

Division, promptly by telephone (within 2 working days) for specific instructions regarding how to proceed." *The Guide* provides that the field IG should be prepared to respond to the following specific questions:

- What protected communications (PCs) does the soldier claim he/she made?
- To whom were they made?
- When were they made?
- What matters were addressed in the PC (i.e., gross mismanagement, waste, public safety, abuse, etc.)?
- What were the unfavorable personnel actions alleged by the soldier?
- Who were the responsible Army officials alleged by the soldier to have taken or threatened the personnel action?
- When were the personnel actions against the soldier taken or threatened?
- When did the soldier first become aware of the personnel actions?

The Guide, Section 11-1, paragraph 5, further provides that the "[i]f, as a result of the coordination with WIOB, DAIG—Assistance Division, it is determined that the soldier's allegations appear to meet the criteria for coverage under the [whistleblower] law, then the IG receiving the complaint will be directed by the WIOB to forward the case to either their MACOM (Major Command) IG or to WIOB for . . . preliminary analysis . . ."

The Guide goes on to state that the PA/PI/IGPA will determine whether the complaint meets the criteria for coverage under the Military Whistleblower Statute and whether a formal investigation is warranted. If it is determined during PA/PI/IGPA that the soldier's allegations do not appear to meet the criteria, the MACOM IG will forward the case via IG channels to WIOB, DAIG—Assistance Division, for further review and reporting to IG, DoD. If the PA determines that the soldier's allegations meet the criteria, then the MACOM IG will coordinate with WIOB, DAIG—Assistance Division, to determine which whistleblower investigation strategy to use and then proceed with that strategy . . . [Tab A-6].

(4) *The Assistance and Investigations Guide*, January 2006 [Tab A-7], Section 11-1, paragraph 2, states "[i]f, upon presentation, a soldier makes a reprisal allegation that **appears to meet the criteria** (emphasis added) 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)." The "Whistleblower Advisement" analysis set forth in the 2006 version of *The*

Guide is comprised of essentially the same list of questions set forth in the 2004 edition:

- What protected communications (PCs) does the soldier claim he/she made or prepared?
- To whom were they made?
- When were they made?
- What matters were addressed in the PC (i.e., gross mismanagement, waste, public safety, abuse, etc.)?
- What were the unfavorable personnel actions alleged by the soldier?
- Who were the responsible management officials (RMOs) alleged by the soldier to have taken or threatened the personnel action?
- When were the personnel actions against the soldier taken or threatened?
- When did the soldier first become aware of these personnel actions?

The 2006 iteration of *The Guide* at Section 11-1, paragraph 3, goes on to provide that the upon receipt of the "whistleblower advisement" and complaint document, WIOB . . . will refer the case to the appropriate IG for Preliminary Inquiry (PI) to determine whether the allegation meets the criteria for whistleblower reprisal. Paragraph 4 of this same section of *The Guide* states that "[a] PI will address the questions of whether a PC was made or prepared and if unfavorable personnel action was taken or threatened, if a favorable personnel action was withheld or threatened to be withheld A PI can result only in a recommendation that the case be declined or that more investigation is required. A declination would be indicated if there was no PC or no unfavorable personnel action. . . . If the evidence indicates there was a PC and there was unfavorable personnel action . . . then you must conduct an inquiry or investigation. WIOB will maintain oversight of all Whistleblower cases."

Evidence:

The evidence associated with [REDACTED] complaints is drawn from four Inspector General case files.⁵⁶

On September 1, 2004, [REDACTED] visited the Fort Bragg OIG and met initially with [REDACTED] [Tab C-1b] p. 10] and later with [REDACTED] then an Assistant IG at the FB OIG [Tab C-7e] p. 2].

⁵⁶ The case designator assigned to an IG case identifies the Inspector General Office with primary responsibility for working the matter. FB OIG cases are identified by the letters "FJ"; FORSCOM OIG cases use the "FZ" designator. The four case files related to [REDACTED] include: Case Number FJ 04-0265, opened on January 25, 2005, closed August 12, 2005 [Tab B-8] Case File 1; Case Number FZ 05-0081, opened on January 25, 2005, closed January 9, 2006 [Tab B-9, SFC Wilson Case File 2]; Case Number FZ 06-0016, opened on October 27, 2005, closed January 27, 2007 [Tab B-10] Case File 3; Case Number FJ 06-0031, opened on October 27, 2005, closed December 5, 2005 [Tab B-11] Case File 4.

(b)(7)(C) completed an IGAR alleging that her chain of command "mistreat[ed] soldiers across the board." Among (b)(7)(C) general complaints and the issues of greatest relevance to the OSC-referred allegation at issue were (b)(7)(C) allegations that (b)(7)(C) and (b)(7)(C) (the (b)(7)(C) and (b)(7)(C) respectively, of B Company, 327th Signal Battalion, to whom (b)(7)(C) reported in her capacity as platoon sergeant), in concert with (b)(7)(C) (the CSM of the 327th Signal Battalion, the parent unit of B Company),⁵⁸ had removed her from her position as a platoon sergeant and downgraded her NCOER in reprisal for her having made a complaint to her Brigade Equal Opportunity (EO) representative in July 2004 [Tab B-8c, Case File 1, Synopsis, p. 1]. (b)(7)(C) prior EO complaint had focused on her perceptions that soldiers in her platoon were treated poorly when compared with the treatment afforded the soldiers of other platoons in the company.

In verbal discussions with the FB OIG, documented in the case synopsis, (b)(7)(C) asserted that after evaluating her July 2004 complaint, the Brigade EO representative had determined that the concerns she raised were not EO-appropriate, but rather were command issues. Accordingly, the EO representative had forwarded (b)(7)(C) concerns to her company leadership, (b)(7)(C) and (b)(7)(C) for action as appropriate. (b)(7)(C) alleged that subsequently, on August 26, 2004, she had received an NCOER from (b)(7)(C) and (b)(7)(C) that NCOER had reflected a downgrade in her expected evaluation of her performance of duty as platoon sergeant [Tab B-8c, Case File 1, Synopsis, p. 1]. (b)(7)(C) had refused to sign the NCOER.⁵⁹ (b)(7)(C) reported that on August 31, 2004, she had been ordered by (b)(7)(C) to report to a company formation that was forming up outside the building; allegedly because (b)(7)(C) raised his voice at her and cursed her, (b)(7)(C) refused to obey the order and went instead to seek an audience with (b)(7)(C) about her NCOER. Based on her disobedience, (b)(7)(C) advised (b)(7)(C) that he had lost confidence in (b)(7)(C) and requested that she be moved from B Company. The very next day, (b)(7)(C) was re-assigned to C Company, as a section sergeant, a position of lesser stature than that she had held in B Company [Tab B-8c, Case File 1, Synopsis, p. 1]. (b)(7)(C) also asserted that her chain of command had improperly reformulated an NCOER she had issued to (b)(7)(C) a soldier for whom she was responsible in her role as platoon sergeant. (b)(7)(C) asserted that

⁵⁷ Note that the report reflects several different spellings of (b)(7)(C) last name.

⁵⁸ See *supra* note 4 for a discussion of the organization of the XVIII Airborne Corps and command and non-commissioned officer leadership relationships.

⁵⁹ Note that it is in the context of describing the events associated with her refusal to sign her NCOER that (b)(7)(C) appears to have first mentioned (b)(7)(C) to members of the FB OIG. She asserts that after receiving the NCOER from (b)(7)(C) and (b)(7)(C) she had consulted with (b)(7)(C) and (b)(7)(C) both of whom had advised her to sign the NCOER [Tab B-8c, Case File 1, Synopsis, p. 1].

(b)(7)(C) had substituted himself as (b)(7)(C) rater, in direct contravention of the published rating chain that established (b)(7)(C) as (b)(7)(C) rater [Tab B-8c, Case File 1, Synopsis, p. 1].

In her September 1, 2004 discussions with the FB OIG, (b)(7)(C) requested the IG's assistance in facilitating her move to a new duty position outside the 35th Signal Brigade to enable her to make a "clean start." [Tab B-8c, Case File 1, Synopsis, p. 1]. It is important to note that (b)(7)(C) IGAR made no reference to or allegation against (b)(7)(C) who served as the Command Sergeant Major of the 35th Signal Brigade, the parent unit of the 327th Signal Battalion and its subordinate companies.

There is no indication that the FB OIG undertook to contact FORSCOM OIG or DAIG to discuss or report (b)(7)(C) September 1, 2004 allegations of reprisal. The case synopsis indicates only that (b)(7)(C) advised (b)(7)(C) to request that her Battalion Commander conduct a Commander's Inquiry into her assertions of error and injustice regarding her NCOER and reassignment [Tab B-8c, Case File 1, Synopsis, p. 1].

While the FB OIG's PA/PI/IGPA of (b)(7)(C) complaint was ongoing, DAIG received a letter, dated November 9, 2004, from Senator Elizabeth Dole, referring a complaint from her constituent, (b)(7)(C) for the Army's response. (b)(7)(C) letter of complaint to Senator Dole contained vague references to reprisal, but did not claim that (b)(7)(C) was the subject of reprisal, nor did it name any person (b)(7)(C) believed to be responsible for any such reprisal. The letter mentioned the "Brigade CSM" (although there was no name provided, it was later presumed to refer to (b)(7)(C)) having made a statement about removing (b)(7)(C) from Fort Bragg, but did not assert that the CSM did anything improper or that the statement was made in reprisal for any protected communication (b)(7)(C) had made. In her complaint to Senator Dole, (b)(7)(C) indicated that she had visited the FB OIG regarding matters contained in her letter but had not yet received any word from that office [Tab B-8d, Case File 1, Senator Dole letter]. Although the DAIG did not formally transmit Senator Dole's letter to FORSCOM until December 16, 2004 and FORSCOM did not forward the letter to the FB OIG until January 25, 2005,⁶⁰ it appears that the FB OIG was informally advised of the letter and its contents because FB OIG investigators discussed the Senator's communication in an

⁶⁰ On December 16, 2004, DAIG assigned the Senator Dole letter to the FORSCOM IG for action; on January 25, 2005, FORSCOM further assigned it for resolution to the FB OIG. In forwarding the complaint to the FB OIG, the FORSCOM OIG email communication specifically directed the FB OIG to review the case for a possible military whistleblower reprisal violation and to forward the completed report to the FORSCOM OIG, which would send the case file on to DAIG, which would then respond to Senator Dole [Case File 2, Tab B-9a, case notes, p. 4; Tab B-9b, FORSCOM letter to FB OIG, p. 1; Tab B-9c, DAIG letter to FORSCOM OIG, p. 1].

interview they conducted with [redacted] on November 23, 2004 [Tab B-8e, Case File 1, [redacted] testimony, p. 43].⁶¹

In a November 23, 2004 interview conducted by then [redacted] Chief of the Inspections Division, and [redacted] provided sworn testimony elaborating on her complaints against her chain of command [Tab B-8e, Case File 1, [redacted] testimony]. [redacted] testimony centered on her receipt of the downgraded NCOER, her move from B Company to C Company, and the situation regarding [redacted] NCOER. In her testimony, [redacted] recalled speaking to both [redacted] and [redacted] during her September 1, 2004 visit to the FB OIG [Tab B-8e, Case File 1, [redacted] testimony, pp. 23, 30-31]; although [redacted] initially handled her complaint, [redacted] testified that she had spoken also to [redacted] that same day about whistleblower reprisal and that he had told her then that he didn't "think it fit." [Tab B-8e, Case File 1, [redacted] testimony, p. 23]. It was during her sworn testimony of November 23, 2004, that [redacted] also alleged for the first time that [redacted], the 35th [redacted] who supervised both [redacted] and [redacted] told her 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-8e, Case File 1, [redacted] testimony, pp. 32, 33].⁶² [redacted] testified that she felt [redacted] was "trying to" threaten her with his comments [Tab B-8e, Case File 1, [redacted] testimony, p. 33].

In the only reference to [redacted] in the four case files pertaining to [redacted] allegations, the opening section of the transcript of November 23, 2004 interview indicates only that [redacted] then the [redacted] had directed the interview [Tab B-8e, Case File 1, [redacted] testimony, p. 1]. There is no evidence that [redacted] issued a written directive for the interview. It is more likely that, in accordance with standard Inspector General procedures, [redacted] was briefed by a member of the FB OIG staff on the allegations set forth in [redacted] September 1, 2004 IGAR (and perhaps on the letter from Senator Dole) and verbally directed his staff to interview [redacted].

On December 16, 2004, DAIG formally assigned the Senator Dole letter to the FORSCOM IG for action [Tab B-9c, Case File 2, DAIG forwarding letter]. FORSCOM OIG case notes reflect that [redacted].

⁶¹ It is reasonable to presume that receipt of Senator Dole's letter may have prompted the FB OIG to undertake the interview of [redacted].

⁶² It is important to note that [redacted] had been assigned to Fort Bragg on a "compassionate reassignment" to permit her to care for her ailing mother who had suffered a cerebral stroke and had been placed in a nursing home in the local area near Fort Bragg. The Army provides for soldiers to receive a "compassionate reassignment" based on sensitive family or personal needs. Usually, soldiers can expect to be stabilized for at least one year in the location or with the unit to which they are compassionately reassigned.

complaints were viewed as "possible WB but is a non-WB reprisal at this time. Will include instructions to check for 1034 complaint in referral memo." [Tab B-9a, Case File 2, FORSCOM case notes, p. 4]. On January 25, 2005, FORSCOM further assigned the case for action to the FB OIG. In forwarding the complaint to the FB OIG, the FORSCOM OIG email communication specifically directed the FB OIG to review the case for a possible military whistleblower reprisal violation and to forward the completed report to the OIG FORSCOM, which would send the case file on to DAIG, which would then respond to Senator Dole [Case File 2, Tab B-9a, case notes, p. 4; Tab B-9b, FORSCOM letter to FB OIG, p. 1; Tab B-9c, DAIG letter to FORSCOM OIG, p. 1]. It is important to understand that at this point responsibility for the management of the FB OIG had transferred to [redacted] [redacted] had deployed to Iraq on January 24, 2005 and would not return until on or about January 21, 2006.

Inexplicably, the FB OIG case file reflects no further action on this case until June 17, 2005, when it was assigned to [redacted] [Tab B-8c, Wilson Case File 1, FB OIG case notes, p. 7]. FORSCOM case notes indicate that on two occasions: April 25, 2005 and 24 May 2005, FORSCOM received requests from [redacted] for extensions of time to work the case [Tab B-9a, Case File 1, FORSCOM OIG case notes, p. 4]. It was not until August 11, 2005, however, that the FB OIG forwarded its Report of Investigative Inquiry (ROI), authored by [redacted] to FORSCOM, where it was received on August 24, 2005, and first reviewed on September 7, 2005 [Tab B-8c, Case File 1, FB OIG case notes, p. 7; Tab B-9a, Case File 2, FORSCOM OIG case notes, p. 4]. This initial ROI addressed [redacted] complaint that she had been reassigned to a different unit because she had registered a command-related complaint with the Brigade EO representative only as a violation of AR 600-20, paragraph 5-8c⁶³ and made no reference whatsoever to any allegation against [redacted] [Tab B-8f, Case File 1, initial ROI]. The FORSCOM OIG case notes reflect that the FORSCOM reviewing officer spoke with [redacted] and advised him that [redacted] allegations should have been addressed as violations of the Military Whistleblower Statute. The FORSCOM reviewing officer recommended that [redacted] "do an advisement for the [whistleblower complaint] and take the AR 600-20 allegation out of the ROI and address it separately in [the whistleblower] inquiry." [Tab B-9a, Case File 2, FORSCOM OIG case notes, p. 4]. It appears that [redacted] complied with these instructions and on October 21, 2005, forwarded a corrected ROI to FORSCOM [Tab B-9a, Case File 2, FORSCOM OIG case notes, p. 4]. This second iteration of the ROI focused predominantly on [redacted] allegations

⁶³ AR 600-20, *Army Command Policy*, dated May 13, 2002, para. 5-8c(1) [Tab A-10], provides that "Commanders and supervisors are prohibited from initiating any type of disciplinary or adverse action against any Soldier . . . because the individual registered a complaint . . . with an equal opportunity office."

regarding [REDACTED] NCOER.⁶⁴ References to the allegations that members of the chain of command had taken adverse against [REDACTED] in response to her EO complaint had been removed [Tab B-8g, Case File 1, revised ROII]. Instead, the revised ROII contained a statement that allegation of reprisal . . . "fell under [0 USC 1034]'Whistleblower Reprisal' and was reported to DAIG Assistance Division" and investigated a separate matter, and that accordingly the ROII [did not] address any allegations of reprisal [Tab B-8g, Case File 1, revised ROII, pp. 2, 17].

In accordance with AR 20-1 procedures governing the intake of whistleblower reprisal allegations and the FORSCOM OIG directive to address properly [REDACTED] complaints, the FB OIG submitted a "whistleblower advisement" in [REDACTED] case to FORSCOM on October 21, 2005 [Tab B-9a, Case File 2, FORSCOM OIG case notes, p. 4]. On October 27, 2005, apparently after consultation with WIOB, DAIG—Assistance Division, the FORSCOM OIG authorized the FB OIG to conduct a PA/PI/IGPA into [REDACTED] reprisal allegations. [REDACTED] began to work the case actively [Tab B-9a, Case File 2, FORSCOM OIG case notes, p. 4; Tab B-10, Case File 3, p. 3] and on October 28, 2005, initiated efforts to re-interview [REDACTED] as part of the PA/PI/IGPA. Upon determining that [REDACTED] had deployed to Iraq and would not return to Fort Bragg until November 2005, [REDACTED] made an effort to contact her by email. [REDACTED] unit redeployed to Fort Bragg on November 20, 2005 and on November 30, 2005, [REDACTED] requested assistance from [REDACTED] who remained the [REDACTED] of the 35th Signal Brigade, in making [REDACTED] available for interview [Tab B-11a, Case File 4, case notes, p. 1].

On December 1, 2005, the [REDACTED] re-interviewed [REDACTED] and requested that she complete a "Reprisal Against Whistleblower Questionnaire." Both verbally in her sworn testimony to [REDACTED] [Tab B-11e, Case File 4, sworn statement to [REDACTED] pp. 4-5] and in writing in her "Questionnaire" responses [Tab B-11c, Case File 4, Whistleblower Questionnaire, pp. 2-3], [REDACTED] denied that any Army official reprisal against her for making a protected communication and stated, for the first time, that she had been informed of her pending reassignment from B Company to C Company in the "middle of July 2004," prior to her protected communication with the Brigade EO representative [Tab B-11c, Case File 3, Whistleblower Questionnaire, pp. 2-3; Tab B-11d, Case File 3, FB OIG request to DAIG, p. 2-4]. She indicated

⁶⁴ The ROII substantiated that [REDACTED] and another officer had acted improperly with regard to [REDACTED] NCOER. The ROII unsubstantiated the allegation that [REDACTED] had failed to initiate a commander's inquiry into [REDACTED] allegations of error or injustice in regard to her NCOER in violation of AR 623-205, *Noncommissioned Officer Evaluation Reporting System*, para. 6-3 [Tab A-9], and unsubstantiated the allegation that [REDACTED] had failed to take action when he received a written complaint from [REDACTED] through the Brigade Equal Opportunity Advisor, in violation of AR 600-20, para. 6-2g [Tab A-10].

that the move was based on her poor working relationship with [REDACTED] and was not in response to her protected communication [Tab B-11e, Case File 4, sworn statement to [REDACTED] pp. 4-5]. She further indicated that she, [REDACTED] and [REDACTED] met and resolved her EO complaint within several days after it had first been referred to the chain of command for action and that about this same time she had agreed to be moved to C Company [Tab B-11a, Case File 4, case notes, p. 3]. [REDACTED] made no mention of [REDACTED] in either her sworn testimony or in her written "Questionnaire" responses. Accordingly, in his December 7, 2005 written analysis of the case and the companion "declination memorandum," [REDACTED] concluded that there were independent bases for the unfavorable personnel actions against [REDACTED] (i.e., her poor working relationship with [REDACTED]); determined that the complaint did not meet the criteria for whistleblower protection, and recommended that the complaint be declined under the provisions of DoD Directive 7050.6, *Military Whistleblower Protection* [Tab B-11b, Case File 4, FB OIG declination memorandum, p. 2]. The declination of [REDACTED] reprisal case was approved by DoDIG on March 16, 2007 [Tab B-12, DoDIG concurrence].

Other than [REDACTED] having directed the interview of [REDACTED] in November 2004 (at which interview [REDACTED] first mentioned [REDACTED] and his comments to her), he is not mentioned in any of the four Inspector General files pertaining to [REDACTED]. Further, it is important to note that [REDACTED] was deployed to Iraq from January 24, 2005 through on or about January 21, 2006, the period during which most of the investigative activity in [REDACTED] case took place. Most significantly, there is no evidence indicating that any member of the FB OIG with knowledge of [REDACTED] complaint against [REDACTED] informed [REDACTED] about that complaint or discussed it with him in any way.

[REDACTED] testified that he briefed [REDACTED] on the [REDACTED] allegation after receiving [REDACTED] first complaint in September 2004, and that the case was then referred to [REDACTED] and [REDACTED] as action officers. He further testified that "instead of following procedures," [REDACTED] had decided not to advise DAIG of a potential reprisal allegation as required by AR 20-1 and that [REDACTED] had told him simply to call [REDACTED] to ensure that [REDACTED] knew about the Military Whistleblower Act [Tab C-1b, [REDACTED] p. 10]. In his statement [REDACTED] indicated that he contacted [REDACTED] about these concerns in "fall 2004." [Tab C-1b, [REDACTED] p. 11]. [REDACTED] asserted that due to [REDACTED] decisions and directives, a full inquiry into [REDACTED] allegations had never been conducted and that in violation of AR 20-1, neither a "whistleblower advisement" nor a "declination memorandum" ever had been processed.

[REDACTED] testified that when [REDACTED] first sought help from the FB OIG in September 2004, [REDACTED] had worked her case. [REDACTED] recalled

that [REDACTED] had been exploring the "teach and train angle" with [REDACTED] on the Whistleblower Protection Act, so that [REDACTED] would not implicate himself as a Responsible Management Official (RMO). [REDACTED] did not associate [REDACTED] with this decision to "teach and train." [REDACTED] testified recalling that [REDACTED] had directed an interview of [REDACTED] in which [REDACTED] and [REDACTED] had participated on November 23, 2004. [REDACTED] asserted that he did not know what had come of the case as it was not his to work and that his employment with the FB OIG had been terminated shortly after the November 2004 interview.⁶⁵ [REDACTED] was unaware of any discussion in the FB OIG in which it had been decided not to investigate [REDACTED] [Tab C-7e, MFR, p. 2].

In their respective testimonies to the FORSCOM IOs investigating the OSC-referred allegations, [REDACTED] and [REDACTED] (the Primary IG in the FB OIG during [REDACTED] Iraq deployment), all recalled [REDACTED] case but none, to include [REDACTED] to whom [REDACTED] asserted that he reported [REDACTED] alleged act of reprisal, could recall whether or not [REDACTED] had been reported as a RMO [Tab C-2d, p. 1; Tab C-8c, p. 1; Tab C-6, p. 2]. Notably, [REDACTED] makes no assertion that [REDACTED] was involved in the matter in any way [Tab C-2d, p. 2].

When informed by the FORSCOM IOs investigating the OSC-referred allegations that [REDACTED] had not been named as an RMO, none except [REDACTED] could shed light on why that decision had been made or who had made it. [REDACTED] stated that the decision not to handle the case as a reprisal case was based upon conversations with [REDACTED] and [REDACTED] and that she had never heard anything from [REDACTED] concerning the matter [Tab C-8, p. 2].

[REDACTED] testified that he probably received [REDACTED] case from [REDACTED]⁶⁶ He remembered [REDACTED] being implicated in the case. He further recalled that [REDACTED] had evidenced a completely different tone between her initial interview in November 2004 (in which he did not participate) and her December 2005 interview (in which he did participate) [Tab C-3c, pp. 1-2]. He further testified that in her December 2005 interview, [REDACTED] never raised the issue of [REDACTED] reprising against her and thus he did not pursue it. Additionally, [REDACTED] testified that no one ever directed him not to investigate [REDACTED] role in this matter and that

⁶⁵ For a detailed discussion of the termination of [REDACTED] employment with the FB OIG, see "Stand Alone" Issue, pp. 68-70 of text.

⁶⁶ Records of the FB OIG reflect that [REDACTED] was transferred to new duty assignment, in due course, on or about July 5, 2006. Given that case notes reflect that [REDACTED] assumed responsibility for [REDACTED] case in mid-June 2006, it seems likely that [REDACTED] transferred the case to him in preparation for her reassignment and departure from the FB OIG.

he had no knowledge bearing on the question of whether [REDACTED] had directed [REDACTED] merely to coach and teach [REDACTED] about avoiding whistleblower reprisal [Tab C-3c, [REDACTED] p. 2].

When interviewed, [REDACTED] did not recall [REDACTED] case at all. He denied, however, that he ever would have never squelched a potential reprisal allegation by declining to report the allegation to DAIG. Further, he noted that he would have found it unacceptable merely to have his subordinates discuss the Military Whistleblower States in a "teach and train" approach with a named RMO. [REDACTED] asserted that he would have been sensitive to any whistleblower reprisal complaint, and particularly to any allegation against [REDACTED] because he had long-held concerns about the leadership environment in the 35th Signal Brigade, [REDACTED] unit [Tab C-10b, [REDACTED] pp. 1-2].

Discussion:

The preponderance of evidence does not support the OSC-referred allegation that [REDACTED] directed [REDACTED] to take improper and insufficient action in response to a whistleblower reprisal allegation against [REDACTED].

When [REDACTED] first complained to the FB OIG on September 1, 2004, her IGAR made no reference to an allegation of reprisal against [REDACTED]. This complaint was worked by [REDACTED] and by [REDACTED]. There is no evidence that either [REDACTED] or [REDACTED] took any action to report [REDACTED] complaint to the FORSCOM OIG or to DAIG as a whistleblower matter. Although [REDACTED] letter to Senator Dole referenced her "Brigade CSM" (presumed to be [REDACTED]), the letter made no assertion that the "Brigade CSM" had wronged [REDACTED] in any way. It is clear that [REDACTED] did not articulate her reprisal allegation against [REDACTED] until her interview on November 23, 2004.

Although [REDACTED] authorized the November 23, 2004 interview of [REDACTED], there is no evidence in any of the four Inspector General case files pertaining to [REDACTED] that [REDACTED] ever was informed of the outcome of the interview or of the specific allegation against [REDACTED]. There is not the slightest intimation in any of the files that [REDACTED] directed that [REDACTED] become involved in the case or that [REDACTED] take any action to address [REDACTED] alleged reprisal against [REDACTED] deployed to Iraq on January 24, 2005 and did not return to Fort Bragg until on or about January 21, 2006, after the final FB OIG "declination" in the case had been sent forward to FORSCOM. There is no evidence that [REDACTED] had any further contact with the case or the related evidence after authorizing the interview of [REDACTED] in November 2004.

Although [REDACTED] testified that [REDACTED] directed him merely to discuss the whistleblower law with [REDACTED] and not to report the matter to DAIG, no one else recalls [REDACTED] being involved in this case or directing this course of action. In particular, [REDACTED] supervisor, to whom [REDACTED] said he reported [REDACTED] alleged act of reprisal, had no recollection that [REDACTED] had been involved in the matter. [REDACTED] asserted that he had no recollection of the case; [REDACTED] testified to the FORSCOM IOs that he was unaware that [REDACTED] had filed an allegation of reprisal against [REDACTED] and denied he had ever directed the office not to handle the matter as a reprisal allegation.

The evidence indicates that although some members of the FB OIG may have recognized that [REDACTED] alleged comments to [REDACTED] may have constituted a potential violation of the Military Whistleblower Statute, no one acted on this recognition or brought the matter to [REDACTED] attention. It appears that a decision was made not to pursue [REDACTED] allegations of reprisal as violations of the Military Whistleblower Statute; the initial FB OIG ROII into [REDACTED] allegations briefly addressed matters related to [REDACTED] reprisal allegations solely in the context of the Army Regulation proscribing disciplinary action against a soldier for having made an EO complaint (not as a potential violation of the Military Whistleblower Statute). The initial ROII did not address the matter of [REDACTED] alleged threats at all. There is no evidence that this error was the result of action or inaction by [REDACTED] or, given that [REDACTED] was deployed for almost the entire period during which [REDACTED] allegations were under consideration by the FB OIG, that [REDACTED] was even aware of the decision. Rather, it appears that the failure to address [REDACTED] allegations properly resulted from the independent actions (or perhaps the failure to act) on the part of an unidentified member or members of the FB OIG staff. The FORSCOM IOs investigating the OSC-referred allegations could not determine why the FB OIG decided to proceed in this manner, in major part because of the lack of documentation in the case file between September 1, 2004, and November 23, 2004, and also between November 23, 2004 and June 17, 2005. All evidence points to a serious mistake on the part of the entire FB OIG staff in failing to address [REDACTED] comments to [REDACTED] as a potential violation of the Military Whistleblower Act, not to [REDACTED] knowing and intentional disregard of [REDACTED] allegations.⁶⁷

In October 2005, after the FORSCOM OIG directed that the FB OIG take action to correct its erroneous handling of [REDACTED] reprisal complaints, the FB OIG reopened its inquiry. During her follow-on interview with [REDACTED]

⁶⁷ Note also that the FB OIG staff was short-handed and in a transition period—[REDACTED] who had been primarily responsible for [REDACTED] case, was preparing to leave the FB OIG for a new duty assignment. As [REDACTED] prepared to depart, she transferred the case to [REDACTED] who had not previously been involved in the matter and was left with only the written documentation in the case file on which to base his understanding of the allegations and craft the initial ROII.

(b)(7)(C) on December 1, 2005, (b)(7)(C) denied ever having been reprimed against by any member of her chain of command. Rather, (b)(7)(C) asserted that her removal from platoon sergeant duties and reassignment were due to her poor working relationship with (b)(7)(C). (b)(7)(C) stated for the first time that she had been advised unofficially of her impending reassignment prior to filing her complaint with her EO representative in July 2004. (b)(7)(C) made no allegation against (b)(7)(C) during her December 2005 interview. That given, (b)(7)(C) recommended (b)(7)(C) whistleblower reprisal case for "declination." DoDIG approved the declination of this case on March 16, 2007 [Tab B-12, DoDIG concurrence].

Conclusion: The allegation that (b)(7)(C) acted improperly, in violation of established standards, in his handling of (b)(7)(C) complaint against (b)(7)(C) or directed (b)(7)(C) to do so, is unsubstantiated.

Corrective Action Related to OSC Allegation 2: Although it does not appear that (b)(7)(C) was involved in any way with the FB OIG decision not to pursue (b)(7)(C) November 2004 allegation of reprisal against (b)(7)(C) information discovered in the course of investigating of the OSC-referred allegations prompts a conclusion that the FB OIG erred in failing to address (b)(7)(C) prior allegation of reprisal by (b)(7)(C) with her in the course of her December 1, 2005 interview. Accordingly, at the conclusion of matters related to the OSC-referred allegations, The Inspector General of the Army will direct the FB OIG to reopen (b)(7)(C) case to address properly and resolve her potential allegation of reprisal against (b)(7)(C).⁶⁸

OSC Allegation 3:

Allegation: That (b)(7)(C) violated AR 20-1 by delaying an investigation into allegations that (b)(7)(C) Battalion Commander, 51st Signal Battalion,⁶⁹ had physically assaulted (b)(7)(C) and had engaged in an inappropriate relationship with a subordinate non-commissioned officer (NCO), (b)(7)(C) even though a preliminary analysis of these allegations had revealed sufficient evidence to warrant further investigation. The complainants allege that it was only after some delay that (b)(7)(C) initiated a request for an investigation⁷⁰ that ultimately substantiated allegations against (b)(7)(C).

⁶⁸ Note that (b)(7)(C) is retired from the Army.

⁶⁹ See *supra* note 4 for a discussion of the organization of the XVIII Airborne Corps and command and non-commissioned officer leadership relationships.

⁷⁰ In their respective testimonies, (b)(7)(C) and (b)(7)(C) refer to this investigation as a "Commander's Inquiry." [Tab C-2c, (b)(7)(C) p. 2; Tab C-1b, (b)(7)(C) p. 6]. Such reference is not inaccurate in that a "Commander's Inquiry" is a form of investigation authorized by Rule for Courts-Martial 303, *Manual for Courts-Martial*.

Summary of Findings: This allegation was unsubstantiated by a preponderance of the evidence. Contrary to the allegation, the evidence indicates that [REDACTED] ordered [REDACTED] to proceed quickly to investigate the allegations against [REDACTED] so that [REDACTED] superiors, the Commanding General of the XVIII Airborne Corps and [REDACTED] the 35th Signal Brigade Commander, could make informed decisions regarding [REDACTED] before his unit deployed.

Relevant Authorities:

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

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

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

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

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

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

Evidence:

(b)(7)(C) visited the FB OIG on October 19, 2004 and met with (b)(7)(C) [Tab C-1b], p. 6], who opened FB OIG case file, Number FJ 05-0012 that same day [Tab B-13].⁷¹

In an IGAR, (b)(7)(C) asserted that she had been assaulted by her Battalion Commander, (b)(7)(C) in October 2003 while they were deployed in Iraq as members of the 51st Signal Brigade. (b)(7)(C) asserted that she reported the assault to her Brigade Commander, (b)(7)(C)⁷² who conducted an inquiry in which it was determined that the alleged "assault" was merely a "verbal altercation." (b)(7)(C) perceived the inquiry as inadequate, categorizing it as "mere protocol," designed to cover-up rather than to investigate properly (b)(7)(C) misconduct. All-in-all, (b)(7)(C) believed that her Brigade Commander had failed to take appropriate action on her allegations of assault [Tab B-13], (b)(7)(C) handwritten statement, p. 1].

⁷¹ In several portions of the FORSCOM OIG report of inquiry into the OSC-referred allegations, the IOs note that FB OIG employees failed to transcribe recorded witness testimony. For example, although many of the witnesses interviewed in the context of the investigation of the OSC-referred allegations, to include the complainants, assert that (b)(7)(C) her husband, (b)(7)(C) and (b)(7)(C) the former Executive Officer of the 51st Signal Battalion, were interviewed in the course of the FB OIG investigation of (b)(7)(C) complaints, there was no documentation in the case file of any of these interviews, nor was documentation of any of these interviews included in the ROII. The FORSCOM IOs investigating the OSC-referred allegations were unable even to locate any audio tape used to record these interviews. Further, neither the FB OIG case files nor the final ROII in (b)(7)(C) case included documentation or evidence of the interviews of (b)(7)(C) or (b)(7)(C). The FORSCOM IOs investigating the OSC-referred allegations located audio tapes documenting these interviews, however. The interviews were transcribed and considered as evidence for purposes of the OSC investigation. Note that IGs are not required to transcribe every witness interview. Other acceptable methods of recording witness interviews include summarizing testimony in a Memorandum for Record (MFR) format (*The Assistance and Investigations Guide*, Section II-6-4 [Tab A-6]); taking a written statement directly from the witness (*The Guide*, Section II-6-5); and recording information in "memoranda of conversations, handwritten notes, unsworn statements" (AR 20-1, para. 8-4g [Tab A-1]). The method employed depends on the level/phase of investigation (for example, transcribed testimony would be appropriate for a ROII but not necessary for a preliminary inquiry); the witness's relevance (for example, transcribed testimony might be appropriate for the interview of the subject of the investigation, but not necessary for other witnesses); and other factors. It is not appropriate, however, to conduct an interview and tape record the relevant witness testimony but then fail to memorialize or summarize the testimony in some written format. Yet, this substandard practice appears to have been common during the FB OIG investigation of (b)(7)(C) complaints. The Inspector General of the Department of the Army has directed that at the conclusion of matters related to the OSC-referred allegations, a team comprised of DAIG experts, will conduct an on-site "Staff Assistance Visit" with the FB OIG to assess that office's policies and procedures and to provide retraining and other on-the-spot assistance to the FB OIG in remedying any deficiencies identified.

⁷² It is important to distinguish between (b)(7)(C) commander of the 35th Signal Brigade (who is referenced in the allegations made by (b)(7)(C) and the allegation regarding (b)(7)(C) OSC Allegations 3, 4, and 5), and (b)(7)(C) commander of the "provisional" rear detachment of the "Dragon Brigade" (who was involved in the matters raised by (b)(7)(C) OSC Allegation 1).

[REDACTED] IGAR also alleged that [REDACTED] was engaged in an inappropriate relationship with a subordinate female NCO in his unit, [REDACTED] both [REDACTED] and [REDACTED] were married to others. Further, [REDACTED] asserted that [REDACTED] had a public altercation with [REDACTED] the husband of [REDACTED] but that no action had been taken against [REDACTED] for any of this misconduct [Tab B-13d, [REDACTED] request for XVIII Airborne Corps to direct FB OIG investigation, p. 1; Tab C-2e, [REDACTED] p-2].

The case notes reflect that [REDACTED] PA/PI/IGPA of [REDACTED] allegations indicated they had merit⁷³ [Tab B-13a, case notes, p. 3; Tab B-13b, case notes, p. 1].

On November 22, 2004, [REDACTED] made the following case note entry in the file: "prepared an action memo to CG (Commanding General) allowing the Corps CG to sign the directive for the investigation." The case note continued, stating that the CG had signed the directive and requested that the FB OIG "keep him informed of its progress in the event he wants . . . to appoint an IO if allegations appear they may be substantiated."⁷⁴ [Tab B-13b, case notes, p. 1].

The content of this case note is borne out by papers documenting that on November 22, 2004, [REDACTED] signed and submitted a written request to [REDACTED] Commanding General, XVIII Airborne Corps, asking that he direct an FB OIG investigation into the allegations against

⁷³ A fair reading of the FB OIG case notes would support the inference that [REDACTED] belief that the allegations had merit was based on interviews, purportedly conducted by [REDACTED] and [REDACTED] on November 9, 2004, of [REDACTED] the female NCO with whom [REDACTED] allegedly engaged in an inappropriate relationship, and [REDACTED] her husband [Tab C-2f, [REDACTED] p. 2; Tab C-1e, [REDACTED] p. 7; Tab C-7a, [REDACTED] p. 2]. Note however, that despite an exhaustive search, no documentation of these interviews has been discovered. Further, no evidence of [REDACTED] participation in the investigation of [REDACTED] allegations has been discovered.

⁷⁴ See AR 20-1, Ch. 8 [Tab A-1]. The November 22, 2004 directive from the CG, XVIII Airborne Corps and Fort Bragg was required to authorize the FB OIG to conduct a more detailed PA/PI/IGPA, while keeping the Commanding General apprised of allegations of misconduct against a senior field-grade officer and commander [REDACTED] under his jurisdiction. Second, it would appear that because [REDACTED] believed that [REDACTED] Brigade Commander, [REDACTED] may have been "too close to the situation," it was prudent to seek a directive from the CG, XVIII Airborne Corps to document and justify [REDACTED] decision not to involve [REDACTED] in the matter at this stage of the proceedings. Finally, because IG investigations are not the appropriate venue for the investigation of matters of a criminal nature or of allegations that are likely to result in adverse action against the subject. It is standard practice for an Inspector General to conduct a PA/PI/IGPA, and on determination that an allegation of criminal misconduct is likely to be substantiated, to refer the matter to the U.S. Army Criminal Investigation Command (USACIDC) for full investigation. Similarly, when an Inspector General conducts a PA/PI/IGPA that indicates that an allegation of misconduct is likely to be substantiated and to result in adverse personnel action against the subject, the matter is referred to the subject's command for investigation. Although adultery, fraternization, and conduct unbecoming an officer are crimes under Article 134 of the Uniform Code of Military Justice, when committed by members of the military, they are generally referred to the subject's command for action, barring aggravating circumstances that would favor the involvement of USACIDC.

[redacted] [Tab B-13d, request for XVIII Airborne Corps to direct FB-OIG investigation]. [redacted] request for an investigative directive referenced a November 9, 2004 interview of [redacted] by the FB-OIG in which [redacted] alleged that his spouse, [redacted] was engaged in a sexual relationship with [redacted] [Tab B-13d, request for XVIII Airborne Corps to direct FB-OIG investigation, p. 1].⁷⁵ The request cited to allegations that [redacted] had committed adultery, fraternized, and engaged in a prohibited relationship with [redacted] and that [redacted] had engaged in conduct unbecoming an officer.

[redacted] was aware that [redacted] had previously conducted a Commander's Inquiry into [redacted] assault allegations and that that inquiry had unsubstantiated the allegation of assault, instead substantiating a lesser finding that [redacted] had failed to treat [redacted] with dignity and respect. Apparently to address [redacted] allegation that [redacted] inquiry had been only cursory in nature, the request for an investigative directive also identified several "issues," among them whether [redacted] had conducted a "thorough and complete investigation" into [redacted] allegation that she had been assaulted by [redacted] [Tab B-13d, request for XVIII Airborne Corps to direct FB-OIG investigation, p. 2].⁷⁶ It appears that the Commanding General, [redacted] signed the directive for investigation on the same day on which it was presented to him [Tab B-13e, CG, XVIII Airborne Corps approval of FB-OIG request].

On or around December 2 or 3, 2004, as part of the FB-OIG investigation directed by the Commanding General, XVIII Airborne Corps, [redacted] and possibly [redacted] interviewed: the Staff Duty NCO to whom the altercation between [redacted] and [redacted] was reported [Tab C-12, [redacted] the Battalion CSM to whom the Staff Duty NCO reported the incident [Tab C-14, [redacted]; and the Battalion operations officer [Tab C-13, [redacted].⁷⁷ [redacted] testified that these interviews led him to believe there was a strong possibility that the allegations were true, that [redacted] knew about them, and that [redacted] had never interviewed or caused to be interviewed [redacted] or [redacted], key witnesses in the

⁷⁵ No documentation of [redacted] interview has ever been located. See *supra* note 71.

⁷⁶ In IG parlance, an "issue" is a concern that requires investigation, but does not rise to the level of a specific "allegation" against a specific person. In this case, given that it was known that [redacted] had previously investigated [redacted] complaint of assault, it does not appear inappropriate to categorize the concern as to the sufficiency of that investigation as an "issue." It is important to note that, at the recommendation of the FB-OIG, the assault of [redacted] was further investigated by the AR 15-6 IO subsequently appointed by the Commanding General, XVIII Airborne Corps.

⁷⁷ It appears possible that [redacted] and [redacted] also interviewed [redacted] the Battalion Executive Officer, although as set forth in note 71, *supra*, no documentation of that interview ever has been located, despite an exhaustive search. And, as stated in note 71, *supra*, the audio tapes of the interviews of [redacted] and [redacted] were never transcribed by the FB-OIG. Rather, the tapes were discovered pursuant to a search conducted by the FORSCOM IOs investigating the OSC-referred allegations and were subsequently transcribed.

case. [REDACTED] emphasized that he told [REDACTED] that the testimonies created a "reasonable probability that [REDACTED] was aware of the alleged improper relationship between [REDACTED] and the female subordinate and that the probability required that the allegation of a cover-up be addressed." [Tab C] [REDACTED], p. 8].

It is undisputed that based on the evidence gathered in these interviews, the FB OIG concluded that a high-level command investigation into the allegations against [REDACTED] was necessary.⁷⁸ Pursuant to the recommendation of the FB OIG, on December 17, 2004, [REDACTED] appointed [REDACTED], another Brigade Commander, to conduct an investigation under provisions of AR 15-6 into allegations that [REDACTED] had engaged in an inappropriate relationship with [REDACTED] and had assaulted [REDACTED]. [Tab B-13g, CG, XVIII Airborne Corps Appointment of AR 15-6] [REDACTED] was also tasked to review [REDACTED] allegation of assault [Tab B-13g, AR 15-6 Report, p. 3 of 4].

On January 26, 2005, [REDACTED] approved the findings and recommendations set forth in [REDACTED] report of his AR 15-6 investigation [Tab B-13g, CG, XVIII Airborne Corps Approval of AR 15-6, p. 4 of 4]. [REDACTED] found insufficient evidence to establish that [REDACTED] had engaged in adultery with [REDACTED] but did find that they engaged in an inappropriate relationship. [REDACTED] further determined that [REDACTED] had assaulted and mistreated [REDACTED]. Further, [REDACTED] noted that [REDACTED] had previously directed a Commander's Inquiry into [REDACTED] assault allegation, but that this earlier Inquiry had determined that because [REDACTED] had no intent to cause [REDACTED] bodily harm, no assault had taken place. Rather, the prior Inquiry had determined that [REDACTED] simply failed to treat [REDACTED] with dignity, respect, fairness, and consistency in violation of AR 600-100, *Army Leadership*, paragraph 2-1.⁷⁹ In light of those findings [REDACTED] had taken only adverse administrative action against [REDACTED] filing a [REDACTED] in [REDACTED] local personnel file [Tab B-13a, case notes, pp. 3-4, 7; Tab B-13c, FB OIG ROI, p. 5; Tabs B-13]. [REDACTED] specified that he had "uncovered no new facts and circumstances to change the understanding of the facts and circumstances surrounding the incident," but noted that proof of assault under Article 128 of the Uniform Code of Military Justice did not require evidence of "intent."⁸⁰ Accordingly, [REDACTED] determined that [REDACTED]

⁷⁸ See *supra* note 74. Allegations likely to result in adverse personnel action against the subject are referred to the chain of command for investigation.

⁷⁹ AR 600-100, *Army Leadership*, dated September 17, 1993.

⁸⁰ Under the Uniform Code of Military Justice, Article 128, the offense of assault requires proof that: (1) the accused attempted or offered to do bodily harm to a certain person; and (2) that the attempt or offer was done with unlawful forces or violence. The law imposes no requirement to establish the accused's specific "intent."

had both assaulted [REDACTED] and violated AR 600-100 leadership standards in his treatment of her [REDACTED] [Tab B-13c, FB OIG ROII, pp. 4-5].

Pursuant to the findings of the AR 15-6 investigation, the Commanding General removed [REDACTED] from command of the 51st Signal Battalion on January 26, 2005, and on the same date issued a [REDACTED] to [REDACTED] and [REDACTED] [Tab B-13k].

The case file indicates that based on the findings of [REDACTED] AR 15-6 investigation, the FB OIG produced a Report of Investigative Inquiry (ROII), dated February 25, 2005. The ROII reflected the same findings as set forth in the AR 15-6 investigation. The ROII included as enclosures the AR 15-6 investigation and the documentation of adverse action taken against [REDACTED] [REDACTED] [Tab B-13c-1]. [REDACTED] signature appeared on the ROII as the inquiry officer; because [REDACTED] was deployed to Iraq at the time, [REDACTED] who was serving as the Command IG at the time, signed concurring in the report [Tab B-13c, FB OIG ROII, p. 6].

In his sworn statement to the FORSCOM IOs appointed to investigate the OSC-referred allegations, [REDACTED] verified that [REDACTED] had visited the FB OIG office in mid- to late-2004 and made the complaints discussed above. [REDACTED] indicated that he had conducted the intake interview of [REDACTED] then had briefed [REDACTED] and transferred the case to [REDACTED] for action [Tab C-1b, p. 6]. [REDACTED] stated that [REDACTED] interviewed [REDACTED]⁸¹ and, in the course of that interview identified three allegations, following which [REDACTED] prepared a request for Commander's Inquiry addressed to the 35th Signal Brigade Commander, [REDACTED] [REDACTED] asserted that [REDACTED] had refused to sign the request for Commander's Inquiry. [REDACTED] said that he did not know how [REDACTED] had explained his refusal to either [REDACTED] or [REDACTED] but that he [REDACTED] had been present when he heard [REDACTED] say that he [REDACTED] did not want to "straddle units with distractors while they are preparing for deployment." [Tab C-1b, pp. 6-7].

[REDACTED] stated that [REDACTED] had complained that [REDACTED] had not taken any action on her allegation that [REDACTED] was having an inappropriate relationship and that [REDACTED] had covered it up [Tab C-2e, p. 2]. [REDACTED] further corroborated [REDACTED] testimony that [REDACTED] refused to sign the referral of the assault/inappropriate relationship allegations to [REDACTED] [REDACTED] reiterated [REDACTED] assertion that [REDACTED] had not wanted to burden the 35th Signal Brigade as it prepared for deployment, that [REDACTED] directed closure of the case as an

⁸¹ See *supra* note 73. The FORSCOM IOs investigating the OSC-referred allegations could find no evidence that [REDACTED] participated in interviews related to [REDACTED] allegations.

Assistance matter, and that it was not until the FB OIG learned of the alleged altercation between [redacted] and [redacted] that [redacted] permitted [redacted] to seek a Commanding General's directive for investigation [Tab C-2a, p. 2; Tab C-2b, p. 2; Tab C-2c, pp. 1-2].

[redacted] confirmed that he had interviewed [redacted] about her complaint of assault and that he had told her initially that her allegations were without merit and that the FB OIG would not investigate further because her unit had already investigated them. Additionally, having subsequently determined the case to be a matter for the Assistance section, [redacted] proceeded to return the case to [redacted]. [redacted] further testified that [redacted] returned again to the FB OIG, at which meeting she raised for the first time the allegation of [redacted] inappropriate relationship with [redacted] and [redacted] public altercation with [redacted] [Tab C-7a, p. 2; and Tab C-7c, p. 2].⁸² [redacted] testified that because [redacted] did not have any first hand knowledge of the alleged inappropriate relationship, he [redacted] and [redacted] undertook to conduct follow-on interviews with both [redacted] and [redacted] but that he had not worked the case further and was not familiar with how the directive for an investigation was sought. [redacted] also stated that he did not receive any pressure from [redacted] not to report allegations against [redacted] during the conduct of the inquiry as by that time it was [redacted] case. Contrary to [redacted] assertion that [redacted] had generated a request for Commander's Inquiry and presented that request to [redacted] only to have it rejected, [redacted] does not recollect playing any role in the request for Commander's Inquiry. Further, [redacted] stated that [redacted] had never prevented him from reporting allegations against field grade officers to the appropriate authority in a timely manner [Tab C-7b, p. 1; Tab C-7c, p. 2]. [redacted] testified that he did not perceive that [redacted] was "covering up" for field grade officers at Fort Bragg [Tab C-7c, p. 2].

[redacted] testified that [redacted] was "disgust[ed]" with [redacted] behavior, viewing it as unacceptable on the part of a professional officer and Battalion Commander, and that [redacted] was not at all upset that the allegations against [redacted] had been substantiated. [redacted] did not perceive that [redacted] tried to influence the investigation in any inappropriate manner [Tab C-4a, p. 2; Tab C-4b, p. 5]. [redacted] also stated that [redacted] was very conscious of his

⁸² The FORSCOM IOs investigating the OSC-referred allegations could find no evidence that [redacted] had visited the FB OIG on two occasions or that she had divulged information relating to the allegation of adultery only on her second visit. All available information seems to support a finding that [redacted] visited the FB OIG on only one occasion, October 19, 2004, and that she complained about both her assault at the hands of [redacted] and [redacted] inappropriate relationship with [redacted] in the course of that single visit.

image as a professional officer and as the IG. He constantly projected the behavior that I would expect of a professional officer and IG, as described in AR 20-1." [Tab C-4a, (b)(7)(C) p. 2].

In his testimony to the FORSCOM IOs, (b)(7)(C) recalled (b)(7)(C) (b)(7)(C) allegations coming to light around the same time he undertook a two-week TDY trip to Iraq as part of a team conducting a pre-deployment site survey in preparation for the upcoming deployment by the XVIII Airborne Corps; (b)(7)(C) (b)(7)(C) TDY trip to Iraq covered the period from October 25—November 5, 2004 [Tab C-10d, (b)(7)(C) pp. 4-7]. (b)(7)(C) could not recall exactly when he was informed of (b)(7)(C) allegations regarding the inappropriate relationship, but was fairly certain that he had learned of this allegation only after returning from this two-week trip [Tab C-10d, (b)(7)(C) pp. 5-7].⁸³

(b)(7)(C) recalled discussing the allegations against (b)(7)(C) with (b)(7)(C) in early November 2004 and that (b)(7)(C) had viewed the allegations as serious enough to warrant commencing a search for a replacement for (b)(7)(C) in the event the inappropriate relationship was substantiated and (b)(7)(C) was relieved of command [Tab C-10a, (b)(7)(C) p. 6]. (b)(7)(C) told (b)(7)(C) that the Commanding General or Deputy Commanding General would be contacting him (b)(7)(C) about the allegations [Tab C-10d, (b)(7)(C) p. 5-7]. (b)(7)(C) testified that at the conclusion of his conversation with (b)(7)(C) he had returned to his office and told (b)(7)(C) that (b)(7)(C) had conducted a Commander's Inquiry "into the allegations" against (b)(7)(C). Likely because he was deploying and because he knew that he had set the appropriate investigations in motion, (b)(7)(C) took no further action on (b)(7)(C) allegations, intending to leave it to the FB OIG staff and to the Commanding General to pursue the formal inquiry [Tab C-10d, (b)(7)(C) p. 6-7].

(b)(7)(C) testified that he did not remember his staff IGs advising him to refer the improper relationship allegation to (b)(7)(C) for investigation at (b)(7)(C) level. (b)(7)(C) indicated that regardless, he would not have concurred in such a course of action because, as (b)(7)(C) direct superior, (b)(7)(C) was "too close" to the matters at issue. (b)(7)(C) denied both ordering the case closed as an Assistance matter and telling anyone not to investigate it. Rather, he emphasized that the allegations warranted attention and investigation, and that the FB OIG "needed to deal with [the allegations] in a timely and effective manner." [Tab C-10d, (b)(7)(C) p. 5-7].

(b)(7)(C) recalled his dissatisfaction with the Assistance section's slow progress on the case. (b)(7)(C) specifically recalled, "I remember, in fact, taking (b)(7)(C) with me, going to the CG's office and getting a signed investigation directive and we came back here and (b)(7)(C) said, unless

⁸³ Note that (b)(7)(C) was interviewed four times by the FORSCOM IOs.