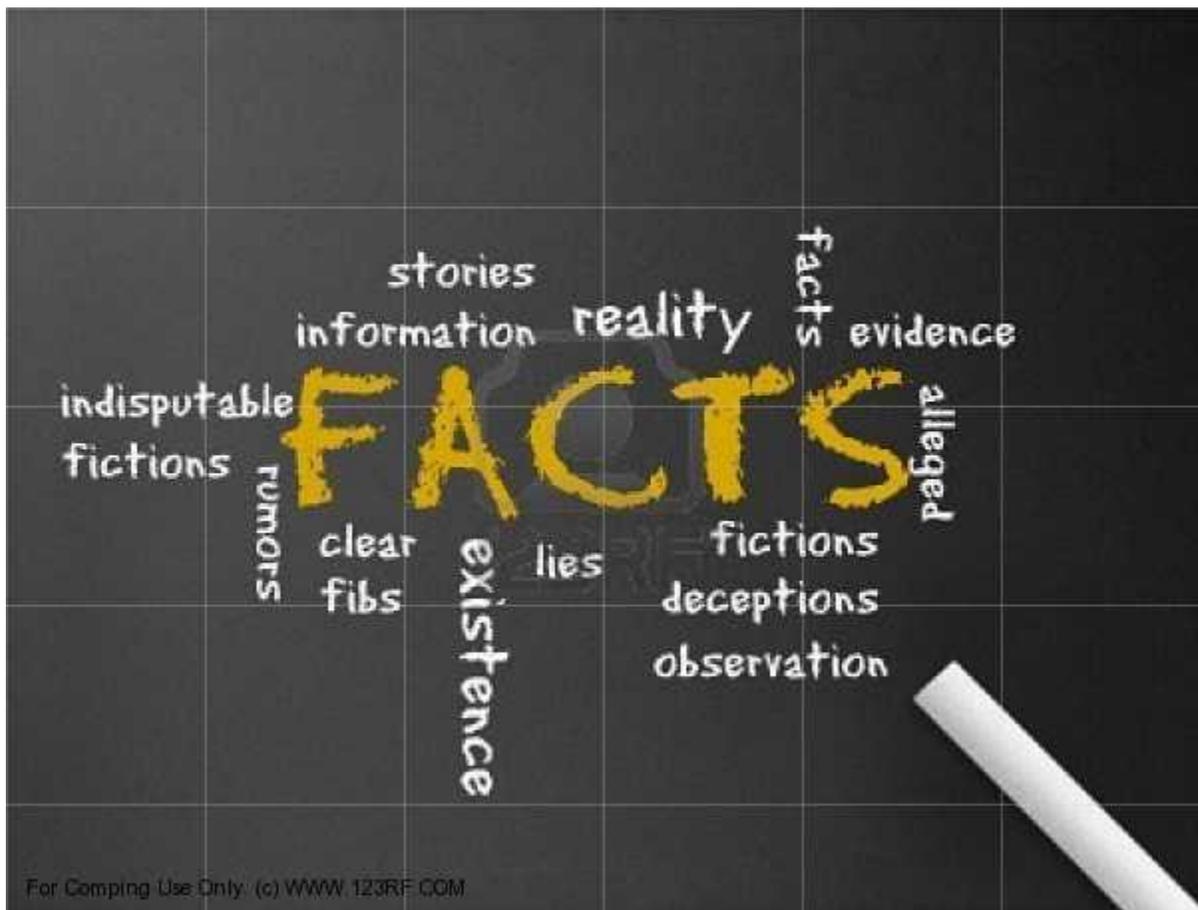


Fort Belvoir Guide for

ARMY REGULATION 15-6 Investigations



*Office of the Staff Judge Advocate
Fort Belvoir, Virginia*

November 2014

C O N T E N T S

1. INTRODUCTION	1
2. PURPOSE OF GUIDE	1
3. AUTHORITIES	2
3.1 AR 15-6, dated 2 October 2006	2
4. DUTIES OF INVESTIGATING OFFICER	2
4.1 Primary Duties of IO	2
5. PRELIMINARY MATTERS	2
5.1 Formal and Informal Investigations	2
5.2 Limitations	2
5.2.1 Not a Hearing	
5.2.2 Limited Rights	
5.2.3 Eligibility of Investigating Officers (IOs)	
5.3 Appointing Authorities – Informal Investigations	3
5.4 Appointing Procedures	3
5.4.1 Appointment Orders	
5.4.2 Obtaining Clarification	
5.5 Correlative Investigations	5
5.6 Precedence of Investigation	5
6. COMMENCING THE INVESTIGATION	5
6.1 Chronology	5
6.2 Legal Advisor briefing	5
6.3 Assembling Support Team	5
6.3.1 Purpose and Potential Team Members	
6.3.2 Initial Team Meeting	
6.3.3 Role of Legal Advisor	

6.4 Establishing Investigation and Reporting Timeline	6
7. DEVELOPING AN INVESTIGATIVE PLAN	7
7.1 Preliminary Considerations	7
7.2 Elements of an Investigative Plan	7
7.2.1 Statement of the Mission	
7.2.2 Background Information and Available Facts Bearing on Investigation	
7.2.3 Applicable Regulations and References	
7.2.4 Commands involved	
7.2.5 Staff Agencies Having Knowledge of Case	
7.2.6 Applicable Standards, Rules, or Procedures	
7.2.7 Evidence and Data Required	
7.2.8 Administrative Matters	
8. CONDUCTING THE INVESTIGATION	10
8.1 Gathering and Evaluating Evidence	10
8.2 Obtaining Witness' Evidence - In General	10
8.2.1 Interview Type	
8.2.2 Witness Statements	
8.2.3 Sworn v. Unsworn	
8.2.4 Conducting Interviews	
<i>A. Formal</i>	11
8.2.5 Pre-Tape Briefing	
8.2.6 Read-in	
8.2.7 Questioning	
8.2.8 Read-out	
<i>B. Informal</i>	15
8.2.9 Introduction	
8.2.10 Questions	
8.2.11 Closing	
8.3 Modes of Interview	16
8.3.1 Face to Face	
8.3.2 Telephonic Interviews	
8.3.3 Interviews by Other	
8.4 Witness Availability and Cooperation	17
8.4.1 Subpoenas for Witnesses	
8.4.2 Witnesses within DOD	
8.4.3 Witnesses from other Services	
8.4.4 Non-DOD Civilian Witnesses	
8.5 Witness Self Incrimination	18

8.6 Witness Rights Warning	18
8.7 Other Participants in Interviews	19
8.7.1 Interpreters	
8.7.2 Attorneys	
8.7.3 Friend	
8.7.4 Union Representatives	
8.8 Organizing Interviews	20
8.8.1 Avoid Re-interviews	
8.8.2 Planning Interviews	
8.8.3 Sequence of Interviews	
8.8.4 Exceptions to Usual Sequence	
8.9 Interview Time Requirements	23
8.9.1 Rapport building	
8.9.2 Pre-tape or introduction	
8.9.3 Questions and answers	
8.9.4 Protect confidentiality	
8.9.5 Taking Breaks	
8.9.6 Administration	
8.10 Location of Interview	24
8.10.1 IO's Office	
8.10.2 Witness' Workplace	
8.10.3 Hotel or Motel	
8.10.4 Other Installations	
8.10.5 Witness' Home	
8.11 Interviewing Techniques	26
8.11.1 Preparation	
8.11.2 Attitude and Demeanor of Investigating Officers	
8.11.3 Formulating Questions	
8.11.4 Witness Control	
8.11.5 Interviewing Non-DA Civilians	
8.11.6 Observations by Interviewer	
8.11.7 Memorandum for Record	
8.11.8 Use of Polygraph	
8.11.9 Interviewing DOs and DON'Ts	
9. ASSEMBLING AND ASSESSING EVIDENCE	33
9.1 Overview	33
9.2 Categories of Evidence	33
9.2.1 Documentary Evidence	
9.2.2 Physical Evidence	

9.3 Oral Statements	34
9.3.1 Testimony	
9.3.2 Witness' Statements	
9.4 Assessing Types of Evidence	36
9.4.1 Direct Evidence	
9.4.2 Circumstantial Evidence	
9.4.3 Hearsay Evidence	
9.4.4 Personal Observation	
9.4.5 Opinion	
9.5 Developing Facts	37
9.6 Evaluating Evidence	37
9.6.1 Standard of Proof for AR 15-6 Investigations	
9.6.2 Rules of Evidence for AR 15-6 Investigations	
9.7 Developing Findings	39
10. CONCLUDING THE INVESTIGATION	39
10.1 Drafting the Statement of Facts	39
10.2 Drafting the Statement of Findings	39
10.3 Drafting the Recommendations	40
10.4 Assembling the Packet	40
10.4.1 Preparing the Submission to the Appointing Authority	
10.4.2 Legal Review	
 A P P E N D I C E S	
APPENDIX A - Checklist for Investigating Officers and Alternate Checklist	43
APPENDIX B - Timeline	47
APPENDIX C - Investigation Plan Outline	48
APPENDIX D - Subject Notification Format – Non-criminal allegations	50
APPENDIX E - Summarized Testimony Format	51
APPENDIX F - Pre-Tape Briefing	52
APPENDIX G - Privacy Act Information	54
APPENDIX H - Rights Warning / Waiver Certificate (Notes)	55
APPENDIX I - Witness Interview Guide	56

Fort Belvoir Guide for AR 15-6 Investigations

1.0 INTRODUCTION

a. Army Regulation 15-6 (AR 15-6) is used as the basis for many investigations requiring the detailed gathering and analyzing of facts, and the making of recommendations based on those facts. AR 15-6 procedures may be used on their own, 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 these procedures, the more specific guidance will control. For example, AR 15-6 does not contain time limits for completion of investigations; however, if another directive that incorporates AR 15-6 procedures contains time limits, that requirement will apply.

b. Army Regulation 15-6 (AR 15-6) contain authorized procedures for conducting investigations, whether informal or formal. Occasionally, commanders seek to conduct a ‘commanders inquiry’ or ‘preliminary investigation’ before deciding to request an AR 15-6 investigation. There are no set guidelines for such procedures—by default, AR 15-6 procedures are recommended. This Regulation is designed to cover procedures for all investigations and investigating officers and ensure compliance with Privacy Act and constitutional rights advisements.

2.0 PURPOSE OF GUIDE

This guide is intended to assist investigating officers (IOs), who have been appointed under the provisions of AR 15-6, in conducting timely, thorough, and legally sufficient investigations. It is designed specifically for informal investigations, but some provisions are applicable to formal investigations. It may also be used by legal advisors responsible for advising IOs. A brief checklist is included at the end of the guide as an enclosure. The checklist is designed as a quick reference to be consulted during each stage of the investigation. The questions in the checklist will ensure that the IO has covered all the basic elements necessary for a sound investigation.

3.0 AUTHORITIES

This guide includes the changes implemented by the most recent publication of AR 15-6, dated 2 October 2006.

4.0 DUTIES OF INVESTIGATING OFFICER

4.1 Primary Duties of IO

4.1.1 The primary duties of an IO are to:

- a. Ascertain and consider all evidence on all sides of an issue
- b. Be thorough and impartial
- c. Make findings and recommendations supported by facts and IAW instructions of the appointing authority
- d. Prepare the written Final Report incorporating findings and recommendations

4.1.2 The checklist in Appendix A is designed as a quick reference to help the investigating officer keep track of the step-by-step procedures to be followed during the investigation. It is set in sequential order and when used correctly will help prevent the omission of important information from the investigation. The checklist will ensure that the IO has covered the primary duties and all the basic elements necessary for a sound investigation.

5.0 PRELIMINARY MATTERS

5.1 Formal and Informal Investigations

AR 15-6 sets forth procedures for the conduct of informal and formal investigations. Only informal investigations will be discussed here. Informal investigations are those that usually have a single IO who conducts interviews and collects evidence. In contrast, formal investigations normally involve due process hearings with a designated respondent. Formal procedures are required whenever a respondent is designated.

5.2 Limitations

5.2.1 Not a Hearing

Informal procedures are not intended to provide a hearing for persons who may have an interest in the subject of the investigation.

5.2.2 Limited Rights

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 IO may, however, make any relevant findings or recommendations concerning individuals, even where those findings or recommendations are adverse to the individual or individuals concerned.

5.2.3 Eligibility of Investigating Officers (IOs)

Only commissioned officers, warrant officers, or DA civilian employees paid under the General Schedule, Level 13 (GS 13), or above may be IOs. The IO must also be senior to any person that is part of the investigation if the investigation may require the IO 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. Other regulations, such as the Financial Management Regulation, may require IOs to have specialized training.

5.3 Appointing Authorities – Informal Investigations

5.3.1 Under AR 15-6, the following persons may appoint IOs for informal investigations:

- a. Any general court-martial convening authority, including those who have such authority for administrative purposes only,
- b. Any general officer,
- c. Commander at any level,
- d. Principal staff officer or supervisor in the grade of major (04) or above,
- e. Any state adjutant general, and
- f. DA civilian supervisor paid under the Executive Schedule, SES, or GS/GM 14 or above, provided the supervisor is the head of an agency or activity or the chief of a division or department.

5.3.2 Only a general court-martial convening authority may appoint an investigation for incidents resulting in property damage of \$1,000,000, the loss or destruction of an Army aircraft or missile, an injury or illness resulting in, or likely to result in, total disability, or the death of one or more persons.

5.4 Appointing Procedures

5.4.1 Appointment Orders

a. While informal investigation appointments may be made orally or in writing, it is prudent practice always to request written appointment orders. Written 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.

b. If the orders are unclear, the IO should seek clarification from the appointing authority or his/her designated subordinate.

c. 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, a requirement that all witness statements be sworn.

d. The appointment orders should state the suspense for conducting the investigation. It is crucial that the investigation be conducted expeditiously, as memories may quickly fade, documents may be lost and witnesses leave. Also, a prolonged investigation may allow an individual to destroy evidence or influence witnesses.

5.4.2 Obtaining Clarification

a. The IO should review the appointment orders carefully as soon as they are received. If the IO is not clear about an issue, he/she must seek clarification at the outset. The IO should develop a list of questions for legal counsel or the appointing authority and obtain clear guidance for every question before proceeding with the investigation. The IO may need to obtain written amendment to the original appointment orders to ensure all parties to the investigation are operating with a common baseline of understanding. Legal counsel is the IO's most important resource for the interpretation of regulations and statutes related to the investigation.

b. While AR 15-6 includes no regulatory time limit on investigations, the appointment orders may specify a suspense date. If the IO determines he/she requires more time to complete an investigation, the IO should ask for an extension of the suspense date as soon as possible.

5.5 Correlative Investigations

5.5.1 An informal investigation may be conducted before, concurrently with, or after an investigation into the same or related matters by another command or agency. Appointing authorities and IOs must ensure that investigations do not hinder or interfere with criminal investigations or investigations directed by higher headquarters.

5.5.2 In cases of concurrent investigations, IOs should coordinate with the other command or agency to avoid duplication of effort wherever possible. If available, the results of other investigations may be incorporated into the AR 15-6 investigation and considered by the IO. Additionally, an IO should immediately coordinate with the legal advisor if he or she discovers evidence of criminal misconduct.

5.6 Precedence of Investigation

The investigation takes precedence over all other duties. The IO should ensure the supervisory chain of command understands the precedence of the mission so that his/her supervisor may coordinate with the appointing authority to resolve conflicts with other duties.

6.0 COMMENCING THE INVESTIGATION

6.1 Chronology

As soon as the IO receives appointing orders, he or she 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. IOs 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.

6.2 Legal Advisor briefing

6.2.1. Prior to beginning the investigation, the IO must receive a briefing from the legal advisor. Call the Office of the Staff Judge Advocate to schedule a briefing. The servicing Judge Advocate office can provide assistance to an IO at the beginning of and at any time during the investigation. IOs should always seek legal advice as soon as possible after they are informed of this duty and as often as needed while conducting the investigation.

6.2.2. In serious or complex investigations for which a legal review is mandatory, 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 in the mandatory legal review.

6.2.3 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.

6.3 Assembling Support Team

6.3.1 Purpose and Potential Team Members

a. AR 15-6 investigations can involve a complex situation and a multitude of functional areas where a support team is imperative. The appointing officer shall ensure that the investigating officer receives adequate support, including access to additional personnel with the requisite knowledge in all of the functional areas involved. The support team should include legal

counsel, resource management, and functional area technical support. The IO is responsible to raise issues regarding team support as necessary for the efficient completion of the investigation.

b. Interaction between the support team and the investigating officer is essential for ensuring the timeliness and accuracy of findings and recommendations. Early consultations between everyone involved will prevent major errors in the preliminary and final reports.

6.3.2 Initial Team Meeting

a. As early as possible after the initial legal advisor briefing the IO should schedule a support team meeting to:

- i. Define IO's role and duties, *vis-a-vis* AR 15-6 requirements and Appointment Letter
- ii. Define team members' roles and duties
- iii. Develop list of questions for legal counsel as well as other members of support group
- iv. Establish plans for periodic meetings

b. Reviewing the checklist in Appendix A with the team will ensure coordination on background, scope, and sequential procedures followed in the investigation. The IO should also synchronize the investigation checklist with the investigation timeline described below and in Appendix B to ensure thorough and timely completion of the investigation.

6.3.3 Role of Legal Advisor

a. In addition to providing the IO guidance at the initial briefing, the legal advisor can assist an IO 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 IO.

b. The legal advisor can also help the IO in identifying and interpreting relevant regulations and statutes related to the investigation and in providing any further assistance or resources required to facilitate the IO's investigation.

6.4 Establishing Investigation and Reporting Timeline

6.4.1 An AR 15-6 investigation must be completed in a timely manner and in accordance with the suspense established in the appointment orders. The IO should ask for additional time as early as he/she determines the suspense date

cannot be met. However, the IO must be able to justify an extension in the request.

6.4.2 IOs will find it helpful to establish investigation milestones, dates for submission of information, and for preliminary and final drafts for support team consideration. The IO will need to coordinate these timeline markers with the investigation checklist and the investigative plan described below. *See* Appendix B for suggested timeline.

7.0 DEVELOPING AN INVESTIGATIVE PLAN

7.1 Preliminary Considerations

7.1.1 The appointment memorandum should state the specific issue(s) the appointing authority has ordered the IO to investigate. The IOs mission is to make factual findings in the final report that answer the questions posed by the appointing authority and to recommend an appropriate course of action. Before proceeding with the investigation, the IO must clearly understand the issues and ensure that the legal advisor fully answers any questions.

7.1.2 In the course of the investigation the IO may uncover other relevant issues that are outside the scope of the investigation but which should be investigated. The IO should consult with the legal advisor for guidance re: expanding the investigation or reporting new issues uncovered.

7.1.3 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 (a) an understanding of the facts required to reach a conclusion, and (b) 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. For example, 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.

7.2 Elements of an Investigative Plan

7.2.1 Statement of the Mission

This information derives from the first paragraph of the appointment memorandum. It should state clearly what the appointing authority has ordered the IO to investigate. This information also indicates, but may not confine the scope of the investigation.

7.2.2 Background Information and Available Facts Bearing on Investigation

The IO should begin the investigation by identifying the information already available, and determining what additional information will be required before findings and recommendations may be made to the appointing authority.

7.2.3 Applicable Regulations and References

With the legal advisor's assistance, the IO should gather those applicable regulations/publications that apply to the allegation(s) being investigation. For example, if the allegations pertained to procurement irregularities, the Federal Acquisition Regulation (FAR) would probably be a reference. The IO should ensure the referenced regulation was in effect at the time of the alleged incident.

7.2.4 Commands involved

The IO should list the various commands that might be involved. For example, if the allegation pertained to an incident in a unit in Europe, the commands could include the specific division, corps and, possibly, HQ, USAREUR.

7.2.5 Staff Agencies Having Knowledge of Case

The IO should consider any staff agencies made aware of the allegation(s) and how they were informed. Identify any staff agency that may be a proponent for regulations or guidelines that could be related to the allegation(s).

7.2.6 Applicable Standards, Rules, or Procedures

An important part of this is establishing the appropriate standards, rules, or procedures that govern the circumstances under investigation. The legal advisor or other functional expert can assist the IO in determining the information that will be required.

7.2.7 Evidence and Data Required

a. The IO will want to list additional evidence and data required to meet the terms and scope of the investigation, such as:

b. *Testimonial Evidence:* From the information available, the IO should list the names of witnesses that he/she wants to interview for each allegation. The number of witnesses and possibly the allegations, within the scope of the appointment order may change. Also, the IO need not question all witnesses about every allegation.

c. The IO should decide the type of interview for each witness and what additional procedures are required for each type. Examples include: Face-

to-face interviews may require a written rights advisement or privacy act statement acknowledgement. Telephonic interviews will need to be recorded in a memorandum for record immediately following. Written statements may be best handled in the question and answer format.

d. The IO should also decide on the order of interviews. Usually, the principal witness is interviewed last. The IO may add additional witnesses to the list as the investigation progresses.

e. The IO may want to identify and group witnesses by allegation.

Allegation 1:

- Witness #1
- Witness #2

Allegation 2:

- Witness #1
- Witness #3

f. *Documents and Physical Evidence* – The IO should list documents and records and other physical evidence needed to substantiate or refute allegations. These may include standing operation procedures, training records, contracts, emails, and so forth.

g. *Research:* During the investigation an investigating officer may be required to perform extensive research. The research effort may include directives and regulations related to the functional area involved (such as civil engineering or contracting), public law, and legal opinions.

h. An investigating officer normally reviews all specific documentation in the functional area involved related to the violation such as purchase requests, contracts, work orders, vouchers, supporting materials, etc. Research also includes any other information required and answers needed.

i. *Additional Clarification or Assistance:* In this process the IO may identify and request clarification of any ambiguities or issues, additional assistance or resources required.

7.2.8 Administrative Matters

a. *Itinerary:* Who, what, where, when, and how to gather information, including interview venues, discussed below. The list should include: courtesy calls, transportation requirements, lodging requirements, interview locations and so forth.

b. *Notifications*: The IO should identify commanders and subjects to whom he/she should provide notice of the investigation and request for interviews.

c. *Travel Requirements*: This list includes TDY orders, passports, car rentals, hotel reservations, and so forth.

See: Appendix C.

8.0 CONDUCTING THE INVESTIGATION

8.1 Gathering and Evaluating Evidence

8.1.1 Generally, the art of an investigation lies in gathering and evaluating information and evidence, both testimonial and physical. The IO should start by developing a hypothesis that serves as the framework for the case. The hypothesis consists of a set of reasoned assumptions of how and why the matter under investigation evolved. Reassess the hypothesis as new facts and leads are uncovered.

8.1.2 The IO then evaluates each piece of evidence or new information individually and in context of the entire investigation in relation to all other evidence obtained. He/she then records the time, date, location and any other circumstances of collection for each piece of evidence or information obtained in the chronology. *See* Section 6.0 above.

8.2 Obtaining Witness' Evidence--In General

8.2.1 Interview Type

Depending on the nature of the allegations, sensitivity of the case, and location of witnesses, your interview may be anything from a very brief, informal telephone call (documented in an MFR) to a formal recorded session lasting several hours. Clearly, the best interviews occur face-to-face; but, if necessary, interviews may be conducted by telephone. Because of the preference for face-to-face interviews, telephone and mail interviews should be used only in unusual circumstances. As noted above, information obtained telephonically should be documented in a memorandum for record.

8.2.2 Witness 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' field of expertise, the witness should be asked to define the terms the first time they are used.

8.2.3 Sworn v. Unsworn

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 the IO may, at his or her own discretion, ask for sworn statements, even when not specifically required. Under Article 136, UCMJ, military officers are authorized to administer the oath required to provide a sworn statement; 5 U.S.C. 303 provides this authority for civilian employees. Statements taken out of the presence of the IO may be sworn before an official authorized to administer oaths at the witness' location.

8.2.4 Conducting Interviews

The predominant category of evidence gathered by an investigating officer (IO) is oral statement. The method used to gather this evidence is the interview. In every interview, the IO has three major concerns: the rights of the individual being questioned; confidentiality; and the evidence to be obtained. The process used by IO to conduct interviews is designed to protect rights and enhance confidentiality. The IO's preparations and skills as an interviewer affect the quantity and quality of the evidence gathered. In investigations, the IO sometimes gathers sworn, recorded testimony by conducting formal interviews. This section describes the process used by IOs to conduct both formal and informal interviews.

A. *Formal Interviews:* Formal interviews are conducted in four phases: **Pre-Tape Briefing; Read-In; Questioning; Read-Out.**

8.2.5 Pre-Tape Briefing

a. The pre-tape is an informal briefing you give to the interviewee, serving several purposes. It familiarizes the witness with the interview process and helps to put them at ease (most witnesses have never been involved in an investigation or inquiry). It provides you an opportunity to establish a dialogue with the witness. A skillful interviewer uses the pre-tape briefing to condition the witness to respond to questions. Most importantly, the pre-tape covers key information and administrative details. These include:

1. Advising the witness of the Privacy Act. (Required if it is necessary to ask for the witness' social security number, home address, or home telephone number.)
2. Emphasizing confidentiality, but not guaranteeing it. Witnesses must understand that their testimony can be used for official purposes.

3. Advising a suspect of his rights. A suspect is someone accused of a criminal wrongdoing. This means that the person is suspected of knowingly and willfully violating the law.
4. Advising the witness of the Freedom of Information Act (FOIA) and that his testimony may be requested for unofficial purposes
 - b. There are step-by-step formats for providing subject notifications and testimony summaries in Appendices D and E of this Guide. A step-by-step outline for conducting the pre-tape briefing appears in Appendix F. IOs should become familiar with its contents and brief the witness in their own words.
 - c. IOs should introduce themselves and show their credentials at the outset. These credentials include the IO's appointment letter and your ID card.
 - d. Explain that the interview will be conducted in four parts (pre-tape, read-in, questions and answers, and read-out) and explain that the procedures are standard for AR 15-6 investigations.
 - e. Explain the IOs confidential fact-finding role, and that both hearsay and opinion can be accepted as testimony.
 - f. Explain how the investigation protects the confidentiality of the witness, but that law or regulation may in some instances result in the release of any testimony. For example, a court may order the release of records from the investigation.
 - g. State that the interview will be conducted while the witness is under oath or affirmation and that it will be recorded. Do not ask the witness whether they want to be recorded or take the oath. If they raise the question, explain the importance of taking sworn, recorded testimony.
 - h. Explain that a prepared script is used during the read-in and read-out portions of the interview to ensure the witness' rights are explained as required by law and regulation.
 - i. Explain that after each question the witness will have time to respond.
 - j. Explain that at the end of the interview and the IO reads from a prepared script, the witness will have an opportunity to present additional material that pertains to the investigation.
 - k. Tell the witness that because the interview is recorded, all responses must be verbal; not to speak while anyone else is speaking; and to

avoid actions, such as tapping on the table, which might obliterate words in the recording.

l. Caution the witness to discuss classified information only if necessary and to identify any classified information given. Instruct the witness to ask the interviewer to turn off the tape recorder prior to discussing classified information so the IO can determine whether the information is necessary to the case and needed in the transcript. If any portion of the tape contains classified information, then the tape must be classified. If any classified information is used in the IOs report, the report also must be classified and protected as appropriate.

m. Explain that the final product of the investigation will be a report to the appointing authority.

n. Explain that the Freedom of Information Act allows members of the public (anyone) to make requests for any government record. This includes IO records, such as the transcript of the interview or the report of the investigation. Explain that some information can be protected from a FOIA release if the witness wants it protected. Explain that at the end of the interview, as part of the read-out script, the IO will ask the witness whether or not they consent to release. A "yes" will mean they consent to release and a "no" means they do not consent to release, should there be a request. The IO should explain that while IO records are protected from unnecessary release, the records can be used for official purposes as necessary throughout the Federal government and that FOIA consent has nothing to do with that use.

o. The IO must be sensitive to the fact that many witnesses misunderstand the FOIA release question. Some believe that you will think that they are trying to hide something if they do not consent to release. You should not advise them how to answer this question, but do make them aware of what it means. Additionally, IOs should tell them that you draw no inference about whether they are truthful or not from their answer regarding FOIA.

p. Provide the witness a copy of the Privacy Act Statement and allow him to read it. Ask if he has any questions. This will save time after you start the interview. If there are questions, tell him that the purpose of providing this form is to show that the IO has the authority to request personal information and that release of their social security number is voluntary. This statement is not consent to release to a third party and does not have to be signed. It will be referred to in the read-in. *See* Appendix G.

q. Have the witness complete the administrative information on the first portion of the Summarized Testimony Format in Appendix E and explain that the information will assist whoever does the transcribing. During the interview, correct spellings of proper names and acronyms will be recorded on

this sheet. After the interview, fold the header sheet and secure it around the tapes from that interview with a rubber band. This organizes the IO's tapes and ensures that the transcriber does not attribute testimony to the wrong witness.

r. The IO should explain that the interviewee can turn off the recording devices and discuss points off tape, but that everything said is considered on the record and may be used in the investigation regardless of whether the tape is recording. Explain that the IO can also turn off the tapes for breaks as required.

s. If appropriate, the IO may want to verify the status of the witness (active Army, USAR, ARNG, Federal technician, state technician, or civilian) to determine his rights and whether he is subject to the Uniform Code of Military Justice (UCMJ).

t. While not required, the IO may explain to civilian federal employees their right to have a union representative present.

u. If the IO is interviewing a suspect, he/she should execute the DA 3881 Rights Warning Procedure/Waiver Certificate during the pre-tape. *See* Appendix H.

8.2.6 Read-in

The read-in is a formal script that is used to begin the interview. Before an interview, the IO should review the interview guide in Appendix I; fill in the blank spaces with personal data and information from the investigation's action memorandum and directive. If the IO is conducting an inquiry and has no action memorandum or directive, he/she should fill in the allegations of the inquiry. During the interview, complete the pre-tape, turn on the tape recorder, and read the read-in script verbatim. This procedure ensures and documents that the IO has fully and correctly advised the witness, subject, or suspect of the process and their rights.

8.2.7 Questioning

a. Questions are the foundation of an interview. During preparation, develop an interrogatory to elicit the anticipated evidence from the witness. Once the interview begins, be flexible. Alter the questions, or their order based upon the mood of the witness and variances in the information actually presented. The IO must be prepared to ask "hard" or embarrassing questions in a calm, forthright, and professional manner. Example: "Did you have knowledge that the violation was going to occur?" The IO must also ask questions that allow them to comment on the allegations and all adverse information that will be used in the report, even if only to deny the allegations.

b. Explain the difference between responses: “I don’t know,” i.e. I never knew the answer and don’t know now; and “I don’t remember,” i.e. I knew the answer at some time in the past but cannot recall what it is at the present.

8.2.8 Read-out

The read-out is a formal script that closes the interview. A key portion of the read-out is advising the witness of the FOIA and having them respond "yes" or "no" on tape to indicate whether or not they consent to release of their testimony. Another key item is the admonition to the witness regarding confidentiality.

B. *Informal Interviews:* Informal interviews consist of three phases--an **Introduction**, **Questioning**, and a **Closing**.

8.2.9 Introduction

The introduction is very similar to the pre-tape in a formal interview. Using the standard outline helps to ensure that each witness gets the same information, that the IO covers cover all essential topics, and that the presentation is smooth and confident. As a minimum, the IO should discuss the investigation process, the IO role, Privacy Act, FOIA, and rights warning (if required).

8.2.10 Questions

There is no difference between questioning in an informal interview and questioning in a formal interview. The evidence that the IO expects to gather affects the questions he/she drafts. The witness’ information and their demeanor may affect how the IO actually asks the questions. These factors are independent of the type of interview conducted.

8.2.11 Closing

a. Once questioning is complete, the IO must close out the interview. He/she should close out with some type of statement that allows the individual to know what to expect. Be candid. If the IO doesn’t think he/she will ever contact the witness again, say so.

b. When conducting an interview, do not speculate on the outcome of a case or commit anyone to a milestone for its completion.

c. Ask the witness whether he consents to release of his identity and testimony in response to requests under the FOIA. *See* the Read-out portion of the Witness Interview Guide in Appendix I. Finally, the IO should request that the individual not discuss the case with anyone except an attorney should they choose to consult one.

8.3 Modes of Interview

8.3.1 Face to Face

This mode is the most efficient method of communication and is the ideal method for conducting IO interviews during investigations. Face-to-face interviewing allows the IO to judge the non-verbal reactions of the individual, enhancing his/her ability to establish and maintain rapport and ask effective follow-up questions. IOs should always attempt to interview their key witnesses and the subject or suspect face-to-face.

8.3.2 Telephonic Interviews

a. Both formal and informal interviews may be conducted over the telephone. A telephonic interview is an excellent time and money-saving method for interviewing distant witnesses. While the IO cannot judge the witness' non-verbal communications, he/she can often gain insights from the witness' inflection or tone of voice.

b. Normally, IOs must contact witnesses in advance to schedule telephonic interviews. Many witnesses are not prepared to devote the required time when first contacted. Also, IOs must be concerned about confidentiality and always strive to have the witness in a location that provides privacy during the interview.

c. The IO might not be ready to conduct an interview with this first call. Do not attempt to conduct an interview at this point if background preparation is incomplete.

d. Once the call is placed, the IO should read the lead-in script that verifies the witness' identification and the fact that the witnesses has been properly sworn and advised of their rights. Close the interview by using the script in the interview guide in Appendix I.

e. A detailed list of questions is essential for a telephone interview. Try to anticipate the witness' answers and have follow-on questions prepared.

f. If the IO opts to record a telephonic interview, he/she must inform all parties that the call is being recorded. Taping telephone conversations without the knowledge of all parties can violate Federal law. There are simple devices available through most supply systems that allow a tape recorder to adapt to a telephone. The IO can also use a speakerphone if available. This technique allows the IO to record the conversation and aids in the process. IOs are not required to ask whether someone consents to a recorded telephone interview. Military and DA civilians must cooperate. Civilians not connected

with the military are not required to cooperate. Therefore, they may decline being recorded just as they may decline the interview altogether. If the individual seems uncomfortable with the telephonic interview process, regardless of whether they are required to cooperate, the IO should contact his/her legal advisor at once.

8.3.3 Interviews by Others

a. In some cases IOs may coordinate for another support team to interview witnesses. The IO should provide the interrogatories and enough background information so the support team can conduct intelligent interviews. It is helpful to provide the support team with anticipated answers expected from each witness. Also provide the support team a copy of the directive as well as copies of any documentary evidence they might need during the interviews.

b. After the interviews are completed, the assisting support team sends the IO the tapes or copies of the transcripts. After the IO has acknowledged receipt of the testimony, the assisting support team destroys all file material.

8.4 Witness Availability and Cooperation

8.4.1 Subpoenas for Witnesses

a. Investigating officers do not have the authority to subpoena witnesses and their authority to interview civilian employees may be subject to certain limitations. Prior to interviewing Department of Defense civilians, the investigating officer should discuss this matter with the local labor counselor. Commanders and supervisors, however, have the authority to order military personnel and to direct federal employees to appear and testify.

b. Civilian witnesses who are not federal employees may agree to appear, and, if necessary, 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.

8.4.2 Witnesses Within DoD

a. AR 20-1 requires DA personnel to cooperate with IOs. If a witness is reluctant to cooperate in an investigation, the best course of action is to persuade them that cooperation is in their best interest as well as of their organization.

b. If unsuccessful, the IO should seek the assistance of the witness' commander or immediate supervisor. They can order or direct military members to cooperate. Both military and civilians are prohibited from actively impeding the investigation.

8.4.3 Witnesses From Other Services

a. IOs may have occasion to interview witnesses from other branches of the armed forces. Make arrangements in the same way as for Army witnesses. If the IO anticipates or has problems arranging interviews with members from another service, coordinate through the local commander or inspector general.

8.4.4 Non-DoD Civilian witnesses

a. IOs cannot compel civilians not employed by DoD to cooperate with their investigation. As stated above, IOs have no authority to subpoena civilian witnesses. IO's should contact their legal counsel for advice if these problems arise.

8.5 Witness Self Incrimination

IOs must always be alert for the witness or subject who, while testifying, implicates himself as a suspect or discloses additional violations. The admission of possible criminal wrongdoing need not be related to the case being investigated. This also applies to suspects who may implicate themselves in an area outside the scope of the investigation. If an individual implicates himself in criminal activity: stop, read and execute the rights warning procedure and waiver on DA Form 3881, and continue the interview only if the individual waives his rights. *See* Appendix H.

8.6 Witness Rights Warning

8.6.1 All interviewees suspected of criminal misconduct must first be advised of their rights. DA Form 3881 should be used to record that the witness understands his rights and elects to waive those rights and make a statement. *See* Appendix H. It may be necessary to provide the rights warning at the outset of the interview. In some cases, however, an IO will become aware of the witness' involvement in criminal activity only after the interview has started and incriminating evidence is uncovered. In such a case, rights warnings must be provided as soon as the investigating officer suspects that a witness may have been involved in criminal activity. If a witness elects to assert his rights and requests an attorney, all questioning must cease immediately. Questioning may resume in the presence of the witness' attorney.

8.6.2 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, these rights may be asserted only by the individual who would be accused of the crime. The rights cannot be asserted to avoid incriminating other individuals. The following example highlights this distinction.

8.6.3 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 merely is being interviewed concerning 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.

8.6.4 Use the DA Form 3881, Rights Warning Procedure/Waiver Certificate to advise suspects and those who incriminate themselves of their rights. Consult legal counsel, if necessary, concerning its proper use. The general procedures are to have them read the front side, Part I, which should be filled out in advance. Then read the backside, Part II, aloud to the suspect while they read another copy. Ask them the four waiver questions. Finally, have them sign the waiver in Section B. The IO and a witness must also sign the appropriate blocks in Section B.

8.6.5 If the IO needs to execute a DA Form 3881 during an interview and he/she is unsure as to the appropriate charges to put on the form, a call to legal counsel is appropriate. If the legal counsel is unavailable, a general description of the charges (e.g., failure to follow a regulation; misuse of government equipment), will suffice. If the IO questions a suspect a second time on the same allegations for which he/she already completed a DA Form 3881 (and they waived their rights), it is unnecessary to complete a new DA Form 3881. However, if the IO questions the suspect concerning new allegations, then a new DA Form 3881 is necessary. The original copy of the DA Form 3881 should be included with the suspect's testimony in the Report of Investigation (ROI).

8.7 Other Participants in Interviews

8.7.1 Interpreters

a. If an interpreter is required, caution him on the privileged nature of the investigation. Administer the following oath at the beginning of the investigation, but do not repeat it for each witness:

b. OATH: "Do you, _____, solemnly swear (or affirm) that you will interpret truly the testimony you are called upon to interpret, so help you God?"

8.7.2 Attorneys

a. Suspects have a right to have an attorney present during their interview. Remember that the purpose of a lawyer in an interview is only to advise the witness, subject, or suspect not to incriminate him or herself. The IOs must prohibit a lawyer from answering questions for interviewees or advising them on the conduct of the interview.

b. If the IO encounters difficulties with an attorney during an interview, he/she should take a break and contact legal counsel for advice. It is always best to explain the ground rules to both the suspect and the attorney during the pre-tape. This often precludes problems later during the interview.

c. If a witness or subject demands his right to have a lawyer present during the interview, explain that an IO interview is not a court of law and the proceedings are administrative in nature. Additionally, they do not have a right to have a lawyer present because they are not a suspect and do not have criminal allegations against them. You may allow the individual to have a lawyer. Should a witness or subject request to see a lawyer during an interview, it is the IO's choice to allow it. In most cases it is best to allow them to do so. To not allow them to do so could cause them to become very defensive and reluctant to answer questions.

8.7.3 Friend

Persons being interviewed may request to have friends present. No one has a right to have a friend present. If the IO allows a friend to be present, he/she must control them. The friend is for moral support of the witness only, and should remain silent. Inform the friend of confidentiality requirements and ask that he not reveal information.

8.7.4 Union Representatives

Some civilian DA employees may have the right to have a union representative at your installation present during their interviews. Others may request a union representative, even if it is not their right. In most cases, the role of the union representative is to observe and advise the witness. Check with legal counsel regarding the collective bargaining agreement at the witness' installation.

8.8 Organizing Interviews

8.8.1 Avoid Re-interviews

Organizing interviews is a key step in the planning process. The IO will need to determine which witnesses to interview 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 be otherwise spent backtracking to re-interview prior witnesses concerning information provided by subsequent witnesses. While re-interviewing may be unavoidable in some circumstances, it should be kept to a minimum. The following suggests an approach to organizing witness interviews.

8.8.2 Planning interviews.

When planning who to interview, work from the center of the issue outward. Concentrate on those witnesses who would have the most direct knowledge about the events in question. This will allow the interviews of key witnesses to be as complete as possible, avoiding the backtracking described above. 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.

8.8.3 Sequence of Interviews

a. Experience shows that the best sequence is to first interview the complainant, then experts, witnesses, with suspects or subjects last. Naturally, the sequence of interviews will vary based on the nature of the allegations and on the availability of the witnesses, subjects or suspects. Many inexperienced investigators are inclined to resolve cases quickly by talking to subjects or suspects first. Avoid that pitfall by following the recommended sequence which will:

1. Give information needed to ask the right questions of the subject or suspect.
2. Enhance truth telling (i.e., people are more likely to be truthful if they know the interviewer has prepared his/her background information).
3. Enable the IO immediately to challenge statements that are inconsistent with other evidence.
4. Allow the IO to advise subjects or suspects of all adverse information against them and allow them an opportunity to comment. This is a right they have as part of an administrative investigation. The IO will have more adverse information at the end of an investigation than at the beginning. The individual who is named responsible should have an opportunity to review and comment on the completed report.

5. Decrease the likelihood for a recall interview. An interview conducted too early in the inquiry process increases the likelihood of the need for a recall interview and may unnecessarily consume more investigative time.
6. Protect the legal rights of all persons involved. Because the IO will become more progressively knowledgeable about the case, he/she is more likely to protect the legal rights of all persons involved. For example, the IO is less likely to interview someone as a witness when they should have been treated as a suspect.
7. IOs should also consider the order in which they will interview witnesses. Frequently, investigators will group witnesses by the evidence they are expected to provide. For example, all witnesses who observed a specific event might be interviewed sequentially. Another alternative is to interview witnesses in chronological order.
 - b. 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.
 - c. It may be necessary or advisable to interview experts having specialized understanding of the subject matter of the investigation.
 - d. At some point, there will be no more witnesses available with relevant and useful information. It is not necessary to interview every member of a unit, for example, 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, the investigating officer must be careful not to prematurely terminate an investigation because a few witnesses give consistent testimony.

8.8.4 Exceptions to Usual Sequence

- a. There are circumstances that may cause you to interview the subject early on in the investigation or inquiry. These are:
 1. Anonymous allegations that do not readily point to any witnesses.
 2. The IO has vague or anonymous allegations that the subject may be able to clarify. The subject may provide the IO the names of witnesses.
 3. The subject has information not readily available elsewhere and the IO needs them early in the inquiry.

4. The subject is about to retire or make a permanent change of station (PCS) to a distant location, and flagging is not appropriate.
5. The IO believes this is one of those rare occasions when the need for speed justifies the risk. Evidence might be fleeting—in risk of destruction.

8.9 Interview Time Requirements

Another key consideration to organizing interviews is the time it will take to conduct each interview. As a minimum, the IO should plan for the following:

8.9.1 Rapport building

Set aside 10-15 minutes to put the witness at ease before you begin your interview.

8.9.2 Pre-tape or introduction

Plan to spend 15 minutes covering the points of your pre-tape, if formal; or introduction, if informal. More time is required if the IO must execute a rights warning certificate. *See Appendix H.*

8.9.3 Questions and answers

Always consider the possibility of unexpected issues or allegations arising during the interviews and allow a few extra minutes.

8.9.4 Protect confidentiality

Provide adequate time to allow one witness to leave and another to arrive without violating confidentiality. As a contingency, the IO should plan what to do when there is one witness in the interview room and another waiting outside to be interviewed. Many IOs take a break and leave their interviewee in the interview room while they move the person waiting outside to another location.

8.9.5 Taking Breaks

Should the IO or the witness need to take a break for any reason while conducting recorded testimony, state for the record (on tape) the circumstances and time before shutting off the recorders. When the IO is ready to resume the interview, turn on the recorders, state the time and state whether the people in attendance are the same.

b. If someone has departed or someone new is present, give their names and briefly explain the reason for the change. As an example, a lawyer who was not there at the start of the interview may be present after the break.

8.9.6 Administration

IOs should plan time for them and their partner to compare notes, prepare for the next interview, and take care of personal needs. Experience has shown that an interview that turns out being shorter than planned is far better than an interview that takes more time than scheduled.

8.10 Location of Interview

IOs can conduct interviews almost anywhere. The major consideration in choosing a location is privacy. Some locations, however, offer other advantages as well.

8.10.1 IO's Office

a. Experience has proven that an office is often the best place to conduct interviews.

b. The IO controls *the environment* – IOs can avoid interruptions such as ringing telephones and people entering unannounced. Someone from the support team can control other witnesses. Should the IO sense that a witness is going to be difficult, he/she may be able to ask for assistance from a more experienced interviewer or an interviewer of higher rank.

c. *Confidentiality* – The IOs office is probably located away from the subject's workplace. Witnesses can visit discreetly.

d. *Efficiency* – Conducting interviews at the IOs office maximizes efficiency. No time is required to travel and administrative support is immediately available.

8.10.2 Witness' Workplace

a. Another choice is to conduct the interview at the witness' office. The advantages are that the interviewee may be more at ease, more willing to cooperate, and more willing to share information. Often, the IOs willingness to come to the witness' location for the interview can help establish a rapport with a reluctant or defensive witness. They may also have ready access to information, records or documents.

b. The disadvantages are that many people at that office may find out that an interviewer is there, and rumors could result. Additionally, IOs have

little control over privacy and probably cannot prevent unwanted interruptions. A subject or suspect may want an IO to conduct the interview in their office because they feel more in control. If the IO has interviewed the proper witnesses, gathered the facts, and prepared for the interview, it will make little difference.

8.10.3 Hotel or Motel

a. There will be times when IOs need to travel, and may have to conduct interviews at their hotel or motel. This can be done effectively if they plan ahead. When possible, arrange for a neutral interview location (request orders cut to allow rental of a conference room, extra room, or business suite). When notifying someone of a motel interview, set up an initial meeting in a public place such as the lobby.

b. NOTE: While IOs are not prohibited from interviewing one-on-one, even if the interviewee is of the opposite sex, having a partner while interviewing may make the interviewee more comfortable and provide everyone involved with a measure of protection from possible allegations.

8.10.4 Other Installations

a. If an IO must travel to another installation, he/she can request that the local commander provide an interview room. The IO will need to ensure the local command is aware of needs and requirements in advance of the visit. Additionally, consider asking the local commander to make witness notifications prior to the interview. The command knows the local environment and can possibly enhance the confidentiality of your investigation.

b. Consider using a Reserve Center or National Guard Armory as an interview location if there is no installation nearby. Coordinate with the reserve component.

8.10.5 Witness' Home

At times, IOs may have to interview a witness (usually a civilian) at their home. Interviews conducted in a home are fraught with distractions, e.g., pets, phone calls, family members. Additionally, the physical characteristics of the site may not be good. In all cases the IO will want to ensure that the interview location is private enough to ensure witness confidentiality and preclude unnecessary disclosure of case details.

8.11 Interviewing Techniques

8.11.1 Preparation

a. Effective questioning can only be accomplished by skill, preparation, and experience. The previous sections focused on the process of conducting interviews. This section focuses more on the art of interviewing. Unless otherwise noted, the word witness in this section refers to subjects and suspects as well.

b. There is no substitute for detailed preparation. IOs should know what they are talking about; know what evidence they want; keep in mind the who, what, when, where, why, and how of the case. They must have sufficient background knowledge about the witness to select the correct approach to questioning, to assess the witness' truthfulness, and to demonstrate the thoroughness of the investigation.

c. As with most activities, preparation is vital to success. Preparations fall into two areas: administrative and substantive

d. *Administrative:* The IO needs to ensure that he/she has the proper administrative details completed prior to the interview. If the IO is going to request a social security number, he/she should have a copy of the Privacy Act statement available. If the IO is taping a witness, make sure to set up and test the tape recorders; have extra batteries, and a sufficient number of blank tapes on hand.

e. *Substantive:* The IO should prepare a list of questions (interrogatory) for the interview. The process of building an interrogatory begins with the assessment of the evidence the IO believes the witness possesses. Then craft questions to gather that evidence. Work out possible answers the interviewee might provide. The interrogatory provides a road map for the interview and helps ensure the IO does not forget to ask questions on all key points. If the IO plans to have the interviewee comment on documentary evidence, he/she needs to ensure that the documents are at hand in the order that the IO plans to introduce them during the course of the interview. Witnesses may ask the IO to remove their names from their statements before presentation to the individual being investigated.

8.11.2 Attitude and Demeanor of Investigating Officers

a. Attitude and demeanor contribute immeasurably to the success or failure of the interview. Remember that each witness is unique and will react differently. Therefore, IOs must adapt their techniques accordingly. In questioning witnesses they should:

1. Gain and maintain the witness' respect. Be professional!
2. Adopt an objective and friendly, but not familiar, attitude.
3. Try to put the witness at ease and then direct the conversation to the matters being investigated. If the witness proves to be hostile, adopt a firmer attitude.
4. Be courteous, sincere, and self-confident. Do not deceive, browbeat, threaten, coerce, or make promises. Do not apologize for doing a difficult job.
5. Remain an impersonal, calm, objective fact-finder. Do not shout, lose composure, or otherwise show emotion.
6. Maintain an attitude of fairness.

8.11.3 Formulating Questions

a. A well thought out interrogatory is the key to a successful interview. Use care when determining the order of your questions. The IO can put the witness at ease by asking background questions first in order to establish rapport. Interrogatories should include the anticipated answers. If the IO cannot anticipate the answer, he/she should be ready to follow-up with other prepared questions. Try to avoid being surprised, or upset by surprises. Do not hesitate to take a break to think around surprises or develop changes in lines of questioning. A well thought out question is better than a reactive question.

b. Get to the point at the appropriate time during the interview. There is a real art form in asking the hard questions at the correct time. IOs will need to establish background information and put the witness at ease before getting into difficult areas which could cause the witness to become defensive. The best approach is usually first to ask background questions which are pertinent, but not controversial, then work the witness toward the more difficult subjects. A defensive witness may not want to answer your questions. Waiting too long can appear to be "beating around the bush" or "fishing" which can be just as bad.

c. Word questions so the information comes from the witness. Providing too much information in the question may identify your source to the witness. Avoid questions that can be answered by yes or no. For example, if the IO wants to know if the witnesses were at a certain place on a particular day, he/she should not ask them if they were there. But rather, ask where they were that day.

d. Ask one question at a time and patiently wait for the answer. If the witness hesitates, don't immediately start rephrasing the question -- he simply may need time to think. In many instances, a witness starts to answer a question and one or both investigators interrupt with another question or clarification before the witness has completed answering the original question. Make a note, and ask the question when the witness finishes the answer. Usually if a witness does not understand a question, he will ask for clarification.

e. Avoid making detailed statements followed by "Is that correct?" Do not put words in the mouth of a witness. However, it may be appropriate to summarize to the witness what you think he said.

f. Use language the witness understands and try to persuade the witness to avoid jargon or slang. If jargon, slang or acronyms are used, clarify them during the interview.

g. Rephrase the question if the witness' answer is incomplete or not to the point.

h. Do not ask compound questions -- they elicit incomplete answers, and it is difficult to determine later which question the witness answered.

i. With respect to locations or positions, it is frequently helpful to have the witness draw a rough diagram or sketch. This diagram or sketch can be entered into the investigation report as an exhibit where it can help a reader to better understand the testimony. Each location or position should be identified separately. Do not mark multiple locations/positions with the same "X" mark because it may become unclear which location/position relates to which portion of the answer.

8.11.4 Witness Control

a. It is difficult to conduct an investigation if the witnesses talk to each other about the case. Ensure you inform each witness of the requirement not to reveal to anyone the questions or topics discussed during the interview.

b. Maintain absolute control of the interview. Allow discussions of unrelated matters to place witnesses at ease, but never allow a witness to take the initiative.

c. Listen attentively, evaluate the information received, and resolve inconsistencies with follow-up questions. The investigating officers should agree prior to the interview as to who will concentrate on the prepared interrogatory and who will listen for unanticipated leads and information. This agreement also lessens the chance of one investigator unnecessarily interrupting the other and possibly changing the thrust of the original question.

- d. Allow the witness to give testimony freely and without fear, but do not permit him to give flippant or evasive answers, or to become argumentative.
- e. Determine the basis for the witness' opinion.
- f. Ask questions for clarification when answers contain trade names, technical wording, acronyms, slang, or colloquial expressions. However, do not interrupt by asking how to spell a name or to obtain other identifying data. This interruption of the witness train of thought often causes disruption of the train of thought. Make a note and ask the question after the witness finishes the answer or at the end of the interview.
- g. Determine the source of hearsay evidence so that direct evidence may be obtained.
- h. Pursue the issue when an answer, tone of voice, or non-verbal signal indicates the witness has additional information.
- i. Guide the talkative witness to the issues and pertinent answers.
- j. Use simple, direct questions to elicit information when the witness is hostile or reluctant.
- k. Appeal to military witnesses' sense of duty to overcome their normal reluctance to make adverse statements about others.
- l. Persuade civilian witnesses to cooperate by appealing to their patriotism or desire to see justice done, and tell them how valuable their cooperation is to the Army.
- m. Continue to question a witness who avoids answering questions by saying, "I don't remember." Point out that they may be failing to remember facts that persons would normally recall.
- n. Use skill and tact to confirm or deny suspicions that a witness is untruthful. Confront the untruthful witness with proof of their falsehood in order to elicit a change in their testimony. It is not necessary to have someone who is a subject/suspect admit wrongdoing. If there is a preponderance of evidence that substantiates an allegation, the only purpose for talking is to get their side of the story (administrative due process right). The fact that a witness has lied to you during a case can be important and should be addressed in your report.
- o. The IO should ask him/herself if all pertinent points have been covered. Are the answers complete? If the IO has any doubt as to what the

witness is saying, ask, "What I hear you saying is" or "Do you mean by that . . . ?", then repeat the IOs understanding to the witness.

p. Just prior to the end of the interview, the IO may want to summarize important answers with such statements as "I understand that what you have testified to is this: one, . . . ; two, . . . ; three" This technique is specifically applicable when it concerns an element of essential information. The IO should take care to be accurate. A witness will tend to believe and agree with whatever the IO says even if incorrect. This is especially true when the witness feels overwhelmed and nervous about the interview process or really wants to please the IO.

q. Ask the hard questions that concern the witness' specific role in what has been alleged. Do not allude to the subject matter--be direct and specific. If the hard question is not asked, it most likely will go unanswered. Often the questions can be embarrassing or sensitive to the witness. Preparation will make everyone comfortable, and that comfort will put the witness at ease with the hard questions.

r. Demonstrate proper courtesy, but do not be intimidated questioning a senior official.

8.11.5 Interviewing Non-DA Civilians

a. IOs do not have the authority to require the appearance or testimony of non-DA civilian witnesses. IO techniques in dealing with non-DA civilians will frequently determine if they can gain witness cooperation and testimony. Consider these techniques when dealing with civilian witnesses:

1. Adopt an objective, empathetic attitude.
2. Explain the procedures that will be followed and the rationale, because some civilians may not understand the IO's role or may view the investigation more as an inquisition. Anticipate potential problems. Do not use military jargon and acronyms.
3. Attempt to conduct all interviews at your location. If the witness does not agree to this, then conduct the interview at a neutral place like a hotel or motel conference room. If the witness still refuses, it is permissible to conduct the interview where the witness suggests. However, IOs should make sure they take appropriate measures to avoid the appearance of impropriety. Civilian clothes could be appropriate when interviewing civilian witnesses at their home or work place.

4. Explain the concept of confidentiality and the methods used to protect the rights of all those involved in the investigative process.
5. Should the witness be very reluctant to participate in a formal interview with sworn recorded testimony, attempt to continue without recording the session. Complete a summary of the information provided.
6. Consider other alternatives if there is continued reluctance to testify after repeated explanations. For example, if a witness refuses to give oral testimony, ask for a written statement. Consider if this witness' testimony is critical to your investigation. Can this information be obtained from another source? A decision not to interview a reluctant witness is sometimes best.

8.11.6 Observations by Interviewer

a. An IO's observations are valuable when developing follow-on questions and when weighing the evidence or credibility of a witness. During the questioning, continuously evaluate the mannerisms and emotional state of the witness. Hesitation, evasiveness, body movements, and fidgeting may indicate the witness is not telling the truth or is concealing information. Such behavior may only mean that the witness is nervous with the interview process. This is where the IO's ability to put the witness at ease is very important.

b. An IO is better able to judge when a specific question causes the witness obvious discomfort. It may be worth rephrasing the question, or it may be appropriate to direct a question to their discomfort. For example: "I sensed a change in your voice when I asked that question, why?" When appropriate, write a memorandum for record (MFR) which describes physical mannerisms. Use caution, however, in interpreting physical mannerisms, and avoid attaching undue or unfounded significance to them.

8.11.7 Memorandum for Record

a. An MFR is a suitable way to record an IO's observations, to identify exhibits, or to record other information important to the investigation. Remember, when IOs include an MFR with their observations in their report, they become a witness in the case.

b. Prepare MFRs while the matters are fresh in mind. Take a few minutes after the interview to either make notes on the testimony transcript

information sheet or dictate your observations on the tape immediately after the recorded testimony.

- c. The MFR should contain:
 1. What was observed; where, when, and how, if applicable
 2. Why the action was recorded
 3. What was found
 4. Explanatory notes, comments, or comparisons
 5. Signature of at least one investigating officer

8.11.8 Use of Polygraph

The polygraph, commonly termed "lie detector," is not an appropriate method for gathering evidence in an AR 15-6 investigation. An investigation that requires the use of the polygraph has gone beyond the scope of what is appropriate for an AR 15-6 investigation.

8.11.9 Interviewing DOs and DON'Ts

DOs

- DO maintain a high standard of professional conduct.
- DO get the witness to fully explain his answers.
- DO develop facts.
- DO honor the rights of the witness.
- DO be fair.
- DO be thorough, objective, and discreet.
- DO ask the hard questions.
- DO thoroughly research the standard.
- DO prepare for the unexpected.

DON'Ts

- DON'T browbeat, mislead, threaten, or intimidate.
- DON'T make promises.
- DON'T advise or counsel.
- DON'T guarantee testimony cannot be used for adverse action.
- DON'T lose your temper or patience.
- DON'T argue or make snide remarks.
- DON'T tell an untruth to get a truth.
- DON'T unnecessarily reveal the identity of other witnesses.

- DON'T be embarrassed by silences; give the witness time to think.
- DON'T ask long, multiple, or involved questions.
- DON'T lead the witness.
- DON'T put words in the witness' mouth.

9.0 ASSEMBLING AND ASSESSING EVIDENCE

9.1 Overview

Investigations are focused searches for evidence to substantiate or refute allegations. The "bottom line" of an investigation is the conclusion the IO draws from evaluating the credible evidence gathered. Consequently, it is essential that the IO has a good understanding of the nature of evidence.

9.2 Categories of Evidence

Evidence generally falls into one of four major categories: documentary, physical, oral statements and the IO's personal observation. Most investigations depend upon the testimony of witnesses. Some investigations require extensive use of documentary and physical evidence.

9.2.1 Documentary Evidence

Documentary evidence includes written items, photographs, maps, sketches, regulations, laws, records (travel vouchers, evaluation reports, medical records) and other types of written material. Nearly all investigations include some documentary evidence. Gather it early in the investigation, and identify it by showing the date obtained, whether it is an original or copy, location of the original, identity of the custodian and signature of the investigating officer. When practical, use copies of documents, and leave the originals with their proper custodians.

9.2.2 Physical Evidence

a. Physical evidence consists of objects or conditions that establish facts. It is the least common category of evidence found in investigations. Physical evidence may or may not accompany the report of investigation (ROI).

b. Normally, an object is not required to accompany an ROI. If the IO does need to forward an object with an ROI, securely attach it to the ROI and identify it by showing:

1. Name of the object
2. Where and when the object was obtained
3. Custodian or person who obtained it

4. Its function, if applicable
5. Serial number, size, make, brand name, or other identifying information
6. Monetary value, if applicable
7. Description of container, if appropriate
8. State of serviceability

c. Most physical evidence will not be included with the ROI because of size, perishability, monetary value, or other reasons. Photograph, sketch or describe these objects in an MFR that contains the information and attach it as an exhibit to the ROI.

9.3 Oral Statements

An oral statement is evidence given orally by a "competent" witness (in the legal definition of the term competent). Oral statements are the primary means of gathering evidence in the IO investigation. Oral statements fall into two categories, testimony and statements.

9.3.1 Testimony

a. An oral statement that is sworn and recorded is called testimony. Under Article 136, UCMJ, military officers are authorized to administer the oath required to provide a sworn statement; 5 U.S.C. 303 provides this authority for civilian employees. Individuals who do not wish to swear an oath may affirm that their testimony is truthful.

b. Testimony is the primary means of gathering evidence in investigations and may be used in inquiries. Recorded testimony is normally transcribed verbatim. Verbatim transcripts can be prepared by court reporters (sometimes available from the legal counsel), contract transcriptionists, or typed by the IO. Verbatim transcripts are time consuming and expensive to prepare and review, but provide the most accurate record. The IO who conducted the interview normally must certify the accuracy of the transcript by reading it and making corrections as he listens to the tape.

c. Verbatim testimony may not always be practical. If assets or time are limited, take sworn, recorded testimony, and initially only prepare a summary. If the IO turns the case over to a follow-on investigator or terminates the case prior to completion, transcription may not be necessary. Should the IO determine a transcript is necessary as the case proceeds, he/she can prepare it at

that time. Another alternative is to transcribe the testimony of key, necessary witnesses (complainant and subject or suspect, for example) only. The IO can summarize evidence from other witnesses.

d. NOTE: When taping interviews, if possible use two tape recorders in order to have a backup system. Keep in mind the purpose for recording is to make an accurate record of what is said during the interview. For accuracy, the IO may tape interviews even if he/she does not intend to prepare a verbatim transcript. When in doubt, tape.

9.3.2 Witness' Statements

a. Information gathered during an interview that is not sworn is referred to as a statement. The statement can be documented as a summarized statement by the IO who conducted the interview on DA Form 2823.

b. The statement may also be written by the witness in narrative form. Some witnesses have difficulty expressing themselves completely in written statements. In such cases the IO can write out the questions he/she wants answered and the witness can respond directly to these written questions with written answers. If the witness testimony involves technical terms that are not generally known outside the witnesses' field of expertise, the IO should ask the witness to define the terms the first time used.

c. When preparing the summary, the IO must be extremely careful to write what the witness actually said, not what you think the witness said. Claims by witnesses that the IO misquoted them occur occasionally. Draft the summary immediately following the interview to avoid having to rely upon your memory several hours or days later. The IO may also ask the interviewee to verify the summary of the interview. For accuracy, the IO may tape verbal statements even if they are not sworn. This is particularly important if the issues or allegations are serious, complex, or conflicts with other evidence. When taping a telephonic interview, ensure you inform the interviewee that you are recording.

d. If the IO is unable to obtain an oath, he/she must evaluate whether administering the oath is necessary or appropriate. Some considerations are the nature of the allegations or issues and the expected evidence the witness might provide. Swearing-in the witness adds formality to the interview and may enhance the accuracy of the information presented by the interviewee. The oath creates the belief and expectation in the witnesses' mind that they must be truthful or suffer the consequences.

e. For military personnel, a false official statement (sworn or not sworn) is a criminal offense. For non-government civilians, false sworn statements are a violation of federal law. When evaluating evidence, sworn statements are generally given more weight than unsworn statements.

9.4 Assessing Types of Evidence

9.4.1 Direct Evidence

First-hand knowledge, or direct evidence, proves or disproves an issue through the use of facts. For example, if a witness states "I saw the subject's car at the headquarters on day x at time y," there is direct evidence that the subject's car was at the headquarters at that date and time. Direct evidence should be verified (corroborated) by other evidence, if possible.

9.4.2 Circumstantial Evidence

Circumstantial evidence tends to prove or disprove an issue by inferences. The statement, "I saw the subject's car parked in front of the headquarters on day x at time y," is circumstantial evidence that the subject was inside the headquarters at that time. Circumstantial evidence is not an inferior kind of evidence to be used only when there is no direct evidence. It may not have the weight of direct evidence, but it is still valid evidence. It can be used with direct evidence to establish a fact. Some issues such as command climate and unit morale are seldom established by direct evidence. Frequently, they are established by circumstantial evidence alone.

9.4.3 Hearsay Evidence

Hearsay is what one individual says another person said. It is an acceptable source of information in AR 15-6 investigations. However, the IO should attempt to verify hearsay by contacting the person having direct knowledge of the information (the person who said whatever the witness heard).

9.4.4 Personal Observation

a. IOs can document physical conditions they observe in an MFR. These observations or measurements in an MFR can supplement or provide background for reports or testimony by technicians or authorities whose expertise may be better evidence than non-expert observation alone. Certain observations or events that occur during an interview (witness comments while off-tape, for example) may be worthy of an MFR.

b. By introducing personal observations as evidence, the IO can make himself a witness in the case, perhaps opening himself to allegations of bias. As an alternative, the IO might have another individual observe the conditions in question and then interview the other individual as a witness.

9.4.5 Opinion

Opinion, a person's belief or judgment, may be used as evidence. Opinions of qualified experts are commonly used as evidence in AR 15-6 investigations. IOs may ask witnesses for their opinions, but they need to develop the reasons why the witnesses reached their opinions. Clearly identify such testimony as opinion.

9.5 Developing Facts

9.5.1 AR 15-6 investigations are fact finding in nature. Facts include events that are known to have happened and things that are known to be true. Some matters are easily established as facts, while others are difficult. In solving a disputed issue, use judgment, common sense, and personal experience to weigh the evidence, consider its probability, and base conclusions on the most credible evidence.

9.5.2 A general guide when attempting to establish facts is to obtain the testimony of two or more sworn, competent witnesses who agree on a single point. A fact is also established by a combination of testimony, documentary evidence, and physical evidence that agree on a single point.

9.6 Evaluating Evidence

9.6.1 Standard of Proof for AR 15-6 Investigations

a. The critical analytical task performed by the IO in each investigation is the evaluation of the evidence. To draw a conclusion, the IO must determine if there is a preponderance of credible evidence as viewed by a reasonable person. Preponderance is defined as "superiority of weight." In layman's terms, preponderance means "more likely than not" (51% or more). AR 15-6 uses the same standard of proof--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 which, after considering all evidence presented, points to a particular conclusion as being more credible and probable than any other conclusion. Since an investigation is not a criminal proceeding, there is no requirement that facts and findings be proven beyond a reasonable doubt.

b. To evaluate the evidence, the IO must first determine the facts that must be supported or refuted to indicate whether or not the matters alleged occurred. The IO must then collate the evidence pertaining to each fact and determine the credibility of each item of evidence. This is often a difficult task. Some witnesses provide inaccurate information, others fail to provide the whole truth or slant the truth to their advantage, and a few lie outright. The IO must look for and address voids and conflicts in the evidence and seek corroboration. Then the IO can assign a relative value to each item of evidence--some evidence

is more important than other evidence. Finally, the IO must determine if a preponderance of the credible evidence proves or disproves that a violation occurred. This is a highly subjective process. Remember, the more thorough the IO is in gathering pertinent evidence, the more likely he/she can be objective in evaluating the facts.

c. The IO repeats this evaluation process for each of the facts essential to the case. Finally, given a set of supported or refuted facts, the IO must determine whether a preponderance of credible evidence exists regarding the allegation as a whole. If preponderance indicates that the allegation occurred, the allegation is substantiated. If preponderance indicates that the allegation did not occur, the allegation is not substantiated. If there is no preponderance of credible evidence, the allegation is neither substantiated nor refuted. Neither-or conclusions should be avoided. When faced with a neither-or situation the IO should evaluate the process and attempt to gather additional evidence that will substantiate or refute the allegation.

9.6.2 Rules of Evidence for AR 15-6 Investigations

a. The process of evaluating evidence is not easy--few cases are black and white; most are gray. Thoroughness, objectivity, and good judgment are critical aspects of an IO evaluation process in every investigation.

b. 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.

1. The information must be relevant and material to the matter or matters under investigation.
2. 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.
3. The result of polygraph examinations may be used only with the subject's permission.
4. 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.

5. Off-the-record statements are not acceptable.

c. 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.

d. The investigating officer should consult the legal advisor if he has any questions concerning the applicability of any of these rules.

9.7 Developing Findings

9.7.1 A finding is a clear and concise statement of a fact readily deduced from evidence in the report. It is directly established by evidence in the report or is a conclusion of fact by the investigating officer. Negative findings (such as the evidence does not establish a fact) can be appropriate. The findings should be necessary and sufficient to support each recommendation. If the results of a formal investigation determine that there was no violation, the investigation report shall include that conclusion supported by appropriate justification 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.

9.7.2 After all of the evidence is collected, the IO must review it and make findings. The IO should consider the evidence thoroughly and impartially and make findings of fact and recommendations that are supported by the facts and comply with the instructions of the appointing authority.

10.0 CONCLUDING THE INVESTIGATION

10.1 Drafting the Statement of Facts

To the extent possible, the investigating officer should fix dates, places, persons, and events, definitely and accurately. The investigating officer 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.

10.2 Drafting the Statement of Findings

A finding is a clear and concise statement that can be deduced from the evidence in the record. In developing findings, investigating officers are permitted to rely on the facts and any reasonable inferences that may be drawn from those facts. In stating findings, investigating officers should refer to the exhibit or exhibits relied upon in making each finding. Findings (including findings of no fault, no loss, or no wrongdoing) must be supported by the

documented evidence that will become part of the report. Exhibits should be numbered in the order they are discussed in the findings.

10.3 Drafting the Recommendations

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

10.4 Assembling the Packet

10.4.1 Preparing the Submission to the Appointing Authority

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

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

10.4.2 Legal Review

a. AR 15-6 does not require that all informal investigations receive legal review. The appointing authority, however, 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. Nonetheless, appointing authorities are encouraged to obtain legal review of all investigations. Other specific directives may also require a legal review. Generally, the legal review will determine:

1. Whether the investigation complies with requirements in the appointing order and other legal requirements,
2. The effects of any errors in the investigation,
3. Whether the findings (including findings of no fault, no loss, or no wrongdoing) and recommendations are supported by sufficient evidence, and

4. Whether the recommendations are consistent with the findings.

b. If a legal review is requested, it is required 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 the taking of additional evidence, or making additional findings.

APPENDICES A - I

A P P E N D I X A

CHECKLIST FOR INVESTIGATING OFFICERS

1. Preliminary Matters:

- a. Has the appointing authority appointed an appropriate IO based on seniority, availability, experience, and expertise?
- b. 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?
- c. Has the initial legal briefing been accomplished?

2. Investigative Plan.

- a. Does the investigative plan outline the background information that must be gathered, identify the witnesses who must be interviewed, and order the interviews in the most effective manner?
- b. Does the plan identify witnesses no longer in the command and address alternative ways of interviewing them?
- c. Does the plan identify information not immediately available and outline steps to quickly obtain the information?

3. Conducting the Investigation.

- a. Is the chronology being maintained in sufficient detail to identify causes for unusual delays?
- b. Is the information collected (witness statements, MFRs of phone conversations, photographs, etc.) being retained and organized?
- c. Is routine coordination with the legal advisor being accomplished?

4. Preparing Findings and Recommendations.

- a. Is the evidence assembled in a logical and coherent fashion?
- b. Are the findings (including findings of no fault, no loss, or no wrongdoing) supported by the evidence? Does each finding cite the exhibits that support it?
- c. Are the recommendations supported by the findings? Does each recommendation cite the findings that support it?

d. Are the findings and recommendations responsive to the tasking in the appointment memorandum?

e. 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?

5. Final Action.

a. Was an appropriate legal review conducted?

b. Did the appointing authority approve the findings and recommendations? If not, have appropriate amendments been made and approved?

c. Have the necessary taskers been prepared to implement the recommendations?

ALTERNATE CHECKLIST A

INVESTIGATING OFFICER – Checklist of Procedural Steps of the Investigation Process

Preparing for Investigation

A. Attend in-brief session

___1. Confer with Support Team, especially legal counsel

___2. Determine schedule for future consultations

B. Review the following:

___1. Background Documents

___ 2. AR 15-6 Investigation Guide

C. Acquire a clear understanding of facts and allegations

D. Reference applicable regulations

E. Review decisions in related cases, if desired

F. Investigative Plan

___1. Does the investigative plan outline the background information that must be gathered, identify the witnesses who must be interviewed, and order the interviews in the most efficient manner?

___2. Does the plan identify witnesses no longer in the command and address alternative ways of interviewing them?

___3. Does the plan identify information not immediately available and outline steps to quickly obtain the information?

___4. Is the chronology being maintained in sufficient detail to identify causes for unusual delays?

___5. Is the information collected (witness statements, MFRs of phone conversations, photographs, etc.) being retained and organized?

___6. Is routing coordination with the legal advisor being accomplished?

G. Develop questions to assist in understanding the investigation

___1. Understand the facts and circumstances of potential violation

___2. Confirm or dispute the existence of the potential violation

___3. Stay focused on investigation

Gathering Evidence

H. Set-up schedule and mark your calendar for the following:

___1. Consultation with Support Team

___2. Meet with Legal Counsel

___3. Talk with former investigating officer (optional)

___4. Meet with staff who reported alleged violation

__ a. Discuss violation

__ b. Develop clear understanding of their concerns

___5. Write interview questions in advance

___6. Develop a list of people to interview

___ a. Witness(es)

___ b. Subject(s)/Suspect(s)

___7. Gather and review evidence

___8. Travel (if needed)

___9. Draft Report

I. Consult with legal counsel and support team

J. Interview necessary personnel

K. Record each piece of evidence collected

L. Make copies of transactions that caused the potential violation

M. Trace and document the following:

___1. authorization or approval of transaction(s)

___2. relevant decisions leading up to the potential violation

Drafting Preliminary Report

___ No allegation is substantiated, the investigation is concluded

___If one or more allegations are substantiated, proceed to identify responsible individual, recommended action(s)

N. Obtain legal opinion

O. Preparing the Findings and Recommendations

___1. Is the evidence assembled in a logical and coherent manner?

___2. Are the findings (including findings of no fault, no loss, or no wrongdoing) supported by the evidence? Does each finding cite the exhibits that support it?

___3. Are the recommendations supported by the findings? Does each recommendation cite the findings that support it?

___4. Are the findings and recommendations responsive to the tasking in the appointment memorandum?

___5. 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?

P. Final Report should include

___ Statement of Facts

___ Statement of Findings

___ Recommendations

___ Legal Review

Preparing and Submitting Final Packet

1. Appointment order
2. Initial information collected
3. Rights warning statements
4. Chronology, and
5. Exhibits (with an index).

A P P E N D I X B

Timeline

Day One

Allegations Reported

Day ___

Appoint investigating officer

Appoint support team

In-Brief session

Review Appointment Order and Suspense

Backwards plan from Suspense Date to complete Timeline

Day ___

Consult legal counsel

Begin investigation

Read all applicable regulations

Develop questions

Check timeframe and mark calendar

Examine Checklist

Confer with support team

Day ___

Continue consultation with support team (when necessary)

Meet with a previous investigating officer (optional)

Meet with staff requesting or reporting investigation

Research any violations(s)

Write interview questions

Conduct interview(s)

Document evidence

Make travel arrangements (when necessary)

Day ___

Consult with legal counsel, as needed

Confer with support team, as needed

Conclude Investigation

Recommend disciplinary action

Day ___

Prepare and Sign Final Report

Review Final Report

Prepare Packet

Additional information

Consult with Legal Counsel

Submit Final Packet and Report to appointing officer

APPENDIX C

INVESTIGATION PLAN OUTLINE

MEMORANDUM FOR RECORD

SUBJECT: Investigation Plan - (Case Name)

1. Mission. (Information should be similar to that stipulated in the first paragraph of your Appointing Officer's Directive.)

2. Facts bearing on mission.

a. Background and Allegations. Allegations should be specific enough to adequately describe the scope of the investigation. Note when the directive was signed, by whom and reference any relevant correspondence from or to VIPs.)

b. Applicable Regulations and Reference Publications. (List those applicable regulations/publications that apply to the allegation(s). For example, if the allegations pertained to procurement irregularities, the Federal Acquisition Regulation (FAR) would probably be a reference. Ensure the referenced regulation was in effect at the time of the alleged incident.)

c. Commands involved. (List the various commands that might be involved. For example, if the allegation pertained to an incident in a unit in Europe, the commands could include the specific division, corps and, possibly, HQ, USAREUR.)

d. Staff Agencies Having Knowledge of Case. (Include any staff agencies made aware of the allegation(s) and how they were informed. Identify any staff agency that may be a proponent for regulations or guidelines that could be related to the allegation(s).)

3. Evidence and Data Required.

a. Witnesses. (From information available to you, list the names of witnesses that you want to interview for each allegation. Remember, the number of witnesses and possibly the allegations, within the scope of the directive, may change. You may not need to question all witnesses about every allegation.)

(1) Allegation 1: (State the specific allegation)

(a) Witness #1

(b)

- (2) Allegation 2: (State the specific allegation)
- (a) Witness #1
- (b)

b. Documents. (List documents and records you need to substantiate or refute the allegation. These may include SOPs, training records, contracts and more.)

c. Physical evidence. (List any required physical evidence).

4. Administrative Matters.

a. Itinerary. (When, where, and how you plan to conduct the investigation. The list should include: courtesy calls, transportation requirements, lodging requirements, interview locations, and witness interview sequence.)

b. Notifications. (Identify commanders and Subject(s)/Suspect(s) who should be notified IAW this Guide and the directing authority's guidance.)

- (1) Command(s).
- (2) Subject(s)/suspect(s).

c. Travel Requirements. (TDY orders, passports, car rentals.)
List of Enclosures that may be relevant

INVESTIGATOR'S SIGNATURE

A P P E N D I X D

SUBJECT NOTIFICATION FORMAT

(For Non-criminal Allegations)

To: (Rank and Name) _____

Position and Organization: _____

Phone number: _____

(CHECK WHEN DONE)

1. () _____, this is _____ from the _____ IO Office. We have been directed by _____ (directing authority) to investigate allegations that you: (as stated in action memorandum)

2. () It will be necessary to interview you regarding these matters. (Choose a. or b.)

a. You will be contacted by [Investigating Officer(s)] _____ or _____ to make necessary arrangements; or

b. We want to interview you at (time) _____ on (date) _____ at (location) _____. Our telephone number is _____.

3. () You are a subject in this investigation. Although the allegation(s) against you is/are non-criminal, you do not have to answer any questions that may tend to incriminate you. The investigators will give you an opportunity to respond to the allegation(s). You have the right to consult with an attorney before being questioned, but you do not have the right to have an attorney present during the interview.

4. () _____ has been notified of this investigation.

5. () We are required to protect the confidentiality of all investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone except your attorney, if you consult one, without permission of the investigating officers.

6. () _____ was (telephonically/personally) notified of the above at _____ (time) on _____ (date).

_____ (Signature of Notifying Official)

APPENDIX E

SUMMARIZED TESTIMONY FORMAT

Summarized (sworn and recorded) testimony of (NAME), (SSN), (DUTY POSITION), (LOCATION), obtained by interview at (LOCATION), (DATE), from (TIME) to (TIME) hours by (INVESTIGATION OFFICERS)

Name of Witness:

Grade of Witness:

SSN of Witness:

Organization:

Duty assignment of Witness:

Telephone number of Witness:

(NAME) was interviewed and informed of the role of the IO, that we were conducting an investigation, that testimony would be recorded and either transcribed verbatim or summarized and would become part of the report. The witness was informed of the authority for the investigation, information required by the Privacy Act of 1974, and of the rights of a witness.

.....

(Present a brief summary of the KEY POINTS of the witness' testimony. Do not include information provided by the witness that is not EVIDENCE relevant to the investigation.)

.....

(NAME) did/did not agree to the release of this testimony outside official channels.

John L. Doe

LTC, IO

Investigating Officer

A P P E N D I X F

PRE-TAPE BRIEFING

1. Identify Investigators -- Show Military ID and IO Appointment Letter
2. Explain Investigative Procedure and investigator's role - "This is a four part interview..."
 - Confidential fact finders for directing authority.
 - Collect and examine all pertinent evidence.
 - Make complete and impartial representation of all evidence.
 - No authority to make legal findings, impose punishment, or direct corrective action.
 - Dual Role of IO:
 - Protect best interests of DOD
 - Establish truth of allegations or establish that allegations are not true and clear a person's good name. Anyone can make allegations. The investigator has the authority to make recommendations.
 - IO confidentiality:
 - Protect the confidentiality of everyone involved but do not guarantee that protection.
 - Will not reveal sources of information.
 - Will not tell you to whom we have talked.
 - Will not tell you specific allegations being investigated (except for subjects and suspects).
3. Explain Interview ground rules
 - Sworn and recorded testimony. We normally take sworn and recorded testimony. Recorders improve accuracy.
 - All answers must be spoken. Tape recorder cannot pick up nods or gestures.
 - Classified information: If classified information comes up, we will discuss off tape first.
 - Break procedures: Can go off tape at any time, but
 - We never go off record.
4. Summation
 - Administrative procedure, not court of law.
 - Can accept and use hearsay and opinion.
 - We protect everyone's confidentiality, but do not guarantee confidentiality.
 - TO KEEP THIS CASE AS CONFIDENTIAL AS POSSIBLE YOU WILL BE ASKED NOT TO DISCUSS YOUR TESTIMONY WITH ANYONE WITHOUT OUR PERMISSION.

NOTE: PROVIDE INTERVIEWEE WITH APPROPRIATE DOCUMENT. PRIVACY ACT PERTAINS TO US CITIZENS ONLY, UNLIKE FOIA, which applies to the world.

5. Explain Privacy Act of 1974
 - Disclosure of SSN is voluntary.
 - Describes authority to ask for personal information.
 - LET THEM READ PRIVACY ACT STATEMENT. Will refer to it during the formal read-in.
6. Rights warning/waiver. EXECUTE DA FORM 3881 (When appropriate.)
7. PRE-TAPE briefing (doing now).
8. Formal READ-IN. (Formality designed to ensure rights of individual fully explained and legal requirements are met.)
9. Questioning.
10. Formal READ-OUT.
11. Release of your testimony
 - The last question we ask you during the READ-OUT is whether you consent to release your name and personal testimony to members of the public under the FOIA or Privacy Act. FOIA allows members of the public to request government records for unofficial purposes.
 - Our report, INCLUDING YOUR TESTIMONY, will be used as necessary for official government purposes.

APPENDIX G

PRIVACY ACT INFORMATION

DATA REQUIRED BY THE PRIVACY ACT OF 1974

PRIVACY ACT STATEMENT FOR PERSONAL INFORMATION TAKEN
DURING WITNESS TESTIMONY

AUTHORITY: Title 5 US Code, Section 552a.

PRINCIPAL PURPOSE(S): Information is collected during an investigation to aid in determining facts and circumstances surrounding allegations/problems. The information is assembled in report format and presented to the official directing the inquiry/investigation as a basis for Department of Defense/ Department of the Army decision making. The information may be used as evidence in judicial or administrative proceedings or for other official purposes within the Department of Defense. Disclosure of Social Security Account Number, if requested, is used to further identify the individual providing the testimony.

ROUTINE USES:

- a. The information may be forwarded to federal, state or local law enforcement agencies for their use.
- b. May be used as a basis for summaries, briefings or responses to Members of Congress or other agencies in the Executive Branch of the Federal Government.
- c. May be provided to Congress or other federal, state and local agencies, when determined necessary by The Inspector General (DAIG).

MANDATORY OR VOLUNTARY DISCLOSURE AND EFFECT ON INDIVIDUAL NOT PROVIDING INFORMATION:

For Military Personnel: The disclosure of Social Security Account Number is voluntary where requested. Disclosure of other personal information is mandatory and failure to do so may subject the individual to disciplinary action.

For Department of the Army Civilians: The disclosure of Social Security Account Number is voluntary. However, failure to disclose other personal information in relation to your position responsibilities may subject you to adverse personnel action.

FOR ALL OTHER PERSONNEL: THE DISCLOSURE OF SOCIAL SECURITY ACCOUNT NUMBER, WHERE REQUESTED, AND OTHER PERSONAL INFORMATION IS VOLUNTARY AND NO ADVERSE ACTION CAN BE TAKEN AGAINST YOU FOR REFUSING TO PROVIDE INFORMATION ABOUT YOURSELF.

APPENDIX H

RIGHTS WARNING / WAIVER CERTIFICATE

NOTES:

(1) Complete administrative data on the front side of the DA 3881 prior to the interview. Summarize the allegations contained in the action memorandum. Ask the suspect to review the personal data and other information. Advise the suspect that you will formally advise him of his rights, explain his options and then, ask him if he is willing to waive his rights by signing the DA 3881. Also inform the suspect that you will refer again to the rights warning/waiver when you conduct the read-in (if you are conducting a formal interview).

(2) Read the appropriate paragraphs in Part II on the back of the DA 3881 (THE WARNING) to the suspect verbatim. Ensure the suspect understands what you have read. Note that different paragraphs are applicable for military personnel only and civilian personnel only.

(3) Ask the suspect verbatim the four questions in the second part of Part II on the back of the DA 3881 (THE WAIVER). Ensure the suspect answers "yes" or "no" to the questions. Do not accept "I guess so" as an answer.

(4) If the suspect waives his rights, ask him to sign the front of the DA 3881 in block 3 of Section B (SIGNATURE OF INTERVIEWEE). If the suspect does not agree to waive his rights, have him check the appropriate block and sign in Section C (NON WAIVER).

(5) Do not recall a suspect who has earlier invoked his rights, unless such recall is agreed to and coordinated with his attorney. He will be notified of unfavorable information in writing and advised that he has the right to comment on the information if he chooses.

(6) See notes in Suspect Read-In Script in dealing with a witness who becomes suspected of knowingly making a false statement under oath or of having committed another criminal offense.

(7) If you have any questions regarding the DA Form 3881 or encounter any difficulty when executing the warning/waiver, consult with legal counsel.

APPENDIX I

WITNESS INTERVIEW GUIDE

(BEGIN READ-IN. DO NOT USE YOUR OWN WORDS)

1. The time is _____. This tape-recorded interview is being conducted on (date) _____, at (location) _____ (if telephonic, state both locations). Persons present are the witness (name) _____, the investigating officers _____, _____, (court reporters, attorney, union representative, others) _____. This (investigation directed by _____) concerns allegations that: (as stated in directive)

NOTE: If the investigation concerns classified information, inform witness that the report will be properly classified, and advise witness of security clearances held by IO personnel. Instruct witness to identify classified testimony.

2. An investigating officer is an impartial fact finder. Testimony taken by an IO and reports based on the testimony may be used for official purposes. Access is normally restricted to persons who clearly need the information to perform their official duties. In some cases, disclosure to other persons may be required by law or regulation, or may be directed by proper authority. Upon completion of this interview, I will ask you whether you consent to the release of your testimony if requested by members of the public pursuant to the Freedom of Information Act.

3. Since I will ask you to provide your social security number to help identify you as the person testifying, I provided you a Privacy Act Statement. (If telephonic, it may have been necessary to read the Privacy Act Statement.) Do you understand it? (Witness must state yes or no)

4. You are not suspected of any criminal offense and are not the subject of any unfavorable information.

5. Before we continue, I want to remind you of the importance of presenting truthful testimony. It is a violation of Federal law to knowingly make a false statement under oath. Do you have any questions before we begin? Please raise your right hand so I may administer the oath.

Do you swear (or affirm) that the testimony you are about to give shall be the truth, the whole truth and nothing but the truth so help you God?

NOTE: The witness should audibly answer, "yes" or "I do." If the witness objects to the oath, the word "swear" may be changed to the word "affirm," and the phrase "so help me God" may be omitted.

6. Please state your: (as applicable)

Name

Rank (Active/Reserve/Retired)

Grade/Position

Organization

Social security number (voluntary)

Address (home or office)

Telephone number (home or office)

(END READ-IN)

XX

7. Question the witness.

NOTE: (1) If during this interview the witness suggests personal criminal involvement, the witness must be advised of his rights using DA Form 3881, Rights Warning Procedure/Waiver Statement. Unless rights are waived, the interview ceases. If during the interview you believe the witness has become a subject, advise him that he need not make any statement that may incriminate him.

NOTE: (2) If during the interview it becomes necessary to advise a witness about making false statements or other false representations, read the following statement to the witness, as applicable:

7a. for active duty or USAR/ARNG personnel subject to UCMJ:

I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order, or other official document, knowing the same to be false, may be subject to action under the provisions of UCMJ, Art. 107. Additionally, under the provisions of the UCMJ, Art. 134, any person subject to the UCMJ who makes a false statement, oral or written, under oath, believing the statement to be untrue, may be punished as a court-martial may direct.

Do you understand? (Witness must state yes or no)

7b. For USAR/ARNG and civilian personnel not subject to UCMJ:

I consider it my duty to advise you that under the provisions of section 1001, title 18, United States Code, whoever in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both.

Additionally, any person who willfully and contrary to his oath testifies falsely while under oath may be punished for perjury under the provisions of section 1621, title 18, United States Code.

Do you understand? (Witness must state yes or no)

XX

(BEGIN READ-OUT)

8. Do you have anything else you wish to present?

9. Who else do you think we should talk to, and why?

10. We are required to protect the confidentiality of IO investigations and the rights, privacy, and reputations of all people involved in them. We ask people not to discuss or reveal matters under investigation. Accordingly, we ask that you not discuss this matter with anyone, except your attorney if you choose to consult one, without permission of the investigating officers.

NOTE: Others present should also be advised against disclosing information.

11. Your testimony may be made part of an official record. Earlier, I advised you that while access is normally restricted to persons who clearly need the information to perform their official duties, your testimony may be released outside official channels. Individual members of the public who do not have an official need to know may request a copy of this record, to include your testimony. If there is such a request, do you consent to the release of your testimony outside official channels? (Witness must state "yes" or "no.")

12. Do you have any questions? The time is _____, and the interview is concluded. Thank you.

XX
(END READ-OUT)