



INVESTIGATING OFFICER'S GUIDE
FOR
AR 15-6 INFORMAL INVESTIGATIONS



OFFICE OF THE STAFF JUDGE ADVOCATE
JOINT READINESS TRAINING CENTER AND FORT POLK



Congratulations! You're a 15-6 Investigating Officer!

This guide is intended to assist investigating officers (IOs) appointed under the provisions of Army Regulation (AR) 15-6, in conducting timely, thorough, and legally sufficient investigations. Although it is designed specifically for informal investigations, some provisions are applicable to formal investigations as well. Legal advisors may also use it to advise investigating officers. A brief checklist is included at the end of the guide as an enclosure. The checklist is designed as a quick reference for use during each stage of the investigation. The questions in the checklist will ensure that the investigating officer has covered all the basic elements necessary for a

sound investigation.

If this is your first time as an IO, or if it's been a while, don't worry! 15-6 investigations don't have to be difficult or frustrating. Take time to read through this "how-to" manual, and remember that you can always seek clarification from the Administrative Law Division at the Office of the Staff Judge Advocate. Here's an outline of what's covered in this guide:

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What do I need to know about 15-6 investigations?

This section will tell you:

- What a 15-6 Investigation
- What rules to follow
- Who's Who

What is a 15-6 Investigation?

AR 15-6 procedures generally govern investigations requiring detailed fact gathering and analysis and recommendations based on those facts. An "investigation" is simply the process of collecting information for the command, so that the command can make an informed decision. AR 15-6 sets forth procedures for both informal and formal investigations. Only informal investigations are discussed here. Informal investigations usually have a single investigating officer who conducts interviews and collects evidence. In contrast, formal investigations normally involve due process hearings for a designated respondent before a board of several officers. Formal procedures are required whenever a respondent is designated.

What rules do I follow?

Check it out in AR 15-6:
Paragraph 1-1



Informal procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation. Since no respondents are designated in informal procedures, no one

is entitled to the rights of a respondent, such as notice of the proceedings, an opportunity to participate, representation by counsel, or the right to call and cross-examine witnesses. The investigating officer may, however, make any relevant findings or recommendations concerning individuals, even where those findings or recommendations are adverse to the individual or individuals concerned.

AR 15-6 procedures may be used independent of other regulations, such as in an investigation to determine facts and circumstances, or the procedures may be incorporated by reference into directives governing specific types of investigations, such as reports of survey and line of duty investigations. If such directives contain **guidance that is more specific** than that set forth in AR 15-6 or **conflicts with 15-6 procedures**, the more specific guidance will control. For example, AR 15-6 does not contain time limits for completing investigations; however, if another directive incorporating AR 15-6 procedures contains time limits, those requirements will apply.

Finally, your appointment orders (which are discussed in more detail below) will usually ask for specific things in your findings and recommendations. It will help to read through this list of things when trying to plan how to conduct your investigation.

Who's Who?

Here are a few key players in the 15-6 process you should know about.

Check it out in AR 15-6:
Paragraph 1-3



Appointing Authority. The individual with the authority to "start" an investigation under AR 15-6 is called the Appointing Authority. The requirements for who can be an appointing authority differ for formal

and informal investigations. For an informal investigation or board, the appointing authority could be a commander at any level, a principal staff officer or supervisor in the grade of major or above, or any officer with the authority to appoint a formal board. However, only a general court-martial convening authority may appoint an informal investigation or board for incidents resulting in property damage of \$1,000,000 or more, the loss or destruction of an Army aircraft or missile, an injury and/or illness resulting in, or likely to result in, permanent total disability, or the death of one or more persons.

Respondent. In formal investigations the appointing authority may designate one or more persons as respondents in the investigation. Such a designation has significant procedural implications. Respondents may not be designated in informal investigations, so you won't have to worry about them. Remember this: just because someone is the main focus or most important "player" in your informal 15-6 investigation, it doesn't make that person a respondent.

Survey Officer. That's you! Only commissioned officers, warrant officers, or DA civilian employees paid under the General Schedule, Level 13 (GS 13) or above may be investigating officers. The investigating officer must also be senior to any person that is part of the investigation, if the investigation may require the investigating officer to make adverse findings or recommendations against that person. Since the results of any investigation may have a significant impact on policies, procedures, or careers of government personnel, the appointing authority should select the best-qualified person for the duty based on their education, training, experience, length of service, and temperament.



What's my job as the Investigating Officer for a 15-6?

The primary duties of an investigating officer are:

- To fully establish and consider all the relevant evidence on an issue;
- To be thorough and impartial;
- To make findings and recommendations warranted by the facts and that comply with the instructions of the appointing authority; and

- To report the findings and recommendations to the appointing authority.

Getting Started: What do I do first?

Now that you're familiar with the 15-6 process, you need to take care of a few preliminary matters. This section will tell you:

- About the appointment process other preliminary matters
- Getting your initial assistance from JAG

Appointment and Administrative Concerns

Informal investigation appointments may be made orally or in writing. If written, the appointment orders are usually issued as a memorandum signed by the appointing authority or by a subordinate with the appropriate authority line. Whether oral or written, the appointment should specify clearly the purpose and scope of the investigation and the nature of the findings and recommendations required. If the orders are unclear, you should seek clarification. The primary purpose of an investigation is to report on matters that the appointing authority has designated for inquiry. The appointment orders may also contain specific guidance from the appointing authority, which, even though not required by AR 15-6, nevertheless must be followed. For example, AR 15-6 does not require that witness statements be sworn for informal investigations; however,

if the appointing authority requires this, all witness statements must be sworn.

Check it out in AR 15-6:
Chapter 2



As soon as you receive appointing orders, you should begin a chronology showing the date, time, and a short description of everything done in

connection with the investigation. The chronology should begin with the date orders are received, whether verbal or written. You should also record the reason for any unusual delays in processing the case, such as the absence of witnesses due to a field training exercise. The chronology should be part of the final case file.

Getting help from JAG...



The servicing Office of the Staff Judge Advocate ("OSJA") can provide assistance to you at the beginning of and at any time during the investigation. Before beginning an informal investigation, you must review all written materials provided by the appointing authority and consult with a legal advisor from the administrative and civil law division of the OSJA to obtain appropriate legal advice. This requirement should be included in the appointment letter. Early coordination with the legal advisor will allow problems to be resolved before they are identified during the mandatory legal review. The legal advisor can assist an investigating officer in framing the issues, identifying the information required, planning the investigation, and interpreting and analyzing the information obtained. The attorney's role, however, is to provide legal advice and assistance, not to conduct the investigation or substitute his or her judgment for that of the investigating officer. NOTE: Complex and sensitive cases include those involving a death or serious bodily injury, those in which findings and recommendations may result

in adverse administrative action, and those that will be relied upon in actions by higher headquarters.

Getting to Work: How do I conduct my investigation?

Check it out in AR 15-6:
Chapter 4



You've got your orders, you've talked to a Judge Advocate, and you're ready to get started. This section deals tells you about conducting the

investigation. In this section, you'll read about:

- Putting together a plan
- Obtaining documents and physical evidence
- Interviewing Witnesses

Putting Together a Plan

The investigating officer's primary duty is to gather evidence, and make findings of fact and appropriate recommendations to the appointing authority. Before obtaining



information, however, the investigating officer should develop an investigative plan that consists of (1) an understanding of the-facts required to reach a conclusion, and (2) a strategy for obtaining evidence. This should include a list of potential witnesses and a plan for when each witness will be interviewed. The order in which witnesses are interviewed may be important. An effective, efficient method is to interview principal witnesses last. This best prepares the investigating officer to ask all relevant questions and minimizes the need to re-interview these critical witnesses. As the investigation proceeds, it may be necessary to review and modify the investigative plan.

Obtaining Documents and Physical Evidence

You may need to collect documentary and physical evidence such as applicable regulations, existing witness statements, accident or police reports, and photographs. Obtaining this information early in the investigation can save valuable time and effort. In some cases, the information will not be readily available, so you should request it early



so you can continue to work on other aspects of the investigation while the request is being processed. You should consider personally inspecting relevant incident locations and take photographs if they will assist the appointing authority.

You should avoid a recurring problem of gathering insufficient evidence to document a finding of no fault, no loss, or no wrongdoing. It is just as important to support these findings with documentary evidence, as it is to document

adverse findings. All too frequently an IO who makes a finding of no fault, no loss, or no wrongdoing, closes the investigation with little or no documentation. The report of investigation must include sufficient documentation to convince the appointing authority and others who may review the investigation that the finding of no fault, no loss, or no wrongdoing is supported by the evidence.

Talking to People: Interviews, Rights Warnings, and More

In most cases, witness testimony will be required. Clearly, the best interviews occur face-to-face; but, if necessary, interviews may be conducted by telephone or mail. Because of the preference for face-to-face interviews, telephone and mail interviews should be used only in unusual circumstances (i.e., where witnesses have PCSed or are otherwise not readily available). **Information obtained telephonically should be documented in a memorandum for record.**

Sworn Statements. Witness statements should be taken on DA Form 2823. Legible handwritten statements and/or questions-and-answers are ordinarily sufficient. If the witness testimony involves technical terms that are not generally known outside the witness's field of expertise, the witness should define each term the first time it is used.



Although AR 15-6 does not require that statements be sworn for informal investigations, the appointing authority, or other applicable regulation, may require sworn statements, or you may, at your own discretion, ask for sworn statements, even where not specifically required. Under Article 136, UCMJ, IOs are authorized to administer the oath required for sworn statements; 5 U.S.C. 303 provides this authority for civilian employees. (Statements taken out of the presence of the investigating officer may be sworn before an official authorized to administer oaths at the witness's location.)

Subpoenas. Investigating officers do not have the authority to subpoena witnesses, and their authority to interview civilian employees may be subject to certain limitations (i.e., union contract provisions). Prior to interviewing civilians, you should discuss this matter with the local Labor Counselor. Commanders and supervisors have the authority to order military personnel and to direct Federal employees to appear and testify. Civilian witnesses who are not Federal employees may agree to appear, and, if their presence is necessary, they may be issued invitational travel orders. This authority should be used only if the information cannot be otherwise obtained and only after coordinating with the legal advisor or appointing authority.

Rights Warnings. All soldiers suspected of criminal misconduct must be advised of their rights under Article 31 before questioning. DA Form 3881 should be used to record the witness's understanding of his or her rights and election to waive those rights by making a statement. It may be necessary to provide the rights warning at the outset of the interview. In some-cases; you will become aware of the witness's involvement in

criminal activity only after the interview has started and incriminating evidence is uncovered. In such case, rights warnings must be provided as soon as you suspect that a witness may have been involved in criminal activity.



If a witness elects to assert his right to remain silent or requests an attorney, all questioning must cease immediately. If the suspect has requested an attorney, questioning may only resume in the presence of the witness's attorney, if the witness consents to being interviewed. Note that these rights apply only to information that might be used to incriminate the witness. They cannot be invoked to avoid questioning on matters that do not involve violations of criminal law. Finally, only the individual who would be accused of the crime may assert these rights. They cannot be asserted to avoid incriminating other individuals. The following example highlights this distinction.

Example: A witness who is suspected of stealing government property must be advised of his or her rights prior to being interviewed. However, if a witness is only being interviewed about lost or destroyed government property in connection with a Report of Survey, a rights warning would not be necessary unless evidence is developed that leads the investigating officer to believe the individual has committed a criminal offense. If it is clear that the witness did not steal the property but has information about who did, the witness may not assert rights on behalf of the other individual and may be compelled to make the statement. Failure to do so would constitute an Article 90, UCMJ violation.



Scheduling witness interviews. You will need to determine which witnesses should be interviewed and in what order. Often, information provided by one witness can raise issues that should be discussed with another. Organizing the witness interviews will save time and effort that would otherwise be spent "backtracking" to re-interview prior witnesses.

While re-interviewing may be unavoidable in some circumstances, it should be kept to a minimum. The following is a suggested approach to organizing witness interviews; it is not mandatory.

- When planning who to interview, identify the people who are likely to provide the best information. Start with the witnesses that will provide all relevant background information and frame the issues. The intent is to have a general understanding of the issue before confronting the key witnesses with specific questions. This will often avoid the "backtracking" described above.
- Concentrate on those witnesses who would have the most direct knowledge about the events in question. Without unnecessarily disclosing the evidence obtained, attempt to seek information that would support or refute information already obtained from others. In closing an interview, it is appropriate to ask if the witness knows of any other persons who might have useful information or any other information the witness believes may be relevant to the inquiry.

- Any information that is relevant should be collected regardless of the source; however, investigating officers should collect the best information available from the most direct source. All relevant evidence is admissible unless protected by a privilege.
- It may be necessary or advisable to interview experts having specialized knowledge of the subject matter.
- It is not necessary to interview every member of a unit if only a few people have information relevant to the inquiry. Also, all relevant witnesses do not need to be interviewed if the facts are clearly established and not in dispute. However, you must be careful not to prematurely terminate an investigation because a few witnesses give consistent testimony.



Conducting witness interviews. You may find it useful to consult with Inspector General officials or law enforcement agents such as Military Police investigators or CID agents for assistance in interviewing techniques. The following suggestions may also be helpful:

- Prepare for the interview. While there is no need to develop a script for the witness interviews, IOs may wish to review the information required and prepare a list of questions or key issues to be covered. This

will prevent the investigating officer from missing issues and will maximize the use of the officer and witness's time. Generally, it is helpful to begin with open-ended questions such as "Can you tell me what happened?" After a general outline of events is developed, follow up with narrow, probing questions, such as "Did you see SGT X leave the bar before or after SGT Y?" Weaknesses or inconsistencies in testimony can generally be better explored once the general sequence of events has been established.

- Ensure the witness's privacy. Investigating officers should conduct the interview in a place that will be free from interruptions and will permit the witness to speak candidly without fear of being overheard. Witnesses should not be subjected to improper questions, unnecessarily harsh and insulting treatment, or unnecessary inquiry into private affairs. -
- Focus on relevant information. Unless precluded for some reason, the investigating officer should begin the interview by telling the witness about the subject matter of the investigation. Generally, any evidence that is relevant and useful to the investigation is permissible. Relevancy depends on the circumstances in each case. The investigating officer should not permit the witness to get off track on other issues, no matter how important the subject may be to the witness. Compare the following examples:

- **Example 1:** In an investigation of a loss of government property, the witness's opinions concerning the company commander's leadership style normally would not be relevant.
- **Example 2:** In an investigation of alleged sexual harassment in the unit, information on the commander's leadership style might be relevant.
- **Example 3:** In an investigation of allegations that a commander has abused command authority, the witness's observation of the commander's leadership style would be highly relevant.

Letting the witness testify in his or her own words. You must avoid coaching the witness or suggesting the existence or non-existence of material facts. After the testimony is completed, the investigating officer should assist the witness in preparing a written statement that includes all relevant information, and presents the testimony in a clear and logical fashion. Written testimony also should reflect the witness's own words and be natural. Stilted "police blotter" language is not helpful and detracts from the substance of the testimony. You may use a tape recorder, but must advise the witness that you are going to do so. Additionally, the tape should be safeguarded, even after the investigation is completed.

Protecting the interview process. In appropriate cases, you may direct witnesses not to discuss their statement or testimony with other witnesses or with persons who have no official interest in the proceedings until the investigation is complete. This precaution is recommended to eliminate possible influence on testimony of witnesses still to be heard. Witnesses, however, are not precluded from discussing matters with counsel.

Looking at the evidence

Now that you've gathered all this information, you might have a few questions about how you are supposed to use it. This section will explain...

- How you are to consider the evidence you have gathered
- What level of proof you should use when adding it all up

Check it out in AR 15-6:
Paragraph 3-6



Rules of Evidence

Because an AR 15-6 investigation is an administrative and not a judicial action, the rules of evidence normally used in court proceedings do not apply. Therefore, the

evidence that may be used is limited by only a few rules:

- The information must be relevant and material to the matter or matters under investigation.

- Information obtained in violation of an individual's Article 31, UCMJ, or 5th Amendment rights may be used in administrative proceedings unless obtained by unlawful coercion or inducement likely to affect the truthfulness of the statement.
- The result of polygraph examinations may be used only with the subject's permission. Civilian polygraph reports should not be accepted.
- -Privileged communications between husband and wife, priest and penitent, attorney and client may not be considered, and present or former inspector general personnel will not be required to disclose the contents of inspector general reports, investigations, inspections, action requests, or other memoranda without appropriate approval.
- "Off-the-record" statements are not acceptable.
- -An involuntary statement by a member of the Armed Forces regarding the origin, incurrence, or aggravation of a disease or injury may not be admitted.

Remember, you should consult the legal advisor if you have any questions concerning the applicability of any of these rules.

Check it out in AR 15-6:
Paragraph 3-6



Standard of Proof

Since an investigation is not a criminal proceeding, there is no requirement that facts and findings be proven beyond a reasonable doubt. Thus,

unless another specific directive states otherwise, AR 15-6 provides that findings must be supported by "a greater weight of evidence than supports a contrary conclusion." That is, findings should be based on evidence that, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion.



Putting it all together...

Okay. You've gathered documents, interviewed witnesses, and taken time to consider what you've learned from the evidence. You still need to prepare your report. This section tells you how to...

- Prepare Findings and Recommendations
- Complete the paperwork

Findings and Recommendations

After all the evidence is collected, the investigating officer must review it and make

findings. You should start by re-reading your appointment orders to help you focus on what the appointing authority needs to learn from your investigation. Next, you should

consider the evidence thoroughly and impartially, and make findings of fact and recommendations that are both supported by the facts and comply with the appointing authority's instructions. To the extent possible, you should fix dates, places, persons, and events, definitely and accurately. You should be able to answer questions such as: What occurred? When did it occur? How did it occur? Who was involved, and to what extent? Exact descriptions and values of any property at issue in the investigation should be provided.

Check it out in AR 15-6:
Paragraph 3-9



Findings. A finding is a clear and concise statement that can be deduced from the evidence in the record. In developing findings, you are permitted to rely on the

facts and any reasonable inferences that may be drawn from those facts. In stating findings, you should refer to the exhibit or exhibits relied upon in making each finding. The documented evidence must support the findings (including findings of no fault, no loss, or no wrongdoing) and must be included in the report. Exhibits should be numbered in the order they are discussed in the findings.

Check it out in AR 15-6:
Paragraph 3-10



Recommendations. Recommendations should take the form of proposed courses of action consistent with the findings; such as disciplinary action, imposition of

financial liability, or other corrective action. Recommendations must be supported by the facts and consistent with the findings. Each recommendation should cite the specific findings that support the recommendation.

Preparing the Report

After developing the findings and recommendations, you should complete DA Form 1574 and assemble the packet in the following order:

Check it out in AR 15-6:
Chapter 3, Section III



1. Appointing order,
2. Initial information collected,
3. Chronology, and
4. Exhibits (with an index)

Getting a Legal Review

Although AR 15-6 does not require that all informal investigations receive legal review, the appointing authority, must get a legal review of all cases involving serious or "complex matters, such as where the incident being investigated has resulted in death or serious bodily injury, or where the findings and recommendations may result in adverse administrative action, or will be relied on in actions by higher headquarters." Appointing authorities are encouraged to obtain legal review for all investigations. Other specific directives may require a legal review. Generally, the legal review will determine:

- Whether the investigation complies with requirements in the appointing order and other legal requirements,
- The effect of any errors in the investigation (harmless or materially prejudices a right),
- Whether the findings (including findings of no fault, no loss, or no wrongdoing) and recommendations are supported by sufficient evidence, and
- Whether the recommendations are consistent with the findings

If a legal review is required, the review must be completed before the appointing authority approves the findings and recommendations. After receiving a completed AR 15-6 investigation, the appointing authority may approve, disapprove, or modify the findings and recommendations, or may direct further action, such as additional evidence gathering or making additional findings.

Making it easier...

In the next few pages, you will find a few useful tools to help you get your AR 15-6 informal investigation done right. They are:

- A checklist for investigating officers
- A Sample Privacy Act Statement
- A Sample Findings and Recommendations Memo

Checklist for Investigating Officers

- Preliminary Matters:
 - Has the appointing authority appointed an appropriate investigating officer based on seniority, availability, experience, and expertise?
 - Does the appointment memorandum clearly state the purpose and scope of the investigation, the points of contact for assistance (if appropriate), and the nature of the findings and recommendations required?
 - Has the IO received an initial briefing and received appropriate resources?
- Investigative Plan.
 - Does the investigative plan outline the background information the IO must gather, identify the witnesses who must be interviewed, and organize the interview order in the most effective manner?
 - Does the plan identify witnesses who are no longer in the command and address methods of interviewing them?
 - Does the plan identify information that will not be immediately available and outline steps to quickly obtain it?
- Conducting the Investigation.

- Is the IO maintaining a chronology in sufficient detail to identify causes for unusual delays?
- Is the IO retaining and organizing the information collected (witness statements, MFR's of phone conversations, photographs, etc.)?
- Does the IO make routine coordination with the legal advisor, appointing authority, and subject matter experts as necessary?
- **Preparing Findings and Recommendations.**
 - Is the evidence assembled in a logical and coherent fashion?
 - Does the evidence support the findings (including findings of no fault, no loss, or no wrongdoing)? Does each finding cite the specific evidence, by exhibit, which supports it?
 - Are the recommendations supported by the findings? Does each recommendation cite the findings that support it?
 - Are the findings and recommendations responsive to the tasking in the appointment memorandum?
 - Did the investigation address all the issues (including systemic breakdowns; failures in supervision, oversight, or leadership; program weaknesses; accountability for errors; and other relevant areas of inquiry) raised directly or indirectly by the appointment?
- **Final Action.**
 - Was a legal review conducted by the OSJA, Administrative Law Division?
 - Did the appointing authority approve the findings and recommendations? If not, have appropriate amendments been made and approved?
 - Has the IO conducted necessary coordination to implement the recommendations?

Sample Privacy Act Statement

DATA REQUIRED BY THE PRIVACY ACT OF 1974

AUTHORITY: The solicitation of personal information in conjunction with this investigation is authorized under Title 10 USC 3012.

PURPOSE: The purpose for collecting this information is to obtain facts and make recommendations to assist the Commander in determining what action to take with regard to: _____

ROUTINE USES: Information obtained during the conduct of this investigation will be used to document relevant facts regarding the incident concerned. It will be used to determine the cause(s) leading to the incident, establish individual responsibilities, negligence, and make recommendations for corrective actions and/or appropriate administrative actions. Any information you provide may be disclosed to members of the Department of Defense who have a need for it in the performance of their duties.

DISCLOSURE MANDATORY OR VOLUNTARY AND THE EFFECT OF NOT PROVIDING INFORMATION:

The private information you furnish is voluntary. There will be no adverse effect on you for not furnishing private information other than that certain facts or information might not be otherwise available .to the Commander for his decision in this matter.

The other information you furnish is mandatory. Failure to provide the requested information could result in disciplinary or other adverse action against you under Article 134, UCMJ.

I, _____, having been advised of the above provisions of the Privacy Act agree to provide information concerning the above-cited incident.

Sample Findings and Recommendations Memo



DEPARTMENT OF THE ARMY

XXXXXXXXXX
FORT POLK, LA 714595

AFXX

xx xxx 02

MEMORANDUM FOR Commander, XXXXXX, Fort Benning, Georgia, 31905

SUBJECT: AR 15-6 Investigation Findings and Recommendations

- FINDINGS:** *[This is the BLUF findings (i.e. your conclusion). You will get into the analysis supporting your findings in paragraphs 3 and 4. For example:]* After investigating the allegations of xxx against XXXXXX it is my belief, based on a preponderance of the evidence, that XXXXXX did/did not commit xxx with YYYYYY.
- RECOMMENDATIONS:** *[Recommendations can run the gamut from nothing (no change), attending special training, introducing systemic or doctrine changes, relieving soldiers from leadership positions, negative counseling, separation from service, bars to re-enlistment, flags, letters of reprimand (both local or OMPF), suspended punishment/probationary periods, and UCMJ actions [Article 15s, preferral of charges for court martial. For example:]* I recommend that a letter of reprimand be issued to XXXXXX, to be filed in his OMPF.
- BACKGROUND:** *[Outline the Facts presented. Cite to specific witness statements and specific exhibits that support your version of the story. Note contradictory evidence and why you believe one version of events over other versions. For example:]* On xx 02, the SSG ZZZZZZZ, and his wife held a party at their house. Both SSG XXXXXX and YYYYYY attended this party, although not together. During the party a physical fight between ZZZZZZZ and YYYYYY occurred. The Military Police were called to the scene and investigated the matter. ZZZZZZZ was arrested for assault and taken to the MP station and YYYYYY, having left the party, was also apprehended and taken to the MP station. The next morning, SFC XXXXXX, who is deployed to Kuwait, called his wife, who told him of the fight, but would not tell him why the fight occurred. After not getting a satisfactory response from his wife, SFC XXXXXX called the ZZZZZZZ residence and spoke with ZZZZZZZ. ZZZZZZZ told SFC XXXXXX that the fight occurred because she told YYYYYY and SSG XXXXXX to leave the party because they were having a disruptive argument. YYYYYY would not leave the house and the argument/fight between ZZZZZZZ and YYYYYY began. ZZZZZZZ told SFC XXXXXX that YYYYYY and SSG XXXXXX were arguing about their relationship because they had been having a sexual affair for almost one year. Upon receiving this information SFC XXXXXX confronted his wife and SSG XXXXXX about the affair. During the next few days, SFC XXXXXX made a battery of telephone calls to all parties involved, during which he stated that

AFXX-XX

SUBJECT: AR 15-6 Investigation Findings and

he received a confession from both his wife and SSG XXXXXX. It was during this time that he called his commanding officer, MAJ vvv to register his complaint.

a. In Annex B1, SFC XXXXXX testifies that both SSG XXXXXX and YYYYYY confessed to having a sexual affair to him.

b. In Annex C, ZZZZZZZ testifies that both SSG XXXXXX and YYYYYY confess to having a sexual affair to her. YYYYYY also confided in ZZZZZZZ several times that she was having a sexual affair with SSG XXXXXX.

c. In Annex A1 – A3, emails that YYYYYY sent to her husband SFC XXXXXX definitely substantiate the affair. In A1, YYYYYY states, “I would love to be able to stand up for myself and let everyone know the truth. But I would also be telling everyone I am guilty.” In A2, she again states that she wishes she could tell everyone the truth (about the affair) but will not. The email alludes to the notion that SSG XXXXXX tells people that YYYYYY blackmailed him into the affair, but she responds, “I did not hold a gun to his head, nor anything else against him.” In A3, she further implies that she had the affair in stating, “I did do the wrong thing to try to make myself happy.”

d. SSG XXXXXX invoked his rights and refused to answer questions regarding this investigation (Annex D).

e. XXXXXX, wife of SSG XXXXXX, would not answer any questions regarding this matter.

f. YYYYYY would not answer any questions regarding this matter.

g. BBBB, former neighbor and close friend of YYYYYY, refused to answer questions regarding this matter.

h. The following individuals were interviewed and indicated that they never saw anything inappropriate or suspicious between SSG Jason XXXXXX and YYYYY:

(1) Mr. BBBB: SFC XXXXXX and SSG XXXXXX’s supervisor.

(2) Mrs. CCCC: SFC XXXXXX and SSG XXXXXX’s supervisor.

(3) CPT DDDD: SSG XXXXXX’s rater from approximately April 2001 – April 2002.

(4) CPT EK: SFC XXXXXX and SSG XXXXXX’s former rater from June 2000 – November 2001.

4. **ISSUES and ANALYSIS:** *[Lay out the rules that govern the conduct at issue. This can be SOPs, UCMJ, other Army doctrine such as ARs, FMs, TMs, etc. Once you have established the standard that should govern in the case, articulate why the facts do or do not*

AFXX-XX

SUBJECT: AR 15-6 Investigation Findings and

meet the standard. For Example:] Did SSG XXXXXXX commit adultery as defined by article 134 of the UCMJ? There are three elements of adultery under article 134:

- (1) That the accused wrongfully had sexual intercourse with a certain person;
- (2) That, at the time, the accused or the other person was married to someone else; and
- (3) The, under the circumstances, the conduct of the accused was to the prejudice of good order and discipline in the armed forces or was of a nature to bring discredit upon the armed forces.

Based on the testimony and evidence gathered, I believe that all elements are satisfied, and SSG XXXXXXX did commit adultery with XXXXXXX XXXXXXX. Evidence shows that the accused wrongfully had sexual intercourse with XXXXXXX XXXXXXX. Evidence also shows that the accused and the other person were married at the time. Finally, evidence shows that, under the circumstances, the conduct was to the prejudice of good order and discipline of the armed forces. The emails of XXXXXXX XXXXXXX to her husband CCCC substantiate the allegation. The testimony of AAA and BBB also substantiate the allegation. The fact that two spouses were arrested and that CCCC is deployed to Kuwait show that the conduct is prejudicial to good order and discipline within this unit.

5. POC is the undersigned at xxx-xxxx.

5 Encls

1. Annex A (Emails)
2. Annex B (Sworn Statements)
3. Annex C (cccc Interview)
4. Annex D (SSG XXXXXXX Information)
5. Annex E (Appointment Orders)

XXXXXXXX
CPT, IN
Investigating Officer