page of the subject: "*NOTE: THE DISTRIBUTION OF THIS PUBLICATION IS RESTRICTED TO U.S. GOVERNMENT AGENCIES ONLY TO PROTECT TECHNICAL OR OPERATIONS INFORMATION FROM AUTOMATIC DISSEMINATION UNDER THE INTERNATIONAL EXCHANGE PROGRAM OR BY OTHER MEANS.*"
- Exhibit 44 Directorate of Emergency Services Training and Development Plan, Security and Fire, FY 2009
- Exhibit 45 Directorate of Emergency Services Training and Development Plan, Security and

Fire, FY 2010

Exhibit 46 Analysis of ANAD Local Training, Police Academy Subjects, and ANAD *PTP* Program, 15 April 2011

Exhibit 47 Army Regulation (AR) 190-30, *Military Police Investigations*, 1 November 2005

Exhibit 48 Army Regulation (AR) 670-10, *Furnishing Uniforms or Paying Uniform Allowances to Civilian Employees*, 1 July 1980

Exhibit 49 Email Response to SRT Questions for 15-6 Investigation, 28 February 2011

Exhibit 50 Sworn Statement #4 (DA Form 2823): ANAD Police Officer 4 (GS-0083-06; DA Police Officer, DES, ANAD), 17 November 2010, 1645 hours

Exhibit 51 Sworn Statement #5 (DA Form 2823): ANAD Police Officer 5 (GS-0083-06; DA Police Officer, DES, ANAD), 17 November 2010, 2030 hours

Exhibit 52 Sworn Statement #16 (DA Form 2823): ANAD Police Officer 6 (GS-0083-06; DA Police, DES, ANAD), 20 November 2010, 1015 hours

Exhibit 53 E-mail on Miscellaneous Questions to OPMG, HQDA



SECRETARY OF THE ARMY
WASHINGTON

MAR 18 2011

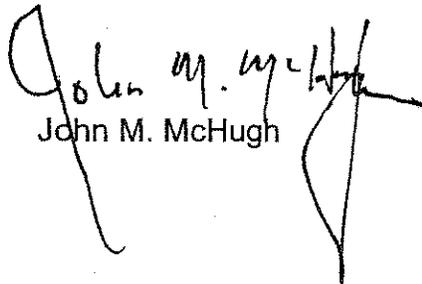
MEMORANDUM FOR ASSISTANT SECRETARY OF THE ARMY
(MANPOWER AND RESERVE AFFAIRS)

SUBJECT: Delegation of Certain Authority Under Title 5, United States Code,
Section 1213

In accordance with Title 10, United States Code, Section 3013(f), I hereby delegate to you certain authority conferred upon me as the head of the Department of the Army by Title 5, United States Code, Section 1213. Specifically, you are authorized to review, sign and submit written reports setting forth the findings of investigations into information and any related matters transmitted to me by The Special Counsel in accordance with Title 5, United States Code, Sections 1213. This authority may not be further delegated.

Although not a limitation on your authority to act in my behalf, in those cases in which your proposed decisions or actions represent a change in precedent or policy; are of significant White House, Congressional, Department or public interest; or have been, or should be, of interest or concern to me, for any reason, you will brief me prior to decision or action, unless precluded by the exigencies of the situation.

This delegation shall remain in effect for three years from the date of its execution, unless earlier rescinded in writing by me.


John M. McHugh

CF:
Office of the Army General Counsel

TABA



DEPARTMENT OF THE ARMY
UNITED STATES ARMY TACOM LIFE CYCLE MANAGEMENT COMMAND
6501 EAST 11 MILE ROAD
WARREN, MICHIGAN 48397-5000

REPLY TO
ATTENTION OF:

S: 17 September 2010

AMSTA-CG

MEMORANDUM FOR [REDACTED] US Army TACOM LCMC, 6501 E. Eleven Mile Road, Warren, MI 48397-5000

SUBJECT: Appointment of AR 15-6 Investigating Officer

1. References:

a. Secretary of the Army memorandum, July 16, 2010, subject: Whistleblower Investigation – Anniston Army Depot, Anniston, Alabama – (Office of Special Counsel File Number DI-10-1952). (Encl 1)

b. US Office of Special Counsel Letter, June 29, 2010, subject: OSC File No. DI-10-1952. (Encl 2)

2. You are hereby appointed an investigating officer pursuant to AR 15-6 to conduct an informal investigation to make findings and recommendations concerning allegations that actions taken by employees at the Department of the Army, Anniston Army Depot, (ANAD), constitute a violation of a law, rule, or regulation with respect to the use of Security Guards to perform the duties of Police Officers at the Anniston Army Depot, the lack of a Field Training Program for newly hired Police Officers, the lack of adequate training for newly hired Police Officers, and the wearing of police uniforms by Security Guards. The purpose of your investigation is to determine the validity of the whistleblower's allegations and make findings concerning whether any wrongdoing occurred, and if so, by whom, and whether adequate policies and procedures are in place to preclude any recurrence of any improprieties, irregularities, or misconduct disclosed during your inquiry.

3. You are directed to make findings and recommendations on the issues and questions listed below in paragraph 4, concerning the use, training and outfitting of Security Guards and Police Officers at Anniston Army Depot. In conducting your investigation, you will consider the evidence of witnesses, the materials contained in the enclosed references and any other materials that you consider relevant.

4. At a minimum, your investigation will address the following issues and questions:

a. What are the requirements under AR 190-56 for the assignment and training of Security Guards and Police Officers?

b. How many Security Guards are currently employed at ANAD? How many Police Officers are currently employed at ANAD? Provide a breakdown of these positions (including pay grade,

TAB B

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SUBJECT: Appointment of AR 15-6 Investigating Officer

current salary), where they are located, and which positions are designated as supervisors.

c. Review the job descriptions for all Security Guards and Police Officers at ANAD, and determine the job duties for each position. Additionally, determine whether the job descriptions accurately reflect duties and responsibilities that are in compliance with the relevant Office of Personnel Management and regulatory requirements.

d. What duties do the Security Guards at ANAD perform? What duties do the Police Officers at ANAD perform? Be sure to investigate what duties these employees truly perform, not just what their job descriptions provide. Have these been the duties for the Police Officers and Security Guards for the past five years, and if not, describe how they have changed during the past five years.

e. Do any Security Guards at ANAD perform any law enforcement work? Has a Security Guard ever performed any law enforcement work? If so, provide details on each event, including the reason why this was done. Include any time a Security Guard made an arrest, placed an individual into handcuffs, or transported a suspect to the Depot's Command Investigation Division (CID) office or any other location.

f. Do any Police Officers perform security or protective services (including guarding buildings and property and controlling access to the Depot)? Has a Police Officer ever performed any security or protective services? If so, provide details on each event, including the reason why this was done.

g. What is the Special Reaction Team (SRT)? What is the statutory or regulatory basis for its establishment? Who is a member of this team (include names, rank, pay grade and supervisor)? What duties does the SRT perform? Who supervises the SRT? Include any other information to explain the function of the SRT.

h. Is there a requirement (statutory, regulatory, policy, ANAD regulation, etc.) for a Field Training Program (FTP)? Does ANAD have a Field Training Program for newly hired Police Officers? If not, why not? If so, describe the program, who it applies to, what it includes, what constitutes completion of the program, how completion is documented, etc. Check those records and determine if all Police Officers have completed FTP. Are there any Police Officers that have not completed FTP? Has any ANAD Police Officer performed duties before completing the FTP?

i. If there is no formal FTP for Police Officers at ANAD, what training is provided to newly hired Police Officers? Explain in detail what the training is, when it is given to the Police

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Officers, how long the training lasts, what constitutes completion of training, and how is completion documented.

j. What uniform do the Security Guards at ANAD wear? Are all Security Guards required to wear this uniform? Who or what determined that this uniform would be worn by Security Guards at ANAD (i.e., is there a regulation or policy that sets out the uniform)? Does the uniform for Security Guards include badges, cap insignia and shoulder insignia? If so, describe in detail. Do Security Guards wear hats as part of their uniform? If so, describe the hat, to include any words on it. Do Security Guards wear hats, badges and shoulder insignia that have "Police" on them? If so, why? Have Security Guards EVER worn hats, badges, and shoulder insignia that have "Police" on them? If so, describe when, why and if they still do. Is there any time in which a Security Guard who is on duty does not wear this uniform? Have there been any times in which a Security Guard wore a Police Officer uniform?

k. What uniform do the Police Officers at ANAD wear? Are all Police Officers required to wear this uniform? Who or what determined that this uniform would be worn by Police Officers at ANAD (i.e., is there a regulation or policy that sets out the uniform)? Is there any time in which a Police Officer who is on duty does not wear this uniform? Have there been any times in which a Police Officer wore a Security Guard uniform?

l. Investigate and gather any other relevant information concerning these allegations, whether specified above or not, to include any additional questions and areas of concern that are identified during the course of the investigation.

5. In your investigation you are not limited to the issues and questions listed above. You will investigate any relevant and related matters that you may discover that fall under the areas for investigation described above. You are advised not to investigate matters that do not fall within the areas for investigation described above. If you are in doubt about the relevance of a matter, you will consult your legal advisor, [REDACTED] Red River Army Depot, Legal Office, Building 15, Texarkana, TX, 75507-5000, 903-334-4553, email: [REDACTED]. You will consult with your legal advisor prior to beginning your investigation.

6. In conducting your investigation, you will use the informal procedures specified in AR 15-6, chapter 4. Upon completing your investigation, make appropriate specific findings and recommendations. Reference your analysis and findings to the specific evidence upon which you rely. Recommend remedial measures, to include any corrective and personnel or disciplinary actions you deem appropriate, if any. You may also recommend any necessary management actions to preclude a recurrence of any founded misconduct or identified systemic problems. If certain evidence conflicts with other evidence, state what you believe and why. If any question

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asked solicits an answer that requires a follow up question and answer, ensure that you have pursued those questions in order to further develop the record evidence.

7. All witness statements will be written (typed or block printed) and sworn. You will interview all witnesses in person, if practical. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator. If, in the course of your investigation, you come to suspect that certain people may have committed criminal conduct, you must advise them of their rights under Article 31, UCMJ or the Fifth Amendment of the United States Constitution, as appropriate. In such a case, waivers should be documented on DA Form 3881 (Rights Warning Procedure/Waiver Certificate). You will provide each witness with a Privacy Act statement before soliciting any personal information.

8. In your investigation, you will make such findings as are relevant and supported by the facts. You will also make such recommendations as are appropriate and are supported by the facts. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

9. This investigation has been directed by the Office of Special Counsel (OSC) pursuant to a whistleblower complaint. Pursuant to OSC policy, you normally must interview the whistleblower. However, in this case, the whistleblower requested to remain anonymous. If at any time during the investigation, an individual comes forward and advises you that they are the whistleblower, please forward this information to your legal advisor [REDACTED] or his supervisor, [REDACTED]. In turn, this information will be conveyed to the Army Office of the General Counsel for further guidance.

10. You should contact those witnesses you consider relevant during the course of your investigation. You are to thoroughly document all witness interviews in writing, preferably on DA Form 2823 (Sworn Statement), and have witnesses certify their statements when final. In addition, you must provide all persons interviewed with a Privacy Act statement before you solicit any information.

11. You will interview all witnesses in person, if practicable. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator.

12. If, in the course of your investigation, you suspect wrongdoing or neglect on the part of a person senior to you, inform me so that a new investigating officer may be appointed. As an Investigating Officer, you may not, absent military exigency, investigate someone senior to you.

13. During the course of your investigation, you may find it necessary to interview civilian

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employees. Generally speaking, civilian employees are required to cooperate with official investigations. There are some exceptions:

- a. Civilian employees who are members of a bargaining unit have a right to union representation at any interview with management if they reasonably believe that the interview could result in a disciplinary action against them. You must observe appropriate union notice requirements prior to interviewing any bargaining unit employees. Should a bargaining unit employee seek to invoke this right, you have no obligation to arrange representation for the employee, only an obligation to permit the employee the opportunity to secure representation. Once you have scheduled any bargaining unit employees for an interview, contact your legal advisor for guidance in notifying the appropriate union representative. The Civilian Personnel Office can tell you whether any particular employee you wish to interview is a member of the bargaining unit.
- b. Civilian employees who reasonably believe that information they provide during an official investigation may be used against them in a criminal prosecution cannot be required to cooperate without a grant of immunity. Should any civilian employee you attempt to interview decline to cooperate for any reason, suspend the interview and seek guidance from your legal advisor on how to proceed.
- c. If the matter you are investigating involves a grievance, a personnel practice or policy or other conditions of employment, you may be required to notify the union of any interviews you have scheduled with bargaining unit employees and afford the union the opportunity to be present. Check with your legal advisor to determine if this rule applies to your case and how to proceed if it does.
- d. You have no authority to compel the cooperation of contractor employees. If you find it necessary to interview contractor employees, you must contact the contracting officer's representative for the applicable contract to request cooperation.

14. You will submit your completed investigation on a DA Form 1574 with a table of contents and enclosures. The enclosures will include all documentary materials considered by you. Make two copies of your report of investigation (ROI). Provide an index and clearly tab the original ROI, to include your findings and recommendations on DA Form 1574, with appropriate enclosures and forward the entire package to me, through the TACOM LCMC Red River Army Depot Legal Office, ATTN: Legal Office, TARR-L, 100 Main Drive, Bldg 15, Texarkana, TX 75507-5000. Before beginning your investigation, you will receive a legal briefing from the TACOM LCMC Red River Army Depot Legal office. Contact your legal advisor, [REDACTED] (903) 334-4553, or his supervisor [REDACTED] at (903) 334-3258, to schedule the briefing. You may consult the legal advisor at any time during the investigation and you will consult the

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legal advisor before warning any witness as a suspect and before putting your report in final form. Additionally, along with your report of investigation, you will submit a draft final agency response describing any actions taken to address the allegations.

15. This investigation takes priority over all normal duties, TDY, and leave.

16. You are directed to begin your investigation as soon as practicable.

Encls
as



Major General, U.S. Army
Commanding

Army Regulation 15-6

Boards, Commissions, and Committees

Procedures for Investigating Officers and Boards of Officers

Headquarters
Department of the Army
Washington, DC
2 October 2006

UNCLASSIFIED



SUMMARY of CHANGE

AR 15-6

Procedures for Investigating Officers and Boards of Officers

This rapid action revision, dated 2 October 2006--

- o Clarifies the distinction between levels of appointing authorities for hostile fire death investigations and friendly fire death investigations (para 2-1a(3)).
- o Permits the general court-martial convening authority to delegate appointing authority to the special court-martial convening authority in hostile fire death investigations (para 2-1a(3)).

This regulation, dated 30 September 1996--

- o Is a complete revision of the earlier regulation dated 24 August 1977.
- o Updates policies and procedures concerning the procedures for investigating officers and boards of officers.

Boards, Commissions, and Committees

Procedures for Investigating Officers and Boards of Officers

By Order of the Secretary of the Army:

PETER J. SCHOOMAKER
General, United States Army
Chief of Staff

Official:


JOYCE E. MORROW
Administrative Assistant to the
Secretary of the Army

History. This publication is a rapid action revision. The portions affected by this rapid action revision are listed in the summary of change.

Summary. This regulation establishes procedures for investigations and boards of officers not specifically authorized by any other directive.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated. During mobilization,

chapters and policies contained in this regulation may be modified by the proponent.

Proponent and exception authority.

The proponent of this regulation is The Judge Advocate General. The Judge Advocate General has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The Judge Advocate General may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through higher headquarters to the policy proponent. Refer to AR 25-30 for specific guidance.

Army management control process.

This regulation does not contain management control provisions.

Supplementation. Supplementation of

this regulation and establishment of command and local forms are prohibited without prior approval from HQDA (DAJA-AL), Washington, DC 20310-2212.

Suggested improvements. The proponent agency of this regulation is the Office of The Judge Advocate General. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (DAJA-AL), Washington, DC 20310-2212.

Distribution. This publication is available in electronic media only and is intended for command level A for the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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Chapter 1 Introduction

1-1. Purpose

This regulation establishes procedures for investigations and boards of officers not specifically authorized by any other directive. This regulation or any part of it may be made applicable to investigations or boards that are authorized by another directive, but only by specific provision in that directive or in the memorandum of appointment. In case of a conflict between the provisions of this regulation, when made applicable, and the provisions of the specific directive authorizing the investigation or board, the latter will govern. Even when not specifically made applicable, this regulation may be used as a general guide for investigations or boards authorized by another directive, but in that case its provisions are not mandatory.

1-2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1-3. Explanation of abbreviations and terms

Abbreviations and special terms used in this regulation are explained in the glossary.

1-4. Responsibilities

Responsibilities are listed in chapter 2.

1-5. Types of investigations and boards

a. General. An administrative fact-finding procedure under this regulation may be designated an investigation or a board of officers. The proceedings may be informal (chap 4) or formal (chap 5). Proceedings that involve a single investigating officer using informal procedures are designated investigations. Proceedings that involve more than one investigating officer using formal or informal procedures or a single investigating officer using formal procedures are designated a board of officers.

b. Selection of procedure.

(1) In determining whether to use informal or formal procedures, the appointing authority will consider these among other factors:

(a) Purpose of the inquiry.

(b) Seriousness of the subject matter.

(c) Complexity of issues involved.

(d) Need for documentation.

(e) Desirability of providing a comprehensive hearing for persons whose conduct or performance of duty is being investigated. (See paras 1-8, 4-3, and 5-4a.)

(2) Regardless of the purpose of the investigation, even if it is to inquire into the conduct or performance of a particular individual, formal procedures are not mandatory unless required by other applicable regulations or directed by higher authority.

(3) Unless formal procedures are expressly required, either by the directive authorizing the board or by the memorandum of appointment, all cases to which this regulation applies will use informal procedures.

(4) In determining which procedures to use, the appointing authority will seek the advice of the servicing judge advocate (JA).

(5) Before opening an investigation involving allegations against general officers or senior executive service civilians, the requirements of Army Regulation (AR) 20-1, subparagraph 8-3i(3) must be met.

c. Preliminary investigations. Even when formal procedures are contemplated, a preliminary informal investigation may be advisable to ascertain the magnitude of the problem, to identify and interview witnesses, and to summarize or record their statements. The formal board may then draw upon the results of the preliminary investigation.

d. Concurrent investigations. An administrative fact finding procedure under this regulation, whether designated as an investigation or a board of officers, may be conducted before, concurrently with, or after an investigation into the same or related matters by another command or agency, consistent with subparagraph *b(5)* above. Appointing authorities, investigating officers, and boards of officers will ensure that procedures under this regulation do not hinder or interfere with a concurrent investigation directed by higher headquarters, a counterintelligence investigation or an investigation being conducted by a criminal investigative. In cases of concurrent or subsequent investigations, coordinations, coordination with the other command or agency will be made to avoid duplication of investigative effort, where possible.

1-6. Function of investigations and boards

The primary function of any investigation or board of officers is to ascertain facts and to report them to the appointing authority. It is the duty of the investigating officer or board 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.

1-7. Interested persons

Appointing authorities have a right to use investigations and boards to obtain information necessary or useful in carrying out their official responsibilities. The fact that an individual may have an interest in the matter under investigation or that the information may reflect adversely on that individual does not require that the proceedings constitute a hearing for that individual.

1-8. Respondents

In formal investigations the appointing authority may designate one or more persons as respondents in the investigation. Such a designation has significant procedural implications. (See chap 5, sec II, in general, and para 5-4a, in particular.) Respondents may not be designated in informal investigations.

1-9. Use of results of investigations in adverse administrative actions

a. This regulation does not require that an investigation be conducted before adverse administrative action, such as relief for cause, can be taken against an individual. However, if an investigation is conducted using the procedures of this regulation, the information obtained, including findings and recommendations, may be used in any administrative action against an individual, whether or not that individual was designated a respondent, and whether formal or informal procedures were used, subject to the limitations of *b* and *c* below.

b. The Office of Personnel Management and Army Regulations establish rules for adverse actions against Army civilian personnel and establish the procedural safeguards. In every case involving contemplated formal disciplinary action against civilian employees, the servicing civilian personnel office and labor counselor will be consulted before the employee is notified of the contemplated adverse action.

c. Except as provided in *d* below, when adverse administrative action is contemplated against an individual (other than a civilian employee, see *b* above), including an individual designated as a respondent, based upon information obtained as a result of an investigation or board conducted pursuant to this regulation, the appropriate military authority must observe the following minimum safeguards before taking final action against the individual:

(1) Notify the person in writing of the proposed adverse action and provide a copy, if not previously provided, of that part of the findings and recommendations of the investigation or board and the supporting evidence on which the proposed adverse action is based.

(2) Give the person a reasonable opportunity to reply in writing and to submit relevant rebuttal material.

(3) Review and evaluate the person's response.

d. There is no requirement to refer the investigation to the individual if the adverse action contemplated is prescribed in regulations or other directives that provide procedural safeguards, such as notice to the individual and opportunity to respond. For example, there is no requirement to refer an investigation conducted under this regulation to a soldier prior to giving the soldier an adverse evaluation report based upon the investigation because the regulations governing evaluation reports provide the necessary procedural safeguards.

e. When the investigation or board is conducted pursuant to this regulation but the contemplated administrative action is prescribed by a different regulation or directive with more stringent procedural safeguards than those in *c* above, the more stringent safeguards must be observed.

Chapter 2 Responsibilities of the Appointing Authority

2-1. Appointment

a. Authority to appoint. The following people may appoint investigations or boards to inquire into matters within their areas of responsibility.

(1) Except as noted in subparagraph 2-1a(3) below, the following individuals may appoint a formal investigation or board (chap 5) after consultation with the servicing judge advocate (JA) or legal advisor (LA):

(a) Any general court-martial (GCM) or special court-martial convening authority, including those who exercise that authority for administrative purposes only.

(b) Any general officer.

(c) Any commander or principal staff officer in the grade of colonel or above at the installation, activity, or unit level.

(d) Any State adjutant general.

(e) A Department of the Army civilian supervisor permanently assigned to a position graded as a general schedule

(GS)/general management, grade 14 or above and who is assigned as the head of an Army agency or activity or as a division or department chief.

(2) Except as noted in subparagraph 2-1a(3), the following individuals may appoint an informal investigation or board (chap 4):

(a) Any officer authorized to appoint a formal board.

(b) A commander at any level.

(c) A principal staff officer or supervisor in the grade of major or above.

(3) Only a general court-martial convening authority may appoint a formal investigation or board (chap 5) or an informal investigation or board (chap 4) for incidents resulting in property damage of \$1,000,000 or more, the loss or destruction of an Army aircraft or missile, an injury and/or illness resulting in, or likely to result in, permanent total disability, the death of one or more persons, and the death of one or more persons by fratricide/friendly fire.

(a) For investigations of a death or deaths involving a deployed force(s), from what is believed to be hostile fire, the general court-martial convening authority may delegate, in writing, appointing/approval authority to a subordinate commander exercising special court-martial convening authority. This authority may not be further delegated.

(b) If evidence is discovered during a hostile fire investigation that indicates that the death(s) may have been the result of fratricide/friendly fire, the investigating officer will immediately suspend the investigation and inform the appointing authority and legal advisor. At this time the general court-martial convening authority will appoint a new investigation into the fratricide/friendly fire incident. Any evidence from the hostile fire investigation may be provided to the investigating officer or board conducting the fratricide/friendly fire investigation.

(4) Appointing authorities who are general officers may delegate the selection of board members to members of their staffs.

(5) When more than one appointing authority has an interest in the matter requiring investigation, a single investigation or board will be conducted whenever practicable. In case of doubt or disagreement as to who will appoint the investigation or board, the first common superior of all organizations concerned will resolve the issue.

(6) Appointing authorities may request, through channels, that persons from outside their organizations serve on boards or conduct investigations under their jurisdictions.

b. Method of appointment. Informal investigations and boards may be appointed orally or in writing. Formal boards will be appointed in writing but, when necessary, may be appointed orally and later confirmed in writing. Any written appointment will be in the form of a memorandum of appointment. (See figs 2-1 through 2-5.) Whether oral or written, the appointment will specify clearly the purpose and scope of the investigation or board and the nature of the findings and recommendations required. If the appointment is made under a specific directive, that directive will be cited. If the procedures of this regulation are intended to apply, the appointment will cite this regulation and, in the case of a board, specify whether it is to be informal or formal. (Refer to chaps 4 and 5.) Any special instructions (for example, requirement for verbatim record or designation of respondents in formal investigations) will be included.

c. Who may be appointed. Investigating officers and board members shall be those persons who, in the opinion of the appointing authority, are best qualified for the duty by reason of their education, training, experience, length of service and temperament.

(1) Except as provided in paragraph 5-1e, only commissioned officers, warrant officers, or Department of the Army civilian employees permanently assigned to a position graded as a GS-13 or above will be appointed as investigating officers or voting members of boards.

(2) Recorders, legal advisors, and persons with special technical knowledge may be appointed to formal boards in a nonvoting capacity. (See para 5-1.)

(3) An investigating officer or voting member of a board will be senior to any person whose conduct or performance of duty may be investigated, or against whom adverse findings or recommendations that may be made, except when the appointing authority determines that it is impracticable because of military exigencies. Inconvenience in obtaining an investigating officer or the unavailability of senior persons within the appointing authority's organization would not normally be considered military exigencies.

(a) The investigating officer or board president will, subject to the approval of the appointing authority, determine the relative seniority of military and civilian personnel. Actual superior/subordinate relationships, relative duty requirements, and other sources may be used as guidance. Except where a material adverse effect on an individual's substantial rights results, the appointing authority's determination of seniority shall be final (see para 2-3c).

(b) An investigating officer or voting member of a board who, during the proceedings, discovers that the completion thereof requires examining the conduct or performance of duty of, or may result in findings or recommendations adverse to, a person senior to him or her will report this fact to the board president or the appointing authority. The appointing authority will then appoint another person, senior to the person affected, who will either replace the investigating officer or member, or conduct a separate inquiry into the matters pertaining to that person. Where necessary, the new investigating officer or board may be furnished any evidence properly considered by the previous investigating officer or board.

(c) If the appointing authority determines that military exigencies make these alternatives impracticable, the appointing authority may direct the investigating officer or member to continue. In formal proceedings, this direction will be

written and will be an enclosure to the report of proceedings. If the appointing authority does not become aware of the problem until the results of the investigation are presented for review and action, the case will be returned for new or supplemental investigation only where specific prejudice is found to exist.

(4) Specific regulations may require that investigating officers or board members be military officers, be professionally certified, or possess an appropriate security clearance.

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: *(President)*

SUBJECT: Appointment of Board of Officers

1. A board of officers is hereby appointed pursuant to AR 735-5 and AR 15-6 to investigate the circumstances connected with the loss, damage, or destruction of the property listed on reports of survey referred to the board and to determine responsibility for the loss, damage, or destruction of such property.

2. The following members are appointed to the board:

MAJ Robert A. Jones, HHC, 3d Bn, 1st Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member (President)

CPT Paul R. Wisniewski, Co A, 2d Bn, 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT David B. Braun, Co C, 1st Bn, 3d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Member

CPT John C. Solomon, HHC, 2d S & T Bn, DISCOM 20th Inf Div, Ft Blank, WD 88888 Alternate member (see AR 15-6, para 5-2c)

1LT Steven T. Jefferson, Co B, 2d Bn, 2d Inf Bde, 20th Inf Div, Ft Blank, WD 88888 Recorder (without vote)

3. The board will meet at the call of the President. It will use the procedures set forth in AR 735-5 and AR 15-6 applicable to formal boards with respondents. Respondents will be referred to the board by separate correspondence.

4. Reports of proceedings will be summarized (the findings and recommendations will be verbatim) and submitted to this headquarters, ATTN: ABCD-AG-PA. Reports will be submitted within 3 working days of the conclusion of each case. The Adjutant General's office will furnish necessary administrative support for the board. Legal advice will be obtained, as needed, from the Staff Judge Advocate's office.

5. The board will serve until further notice.

(Authority Line)

(Signature block)

CF: *(Provide copy to board personnel)*

Figure 2-1. Sample memorandum for appointment of a standing board of officers using formal procedures

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: (President of standing board)

SUBJECT: Referral of Respondent

1. Reference memorandum, this headquarters, dated (day-month-year), subject: Appointment of Board of Officers.
2. (Enter rank, name, SSN, and unit) is hereby designated a respondent before the board appointed by the referenced memorandum. The board will consider whether (enter name of respondent) should be held pecuniarily liable for the loss, damage, or destruction of the property listed on the attached report of survey. The correspondence and supporting documentation recommending referral to a board of officers are enclosed.
3. (Enter rank, name, branch, and unit) is designated counsel for (enter name of respondent).
4. For the consideration of this case only, (enter rank, name, and unit) is designated a voting member of the board, vice (enter rank, name, and unit).

(Authority line)

Encl

(Signature block)

CF: (Provide copy to board personnel, counsel, and respondent)

Figure 2-2. Sample memorandum for referral of a respondent to a standing board

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: (Officer concerned)

SUBJECT: Appointment as a Board of Officers to Investigate Alleged Corruption and Mismanagement

1. You are hereby appointed a board of officers, pursuant to AR 15-6, to investigate allegations of (enter subject matter to be investigated, such as corruption and mismanagement in the office of the Fort Blank Provost Marshal). The scope of your investigation will include (mention specific matters to be investigated, such as whether military police personnel are properly processing traffic tickets, whether supervisory personnel are receiving money or other personal favors from subordinate personnel in return for tolerating the improper processing of traffic tickets, and so forth). Enclosed herewith is a report of proceedings of an earlier informal investigation into alleged improper processing of traffic tickets that was discontinued when it appeared that supervisory personnel may have been involved.
2. As the board, you will use formal procedures under AR 15-6. (Enter duty positions, ranks, and names) are designated respondents. Additional respondents may be designated based on your recommendations during the course of the investigation. Counsel for each respondent, if requested, will be designated by subsequent correspondence.
3. (Enter rank, name, branch, and unit) will serve as legal advisor to you, the board. (Enter rank, name, duty position, and unit), with the concurrence of (his/her) commander, will serve as an advisory member of the board. The office of the adjutant general, this headquarters, will provide necessary administrative support. The Fort Blank Resident Office, Criminal Investigation Division Command (CIDC), will provide technical support, including preserving physical evidence, if needed.
4. Prepare the report of proceedings on DA Form 1574 and submit it to me within 60 days.

(Signature of appointing authority)

CF: (Provide copy to all parties concerned)

Figure 2-3. Sample memorandum for appointment of a single officer as a board of officers, with legal advisor and advisory member, using formal procedures

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: (Officer concerned)

SUBJECT: Appointment of Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15-6 and AR 210-7, paragraph 4-3, to conduct an informal investigation into complaints that sales representatives of the Fly-By-Night Sales Company have been conducting door-to-door solicitation in the River Bend family housing area in violation of AR 210-7. Details pertaining to the reported violations are in the enclosed file prepared by the Commercial Solicitation Branch, Office of the Adjutant General, this headquarters (Encl).

2. In your investigation, all witness statements will be sworn. From the evidence, you will make findings whether the Fly-By-Night Sales Company has violated AR 210-7 and recommend whether to initiate a show cause hearing pursuant to AR 210-7, paragraph 4-5, and whether to temporarily suspend the company's or individual agents' solicitation privileges pending completion of the show cause hearing.

3. Submit your findings and recommendations in four copies on DA Form 1574 to this headquarters. ATTN: ABCD-AG, within 7 days.

(Authority line)

Encl

(Signature block)

Figure 2-4. Sample memorandum for appointment of an investigating officer under AR 15-6 and other directives

(Appropriate letterhead)

OFFICE SYMBOL DATE

MEMORANDUM FOR: (Officer concerned)

SUBJECT: Appointment as Investigating Officer

1. You are hereby appointed an investigating officer pursuant to AR 15-6 and AR 380-5, paragraph 10-8, to investigate the circumstances surrounding the discovery of a CONFIDENTIAL document in a trash can in the office of the 3d Battalion S-3 on 31 August 1987. A preliminary inquiry into the incident proved inconclusive (see enclosed report).

2. In your investigation, use informal procedures under AR 15-6. You will make findings as to whether security compromise has occurred, who was responsible for any security violation, and whether existing security procedures are adequate.

3. This incident has no known suspects at this time. If in the course of your investigation you come to suspect that certain people may be responsible for the security violation, you must advise them of their rights under the UCMJ, Article 31, or the Fifth Amendment, as appropriate. In addition, you must provide them a Privacy Act statement before you solicit any (further) personal information. You may obtain assistance with these legal matters from the office of the Staff Judge Advocate.

4. Submit your findings and recommendations on DA Form 1574 to the Brigade S-2 within 10 days.

(Authority line)

(Signature block)

Figure 2-5. Sample memorandum for appointment of an investigating officer in a case with potential Privacy Act implications

2-2. Administrative support

The appointing authority will arrange necessary facilities, clerical assistance, and other administrative support for investigating officers and boards of officers. If not required by another directive, a verbatim transcript of the proceedings may be authorized only by The Judge Advocate General (TJAG) or the GCM convening authority in his or her sole discretion. However, before authorization, the GCM convening authority will consult the staff judge advocate (SJA). A contract reporter may be employed only for a formal board and only if authorized by the specific directive under which the board is appointed. A contract reporter will not be employed if a military or Department of the Army

(DA) civilian employee reporter is reasonably available. The servicing JA will determine the availability of a military or DA civilian employee reporter.

2-3. Action of the appointing authority

a. Basis of decision. Unless otherwise provided by another directive, the appointing authority is neither bound nor limited by the findings or recommendations of an investigation or board. Therefore, the appointing authority may take action less favorable than that recommended with regard to a respondent or other individual, unless the specific directive under which the investigation or board is appointed provides otherwise. The appointing authority may consider any relevant information in making a decision to take adverse action against an individual, even information that was not considered at the investigation or board (see para 1-9c and d). In all investigations involving fratricide/friendly fire incidents (see AR 385-40), the appointing authority, after taking action on the investigation, will forward a copy of the completed investigation to the next higher Army headquarters for review.

b. Legal review. Other directives that authorize investigations or boards may require the appointing authority to refer the report of proceedings to the servicing JA for legal review. The appointing authority will also seek legal review of all cases involving serious or complex matters, such as where the incident being investigated has resulted in death or serious bodily injury, or where the findings and recommendations may result in adverse administrative action (see para 1-9), or will be relied upon in actions by higher headquarters. The JA's review will determine—

- (1) Whether the proceedings comply with legal requirements.
- (2) What effects any errors would have.
- (3) Whether sufficient evidence supports the findings of the investigation or board or those substituted or added by the appointing authority (see para 3-10b).
- (4) Whether the recommendations are consistent with the findings.

c. Effect of errors. Generally, procedural errors or irregularities in an investigation or board do not invalidate the proceeding or any action based on it.

(1) *Harmless errors.* Harmless errors are defects in the procedures or proceedings that do not have a material adverse effect on an individual's substantial rights. If the appointing authority notes a harmless error, he or she may still take final action on the investigation.

(2) *Appointing errors.* Where an investigation is convened or directed by an official without the authority to do so (see para 2-1a), the proceedings are a nullity, unless an official with the authority to appoint such an investigation or board subsequently ratifies the appointment. Where a formal board is convened by an official authorized to convene an informal investigation or board but not authorized to convene formal investigations, any action not requiring a formal investigation may be taken, consistent with paragraph 1-9 and this paragraph.

(3) *Substantial errors.*

(a) Substantial errors are those that have a material adverse effect on an individual's substantial rights. Examples are the failure to meet requirements as to composition of the board or denial of a respondent's right to counsel.

(b) When such errors can be corrected without substantial prejudice to the individual concerned, the appointing authority may return the case to the same investigating officer or board for corrective action. Individuals or respondents who are affected by such a return will be notified of the error, of the proposed correction, and of their rights to comment on both.

(c) If the error cannot be corrected, or cannot be corrected without substantial prejudice to the individual concerned, the appointing authority may not use the affected part of that investigation or board as the basis for adverse action against that person. However, evidence considered by the investigation or board may be used in connection with any action under the Uniform Code of Military Justice (UCMJ), civilian personnel regulations, AR 600-37, or any other directive that contains its own procedural safeguards.

(d) In case of an error that cannot be corrected otherwise, the appointing authority may set aside all findings and recommendations and refer the entire case to a new investigating officer or board composed entirely of new voting members. Alternatively, the appointing authority may take action on findings and recommendations not affected by the error, set aside the affected findings and recommendations, and refer the affected portion of the case to a new investigating officer or board. In either case, the new investigating officer or board may be furnished any evidence properly considered by the previous one. The new investigating officer or board may also consider additional evidence. If the directive under which a board is appointed provides that the appointing authority may not take less favorable action than the board recommends, the appointing authority's action is limited by the original recommendations even though the case subsequently is referred to a new board which recommends less favorable action.

(4) *Failure to object.* No error is substantial within the meaning of this paragraph if there is a failure to object or otherwise bring the error to the attention of the legal advisor or the president of the board at the appropriate point in the proceedings. Accordingly, errors described in (3) above may be treated as harmless if the respondent fails to point them out.

Chapter 3 General Guidance for Investigating Officers and Boards

Section I Conduct of the Investigation

3-1. Preliminary responsibilities

Before beginning an informal investigation, an investigating officer shall review all written materials provided by the appointing authority and consult with the servicing staff or command judge advocate to obtain appropriate legal guidance.

3-2. Oaths

a. Requirement. Unless required by the specific directive under which appointed, investigating officers or board members need not be sworn. Reporters, interpreters, and witnesses appearing before a formal board will be sworn. Witnesses in an informal investigation or board may be sworn at the discretion of the investigating officer or president. The memorandum of appointment may require the swearing of witnesses or board members.

b. Administering oaths. An investigating officer, recorder (or assistant recorder), or board member is authorized to administer oaths in the performance of such duties, under UCMJ, Art. 136 (for military personnel administering oaths) and Section 303, Title 5, United States Code (5 USC 303) (for civilian personnel administering oaths) (see fig 3-1 for the format for oaths).

3-3. Challenges

Neither an investigating officer nor any member of a board is subject to challenge, except in a formal board as provided in paragraph 5-7. However, any person who is aware of facts indicating a lack of impartiality or other qualification on the part of an investigating officer or board member will present the facts to the appointing authority.

3-4. Counsel

Only a respondent is entitled to be represented by counsel (see para 5-6). Other interested parties may obtain counsel, at no expense to the Government, who may attend but not participate in proceedings of the investigation or board which are open to the public. The proceedings will not be unduly interrupted to allow the person to consult with counsel. When a civilian employee is a member of an appropriate bargaining unit, the exclusive representative of the unit has the right to be present whenever the employee is a respondent or witness during the proceedings if requested by the employee and if the employee reasonably believes that the inquiry could lead to disciplinary action against him or her (see para 3-8).

3-5. Decisions

A board composed of more than one member arrives at findings and recommendations as provided in section II of this chapter. A formal board decides challenges by a respondent as provided in paragraph 5-7. The investigating officer or president decides administrative matters, such as time of sessions, uniform, and recess. The legal advisor or, if none, the investigating officer or president decides evidentiary and procedural matters, such as motions, acceptance of evidence, and continuances. The legal advisor's decisions are final. Unless a voting member objects to the president's decision on an evidentiary or procedural matter at the time of the decision, it too is final. If there is such an objection, a vote will be taken in closed session, and the president's decision may be reversed by a majority vote of the voting members present.

3-6. Presence of the public and recording of proceedings

a. The public. Proceedings of an investigation or board are normally open to the public only if there is a respondent. However, if a question arises, the determination will be made based on the circumstances of the case. It may be appropriate to open proceedings to the public, even when there is no respondent, if the subject matter is of substantial public interest. It may be appropriate to exclude the public from at least some of the proceedings even though there is a respondent, if the subject matter is classified, inflammatory, or otherwise exceptionally sensitive. In any case, the appointing authority may specify whether the proceedings will be open or closed. If the appointing authority does not specify, the investigating officer or the president of the board decides. If there is a respondent, the servicing JA or the legal advisor, if any, will be consulted before deciding to exclude the public from any portion of the proceedings. Any proceedings that are open to the public will also be open to representatives of the news media.

b. Recording. Neither the public nor the news media will record, photograph, broadcast, or televise the board proceedings. A respondent may record proceedings only with the prior approval of the appointing authority.

Preliminary Matters

PRES: This hearing will come to order. This board of officers has been called to determine_____

When RESP is without counsel:_____

PRES:_____, you may, if you desire, obtain civilian counsel at no expense to the Government for this hearing. If you do not obtain civilian counsel, you are entitled to be represented by a military counsel designated by the appointing authority. Do you have counsel?

RESP: No (Yes).

If RESP has counsel, the RCDR should identify that counsel at this point for the record. If RESP does not have counsel, the PRES should ask this question:

PRES: Do you desire to have military counsel?

RESP: Yes (No).

If RESP answers "yes," the PRES should adjourn the hearing and ask the appointing authority to appoint counsel for RESP (see para 5-6b). If counsel is supplied, the RCDR should identify that counsel for the record when the board reconvenes.

A reporter and an interpreter, if used, should be sworn.

RCDR: The reporter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of reporter to this board, (so help you God)?

REPORTER: I do.

RCDR: The interpreter will be sworn.

RCDR: Do you swear (or affirm) that you will faithfully perform the duties of interpreter in the case now in hearing, (so help you God)?

INTERPRETER: I do.

RCDR: The board is appointed by Memorandum of Appointment, Headquarters,_____, dated_____. Have all members of the board read the memorandum of appointment? (If not, the memorandum of appointment is read aloud by RCDR or silently by any member who has not read it.)

When RESP has been designated by a separate memorandum of appointment, the same procedure applies to that memorandum of appointment.

RCDR: May the memorandum of appointment be attached to these proceedings as Enclosure I?

PRES: The memorandum of appointment will be attached as requested.

RCDR: The following members of the board are present:

The following members are absent:

RCDR should account for all personnel of the board, including RESP and COUNSEL, if any, as present or absent at each session. RCDR should state the reason for any absence, if known, and whether the absence was authorized by the appointing authority.

PRES:_____, you may challenge any member of the board (or the legal advisor) for lack of impartiality. Do you desire to make a challenge?

Figure 3-1. Suggested procedure for board of officers with respondents

RESP (COUNSEL): No. (The respondent challenges _____.)

If RESP challenges for lack of impartiality, the LA, PRES, or next senior member, as appropriate, determines the challenge. See paragraph 5-7. If sustaining a challenge results in less than a quorum, the board should recess until additional members are added. See paragraph 5-2b.

RCDR swears board members, if required. PRES then swears RCDR, if required.

RCDR: The board will be sworn.

All persons in the room stand while RCDR administers the oath. Each voting member raises his or her right hand as RCDR calls his or her name in administering the following oath:

RCDR: Do you, Colonel _____, Lieutenant Colonel _____, Major _____, swear (affirm) that you will faithfully perform your duties as a member of this board; that you will impartially examine and inquire into the matter now before you according to the evidence, your conscience, and the laws and regulations provided; that you will make such findings of fact as are supported by the evidence of record; that, in determining those facts, you will use your professional knowledge, best judgment, and common sense; and that you will make such recommendations as are appropriate and warranted by your findings, according to the best of your understanding of the rules, regulations, policies, and customs of the service, guided by your concept of justice, both to the Government and to individuals concerned, (so help you God)?

MEMBERS: I do.

The board members lower their hands but remain standing while the oath is administered to LA and to RCDR, if required.

PRES: Do you _____, swear (or affirm) that you will faithfully perform the duties of (legal advisor) (recorder) of this board, (so help you God)?

LA/RCDR: I do.

All personnel now resume their seats.

PRES may now give general advice concerning applicable rules for the hearing.

RCDR: The respondent was notified of this hearing on _____ 19_____

RCDR presents a copy of the memorandum of notification with a certification that the original was delivered (or dispatched) to RESP (para 5-5) and requests that it be attached to the proceedings as Enclosure_____

PRES: The copy of the memorandum of notification will be attached as requested.

Presentation of Evidence by the Recorder

RCDR may make an opening statement at this point to clarify the expected presentation of evidence.

RCDR then calls witnesses and presents other evidence relevant to the subject of the proceedings. RCDR should logically present the facts to help the board understand what happened. Except as otherwise directed by PRES, RCDR may determine the order of presentation of facts. The following examples are intended to serve as a guide to the manner of presentation, but not to the sequence.

RCDR: I request that this statement of (witness) be marked Exhibit _____ and received in evidence. This witness will not appear in person because _____

LA (PRES): The statement will (not) be accepted.

RCDR may read the statement to the board if it is accepted.

RCDR: I request that this (documentary or real evidence) be marked as Exhibit _____ and received in evidence.

A foundation for the introduction of such evidence normally is established by a certificate or by testimony of a witness indicating its authenticity. LA (PRES) determines the adequacy of this foundation. If LA (PRES) has a reasonable basis to believe the evidence is what it purports to be, he or she may waive formal proof of authenticity.

Figure 3-1. Suggested procedure for board of officers with respondents—Continued

RCDR: The recorder and respondent have agreed to stipulate_____.

Before LA (PRES) accepts the stipulation, he or she should verify that RESP joins in the stipulation.

LA (PRES): The stipulation is accepted.

If the stipulation is in writing, it will be marked as an exhibit.

RCDR conducts direct examination of each witness called by RCDR or at the request of PRES or members. RESP or COUNSEL may then cross-examine the witness. PRES and members of the board may then question the witness, but PRES may control or limit questions by board members.

RCDR: The board calls_____ as a witness.

A military witness approaches and salutes PRES, then raises his or her right hand while RCDR administers the oath. A civilian witness does the same but without saluting. See MCM, Rules for Court-Martial 807, for further guidance with regard to oaths.

RCDR: Do you swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth, (so help you God)?

If the witness desires to affirm rather than swear, the words "so help you God" will be omitted.

WITNESS: I do.

The witness then takes the witness chair. RCDR asks every witness the following question no matter who called the witness.

RCDR: What is your full name (grade, branch of service, organization, and station) (and address)?

Whenever it appears appropriate and advisable to do so, the board should explain the rights of a witness under Article 31 of the UCMJ or the Fifth Amendment to the Constitution. See paragraph 3-6c(5).

If the report of proceedings will be filed in a system of records under the witness's name, the board must advise that witness in accordance with the Privacy Act. See paragraph 3-7e. Normally, this requirement applies only to RESP.

RCDR then asks questions to develop the matter under consideration.

RCDR: The recorder has no further questions.

RESP (COUNSEL) may cross-examine the witness. RCDR may then conduct a redirect examination.

RCDR: Does the board have any questions?

Any board member wishing to question the witness should first secure the permission of PRES.

If RCDR and RESP (COUNSEL) wish to ask further questions after the board has examined the witness, they should seek permission from the PRES. PRES should normally grant such requests unless the questions are repetitive or go beyond the scope of questions asked by the board.

When all questioning has ended, PRES announces:

PRES: The witness is excused.

PRES may advise the witness as follows:

PRES: Do not discuss your testimony in this case with anyone other than the recorder, the respondent, or his or her counsel. If anyone else attempts to talk with you about your testimony, you should tell the person who originally called you as a witness.

Verbatim proceedings should indicate that the witness (except RESP) withdrew from the room.

Unless expressly excused from further attendance during the hearing, all witnesses remain subject to recall until the proceedings have ended. When a witness is recalled, the RCDR reminds such witness, after he or she has taken the witness stand:

RCDR: You are still under oath.

The procedure in the case of a witness called by the board is the same as outlined above for a witness called by RCDR.

Figure 3-1. Suggested procedure for board of officers with respondents—Continued

RCDR: I have nothing further to offer relating to the matter under consideration.

Presentation of Respondent's Evidence

RESP (COUNSEL): The respondent has (an) (no) opening statement.

RESP presents his or her stipulations, witnesses, and other evidence in the same manner as did RCDR. RCDR administers oath to all witnesses and asks the first question to identify the witness.

Should the RESP be called to the stand as a witness, the RCDR will administer the oath and ask the following preliminary questions, after which the procedure is the same as for other witnesses:

RCDR: What is your name, (grade, branch of service, organization, and station) (address, position, and place of employment)?

RESP: _____

RCDR: Are you the respondent in this case?

RESP: Yes.

The board may advise RESP of his or her rights under Article 31 of the UCMJ, or the Fifth Amendment of the Constitution. See paragraph 3-6c(5).

If the report of proceedings will be filed in a system of records under RESP's name, the board must advise RESP in accordance with the Privacy Act. See paragraph 3-7e.

When RESP has concluded his or her case, RESP announces:

RESP (COUNSEL): The respondent rests.

RCDR: The recorder has no further evidence to offer in this hearing. Does the board wish to have any witnesses called or recalled?

PRES: It does (not).

Closing Arguments and Deliberations

PRES: You may proceed with closing arguments. RCDR: The recorder (has no) (will make an) opening argument.

RCDR may make the opening argument and, if any argument is made on behalf of RESP, the rebuttal argument. Arguments are not required (see para 5-9). If no argument is made, RESP or RCDR may say:

RESP (COUNSEL)/RCDR: The (respondent) (recorder) submits the case without argument.

PRES: The hearing is adjourned.

Adjourning the hearing does not end the duties of the board. It must arrive at findings based on the evidence and make recommendations supported by those findings. See chapter 3, section II. Findings and recommendations need not be announced to RESP, but in certain proceedings, such as elimination actions, they customarily are. RCDR is responsible for compiling the report of proceedings and submitting properly authenticated copies thereof to the appointing authority. See chapter 3, section III.

Legend

PRES: President of the board of officers.

LA: Legal Advisor

LA(PRES): Legal Advisor, if one has been appointed; otherwise the board President.

RCDR: Recorder (junior member of the board if no recorder has been appointed). (If the board consists of only one member, that member has the responsibilities of both PRES and RCDR.)

RESP: Respondent.

RESP (COUNSEL): Respondent or respondent's counsel, if any.

Figure 3-1. Suggested procedure for board of officers with respondents—Continued

3-7. Rules of evidence and proof of facts

a. General. Proceedings under this regulation are administrative, not judicial. Therefore, an investigating officer or board of officers is not bound by the rules of evidence for trials by courts-martial or for court proceedings generally. Accordingly, subject only to the provisions of *c* below, anything that in the minds of reasonable persons is relevant and material to an issue may be accepted as evidence. For example, medical records, counseling statements, police reports, and other records may be considered regardless of whether the preparer of the record is available to give a statement or testify in person. All evidence will be given such weight as circumstances warrant. (See para 3-5 as to who decides whether to accept evidence.)

b. Official notice. Some facts are of such common knowledge that they need no specific evidence to prove them (for example, general facts and laws of nature, general facts of history, location of major elements of the Army, and organization of the Department of Defense (DOD) and its components), including matters of which judicial notice may be taken. (See Military Rules of Evidence (MRE) 201, sec II, part III, Manual for Courts-Martial, United States (MCM).)

c. Limitations. Administrative proceedings governed by this regulation generally are not subject to exclusionary or other evidentiary rules precluding the use of evidence. The following limitations, however, do apply:

(1) *Privileged communications.* MRE, section V, part III, MCM, concerning privileged communications between lawyer and client (MRE 502), privileged communications with clergy (MRE 503), and husband-wife privilege (MRE 504) apply. Present or former inspector general personnel will not be required to testify or provide evidence regarding information that they obtained while acting as inspectors general. They will not be required to disclose the contents of inspector general reports of investigations, inspections, inspector general action requests, or other memoranda, except as disclosure has been approved by the appropriate directing authority (an official authorized to direct that an inspector general investigation or inspection be conducted) or higher authority. (See AR 20-1, para 3-6.)

(2) *Polygraph tests.* No evidence of the results, taking, or refusal of a polygraph (lie detector) test will be considered without the consent of the person involved in such tests. In a formal board proceeding with a respondent, the agreement of the recorder and of any respondent affected is required before such evidence can be accepted.

(3) *"Off the record" statements.* Findings and recommendations of the investigating officer or board must be supported by evidence contained in the report. Accordingly, witnesses will not make statements "off the record" to board members in formal proceedings. Even in informal proceedings, such statements will not be considered for their substance, but only as help in finding additional evidence.

(4) *Statements regarding disease or injury.* A member of the Armed Forces will not be required to sign a statement relating to the origin, incurrence, or aggravation of a disease or injury that he or she has suffered. Any such statement against his or her interest is invalid (10 USC 1219) and may not be considered on the issue of the origin, incurrence, or aggravation of a disease or injury that the member concerned has suffered. A statement made and signed voluntarily by a soldier is not a statement that the soldier was "required to sign" within the meaning of this paragraph.

(5) *Ordering witnesses to testify.*

(a) No military witnesses or military respondents will be compelled to incriminate themselves, to answer any question the answer to which could incriminate them, or to make a statement or produce evidence that is not material to the issue and that might tend to degrade them (see UCMJ, Art. 31).

(b) 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 of the U.S. Constitution.

(c) A person refusing to provide information under (a) or (b) above must state specifically that the refusal is based on the protection afforded by UCMJ, Art. 31, or the Fifth Amendment. The investigating officer or board will, after consultation with the legal advisor or, if none has been appointed, the servicing JA, unless impractical to do so, decide whether the reason for refusal is well taken. If it is not, the witness may be ordered to answer.

(d) Whenever it appears appropriate and advisable, an investigating officer or board will explain their rights to witnesses or respondents. A soldier, for example, who is suspected of an offense under the UCMJ, such as dereliction of duty, will be advised of his or her rights under UCMJ, Art. 31, before being asked any questions concerning the suspected offense. The soldier will be given a reasonable amount of time to consult an attorney, if requested, before answering any such questions. No adverse inference will be drawn against soldiers who invoke that right under UCMJ, Art. 31. It is recommended that the procedure for explaining rights set forth on DA Form 3881 (Rights Warning Procedure/Waiver Certificate) be used.

(e) The right to invoke UCMJ, Art. 31, or the Fifth Amendment is personal. No one may assert the right for another person, and no one may assert it to protect anyone other than himself or herself. An answer tends to incriminate a person if it would make it appear that person is guilty of a crime.

(f) In certain cases the appropriate authority may provide a witness or respondent a grant of testimonial immunity

and require testimony notwithstanding UCMJ, Art. 31, or the Fifth Amendment. Grants of immunity will be made under the provisions of AR 27-10, chapter 2.

(6) *Involuntary admissions.* A confession or admission obtained by unlawful coercion or inducement likely to affect its truthfulness will not be accepted as evidence. The fact that a respondent was not advised of his or her rights under UCMJ, Art. 31, or the Fifth Amendment, or of his or her right to a lawyer does not, of itself, prevent acceptance of a confession or admission as evidence.

(7) *Bad faith unlawful searches.* If members of the Armed Forces acting in their official capacity (such as military police acting in furtherance of their official duties) conduct or direct a search that they know is unlawful under the Fourth Amendment of the U.S. Constitution, as applied to the military community, evidence obtained as a result of that search may not be accepted or considered against any respondent whose personal rights were violated by the search. Such evidence is acceptable only if it can reasonably be determined by the legal advisor or, if none, by the investigating officer or president that the evidence would inevitably have been discovered. In all other cases, evidence obtained as a result of any search or inspection may be accepted, even if it has been or would be ruled inadmissible in a criminal proceeding.

3-8. Witnesses

a. General.

(1) Investigating officers and boards generally do not have authority to subpoena witnesses to appear and testify. An appropriate commander or supervisor may, however, order military personnel and Federal civilian employees to appear and testify. Other civilians who agree to appear may be issued invitational travel orders in certain cases (see Joint Travel Regulations (JTR), vol 2, para C6000.11). The investigating officer or board president normally will inform witnesses of the nature of the investigation or board before taking their statements or testimony. The investigating officer or board president, assisted by the recorder and the legal advisor, if any, will protect every witness from improper questions, unnecessarily harsh or insulting treatment, and unnecessary inquiry into his or her private affairs. (See para 3-2 as to placing witnesses under oath.)

(2) During an investigation under this regulation, the exclusive representative of an appropriate bargaining unit has the right to be present whenever a civilian employee of the unit is a respondent or witness during the proceedings if requested by the employee and if the employee reasonably believes that the inquiry could lead to disciplinary action against him or her. Unless required by the collective bargaining agreement, there is no requirement to advise the employee of this right. If the employee requests the presence of the exclusive representative, a reasonable amount of time will be allowed to obtain him or her. The servicing civilian personnel office and labor counselor will be consulted before denying such a request.

b. *Attendance as spectators.* Witnesses other than respondents normally will not be present at the investigation or board proceedings except when they are testifying. In some cases, however, it is necessary to allow expert witnesses to hear evidence presented by other witnesses in order that they may be sufficiently advised of the facts to give informed testimony as to the technical aspects of the case. In such instances, the report of proceedings will indicate that the expert witnesses were present during the testimony of the other witnesses.

c. Taking testimony or statements.

(1) If a board is formal, or if the appointing authority has directed a verbatim record (see para 2-2), witnesses' statements will be elicited by questions and answers. However, narrative testimony may be used.

(2) In informal proceedings, statements of witnesses may be obtained at informal sessions in which they first relate their knowledge and then summarize those statements in writing. A tape recorder may be used to facilitate later preparation of written statements, but the witness will be informed if one is used. The investigating officer or board will assist the witness in preparing a written statement to avoid inclusion of irrelevant material or the omission of important facts and circumstances. However, 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. The witness may be asked to read, correct, and sign the final statement.

(3) Whether the witness swears to the statement is within the discretion of the investigating officer or president. If the statement is to be sworn, use of DA Form 2823 (Sworn Statement) is recommended. If the witness is unavailable or refuses to sign, the person who took the statement will note, over his or her own signature, the reasons the witness has not signed and will certify that the statement is an accurate summary of what the witness said.

(4) Whether the proceeding is formal or informal, to save time and resources, witnesses may be asked to confirm written sworn or unsworn statements that have first been made exhibits. The witnesses remain subject to questioning on the substance of such statements.

(5) Although the direct testimony of witnesses is preferable, the investigating officer or board may use any previous statements of a witness as evidence on factual issues, whether or not the following conditions exist:

- (a) Proceedings are formal or informal.
- (b) Witness is determined to be unavailable.
- (c) Witness testifies.
- (d) Prior statements were sworn or unsworn.

(e) Prior statements were oral or written.

(f) Prior statements were taken during the course of the investigation.

d. *Discussion of evidence.* An investigating officer or board may direct witnesses who are subject to Army authority, and request other witnesses, not to discuss their statements or testimony with other witnesses or with persons who have no official interest in the proceedings until the investigation is complete. This precaution is appropriate to eliminate possible influence on the testimony of witnesses still to be heard. Witnesses may not be precluded from discussing any relevant matter with the recorder, a respondent, or counsel for a respondent.

e. *Privacy Act statements.*

(1) *When required.* A Privacy Act statement (AR 340-21) will be provided to a witness if the report of proceedings will be filed in a system of records from which it can be retrieved by reference to the name or other personal identifier of that witness. Unless otherwise informed by the appointing authority, an investigating officer or board may presume that the report of proceedings will be retrievable by the name of each person designated as a respondent, but that the report will not be retrievable by the name of any other witness. If any question arises as to the need for a Privacy Act statement, the investigating officer or board will consult the legal advisor, if any, or the servicing JA.

(2) *Method of providing statement.* Appendix B provides guidance for preparing Privacy Act statements. The statement may be written or oral, but it must be provided before taking the witness's testimony or statement. A written statement will be attached to the report of proceedings as an enclosure. An oral statement will be noted in the report either as part of a verbatim transcript or as an enclosure, in the form of a certificate by the officer who provided the Privacy Act statement.

(3) *Copy of the statement.* Anyone to whom this requirement applies is entitled to a copy of the Privacy Act statement in a form suitable for retention. Providing a respondent a copy of the part of the report of proceedings (see para 5-10) that includes the statement satisfies this requirement. Any other witness who is provided a Privacy Act statement will, on request, be furnished a copy of the statement in a form suitable for retention.

3-9. Communications with the appointing authority

If in the course of the investigation or board something happens that could cause the appointing authority to consider enlarging, restricting, or terminating the proceedings, altering the composition of the fact-finding body or otherwise modifying any instruction in the original appointment, the investigating officer or president of the board will report this situation to the appointing authority with recommendations.

Section II

Findings and Recommendations

3-10. Findings

a. *General.* A finding is a clear and concise statement of a 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 or board. Negative findings (for example, that the evidence does not establish a fact) are often appropriate. The number and nature of the findings required depend on the purpose of the investigation or board and on the instructions of the appointing authority. The investigating officer or board will normally not exceed the scope of findings indicated by the appointing authority. (See para 3-9.) The findings will be necessary and sufficient to support each recommendation.

b. *Standard of proof.* Unless another directive or an instruction of the appointing authority establishes a different standard, the findings of investigations and boards governed by this regulation must be supported by a greater weight of evidence than supports a contrary conclusion, that is, evidence which, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion. The weight of the evidence is not determined by the number of witnesses or volume of exhibits, but by considering all the evidence and evaluating such factors as the witness's demeanor, opportunity for knowledge, information possessed, ability to recall and relate events, and other indications of veracity.

c. *Form.* Findings will be stated to reflect clearly the relevant facts established by the evidence and the conclusions thereon of the investigating officer or board. If findings are required on only one subject, normally they will be stated in chronological order. If findings are required on several distinct subjects, they normally will be stated separately for each subject and chronologically within each one. If the investigation or board is authorized by a directive that establishes specific requirements for findings, those requirements must be satisfied.

3-11. Recommendations

The nature and extent of recommendations required also depend on the purpose of the investigation or board and on the instructions of the appointing authority. Each recommendation, even a negative one (for example, that no further action be taken) must be consistent with the findings. Investigating officers and boards will 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.

3-12. Deliberation

After all the evidence has been received (and arguments heard, if there is a respondent), the investigating officer or board members will consider it carefully in light of any instructions contained in the original appointment and any supplemental instructions. These deliberations will (and if there is a respondent, must) be in closed session, that is, with only voting members present. Nonvoting members of the board do not participate in the board's deliberations but may be consulted. The respondent and the respondent's counsel, if any, will be afforded the opportunity to be present at such consultation. The board may request the legal advisor, if any, to assist in putting findings and recommendations in proper form after their substance has been adopted by the board. A respondent and counsel are not entitled to be present during such assistance.

3-13. Voting

A board composed of more than one voting member arrives at its findings and recommendations by voting. All voting members present must vote. After thoroughly considering and discussing all the evidence, the board will propose and vote on findings of fact. The board will next propose and vote on recommendations. If additional findings are necessary to support a proposed recommendation, the board will vote on such findings before voting on the related recommendation. Unless another directive or an instruction by the appointing authority establishes a different requirement, a majority vote of the voting members present determines questions before the board. In case of a tie vote, the president's vote is the determination of the board. Any member who does not agree with the findings or recommendations of the board may include a minority report in the report of proceedings, stating explicitly what part of the report he or she disagrees with and why. The minority report may include its own findings and/or recommendations.

Section III

Report of Proceedings

3-14. Format

a. Formal. If a verbatim record of the proceedings was directed, the transcript of those proceedings, with a completed DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officers) as an enclosure, and other enclosures and exhibits will constitute the report. In other formal boards, a completed DA Form 1574, with enclosures and exhibits, will constitute the report.

b. Informal. In an informal investigation or board, the report will be written unless the appointing authority has authorized an oral report. Written reports of informal investigations will use DA Form 1574; however, its use is not required unless specifically directed by the appointing authority. Every report—oral or written, on DA Form 1574 or not—will include findings and, unless the instructions of the appointing authority indicate otherwise, recommendations.

3-15. Enclosures

In written reports, all significant letters and other papers that relate to administrative aspects of the investigation or board and that are not evidence will be numbered consecutively with roman numerals and made enclosures, including such items as these:

- a.* The memorandum of appointment or, if the appointment was oral, a summary by the investigating officer or board including date of appointment, identification of the appointing authority and of all persons appointed, purpose of the investigation or board, and any special instructions.
- b.* Copies of the notice to any respondent (see para 5-5).
- c.* Copies of other correspondence with any respondent or counsel.
- d.* Written communications to or from the appointing authority (see para 3-8).
- e.* Privacy Act statements (see para 3-8e).
- f.* Explanation by the investigating officer or board of any unusual delays, difficulties, irregularities, or other problems encountered.

3-16. Exhibits

a. General. In written reports, every item of evidence offered to or received by the investigation or board will be marked as a separate exhibit. Unless a verbatim record was directed, statements or transcripts of testimony by witnesses will also be exhibits. Exhibits will be numbered consecutively as offered in evidence (even if not accepted), except that those submitted by each respondent will be lettered consecutively (and further identified by the name of the respondent, if more than one). Exhibits submitted but not admitted in evidence will be marked "Not admitted."

b. Real evidence. Because attaching real evidence (physical objects) to the report is usually impractical, clear and accurate descriptions (such as written statements) or depictions (such as photographs) authenticated by the investigating officer, recorder, or president may be substituted in the report. In any case, the real evidence itself will be preserved, including chain of custody, where appropriate, for use if further proceedings are necessary. The exhibit in the report will tell where the real evidence can be found. After final action has been taken in the case, the evidence will be disposed of as provided in AR 190-22, where applicable.

c. Documentary evidence. When the original of an official record or other document that must be returned is an exhibit, an accurate copy, authenticated by the investigating officer, recorder, or president, may be used in the written report. The exhibit in the report will tell where the original can be found.

d. Official notice. Matters of which the investigating officer or board took official notice (para 3-6b) normally need not be recorded in an exhibit. If, however, official notice is taken of a matter over the objection of a respondent or respondent's counsel, that fact will be noted in the written report of proceedings, and the investigating officer or board will include as an exhibit a statement of the matter of which official notice was taken.

e. Objections. In a formal board, if the respondent or counsel makes an objection during the proceedings, the objection and supporting reasons will be noted in the report of proceedings.

3-17. Authentication

Unless otherwise directed, a written report of proceedings will be authenticated by the signature of the investigating officer or of all voting members of the board and the recorder. Board members submitting a minority report (see para 3-13) may authenticate that report instead. If any voting member of the board or the recorder refuses or is unable to authenticate the report (for example, because of death, disability, or absence), the reason will be stated in the report where that authentication would otherwise appear.

3-18. Safeguarding a written report

a. When the report contains material that requires protection but does not have a security classification, the report will be marked "For Official Use Only" as provided by AR 25-55.

b. No one will disclose, release, or cause to be published any part of the report, except as required in the normal course of forwarding and staffing the report or as otherwise authorized by law or regulation, without the approval of the appointing authority.

3-19. Submission

A written report of proceedings will be submitted, in two complete copies, directly to the appointing authority or designee, unless the appointing authority or another directive provides otherwise. If there are respondents, an additional copy for each respondent will be submitted to the appointing authority.

3-20. Action of the appointing authority

The appointing authority will notify the investigating officer or president of the board if further action, such as taking further evidence or making additional findings or recommendations, is required. Such additional proceedings will be conducted under the provisions of the original appointing memorandum, including any modifications, and will be separately authenticated per paragraph 3-16. If applicable, the appointing authority will ensure that the provisions of paragraph 1-8 have been satisfied. (See para 2-3 for further guidance.)

Chapter 4 Informal Investigations and Boards of Officers

4-1. Composition

Informal procedures may be used by a single investigating officer or by a board of two or more members. (One officer is not designated a board unless procedures are formal.) All members are voting members. Appointment of advisory members or a legal advisor is unnecessary because persons with special expertise may be consulted informally whenever desired. The senior member present acts as president. There is no recorder. The president prescribes the duties of each member. A quorum is required only when voting on findings and recommendations. (See para 3-13.)

4-2. Procedure

An informal investigation or board may use whatever method it finds most efficient and effective for acquiring information. (See chap 3 for general guidance.) A board may divide witnesses, issues, or evidentiary aspects of the inquiry among its members for individual investigation and development, holding no collective meeting until ready to review all the information collected. Although witnesses may be called to present formal testimony, information also may be obtained by personal interview, correspondence, telephone inquiry, or other informal means.

4-3. Interested persons

Informal procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation or board. No respondents will be designated and no one is entitled to the rights of a respondent. The

investigating officer or board may still make any relevant findings or recommendations, including those adverse to an individual or individuals.

Chapter 5 Formal Boards of Officers

Section I General

5-1. Members

a. Voting members. All members of a formal board of officers are voting members except as provided elsewhere in this paragraph, in other applicable directives, or in the memorandum of appointment.

b. President. The senior voting member present acts as president. The senior voting member appointed will be at least a major, except where the appointing authority determines that such appointment is impracticable because of military exigencies. The president has the following responsibilities:

(1) *Administrative.* The president will—

(a) Preserve order.

(b) Determine time and uniform for sessions of the board.

(c) Recess or adjourn the board as necessary.

(d) Decide routine administrative matters necessary for efficient conduct of the business of the board.

(e) Supervise the recorder to ensure that all business of the board is properly conducted and that the report of proceedings is submitted promptly. If the board consists of only one member, that member has the responsibilities of both the president and the recorder.

(2) *Procedural.*

(a) When a legal advisor has been appointed, the legal advisor rules finally on matters set forth in paragraph *d* below.

(b) When a legal advisor has not been appointed, the president will rule on evidentiary and procedural matters. The ruling on any such matter (other than a challenge) may be reversed by majority vote of the voting members present. (See para 3-5.) If the president determines that he or she needs legal advice when ruling on evidentiary and procedural matters, he or she will contact the legal office that ordinarily provides legal advice to the appointing authority and ask that a JA or a civilian attorney who is a member of the Judge Advocate Legal Service be made available for legal consultation. When a respondent has been designated, the respondent and counsel will be afforded the opportunity to be present when the legal advice is provided.

c. Recorder. The memorandum of appointment may designate a commissioned or warrant officer as recorder. It may also designate assistant recorders, who may perform any duty the recorder may perform. A recorder or assistant recorder so designated is a nonvoting member of the board. If the memorandum of appointment does not designate a recorder, the junior member of the board acts as recorder and is a voting member.

d. Legal advisor.

(1) A legal advisor is a nonvoting member. He or she rules finally on challenges for cause made during the proceedings (except a challenge against the legal advisor (see para 5-7c)) and on all evidentiary and procedural matters (see para 3-5), but may not dismiss any question or issue before the board. In appropriate cases, the legal advisor may advise the board on legal and procedural matters. If a respondent has been designated, the respondent and counsel will be afforded the opportunity to be present when legal advice is provided to the board. If legal advice is not provided in person (for example, by telephone or in writing), the right to be "present" is satisfied by providing the opportunity to listen to or read the advice. The right to be present does not extend to general procedural advice given before the board initially convened, to legal advice provided before the respondent was designated, or to advice provided under paragraph 3-12.

(2) A JA or a civilian attorney who is a member of the Judge Advocate Legal Service may be appointed as legal advisor for a formal board of officers under the following circumstances:

(a) TJAG authorizes the appointment.

(b) Another directive applicable to the board requires the appointment.

(c) The appointing authority is a GCM convening authority.

(d) The appointing authority is other than a GCM convening authority, and a JA is assigned to his or her organization or a subordinate element thereof under an applicable table of organization and equipment or tables of distribution and allowances; or the appropriate GCM convening authority authorizes appointment of a legal advisor.

(3) Appointment of a legal advisor under this paragraph will occur only after consultation with the SJA of the GCM jurisdiction concerned. The SJA will then be responsible for providing or arranging for the legal advisor.

e. Members with special technical knowledge. Persons with special technical knowledge may be appointed as voting

members or, unless there is a respondent, as advisory members without vote. Such persons need not be commissioned or warrant officers. If appointed as advisory members, they need not participate in the board proceedings except as directed by the president. (See para 3-12 with regard to participation in the board's deliberations.) The report of proceedings will indicate the limited participation of an advisory member.

5-2. Attendance of members

a. General. Attendance at the proceedings of the board is the primary duty of each voting member and takes precedence over all other duties. A voting member must attend scheduled sessions of the board, if physically able, unless excused in advance by the appointing authority. If the appointing authority is a GCM convening authority or a commanding general with a legal advisor on his or her staff, the authority to excuse individual members before the first session of the board may be delegated to the SJA or legal advisor. The board may proceed even though a member is absent, provided the necessary quorum is present (see *d* below). If the recorder is absent, the assistant recorder, if any, or the junior member of the board will assume the duties of recorder. The board may then proceed at the discretion of the president.

b. Quorum. Unless another directive requires a larger number, a majority of the appointed voting members (other than nonparticipating alternate members) of a board constitutes a quorum and must be present at all sessions. If another directive prescribes specific qualifications for any voting member (for example, component, branch, or technical or professional qualifications), that member is essential to the quorum and must be present at all board sessions.

c. Alternate members. An unnecessarily large number of officers will not be appointed to a board of officers with the intention of using only those available at the time of the board's meeting. The memorandum of appointment may, however, designate alternate members to serve on the board, in the sequence listed, if necessary to constitute a quorum in the absence of a regular member. These alternate members may then be added to the board at the direction of the president without further consultation with the appointing authority. A member added thereby becomes a regular member with the same obligation to be present at all further proceedings of the board. (See subpara *a* above.)

d. Member not present at prior sessions. A member who has not been present at a prior session of the board, such as an absent member, an alternate member newly authorized to serve as a member, or a newly appointed member, may participate fully in all subsequent proceedings. The member must, however, become thoroughly familiar with the prior proceedings and the evidence. The report of proceedings will reflect how the member became familiar with the proceedings. Except as directed by the appointing authority, however, a member who was not available (because of having been excused or otherwise) for a substantial portion of the proceedings, as determined by the president, will no longer be considered a member of the board in that particular case, even if that member later becomes available to serve.

5-3. Duties of recorder

a. Before a session. The recorder is responsible for administrative preparation and support for the board and will perform the following duties before a session:

(1) Give timely notice of the time, place, and prescribed uniform for the session to all participants, including board members, witnesses, and, if any, legal advisor, respondent, counsel, reporter, and interpreter. Only the notice to a respondent required by paragraph 5-5 need be in writing. It is usually appropriate also to notify the commander or supervisor of each witness and respondent.

(2) Arrange for the presence of witnesses who are to testify in person, including attendance at Government expense of military personnel and civilian government employees ordered to appear and of other civilians voluntarily appearing pursuant to invitational travel orders. (See para 3-8a.)

(3) Ensure that the site for the session is adequate and in good order.

(4) Arrange for necessary personnel support (clerk, reporter, and interpreter), recording equipment, stationery, and other supplies.

(5) Arrange to have available all necessary Privacy Act statements and, with appropriate authentication, all required records, documents, and real evidence.

(6) Ensure, subject to security requirements, that all appropriate records and documents referred with the case are furnished to any respondent or counsel.

(7) Take whatever other action is necessary to ensure a prompt, full, and orderly presentation of the case.

b. During the session. The recorder will perform the following duties during the session:

(1) Read the memorandum of appointment at the initial session or determine that the participants have read it.

(2) Note for the record at the beginning of each session the presence or absence of the members of the board and, if any, the respondent and counsel.

(3) Administer oaths as necessary.

(4) Execute all orders of the board.

(5) Conduct the presentation of evidence and examination of witnesses to bring out all the facts.

c. After the proceedings. The recorder is responsible for the prompt and accurate preparation of the report of

proceedings, for the authentication of the completed report, and, whenever practicable, the hand-carried delivery of the report, including delivery to the appointing authority or designee.

Section II Respondents

5-4. Designation

a. General. A respondent may be designated when the appointing authority desires to provide a hearing for a person with a direct interest in the proceedings. The mere fact that an adverse finding may be made or adverse action recommended against a person, however, does not mean that he or she will be designated a respondent. The appointing authority decides whether to designate a person as a respondent except where designation of a respondent is—

- (1) Directed by authorities senior to the appointing authority; or
- (2) Required by other regulations or directives or where procedural protections available only to a respondent under this regulation are mandated by other regulations or directives.

b. Before proceedings. When it is decided at the time a formal board is appointed that a person will be designated a respondent, the designation will be made in the memorandum of appointment.

c. During the proceedings.

(1) If, during formal board proceedings, the legal advisor or the president decides that it would be advisable to designate a respondent, a recommendation with supporting information will be presented to the appointing authority.

(2) The appointing authority may designate a respondent at any point in the proceedings. A respondent so designated will be allowed a reasonable time to obtain counsel (see para 5-6) and to prepare for subsequent sessions.

(3) If a respondent is designated during the investigation, the record of proceedings and all evidence received by the board to that point will be made available to the newly designated respondent and counsel. The respondent may request that witnesses who have previously testified be recalled for cross-examination. If circumstances do not permit recalling a witness, a written statement may be obtained. In the absence of compelling justification, the proceedings will not be delayed pending the obtaining of such statement. Any testimony given by a person as a witness may be considered even if that witness is subsequently designated a respondent.

5-5. Notice

The recorder will, at a reasonable time in advance of the first session of the board concerning a respondent (including a respondent designated during the proceedings), provide that respondent a copy of all unclassified documents in the case file and a letter of notification. In the absence of special circumstances or a different period established by the directive authorizing the board, a "reasonable time" is 5 working days. The letter of notification will include the following information:

- a.* The date, hour, and place of the session and the appropriate military uniform, if applicable.
- b.* The matter to be investigated, including specific allegations, in sufficient detail to enable the respondent to prepare.
- c.* The respondent's rights with regard to counsel. (See para 5-6.)
- d.* The name and address of each witness expected to be called.
- e.* The respondent's rights to be present, present evidence, and call witnesses. (See para 5-8a.)
- f.* (Only if the board involves classified matters.) The respondent and counsel may examine relevant classified materials on request and, if necessary, the recorder will assist in arranging clearance or access. (See AR 380-67.)

5-6. Counsel

a. Entitlement. A respondent is entitled to have counsel and, to the extent permitted by security classification, to be present with counsel at all open sessions of the board. Counsel may also be provided for the limited purpose of taking a witness's statement or testimony, if respondent has not yet obtained counsel. An appointed counsel will be furnished only to civilian employees or members of the military.

b. Who may act.

(1) *Civilian counsel.* Any respondent may be represented by civilian counsel not employed by and at no expense to the Government. A Government civilian employee may not act as counsel for compensation or if it would be inconsistent with faithful performance of regular duties. (See 18 USC 205.) In addition, a DA civilian employee may act as counsel only while on leave or outside normal hours of employment, except when acting as the exclusive representative of the bargaining unit pursuant to 5 USC 7114(a)(2)(B). (See para 3-4.)

(2) *Military counsel for military respondents.* A military respondent who does not retain a civilian counsel is entitled to be represented by a military counsel designated by the appointing authority. A respondent who declines the services of a qualified designated counsel is not entitled to have a different counsel designated.

(3) *Military counsel for civilian respondents.* In boards appointed under the authority of this regulation, Federal civilian employees, including those of nonappropriated fund instrumentalities, will be provided a military counsel under

the same conditions and procedures as if they were military respondents, unless they are entitled to be assisted by an exclusive representative of an appropriate bargaining unit.

c. Delay. Whenever practicable, the board proceedings will be held in abeyance pending respondent's reasonable and diligent efforts to obtain civilian counsel. However, the proceedings will not be delayed unduly to permit a respondent to obtain a particular counsel or to accommodate the schedule of such counsel.

d. Qualifications. Counsel will be sufficiently mature and experienced to be of genuine assistance to the respondent. Unless specified by the directive under which the board is appointed, counsel is not required to be a lawyer.

e. Independence. No counsel for a respondent will be censured, reprimanded, admonished, coerced, or rated less favorably as a result of the lawful and ethical performance of duties or the zeal with which he or she represents the respondent. Any question concerning the propriety of a counsel's conduct in the performance of his or her duty will be referred to the servicing JA.

5-7. Challenges for cause

a. Right of respondent. A respondent is entitled to have the matter at issue decided by a board composed of impartial members. A respondent may challenge for cause the legal advisor and any voting member of the board who does not meet that standard. Lack of impartiality is the only basis on which a challenge for cause may be made at the board proceedings. Any other matter affecting the qualification of a board member may be brought to the attention of the appointing authority. (See para 3-3.)

b. Making a challenge. A challenge will be made as soon as the respondent or counsel is aware that grounds exist; failure to do so normally will constitute a waiver. If possible, all challenges and grounds will be communicated to the appointing authority before the board convenes. When the board convenes, the respondent or counsel may question members of the board to determine whether to make a challenge. Such questions must relate directly to the issue of impartiality. Discretion will be used, however, to avoid revealing prejudicial matters to other members of the board; if a challenge is made after the board convenes, only the name of the challenged member will be indicated in open session, not the reason for believing the member is not impartial.

c. Deciding challenges. The appointing authority decides any challenge to a board of officers composed of a single member and may decide other challenges made before the board convenes. Otherwise, a challenge is decided by the legal advisor or, if none or if the legal advisor is challenged, by the president. If there is no legal advisor and the president is challenged, that challenge is decided by the next senior voting member.

d. Procedure. Challenges for lack of impartiality not decided by the appointing authority will be heard and decided at a session of the board attended by the legal advisor, the president or the next senior member who will decide the challenge, the member challenged, the respondent and his or her counsel, and the recorder. The respondent or counsel making the challenge may question the challenged member and present any other evidence to support the challenge. The recorder also may present evidence on the issue. The member who is to decide the challenge may question the challenged member and any other witness and may direct the recorder to present additional evidence. If more than one member is challenged at a time, each challenge will be decided independently, in descending order of the challenged members' ranks.

e. Sustained challenge. If the person deciding a challenge sustains it, he or she will excuse the challenged member from the board at once, and that person will no longer be a member of the board. If this excusal prevents a quorum (see para 5-2b), the board will adjourn to allow the addition of another member; otherwise, proceedings will continue.

5-8. Presentation of evidence

a. Rights of respondent. Except for good cause shown in the report of proceedings, a respondent is entitled to be present, with counsel, at all open sessions of the board that deal with any matter concerning the respondent. The respondent may—

- (1) Examine and object to the introduction of real and documentary evidence, including written statements.
- (2) Object to the testimony of witnesses and cross-examine witnesses other than the respondent's own.
- (3) Call witnesses and otherwise introduce evidence.
- (4) Testify as a witness; however, no adverse inference may be drawn from the exercise of the privilege against self-incrimination. (See para 3-7c(5).)

b. Assistance.

(1) Upon receipt of a timely written request, and except as provided in (4) below, the recorder will assist the respondent in obtaining documentary and real evidence in possession of the Government and in arranging for the presence of witnesses for the respondent.

(2) Except as provided in subparagraph (4) below, the respondent is entitled to compulsory attendance at Government expense of witnesses who are soldiers or Federal civilian employees, to authorized reimbursement of expenses of other civilian witnesses who voluntarily appear in response to invitational travel orders, and to official cooperation in obtaining access to evidence in possession of the Government, to the same extent as is the recorder on behalf of the Government. If the recorder, however, believes any witness's testimony or other evidence requested by the respondent is irrelevant or unnecessarily cumulative or that its significance is disproportionate to the delay, expense, or difficulty

in obtaining it, the recorder will submit the respondent's request to the legal advisor or president (see para 3-5), who will decide whether the recorder will comply with the request. Denial of the request does not preclude the respondent from obtaining the evidence or witness without the recorder's assistance and at no expense to the Government.

(3) Nothing in this paragraph relieves a respondent or counsel from the obligation to exercise due diligence in preparing and presenting his or her own case. The fact that any evidence or witness desired by the respondent is not reasonably available normally is not a basis for terminating or invalidating the proceedings.

(4) Evidence that is privileged within the meaning of paragraph 3-7c(1) will not be provided to a respondent or counsel unless the recorder intends to introduce such evidence to the board and has obtained approval to do so.

5-9. Argument

After all evidence has been received, the recorder and the respondent or counsel may make a final statement or argument. The recorder may make the opening argument and, if argument is made on behalf of a respondent, the closing argument in rebuttal.

5-10. After the hearing

Upon approval or other action on the report of proceedings by the appointing authority, the respondent or counsel will be provided a copy of the report, including all exhibits and enclosures that pertain to the respondent. Portions of the report, exhibits, and enclosures may be withheld from a respondent only as required by security classification or for other good cause determined by the appointing authority and explained to the respondent in writing.

Appendix A References

Section I

Required Publications

Military Rules of Evidence are found in the Manual for Courts-Martial, United States.

AR 20-1

Inspector General Activities and Procedures. (Cited in paras 1-5 and 3-7.)

AR 25-55

The Department of the Army Freedom of Information Act Program. (Cited in para 3-18.)

AR 27-10

Military Justice. (Cited in para 3-7 and app B.)

AR 195-5

Evidence Procedures. (Cited in para 3-16.)

AR 340-21

The Army Privacy Program. (Cited in para 3-8 and app B.)

AR 380-67

The Department of the Army Personnel Security Program. (Cited in para 5-5.)

JTR, vol. 2

(Cited in para 3-7.) (Available at <https://secureapp2.hqda.pentagon.mil/perdiem>.)

MCM 2005

See Military Rules of Evidence contained therein. (Cited in para 3-7.)

MRE 201

Judicial notice of adjudicative facts.

MRE 502

Lawyer-client privilege.

MRE 503

Communications to clergy.

MRE 504

Husband-wife privilege.

UCMJ, Art. 31

Compulsory self-incrimination prohibited

UCMJ, Art. 136

Authority to administer oaths and act as notary. (Cited in paras 1-3, 2-3, 3-2, and 3-7.) (Available from www.army.mil/references/UCMJ.)

UCMJ, Art. 138

Complaints of wrongs

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this regulation. United States Code is found at www.gpoaccess.gov/uscode.

AR 210-7

Commercial Solicitation on Army Installations

AR 380-5
Department of the Army Information Security Program

AR 385-40
Accident Reporting and Records

AR 600-8-14
Identification Cards for M

AR 600-37
Unfavorable Information

AR 735-5
Policies and Procedures for Property Accountability

5 USC 303
Oaths to witnesses

5 USC 7114
Representation rights and duties

10 USC 933
Conduct unbecoming an officer and a gentleman

10 USC 1219
Statement of origin of disease or injury: limitations

10 USC 3012
Department of the Army: seal

18 USC 205
Activities of offices and employees in claims against and other matters affecting the Government

U.S. Constitution, amend. 5
No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury. . . .

Section III
Prescribed Forms

The following forms are available on the APD Web site (www.apd.army.mil) unless otherwise stated.

DA Form 1574
Report of Proceedings by Investigating Officer/Board of Officers. (Cited in para 3-14.)

Section IV
Referenced Forms

DA Form 2823
Sworn Statement

DA Form 3881
Rights Warning Procedure/Waiver Certificate

Appendix B
Guidance for Preparing Privacy Act Statements

B-1. General

a. The Privacy Act requires that, whenever personal information is solicited from an individual and the information

will be filed so as to be retrievable by reference to the name or other personal identifier of the individual, he or she must be advised of the following information:

- (1) The authority for soliciting the information.
- (2) The principal purposes for which the information is intended to be used.
- (3) The routine uses that may be made of the information.
- (4) Whether disclosure is mandatory or voluntary.
- (5) The effect on the individual of not providing all or part of the information.

b. Each Privacy Act statement must be tailored to the matter being investigated and to the person being asked to provide information. The servicing JA will be consulted for assistance in preparing Privacy Act statements, as necessary.

B-2. Content

a. *Authority.* If a specific statute or executive order authorizes collection of the information, or authorizes performance of a function that necessitates collection of the information, the Privacy Act statement will cite it as the authority for solicitation. For example, if a commander appoints an investigating officer to inquire into a UCMJ, Art. 138, complaint under the provisions of AR 27-10, the statutory authority for solicitation of the information would be 10 USC 938. Regulations will not be cited as the authority. If no specific statute or executive order can be found, the authority to cite is 10 USC 3012.

b. *Principal purposes.* The statement of principal purposes will consist of a short statement of the reason the investigation is being conducted. The following examples apply to particular types of investigations:

- (1) Administrative elimination proceeding under AR 635-200: "The purpose for soliciting this information is to provide the commander a basis for a determination regarding your retention on active duty and, if a determination is made not to retain you on active duty, the type of discharge to award."
- (2) Investigation of a UCMJ, Art. 138, complaint: "The purpose for soliciting this information is to obtain facts and make recommendations to assist the commander in determining what action to take with regard to (your) (complainant's) UCMJ, Art 138, complaint."

(3) Investigation of a security violation: "The purpose for soliciting this information is to determine whether the security violation under investigation resulted in a compromise of national defense information, to fix responsibility for the violation, and to determine whether to change existing security procedures."

(4) Flying evaluation board pursuant to AR 600-107: "The purpose for soliciting this information is to provide the commander a basis for a determination regarding your flying status."

c. *Routine uses.* In order to advise an individual of what routine uses may be made of solicited information, it is necessary to identify the system of records in which the report of proceedings will be filed. The routine uses will be summarized from the system notice and from the routine uses of general applicability in AR 340-21. The routine use statement may be introduced as follows: "Any information you provide is disclosable to members of the Department of Defense who have a need for the information in the performance of their duties. In addition, the information may be disclosed to Government agencies outside of the Department of Defense as follows: (list of routine uses external to the Department of Defense)."

d. *Routine uses. Disclosure mandatory or voluntary; the effect of not providing information.*

Providing information is voluntary unless the individual may be ordered to testify. The following statement can be used in most situations:

(1) Respondent or other individual warned of his or her rights under the UCMJ, Art. 31, or the Fifth Amendment: "Providing the information is voluntary. There will be no adverse effect on you for not furnishing the information other than that certain information might not otherwise be available to the commander for his or her decision in this matter."

(2) Individual who may be ordered to testify: "Providing the information is mandatory. Failure to provide information could result in disciplinary or other adverse action against you under (the UCMJ or Army regulations) (civilian personnel regulations)."

2. *UCMJ, Art. 31 rights advisement.* If during the proceeding it is determined to advise an individual of his or her rights under the UCMJ, Art. 31, or the Fifth Amendment, after he or she has been told it is mandatory to provide information, the advising official must be certain that the individual understands that such rights warning supersedes this portion of the Privacy Act statement.

Glossary

Section I Abbreviations

AR

Army regulation

DA

Department of the Army

DOD

Department of Defense

GCM

general court-martial

GS

general schedule

JA

judge advocate

LA

legal advisor

MCM

Manual for Courts-Martial, United States, 2005

MRE

Military Rules of Evidence

SJA

staff judge advocate

TJAG

The Judge Advocate General

UCMJ

Uniform Code of Military Justice

USC

United States Code

Section II

Terms

Adverse administrative action

Adverse action taken by appropriate military authority against an individual other than actions taken pursuant to the UCMJ or MCM.

Military exigency

An emergency situation requiring prompt or immediate action to obtain and record facts.

Section III

Special Abbreviations and Terms

This section contains no entries.

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DEPARTMENT OF THE ARMY
UNITED STATES ARMY TACOM LIFE CYCLE MANAGEMENT COMMAND
6501 EAST 11 MILE ROAD
WARREN, MICHIGAN 48397-5000

REPLY TO
ATTENTION OF:

S: 22 October 2010

AMSTA-CG

MEMORANDUM FOR [REDACTED], US Army TACOM LCMC, 6501 E. Eleven Mile Road,
Warren, MI 48397-5000

SUBJECT: Appointment of AR 15-6 Investigating Officer

1. References:

a. Secretary of the Army memorandum, July 16, 2010, subject: Whistleblower Investigation – Anniston Army Depot, Anniston, Alabama – (Office of Special Counsel File Number DI-10-1952). (Encl 1)

b. US Office of Special Counsel Letter, June 29, 2010, subject: OSC File No. DI-10-1952. (Encl 2)

2. You are hereby appointed an investigating officer pursuant to AR 15-6 to conduct an informal investigation to make findings and recommendations concerning allegations that actions taken by employees at the Department of the Army, Anniston Army Depot, (ANAD), constitute a violation of a law, rule, or regulation with respect to the use of Security Guards to perform the duties of Police Officers at the Anniston Army Depot, the lack of a Field Training Program for newly hired Police Officers, the lack of adequate training for newly hired Police Officers, and the wearing of police uniforms by Security Guards. The purpose of your investigation is to determine the validity of the whistleblower's allegations and make findings concerning whether any wrongdoing occurred, and if so, by whom, and whether adequate policies and procedures are in place to preclude any recurrence of any improprieties, irregularities, or misconduct disclosed during your inquiry.

3. You are directed to make findings and recommendations on the issues and questions listed below in paragraph 4, concerning the use, training and outfitting of Security Guards and Police Officers at Anniston Army Depot. In conducting your investigation, you will consider the evidence of witnesses, the materials contained in the enclosed references and any other materials that you consider relevant.

4. At a minimum, your investigation will address the following issues and questions:

a. What are the requirements under AR 190-56 for the assignment and training of Security Guards and Police Officers?

b. How many Security Guards are currently employed at ANAD? How many Police Officers are currently employed at ANAD? Provide a breakdown of these positions (including pay grade,

TABD

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SUBJECT: Appointment of AR 15-6 Investigating Officer

current salary), where they are located, and which positions are designated as supervisors.

c. Review the job descriptions for all Security Guards and Police Officers at ANAD, and determine the job duties for each position. Additionally, determine whether the job descriptions accurately reflect duties and responsibilities that are in compliance with the relevant Office of Personnel Management and regulatory requirements.

d. What duties do the Security Guards at ANAD perform? What duties do the Police Officers at ANAD perform? Be sure to investigate what duties these employees truly perform, not just what their job descriptions provide. Have these been the duties for the Police Officers and Security Guards for the past five years, and if not, describe how they have changed during the past five years.

e. Do any Security Guards at ANAD perform any law enforcement work? Has a Security Guard ever performed any law enforcement work? If so, provide details on each event, including the reason why this was done. Include any time a Security Guard made an arrest, placed an individual into handcuffs, or transported a suspect to the Depot's Command Investigation Division (CID) office or any other location.

f. Do any Police Officers perform security or protective services (including guarding buildings and property and controlling access to the Depot)? Has a Police Officer ever performed any security or protective services? If so, provide details on each event, including the reason why this was done.

g. What is the Special Reaction Team (SRT)? What is the statutory or regulatory basis for its establishment? Who is a member of this team (include names, rank, pay grade and supervisor)? What duties does the SRT perform? Who supervises the SRT? Include any other information to explain the function of the SRT.

h. Is there a requirement (statutory, regulatory, policy, ANAD regulation, etc.) for a Field Training Program (FTP)? Does ANAD have a Field Training Program for newly hired Police Officers? If not, why not? If so, describe the program, who it applies to, what it includes, what constitutes completion of the program, how completion is documented, etc. Check those records and determine if all Police Officers have completed FTP. Are there any Police Officers that have not completed FTP? Has any ANAD Police Officer performed duties before completing the FTP?

i. If there is no formal FTP for Police Officers at ANAD, what training is provided to newly hired Police Officers? Explain in detail what the training is, when it is given to the Police

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SUBJECT: Appointment of AR 15-6 Investigating Officer

Officers, how long the training lasts, what constitutes completion of training, and how is completion documented.

j. What uniform do the Security Guards at ANAD wear? Are all Security Guards required to wear this uniform? Who or what determined that this uniform would be worn by Security Guards at ANAD (i.e., is there a regulation or policy that sets out the uniform)? Does the uniform for Security Guards include badges, cap insignia and shoulder insignia? If so, describe in detail. Do Security Guards wear hats as part of their uniform? If so, describe the hat, to include any words on it. Do Security Guards wear hats, badges and shoulder insignia that have "Police" on them? If so, why? Have Security Guards EVER worn hats, badges, and shoulder insignia that have "Police" on them? If so, describe when, why and if they still do. Is there any time in which a Security Guard who is on duty does not wear this uniform? Have there been any times in which a Security Guard wore a Police Officer uniform?

k. What uniform do the Police Officers at ANAD wear? Are all Police Officers required to wear this uniform? Who or what determined that this uniform would be worn by Police Officers at ANAD (i.e., is there a regulation or policy that sets out the uniform)? Is there any time in which a Police Officer who is on duty does not wear this uniform? Have there been any times in which a Police Officer wore a Security Guard uniform?

l. Investigate and gather any other relevant information concerning these allegations, whether specified above or not, to include any additional questions and areas of concern that are identified during the course of the investigation.

5. In your investigation you are not limited to the issues and questions listed above. You will investigate any relevant and related matters that you may discover that fall under the areas for investigation described above. You are advised not to investigate matters that do not fall within the areas for investigation described above. If you are in doubt about the relevance of a matter, you will consult your legal advisor [REDACTED] Red River Army Depot, Legal Office, Building 15, Texarkana, TX, 75507-5000, 903-334-4553, email: [REDACTED]. You will consult with your legal advisor prior to beginning your investigation.

6. In conducting your investigation, you will use the informal procedures specified in AR 15-6, chapter 4. Upon completing your investigation, make appropriate specific findings and recommendations. Reference your analysis and findings to the specific evidence upon which you rely. Recommend remedial measures, to include any corrective and personnel or disciplinary actions you deem appropriate, if any. You may also recommend any necessary management actions to preclude a recurrence of any founded misconduct or identified systemic problems. If certain evidence conflicts with other evidence, state what you believe and why. If any question

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asked solicits an answer that requires a follow up question and answer, ensure that you have pursued those questions in order to further develop the record evidence.

7. All witness statements will be written (typed or block printed) and sworn. You will interview all witnesses in person, if practical. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator. If, in the course of your investigation, you come to suspect that certain people may have committed criminal conduct, you must advise them of their rights under Article 31, UCMJ or the Fifth Amendment of the United States Constitution, as appropriate. In such a case, waivers should be documented on DA Form 3881 (Rights Warning Procedure/Waiver Certificate). You will provide each witness with a Privacy Act statement before soliciting any personal information.

8. In your investigation, you will make such findings as are relevant and supported by the facts. You will also make such recommendations as are appropriate and are supported by the facts. In compiling your report of investigation, consider carefully that information contained therein will be subject to public disclosure and release.

9. This investigation has been directed by the Office of Special Counsel (OSC) pursuant to a whistleblower complaint. Pursuant to OSC policy, you normally must interview the whistleblower. However, in this case, the whistleblower requested to remain anonymous. If at any time during the investigation, an individual comes forward and advises you that they are the whistleblower, please forward this information to your legal advisor, [REDACTED] or his supervisor, [REDACTED]. In turn, this information will be conveyed to the Army Office of the General Counsel for further guidance.

10. You should contact those witnesses you consider relevant during the course of your investigation. You are to thoroughly document all witness interviews in writing, preferably on DA Form 2823 (Sworn Statement), and have witnesses certify their statements when final. In addition, you must provide all persons interviewed with a Privacy Act statement before you solicit any information.

11. You will interview all witnesses in person, if practicable. Caution all individuals that they must not discuss the subject matter of the investigation with anyone other than a properly detailed investigator.

12. If, in the course of your investigation, you suspect wrongdoing or neglect on the part of a person senior to you, inform me so that a new investigating officer may be appointed. As an Investigating Officer, you may not, absent military exigency, investigate someone senior to you.

13. During the course of your investigation, you may find it necessary to interview civilian

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SUBJECT: Appointment of AR 15-6 Investigating Officer

employees. Generally speaking, civilian employees are required to cooperate with official investigations. There are some exceptions:

a. Civilian employees who are members of a bargaining unit have a right to union representation at any interview with management if they reasonably believe that the interview could result in a disciplinary action against them. You must observe appropriate union notice requirements prior to interviewing any bargaining unit employees. Should a bargaining unit employee seek to invoke this right, you have no obligation to arrange representation for the employee, only an obligation to permit the employee the opportunity to secure representation. Once you have scheduled any bargaining unit employees for an interview, contact your legal advisor for guidance in notifying the appropriate union representative. The Civilian Personnel Office can tell you whether any particular employee you wish to interview is a member of the bargaining unit.

b. Civilian employees who reasonably believe that information they provide during an official investigation may be used against them in a criminal prosecution cannot be required to cooperate without a grant of immunity. Should any civilian employee you attempt to interview decline to cooperate for any reason, suspend the interview and seek guidance from your legal advisor on how to proceed.

c. If the matter you are investigating involves a grievance, a personnel practice or policy or other conditions of employment, you may be required to notify the union of any interviews you have scheduled with bargaining unit employees and afford the union the opportunity to be present. Check with your legal advisor to determine if this rule applies to your case and how to proceed if it does.

d. You have no authority to compel the cooperation of contractor employees. If you find it necessary to interview contractor employees, you must contact the contracting officer's representative for the applicable contract to request cooperation.

14. You will submit your completed investigation on a DA Form 1574 with a table of contents and enclosures. The enclosures will include all documentary materials considered by you. Make two copies of your report of investigation (ROI). Provide an index and clearly tab the original ROI, to include your findings and recommendations on DA Form 1574, with appropriate enclosures and forward the entire package to me, through the TACOM LCMC Red River Army Depot Legal Office, ATTN: Legal Office, TARR-L, 100 Main Drive, Bldg 15, Texarkana, TX 75507-5000. Before beginning your investigation, you will receive a legal briefing from the TACOM LCMC Red River Army Depot Legal office. Contact your legal advisor, [REDACTED] (903) 334-4553, or his supervisor, [REDACTED] at (903) 334-3258, to schedule the briefing. You may consult the legal advisor at any time during the investigation and you will consult the

AMSTA-CG

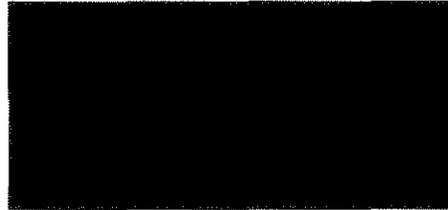
SUBJECT: Appointment of AR 15-6 Investigating Officer

legal advisor before warning any witness as a suspect and before putting your report in final form. Additionally, along with your report of investigation, you will submit a draft final agency response describing any actions taken to address the allegations.

15. This investigation takes priority over all normal duties, TDY, and leave.

16. You are directed to begin your investigation as soon as practicable.

Encls
as



Major General, U.S. Army
Commanding



SECRETARY OF THE ARMY
WASHINGTON

JUL 16 2010

Suspense: August 16, 2010

SAGC

MEMORANDUM FOR Commander, U.S. Army Materiel Command, 9301 Chapek Road, Fort Belvoir, Virginia 22060

SUBJECT: Whistleblower Investigation—Anniston Army Depot, Anniston, Alabama – (Office of Special Counsel File Number DI-10-1952)

Enclosed for your action is a letter from the Office of Special Counsel (OSC), referring a whistleblower complaint related to matters in a command or organization under your authority, direction, or control (Enclosure 1).

The OSC is designated by law to receive whistleblower complaints from Department of the Army employees (Enclosure 2). When the OSC determines that there exists a substantial likelihood that an Army whistleblower complaint discloses a violation of any law, rule, or regulation; gross mismanagement or waste of funds; an abuse of authority; or a substantial and specific danger to public health and safety, the allegations are referred to me for investigation. I am then required to investigate and submit a written report of my findings within 60 days.

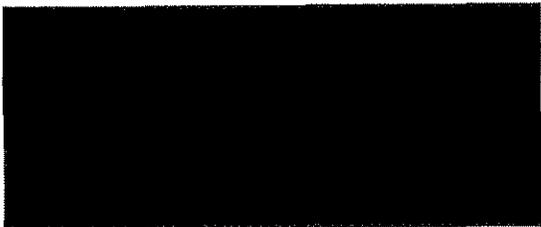
You are hereby directed to initiate an investigation into the allegations referred to me by OSC. Upon completion of your investigation, ensure that you initiate appropriate corrective action as warranted. In addition, prepare a draft Army report setting forth all of the information required by Title 5, United States Code, § 1213(d).

I have delegated to the Assistant Secretary of the Army (Manpower and Reserve Affairs) (ASA (M&RA)) the authority to review, approve, and submit the final Army report to OSC. Upon receipt of the report, OSC will refer it to the whistleblower for comment. The Army report, the whistleblower's comments, and OSC's analysis will be forwarded to the President of the United States and to the Senate and House Armed Services Committees.

In addition, the Army report will be made available for public review and inspection on the OSC web-site and in its reading room. Because your investigation and report will directly impact perceptions of the Army as an institution, it is imperative that you

investigate these allegations and prepare your draft report in a manner that facilitates a clear understanding of the allegations and Army's response.

You must conduct a full and fair investigation and draft and submit the detailed report that OSC requires within the time allowed. A complete set of guidelines and instructions is at Enclosure 3. The Office of the Army General Counsel (OGC) is my point of contact for this matter. Accordingly, please contact [REDACTED] of OGC immediately at 703.695.0562 or by email at [REDACTED] to discuss the way forward in this important effort.



Encls

CF:

INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE [REDACTED]
[REDACTED]
DEPARTMENT OF THE ARMY INSPECTOR GENERAL [REDACTED]
COMMAND COUNSEL U.S. ARMY MATERIEL COMMAND [REDACTED]
OFFICE OF THE JUDGE ADVOCATE GENERAL, LABOR AND EMPLOYMENT
LAW DIVISION [REDACTED]
EXECUTIVE COMMUNICATIONS AND CONTROL [REDACTED]

DEPARTMENT OF THE ARMY
ANNISTON ARMY DEPOT
ANNISTON, ALABAMA 36201

*ANAD Regulation 10-2
1 April 2011

ORGANIZATION MISSION & FUNCTION

By the order the Commander Anniston Army Depot:

TIMOTHY M. SULLIVAN
COL, LG
Commanding

Official:

O/S/B

SARAH C. WHATLEY
Chief, Management Analysis Division

History. This printing publishes a revision of this administrative publication.

Summary. This regulation prescribes the organization, missions and functions of Anniston Army Depot.

Applicability. This regulation applies to Anniston Army Depot organizations.

Proponent. The proponent of this regulation is the Management Analysis Division, Directorate of Resource Management, Anniston Army Depot.

Army management control process. Not Applicable.

Supplementation. Not applicable.

Suggested improvements. Users are invited to provide suggested improvements during review of ANADR directly to proponent, phone ext 6191.

Committee establishment approval. Not Applicable.

Distribution. Distribution of this publication is available in electronic media and is intended for Anniston Army Depot personnel.

*This regulation supersedes ANADR 10-2, 1 October 2009

TABE

X2000 Special Reaction Team

Mission. Respond to a special threat, terrorist incident, or other disruption on the installation within 2-hours or less from the time of notification in order to preserve human life and restore normal activity on the installation.

Functions.

1. Serve as the Commander's principal resource as a response force to a special threat, terrorist incident, or other major disruption on the installation.
2. Deploy in situations which may include barricaded criminals and mentally disturbed persons with or without hostages, sniper incidents, threatened suicides, combating terrorism operations, warrant apprehension of dangerous individuals, and protective service missions.
3. Perform duties that support installation force protection measures such as random antiterrorist measures program (RAMP), foot patrol (criminal information gathering), interior checkpoints, and other critical incidents.
4. Conduct the administration of the traffic enforcement and parking regulation.
5. Provide escort services for various required activities as personnel strength allows.

DECLARATION OF [REDACTED]

I, [REDACTED], make the following declaration in accordance with 28 U.S.C. Section 1746. I am aware that this declaration is the legal equivalent of a statement under oath.

1. I am currently the Director of Emergency Services at the Anniston Army Depot. I have occupied this position since 1995. I occupied this position in 2008 when [REDACTED] made the decision to hire police officers in the GS-083 series rather than security guards in the GS-085 series.

2. When that decision was made, the expectation was that Anniston Army Depot would need a security force that was more robust to match anticipated capabilities of "first responders." The chemical storage mission was expected to end and [REDACTED] felt the nature of the security force should also change. With the changes in AR 190-56, in particular physical standards and medical clearance requirements, it was felt that transitioning to a force consisting of "police" rather than "security guards" was more advantageous for Anniston Army Depot.

3. [REDACTED] decided that the transition would take place through attrition, i.e., as guards retired or otherwise left the force, their position would be abolished and, if the workload justified filling a position, a police officer in the GS-083 series would be hired in his or her place. The first police officer was hired in October of 2008, and this approach has been followed ever since. There has been no discussion of changing this approach to filling positions on the security force.

4. The job descriptions for police officer are written where they can staff any post. The duties of guards and police officers overlap, and the police job descriptions are based on strictly law enforcement functions, of which we have very few.

5. The Directorate of Emergency Services makes work assignments without regard to whether the employee is a guard or police officer. We view them as interchangeable based on the way the job descriptions are written and classified. There are no posts or assignments reserved for or primarily staffed by police officers or guards.

6. Currently we have ten (10) Special Reaction Team (SRT) members. That number is based on Field Manual (FM) 3-19.11. SRT members are higher graded (GS-07), and they are either in the security guard, GS-085 series, or the police officer, GS-083 series, based on the date they were hired. Beginning on February 9, 2010, vacancies have been filled by police officers, GS-083 series.

7. On an Army Working Capital Fund installation, positions are designated and paid for by the employing activity. In this case, the Anniston Chemical Activity, Anniston Munitions Center and DLA are paying for the services of most of the installation Police Officers and Security Guards. SRT positions are highly coveted. It is also the only flexibility that the Commander truly has to respond to incidents and special situations.

8. They are highly trained in special weapons and tactics far above the average police officer. SRT members in the Army must attend a two week school at Fort Leonard Wood for their phase

I requirement. After that, those with precision rifle shooting skills attend the 1 week phase 2 Marksman/Observer course. Although we don't normally have a lot of turnover (established positions), when openings occur people apply. Here, we also utilize the officers in traffic enforcement and traffic accident investigation. Many of the SRT members have attended specialized traffic accident investigation courses because of the position they hold. Because of its tactical mission, SRT has the latest and best equipment possible.

9. By regulation, specifically, AR 190-58, Personal Security, the SRT have unique requirements, equipment and mission designations. SRT (SWAT/ERT or any name they may go by) positions at any installation or civilian police department are highly coveted and very hard to get into. For active Army Soldiers/Civilian Police departments, try outs/evaluations etc., are involved in the selection process. Here, since we have established/classified positions, we have to utilize civilian hiring guidelines as with any other position. The last time we had guard openings for 4 positions, 10 of the 18 candidates were internal. When we hired for 1 police officer opening in the fall of 2010, 15 of the 39 candidates were from within our DES. In the police field, these are normally the elite of the organization.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 6 day of September 2011.

A large black rectangular redaction box covering the signature area of the document.

G

DECISION PAPER

AMSTA-AN-ES

16 Sep 08

MEMORANDUM FOR Commander, Anniston Army Depot

SUBJECT: Directorate of Emergency Services (DES) Reorganization

1. FOR DECISION.

2. PURPOSE. To obtain approval and authorization for implementation of DES reorganization and follow-on hiring process.

3. RECOMMENDATIONS. Commander initial approved and sign at the bottom of the page.

APPROVED DISAPPROVED SEE ME

4. BACKGROUND. See previously provided and again attached reorganization memorandum and enclosures.

5. DISCUSSION. Below is a summary of reorganization changes:

- a. Create Special Reaction Team (SRT) (X2000).
- b. DES Security Division No. 1 (X4000) is retitled DES Security Division 1st Shift (X4000).
- c. DES Security Division No. 2 (X5000) is abolished.
- d. DES Security Division No. 3 (X6000) is retitled DES Security Division 2nd Shift (X6000).
- e. Create position under X1000, Deputy Director, YC-0301-02 (GS-0301-13)
- f. Create position under X2000, Supervisory Security Guard, Special Reaction Team (SRT), YN-0085-01 (GS-0085-09)
- g. Move nine (9) Security Guard, SRT, GS-0085-07 from X4000 to X2000
- h. Move four (4) Security Clerk (COMP), GS-0086-03 from X4000 to X2000
- i. Move one (1) Security Clerk (COMP), GS-0086-03 from X7000 to X2000
- j. Create position under X4000, one (1) Office Automation Assistant, GS-0326-05
- k. Create position under X6000, one (1) Office Automation Assistant, GS-0326-05
- l. Create position under X7000, one (1) Antiterrorism Officer, YA-0080-02 (GS-0080-12)

TABE

m. Create position under X7000, one (1) Supply Technician, GS-2005-06

n. Change under X7000, Physical Security Specialist, GS-0080-11 to Supervisory Security Specialist, YA-0080-02 (GS-0080-11)

o. Create position under X7000, two (2) Police Officer, Training Instructor, GS-0083-07

p. Change under X4000, four (4) Lead Security Guard, GS-0085-08 to Supervisory Security Guard, YN-0085-01 (GS-0085-08)

q. Change under X6000, four (4) Lead Security Guard, GS-0085-08 to Supervisory Security Guard, YN-0085-01 (GS-0085-08)

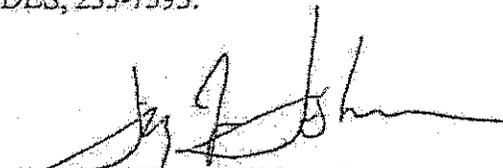
6. IMPACT. If not approved DES will continue to be dysfunctionally organized thus lacking an effective organizational structure that would facilitate and support the operational mission, providing supervisory span of control capability, and incorporate enhancements for administrative and logistical support functions.

7. COORDINATION.

Deputy to the Commander	<u>ZEC</u>	<u>CONCUR</u> / NONCONCUR	<u>16 Sep 08</u>	DATE
Chief of Staff	<u>PMS</u>	<u>CONCUR</u> / NONCONCUR	<u>7 Oct 08</u>	DATE
CPAC	<u>AW</u>	<u>CONCUR</u> / NONCONCUR	<u>3 Oct 08</u>	DATE
DRM	<u>ACW</u>	<u>CONCUR</u> / NONCONCUR	<u>9-23-08</u>	DATE

8. POC for this action is Jay F. Johnson, DES, 235-7595.

Encls


JAY F. JOHNSON
Director of Emergency Services

 15 Oct 08
S. B. KELLER
Colonel, LG
Commanding

DECISION PAPER

AMSTA-AN-ES

16 Sep 08

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1. FOR DECISION

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- l. Create position under X7000, one (1) Antiterrorism Officer, YA-0080-02 (GS-0080-12)

- m. Create position under X7000, one (1) Supply Technician, GS-2005-06
- n. Change under X7000, Physical Security Specialist, GS-0080-11 to Supervisory Security Specialist, YA-0080-02 (GS-0080-11)
- o. Create position under X7000, two (2) Police Officer, Training Instructor, GS-0083-07
- p. Change under X4000, four (4) Lead Security Guard, GS-0085-08 to Supervisory Security Guard, YN-0085-01 (GS-0085-08)
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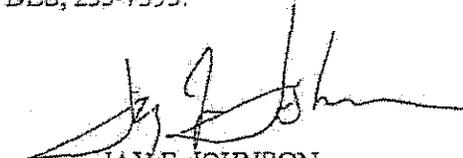
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Deputy to the Commander	<u>JEC</u>	<u>CONCUR</u> / NONCONCUR	<u>16 Sep 08</u>	DATE
Chief of Staff	<u>PMH</u>	<u>CONCUR</u> / NONCONCUR	<u>7 Oct 08</u>	DATE
CPAC	<u>RLC</u>	<u>CONCUR</u> / NONCONCUR	<u>3 Oct 08</u>	DATE
DRM	<u>RCW</u>	<u>CONCUR</u> / NONCONCUR	<u>9-23-08</u>	DATE

8. POC for this action is Jay F. Johnson, DES, 235-7595.

Encls


 JAY F. JOHNSON
 Director of Emergency Services

 15 Oct 08
 S. B. KELLER
 Colonel, LG
 Commanding



DEPARTMENT OF THE ARMY
ANNISTON ARMY DEPOT
7 FRANKFORD AVENUE
ANNISTON, ALABAMA 36201-4199

AMSTA-AN-ES

16 Sep 08

MEMORANDUM THRU Director of Resource Management, Anniston Army Depot

FOR Chief, Management Analysis Division, Anniston Army Depot

SUBJECT: Request Reorganization of the Directorate of Emergency Services (DES)

I. Request approval and implementation of reorganization for the Directorate of Emergency Services (DES) LAW the below plan and enclosed documentation.

a. Rationale. This reorganization is required to establish an effective organizational structure that facilitates and supports the operational mission, providing supervisory span of control capabilities, and incorporates enhancements for administrative and logistical support functions.

b. Objectives of the plan. This reorganization is recommended in order to provide for positive results of greater effectiveness in mission accomplishment and better utilization of available resources. Portions of this reorganization are based on budget reduction management review previously performed that implemented operational changes approved by the previous Commander and were documented internally as well as submitted as a Value Engineering effort.

c. Requested changes.

(1) Organizational structure.

(a) Create Special Reaction Team (SRT) (X2000).

(b) DES Security Division No. 1 (X4000) is retitled DES Security Division 1st Shift (X4000).

(c) DES Security Division No. 2 (X5000) is abolished.

(d) DES Security Division No. 3 (X6000) is retitled DES Security Division 2nd Shift (X6000).

(2) TDA Positions.

(a) Create position under X1000, Deputy Director, YC-0301-02 (GS-0301-13)

TAB H

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SUBJECT: Request Reorganization of the Directorate of Emergency Services (DES)

- (b) Create position under X2000, Supervisory Security Guard, Special Reaction Team (SRT), YN-0085-01 (GS-0085-09)
- (c) Move nine (9) Security Guard, SRT, GS-0085-07 from X4000 to X2000
- (d) Move four (4) Security Clerk (COMP), GS-0086-03 from X4000 to X2000
- (e) Move one (1) Security Clerk (COMP), GS-0086-03 from X7000 to X2000
- (f) Create position under X4000, one (1) Office Automation Assistant, GS-0326-05
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- (h) Create position under X7000, one (1) Antiterrorism Officer, YA-0080-02 (GS-0080-12)
- (i) Create position under X7000, one (1) Supply Technician, GS-2005-06
- (j) Change under X7000, Physical Security Specialist, GS-0080-11 to Supervisory Security Specialist, YA-0080-02 (GS-0080-11)
- (k) Create position under X7000, two (2) Police Officer, Training Instructor, GS-0083-07
- (l) Change under X4000, four (4) Lead Security Guard, GS-0085-08 to Supervisory Security Guard, YN-0085-01 (GS-0085-08)
- (m) Change under X6000, four (4) Lead Security Guard, GS-0085-08 to Supervisory Security Guard, YN-0085-01 (GS-0085-08)

(3) TDA current and proposed laydown.

DELTA			
CC	Current	Proposed	DELTA
X1000	2	3	1
X2000	0	15	15
X4000	104	111	7
X5000	60	0	-60
X6000	67	101	34
X7000	19	22	3
X9000	41	41	0
Total	293	293	0

(4) Enclosure 4, current and proposed TDA staffing by Cost Center, Job Title, Series, and Grade identifies the current TDA position assignment and annotates the proposed location that personnel will be assigned based on the current operational assignment.

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SUBJECT: Request Reorganization of the Directorate of Emergency Services (DES)

d. Need and intended outcome of changes.

(1) Need for change. Current DES organizational structure and TDA are dysfunctional; both do not support neither the operational nor the administrative mission and lack the capability for span of control supervision of widely dispersed personnel resources.

(2) Tangible and verifiable improvements. DES already operates as two Security Divisions so the administrative corrections assigning personnel into just the two divisions will be an immediate improvement showing time management savings for administrative processes. Restructuring and creation of needed positions will provide functional expertise to programs that have been understaffed or not staffed at all for too long.

(3) Impact on other elements. There may be adverse impacts however if it does it should only appear in one position area possibly affecting seven Guard personnel; this is the change from Lead to Supervisory Security Guard.

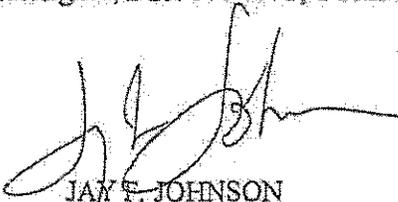
(4) Major advantages and disadvantages.

(a) Advantages. The reorganization will establish an effective organizational structure that facilitates and supports the operational mission, provides for supervisory span of control capabilities, and incorporates enhancements for administrative and logistical support functions.

(b) Disadvantages. None

e. Coordination. Informational meetings as well as document sharing has provided for a coordinated effort to discuss the proposed organization changes with Civilian Personnel Advisory Center (CPAC) and Management Analysis Division (RMG) personnel. These efforts addressed personnel and organization issues that if they had not been addressed might have prolonged the planned completion/implementation. The proposal was discussed with the President of the AFGE with AFGE providing a letter of non-concur for two reasons (encl 6).

2. Point of contact for this request is the undersigned, DSN 571-7595, COMM 256-235-7595, jay.f.johnson@us.army.mil.



JAY F. JOHNSON
Director of Emergency Services

8 Encls

1. Current organization chart
2. Proposed organization chart
3. Proposed ANADR 10-2
4. Current and proposed TDA staffing by Cost Center, Job Title, Series, and Grade
5. PowerPoint presentation (DES Proposed