

you see a problem, I'm going to wait until next week to start contacting witnesses and scheduling them for interviews. I was absolutely astonished that he would do that for two reasons. One, it involved a senior leader and we were beyond the point of . . . trying to figure out . . . I was astonished that we would just sit and wait." [Tab C-10a, (b)(7)(C) p. 5].

(b)(7)(C) thought (b)(7)(C) was trying to stall inquiry into this case long enough to delay its resolution until the 35<sup>th</sup> Signal Brigade's deployment to Iraq. (b)(7)(C) testified that, in contrast, he wanted the section to complete a PI and to do it quickly. He knew the 35<sup>th</sup> was getting ready to deploy, and that if these allegations were true, one of the deploying units would lose its Battalion Commander. Were that to occur, (b)(7)(C) wanted the unit to have as much time as feasible before deployment to adjust to the loss of its leadership. (b)(7)(C) said that he made it very clear to (b)(7)(C) that he wanted him to move forward on the case so the Commanding General and Brigade Commander would have sufficient facts to make an informed decision on (b)(7)(C) status before the unit's deployment [Tab C-10d, (b)(7)(C) p. 5-7].

(b)(7)(C) testified that in early- to mid-November 2004 (about two weeks prior to his (b)(7)(C) deployment to Iraq),<sup>84</sup> (b)(7)(C) had personally brought to his (b)(7)(C) attention allegations that (b)(7)(C) had engaged in an inappropriate relationship. (b)(7)(C) stated that (b)(7)(C) told him that the FB OIG had received unfavorable information about (b)(7)(C). (b)(7)(C) testified that he offered to investigate the matter by appointing an AR 15-6 investigating officer at his level, but that (b)(7)(C) advised him not to do anything because he (b)(7)(C) intended to seek the Commanding General's advice on the matter [Tab C-11, (b)(7)(C) p. 2].

#### Discussion:

There is no evidence, other than the unsupported testimony of the two complainants, that (b)(7)(C) blocked the referral of (b)(7)(C) allegations against (b)(7)(C) to the command for investigation. That slightly more than a month elapsed between receipt of (b)(7)(C) complaints (October 19, 2004) and (b)(7)(C) referral of the matter to the highest levels of the chain of command at Fort Bragg (November 22, 2004), does not appear unreasonable, particularly given that (b)(7)(C) was TDY in Iraq for two of the weeks at issue. Further, it appears that in the intervening period, the FB OIG undertook interviews of several significant witnesses in the case as part of a PA/PI/IGPA. It is reasonable to presume that (b)(7)(C) properly relied on information derived from those interviews to assess preliminarily whether (b)(7)(C) allegations were credible and to inform his decision to approach the

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<sup>84</sup> Note that investigation revealed that (b)(7)(C) and the 35<sup>th</sup> Signal Brigade deployed to Iraq sometime between November 26 and 28, 2004.

Commanding General, XVIII Airborne Corps to secure a directive to investigate the case further.

It appears that within a reasonable period after being informed of [REDACTED] allegations, [REDACTED] discussed the allegations with [REDACTED]. Although [REDACTED] offered to address the issues internal to the 35<sup>th</sup> Signal Brigade, [REDACTED] advised against that course of action. [REDACTED] decision not to refer the allegations to [REDACTED] for resolution did not violate AR 20-1. As the Primary IG, it was within [REDACTED] discretion to elect a different method of investigation for these allegations. [REDACTED] decision that these allegations were too sensitive to be investigated at the Brigade level, but should be investigated at a more senior level under the auspices of the Commanding General, was reasonable and prudent and should be accorded deference.

[REDACTED] testified credibly that he had neither ordered the case to be closed in the office as an Assistance matter nor had he directed that the case should not be investigated properly. To the contrary, [REDACTED] made it very clear to [REDACTED] that he wanted him to move forward quickly on the case to facilitate timely decision-making by the Commanding General and Brigade Commander on [REDACTED] status. After the initial directive was signed by the Commanding General in late November, the IG investigation commenced. When the IG investigation developed information that the allegations appeared to be true and thus could lead to adverse action against [REDACTED], [REDACTED] recommended that the Commanding General appoint an AR 15-6 officer and secured the Commanding General's approval of that course of action. The completed AR 15-6 investigation was used as the basis for [REDACTED] removal from command and to inform an IG ROII. All indications are that, for the most part, the FB OIG properly handled and supervised the investigation as it developed and progressed.

Conclusion: The allegation that [REDACTED] delayed an investigation into the allegations made by [REDACTED] against [REDACTED] is unsubstantiated.

Corrective Action Related to OSC Allegation 3: The lack of documentation of key witness interviews in either the case file or the ROII related to [REDACTED] allegations significantly hindered the FORSCOM investigation of the OSC-referred allegations.<sup>85</sup> This deficiency made it particularly difficult to determine what transpired in the period between [REDACTED] complaint to the FB OIG on October 19, 2004 and [REDACTED] issuance of a directive for an IG investigation on November 22, 2004, the time frame especially critical to an analysis of the complainants' allegation. Substandard practices and procedures regarding the documentation and preservation of witness interviews appear to have pervaded FB OIG operations at this time. Accordingly, the Inspector

<sup>85</sup> See *supra* note 71.

General of the Department of the Army has directed that, at the conclusion of matters related to the OSC-referred allegations, a team comprised of DAIG experts will conduct an on-site "Staff Assistance Visit" with the FB OIG to assess that office's policies and procedures and to provide training and on-the-spot assistance to the FB OIG in remedying any deficiencies identified. The proper documentation of witness interviews will be a particular focus of the "Staff Assistance Visit."

#### **OSC Allegation 4:**

Allegation: The complainants allege that the FB OIG's preliminary analysis of [REDACTED] complaints yielded sufficient evidence to warrant investigation of an allegation that the 35<sup>th</sup> Signal Brigade Commander, [REDACTED], had prior knowledge of [REDACTED] misconduct (as set forth in OSC Allegation 3, above), but covered-up [REDACTED] complaint. The complainants further assert that with a view to protecting [REDACTED] [REDACTED] refused recommendations to order an investigation into the alleged cover-up.

Summary of Findings: This allegation was unsubstantiated by a preponderance of the evidence. The evidence indicates that [REDACTED] ordered [REDACTED] to proceed quickly to investigate the allegations against [REDACTED] so that [REDACTED] superiors, the Commanding General of the XVIII Airborne Corps and [REDACTED] the 35<sup>th</sup> Signal Brigade Commander could make an informed decision regarding [REDACTED] before his unit deployed. It is undisputed that previously, in June 2004, [REDACTED] had directed an investigation into [REDACTED] allegation that she had been assaulted by [REDACTED]. In fact, one of the "issues" subsequently investigated by the Commanding General's AR 15-6 officer (at the behest of [REDACTED] and in response to [REDACTED] complaints to the FB OIG) was whether [REDACTED] prior investigation of the assault had been thorough and complete. A preponderance of the evidence establishes that [REDACTED] was not aware of the separate allegation that [REDACTED] was engaged in an inappropriate relationship with [REDACTED] until November 2004, when [REDACTED] informed [REDACTED] of same. Although [REDACTED] immediately offered to investigate the allegation of inappropriate relationship, [REDACTED] believed the matter was more properly addressed at the level of the Commanding General, XVIII Airborne Corps and advised [REDACTED] accordingly. It would have been inappropriate and illogical for [REDACTED] or the FB OIG to categorize and investigate as a cover-up [REDACTED] failure to investigate an allegation of which he had been previously unaware.

Relevant Authorities:

1. AR 20-1, *Inspector General Activities and Procedures*, dated March 29, 2002 [Tab A-1], provides as follows:

(a) Paragraph 4-5b(2) provides that IGs will determine whether a complaint contains allegations of wrongdoing by an individual or contains information regarding an adverse condition. In both cases, the IG will either initiate an investigative inquiry or refer the allegation to the chain of command to work . . . .

(b) Paragraph 8-1b(2) defines an investigative inquiry as "the fact-finding process followed by IGs to gather information needed to address allegations of impropriety against an individual that can accomplish the same objectives as an IG investigation. . . . The investigative inquiry is the primary fact-finding process used by IGs to address allegations."

(c) Paragraph 8-2a(2) cautions that "[i]nspector general investigators will make or obtain conscious decisions on disposition of all allegations."

(d) Paragraph 4-1 addresses the "Inspector General Action Process" and provides that inspectors general will use the Inspector General Action Process (IGAP) . . . in receiving and resolving IGARS. The IGAP provides for a systematic fact-finding approach to problem solving. Specific actions or components of the IGAP are integral to the whole process and are not intended to be a group of individual steps that are accomplished independently during the process. The process does not require a dogmatic sequential approach of each step for every case, but using this process allows the IG to accomplish all critical tasks in resolving complaints."

(e) Paragraph 4-6a provides that "[t]he chain of command has the responsibility and the authority to address complaints. Inspector Generals will decide matters that are appropriate for the chain of command and then monitor the case after the referral is made to ensure the chain of command takes proper action. When appropriate, IGs should refer allegations to commanders while protecting confidentiality of the source to the extent possible."

Evidence:

OSC Allegation 4 involves the same FB OIG case file, Number FJ 05-0012 [Tab B-13] and facts as does OSC Allegation 3, above. Although [redacted] directed a FB OIG inquiry into the matters raised by [redacted] and sought directives from the Commanding General, XVIII Airborne Corps and Fort Bragg to investigate the allegations against [redacted] claims that [redacted] disregarded recommendations to investigate whether [redacted]

(b)(7)(C) the 35<sup>th</sup> Signal Brigade Commander, had prior knowledge of (b)(7)(C) misconduct but covered-up (b)(7)(C) complaint.

As set forth in the discussion of OSC Allegation 3, above, on December 17, 2004, the Commanding General, XVIII Airborne Corps and Fort Bragg acted on the recommendation of (b)(7)(C) to appoint an AR 15-6 Investigating Officer (IO) to investigate allegations against (b)(7)(C) [Tab B-13e, CG, XVIII Airborne Corps approval of FB OIG request, Tab B-13g, CG, XVIII Airborne Corps Appointment of AR 15-6 IO, p. 1]. The AR 15-6 report was accepted and approved by the Commanding General on January 26, 2005 [Tab B-13g, AR 15-6 Report, p. 4 of 4]. Based on that report, the Commanding General issued (b)(7)(C) a (b)(7)(C) and (b)(7)(C) [Tab B-13k].

The AR 15-6 investigative report served as the basis for the final FB OIG ROII into (b)(7)(C) allegations. Like the AR 15-6 investigation on which it was based, the FB OIG ROII, dated February 25, 2005, addressed, but did not substantiate the allegation that (b)(7)(C) had committed adultery; substantiated that (b)(7)(C) had engaged in an inappropriate relationship with (b)(7)(C) and substantiated that (b)(7)(C) had assaulted (b)(7)(C) and failed to treat her with dignity and respect [Tab B-13c, FB OIG ROII, pp. 4-5]. The background section of the ROII addressed (b)(7)(C) inquiry into (b)(7)(C) allegations of assault, noting that on June 2, 2004, (b)(7)(C) had appointed an officer to inquire into the assault allegation.<sup>86</sup> The officer initially appointed by (b)(7)(C) to conduct the inquiry had determined that because (b)(7)(C) had no intent to cause (b)(7)(C) bodily harm, there was no assault. Rather, the inquiry officer concluded that (b)(7)(C) had failed to treat (b)(7)(C) with dignity, respect, fairness and consistency in violation of AR 600-100, *Army Leadership*, paragraph 2-1 [Tab B-13a, case notes, p. 6; Tab B-13c, FB OIG ROII, p. 4]. Based on this finding, and pursuant to legal advice from a judge advocate attorney, (b)(7)(C) had punished (b)(7)(C) by filing a (b)(7)(C) in his personnel file. The AR 15-6 IO appointed by the Commanding General of XVIII Airborne Corps at (b)(7)(C) recommendation, specified in his report that he had "uncovered no new facts and circumstances to change the understanding of the facts and circumstances surrounding the [assault] incident," but noted that proof of assault under Article 128 of the Uniform Code of Military Justice did not require evidence of "intent."<sup>87</sup> Accordingly, the AR 15-6 determined that (b)(7)(C) had both assaulted (b)(7)(C) and violated AR 600-100 leadership standards in his treatment of her [Tab

<sup>86</sup> There is no indication how or when SSG Perez's allegation of assault first came to the attention of the 35<sup>th</sup> Signal Brigade chain of command [B-13a, case notes, p. 6].

<sup>87</sup> Under the Uniform Code of Military Justice, Article 128, the offense of assault requires proof that: (1) the accused attempted or offered to do bodily harm to a certain person; and (2) that the attempt or offer was done with unlawful forces or violence. The law imposes no requirement to establish the accused's specific "intent."

B-13c, FB/OIG ROII, pp. 4-5]. This same finding was reflected in the final FB  
OIG ROII. The ROII was signed by [REDACTED] given [REDACTED]  
deployment to Iraq at the time the ROII was completed, [REDACTED]  
signed, concurring in the ROII as the serving Primary IG for Fort Bragg.

The IGAR submitted by [REDACTED] on October 19, 2004, detailed her  
allegation that she had been assaulted by [REDACTED]. The fact that [REDACTED]  
had previously ordered a unit investigation of the incident notwithstanding, [REDACTED]  
[REDACTED] alleged that the assault had been "covered-up" and that no action had  
been taken against [REDACTED]. In support of her perception that her complaint  
had been "covered-up," [REDACTED] asserted her belief that allegations related to  
[REDACTED] alleged inappropriate relationship with [REDACTED] similarly  
had been "covered-up" by the command [Tab B-13f, IGAR p. 1].

The sworn testimony of [REDACTED] was taken on December 3, 2004, by  
[REDACTED] and [REDACTED] it is possible that [REDACTED] also participated in  
this interview [Tab B-14, [REDACTED] testimony]. Regarding her allegation that  
her assault had been "covered-up," [REDACTED] testified that the Brigade  
Commander [REDACTED] knew about her allegation of assault and that she had  
written a statement about the incident [Tab B-14, [REDACTED] testimony, p. 26],  
but that no one from the command had interviewed her about her allegation, and  
the next thing she heard, [REDACTED] was found guilty only of committing  
"verbal abuse" against her [Tab B-14, [REDACTED] testimony, pp. 25-26].  
[REDACTED] testified that [REDACTED] told her that "they were going to give  
[REDACTED] a [REDACTED]" but that when she [REDACTED] saw [REDACTED]  
OER "there was no reference to any kind of problem so if he got a  
reprimand, it was after his OER was put out." [Tab B-14, [REDACTED] testimony,  
pp. 25-26].

In her December 3, 2004 testimony, [REDACTED] also testified to events  
she had personally witnessed while deployed in Iraq and Kuwait, as well as to  
events that had been related to her by others, all of which she perceived to  
evidence that [REDACTED] was engaged in an inappropriate relationship with  
[REDACTED] [Tab B-14, [REDACTED] testimony, pp. 6-7]. [REDACTED]  
testified that another soldier told her that that he had actually observed an  
altercation between [REDACTED] and [REDACTED] ( [REDACTED]  
husband) in which [REDACTED] had confronted [REDACTED] about having sex  
with [REDACTED] [Tab B-14, [REDACTED] testimony, p. 7-8]. Given that the  
incident had been observed by a number of people and "no one said anything,"  
[REDACTED] concluded, "[b]ut of course since they covered up one incident with  
me, it proves nothing that they wouldn't cover this up either."<sup>88</sup> [Tab B-14, [REDACTED]  
testimony, p. 8].

<sup>88</sup> It is important to note that [REDACTED] was not a witness to the altercation between [REDACTED] and [REDACTED]  
[REDACTED] but that she had simply heard rumors around the Battalion as to what had occurred [Tab  
B-14, [REDACTED] testimony, pp. 7-8].

In his testimony to the FORSCOM IOs appointed to investigate the OSC-referred allegations, [REDACTED] explained that [REDACTED] had visited the FB OIG office in mid- to late-2004 to complain that she had been assaulted by her [REDACTED] LTC Thomas. [REDACTED] recalled that [REDACTED] had further alleged that [REDACTED] had engaged in an inappropriate relationship with [REDACTED] and that she [REDACTED] had reported the alleged assault and improper relationship (emphasis added) to [REDACTED], the 35<sup>th</sup> Signal Brigade Commander, but that he had failed to investigate her complaints and covered up the offenses. After taking in [REDACTED] information, [REDACTED] briefed [REDACTED] and turned over the case to [REDACTED] for investigation [Tab C-1, p. 6].

[REDACTED] testified that when [REDACTED] the primary action officer on [REDACTED] case, left the FB OIG for a new job with the XVIII Airborne Corps G-3, [REDACTED] case load was left for him [REDACTED] to complete. [REDACTED] testified that all of the evidence gathered during the FB OIG PIPA/IGPA seemed to indicate that there had existed throughout the Brigade a perception that [REDACTED] was engaged in an inappropriate relationship with [REDACTED]. [REDACTED] noted that the testimonies of the 51<sup>st</sup> Signal Battalion [REDACTED] and Battalion S-3, [REDACTED], created a "reasonable probability" that [REDACTED] had been made aware of the alleged improper relationship. [REDACTED] testified that based on this "reasonable probability" he had concluded that [REDACTED] knew about [REDACTED] behavior, but had not undertaken to investigate or correct the matter. Accordingly, [REDACTED] concluded that an allegation of cover-up on the part of [REDACTED] should be addressed. [REDACTED] claimed that when he discussed this concern with [REDACTED], [REDACTED] told him that [REDACTED] had denied knowing anything about [REDACTED] inappropriate relationship, but that [REDACTED] had previously conducted an inquiry into [REDACTED] allegation of assault [Tab C-1, p. 7]. [REDACTED] testified to his belief that the allegation that [REDACTED] had covered-up the inappropriate relationship had never been addressed properly [Tab C-1, pp. 7-8].

In his testimony to the FORSCOM IOs, [REDACTED] asserted that [REDACTED] had complained about [REDACTED] in her original IGAR, adding that [REDACTED] reported that she had visited [REDACTED] under the "open door policy"<sup>89</sup> and personally told him about [REDACTED] inappropriate relationship, but that [REDACTED] had "covered it up." [Tab C-2e, p. 2]. [REDACTED] said that [REDACTED] told him that he [REDACTED] had asked [REDACTED] if he had looked into the allegations of an improper relationship and that [REDACTED] told [REDACTED] that he had already informally looked into the allegations of the improper relationship and they were "baseless . . ." [REDACTED] told [REDACTED] he

<sup>89</sup> Under the military's widely used "open door policy," any member of a command may seek a personal discussion with his or her commander on any matter of concern.

didn't do it, and that was the end of it." [Tab C-2a] p. 2; Tab C-2e; pp. 1-2.

A review of [redacted] written IGAR reveals no reference to [redacted] most notably, the IGAR does not indicate that [redacted] had informed [redacted] personally of her complaints [Tab B-13f; [redacted] IGAR]. Neither does [redacted] reference [redacted] in her December 3, 2004 interview with [redacted] and [redacted] [Tab B-14; [redacted] testimony]. Both documents indicate that [redacted] made only vague references to the 35<sup>th</sup> Signal Brigade having undertaken an investigation into wrongdoing by [redacted] and that "the final findings were geared to cover up [redacted] behavior." [Tab B-13f; [redacted] IGAR p. 1].

In his testimony, [redacted] recalled discussing the allegations against [redacted] with [redacted] in the mid-November 2004 timeframe. Given that [redacted] was TDY from October 25 to November 5, 2004, his recollection of the timing of his conversation with [redacted] seems generally accurate. Although [redacted] recalled that [redacted] was knowledgeable of [redacted] allegation that she had been assaulted by [redacted] (because [redacted] had ordered an inquiry into those allegations), [redacted] testified that he was not sure what [redacted] knew about the allegation of [redacted] alleged **inappropriate relationship** with [redacted]. [redacted] testified that when he first advised [redacted] in November 2004 about the allegations of inappropriate relationship and that he [redacted] intended to notify the Commanding General of same, [redacted] told him there had been previous perceptions of an **inappropriate relationship**, and that he [redacted] had conducted a Commander's Inquiry [Tab C-10d; [redacted] p. 5/7]. [redacted] further recalled that [redacted] had told him [redacted] that he [redacted] had concerns with [redacted] and had admonished [redacted] about the perceptions in the command [Tab 10d; [redacted] p. 6/7]. According to [redacted] [redacted] offered to investigate the allegations regarding the **inappropriate relationship** internal to the Brigade, but that he [redacted] had declined the offer because the FB OIG was already "moving out with the case." [Tab C-10d; [redacted] p. 5/7]. And, [redacted] did not believe that referring the allegations to [redacted] for investigation was a good idea because a Brigade Commander should not "investigate a direct subordinate" and [redacted] was "too close to the matter." [Tab C-10d; [redacted] p. 5/7]. [redacted] testified that after talking with [redacted] he went back to the FB OIG and told [redacted] that [redacted] had previously conducted a Commander's Inquiry into the allegations against [redacted] [Tab C-10d; [redacted] p. 6/7]. [redacted] testified that "he had made it very clear to [redacted] that he wanted him to move forward on the case so the Commanding General and Brigade Commander would have enough facts in order to make a [sic] informed decision on the fate of the battalion commander before they deployed." [Tab C-10d; [redacted] p. 5/7]. It is uncontroverted that pursuant to [redacted] request on

November 22, 2004, the Commanding General signed the initial directive to the FB OIG to inquire into the allegations [Tab C-10d] p. 4/7.

[redacted] denied that he ordered the case closed as an IG Assistance matter or that he had instructed that it not be investigated. Rather, [redacted] acknowledged repeatedly his belief that the FB OIG needed to deal with the allegations "in a timely and effective manner." [Tab C-10d] p. 5/7.

[redacted] also testified that he could not recall if it had been brought to his attention that there was a potential allegation against [redacted] for covering-up the alleged improprieties of his Battalion Commander [Tab C-10d] p. 5/7. [redacted] denied covering-up any allegation against [redacted] and asserted that he did not believe [redacted] had covered-up [redacted] misconduct [Tab C-10d] p. 5/7.

Finally, [redacted] testified that during the AR 15-6 investigation appointed by the Commanding General, [redacted] one of the issues investigated was the alleged cover-up by [redacted] of [redacted] assault charge [Tab C-10a] p. 7.

[redacted] testified that he deployed from Fort Bragg, North Carolina to Iraq around November 26-28, 2004 and that he had met with [redacted] approximately two weeks prior. [redacted] stated that [redacted] advised him that the Inspector General had received some unfavorable information concerning [redacted] one of the Battalion Commanders subordinate to [redacted]—an allegation that [redacted] was involved in an inappropriate relationship with [redacted]. [redacted] told [redacted] that even though the unit was about to deploy, he [redacted] could appoint an AR 15-6 officer to investigate the allegations. [redacted] recalled that [redacted] told him not to investigate because he [redacted] intended to approach the Commanding General about the matter. [redacted] stated that he had never heard allegations or observed "any indications of this type of impropriety" on the part of [redacted] prior to his November 2004 meeting with [redacted]. [redacted] testified that he had not previously conducted any type of Commander's Inquiry into allegations of an **inappropriate relationship** involving [redacted]. He recalled that he had previously conducted a Commander's Inquiry into allegations that [redacted] had assaulted an NCO. [redacted] testified that **had he known**, prior to his November 2004 discussion with [redacted] of allegations that [redacted] had engaged in an inappropriate relationship, he [redacted] would have investigated (emphasis added) [Tab C-11] p. 2.

[redacted] testified that after his discussion with [redacted] in November 2004, he [redacted] spoke with [redacted] and [redacted] about the allegation that [redacted] had engaged in an inappropriate relationship. [redacted] testified that after speaking with [redacted] and [redacted], he realized that there may have existed in his unit a perception that [redacted] and [redacted]

(b)(7)(C) were engaged in an inappropriate relationship and that the CSMs had tried between themselves to make personnel moves to address the concern and "stabilize the organization." (b)(7)(C) was clear, however, that neither of the CSMs had previously brought the matter to his attention and that he had not been aware of the allegation of the inappropriate relationship until his November 2004 conversation with (b)(7)(C) [Tab C-11], (b)(7)(C) p. 2].

In his December 3, 2004, testimony to (b)(7)(C) and (b)(7)(C) (b)(7)(C) CSM of the 51<sup>st</sup> Signal Battalion, indicated that during the unit's deployment to Iraq and Kuwait in the February 2004 timeframe, he had perceived the existence of an inappropriate relationship between (b)(7)(C) and (b)(7)(C). (b)(7)(C) indicated that he had cautioned (b)(7)(C) many times to stay away from (b)(7)(C) that he had advised (b)(7)(C) about the perception that something inappropriate was going on; and that he had told the 35<sup>th</sup> Signal Brigade CSM, (b)(7)(C) about the situation and asked (b)(7)(C) to move (b)(7)(C) to another battalion once the unit returned to Fort Bragg. There is no evidence that (b)(7)(C) told (b)(7)(C) about his concerns [Tab C-14], (b)(7)(C) p. 52].

(b)(7)(C) also testified that some time after the 51<sup>st</sup> Signal Battalion's redeployment to Fort Bragg in late 2004, he had received a telephone call from the Staff Duty desk asking him to come to the headquarters building because (b)(7)(C) was complaining that (b)(7)(C) was having an affair with his wife [Tab C-14], (b)(7)(C) pp. 5, 7-8]. (b)(7)(C) testified that he told (b)(7)(C) about the incident within 24 hours. (b)(7)(C) reported that he and (b)(7)(C) had decided between them that there was not enough credibility or "anything concrete" to (b)(7)(C) allegations, so they decided to keep the incident at the lowest level and to "try and satisfy (b)(7)(C) as well as maintain the dignity and respect of the battalion commander, (b)(7)(C) as well as the effects it would have on the unit." [Tab C-14], (b)(7)(C) p. 43]. There is no evidence that either (b)(7)(C) or (b)(7)(C) reported their concerns about (b)(7)(C) to (b)(7)(C) [Tab C-14], (b)(7)(C) p. 52].

(b)(7)(C) testified that he assumed that (b)(7)(C) had told (b)(7)(C) about the incident at some point in time, but that he "had no idea" exactly when that might have occurred [Tab C-14], (b)(7)(C) pp. 47-48, 64]. (b)(7)(C) reported that (b)(7)(C) had approached him around the last week of November 2004 and told him (b)(7)(C) that he (b)(7)(C) wished (b)(7)(C) had brought the incident to his (b)(7)(C) attention sooner [Tab C-14], (b)(7)(C) p. 52]. This was the first time that (b)(7)(C) had discussed with (b)(7)(C) the allegation that (b)(7)(C) was involved in an inappropriate relationship.

Discussion:

The preponderance of the evidence does not substantiate that [REDACTED] improperly failed to order an investigation into the allegation that [REDACTED] "covered-up" an inappropriate relationship between [REDACTED] and [REDACTED]. The evidence supports a finding that [REDACTED] had no knowledge of the allegation of an inappropriate relationship between [REDACTED] and [REDACTED] until [REDACTED] brought the matter to his attention in November 2004. It would have been overreaching to accuse [REDACTED] of "covering-up" an allegation of which he had been previously unaware.

First, contrary to the testimony of [REDACTED] and [REDACTED] there is no indication that [REDACTED] mentioned [REDACTED] in conjunction with a "cover-up" of the inappropriate relationship between [REDACTED] and [REDACTED] in either her IGAR or in her December 3, 2004 interview. [REDACTED] made only vague references to a perceived unit cover-up of the inappropriate relationship to buttress her assertions that the unit had also covered up her [REDACTED] allegation that she had been assaulted by [REDACTED].

Second, the preponderance of the testimonial evidence documented by the FORCSOM IOs investigating the OSC-referred allegations supports the premise that [REDACTED] did not know about [REDACTED] alleged **inappropriate relationship** with [REDACTED] until [REDACTED] told in late November 2004. There is no evidence that any of the witnesses interviewed by [REDACTED] and [REDACTED] in the context of their PA/PI/IGPA [REDACTED] and [REDACTED] had previously informed [REDACTED] about existing unit perceptions of an inappropriate relationship or of the altercation between [REDACTED] and [REDACTED]. In fact, [REDACTED] testified that he and [REDACTED] specifically decided not to tell [REDACTED] because they deemed the allegation to lack credibility. Although [REDACTED] testified to his presumption that [REDACTED] had informed [REDACTED] at some point in time, he did not know if, or when, that had occurred. [REDACTED] testified that he was unaware of the allegation of an inappropriate relationship until [REDACTED] advised him in November 2004. Further, [REDACTED] and [REDACTED] similarly testified that in a late-November 2004 discussion between them (according to [REDACTED] this discussion was subsequent to his conversation with [REDACTED] and [REDACTED] had told [REDACTED] that he [REDACTED] "wished" that [REDACTED] had informed him earlier of the perceptions that [REDACTED] and [REDACTED] were involved in an inappropriate relationship. [REDACTED] testified that [REDACTED] told him [REDACTED] that he [REDACTED] had been unaware of the allegation until hearing of it from [REDACTED].

In view of this body of evidence, it would have been inappropriate and unfair to hold [REDACTED] responsible for covering-up an allegation of which he had been previously unaware.

This finding leads inevitably to the conclusion that [REDACTED] testimonial recollection of his November 2004 discussion with [REDACTED] may be faulty. One possible explanation is that [REDACTED] may have misunderstood [REDACTED] statement that he had directed an investigation into **allegations of misconduct** against [REDACTED] to mean that [REDACTED] inquiry had addressed both the assault on [REDACTED] (into which [REDACTED] had inquired) and the inappropriate relationship (of which [REDACTED] had no knowledge until informed by [REDACTED]). But even if his conversation with [REDACTED] occurred as [REDACTED] recalls, it provides no evidence of a cover-up on [REDACTED] part. As recalled by [REDACTED], [REDACTED] comments reflected that [REDACTED] had inquired into the allegation of an inappropriate relationship, but had uncovered no substantiating evidence. Still, [REDACTED] had cautioned [REDACTED] about existing perceptions in the command. Even under this scenario, [REDACTED] would have had every reason to believe that [REDACTED] had acted appropriately when confronted with an allegation against his subordinate commander and would have had no basis on which to assert that [REDACTED] had covered-up [REDACTED] misconduct. And, it is undisputed that after speaking with [REDACTED], [REDACTED] went back to the office and told [REDACTED] that [REDACTED] had previously conducted a **Commander's Inquiry into the allegations** against [REDACTED].

At the time [REDACTED] allegations were brought to his attention, [REDACTED] was in the process of preparing for a January 24, 2005 deployment to Iraq. [REDACTED] believed that the FB OIG (and not [REDACTED] was in the best position to investigate the allegations against [REDACTED]. In this context, he urged [REDACTED] and [REDACTED] to determine quickly whether there existed a sufficient basis to bring the allegations to the attention of the [REDACTED]. Moreover, once [REDACTED] concluded that [REDACTED] and [REDACTED] had developed sufficient facts, [REDACTED] presented the matter to the Commanding General who immediately undertook to authorize the FB OIG to inquire further into the matter and subsequently initiated an AR 15-6 investigation. Presumably at [REDACTED] direction, one of the issues investigated in the context of the AR 15-6 was whether [REDACTED] had acted properly to address [REDACTED] allegation of assault. [REDACTED] showed no hesitation in directing a review of the sufficiency of [REDACTED] response to [REDACTED] assault allegation. There is no reason to believe that [REDACTED] would have hesitated to investigate [REDACTED] response to the allegations of inappropriate relationship had [REDACTED] perceived a "cover-up" on [REDACTED] part. The allegation that [REDACTED] refused to investigate [REDACTED] cover-up is discredited, no matter what one believes was said during [REDACTED] November 2004 conversation with [REDACTED]. One possibility is that [REDACTED] did not direct the investigation of a "cover-up" because he correctly believed that [REDACTED] had not been aware of the allegation of inappropriate relationship until [REDACTED] told him in late-November 2004. In the alternative, [REDACTED] may have mistakenly believed that [REDACTED] had already conducted a Commander's Inquiry into both the allegations that [REDACTED].

(b)(7)(C) had assaulted (b)(7)(C) and that (b)(7)(C) was engaged in an inappropriate relationship. Perceiving under either scenario that (b)(7)(C) had taken appropriate action with regard to the inappropriate relationship, (b)(7)(C) perceived no basis on which to accuse (b)(7)(C) of a cover-up.

Conclusion: The allegation that (b)(7)(C) refused to investigate the assertion that (b)(7)(C) had covered-up an inappropriate relationship between (b)(7)(C) and (b)(7)(C) is unsubstantiated.

#### **OSC Allegation 5:**

Allegation: That (b)(7)(C) delayed investigating a report that (b)(7)(C) Commander, 327<sup>th</sup> Signal Battalion, had condoned his troops' consumption of alcohol, in violation of orders, while deployed to Louisiana. The complainants allege that (b)(7)(C) only reluctantly signed a request for a Commander's Inquiry into the allegation, stating that he did not want to burden units while they were preparing for deployment.

Summary of Findings: The preponderance of evidence does not support complainants' assertion that (b)(7)(C) delayed the investigation of allegations against (b)(7)(C). A preponderance of evidence supports a finding that on April 23, 2004, (b)(7)(C) approached the FB OIG to complain that on April 2, 2004, he had been assaulted by three NCOs while on a rest and relaxation trip to New Orleans, Louisiana, at the conclusion of a deployment to the Joint Readiness Training Center, Fort Polk, Louisiana. It was determined that the troops' consumption of alcohol had been a factor in the assault. On April 29, 2004, within six days of receiving (b)(7)(C) complaint, (b)(7)(C) referred the assault allegations to (b)(7)(C) for a Commander's Inquiry. It was only in the context of that Commander's Inquiry that it was determined that the troops' consumption of alcohol had been approved by (b)(7)(C), in violation of XVIII Airborne Corps policy. The substantiated allegation against (b)(7)(C) was properly included in the FB OIG ROI rendered in the case.

#### Relevant Authorities:

1. AR 20-1, *Inspector General Activities and Procedures*, dated March 29, 2002 [Tab A-1], provides as follows:

(a) Paragraph 4-5b(2) provides that IGs will determine whether a complaint contains allegations of wrongdoing by an individual or contains information regarding an adverse condition. In both cases, the IG will either initiate an investigative inquiry or refer the allegation to the chain of command to work . . . .

(b) Paragraph 8-1b(2) defines an investigative inquiry as "the fact-finding process followed by IGs to gather information needed to address allegations of impropriety against an individual that can accomplish the same objectives as an IG investigation. . . . The investigative inquiry is the primary fact-finding process used by IGs to address allegations."

(c) Paragraph 8-2a(2) cautions that "[i]nspector general investigators will make or obtain conscious decisions on disposition of all allegations."

(d) Paragraph 4-1 addresses the "Inspector General Action Process" and provides that inspectors general will use the Inspector General Action Process (IGAP) . . . in receiving and resolving IGARS. The IGAP provides for a systematic fact-finding approach to problem solving. Specific actions or components of the IGAP are integral to the whole process and are not intended to be a group of individual steps that are accomplished independently during the process. The process does not require a dogmatic sequential approach of each step for every case, but using this process allows the IG to accomplish all critical tasks in resolving complaints."

(e) Paragraph 4-6a provides that "[t]he chain of command has the responsibility and the authority to address complaints. Inspector Generals will decide matters that are appropriate for the chain of command and then monitor the case after the referral is made to ensure the chain of command takes proper action. When appropriate, IGs should refer allegations to commanders while protecting confidentiality of the source to the extent possible."

Evidence:

There is one FB OIG case file, Number FJ 04-0152, associated with this allegation [Tab B-15].<sup>90</sup> This allegation derives from a complaint made by [REDACTED] to the FB OIG on April 23, 2004. [REDACTED] complained that his company commander, [REDACTED] had wronged him by vacating a suspension of punishment associated with a previously imposed Article 15.<sup>91</sup> [REDACTED] alleged that he and another soldier had been assaulted by three NCOs at the conclusion of a rest and relaxation trip to New Orleans, Louisiana, following a deployment to the Joint Readiness Training Center, Fort Polk, Louisiana [Tab B-15a, IGAR, p. 3]. [REDACTED] was a member of the 327<sup>th</sup> Signal Battalion, a sub-element of the 35<sup>th</sup> Signal Brigade. [REDACTED] asserted all but one of the members of his unit who were present

<sup>90</sup> Case Number FJ 04-0152, opened April 23, 2004, closed October 28, 2004 [Tab B-15].

<sup>91</sup> An Article 15 is non-judicial punishment authorized by the Uniform Code of Military Justice. If a commander finds a soldier guilty of the offense alleged, the commander may impose punishment, up to the limitations set by statute and regulation. A commander may, however, suspend the soldier's punishment for a period of time, in effect placing the soldier on probation. The suspension of punishment may be vacated if the soldier engages in subsequent misconduct before completing his probationary period.

at the time of the assault incident had been consuming alcohol. The FB OIG PA/PI/IGPA determined that the soldiers' improper consumption of alcohol while deployed had been a factor in the assaults. Given the facts brought to light by the PA/PI/IGPA, the FB OIG questioned whether [REDACTED] suspended [REDACTED] punishment had been vacated appropriately and whether [REDACTED] the 327<sup>th</sup> Signal Battalion Commander, had responded appropriately when [REDACTED] sought an audience with him to discuss the incident.

On April 29, 2004, [REDACTED] referred the allegations uncovered in the FB OIG PA/PI/IGPA to the 35<sup>th</sup> Signal Brigade Commander, [REDACTED] for investigation. Neither [REDACTED] complaint nor the referred allegations asserted that [REDACTED] had improperly authorized his troops' consumption of alcohol. In fact, [REDACTED] referral specifically directed [REDACTED] to determine whether the "... consumption of alcohol [was] IAW Fort Bragg Master Policy Number 42,"<sup>92</sup> and "[w]ho authorized the consumption of alcohol during this trip . . . ." [Tab: B-15d] [REDACTED] referral of allegations, p. 2]. Excepting [REDACTED] testimony to the FORSCOM IOs investigating the OSC-referred allegations, there is no indication or evidence that prior to the referral of [REDACTED] allegations to [REDACTED] for investigation, the FB OIG suspected [REDACTED] of having authorized his troops' consumption of alcohol. In accordance with Fort Bragg policy, [REDACTED] would have been required to apply to [REDACTED] the first Colonel-level Commander in the 327<sup>th</sup> Signal Battalion's chain of command, for authorization to permit his troops to consume alcohol in a deployed environment. There is no evidence that [REDACTED] hesitated to refer the allegation regarding alcohol consumption to [REDACTED] for investigation or that [REDACTED] had any interest in "protecting" [REDACTED].

In response to the FB OIG referral, [REDACTED] initiated an AR 15-6 investigation. The AR 15-6 Investigating Officer (IO) completed his report on May 24, 2004 [Tab: B-15e-2]. In addition to addressing the specific concerns referred by the FB OIG, the report raised three new issues—among them, the report substantiated that [REDACTED] had permitted his soldiers to consume alcohol while on a field training exercise, in violation of the Fort Bragg Master Policy Number 42 [Tab: B-15e-2]. On September 4, 2004, [REDACTED] asked the Commanding General, XVIII Airborne Corps for authority to take administrative action against [REDACTED]<sup>93</sup> On September 8, 2004, the Commanding General granted [REDACTED] request and on September 9, 2004, [REDACTED] issued [REDACTED] a [REDACTED] [Tab: B-15j].

<sup>92</sup> Fort Bragg Master Policy No. 42 provides that "personnel will not purchase, possess, or consume alcohol during deployments or exercises without prior approval of the first colonel in the chain of command. This policy is punitive . . ."

<sup>93</sup> In most cases, the Commanding General of a large installation withholds to himself the authority to take adverse action against senior officers. A [REDACTED] such as [REDACTED] could request, on a case-by-case basis, that the Commanding General cede jurisdiction to permit [REDACTED] to take action against a particular subordinate officer.

Based on the AR 15-6 report, [REDACTED] crafted the FB OIG ROII; [REDACTED] added to the ROII a discussion of the substantiated allegation against [REDACTED] even though that allegation had not been originally referred by the FB OIG to the chain of command [Tab C-7e, pp. 1-2].

In his sworn testimony to the FORSCOM IG IO investigating the OSC-referred allegations, [REDACTED] stated that a soldier had complained to the FB OIG that he had been punished for misconduct (in that a previously suspended punishment for a prior offense had been vacated) while deployed to Louisiana with his unit. [REDACTED] stated that the soldier specifically complained that [REDACTED] had allowed soldiers to consume alcoholic beverages during the deployment. [REDACTED] asserted that [REDACTED] the action officer on the case, had prepared a request for a Commander's Inquiry to [REDACTED] Commander, 35<sup>th</sup> Signal Brigade, who exercised jurisdiction over the 327<sup>th</sup> Signal Brigade. [REDACTED] testified that [REDACTED] would not sign a request for a Commander's Inquiry into the allegations against [REDACTED] because [REDACTED] did not want to distract the unit with allegations against its leaders while it was preparing to deploy<sup>94</sup> [Tab C-1b, p. 9]. [REDACTED] also testified that although [REDACTED] eventually referred the matter to [REDACTED] [REDACTED] had sent emails to [REDACTED] setting forth options as to how to proceed [Tab C-1b, pp. 9-10]. It should be noted that the [REDACTED] case file contains no such email traffic.

[REDACTED] also testified to the FORSCOM IG about [REDACTED] delay in referring the allegations to [REDACTED] and his [REDACTED] desire not to bother [REDACTED] with such allegations while the 35<sup>th</sup> Signal Brigade was preparing for deployment. [REDACTED] added that but for [REDACTED] insistence, [REDACTED] would not have agreed to refer the allegations for investigation. [REDACTED] believed that [REDACTED] "fired [REDACTED]" in part because of [REDACTED] persistence in this case [Tab C-2c, pp. 1-2].

[REDACTED] testified to the FORSCOM IG that the allegations against [REDACTED] first came to his attention only after he received the final report of the AR 15-6 investigation conducted on the order of [REDACTED] in response to [REDACTED] April 29, 2004 referral of allegations. [REDACTED] testified that he informed [REDACTED] that he was going to include the finding against [REDACTED] in the FB OIG ROII, even though the allegation had not been part of the original FB OIG referral to [REDACTED]. [REDACTED] stated that [REDACTED] was not happy about this plan, but that [REDACTED] had never interfered with [REDACTED] decision to include the information in the final ROII and that [REDACTED] had never directed him not to pursue the allegation against [REDACTED].

<sup>94</sup> It appears that [REDACTED] battalion was preparing to deploy to Iraq in January 2005 as part of the larger Fort Bragg deployment in which [REDACTED] also participated.

[redacted] [Tab C-7e, pp. 1-2]. Like [redacted] believed that this incident had played a part in his dismissal at the end of his probationary period of employment with the FB OIG [Tab C-7e, p. 2]. [redacted] cited to his "impression" that [redacted] had made several calls to [redacted] to voice his displeasure that [redacted] seemed to be continuously investigating matters in [redacted] Brigade [Tab C-7e, p. 2]. [redacted] also testified that he did not know of any instance where [redacted] violated AR 20-1 and that he generally felt that [redacted] "allowed him to freely report allegations against Field Grade officer [sic] in a timely manner." [Tab C-7c, p. 2].

[redacted] testified that he did not delay investigation into the allegations against [redacted] and that he would never have tried to "protect" [redacted] because his battalion was the frequent subject of IG allegations, particularly for leader misconduct. [redacted] testified that he had often made comments to his IG office concerning [redacted] and that "his command climate is a bit skewed . . . he [redacted] was 'beyond protection.'" [Tab C-10a, p. 11].

#### Discussion:

Other than the testimonies of the complainants, there is no objective evidence of delay on the part of [redacted] or any other member of the FB OIG in conducting a PA/PI/IGPA into [redacted] allegations or in referring [redacted] complaints to [redacted] for investigation. In fact, the allegations, as developed by the PA/PI/IGPA were forwarded to [redacted] within 6 days (4 working days) of [redacted] visit to the FB OIG. Additionally, there is no evidence to corroborate complainants' claims that [redacted] refused to sign the memorandum referring the allegations to the chain of command.

There is no evidence that, at the time the allegations were referred to [redacted] [redacted] was suspected of having authorized his troops to consume alcohol while in a deployed environment. In fact, the FB OIG referral expressly directed [redacted] to determine who had authorized the troops to drink and whether that authorization accorded with Fort Bragg policy. [redacted] did not name [redacted] in his complaint, nor were allegations against [redacted] developed in the PA/PI/IGPA conducted by [redacted] the case action officer. In fact, [redacted] testified that he was unaware of any allegation against [redacted] until after the completed AR 15-6 investigation was returned by [redacted] to the FB OIG in July 2004. [redacted] also denied knowledge of any allegation against [redacted] until [redacted] received the unit AR 15-6 report and advised him [redacted] of the finding naming [redacted]. [redacted] further denied that he ever would have attempted to protect [redacted] and asserted that, to the contrary, he was particularly sensitive to complaints from [redacted] unit, which [redacted].

perceived as beset by an unfavorable command climate. [REDACTED] the [REDACTED] on the case testified that although [REDACTED] was not happy about the additional allegation involving [REDACTED] [REDACTED] never attempted to preclude him [REDACTED] from including the information adverse to [REDACTED] [REDACTED] in the final FB OIG ROI.

Conclusion: The allegation that [REDACTED] delayed an investigation into allegations that [REDACTED] had improperly authorized his troops to consume alcohol while deployed is unsubstantiated.

#### Corrective Action Related to Allegation 5:

The FORSCOM IOs investigating the OSC-referred allegations noted that there was “no evidence of the use of case notes in the . . . [IG] database or the case file.” “Case notes” refer to a chronological listing documenting each and every action taken in a particular case. Although not a formal requirement at the time that the FB OIG worked the cases at issue in the OSC-referral, IGs have long found the case note method to be of great utility in documenting the progression of cases. Thus, the January 2006 iteration of *The Assistance and Investigations Guide* mandated the use of case notes to document in the IG database and the case file all actions taken with regard to a specific case; the failure to use “case notes” is now considered a substandard practice.<sup>95</sup> The Inspector General of the Department of the Army has directed that at the conclusion of matters related to the OSC-referred allegations, a team comprised

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<sup>95</sup> This observation appears on page 25 of the FORSCOM OIG report. The requirement to document the progress of an IG case in the case notes was not formally codified until the January 2006 version of *The Assistance and Investigations Guide* [Tab A-7]. The 2006 *Guide* was the first doctrinal IG publication to formally impose a requirement to use case notes, but the “case note” technique has long been used by IGs and taught at the IG School. Section 1-2, para. 27d of the 2006 *Guide* provides:

“d. Case Notes: Case notes should be a detailed chronological listing of everything pertaining to the case. They should include, at a minimum --

- phone calls, including names, phone numbers, summary of topics/discussion
- notifications, if verbal or written
- coordination with staff/command (who, what, ...)
- legal reviews
- any e-mails, faxes, or correspondence received or sent
- additional information as required

[Because the system] . . . allows more than one IG to input data into the same case file, IGs should make use of that capability and update cases notes, even if he or she is not the primary IG working a particular case but merely answered or processed information on behalf of -- or during the absence of -- the primary action officer.”

Note, however, that this codification requiring case notes post-dated the FB OIG report pertaining to [REDACTED] and [REDACTED] which was opened on April 23, 2004 and closed on October 28, 2004.

of DAIG experts will conduct an on-site "Staff Assistance Visit" with the FB OIG to assess that office's policies and procedures and to provide retraining and other on-the-spot assistance to the FB OIG in remedying any deficiencies identified. The use of case notes will be a particular focus of this "Staff Assistance Visit."

### "STAND ALONE" ISSUE

The following addresses a "stand alone" issue, not referred by OSC, but raised in the context of the investigation into the OSC-referred allegations.

In testimony to the FORSCOM IOs investigating the OSC-referred allegations and in specific reference to OSC Allegation 5, [REDACTED] asserted that [REDACTED] had terminated his employment with the FB OIG because [REDACTED] had complained to [REDACTED] about [REDACTED] repeated pursuit of investigations in the 35<sup>th</sup> Signal Brigade [Tab C-7e, p. 2]. [REDACTED] also asserted that [REDACTED] "fired [REDACTED] in part because of [REDACTED] persistence in the case involving [Tab C-2c, pp. 1-2].

To clarify the circumstances associated with [REDACTED] termination of employment with the FB OIG, DAIG undertook a review of this issue. A review of the various SF 50, *Notification of Personnel Action* forms filed in [REDACTED] personnel file at Fort Bragg evidence that he was first employed by the FB OIG on [REDACTED] as an excepted service appointment IG in the grade of [REDACTED] [Tabs C-7f-1 and C-7f-2, SF 50s]. [REDACTED] was hired under Emergency Hiring Authority, on a one-year appointment, slated to end on May 18, 2004. Such hiring authority was frequently employed to address the increasing staffing demands associated with the Global War on Terrorism. On May 16, 2004, [REDACTED] temporary appointment was extended for one year, to May 15, 2005 [Tab C-7f-3, SF 50]. He continued to work in the same job at the same pay. On December 26, 2004, however, [REDACTED] was offered a term position as a [REDACTED] in the XVIII Airborne Corps [REDACTED] and voluntary terminated his employment with the FB OIG to accept that job [Tab C-7f-4, SF 50]. In accepting the term position in the [REDACTED] secured for himself longevity accrual, benefits, and most importantly, a promotion. For unknown reasons, [REDACTED] resumed his employment in the FB OIG on February 1, 2005, after [REDACTED] had deployed to Iraq [Tab C-7f-5, SF 50]. On his return to the FB OIG, [REDACTED] retained the grade of [REDACTED] in this grade [REDACTED] was senior to [REDACTED] who had not yet been promoted to GS12.

It appears that shortly after [REDACTED] return to the FB OIG, likely sometime in early February 2005, [REDACTED] visited the civilian personnel office servicing Fort Bragg and requested assistance in terminating [REDACTED] asserting that [REDACTED] had engaged in inappropriate conduct, to include swearing and shouting at customers. Prior to the termination action being

completed, on February 15, 2005, [redacted] voluntarily returned to his [redacted] position in the XVIII Airborne Corps [redacted] [Tab C-7f-6] [redacted] SF [50]. On February 4, 2006, his G-3 term appointment was extended through December 25, 2008 [redacted] [Tab C-7f-7] [redacted] SF [50].

Questions posed by the DAIG to [redacted] Chief, FORSCOM/Installation Management Agency Team, Fort Bragg Civilian Personnel Advisory Center and to [redacted] Fort Bragg attorney- [redacted] revealed that [redacted] had no involvement in the effort to terminate [redacted] employment with the FB OIG [Tab C-7g]. That [redacted] was involved in [redacted] termination is rendered increasingly improbable when one acknowledges that [redacted] was deployed to Iraq at the time [redacted] sought [redacted] termination. Rather, it appears to have been [redacted] who engineered the effort to terminate [redacted]

The preponderance of the evidence does not substantiate that [redacted] fired [redacted] because of complaints that [redacted] was over-zealous in the performance of his IG duties. None of the available evidence indicates that [redacted] played any role in the effort to terminate [redacted] employment with the FB OIG.

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

**OSC Allegation 2:** Information discovered in the course of investigating this allegation prompts a conclusion that the FB OIG erred in failing specifically to address [redacted] prior allegation of reprisal by [redacted] with her in the course of her follow-up interview on December 1, 2005.

**OSC Allegation 3:** Substandard practices and procedures regarding the documentation and preservation of witness interviews appear to have pervaded FB OIG operations during the period relevant to the OSC-referred allegations.

**OSC Allegation 5:** Although the requirement to document the progress of an IG case using "case notes" was not codified until publication of the January 2006 version of *The Assistance and Investigations Guide* (subsequent to the 2004 FB OIG investigation at issue in this allegation), the utility of the "case note" technique in properly and accurately recording the progress of an investigation has long been recognized by IGs and has been recommended by and taught at the IG School. The failure of the FB OIG IGs to document their investigation of [redacted] complaints through case notes contributed to a perception that the case file, and perhaps the investigation itself, was incomplete and lacked clarity.

## CORRECTIVE ACTIONS TO BE UNDERTAKEN

**As to OSC Allegation 2:** The Inspector General of the Army will direct the FB OIG to reopen [REDACTED] case to address properly her potential allegation of reprisal against [REDACTED].

**As to OSC Allegation 3 and OSC Allegation 5:** The Inspector General of the Department of the Army has directed that, at the conclusion of matters related to the OSC-referred allegations, a team comprised of DAIG experts will conduct an on-site "Staff Assistance Visit" with the FB OIG to assess that office's policies and procedures and to provide training and on-the-spot assistance to the FB OIG in remedying any deficiencies identified. The proper documentation of witness interviews and the use of case notes will be specific concerns to be addressed in the context of the "Staff Assistance Visit."

## CONCLUSION

Army Inspectors General play an extremely important role in ensuring that both the Army as an institution and its individual members adhere to the laws, rules, and regulations promulgated by Congress, the President, and the leadership of the Department of Defense and the Department of the Army. Inspectors General serve as the "eyes," "ears" and "conscience" of the Army and the commands in which they serve. In this role an Inspector General must uphold his or her sworn duty to serve as a fair, impartial, and objective factfinder and problem solver. An Inspector General must be sufficiently independent so that those requesting assistance will continue to do so—even when the complainant feels that his supervisor or commander may be the problem. Because of their distinctive position in the governance and oversight of the Army, Inspectors General have a particularly unique responsibility to conduct themselves in accordance with the highest standards of professionalism, adhering scrupulously to all laws, rules, and regulations and taking utmost care to ensure that their actions are, and will be perceived as, legally, ethically, and morally sound. Most notably, the Inspector General is a critical component of the Army's effort to prevent, investigate, and remedy whistleblower reprisal. On so many levels, the allegations referred by the OSC and addressed in the instant report remind each us of the importance of the Inspector General organization; caution us to be ever mindful of the fact that for our system to be able to function, those who see problems must be able to report them without fear of retaliation; and reinforce our duty to ensure that any employee who makes a disclosure of suspected fraud, waste, abuse, or violations of law or regulation is protected from both actual retaliation and the appearance thereof.

The Department of the Army takes very seriously its responsibilities to address, in a timely, thorough, and deliberate fashion, the concerns drawn to its attention by the OSC with respect to the matters discussed in this report concerning the leadership, policies, and procedures of the FB OIG. The

Department has addressed, in depth, the myriad of complex issues comprising the instant allegations referred by the OSC. Although none of the five allegations referred by OSC was substantiated, this investigation, together with others initiated in response to complaints filed in other venues by the OSC complainants, conferred a significant benefit on the agency by facilitating the identification of [REDACTED] unresolved potential whistleblower complaint of reprisal. Notwithstanding the length of time that has elapsed, the DAIG will reopen this case and bring it to a proper conclusion as required by law.

Further, the OSC-referred allegations have brought to light numerous systemic flaws in the operating practices employed by the FB OIG. A DAIG "Staff Assistance Visit" will assist in remedying these deficiencies and putting into place practices and procedures that will improve the overall professionalism, efficiency, and effectiveness of the FB OIG to perform its important mission.

Finally, the report addresses a single "stand alone" concern, separate and apart from the allegations referred to the Department of the Army by the OSC. Inquiry into the "stand alone" concern revealed neither a violation of law, rule, or regulation, nor a substantial and specific danger to public safety.

No evidence with national security implications has been disclosed in the context of this investigation. There is no criminal violation inquiry referral to the Attorney General pursuant to Title 5, USC, Section 1213(d)(5)(d).

This letter, with enclosures, is submitted in satisfaction of my responsibilities under Title 5, USC, Sections 1213(c) and (d). Please feel free to contact [REDACTED] of the Office of the Army General Counsel, [REDACTED] with any further questions or concerns you may have.

[REDACTED]

[REDACTED]

Assistant Secretary of the Army  
(Manpower & Reserve Affairs)

Enclosures  
as