



DEPARTMENT OF THE AIR FORCE
WASHINGTON, DC

Office Of The General Counsel

August 30, 2011

SAF/GCA
1740 Air Force Pentagon
Washington, DC 20330-1740

The Honorable Carolyn Lerner
Special Counsel
United States Office of Special Counsel
1730 M. Street, N.W., Suite 300
Washington, DC 20036-4505

Re: OSC File Nos. DI-10-2151, DI-10-2538 and DI-10-2734

Dear Ms. Lerner:

This is in response to the July 1, 2011 email request from Ms. Jennifer Pennington of your staff for additional information to supplement the Report of Investigation in the above referenced cases submitted to OSC by the Secretary of the Air Force on May 11, 2011. The email request listed fourteen areas of inquiry. During subsequent telephone discussions with Ms. Catherine McMullen and Ms. Pennington of your staff, the Air Force orally responded to certain inquiries and the focus of other inquiries were narrowed. Please find attached the Air Force response to the remaining areas of inquiry.

Update on Civilian Disciplinary Action

By letter dated August 15, 2011, Mr. Keel was downgraded to a non-supervisory GS-13 grade, effective August 28, 2011 (the first day of the next pay period). On August 28, 2011, he was transferred from his position as the Director of the Port Mortuary to the position of Air Force Survivor Assistance Program Manager. In this position, he is not supervising any employees and is not working within the Port Mortuary or AFMAO. As such, he has no professional contact with any employees within the Port Mortuary or AFMAO. He reports directly to a supervisor at Headquarters Air Force, HAF/AIS, but is physically located at Dover AFB at non-AFMAO facilities.

On May 10, 2011, the Air Force issued a letter of proposed disciplinary action to Mr. Dean, proposing a 14 day suspension. The disciplinary action is pending.

Request for Air Force (Draft) and Army Inspector General Reports

In its email, OSC requested copies of the Air Force Inspector General's (OIG) (draft) report and the Army OIG report. The Air Force investigated the whistleblower disclosures and provided a Report of Investigation to OSC pursuant to 5 U.S.C. §1213(d). Section 1213(d) provides that the report required under subsection (c) "shall include," among other things, "a summary of evidence obtained from the investigation." The Air Force has complied with this requirement by providing OSC a lengthy summary of the evidence in its Report of Investigation. OSC has acknowledged there is no legal requirement for the Air Force to provide OSC the underlying OIG reports. The Air Force respectfully declines to supplement its Report of Investigation with either the Air Force or Army OIG reports.¹ In addition, the Air Force asserts that public release of such information at this time would be contrary to its assertion of certain legal privileges (*i.e.*, such as the law enforcement privilege and the deliberative process privilege).

Preparation of Remains of Deceased Marine

OSC has expressed concern "that the evidence presented does not appear to adequately support the finding that it was not necessary to obtain specific permission from the person authorized to direct disposition (PADD) prior to removing the arm bone." According to OSC,

The report confirms that the Port Mortuary is required to maintain the "highest standards of the funeral service profession." It also acknowledges that a significant majority of the witnesses, including the non-military funeral service experts, stated that specific PADD permission was or would be necessary in this instance. However, the report distinguishes the Port Mortuary from non-military funeral service facilities and concludes that it was not improper to remove the bone without specific PADD approval. This distinction and the resulting conclusion do not appear to be consistent with the requirement to maintain the highest standards in the funeral service profession.

Both the Air Force and Army regulations incorporate (by reference or otherwise) the Armed Services Public Health Guidelines which require morticians to prepare remains in compliance with state and federal health laws and "in a manner reflecting the highest standards of the funeral service profession." In discussions with OSC staff, OSC indicated that the Port Mortuary did not comply with these "highest standards." OSC appears to premise their concern on an assumption that there is one standard in the funeral service industry. We disagree.

Contrary to OSC's assertion, there is no single set of standards in the funeral industry. Moreover, there are no clearly written standards in the funeral service profession regarding notification requirements to the next of kin when conducting major restorative art in the preparation of human remains. The legal examination and analysis conducted found no clear,

¹Under 5 U.S.C. §1219, the Special Counsel is required to make available to the public "reports from heads of agencies under section 1213(c)(1)(B)."

authoritative guidance on whether the actions taken with the Marine were permissible or violative of law, rule or regulation. We found that it is generally the province of state licensing bodies to set out the professional standards for their licensed funeral directors and morticians. While these state licensing requirements differ from state to state, for the most part, they provide only general guidance. None of the state licensing requirements examined specifically prohibited excising the arm bone; nor were there any written requirements mandating family notification in these circumstances. Rather, each avenue examined (*i.e.* DoD and military component rules and regulations, state licensing requirements and common law tort) led to the more subjective inquiry of whether the actions taken in this case were consistent with the generally accepted practices established in the embalming and mortuary industry.

In evaluating the generally accepted practices, the Air Force applied a tort law concept. That is, we equated generally accepted practices established in the embalming and mortuary industry with the required standard of care for professionals, considering their skill and knowledge as well as the communities and circumstances in which they practice. The generally accepted practices are thus flexible based on time, location, and other variables. Such variables at the Port Mortuary include the greater control the military exercises over its people, the length of time it takes for remains of fallen service members to be secured and transported to the Port Mortuary for embalming, the extremely violent nature of many of these war fatalities, the amount of time elapsed since the family had last seen their deceased loved one, the military's mission to protect and care for families of military members, and the lack of a civilian counterpart to the Port Mortuary.²

We believe this approach is consistent with DoD Directive 1300.22, paragraph 4.2 which requires that “[r]emains will be handled with the reverence, care, and dignity *befitting them and the circumstances*” (emphasis added). Based upon the above, the Report does, we believe rightfully, distinguish the Port Mortuary from non-military funeral service facilities. The Air Force considers its interpretation in this regard to fall well within the bounds of reason and thus, subject to broad deference.³ While reasonable minds may differ on the decision to remove the arm bone in this highly unusual circumstance, the Air Force determined that the decision was one that fell within a gray area which had no clear written standards and thus, based upon a preponderance of the evidence, did not violate any law, rule or regulation. Moreover, the decision was based upon consideration for the family -- that is specifically to allow the family to see the deceased in uniform pursuant to their expressed desire while at the same time sparing the

² Seven non-military funeral professionals were contacted as part of the investigation. The question presented to them was as follows: “Have you ever been involved in a situation where it was necessary to remove a bone or a limb during embalming (as opposed to manipulating that limb)? If so, what were the circumstances and did you inform the family (PADD)? In your professional opinion, how would you treat such a situation if it did occur?” These non-military funeral professionals were not provided information regarding the Port Mortuary or the circumstances surrounding the deceased Marine. Where the standards /generally accepted practices in the industry are determined based upon the knowledge and skill of the funeral professional as well as “the communities and circumstances in which they practice,” the stated opinions of these non-military funeral professionals provide insight into the civilian funeral practice but cannot be regarded as the standard for the Port Mortuary, when such opinions were given without consideration of the unique community and circumstances found there.

³ It should be noted that the Supreme Court has been known to make such a distinction between military and civilian. *See e.g. Orloff v Willoughby*, 345 U.S. 83 at 94 (1953) (“the military constitutes a specialized community governed by a separate discipline from that of the civilian.”).

family from undue distress that would result in sharing the specific and horrifying details of the IED-induced war trauma inflicted on their loved one.

OSC further questions whether the evidence supports the conclusion in the Report that “the authorization by the family to prepare, dress and casket the remains can be understood, within the context of the applicable military regulations and the circumstances, to have constituted consent” to remove the bone. According to OSC, “[t]he evidence does not seem to support the conclusion that the removal of the bone fell within the meaning of ‘major restorative art’ or the definition of ‘preparation of remains’ under AR 638-2, from which implied consent could be construed.”

We disagree. As stated in the Report, both Air Force and Army regulations indicate that preparation of the remains generally includes embalming, the application of restorative art techniques and dressing the remains. The Army regulation states “[p]reparation of remains consists of embalming and other preservative measures, restorative art to include derma surgery, dressing or wrapping, placing in casket, and other related items.” The Army regulation further states “[m]ajor restorative art is an integral part of the processing and/or reprocessing of remains.” The regulation provides examples of major restorative art (such as “removal of damaged tissue followed by restoration”), but specifically states the examples are not exclusive.

In this case, the PADD signed the Statement of Disposition of Remains providing authority for Port Mortuary to “prepare, dress and casket” the remains. At the time the PADD made the election, she acknowledged being given a “complete mortuary briefing.” In addition, as stated in the original Report, the CACO assigned to talk with the family stated that the family had expressed a desire through the funeral director to have their Marine dressed in his uniform. The broad interpretation given to the regulations when read together with the expressed desire of the family to have the deceased Marine dressed in his uniform (which could not have been done properly without excision of the arm bone) provides sufficient evidence to support a finding that the authorization to prepare and dress the remains constituted implied consent to remove the bone.

OSC appears to suggest that corrective action taken by the Air Force undermines the above finding in the Report. Specifically, OSC noted that, “among the corrective actions taken, the Joint Standard Operating Procedure (JSOP) for Remains Processing has been revised to require Mortuary Specialists to obtain specific, written permission from the PADD, through the liaison, where the restoration of the remains is beyond those viewable areas for which consent to restore is implied. Such conditions include ‘restoration of missing limbs.’”⁴

The fact that the Air Force has taken corrective action to improve a process should be considered a positive effect of this investigation. OSC’s suggestion that this corrective action is

⁴ Per new procedures, embalmers will obtain written guidance from the Service liaison prior to undertaking restoration that is considered beyond that where consent can be implied. It is the Service liaison’s responsibility, as appropriate, to obtain such consent from the PADD. The embalmers at AFMAO do not directly contact family members and Port Mortuary rules do not now require written permission from the PADD prior to restoration. Rather, the embalmers rely on the Service liaisons to deliver consent in situations beyond that where consent is implied.

somehow proof that a standard was violated is troubling. Such a position is both incorrect and contrary to basic legal concepts of evidence. The fact that the Air Force has created a better practice does not necessarily mean the prior practice was in violation of a standard. Such was the case here.

Based upon the above, the Air Force affirms its conclusion in the Report that it was not necessary to obtain specific permission from the PADD prior to removing the arm bone.

Improper Transport/Cremation of Military Dependents (Fetal Remains)

In its email, OSC expressed “concern[s] regarding the finding that re-used cardboard boxes were not improper for transporting fetal remains, in light of AFI 34-242, AR 638-2, industry standards, and the statements of [Mortuary Specialist 1], Ms. Spera, and even Mr. Keel, that the boxes did not afford the requisite reverence, care and dignity owed to the remains.” As discussed below, OSC elaborated on these concerns in subsequent discussions.

In responding to OSC’s concerns, we emphasize at the onset that there is no law, rule or regulation that specifically prescribes how fetal remains should be transported for cremation. OSC has asserted that Air Force and Army regulations required the use of a transfer case. As discussed in the OSC Report of Investigation, both the Air Force regulations (AFI 34-242) and Army regulations (AR 638-2) have provisions relating to the shipment of remains. However, both the Army and the Air Force determined that their respective regulations, written prior to the establishment of the crematory at Dover, do not require the use of a transfer case to ship fetal remains for cremation. We believe that an agency’s interpretation of its own regulations should be given great deference by OSC.

The OSC Report of Investigation found that neither the AFI nor the Army regulation required the use of a transfer case to ship fetal remains for cremation. Two of the regulatory provisions at issue are not mandatory, but permissive. AFI 34-242 at paragraph 2.27.1.2 provides that remains transported by government aircraft from a mortuary facility in Europe to the Port Mortuary “*should* be uncasketed and placed in an aluminum transfer case.” (Emphasis added.) AR 638-2 at paragraph 6.5 likewise indicates that “[w]hile a transfer case could be used to ship fetal remains, doing so is not a required method of transport.” Thus, neither of these provisions requires the use of a transfer case.

The AFI provision at Table 4.2 provides that “[i]f a government mortuary prepares the remains and Dover Port Mortuary reprocesses” then “[r]emains will be returned to Dover Port Mortuary in a transfer case.” This provision contemplates that shipped remains will be processed or reprocessed at the Port Mortuary. Transfer cases are typically used for the shipment of unembalmed remains, usually from or near the deployed location, to the Port Mortuary. The remains of the fallen are placed on ice inside the sealed transfer case, so that when they arrive at the Port Mortuary they can be autopsied and eventually embalmed or otherwise prepared for burial. In these cases, a transfer case is appropriate and necessary. The fetal remains shipped for cremation were already examined by competent medical authority and embalmed by the morticians at Landstuhl. Because the fetal remains were not shipped to be processed or reprocessed at the Port Mortuary, the AFI regulation at Table 4.2 is simply inapposite. The

finding in the OSC Report of Investigation that it is not necessary or required to use military transfer cases to ship fetal remains that have already been embalmed and that will be cremated is supported by a preponderance of the evidence and a fair reading of the agency regulations.

OSC also asserted under that industry practice, cremation containers have wooden supports for air travel. However, the use of cardboard boxes to transport remains for cremation conforms to industry standard and practice. As previously stated, there is no federal standard for cremation containers used to ship fetal remains. However, there are a number of states which do provide definition guidance for cremation containers. For example, Ohio state law provides the following:

“Alternative container” means a receptacle, other than a casket, in which a dead human body or body parts are transported to a crematory facility and placed in the cremation chamber for cremation, and that meets all of the following requirements:

- (1) Is composed of readily combustible materials that are suitable for cremation;
- (2) May be closed in order to provide a complete covering for the dead human body or body parts;
- (3) Is resistant to leakage or spillage;
- (4) Is sufficiently rigid to be handled readily;
- (5) Provides protection for the health and safety of crematory personnel.

R.C. § 4717.20 (Ohio). Texas and Kansas state law are substantially similar.⁵ The State of Minnesota defines “Cremation container” as

a combustible, closed container that encases the body and can be made of materials like fiberboard or corrugated cardboard and into which a dead human body is placed prior to insertion into a cremation chamber for cremation. Cremation containers may be combustible “alternative containers” or combustible “caskets.”

M.S.A. § 149A.02.

The cardboard boxes used for shipping⁶ the fetal remains met all of the above-stated requirements. The cardboard boxes used were combustible. The packaging (*i.e.* plastic medical

⁵Texas law provides as follows: Human remains must be placed in a cremation container that: (1) is made of combustible materials suitable for cremation; (2) provides a complete covering of the body; (3) is resistant to leakage or spillage; (4) is rigid for easy handling; and (5) protects the health and safety of crematory personnel. V.T.C.A., Health & Safety Code § 716.151 (Texas). Kansas state law provides: (a) “Alternative container” means a receptacle, other than a casket, in which dead human bodies are transported to the crematory and placed in the cremation chamber for cremation. An alternative container shall be (1) composed of readily combustible materials suitable for cremation, (2) able to be closed in order to provide a complete covering for the dead human bodies, (3) resistant to leakage or spillage, (4) rigid enough for handling with ease, and (5) able to provide protection for the health, safety and personal integrity of crematory personnel. K.S.A. 65-1760 (Kansas).

container placed in cardboard box) provided a complete covering of the fetal remains and were resistant to spillage or leakage. The boxes were sufficiently rigid to be readily handled and provided sufficient protection to crematory personnel. Moreover, the boxes were shipped on military, not commercial, aircraft. The boxes were not shipped with the other cargo, but rather were placed specially in the nose of the aircraft. While wooden supports may be recommended or even required for commercial transport of human remains shipped for cremation, there is no such requirement for cremation containers for fetal remains using military transport.

As stated in the OSC Report of Investigation, the requirement to afford dependent fetal remains with reverence, care and dignity is found in the DoD Directives and Instructions, not Air Force or Army regulations. The terms “reverence, care and dignity” are not further defined in writing in any military regulation or rule. The Air Force and the Army concluded, based upon the facts presented and interpreting and applying these DoD regulations, that transportation of the fetal remains at issue was done with the requisite reverence, care and dignity. Military departments should be given broad deference in interpreting and applying military regulations.⁷

OSC points to the statements of [Mortuary Specialist 1], Ms. Spera, and Mr. Keel as evidence tending to prove that the transport of remains was undignified.⁸ The evidence shows that Mr. Keel testified that use of the cardboard boxes was improper and not “very dignified.” However, according to personnel at Landstuhl, he did not communicate such concerns to them and instead told them there was no problem. [Mortuary Specialist 1] testified that he personally did not think the fetal remains were packaged appropriately and stated that the fetal remains should have been shipped inside an infant casket. As previously stated shipment in a casket is not required and may not meet the combustible requirements for a cremation container. Ms. Spera testified that the packaging of the fetal remains “lacks dignity, honor and respect.”

On the other hand, all four mortuary specialists from the Landstuhl Mortuary held the opposite opinion – that the fetal remains were handled with reverence, care and dignity. [Army Mortuary Officer 2] stated that, based upon his understanding of the civilian cremation industry in the United States, human remains shipped for cremation were transported in a cremation box which is generally just a cardboard box. This is consistent with the state statutory requirements set forth above.

In determining whether the fetal remains were treated with the requisite reverence, care and dignity, the use of a cardboard box (whether new or re-used) was not viewed in isolation. It

⁶ Internet searches for cremation containers yielded multiple businesses selling simple cardboard boxes for transporting remains to the crematory, with options of using simple cardboard boxes reinforced with a simple wooden frame to transport remains in the cargo hold of a commercial airliner. None of the businesses advertised the use of a casket or other container for transporting remains for cremation. As advertised, the cardboard box, as the container, gets consumed in the crematory with the remains.

⁷ See e.g. *Goldman v. Weinberger*, 475 U.S. 503, 508 (1986) (Supreme Court “review of military regulations challenged on First Amendment grounds is far more deferential than constitutional review of similar laws or regulations designed for civilian society.”).

⁸ OSC also warned that to a layperson, the use of a re-used cardboard box to transport fetal remains may seem undignified. While a layperson may expect the use of a casket, the reality is that a typical burial casket which oftentimes is metal (or contains metal pieces) is not appropriate to use in a crematory because it is not combustible.

was also important to examine the extremely careful and special handling given to the transported boxes. To reiterate the original Report, the re-used cardboard boxes were not simply stored in an aircraft with the rest of the cargo. First, the fetal remains were placed in a sealed medical container, which was necessary because of the undeveloped nature of the remains. Next, the sealed medical container was placed inside the box, and cushioned using the same cushions used inside adult caskets to ensure the remains would not move during shipping. After the boxes were sealed, they were then wrapped in new brown packaging paper to ensure there were no extraneous marks on the boxes, giving the boxes a clean and crisp appearance. They were then clearly marked with their contents, with noted special handling instructions. The boxes were shipped on military, not commercial, aircraft. The boxes were not shipped with the other cargo, but rather were placed specially in a protected area in the nose of the aircraft. This packaging and special handling clearly afforded these remains with the requisite reverence, care and dignity.

To re-iterate, the Air Force does not believe transporting fetal remains in re-used boxes was the best option. Clearly, the new wooden containers now used are preferable. However, while the decision to reuse cardboard boxes may not have been the best option, it does not necessarily mean the decision violated any law, rule or regulation. Considering the totality of the circumstances, including most importantly the way in which the boxes were packaged, shipped, and handled, the preponderance of the evidence shows that the remains were treated with reverence, care and dignity.

Improper Handling and Transport of Remains with Possible Contagious Disease

In its email, OSC stated they were concerned “that testimony summarized in the report does not support the finding that the ‘preponderance of the evidence’ shows that adequate notice was given and adequate precautionary measures were taken regarding the existence of potentially contagious remains.”

The finding that adequate notice was given and adequate precautionary measures were taken is based in large part on competent medical authority. The evidence shows that on the Saturday during the Memorial Day holiday, the remains in question were determined to be potentially infected with tuberculosis (TB) during autopsy by the medical examiner.⁹ The Chief Medical Examiner for DoD was involved with this case and questioned during the investigation about the spread of TB. He stated that the risk of spreading TB prior to autopsy is “very, very low” because the disease is inside the lungs and the lungs are not breathing. He stated that the greatest risk of infection occurs during the autopsy, when the lungs are cut into. After the autopsy, the evidence showed that the remains were isolated, sutured and placed in multiple body bags. The autopsy/embalming technician who handled the remains wore protective gear to protect himself from possible TB infection. He marked the bagged remains as “TB+” with a biohazard sign and placed the bagged remains in reefer 4 which had limited access. All personnel in the Port Mortuary the day the remains were processed were notified of the possible contagious remains and told to stay away. Based upon competent medical examiner testimony, once the remains were sutured and bagged, the remains posed little or no risk to people in the facility.

⁹ The results of the pathology examination revealed that the remains was not, in fact, infected with tuberculosis.

The same is true for the shipment and re-icing accomplished at Ramstein AB. The bagged remains were labeled as being potentially infectious and clear alert messages were sent to those expected to handle the remains (“***We HIGHLY advise that the remains are ‘Positive for Tuberculosis’”). As long as the marked bags were not opened, the remains posed little risk to people re-icing the remains.

Based upon discussions with OSC, we understand the concern that adequate warnings were not provided is based upon the allegation that Ms. Spera was not immediately notified of the contagious remains when she came to work on Sunday and that no sign was posted on the door of the reefer where the remains were being kept until the following Tuesday. The IO determined based upon conflicting evidence that Ms. Spera was notified on Sunday, in large part based upon the testimony of other witnesses. However, even if it were clear that Ms. Spera did not receive notification until the following Tuesday, that fact would not change the finding that adequate warnings were given and precautionary measures were taken. Ms. Spera was not in danger of coming into contact with TB particles. The possibly contagious remains were double bagged and the bag was marked as “TB+” with a biohazard sign. Likewise, the fact that a sign was not placed on the reefer until Tuesday, does not undermine the finding.

Based upon competent medical authority, the mere fact that the remains were being stored in a reefer of the Port Mortuary did not pose a danger of TB infection to individuals in the Port Mortuary. The potential TB was contained within the body as well as multiple body bags, which were marked. Because there was no reason to open the body bags and certainly no reason to cut into the remains or to force air out of the lungs, any person having reason to work with the remains (*i.e.* for shipping purposes) after the remains were prepared and bagged on Saturday was at extremely low risk to no risk for infection. As such, after the initial precautionary measures were taken, there was no specific and substantial danger to public health, and it was not necessary to provide a generalized warning throughout the facility.

The Report does recognize that while Mr. Keel may have been insensitive to the needs of his employees by failing to issue a general warning/notice, such warning was not necessary to ensure that adequate precautionary measures were taken and warnings given. The Air Force affirms its finding as stated in the Report that the preponderance of the evidence shows that the precautionary measures taken and warnings issued were adequate.

Clarification of [Major 2]’s Duties and Responsibilities for Remains/Portions

In its email, OSC requested clarification of the testimony from [Major 2], former Director of Operations, cited on pages 126-128 and 161 of the Report of Investigation. According to OSC, this testimony “concern[ed] the extent of his involvement and responsibility [that is “specific duties and responsibilities”] for processing of remains/portions, and “the point at which his involvement and/or responsibilities concluded.” OSC indicated that, “[o]n pages 128 and 161 (of the Report of Investigation), [Major 2] represented that his involvement with remains basically concluded when the remains were sent on to the FBI (or in some cases dental) stations, and from that point forward the medical examiners are in control of the remains until they are returned to the embalmers.”

To respond to OSC's request, the Air Force followed up with [Major 2] to clarify the testimony at issue. As discussed below, according to [Major 2], his responsibilities as the former deployed Director of Operations were mainly twofold: operation of the triage station and oversight of the wellness of the deployed military members throughout the processing line.

According to [Major 2], the processing line begins at the time the transfer case is opened by the medical examiners and continues through the time the remains and portions arrive at autopsy. Typically, after the transfer case is opened, the remains and portions go to the triage station, then to the FBI station, the dental station, the X-ray station, and finally to autopsy. According to [Major 2], ultimate responsibility over the entire process belongs to the OAFME. That is, OAFME has responsibility for the scientific processes involved in identifying human remains and portions of fallen service members. The processing line which includes triage is part of this identification process. AFMAO is charged with assisting OAFME in the processing of human remains/portions through the Port Mortuary as well as maintaining accountability of the remains and portions.

[Major 2] stated that, as Director of Operations, he was directly involved and had responsibility to manage the remains and portions at the triage station. As discussed more fully in the OSC Report of Investigation, after fragmented remains are removed from the transfer case and placed on a gurney, the medical examiners lay out the portions that will receive individual Dover numbers at triage. [Major 2] was responsible for labeling and bagging portions at triage and then moving the portions to the first station. According to [Major 2], based upon his experience in running the triage station, the medical examiners trusted that he knew what needed to be done and would usually leave him and his staff alone during the triage part of the process. However, if he had a question or a concern, he would raise it with the OAFME. According to [Major 2], his specific responsibility over the remains/portions ended with the handoff at the first station after triage, at which point the OAFME took over the responsibility.

His second main duty was to oversee all the AFMAO members for wellness throughout the process. According to [Major 2], as the former deployed Director of Operations, he was administratively in charge of all the military personnel deployed to AFMAO. In that capacity, it was his responsibility to ensure the deployed military personnel were taken care of, that they had what they needed to do their jobs, and that they understood what their roles were. He also assisted in assignments of deployed personnel to certain stations. For example, he explained that he worked with the licensed embalmers to determine which deployed personnel would fit best in the different areas of the Port Mortuary (*i.e.* dressing, restoration, shipping).

In his testimony, as quoted in the OSC Report at page 128, [Major 2] indicated that while his primary involvement ended at the hand off, "we'll continue as the remains continue through the process. We'll walk the line and make sure that everything is going the way that it should." The AFMAO members would support the OAFME throughout the processing line, and [Major 2] would watch over them wherever they were in the line to ensure that they were doing well mentally and physically.

Even with the additional follow-up with [Major 2], the evidence shows that, at the time of the events at issue, the roles and responsibilities of AFMAO and OAFME with regard to handling remains/portions were often blurred. While he maintained general oversight for the deployed members throughout the line, [Major 2] stated he did not direct the AFMAO deployed members' actions with respect to the remains/portions after they were delivered to the first station after triage. According to [Major 2], to assist with the processing line, he and other AFMAO members are placed under the temporary tactical control of the OAFME while remains and portions are being processed. This meant that the OAFME may direct or guide the work done by the AFMAO deployed members with respect to the processing line. For instance, OAFME employees working at the dental or FBI stations let the AFMAO handlers know when the human remains or portions are ready to be taken to the next station.

[Major 2] also stated that, while he was Director of Operations, he was not responsible for the human remains/portions throughout the processing line except from triage to the first station. According to [Major 2], he had no responsibilities regarding the remains or portions after autopsy. Rather, that was squarely the responsibility of the licensed embalmers from AFMAO.

On a related note, the Air Force has completed additional corrective action in this regard. As set forth in the OSC Report of Investigation, AFMAO and OAFME signed an MOU delineating respective responsibilities for handling remains/portions. According to the MOU, both AFMAO and OAFME agreed to be bound by established joint standard operating procedures concerning, but not limited to, remains processing and portions management. On June 7, 2011, AFMAO and AFME issued a Joint SOP 01, *Remains Processing*, which provides comprehensive operational guidance for AFMAO and AFME personnel handling remains and portions, and incorporates improvements to procedures including chain of custody requirements and responsibilities.

Redaction

I am enclosing two versions of the Supplemental Response. The first contains the names of witnesses and is for your official use. I understand you will provide a copy of this version to the President and the House and Senate Armed Services Committees and to the Complainants. I request that you make only the second version which is redacted available to the public. We have redacted the names of witnesses and others specifically identified within the Report of Investigation, with the exception of the subjects and the whistleblowers.¹⁰ Names were substituted with duty titles. The redactions are consistent with the witness legend provided for the redacted Report of Investigation. The purpose of removing personally identifying information of the witnesses was to protect them from harm, embarrassment, inconvenience, or unfairness. The altered language does nothing to change the substance of the Report. Because the alterations are immaterial to the meaning of the evidence, the law, the analysis and the conclusions, the attached redacted Supplemental Response for public release is substantively identical to the unredacted version.

¹⁰ According to correspondence with your office, all three whistleblowers consented to the release of their names.

Our request for these redactions is based upon the Privacy Act which prohibits disclosing personal information to anyone other than the subject of the record without his or her written consent (unless such disclosure falls within one of the Privacy Act exceptions not applicable herein). *See* 5 U.S.C. §552a. We believe the witnesses have a reasonable expectation of privacy in the information presented in the Report of Investigation. We also believe that disclosure of their names or other identifying information would not benefit the general public in that the specific identity of the individuals need not be revealed in order for the reader of the redacted report to understand the relevant facts. That is, the redacted information does not in and of itself reveal anything regarding the operations or activities of the Air Force, or the performance of its statutory duties. In our view, the individuals' probable loss of privacy outweighs the public interest in knowing the names of the individuals or other personally identifiable information. I have also attached a revised redacted version of the original report for public release.

If you have any questions regarding this request, please contact Deborah Gunn at 703-695-4435 or by email at Deborah.gunn@pentagon.af.mil or you may contact Major Garrett Condon at 703-695-6552 or by email at Garrett.condon@pentagon.af.mil.

Sincerely,



CHERI L. CANNON
Deputy General Counsel
(Fiscal, Ethics and Administrative Law)

Attachments:

Redacted original OSC Report of Investigation
Redacted version of Supplemental Response