



DEPARTMENT OF THE ARMY
OFFICE OF THE INSPECTOR GENERAL
1700 ARMY PENTAGON
WASHINGTON, DC 20310-1700

REPLY TO
ATTENTION OF:

SAIG-ZA

18 December 2007

MEMORANDUM FOR Forces Command Inspector General, ATTN: [REDACTED]

SUBJECT: Approval of DIH 07-0440

I approve this report's findings and recommendations.

[REDACTED]

The Inspector General

13

OSC Investigation Report

16 February 2007

[As administratively modified 11 December 2007 to change TAB designations to coincide with the report being signed by the Assistant Secretary for the Army, Manpower and Reserve Affairs]

1. Name of Examining Official: [REDACTED]
2. Rank/Grade of Examining Official: [REDACTED]
3. Duty Position and Telephone of Examining Official: Chief, Assistance and Investigations Division, Detailed Inspector General, FORSCOM Inspector General's Office, Comm. [REDACTED] DSN [REDACTED]
4. Organization of Examining Official: Headquarters Forces Command (FORSCOM), Attn: Inspector General, Fort McPherson, GA
5. DIH Control Number: DIH 07-0440
OSC File Nos. DI-06-1645 and DI-06-1904.
6. Scope of Examining, Findings, Conclusions, and Recommendations:

a. Background: On an unknown date, two whistleblowers made disclosures to the Office of Special Counsel (OSC) alleging [REDACTED] II, XVIII Airborne (ABN) Corps and Fort Bragg Primary Inspector General (IG) breached his duty and violated his ethical obligations as an IG by arbitrarily and capriciously delaying, hindering, or failing to order investigations into his colleagues of similar rank.

(1) The disclosure from the two whistleblowers was referred for investigation by the OSC to the Secretary of the Army on 22 Nov 06, as file numbers DI-06-1645 and DI-06-1904. On behalf of the Secretary of the Army, the Office of General Counsel (OGC) in turn referred the disclosures for investigation to the Department of the Army Inspector General (DAIG) on 6 Dec 06.

(2) On 12 Dec 06, The Inspector General (TIG) of the Army appointed the Forces Command (FORSCOM) IG to investigate and prepare a report of the findings since the FORSCOM IG office had a DoDIG Hotline Investigation ongoing into a related complaint. DAIG advised FORSCOM IG not to investigate and report on these matters under the auspices of inspectors general, but to proceed under Title 5, United States Code (USC), Sections 1213 (c) and (d) and Army Regulation (AR) 15-6 Procedures for Investigating Officers and Board of Officers investigative procedures as authorized by AR 20-1 paragraph 2-6a.(2).

b. The following people provided sworn statements or were interviewed by the Investigating Officer (IO) either telephonically or in person during this investigation. Sworn statements were administered by the Staff Judge Advocate office. Some

witnesses were originally interviewed as part of the DoDIG Hotline investigative inquiry, and the IO adopted their relevant testimony for use in the OSC investigation. Each witness received the opportunity to review and adopt their relevant summarized testimony from the DoDIG Hotline investigation in a form of a sworn statement. All witnesses were informed there was a similar investigation directed by the OSC into the whistleblowers's disclosures; the IO was not using IG procedures in this investigation, nor was he acting in his IG capacity; the IO was following AR 15-6 type procedures for records release, and that each witness's identity and testimony could be released for official uses only to various government agencies; that their testimony was releasable outside of official channels under normal FOIA and Privacy Act rules, but that their identity should remain protected; and about the authority for the inquiry, information required by the Privacy Act of 1974, and of the rights of a witness. The IO told applicable witnesses they were not suspected of a criminal offense, but he had information that might be unfavorable to them. Each applicable witness received the opportunity to comment on those matters. Those witnesses facing unfavorable information were told they did not have to answer questions that might incriminate them.

(1) DA Form 2823 (Sworn Statement) of [REDACTED] Assistant IG, XVIII ABN Corps IG Office, Fort Bragg, NC, administered at Fort Bragg, NC on 24 Jan 07. (TAB C-1)

(2) [REDACTED] Deputy IG, XVIII ABN Corps IG Office, Fort Bragg, NC, obtained at Fort Bragg, NC, on 10 Aug 06; and by telephone from Fayetteville, NC, and Fort McPherson, GA on 15 Dec 06 and 25 Jan 07. Sworn statements administered at Fort Bragg, NC on 20 Dec 06. (TAB C-2)

(3) [REDACTED] Assistant IG, XVIII ABN Corps IG Office, Fort Bragg, NC, obtained at Fort Bragg, NC, on 11 Aug 06; and by telephone at Fort Bragg, NC and Fort McPherson, GA, on 18 Dec 06; and sworn statement administered at Fort Bragg, NC on 18 Dec 06. (TAB C-3)

(4) [REDACTED] United States Army Special Operations Command, Fort Bragg, NC, former Detailed IG and Chief of Inspections, XVIII ABN Corps IG office, obtained by telephonic interview at Fort Belvoir, VA and Fort McPherson, GA, on 10 Jan 07; and sworn statement administered at Fort Belvoir, VA on 22 Jan 07. (TAB C-4)

(5) [REDACTED] Joint Multinational Readiness Center, Hohenfels, Germany, former Primary IG, Task Force Bragg IG office, obtained by telephonic interview at Hohenfels, Germany and Fort McPherson, GA, on 21 Dec 06. Sworn statement administered at Hohenfels, Germany on 9 Jan 07. (TAB C-6)

(6) [REDACTED] XVIII ABN Corps Operation Center, Fort Bragg, NC, former Assistant Inspector General, XVIII ABN Corps IG office, obtained at Fort Bragg, NC, on 8 Aug 06; and by telephonic interview at Fayetteville, NC, and Fort McPherson,

GA on 19 Dec 06. Sworn statements administered at Fort Bragg, NC on 5 Jan 07. (TAB C-7)

(7) [REDACTED] XVIII ABN Corps Office of the G4, Fort Bragg, NC, former Detailed Inspector General and Chief of Inspections, Task Force Bragg IG office, obtained by telephonic interview at Fort Bragg, NC and Fort McPherson, GA, on 6 Dec 06; by telephonic interview from Fayetteville, NC and Fort McPherson, GA, on 14 Dec 06; and sworn statement administered at Fort Bragg, NC on 19 Jan 07. (TAB C-8)

(8) [REDACTED] XVIII ABN Corps IG Office Non-Commissioned Officer in Charge (NCOIC), Fort Bragg, NC, obtained by telephonic interview at Fort Bragg, NC and Fort McPherson, GA, on 6 Dec 06. Sworn statement administered at Fort Bragg, NC on 17 Jan 07. (TAB C-9)

(9) [REDACTED] Primary IG, XVIII ABN Corps IG Office, Fort Bragg, NC, obtained at Fort Bragg, NC, and Fort McPherson, GA on 9 Aug 06; by telephonic interview at Fort Bragg, NC and Fort McPherson, GA, on 22 Dec 06; sworn statement administered on 11 Jan 07 at Fort Bragg, NC; by telephonic interview at Fort Bragg, NC and Fort McPherson, GA, on 6 Feb 07; and sworn statement administered at Fort Bragg, NC on 15 Feb 07. (TAB C-10)

(10) [REDACTED] Director Capabilities Development Integration Directorate, and TRADOC Integration Office Networks, US Army Signal Center, Ft. Gordon, GA, former Commander, 35th Signal Brigade, XVIII ABN Corps, Fort Bragg, NC, obtained by telephonic interview at Evans, GA and Ft. McPherson, GA, on 9 Feb 07. (TAB C-11)

c. The IO reviewed the following documents.

(1) Letter, dated 22 Nov 06, from the OSC to The Honorable Francis J. Harvey, Re: OSC File Nos. DI-06-1645 and DI 06-1904. (TAB 2)

(2) Memorandum, Department of the Army, OGC, 6 Dec 06, subject: Whistleblower Investigation-XVIII Airborne Corps and Fort Bragg Office of the Inspector General, Fort Bragg, North Carolina (OSC File Nos. DI-06-1645 and DI 06-1904. (TAB 3)

(3) Memorandum, Department of the Army, Office of the Inspector General, 8 Dec 06, subject: OSC Case. (TAB 4)

(4) Memorandum, Department of the Army, Office of the Inspector General, 12 Dec 06, subject: Office of Special Counsel Whistleblower Investigation. (TAB 5)

(5) Title 5, United States Code, Section 1213, Provisions relating to disclosure of violations of law, gross mismanagement, and certain other matters, 3 Jan 05.

(6) Army Regulation 15-6, Procedures for Investigating Officers and Boards of Officers, 2 Oct 06 (TAB A-2).

(7) Army Regulation 20-1, paragraph 2-6a.(2), Inspector General Activities and Procedures, 29 Mar 02. (TAB A-1)

(8) The Assistance and Investigations Guide, United States Army Inspector General School, June 2004 (TAB A-6).

(9) The Assistance and Investigations Guide, United States Army Inspector General School, January 2006 (TAB A-7).

(10) FORSCOM IG case file, Case No. FZ 06-0007 [REDACTED] (TAB B-1)

(11) XVIII ABN Corps IG case file, Case No. FJ 06-0107 [REDACTED] (TAB B-2)

(12) XVIII ABN Corps IG case file, Case No. FJ 06-0155 [REDACTED] (TAB B-3)

(13) XVIII ABN Corps IG case file, Case No. FJ 06-0218 [REDACTED] (TAB B-4)

(14) Memorandum for Record (MFR) w/enclosures, subject: [REDACTED] NCOER/Reprisal complaint ([REDACTED] as reviewer), dated 17 Feb 06, unsigned, received from [REDACTED] on 10 Aug 06. (TAB B-7)

(15) XVIII ABN Corps IG case file, Case No. FJ 04-0265 [REDACTED] (TAB B-8)

(17) FORSCOM IG case file, Case No. FZ 050081 (DIH 05-0261 [REDACTED]) (TAB B-9)

(18) FORSCOM IG case file, Case No. FZ 060016 (DIH 06-6008 [REDACTED]) (TAB B-10)

(19) XVIII ABN Corps IG case file, Case No. FJ 06-0031 [REDACTED] (TAB B-11)

(20) XVIII ABN Corps IG case file, Case No. FJ 05-0012 [REDACTED] (TAB B-13)

(21) Testimony of SSG Veronica Perez taken on 2 Dec 04, by [REDACTED] and [REDACTED] XVIII ABN Corps IG office. (TAB B-12)

(22) XVIII ABN Corps IG case file, Case No. FJ 04-0152 [REDACTED] (TAB B-15)

(23) Testimony of [REDACTED] taken on 2 Dec 04, by [REDACTED] and [REDACTED] XVIII ABN Corps IG office. (TAB C-12)

(24) Testimony of [REDACTED] taken on 2 Dec 04, by [REDACTED] and [REDACTED], XVIII ABN Corps IG office. (TAB C-13)

(25) Testimony of [REDACTED] taken on 3 Dec 04, by [REDACTED] and [REDACTED], XVIII ABN Corps IG office. (TAB C-14)

d. Allegation 1: [REDACTED] II, improperly failed to contact the Department of the Army Inspector General after being presented a reprisal allegation, in violation of AR 20-1, para 8-9c(2).

FINDING: The allegation was not substantiated.

(1) Presentation of evidence:

(a) Whistleblower Complainants. According to the OSC correspondence to the Secretary of the Army, dated 22 Nov 06, the complainants alleged the "specter of reprisal" was raised in a case concerning [REDACTED] Noncommissioned Officer Evaluation Report (NCOER), which was being worked within their IG office. The complainants alleged they advised [REDACTED] to submit a whistleblower advisory to the DAIG, but [REDACTED] instead berated them for not preventing the reprisal and ordered the case closed as an assistance issue. (TAB 2)

(b) Standard: Paragraph 8-9c(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "If, upon presentation, a Soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 U.S.C. 1034, the IG who receives the allegation will contact DAIG Assistance Division (SAIG-AC) promptly by telephone (within 2 days) for specific instructions regarding how to proceed." (TAB A-1)

(c) Paragraph 2. Section 11-1, Part II, Assistance and Investigations (A&I) Guide, June 2004, states "If, upon presentation, a Soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 USC 1034, the IG who receives the allegation will contact the Whistleblower Investigation and Oversight Branch (WIOB), DAIG Assistance Division, promptly by telephone (within 2 working days) for specific instructions regarding how to proceed." (TAB A-6)

(d) Paragraph 2. Section 11-1, Part II, Assistance and Investigations (A&I) Guide, January 2006, states "If, upon presentation, a Soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 USC 1034, the IG who receives the allegation will contact the Whistleblower Investigation and Oversight Branch (WIOB), DAIG Assistance Division, within two working days using the Whistleblower Advisement." (TAB A-7)

(e) FORSCOM IG case file, Case No. FZ 06-0007 [REDACTED], Opened 14 Oct 05; Closed: 17 Oct 05. Examination showed that [REDACTED] made a WB reprisal complaint to the XVIII ABN Corps IG office on 15 Sep 05. The case was

handled at XVIII ABN Corps by [REDACTED] Assistant IG. The IGARS case notes stated that the Fort Bragg IG office was advised by the FORSCOM IG office and DAIG to submit a request for declination of [REDACTED] complaint because it did not appear to meet the criteria outlined in 10 U.S.C. 1034. Accordingly, the Corps IG office prepared a declination memorandum and forwarded it through FORSCOM IG to DAIG on 21 Sep 05. The Corps IG office then closed their case on 17 Oct 05, without taking further action. A memorandum in the case file from DAIG in March 2006, documented that DoDIG approved the declination request and that further investigation was not required. (TAB B-1)

(f) XVIII ABN Corps IG case file, Case No. FJ 06-0107 [REDACTED] Opened 16 Dec 05; Closed: 5 Jan 06. Examination showed that [REDACTED] requested assistance from the Corps IG office in reference to ensuring her Noncommissioned Officer Evaluation Report (NCOER) was being processed. [REDACTED] Corps assistant IG, provided assistance in the matter and opened a case on 16 Dec 05. [REDACTED] determined that the NCOER was in Iraq awaiting the reviewer's signature and then would be forwarded for processing. [REDACTED] documented in the synopsis that he notified [REDACTED] and closed the case on 5 Jan 06. (TAB B-2)

(g) XVIII ABN Corps IG case file, Case No. FJ 06-0155 [REDACTED] Opened 13 Jan 06; Closed: 20 Jan 06. Examination showed that [REDACTED] contacted the Corps IG office telephonically on 13 Jan 06, requesting assistance in obtaining her NCOER from Dragon Brigade (XVIII ABN Corps Special Troops Brigade). [REDACTED] Corps assistant IG, provided assistance in the matter and opened a case on 13 Jan 06. [REDACTED] contacted the Corps IG office in Iraq and determined the NCOER would be hand carried back from Iraq by the Dragon Brigade Command Sergeant Major (CSM) and changed because the reviewer (Dragon Brigade Cdr, [REDACTED]) did not agree with the rated NCO's job description. [REDACTED] documented in the 1559 synopsis that he notified [REDACTED] by voice message and closed the case on 20 Jan 06. (TAB B-3)

(h) XVIII ABN Corps IG case file, Case No. FJ 06-0218 [REDACTED] Opened 2 Feb 06; Closed: 22 Feb 06. Examination showed that [REDACTED] contacted the Corps IG office telephonically on 2 Feb 06, with a complaint that she had not received her NCOER; that it was past due to the United States Army Enlisted Records Center (USAREC), and alleged that it was part of her earlier complaint of reprisal, dated 15 Sep 05. [REDACTED] Corps assistant IG, was the IG in the matter and opened a case on 2 Feb 06. [REDACTED] determined that the NCOER had been completed and was signed by [REDACTED] but she had yet to receive a copy. [REDACTED] also determined that [REDACTED] reprisal complaint did not appear to meet the criteria of reprisal and recommended to [REDACTED] in a 9 Feb 06, memorandum that the complaint be declined. The Electronic 1559 synopsis shows [REDACTED] complained that her late NCOER was a continuation of the reprisal case she filed earlier, which [REDACTED] annotated in the synopsis was still awaiting a determination from DoDIG. [REDACTED] documented in the synopsis that he notified [REDACTED] (IO Note: date unknown) that a late NCOER was not an adverse personnel action in that it would not adversely effect or

hinder her career or promotion, and that SFC Clark acknowledged understanding this. The case was closed on 22 Feb 06. (TAB B-4)

(i) Memorandum For Record (MFR) w/enclosures, subject: [REDACTED] NCOER/Reprisal complaint [REDACTED] as reviewer), dated 17 Feb 06, submitted by [REDACTED] during an interview with the IO on 10 Aug 06. An examination of the MFR showed that on or about 16 Feb 06, [REDACTED] briefed [REDACTED] and [REDACTED] about [REDACTED] late annual NCOER and reprisal complaint. [REDACTED] MFR stated he believed the reviewer's [REDACTED] actions surrounding [REDACTED] late annual NCOER complaints, and this led him to consider "relooking" her initial reprisal complaint. The MFR stated that [REDACTED] met with [REDACTED] again on 17 Feb 06, and [REDACTED] reiterated the initial reprisal complaint by [REDACTED] [REDACTED] should not be revisited, her latest reprisal complaint was not reprisal, and her complaint of the late NCOER was fixed as an assistance issue.

The MFR stated that based upon [REDACTED] guidance and concerns, the Corps IG office's Assistance and Investigation (A&I) Division closed the case as assistance and notified [REDACTED] there was no reprisal. The MFR also stated that [REDACTED] directed [REDACTED] to not take further action on [REDACTED] whistleblower allegation, even after [REDACTED] reiterated that they should at least send a declination of the complaint to DoDIG. [REDACTED] stated [REDACTED] actions intimidated him and caused him to close the case. The MFR contained enclosures, one of which was a matrix illustrating the timeline, actual and proposed duty titles, and rating chain of [REDACTED] NCOERs from Sep 02 to Dec 05. An additional enclosure to the MFR was an email from [REDACTED] to [REDACTED] dated 13 Feb 06, subject: [REDACTED], which gave highlights from an interview conducted with [REDACTED] senior rater [REDACTED]. [REDACTED] stated in the email to [REDACTED] [REDACTED] confirmed that the duty description on [REDACTED] annual NCOER would be the first rating for her in that position. [REDACTED] commented at the end of the email that if the duty description stands as it is, it would call into question the Dragon Brigade's reason not to do a complete the record NCOER on [REDACTED] back on 15 Sep 05. (TAB B-7)

(j) Testimony of [REDACTED] obtained on 10 Aug 06; and sworn statement administered on 20 Dec 06. [REDACTED] testified that [REDACTED] second Whistleblower Reprisal allegation in February 2006 was not handled properly in the IG office because [REDACTED] would not let the Whistleblower (WB) advisement go forward to DAIG as is required. [REDACTED] clarified in his sworn statement that he felt [REDACTED] had a valid reprisal complaint, and it called into question the office's handling of her initial complaint. [REDACTED] testified there was a requirement to report the allegation to DAIG, but [REDACTED] directed that the case be closed as an assistance case. [REDACTED] testified that [REDACTED] thought [REDACTED] and [REDACTED] were trying to harass the Dragon Brigade commander, [REDACTED] who was the Reviewer on [REDACTED] NCOER. (TAB C-2)

(k) Sworn Statement, [REDACTED] administered on 24 Jan 07. An examination of [REDACTED] sworn statement showed he believed that [REDACTED] first complaint of reprisal in Sep 05 met the whistleblower reprisal complaint criteria because it was the withholding of a favorable personnel action, and that the determination to submit the declination by [REDACTED] was done incorrectly. [REDACTED] contended that [REDACTED] contacted him telephonically on 2 Feb 06, about the late NCOER, and that she also alleged that that it was a continuation of the reprisal complaint she made in September 05. [REDACTED] contended that this constituted an official filing of a reprisal complaint by [REDACTED]. [REDACTED] sworn statement indicated he believed a late NCOER did not meet the criteria of reprisal, but a declination of a reprisal complaint had to be completed at a minimum. [REDACTED] contended he informed [REDACTED] of [REDACTED] complaint, and that [REDACTED] briefed COL Huggins on the complaint behind closed doors; and that when Mr. [REDACTED] emerged from the meeting with [REDACTED] [REDACTED] told him to close [REDACTED] case as assistance, that the case was not to be handled as a whistleblower allegation, and that no notification would be made to FORSCOM IG or DAIG at the direction of [REDACTED] (TAB C-1)

(l) Testimony of [REDACTED] obtained on 11 Aug 06. [REDACTED] testified he knew [REDACTED] made a second WB reprisal complaint in February 2006. [REDACTED] worked the first WB complaint [REDACTED] made in September 2005. [REDACTED] testified that [REDACTED] tried to give the case to him, but in a meeting [REDACTED] attended with [REDACTED], [REDACTED] told [REDACTED] that the case was [REDACTED] case and he was to work it. [REDACTED] further testified that [REDACTED] never gave any direction to close the case in that meeting, and he never heard [REDACTED] say in that meeting that the reprisal complaint should not be reported to DAIG. [REDACTED] did not know what happened with case or its status after the meeting. (TAB C-3)

(m) Testimony of [REDACTED] obtained on 10 Jan 07. [REDACTED] testified he got involved in [REDACTED] NCOER issue just before their redeployment from Iraq; the Brigade S-1, [REDACTED] was his tent mate and he had asked [REDACTED] about the status of the NCOER when it was brought up by the IGs back at Fort Bragg; he remembered the Brigade S-1 admitting that the brigade had held up the completion of the NCOER, and while it was the brigade's fault, it was not deliberate; that the Brigade S-1 told him that the brigade commander had a problem with her duty description on the NCOER, and they wanted to make sure it was right; and that he did not detect any animosity from the leadership in the Dragon Brigade concerning [REDACTED] NCOER, they just wanted to make sure the NCOER was right. (TAB C-4)

(n) Testimony of [REDACTED] obtained on 21 Dec 06. [REDACTED] testified that [REDACTED] told him [REDACTED] did not want to concur with the investigation of a potential whistleblower reprisal allegation made by [REDACTED]; that [REDACTED] told him [REDACTED] thought that they, [REDACTED] and [REDACTED] were trying to set up the leadership of the Dragon Brigade; that he

wasn't privy to any of those discussions because [REDACTED] had just returned from Iraq and [REDACTED] wanted to get immediate control back of the office; that he thought it was peculiar that the brigade commander in the [REDACTED] case was so focused on what her job description was when he was only the reviewer; that reviewers are normally more concerned with content and that the rater and senior rater portions agree; and that he knew [REDACTED] submitted a complaint to their office in the previous months. (TAB C-6)

(o) Testimony of [REDACTED] obtained on 9 Aug 06. [REDACTED] testified he first heard about [REDACTED] NCOER issues while he was in Iraq; he remembered that there was a problem with her duty description, in that she was trying to show a growth in responsibility; he thought at the time that this was another attempt by [REDACTED] to pass off a case to them in Iraq as he had tried to do previously with other cases; he sent a message back to the Fort Bragg IGs that Dragon Brigade was trying to redeploy and to address the issue of her NCOER with them once they got back to Fort Bragg, and to tell Dragon Brigade that this was important otherwise they were going to look bad; he didn't hear anything else about it once he returned to Fort Bragg on 21 Jan 06, until he saw an undated complaint from [REDACTED] on [REDACTED] desk around 22 Feb 06; that he began to ask [REDACTED] and [REDACTED] questions about what they were doing with this complaint; that he began to get suspicious that this was an attempt to set up a commander by dragging their feet on a case, and then when it became late they could say that the commander "screwed a Soldier"; and that it seemed to him that Dragon seemed to be one of [REDACTED] favorite targets.

[REDACTED] further testified that during a meeting with [REDACTED] and [REDACTED] told him that it was [REDACTED] case because it was a whistleblower, wherein [REDACTED] replied that it was not a whistleblower. [REDACTED] then testified that the FORSCOM IG and [REDACTED] indicated the case did not meet the whistleblower criteria while [REDACTED] said it did; he then thought that this was an attempt by [REDACTED] to get a case shifted from [REDACTED] to [REDACTED] because [REDACTED] did not like to do paperwork; that [REDACTED] usually succumbed to [REDACTED] desires even though [REDACTED] was [REDACTED] supervisor; that he [REDACTED] told [REDACTED] he did not care what it was, but to have [REDACTED] work it out and get it done; that it looked like the office was "sitting" on a case; that [REDACTED] case was one of the cases that gave him the impression that [REDACTED] and [REDACTED] were acting corrupt, because it looked like they were structuring and back dating documents to make it look like what should have happened; and that since it looked like he was on to [REDACTED] and [REDACTED] wish to set up the command, it would look like he was trying to protect the Dragon Brigade commander, [REDACTED] (TAB C-10)

(2) Discussion:

(a) The complainants allege in their OSC disclosure that [REDACTED] [REDACTED] improperly failed to contact the DAIG after being presented a reprisal allegation, in violation of AR 20-1, para 8-9c.(2).

(b) Paragraph 8-9c(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "If, upon presentation, a Soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 U.S.C. 1034, the IG who receives the allegation will contact DAIG Assistance Division (SAIG-AC) promptly by telephone (within 2 days) for specific instructions regarding how to proceed." This procedure was updated in June 2004 by the A&I Guide, to contact DAIG by telephone within two working days; and in January 2006, it was changed to "If, upon presentation, a Soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 USC 1034, the IG who receives the allegation will contact the Whistleblower Investigation and Oversight Branch (WIOB), DAIG Assistance Division, within two working days using the Whistleblower Advisement (below)." Based upon the newness of the Jan 06 A&I Guide, XVIII ABN Corps IG should have been expected at the very least to report SFC Clark's reprisal complaint to DAIG within two working days.

(c) The IG case files indicate [REDACTED] alleged whistleblower reprisal in September 2005, which eventually led to an approved declination of reprisal by the DoDIG in March 2006. According to XVIII ABN Corps IG office records, [REDACTED] alleged that the delay in processing her annual NCOER in the February 2006 timeframe was a continuation of her previous reprisal complaint regarding her request for a complete-the-record rating. A preponderance of evidence shows that [REDACTED] Commander, Dragon Brigade and reviewer for [REDACTED] NCOER, did not approve of the duty description on [REDACTED] annual NCOER, and that this issue was not going to be resolved until the Brigade's return from Iraq in January 2006. This apparently contributed to the delay in processing [REDACTED] annual NCOER. [REDACTED] was the IG of record in [REDACTED] February 2006 follow-on allegation of reprisal. As such, he was responsible for the proper handling of that allegation. There is no evidence in the IG records that [REDACTED] tried to gain or formulate the information necessary to timely report an allegation of reprisal to DAIG, as required in AR 20-1 and the A&I Guide. [REDACTED] did not recommend to [REDACTED] that a declination be done on the reprisal complaint until 9 February 2006, seven days after the complaint of reprisal was made. A preponderance of credible evidence established that [REDACTED] did not know about the reprisal matters until mid to late February 2006, well beyond the two day requirement to report it to DAIG as required by AR 20-1 and the A&I Guide.

A preponderance of the evidence established that [REDACTED] [REDACTED] and [REDACTED] met in reference to [REDACTED] NCOER between 17 - 22 Feb 06. [REDACTED] was not present at this meeting and cannot corroborate its outcome. In this meeting, all three attendees agree that [REDACTED] told [REDACTED] that the case would not be shifted to [REDACTED] and that [REDACTED] thought that [REDACTED] and [REDACTED] had in some way set Dragon Brigade up for failure. There is, however, conflicting testimony whether [REDACTED] told [REDACTED] to close the case as assistance and not report it to DAIG. [REDACTED]

testified [REDACTED] told him to close the case and not report it to DAIG. [REDACTED] and [REDACTED] contest this point. They testified that [REDACTED] told [REDACTED] that the case would remain [REDACTED] and [REDACTED] would handle it. [REDACTED] 17 Feb 06, MFR corroborates [REDACTED] and [REDACTED] testimony and contradicts his own testimony. [REDACTED] MFR doesn't indicate that [REDACTED] directed the case be closed. Instead, [REDACTED] MFR stated that he decided on his own to close the case based upon [REDACTED] concerns.

[REDACTED] sworn statement indicated that when [REDACTED] emerged from the meeting he told [REDACTED] that [REDACTED] thought they had failed to stop the Dragon Brigade commander from reprising, and that [REDACTED] allegation of reprisal would be closed as an assistance case. [REDACTED] sworn statement goes on to say he then closed the case as ordered by [REDACTED] [REDACTED] apparently based this statement on his own speculation. The preponderance of evidence indicates [REDACTED] was upset about [REDACTED] and [REDACTED] actions and accused them of setting up the Dragon Brigade commander for failure. [REDACTED] refused to change IG responsibility of the case from [REDACTED] to [REDACTED]. The preponderance of evidence indicates [REDACTED] told [REDACTED] to close the case and that [REDACTED] did not order the case be closed. This, along with the evidence showing that [REDACTED] did not timely act on [REDACTED] complaint, refutes the complainants's claim that [REDACTED] acted improperly in the way he handled [REDACTED] reprisal complaint.

No further investigation is merited regarding this issue. According to the May 2002 version of AR 623-205, paragraph 3-33, complete-the-record NCOERs are "optional" and processed "[a]t the discretion of the rater . . .". According to the regulation proponent, this discretion carried over to the remaining rating officials (email dated 7 June 2007 from U.S. Army Human Resources Command Office of the Staff Judge Advocate, on file in the Department of Army Inspector General (DAIG) Legal Division). Consequently, not honoring [REDACTED] request for a complete-the-record NCOER was not an adverse personnel action, and therefore not reprisal, regardless of the rating officials's rationale.

(3) Conclusion: The allegation [REDACTED] improperly failed to contact the Department of the Army Inspector General after being presented a reprisal allegation, in violation of AR 20-1, para 8-9c(2) was not substantiated.

e. Allegation 2: [REDACTED] improperly failed to contact the Department of the Army Inspector General after being presented a reprisal allegation, in violation of AR 20-1, para 8-9c(2).

FINDING: The allegation was not substantiated.

(1) Presentation of evidence:

(a) Whistleblower Complainants. According to the OSC correspondence to the Secretary of the Army dated 22 Nov 06, the complainants alleged that after [REDACTED] informed the XVIII ABN Corps IG office and [REDACTED] 35th Signal Brigade CSM, that she was being mistreated in her unit, [REDACTED] implied to her that he could have her transferred for her disclosure of the allegation. The complainants alleged that [REDACTED] did not comply with AR 20-1 and handle the matter as a whistleblower reprisal allegation, but instead directed [REDACTED] be spoken to about the Whistleblower Reprisal Protection Act and the right of every Soldier to register a complaint with the IG. (TAB 2)

(b) Standard: Paragraph 8-9c(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "If, upon presentation, a Soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 U.S.C. 1034, the IG who receives the allegation will contact DAIG Assistance Division (SAIG-AC) promptly by telephone (within 2 days) for specific instructions regarding how to proceed." (TAB A-1)

(c) Standard: Paragraph 2. Section 11-1, Part II, A&I Guide, June 2004, states "If, upon presentation, a Soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 USC 1034, the IG who receives the allegation will contact the Whistleblower Investigation and Oversight Branch (WIOB), DAIG Assistance Division, promptly by telephone (within 2 working days) for specific instructions regarding how to proceed." (TAB A-6)

(d) XVIII ABN Corps IG case file, Case No. FJ 04-0265 [REDACTED], Opened 25 Jan 05 and Closed: 12 Aug 05. Examination of the case file revealed a DA Form 1559 (IGAR) signed by [REDACTED] on 1 Sep 04, where she requested the IG to look into the "reprisal" of a move. [REDACTED] named three persons on the IGAR, [REDACTED] and [REDACTED] and [REDACTED] name did not appear on the form. The case file also contained a complaint [REDACTED] made to her Member of Congress on 9 Nov 04. This complaint contained vague references to reprisals without naming any one, and mentions the Brigade CSM (assumed to be [REDACTED]) making the statement about removing her from Fort Bragg, but does not indicate that the CSM did anything improper or that the statement was made in reprisal for any communication she had made. The investigative inquiry and report appeared to address both the 1 Sep 04, and 9 Nov 04, complaints together. The IG of record in IGARS was [REDACTED] however, the case notes reflect [REDACTED] was not given the case to complete a Report of Investigative Inquiry (ROI) until 17 Jun 05. No previous case notes before 17 Jun 05 were evident. The case file contained transcripts of interviews taken on 23 and 24 Nov 04, with [REDACTED], [REDACTED], and [REDACTED] and evidenced that all three were being investigated for improperly initiating an adverse action against [REDACTED] because she filed a complaint with the Equal Opportunity Advisor, in violation of AR 600-20. The case file also contained a transcript of an interview between [REDACTED] and [REDACTED] occurring on 23 Nov 04. In that interview [REDACTED] testified that she went to the XVIII ABN Corps IG office in early Aug 04 and on 1 Sep 04, where she was eventually handed off to [REDACTED]

who handled her complaint. She also testified on 23 Nov 04, that she had spoken to [REDACTED] during the Sep 04 time frame about whistleblower reprisal, and he told her then that he didn't "think it fit" (TAB B-8 p.23 of [REDACTED] testimony). During that same 23 Nov 04, interview with [REDACTED] and [REDACTED] testified that [REDACTED] told her in a meeting she had with him "that if I keep complaining, running to the IG, that he'll move me off Fort Bragg because I wasn't Fort Bragg material anyway" (TAB B-8 p.32 of [REDACTED] testimony). The final ROII stated that [REDACTED] allegations of reprisal fell under 10 USC 1034 "Whistleblower Reprisal," were reported to DAIG, and were investigated as a separate matter. Accordingly, the ROII did not address any allegations of reprisal. (TAB B-8)

(e) FORSCOM IG case file, Case No. FZ 050081 (DIH 05-0261 [REDACTED])
Opened 25 Jan 05; Closed: 9 Jan 06. An examination of the case file showed that [REDACTED] complained to her Member of Congress (MoC) on 9 Nov 04, which in turn was referred to DAIG for a response. DAIG referred the case to FORSCOM in Dec 04. In her complaint to her MoC, [REDACTED] made a vague claim against unknown persons that she had been threatened with reprisals if she kept talking about the situation. FORSCOM IG referred the case to XVIII ABN Corps IG as the office of inquiry on 31 Jan 05, with a note to ensure that the IG review the case for a possible military whistleblower reprisal violation. When FORSCOM IG reviewed the ROII from XVIII ABN Corps IG in Sep 05, it noticed that allegations of reprisal were addressed using AR 600-20, Army Command Policy, as the standard. FORSCOM IG conferred with DAIG and determined the allegation of reprisal should be addressed as a violation of 10 USC 1034 and DoD Directive 7050.6, Military Whistleblower Protection instead of an Army regulation. FORSCOM IG instructed the XVIII ABN Corps IG on 7 Sep 05, to prepare and forward to DAIG an "Advisement of 10 USC Section 1034 Reprisal." XVIII ABN Corps IG submitted an advisement of whistleblower reprisal on 21 Oct 05. Subsequently, a separate Title 10 USC 1034 whistleblower case was generated and referred by DAIG under DAIG case number of DIH 06-6008, dated 26 Oct 05. A corrected ROII without the allegations of reprisal was received from the XVIII ABN Corps IG on 21 Oct 05, and the case was forwarded to DAIG for approval on 9 Jan 06. (TAB B-9)

(f) FORSCOM IG case file, Case No. FZ 060016 (DIH 06-6008 [REDACTED])
Opened 27 Oct 05; Closed 24 Jan 07. This case was the whistleblower reprisal case that was split out from [REDACTED] congressional complaint (DIH 05-0261). FORSCOM IG received the case from DAIG on 26 Oct 05, and referred it to XVIII ABN Corps on 27 Oct 05, as office of inquiry. A recommendation for declination of a reprisal complaint was received from XVIII ABN Corps IG and forwarded to DAIG for approval on 24 Jan 07. The recommendation of declination was still pending approval. (TAB B-10)

(g) XVIII ABN Corps IG case file, Case No. FJ 06-0031 [REDACTED]
Opened 27 Oct 05, and Closed: 5 Dec 05. This case was opened as a result of DAIG's referral of DIH 06-6008. An examination of this case showed that XVIII ABN Corps conducted a preliminary inquiry of [REDACTED] reprisal complaint. XVIII ABN Corps IG

addressed the allegation that [REDACTED] was moved for making a protected communication to an Equal Opportunity Advisor. During the preliminary inquiry [REDACTED] filled out a whistleblower questionnaire and was interviewed on 1 Dec 05, in reference to her reprisal complaint. In her questionnaire and testimony, [REDACTED] denied being reprisal against for making a protected communication. Additionally, she did not indicate [REDACTED] reprisal against her. On 5 Dec 05, XVIII ABN Corps IG submitted a declination of protection under 10 USC 1034 to FORSCOM IG based upon [REDACTED] questionnaire and testimony that she wasn't reprisal against for making a protected communication. (TAB B-11)

(h) Sworn Statement, [REDACTED] administered on 24 Jan 07. [REDACTED] sworn statement indicated that [REDACTED] had made a complaint of reprisal against [REDACTED] that he reported to [REDACTED] and the case was turned over to [REDACTED] and [REDACTED] as action officers. [REDACTED] statement said that when [REDACTED] was briefed on the situation, [REDACTED] did not follow the proper procedures, and had him call [REDACTED] and make sure he knew about the Whistleblower Protection Act. [REDACTED] stated that [REDACTED] allegations of reprisal were not process as required, and neither an advisory nor a declination was processed due to [REDACTED] actions. [REDACTED] further stated [REDACTED] became the action officer on the case, and that [REDACTED] and [REDACTED] should be interviewed. (TAB C-1)

(i) Testimony of [REDACTED] obtained on 15 Dec 06. [REDACTED] testified that he remembered that [REDACTED] was suspected of being involved with [REDACTED] move, but he had no direct knowledge if, or why, [REDACTED] wasn't reported as a Responsible Management Official in a reprisal case to DAIG as required by AR 20-1. (TAB C-2)

(j) Testimony of [REDACTED] obtained 19 Dec 06. [REDACTED] testified that initially when [REDACTED] came into the office, [REDACTED] was working her case. He recalled that [REDACTED] was working the "teach and train angle" with [REDACTED] on the whistleblower protection act, so he, [REDACTED] wouldn't implicate himself as a Responsible Management Official. [REDACTED] testified that he remembered the interview with [REDACTED] on 23 Nov 04; he remembered discussing the case with another IG, [REDACTED] that the statement from [REDACTED] was potentially a whistleblower reprisal complaint, but [REDACTED] did not know what was done with the information; that it was not his case and his employment was terminated from the office shortly after that; and that he knew of no discussions in the office where it was decided not to pursue [REDACTED] as a Responsible Management Official in a reprisal case. (TAB C-7)

(k) Testimony of [REDACTED] obtained on 14 Dec 06. [REDACTED] testified that she remembered the interview with [REDACTED] on 23 Nov 04, but couldn't remember what, if anything, was done with any reprisal allegation against [REDACTED] made by [REDACTED] during her testimony. (TAB C-8)

(1) Testimony of [REDACTED] on 22 Dec 06. [REDACTED] testified that he could not remember the case involving [REDACTED] nor did he remember what, if anything, was done with an allegation made by [REDACTED] of reprisal against [REDACTED]. [REDACTED] testified that he would not have had any IG in the office conduct "teaching and training" in reference to whistleblower reprisal with [REDACTED] because he had concerns with the leadership environment within the 35th Signal Brigade, of which [REDACTED] was the brigade CSM. (TAB C-10 Summarized Testimony Memorandum for Record 29 Dec 06)

(2) Discussion:

(a) The complainants alleged in the OSC disclosure that [REDACTED] improperly failed to contact the DAIG after being presented a reprisal allegation, in violation of AR 20-1, para 8-9c(2).

(b) Paragraph 8-9c.(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "If, upon presentation, a Soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 U.S.C. 1034, the IG who receives the allegation will contact DAIG Assistance Division (SAIG-AC) promptly by telephone (within 2 days) for specific instructions regarding how to proceed." This procedure was updated in the June 2004 A&I Guide, to read: "...contact DAIG by telephone within two working days"; and in January 2006, the A&I Guide was updated to read: "If, upon presentation, a Soldier makes a reprisal allegation that appears to meet the criteria outlined in 10 USC 1034, the IG who receives the allegation will contact the Whistleblower Investigation and Oversight Branch (WIOB), DAIG Assistance Division, within two working days using the Whistleblower Advisement" (below). A subsequent version of AR 20-1, dated 19 Jul 06, aligned with the Jan 06 version of the A&I Guide, but did not exist at the time of these matters.

(c) When [REDACTED] complained to the XVIII ABN Corps IG on 1 Sep 04, she made a vague reference to a reprisal. There was no evidence on the 1 Sep 04, DA Form 1559 IG Action Request (IGAR) of an allegation against [REDACTED]. [REDACTED] referenced three persons on the IGAR - [REDACTED], [REDACTED], and [REDACTED]. There was no obvious documentary evidence in the case file indicating [REDACTED] had, during that 1 Sept 04 visit, implicated [REDACTED] as having reprised against her. Nor was it evident what official disposition the office took on it at that exact time. It was much later, during the 23 Nov 04, interview with [REDACTED] that evidence appeared implicating [REDACTED] as potentially committing reprisal. During [REDACTED] 23 Nov 04, interview, she testified that she was handed off to [REDACTED] during her 1 Sep 04, visit to the IG. She also testified that [REDACTED] told her during the 1 Sep 04, visit, that her whistleblower complaint "did not fit." [REDACTED] statement indicated he briefed [REDACTED] on the reprisal complaint, and the case was referred to [REDACTED] and [REDACTED]. If [REDACTED] had presented an allegation of reprisal while visiting the IG during the 1 Sep 04 timeframe, according to regulation, it was the responsibility of the IG who received the reprisal allegation to document and report it to DAIG. A decision was made in the office not to pursue [REDACTED] allegation of

reprisal as a violation of the Military Whistleblower Protection Act, but to pursue those matters as a violation of AR 600-20. The matters of [REDACTED] alleged reprisal were not included. The reason why the office decided to proceed in this manner could not be determined.

None of the witnesses could corroborate the complainant's claim that a reprisal allegation against [REDACTED] was handled improperly in the office, or that [REDACTED] did not follow correct procedures. [REDACTED] testified that he did not know of any reprisal allegation against [REDACTED] and denied he had ever directed that it not be handled as a reprisal allegation.

The incorrect pursuit of reprisal by the XVIII ABN Corps IG office under the auspices of AR 600-20 was discovered, and corrected. This was determined to be a procedural mistake, and there was no evidence of impropriety. A whistleblower reprisal preliminary inquiry (PI) case was eventually opened and conducted by the XVIII ABN Corps IG office into [REDACTED] reprisal complaint. [REDACTED] had still not been identified as a Responsible Management Official during that inquiry. [REDACTED] was, however, interviewed during that inquiry and asked to clarify her reprisal complaint. She never implicated [REDACTED] during the PI as having reprised against her. In fact, she testified and filled out a questionnaire stating that she was never reprised against for making a protected communication. Her whistleblower reprisal case was recommended for declination by the XVIII ABN Corps IG, and was awaiting approval.

A preponderance of evidence establishes that only [REDACTED] and possibly [REDACTED] knew there was an allegation of reprisal against [REDACTED]. But [REDACTED] did not know how the allegation was handled. Additionally, a serious lack of documentation in the case file between 1 Sep 04 and 23 Nov 04, and 23 Nov 04 and 17 Jun 05, made it very difficult to determine how the case was handled. There was not enough evidence to conclude [REDACTED] knew about the allegation of reprisal against [REDACTED] or that he directed that it not be handled as a whistleblower reprisal allegation. The preponderance of credible evidence indicates a portion of [REDACTED] allegations of reprisal were eventually reported and investigated properly by the XVIII ABN Corps IG in 2005. It appears, however, that [REDACTED] may have an outstanding reprisal complaint that still needs to be addressed.

(3) Conclusion: The allegation [REDACTED] improperly failed to contact the Department of the Army Inspector General after being presented a reprisal allegation, in violation of AR 20-1, para 8-9c(2) was not substantiated. Upon approval of this report, appropriate action should be taken to determine if there are any outstanding whistleblower reprisal matters in [REDACTED] case that need to be further addressed.

f. Allegation 3: [REDACTED] improperly delayed an investigation against [REDACTED] the 51st Signal Battalion Commander, in violation of AR 20-1 para 4-5 b(2).

FINDING: The allegation was not substantiated.

(1) Presentation of evidence:

(a) Whistleblower Complainants. The OSC correspondence to the Secretary of the Army, dated 22 Nov 06, indicates the complainants alleged that [REDACTED] delayed an investigation into allegations that the Commander, 51st Signal Battalion, [REDACTED] physically assaulted [REDACTED] and participated in an inappropriate relationship with a female staff sergeant. The complainants alleged that [REDACTED] was reluctant to order an investigation, even though a preliminary analysis uncovered sufficient evidence to warrant further investigation. The complainants alleged that after some delay, [REDACTED] signed the request for a Commander's Inquiry. (TAB 2)

(b) Standards: Paragraph 4-5b(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated IGs will determine whether the complaint contains allegations of wrongdoing by an individual, an adverse condition or issue. If so, the process outlined in chapter 8 will be used. (TAB A-1)

Paragraph 8-1b(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "An investigative inquiry is 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." (TAB A-1)

Paragraph 8-2a(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "Inspector general investigators will make or obtain conscious decisions on disposition of all allegations. Inspectors general will not discard an allegation solely because it appears frivolous, unimportant, not relevant to matters under investigation, or is subsequently withdrawn by the complainant." (TAB A-1)

Paragraph 4-1, AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "Inspector General Action Process - Inspectors general will use the Inspector General Action Process (IGAP) outline below 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." (TAB A-1)

Paragraph 4-6a, AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "The 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." (TAB A-1)

(c) XVIII ABN Corps IG case file, Case No. FJ 05-0012 [REDACTED], Opened 19 Oct 04 and Closed: 22 Mar 05. Examination of the case file showed the following: (TAB B-13)

(1) DA Form 1559 (IGAR) signed by [REDACTED] on 19 Oct 04, where she alleged that she was assaulted in Iraq, that the investigation that was done was "more protocol", and she felt the findings were geared to cover up [REDACTED] behavior.

(IO Note: There was no documentation in the case file of a formal interview with [REDACTED] nor was it included as evidence in the ROII. The IO, however, discovered that [REDACTED] was interviewed by [REDACTED] and [REDACTED] on 3 Dec 04, but apparently her testimony was never transcribed. [REDACTED] testimony was transcribed later for purposes of this investigation (TAB B-14)

(2) Case Notes: The first case note from the case file indicated an unknown IG on a date unknown summarized [REDACTED] complaint as she was allegedly assaulted by her battalion commander while they were deployed a year ago; that she knew there was an investigation by the 35th Signal Brigade commander of the alleged assault; that she received a response back from her congressman of the findings of the investigation and it was only declared a verbal altercation; that she reported the assault to the provost marshal; that the 35th Signal Brigade commander covered up the report of assault and failed to take action; that the battalion commander had an improper relationship with a Soldier assigned to his unit; that the same battalion commander then had a public altercation with the spouse of the Soldier with whom he had had the improper relationship; that the battalion CSM allowed the battalion commander to retrieve letters showing the improper relationship; and finally, that no action was taken against the battalion commander. An unknown IG on an unknown date made the case note [REDACTED] of this IG office is conducting preliminary analysis. IGPA indicated that the allegations had merit." On 22 Nov 04, [REDACTED] made the following case note: "prepared an action memo to CG (Commanding General) allowing the Corps CG to sign the directive for the investigation." The case note continued with the information that the CG signed the directive and requested that a commander's inquiry pursuant to Manual for Courts Martial Rule 303 be used and an investigating officer (IO) be appointed if the allegations appear they may be substantiated. According to the case notes [REDACTED] informed the CG on 17 Dec 04, that it looked like an allegation would be substantiated and the CG directed the investigation be stopped and an AR 15-6 officer appointed.

(3) Directive for Investigation - ACTION MEMORANDUM, 22 NOV 04. The request for a directive signed by [REDACTED] on 22 Nov 04, included as

allegations that [REDACTED] committed adultery and fraternized with a SSG; engaged in conduct unbecoming an officer; and that [REDACTED] Commander, 35th Signal Brigade, covered up the alleged assault of [REDACTED] by [REDACTED]. The request for directive stated that the alleged wrongdoing of the 35th Signal Brigade commander would be handled as an issue because an inquiry had been done which had a supporting legal review. The directive also indicated that the XVIII ABN Corps IG office interviewed on 9 Nov 04 the husband of the Soldier with whom [REDACTED] had allegedly had the improper relationship [REDACTED]. (IO Note: The IO found no documentation or tape of this interview).

(4) IO Appointment 17 Dec 04. The case file contained a memorandum from the XVIII ABN Corps CG signed on 17 Dec 04, appointing an IO to conduct an informal investigation under AR 15-6 procedures into the allegations against [REDACTED] for an inappropriate or adulterous relationship. (IO Note: AR 15-6 is an administrative fact-finding procedure under Army Regulation 15-6, which provides procedures for the conduct of informal and formal investigations, thus the nomenclature "AR 15-6 investigation").

(5) IG ROII, 25 Feb 05. The case file indicates the XVIII ABN Corps IG office produced a ROII on 25 Feb 05, which addressed the following allegations and issues relevant to this OSC case: that [REDACTED] committed adultery (not substantiated); that [REDACTED] participated in a prohibited relationship (substantiated); that [REDACTED] assaulted [REDACTED] (substantiated); that [REDACTED] failed to treat [REDACTED] with dignity and respect (substantiated); and as an issue that the 35th Signal Brigade commander did not take proper action when he learned that [REDACTED] allegedly assaulted [REDACTED] (unfounded). The ROII contained as enclosures the findings of the AR 15-6 investigation, and the documentation of adverse actions taken against [REDACTED] since allegations were substantiated against him during the conduct of the 15-6. Though the IG of record in IGARS was [REDACTED] signature appeared on the ROII as the inquiry officer, and [REDACTED] signature appeared concurring with the report.

(e) Sworn Statement, [REDACTED] administered on 24 Jan 07. In his sworn statement [REDACTED] indicated that [REDACTED] came into the office in mid to late 2004 and complained that she was assaulted by her battalion commander [REDACTED]; that the battalion commander had also had a improper relationship with a subordinate female NCO; and she reported the alleged assault and improper relationship to the 35th Signal Brigade commander, [REDACTED] and he covered up the offenses instead of investigating her complaint. [REDACTED] sworn statement said that he briefed [REDACTED] on the matter and the case was handed over to their Inquiries and Investigations officer, [REDACTED] stated that [REDACTED] interviewed the complainant (IO Note: no evidence of this interview was in the case file) and identified three allegations, and then prepared a commander's inquiry request to the 35th Signal Brigade commander to look into the allegations. [REDACTED] stated that [REDACTED] refused to sign the request. [REDACTED] said that he heard [REDACTED] say later in reference to the allegations that he [REDACTED] did not want to

"straddle units with distractors while they are preparing for deployment." [REDACTED] stated that after [REDACTED] blocked the referral, he was instructed to contact and interview the husband [REDACTED] of the female [REDACTED] who was alleged to have had the inappropriate relationship with [REDACTED]. [REDACTED]'s sworn statement also indicated he interviewed the Staff Duty NCO [REDACTED] who witnessed the alleged incident between [REDACTED] and [REDACTED]. According to [REDACTED] the Staff Duty NCO told him that the altercation was entered in the staff duty log and he contacted the Battalion CSM. [REDACTED] said that he then interviewed the battalion CSM [REDACTED] who confirmed that there was an altercation between [REDACTED] and an NCO, and that he knew about the perceived improper relationship. All three of these interviews led [REDACTED] to believe there was a strong possibility the allegations were accurate, and that [REDACTED] knew about them, and [REDACTED] never interviewed any one of them. [REDACTED] said that [REDACTED] also interviewed the former battalion executive officer [REDACTED], who also confirmed the altercation between [REDACTED] and [REDACTED] and that he made members at the 35th Signal Brigade HQs aware of the incident. [REDACTED] then stated that [REDACTED] became the primary action officer on the case after the interviews; that the case then resulted in involvement by the Corps commander; and that after an investigation, [REDACTED] was removed from command. [REDACTED] said that to completely address the allegation, [REDACTED], [REDACTED], and [REDACTED] should all be interviewed. (TAB C-1)

(IO Note: None of the interviews mentioned by [REDACTED] were documented in the case file. Tapes of two of the four interviews were discovered by the IO. [REDACTED] was interviewed on 2 Dec 04, and [REDACTED] was interviewed on 3 Dec 04. Tapes of interviews with [REDACTED] and the former battalion executive officer [REDACTED] could not be found).

(i) Testimony of [REDACTED] on 25 Jan 07. [REDACTED] testified that [REDACTED] would not let them refer the allegations of [REDACTED] alleged improper relationship/adultery to [REDACTED] for a commander's inquiry because he [REDACTED] didn't want to bother the units while they were trying to deploy. He testified that [REDACTED] talked to [REDACTED] and [REDACTED] told [REDACTED] he had already informally looked into the allegations of the improper relationship; that [REDACTED] told [REDACTED] he didn't do it, and that was the end of it. [REDACTED] testified that [REDACTED] then wanted the case immediately closed as assistance; that it wasn't until they learned of the altercation between [REDACTED] and [REDACTED] that [REDACTED] let him get a directive for an investigation from the CG; and that they learned about the altercation between [REDACTED] and [REDACTED] right before the directive was requested.

[REDACTED] confirmed that the current battalion Executive Officer (XO) [REDACTED], the battalion CSM [REDACTED], the battalion SDNCO [REDACTED], and [REDACTED] were all interviewed by the IGs as part of their preliminary analysis. [REDACTED] testified it was not until his interview with the old battalion XO [REDACTED], after he had received the directive for and IG

investigation from the CG, that he suspended the IG investigation so it could be turned over to the CG for appointment of a 15-6 IO. [REDACTED] testified that the interviews with all of the individuals were sworn and recorded, and that copies of the transcripts of the interviews should be in the IG office. (TAB C-2)

(IO Note: The IO could not find any documentation or tapes of interviews with [REDACTED] or [REDACTED])

(j) Testimony of [REDACTED] obtained 8 Aug 06, and sworn statement administered on 5 Jan 07. [REDACTED] testified that he remembered taking the initial complaint of [REDACTED] that he told her that her complaint about being assaulted had already been inquired into and was therefore without merit, so it was determined to be an assistance case, and he handed the case over to [REDACTED] because [REDACTED] only handled inquiries and investigations and [REDACTED] handled assistance cases. He testified [REDACTED] came back into the office later and the improper relationship concerning [REDACTED] came out then; that since [REDACTED] didn't have any first hand knowledge of the relationship, he and [REDACTED] undertook that piece of it by conducting follow-on interviews with the Soldier ([REDACTED]) and the Soldier's husband ([REDACTED]) that he didn't work any more of the case after that and wasn't familiar with how the directive for an investigation was sought because what they were doing was still part of the preliminary inquiry; that he didn't receive any pressure from [REDACTED] not to report allegations against [REDACTED] during the conduct of that piece as it was [REDACTED] and not his case; and that this was at about the same time he was being dismissed from the office so he wasn't taking on any new cases, but was handing over cases to [REDACTED] (TAB C-7)

(IO Note: The IO could find no documented evidence of [REDACTED] conducting interviews during the conduct of the [REDACTED] investigation)

(k) Testimony and sworn statement of [REDACTED] obtained on 14 Dec 06, and 19 Jan 07. [REDACTED] testified she remembered the [REDACTED] case but none of the details; that she could not remember any improprieties of how the case was handled from an IG perspective; that she could not remember if the case was handled improperly in the IG office concerning the allegations against [REDACTED] and that since she primarily managed the suspense tracking of cases because part of the office was deployed to Iraq, and also performed Inspection Chief duties, she was not familiar with all of the intricacies of the cases which were not hers. (TAB C-8)

(l) Sworn statement of [REDACTED] administered on 22 Jan 07. [REDACTED] said that [REDACTED] was disgusted with [REDACTED] behavior; that [REDACTED] got upset when he found out that [REDACTED] did not retire from the Army as previously specified during the command's investigation; and that as far as he knew, [REDACTED] did not try to influence the investigation in any way. (TAB C-4)

(m) Testimony of [REDACTED] on 22 Dec 06. [REDACTED] testified in reference to the [REDACTED] case that he tried to get [REDACTED] "off the dime" and do some preliminary analysis on the case; that [REDACTED] battalion was about to deploy and [REDACTED] was taking a slow non-confrontational approach towards gathering evidence; that if they were going to lose a battalion commander or upset the command climate they ought to do it now so the CG could have time to recover from it or get a new commander in there; that he talked to [REDACTED] about it and [REDACTED] thought the allegations were serious enough that he [REDACTED] needed to start lining up the next commander; that he had made it very clear to [REDACTED] that he wanted him to move forward on the case so the CG and brigade commander could make a informed decision on the fate of the battalion commander before they deployed. [REDACTED] denied that he had ordered the case closed in the office as an assistance case or that he had told anyone not to investigate it. (TAB C-10)

(2) Discussion:

(a) The OSC complainants alleged [REDACTED] improperly delayed an investigation against [REDACTED] Commander, 51st Signal Battalion, in violation of AR 20-1 para 4-5 b.(2). The complainants alleged that [REDACTED] delayed an investigation into [REDACTED] alleged physical assault of [REDACTED] and the allegation that he had an inappropriate relationship with a female SSG. The complainants alleged that [REDACTED] was reluctant to order an investigation even though a preliminary analysis uncovered sufficient evidence to warrant further investigation. The complainants alleged that after some delay, [REDACTED] signed the request for a commander's inquiry.

(b) AR 20-1, Inspector General Activities and Procedures, stated IGs will determine whether the complaint contains allegations of wrongdoing by an individual, an adverse condition or issue. If so, the process outlined in chapter 8 will be used. Chapter 8 of AR 20-1 states an investigative inquiry is 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. Additionally Chapter 8 stated, inspector general investigators will make or obtain conscious decisions on disposition of all allegations. IGs will not discard and allegation solely because it appears frivolous, unimportant, not relevant to matters under investigation, or is subsequently withdrawn by the complainant. Paragraph 4-6a of AR 20-1 explains referrals to the chain of command: "The 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."

(c) The serious lack of documentation in the case file of IG investigational efforts, mainly documentation of preliminary IG interviews and case notes, made it

difficult to determine what transpired between when [REDACTED] first made her complaint to the IG on 19 Oct 04, and when the directive to investigate was requested on 22 Nov 04, in order to corroborate the complainants claim that [REDACTED] had delayed or was reluctant to order an investigation. The first documented interview the IO was able to find was 2 Dec 04. However, based upon statements and testimony from [REDACTED] and [REDACTED] it appeared that undocumented interviews were conducted with at least the complainant [REDACTED] and [REDACTED] prior to [REDACTED] signing a request for a directive for investigation on 22 Nov 04.

[REDACTED] and [REDACTED] both claimed [REDACTED] blocked recommendations to refer the allegations against [REDACTED] to the chain of command. The decision not to refer allegations to the chain of command does not, by itself, imply impropriety, and can be considered a purely discretionary decision within an IG's authority to make. IGs also have the option to conduct the investigation or inquiry themselves.

Based upon witness statements and testimony, a preponderance of the evidence indicates that adequate IG preliminary analysis (IGPA) into the allegations against [REDACTED] occurred after [REDACTED] initial complaint on 19 Oct 04, and before the request for a directive of investigation on 22 Nov 04. Witness testimony indicated at least five IG interviews were conducted during IGPA, however, due to the failure in the office to properly document the IGPA, the IO could not determine when these interviews occurred, the exact substance of these interviews, and whether there was sufficient evidence to warrant further investigation, and therefore there was insufficient evidence to establish that [REDACTED] had delayed the investigation in any way. The five interviews conducted during IGPA coupled with the evidence that [REDACTED] eventually requested the CG direct an IG investigation, refutes the claims that [REDACTED] was reluctant to order an investigation, or had ordered the case closed. [REDACTED] testified that he had made it very clear to [REDACTED] that he wanted him to move forward on the case so the CG and brigade commander could make an informed decision on the fate of the battalion commander before they deployed. [REDACTED] also denied that he had ordered the case closed in the office as an assistance case or that he told anyone not to investigate it. After the directive was signed by the CG, an IG investigation commenced, and eventually, the IG recommended referring the allegations to the CG for an AR 15-6 officer investigation, which was used as the basis for the completion of an IG ROI, which all are additional indicators that the investigation was being handled and supervised properly in the office. Additionally, key witnesses identified by the complainants did not corroborate the complainants's claim that [REDACTED] failed to properly investigate the allegations. Therefore the preponderance of evidence does not indicate [REDACTED] improperly delayed the investigation of allegations against [REDACTED].

(3) Conclusion: The allegation [REDACTED] improperly delayed an investigation against LTC Jochen Thomas, the 51st Signal Battalion Commander, in violation of AR 20-1 para 4-5 b(2) was not substantiated.

Allegation 4: [REDACTED] improperly delayed an investigation against [REDACTED] Commander, 327th Signal Battalion, in violation of AR 20-1 para 4-5 b(2).

FINDING: The allegation was not substantiated.

(1) Presentation of evidence:

(a) Whistleblower Complainants. According to the OSC correspondence to the Secretary of the Army, dated 22 Nov 06, the complainants alleged that [REDACTED] delayed an investigation into the Commander, 327th Signal Battalion, [REDACTED] for allegedly condoning the consumption of alcohol while deployed in Louisiana. The complainants alleged that [REDACTED] was reluctant to sign the request for a commander's inquiry, stating he didn't want to burden the units while they were preparing for deployment. The complainants alleged that [REDACTED] was trying to protect [REDACTED] (TAB 2)

(b) Standards: Paragraph 4-5b.(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated IGs will determine whether the complaint contains allegations of wrongdoing by an individual, an adverse condition or issue. If so, the process outlined in chapter 8 will be used. (TAB A-1)

Paragraph 8-1b.(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "An investigative inquiry is 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." (TAB A-1)

Paragraph 8-2a.(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "Inspector general investigators will make or obtain conscious decisions on disposition of all allegations. Inspectors general will not discard an allegation solely because it appears frivolous, unimportant, not relevant to matters under investigation, or is subsequently withdrawn by the complainant." (TAB A-1)

Paragraph 4-1, AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "Inspector General Action Process—Inspectors general will use the Inspector General Action Process (IGAP) outline below 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." (TAB A-1)

Paragraph 4-6a, AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated "The 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." (TAB A-1)

(c) XVIII ABN Corps IG case file, Case No. FJ 04-0152, Opened 23 Apr 04 and Closed: 28 Oct 04. Examination of the case file showed the following: (TAB B-15)

(1) ROI (26 Oct 04): A complaint was made on 23 Apr 04, to the XVIII ABN Corps IG office by a Soldier who alleged he was wronged by his commander and was assaulted by three NCOs. The Soldier's complaint made no allegation against [REDACTED]. The XVIII ABN Corps IG office referred the allegations to the 35th Signal Brigade on 29 Apr 04, for a commander's inquiry. When the XVIII ABN Corps IG received the commander's inquiry results (dated 22 Jul 04) from the commander, the IG office identified additional wrongdoing within the commander's inquiry which was not addressed as wrongdoing by the commander. One of the findings in the commander's inquiry was that [REDACTED] admitted authorizing Soldiers to drink alcohol while deployed or on a field exercise in violation of a Corps policy letter. The XVIII ABN Corps IG apparently decided to include this as an allegation against [REDACTED] in the IG ROI even though it was not part of their original referral of allegations to the command. The ROI contained evidence that the 35th Signal Brigade commander learned about the IG's discovery of wrongdoing and asked the CG, XVIII ABN Corps on 7 Sep 04, for authority to take administrative action on [REDACTED] actions. The CG returned the matter in the form of a memorandum to the 35th Signal Brigade commander on 8 Sep 04. The 35th Signal Brigade commander then issued a Memorandum of Concern to [REDACTED] on 9 Sep 04.

(2) Case Notes: There was no evidence of the use of case notes in the IGARS database or the case file.

(d) Sworn Statement, [REDACTED] administered on 24 Jan 07. [REDACTED] stated that [REDACTED] would not sign a request for a commander's inquiry in reference to the Soldier's complaint; that the Soldier complained about his commander; that [REDACTED] allowed Soldiers to consume alcoholic beverages while deployed; that the reason [REDACTED] refused to sign the request was because he didn't want to "saddle units with distractors" while they were deploying; and that the matter was eventually referred for inquiry. (TAB C-1)

(e) Sworn Statement, [REDACTED] administered on 20 Dec 06. [REDACTED] said that [REDACTED] did not want to bother [REDACTED] Commander, 35th Signal Brigade, with the allegation of wrongdoing by members of his command; that [REDACTED]

insisted that allow him to look in to possible violations; that let them pursue the case after he and pushed him; and that because of insistence in this case, fired
(TAB C-2)

(f) Testimony of obtained 19 Dec 06. testified that he had worked the case of Soldiers drinking alcohol while deployed to the Joint Readiness Training Center (JRTC); that the case took a turn after he received the commander's inquiry back and discovered that had incriminated himself by authorizing Soldiers to drink alcohol while deployed. testified that he then went back to the command and asked them what they were going to do about it; that he then went and told and that he had asked this question of the command; that questioned why they needed to include this part about that he explained it to and wasn't happy about it, but he let it go. testified that never told him not to investigate the allegation further or bullied him in any way; that he confirmed that the allegation against was included in the IG report and eventually substantiated in the IG database; and that he believed that it was his confrontation with the command over this case which led to his eventual dismissal from the.
(TAB C-7)

(g) Testimony of on 9 Aug 06. testified that he remembered the case well and that "you could ask anyone" in the office that he had concerns about that battalion commander; that battalion came into their view frequently for leader misconduct and they were always on their "radar scope"; that he thought they were going to have a problem with the battalion commander because he was concerned about the wrong things and his command climate was a "bit skewed"; and that he would have never tried to protect because he was "beyond protection". (TAB C-10)

(2) Discussion:

(a) The OSC complainants alleged delayed an investigation into the Commander, 327th Signal Battalion, for allegedly condoning the consumption of alcohol while deployed in Louisiana. The complainants alleged that was reluctant to sign the request for a commander's inquiry, stating that he didn't want to burden the units while they were preparing for deployment. The complainants alleged that was trying to protect

(b) AR 20-1, Inspector General Activities and Procedures, stated IGs will determine whether the complaint contains allegations of wrongdoing by an individual, an adverse condition or issue. If so, the process outlined in chapter 8 will be used. Chapter 8 of AR 20-1 went on to state an investigative inquiry is 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. Additionally Chapter 8 stated, IG investigators will make or obtain conscious decisions on disposition of all allegations. IGs will not discard an allegation solely because it appears frivolous, unimportant, not relevant to matters under investigation, or is subsequently withdrawn by the complainant. Paragraph 4-6a of AR 20-1 explains referrals to the chain of command. It stated "The 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."

(c) [REDACTED] sworn statement indicates [REDACTED] would not sign a request for a commander's inquiry for the complaint made by the 327th Signal Battalion Soldier. [REDACTED] incorrectly contends in his sworn statement that the Soldier indicated [REDACTED] wrongdoing. [REDACTED] alleged wrongdoing was not part of the original referral to the chain of command. [REDACTED] said the reason [REDACTED] refused to sign the request was because he didn't want to "saddle units with distractors" while they were deploying. [REDACTED] sworn statement said that the matter was eventually referred for inquiry and that [REDACTED] worked the case. [REDACTED] stated that [REDACTED] didn't want to burden the command with the case, and [REDACTED] had to insist to [REDACTED] that it be investigated. But [REDACTED] testified that while [REDACTED] didn't like the idea that [REDACTED] was going to be included in the IG report with a substantiated allegation, [REDACTED] never told him not pursue the allegation against [REDACTED]. [REDACTED] denied ever trying to protect [REDACTED]. He testified he had concerns with [REDACTED] and knew he was going to have problems with his unit. [REDACTED] thought [REDACTED] was beyond protecting.

The decision to not refer allegations to the command does not by itself imply impropriety, and can be considered a purely discretionary decision that an IG has the authority to make. The IG also has the option to conduct the investigation or inquiry. The only possible type of impropriety would have been if the allegations were not investigated at all, either by the IG or the command.

[REDACTED] as the action officer on the case, did not corroborate the complainant's claims that [REDACTED] did anything improper in the case. Documentary evidence in the case file indicates the complaint came into the office on Friday, 23 Apr 04, and the request for a commander's inquiry was sent to the 35th Signal Brigade within four working days, on Thursday 29 Apr 04. The preponderance of evidence does not indicate [REDACTED] delayed the investigation. Rather, the preponderance of credible evidence indicates the IG office handled the allegations of [REDACTED] wrongdoing, which came to the IG's attention at a later date, properly, and indicated no wrongdoing on [REDACTED] part.

(3) Conclusion: The allegation [REDACTED] improperly delayed an investigation against [REDACTED] Commander, 327th Signal Battalion, in violation of AR 20-1 para 4-5 b.(2) was not substantiated.

Allegation 5: [REDACTED] improperly did not investigate an allegation against [REDACTED] the 35th Signal Brigade Commander, in violation of AR 20-1 para 8-2a(2).

FINDING: The allegation was not substantiated.

(1) Presentation of evidence:

(a) Whistleblower Complainants. According to the OSC correspondence to the Secretary of the Army dated 22 Nov 06, the complainants alleged that the preliminary analysis into [REDACTED] complaint provided sufficient evidence to warrant an investigation in the allegation the 35th Signal Brigade commander [REDACTED] had prior knowledge of [REDACTED] misconduct and covered up [REDACTED] complaint. The complainants alleged that recommendations made to [REDACTED] that he order an investigation into [REDACTED] behavior went unheeded. (TAB 2)

(b) Standards: Paragraph 4-5b(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated IGs will determine whether the complaint contains allegations of wrongdoing by an individual, an adverse condition or issue. If so, the process outlined in chapter 8 will be used. (TAB A-1)

Paragraph 8-1b(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated: "An investigative inquiry is 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." (TAB A-1)

Paragraph 8-2a(2), AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated IG investigators will make or obtain conscious decisions on disposition of all allegations. IGs will not discard an allegation solely because it appears frivolous, unimportant, not relevant to matters under investigation, or is subsequently withdrawn by the complainant. (TAB A-1)

(c) XVIII ABN Corps IG case file, Case No. FJ 05-0012 (Perez), Opened 19 Oct 04 and Closed: 22 Mar 05. Examination of the case file showed the following: (TAB B-13)

(1) DA Form 1559 (IGAR) signed by [REDACTED] on 19 Oct 04, where she alleged that an incident involving [REDACTED] and another Soldier was covered up. [REDACTED] described the incident in the IGAR as a Soldier (the husband of [REDACTED])

[REDACTED] confronting [REDACTED] in public about [REDACTED] having an inappropriate relationship with his wife [REDACTED]

(2) Case Notes: The first case note from the case file indicated an unknown IG (IO Note: believed to be [REDACTED] on a date unknown, clarified [REDACTED] complaint as; she was allegedly assaulted by her battalion commander while they were deployed a year ago; that she knew the 35th Signal Brigade commander investigated the incident; that she received a response back from her congressman on the findings of the investigation and it was declared a verbal altercation; that she reported the assault to the provost marshal; that she alleged the 35th Signal Brigade commander covered up the report of assault and failed to take action; that the battalion commander had an improper relationship with a Soldier assigned to his unit; that the same battalion commander then had a public altercation with the Soldier's spouse; that the battalion CSM allowed the battalion commander to retrieve letters showing the improper relationship; and finally that no action was taken against the battalion commander. The case notes provide that on 20 Oct 04, [REDACTED] was directed to create a chronology and return it to the IG office. The case notes were continued by an unknown IG (IO Note: believed to be [REDACTED] on an unknown date with [REDACTED] of this IG office is conducting preliminary analysis. IGPA indicated that the allegations had merit." On 22 Nov 04, there was a case note relating that [REDACTED] "prepared an action memo to CG allowing the Corps CG to sign the directive for the investigation." The case note continued with the information that the CG signed the directive and requested that a commander's inquiry pursuant to Manual for Courts Martial Rule 303 be used and an IO appointed if the allegations appear like they may be substantiated.

(3) Directive for Investigation-ACTION MEMORANDUM 22 Nov 04. The request for a directive was present in the case file and was signed by [REDACTED] on 22 Nov 04. It included the following issue: "Did [REDACTED] the 51st Signal Battalion SDNCO, record in the SDNCO log, the alleged incident/confrontation between [REDACTED] and [REDACTED]" According to the case notes [REDACTED] informed the CG on 17 Dec 04 that it looked like an allegation would be substantiated and the CG directed the investigation be stopped and an AR 15-6 officer appointed.

(4) IO Appointment and AR 15-6 Investigation, 17 Dec 04: The case file contained a memorandum from the XVIII ABN Corps CG signed on 17 Dec 04 appointing an IO to conduct an informal investigation into the allegation that LTC Thomas engaged in an inappropriate or adulterous relationship.

(5) DA Form 1574 (Report of Proceedings by Investigating Officer/Board of Officer), 26 Jan 05 (AR 15-6 Investigation Report). The IO's findings addressed the following: [REDACTED] alleged assault/improper treatment of a SPC (not substantiated); [REDACTED] alleged assault of [REDACTED] (Substantiated); [REDACTED] alleged improper relationship (Substantiated); [REDACTED] alleged adultery (not substantiated). The AR 15-6 report contained sworn statements from [REDACTED] CSM, [REDACTED] his XO [REDACTED] his Operations Officer [REDACTED]

[REDACTED] and the SDNCO who saw the altercation between [REDACTED] and [REDACTED]. Each sworn statement provided credible evidence that [REDACTED] was having an improper relationship between Jan 04 (while the battalion was still in Iraq), and as late as May 04 at Fort Bragg, NC. None of the sworn statements, however, indicated he that [REDACTED] knew about the relationship. [REDACTED] statement indicated he told [REDACTED] CSM, in late Mar 04, while the battalion was still in Kuwait, that he thought [REDACTED] was getting too close to the battalion commander [REDACTED] and that he needed to have her moved to another battalion.

(6) ROII 25 Feb 05. The ROII addressed that [REDACTED] committed adultery (not substantiated), that [REDACTED] participated in a prohibited relationship (substantiated); that [REDACTED] assaulted [REDACTED] (substantiated); that [REDACTED] failed to treat [REDACTED] with dignity and respect (substantiated); and that the 35th Signal Brigade commander did not take proper action when he learned of the alleged assault by [REDACTED] on [REDACTED] (Unfounded). The background paragraph of the ROII addressed why the brigade commander's alleged cover up of the assault was treated as an issue by explaining that an inquiry was conducted and legally reviewed. The IG of record in IGARS was [REDACTED] but however, [REDACTED] signature appeared on the ROII as the inquiry officer, and [REDACTED] signature appeared concurring with the report.

(d) Sworn and Recorded Testimony of [REDACTED] taken on 3 Dec 04, by [REDACTED] and [REDACTED] XVIII ABN Corps IG office. [REDACTED] and [REDACTED] conducted an interview with the complainant as part of an investigation directed by the XVIII ABN Corps CG. [REDACTED] answered questions concerning her knowledge surrounding the allegations that her battalion commander had an improper relationship with one of his subordinate female NCOs, and the allegations involving her alleged assault in Iraq by the same battalion commander. [REDACTED] testified to some events she witnessed in Iraq and Kuwait that she perceived to be evidence that her battalion commander [REDACTED] was having an improper relationship with one of his subordinate NCOs [REDACTED]. [REDACTED] testified about an altercation she heard had occurred between [REDACTED] and [REDACTED] husband after the unit returned from Iraq. She testified that another Soldier told her that [REDACTED] husband came to the battalion headquarters one night and confronted [REDACTED] about having sex with his wife [REDACTED]. [REDACTED] testified that the incident was covered up by unnamed persons (p. 8 TAB B-14). (TAB B-14)

(IO Note: There was no documentation or evidence of [REDACTED] interview in the inspector general case file, nor was it included as evidence in the ROII. The IO discovered the tape and determined it was never transcribed. [REDACTED] testimony was transcribed at a later date for purposes of this investigation)

(e) Sworn and Recorded Testimony of [REDACTED] taken on 2 Dec 04, by [REDACTED] and [REDACTED] XVIII ABN Corps IG office. [REDACTED] and [REDACTED] interviewed [REDACTED], who was the Staff Duty NCO the night of

the altercation between [REDACTED] and [REDACTED] on 10 May 04, as part of an investigation directed by the XVIII ABN Corps CG. [REDACTED] indicated he saw the altercation between [REDACTED] and [REDACTED]. He testified the only person he contacted about the incident was the battalion CSM, [REDACTED] who then came to the battalion headquarters to deal with the situation. [REDACTED] said [REDACTED] initially told him not to log the altercation in the staff duty log, but later told him to put something in the log to make it sound less offensive. (TAB C-12)

(IO Note: There was no documentation or evidence of [REDACTED] interview in the inspector general case file, nor was it included as evidence in the IG ROII. The IO discovered the tape and determined it was never transcribed. [REDACTED] testimony was transcribed at a later date for purposes of this investigation)

(f) Sworn and Recorded Testimony of [REDACTED] taken on 2 Dec 04, by [REDACTED] and [REDACTED] XVIII ABN Corps IG office. [REDACTED] and [REDACTED] interviewed [REDACTED] who was the Operations Officer for [REDACTED] battalion, as part of an investigation directed by the XVIII ABN Corps CG. [REDACTED] testified that he did not know about or believe that [REDACTED] had an improper relationship with [REDACTED] he shared living quarters with [REDACTED] during their deployment to Iraq, and talked with him frequently; he did not hear about an altercation between [REDACTED] and [REDACTED] at the battalion headquarters in May 2004; that [REDACTED] had once asked him if he had the perception or heard rumors that he, [REDACTED] was having an improper relationship; and that he told [REDACTED] that he hadn't seen it and didn't think it happened, and didn't know where the rumors were coming from. (TAB C-13)

(IO Note: There was no documentation or evidence of [REDACTED] interview in the IG case file, nor was it included as evidence in the IGI ROII. The IO discovered the tape and determined it was never transcribed. [REDACTED] testimony was transcribed at a later date for this investigation)

(g) Sworn and Recorded Testimony of [REDACTED] taken on 3 Dec 04, by [REDACTED] and [REDACTED] XVIII ABN Corps IG office. [REDACTED] and [REDACTED] interviewed [REDACTED] as part of an investigation directed by the XVIII ABN Corps CG. [REDACTED] testified that he had gotten the impression there was an inappropriate relationship between [REDACTED] and [REDACTED] while the battalion was deployed to Iraq; that he told the brigade CSM, [REDACTED] about it; and that he asked [REDACTED] to have [REDACTED] moved from the battalion once they got back to Fort Bragg. [REDACTED] described the incident that took place between [REDACTED] and [REDACTED] husband ([REDACTED]) after they were back at Fort Bragg. He testified that [REDACTED] accused [REDACTED] of "messing with his wife," but he didn't get the impression that adultery was involved; that [REDACTED] had unsigned letters in his possession that [REDACTED] thought were written to his wife by [REDACTED] that he testified he told [REDACTED] about the incident approximately two days later (p. 7, TAB C-14); that he and [REDACTED] decided there was not enough credibility to [REDACTED] allegations, so

they decided to keep the incident at the lowest level (p.43, TAB C-14); that he told the SDNCO, [REDACTED] not to talk about the incident, and log it in the staff duty log so it would not bring undue attention to the incident; that he didn't think [REDACTED] told the brigade commander, [REDACTED] about the incident; that he found out the last week of November 2004 that [REDACTED] told [REDACTED] about the incident, but did not know exactly when he told him (p.46, TAB C-14); that it could have been a couple of days after the incident or the last week of November 2004, he didn't know (p.47, TAB C-14); that [REDACTED] told him around the last week of November 2004 he wished [REDACTED] had told him about the incident (p.52, TAB C-14); that he believed [REDACTED] had told [REDACTED] about the incident before the last week of November 2004, because he knew [REDACTED] and that was what he, [REDACTED] would have done (p.64, TAB C-14).

(IO Note: There was no documentation or evidence of [REDACTED] interview in the IG case file, nor was it included as evidence in the IG ROII. The IO discovered the tape and determined it was never transcribed. [REDACTED] testimony was transcribed at a later date for purposes of this investigation)

(h) Sworn Statement, [REDACTED] administered on 24 Jan 07. [REDACTED] indicated [REDACTED] came into the office in mid to late 2004 and complained she was assaulted by her battalion commander [REDACTED] that the battalion commander also had a improper relationship with a subordinate female NCO; and that she had reported the alleged assault and improper relationship to the 35th Signal Brigade commander, [REDACTED] and he did not investigate her complaint and covered up the offenses. [REDACTED] said he briefed [REDACTED] on the matter, and the case was handed over to their inquiries and investigations officer, [REDACTED] that [REDACTED] interviewed the complainant *(IO Note: no evidence of this interview was in the case file)*, where he identified three allegations; that after the referral was blocked by [REDACTED] he was instructed to contact and interview the husband [REDACTED] of the female [REDACTED] who was alleged to have had the inappropriate relationship with [REDACTED] and that he also interviewed the Staff Duty NCO [REDACTED] who witnessed the alleged incident between [REDACTED] and [REDACTED]. According to [REDACTED] the SDNCO told him the altercation was entered in the staff duty log and he contacted the Battalion CSM. [REDACTED] said he then interviewed the battalion CSM [REDACTED] who confirmed that there was an altercation between [REDACTED] and an NCO, and that he knew about the perceived improper relationship. All three of these interviews led [REDACTED] to believe there was a strong possibility the allegations were accurate, and that COL Ellis knew about them. [REDACTED] said [REDACTED] interviewed the former battalion executive officer [REDACTED] who confirmed the altercation between [REDACTED] and [REDACTED] and that he, [REDACTED] had made members at the 35th Signal Brigade HQs aware of the incident. [REDACTED] stated [REDACTED] became the primary action officer on the case after the interviews; that the case then resulted in involvement by the Corps Commander, and after an investigation, [REDACTED] was removed from command; and that he recommended that [REDACTED] and [REDACTED] also be interviewed regarding these allegations. (TAB C-1)

(i) Testimony of [REDACTED] obtained on 25 Jan 07. [REDACTED] testified that [REDACTED] had made a complaint in the IG office to [REDACTED] that she went to [REDACTED] and told him about the inappropriate relationship between [REDACTED] and an NCO under his open door policy. She complained that [REDACTED] never took action on it, and she thought he covered it up. [REDACTED] said [REDACTED] asked [REDACTED] if he had looked into it, and [REDACTED] admitted that he had; and that [REDACTED] was satisfied with it, and didn't want to pursue [REDACTED] complaint against [REDACTED] because he didn't want to distract them while they were deploying. [REDACTED] confirmed he was the inquiry officer on the case, and that he produced the ROII in reference to the case. He testified that the ROII was completed after [REDACTED] had left for Iraq, but the AR 15-6 investigation which was used to help complete the ROII was finished before the CG deployed, and as such the CG was able to relieve [REDACTED] from command. (TAB C-2)

(j) Testimony of [REDACTED] obtained 8 Aug 06, and sworn statement administered on 5 Jan 07. [REDACTED] testified he remembered taking the initial complaint of [REDACTED] and that he told her that her complaint about being assaulted had already been inquired into and was therefore without merit. [REDACTED] thus determined [REDACTED] complaint to be an assistance case, and he handed the case over to [REDACTED] because [REDACTED] handled assistance cases. He testified [REDACTED] came back into the office at a later date, and the allegation of an improper relationship concerning [REDACTED] came out of the discussions. [REDACTED] said that since [REDACTED] didn't have any first hand knowledge of the relationship, he and [REDACTED] undertook that piece of it by interviewing the Soldier [REDACTED], and the Soldier's husband [REDACTED]. (IO Note: No evidence of these three interviews involving [REDACTED] could be found). [REDACTED] testified that he didn't work any more of the case after that, and he wasn't familiar with how the directive for an investigation was sought because what they were doing was still part of the preliminary inquiry; that he didn't receive any pressure from [REDACTED] during the conduct of the case while he was there because it was [REDACTED] case; and that this was at about the same time his employment was terminated with the office, so he wasn't taking on any new cases and was handing over cases to [REDACTED] (TAB C-7)

(k) Testimony and sworn statement of [REDACTED] obtained on 14 Dec 06 and 19 Jan 07. [REDACTED] testified she remembered the [REDACTED] case but none of the details; that she could not remember any improprieties of how the case was handled from an IG perspective; and that since she primarily managed the suspense tracking of cases, because part of the office was deployed to Iraq, and also performed Inspection Chief duties, she was not familiar with all of the intricacies of the cases which were not hers. (TAB C-8)

(k) Testimony of [REDACTED] on 9 Feb 07. [REDACTED] testified he deployed from Fort Bragg, NC to Operation Iraqi Freedom (OIF) around 26-28 Nov 04; that he had a face-to-face meeting with the XVIII ABN Corps IG [REDACTED] about two weeks before his deployment (early to mid November 2004); that [REDACTED] told him the IG had some unfavorable information concerning one of his subordinate battalion

commanders, [REDACTED] that he never knew or heard about allegations against [REDACTED] having an improper relationship before [REDACTED] told him about it; that he had not previously conducted any type of commander's inquiry into allegations of an improper relationship involving [REDACTED]; that he had conducted a commander's inquiry in Iraq involving [REDACTED] regarding an allegation that [REDACTED] assaulted an NCO; that after being notified of the allegations by [REDACTED] he realized there may have been some perceptions of the improper relationship within the organization that he wasn't aware of up until that point; that he brought his CSM, [REDACTED] and [REDACTED] CSM, [REDACTED] into his office after finding out about the allegations from [REDACTED] and asked them if there was an impropriety that wasn't brought to his attention; that the two CSMs told him there were previous indications of perceptions of an improper relationship, and they, the CSMs, tried to make personnel moves to stabilize and control some things within the organization. (TAB C-11)

(I) Testimony of [REDACTED] on 6 Feb 07. [REDACTED] testified the [REDACTED] case (Oct 04) occurred around the same time that he went TDY to Iraq in preparation of his impending deployment; that he didn't think he was told about the case by his IGs before he left for Iraq, but thought he first learned about it once he had returned; that he remembered [REDACTED] proceeding slowly on the case, so he wouldn't have to work it; that he thought [REDACTED] was going to delay long enough to make sure the case would have to be pushed forward with the Command's decision-makers and investigated in Iraq; that he had made it very to clear to [REDACTED] that he wanted him to move forward on the case so the CG and brigade commander would have enough facts to make a informed decision on the fate of the battalion commander before they deployed; that he did not remember a course of action being presented to him by his IGs to refer the allegations to [REDACTED] that he never ordered the case closed in the office as an assistance case or instructed anyone not to investigate it; that he wasn't sure what [REDACTED] previously knew about the improper relationship; that when he notified [REDACTED] in early November, [REDACTED] told him there were previous indications or perceptions previously of the improper relationship, and that he, [REDACTED] had conducted a commander's inquiry into it; that he could not recall if it had been brought to his attention that there was a complaint or a potential allegation against [REDACTED] for covering up the alleged improprieties of his battalion commander; that he didn't believe [REDACTED] covered for his battalion commander, but thought that he may have tried to protect his subordinate commander's good name; and that if there was that impression of these particular allegations against [REDACTED] in his office, that it might have been a case of [REDACTED] exaggerating them so he could bring down a Senior NCO or Field Grade officer, especially [REDACTED] denied covering up any allegation against [REDACTED]. He testified that after talking with [REDACTED] he went back to the office and told [REDACTED] that [REDACTED] had looked into the allegations against [REDACTED] and had done a commander's inquiry; that he did not take any more action on the matter; and that he intended to leave it up to which ever IO ended up looking at it, either an IG or AR 15-6 officer, because he was just doing preliminary analysis and not starting the investigation. (TAB C-10)

(2) Discussion:

(a) The complainants alleged that the preliminary analysis into [REDACTED] complaint provided sufficient evidence to warrant investigating the allegation that [REDACTED] knew about [REDACTED] misconduct and covered up [REDACTED] complaint. The complainant's alleged that [REDACTED] ignored recommendations to order an investigation into [REDACTED] behavior.

(b) AR 20-1, Inspector General Activities and Procedures, dated 29 Mar 02, stated IGs will determine whether the complaint contains allegations of wrongdoing by an individual, an adverse condition or issue. If so, the process outlined in chapter 8 will be used. Chapter 8 of AR 20-1 stated, an investigative inquiry is 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. Additionally, AR 20-1 stated IG investigators will make or obtain conscious decisions on disposition of all allegations. IGs will not discard an allegation solely because it appears frivolous, unimportant, not relevant to matters under investigation, or is subsequently withdrawn by the complainant.

(c) To determine if [REDACTED] acted improperly as alleged by the complainants in this case, the investigation must first focus on whether there was a viable allegation that [REDACTED] covered up. Based upon an analysis of IG case files, the testimony of witnesses interviewed during the XVIII ABN Corps investigation, and interviews done by the IO, the preponderance of evidence does not indicate there was an valid allegation of impropriety against [REDACTED] as alleged by the complainants. The most persuasive evidence of this is found in [REDACTED] complaint and testimony. She never identified [REDACTED] as being the individual who covered up the incident between [REDACTED] and [REDACTED] in her original complaint to the office, or in her follow up testimony. [REDACTED] simply alleged that the incident was covered-up without identifying who performed the cover up. No other witness interviewed by the XVIII ABN Corps IGs from 2-3 Dec 04 implicated [REDACTED] in doing anything improper. [REDACTED] testified that he could not recall if any allegation of this nature against [REDACTED] had been brought to his attention.

Even had someone alleged that [REDACTED] had previous knowledge of the improper relationship and was covering it up, a preponderance of the evidence supports a finding that [REDACTED] was not covering up this allegation of misconduct. [REDACTED] testified he did not know about the improper relationship before his conversation with [REDACTED]. He testified that he had previously conducted a commander's inquiry into allegations that [REDACTED] had assaulted an NCO, but that he had not conducted a commander's inquiry into allegations that [REDACTED] was involved in an inappropriate relationship. This could explain [REDACTED] statement that [REDACTED] had conducted a commander's inquiry into the allegation; it is possible that [REDACTED] misunderstood [REDACTED] explanation on this point. [REDACTED] Sergeant Major, testified that [REDACTED] discussed the allegation with him

during the last week of November 2004, which would have been shortly after [REDACTED] discussion with [REDACTED]. [REDACTED] testified that [REDACTED] told him in this discussion that he wished [REDACTED] had told him of the incident earlier. This discussion implies that [REDACTED] did not know about the allegation until [REDACTED] discussed it with him.

Finally, even had someone made an allegation against [REDACTED] and even had [REDACTED] told [REDACTED] that he had already handled this allegation via commander's inquiry, there was insufficient evidence that [REDACTED] subsequently covered-up for [REDACTED] alleged failure to take action. The witnesses, [REDACTED] and [REDACTED] identified by the two complainants in this case as being able to corroborate these allegation, did not indicate that [REDACTED] acted improperly during the conduct of the case. [REDACTED] himself testified he told [REDACTED] that [REDACTED] had inquired into this misconduct via commander's inquiry, and had handled it in that manner. At most, this would constitute a procedural violation of the IG regulation in that there was a failure to document this discussion with [REDACTED] and make it part of the IG case file. It would not constitute or suggest a cover-up.

(3) Conclusion: The allegation [REDACTED] II improperly failed to investigate an allegation against [REDACTED] Commander, 35th Signal Brigade, in violation of AR 20-1 para 8-2a(2) was not substantiated.

8. Disposition: Recommend that this case be approved for closure, and no further action be taken against [REDACTED] in these matters. Upon approval of this report the outstanding whistleblower reprisal matters of [REDACTED] case should be readdressed to determine if any further action is required.

9. Security Classification of Information: This report is FOR OFFICIAL USE ONLY.

10. Location of Field Working Papers and Files: Office of the Inspector General, U.S. Army Forces Command (FORSCOM), Fort McPherson, GA 30330.

