Appendix A. Agenda for Change

United States Air Force Academy: Agenda for Change

Introduction

Mission and Values

The United States Air Force Academy exists to educate, train, and inspire so that each graduate is a commissioned leader of character committed to our core values of integrity, service, and excellence; professional growth throughout a career as an officer in the US Air Force, and; a lifetime of selfless service to the nation. Above all else, the Air Force Academy is a military organization designed to serve the Air Force and our nation. In pursuit of its goal to produce leaders of character, the Academy must establish and nurture policies that emphasize the character expected from commissioned Air Force officers.

To remain relevant to the larger Air Force, the Air Force Academy must focus on the deliberate development of Air Force officers, providing the required mentoring, guidance, and discipline to produce future leaders. The Academy will not be managed as a separate entity; rather, it must reflect the values and norms of the broader Air Force while maintaining the high academic standards of a world-class university.

The Cadet Wing, Group, and Squadron

The cadet squadron is the core military organization of the Academy. It provides the structure for daily life. Cadet Group and Wing organizations function to facilitate the leadership training activities of the cadet squadron.

It is every cadet's duty to uphold the highest standard of integrity, service, and excellence as they progress from Basic Cadet to Firstclassmen within their squadron. Every cadet must aspire to lead, both at the Academy and as a commissioned officer. Their potential to assume the responsibility of command will be measured by how they hold themselves and their subordinates accountable to the Academy's standard of discipline.

Every officer and NCO assigned to the Academy will make it their duty to develop and mentor cadets into model officers. The focal point for this effort is the squadron Air Officer Commanding (AOC) and Military Training Leader (MTL). The AOC and MTL will lead, develop and mentor the cadets in their charge with a deep personal commitment that models the command relationship between the squadron commander and first sergeant. The universal guiding principle for all cadets, officers, and NCOs will be honor, integrity, and mutual respect that is the hallmark of the Academy tradition.

Honor, Integrity, Mutual Respect

The United States Air Force is the greatest air and space force on the planet because of the personal honor, integrity and loyalty of its people individually contributing their utmost to achieve a common goal: unbeatable air and space power for the nation. These characteristics can only be cultivated in a climate of trust and mutual respect: between the service and the nation; between the institution and its members; and, between the individuals who are the institution. In the absence of this fundamental compact, none of the values we cherish – integrity, service, excellence – can endure. Loyalty to these values and the institution must be placed above loyalty to any individual who betrays these values.

The Air Force Academy must bolster those processes and systems that guide honorable conduct, of which discipline for infractions is an integral component. The Academy must ensure cadets understand and exercise the spirit of these values in the context of their future in the Air Force. Discipline must be

administered with measured judgment and in accordance with our core values. Ultimately, the success of the Air Force Academy depends on cadets, mentored by squadron-level officers and non-commissioned officers, internalizing these values and emerging from the Academy as officers of high character. The climate we strive to achieve at the Air Force Academy is one in which cadets take appropriate action to deter, stop, or report the criminal actions of a few that sully the reputation of themselves, their fellow cadets and the United States Air Force.

The Cadet Honor Code

The Cadet Honor Code is a statement of intent: the intent to hold both ourselves and our peers to an explicit standard of conduct. Enforcement of the honor code must be based on the goal of instilling in our cadets an imperative to voluntarily live by the ***spirit*** of the code rather than encouraging interpretive efforts to evade punishment under the ***letter*** of the code. A lie is a lie, the mere construction of which requires intent to deceive. Failing to acknowledge this simple moral truth reinforces an attitude accepting the evasion of responsibility for the consequences of one's own behavior. This behavior is unacceptable in a commissioned officer and is, as a result, not to be tolerated at the Air Force Academy.

A critical characteristic distinguishing a profession from a vocation is the willingness of its members to establish and enforce standards of professional conduct, removing those who fail to meet the standard when necessary. Character is a requirement for a practitioner of the profession of arms in the US Air Force. For this reason, we place special emphasis on the "toleration clause" of the Cadet Honor Code. It must be made clear that loyalty should never be confused with excessive tolerance, and that covering up another cadet's criminal activity cannot be viewed as loyalty to a comrade. Ignoring or covering up illegal activity among our peers is to protect one who has violated his or her own loyalty to the institution and his or her fellow cadets. Active duty officers who oversee and provide advice to cadets about the administration of the honor code should assure compliance with its spirit.

Policy Directives and Initiatives

Leadership

- The Superintendent is responsible for overall strategic leadership and planning at the United States Air Force Academy. The Superintendent will initiate a strategic planning process, which will define goals, specify measurable objectives, tasks, and metrics. These goals will be aligned with the stated mission and values of the Academy. The Superintendent will review all USAFA Instructions for compliance with the mission statement, the strategic planning goals, and USAF policies. The office of Vice Superintendent will be eliminated and redesignated as Director of Staff.

- The Commandant of Cadets is responsible for creating an atmosphere that ensures officer development and academic excellence are maintained to the highest standards. To enhance and ensure every aspect serves the cause of leadership and character development, the Director of Athletics will report to the Commandant. The Academic Dean, also bound by the leadership and character development mission, will continue to report to the Superintendent of the Academy. These two officers, the Commandant and the Dean, will work closely together in the development of our future Air Force leaders. The Office of the Vice Commandant, under the Commandant, will assist the Commandant in fulfilling his/her duties and act as an ombudsman for the Commandant and Superintendent.

- In addition to other duties assigned to this position, the Vice Commandant is specifically tasked with overseeing Academy sexual climate issues. In fulfilling the duties of an ombudsman, the Vice Commandant will:

    - Develop an effective template, along with performance metrics and databases, for the management of sexual assault cases in an expeditious, judicious and sensitive manner with the goal of ensuring justice is served both for the victim and the accused.

- With the support of officers detailed to the Vice Commandant from the Office of the Judge Advocate, the Counseling Center, and the Office of Special Investigations, develop and implement procedures for an Academy Response Team (comprising medical, legal, counseling, and command elements) to provide a victim of sexual assault immediate assistance, develop the facts, and initiate appropriate actions. The members of this team will receive special training on the management of sexual assault cases including victim psychology. The cadet alleging sexual assault will be thoroughly briefed on the investigative and legal process.
- Direct the Academy Counseling Center and maintain liaison as appropriate with community counseling entities.
- Determine the appropriate policies and procedures toward separating those alleged to have committed sexual assault offenses from the alleged victims.
- Every effort will be made to assist the alleged victims throughout the inquiry and assure victims that their concerns will be dealt with through the command channels. We will not tolerate criminals, nor will we tolerate their behavior. We will not tolerate individuals who harbor these criminals. We will not tolerate any individual who shuns alleged victims of criminal activity, nor will we tolerate retribution against these victims.
- Under guidance from the General Counsel of the Air Force, apply definitions of sexual assault at the Academy consistent with standard, Air Force-wide definitions. Ensure all Academy instructions, training materials, and guidance reflect Air Force-wide definitions.

- Academy leadership must communicate with the faculty and cadets in a forthright manner about the status of cases being prosecuted, while protecting the privacy rights of the individuals involved. This will ensure the cadet wing is aware of the seriousness of the leadership's commitment to timely justice.

Cadet Life

- Basic Cadet Training: Beginning in the summer of 2003, the Basic Training program will be augmented to enhance cadet preparation for the military environment they are entering and the interactions that will occur. Basic Cadet Training must emphasize fair treatment and mutual respect. The orientation will provide substantial material on sexual assault prevention and overall behavior expected of cadets. The program syllabus will include guidelines on workplace behavior – including consistent USAF definitions of sexual assault and harassment – as well as demeanor and consequences.

- Fourth Degree Training: During Basic Cadet Training, in order to instill a sense of responsibility and uphold the standards of good order and discipline of the United States Air Force Academy, only First Class or Second Class Cadets will interact with Fourth Class cadets. In the first half of the fall semester, only First Class cadets will discipline Fourth Class cadets. After Thanksgiving, selected Second Class cadets can be given training responsibility for Fourth Class cadets. Third Class cadets will only interact with Fourth Class cadets in academic mentoring/tutoring circumstances or on the spot training guidance. The exercise of discipline toward a Fourth Class cadet by Third Class cadets will by governed by a First Class cadet.

- Billeting/Dormitory Life: Separate billeting arrangements will be established for female and male cadets upon entering the Academy for Basic Cadet Training. During the academic year, Fourth Class cadets will be billeted with their assigned squadrons.

- Rooms will be arranged in the dormitories to provide for squadron integrity. Within a squadron, rooms occupied by female cadets will be clustered in the same vicinity near the women's bathrooms. The intent is to preserve basic dignity, deter situations in which casual contact could lead to inappropriate fraternization or worse, and to aid mentoring of lower-degree female cadets by senior female cadets.

- No cadet will enter the room of another cadet of the opposite sex without knocking on the door and announcing themselves, and waiting for the door to be opened by the cadet occupying the room.

Doors shall be fully open at all times when a non-roommate or several non-roommates are present in the room. The Commandant of Cadets will determine the appropriate level of punishment for any violation of this standard.

- The Commandant will establish a 24/7 dormitory security and monitoring system. An officer will be on duty at all times in the dormitories. This duty officer will be responsible for good order and discipline, and will manage a roving patrol in effect at night and on weekends. Fourth class cadets will not be assigned such duty.

- Any cadet found to provide, purchase for, or sell alcohol to an underage cadet will be disenrolled immediately.

- Reporting Incidents of Sexual Assault: All allegations of sexual assault will be reported to the officer chain of command immediately.

- The Counseling Center and the CASIE program will be realigned under the 34 Training Wing and report to the Vice Commandant. The Counseling Center will be staffed with qualified officer counselors.

- All efforts will be made to encourage victims of sexual assault to report any incident. Specific attention will be paid to the education of both male and female cadets regarding action they can take to prevent or to report instances of assault on them or their fellow cadets. Annual Training is required for all cadets, staff, and faculty. The Vice Commandant of Cadets is responsible for establishing, monitoring and documenting this annual training requirement.

- Because loyalty to values and loyalty to institution must be placed above misplaced loyalty to someone who's betrayed our values and our institution, shunning of cadets who attempt to maintain high standards and report sexual assault will not be tolerated and will be dealt with by cadet squadron commanders who have responsibility for maintaining and enforcing standards. Cadet commanders will be held accountable for ensuring that such behavior does not occur.

- Cadet support groups will be organized by the Superintendent to address aggressively the concerns of victims of sexual assault.

- Cadet commanders will be held responsible for the actions of their subordinates. Upper class cadets who are aware of or observe criminal activity will be held accountable if they fail to take charge of the situation and exercise their leadership responsibilities.

- In all reported cases of sexual assault, amnesty from Academy discipline arising in connection with the alleged offense will be extended to all cadets involved with the exception of the alleged assailant, any cadet involved in covering up the incident, any cadet involved in hindering the reporting or investigation of the incident, and the senior ranking cadet in attendance. The senior ranking cadet present will be responsible and accountable for all infractions committed by junior cadets.

- Any false accusations of sexual assault will be prosecuted to the full extent of the law.

- All medical personnel will receive training in dealing with sexual assault and at least one nurse and doctor will be assigned to the Academy Response Team. Rape Kits will be available at both the Cadet Clinic and Academy Hospital.

- Mentors: The Commandant of Cadets will establish a cadet-mentoring program. Each Second Class female cadet will serve as a mentor to at least one Fourth Class female cadet not in her squadron or group, and each male Second Class cadet will mentor at least one Fourth Class male

cadet not in his squadron or group. Evaluations of military performance for the Second Class cadets will in part be based on their mentoring performance.

- The "Bring Me Men…" sign on the Terrazzo wall will be removed immediately, and will be replaced by a statement that more suitably represents the aspirations of the entire cadet wing and the core values of the Air Force.

- An audit of Academy processes to deter, stop, or deal with sexual assault will be conducted every three years by the Headquarters Air Force.

Officer/NCO Selection, Training, Roles

- Air Officer Commanding (AOC) Selection/Training: AOC assignment processes will be enhanced to ensure that selectees are superior officers who achieve commanders' list status. AOCs will be specially selected and academically prepared to assume the unique duties of leading, mentoring, and training cadets. All AOCs will be Majors or Major selects. AOCs will meet a central board established by AFPC. The Commandant of Cadets is responsible for the final selection of all AOCs. All AOCs will be required to live on base.

- AOCs will receive one year of graduate education resulting in a Masters Degree in counseling or similar area prior to a 2-year role as AOC. During the year of study, the officer will have formal OJT with a sitting AOC. AOCs will be considered priority status for post USAFA assignments.

- A specially selected experienced Non-commissioned officer will be assigned to each cadet squadron as a Military Training Leader (MTL). This NCO will report to the Squadron Air Officer Commanding (AOC) and will be senior to any cadet at the Academy. These senior enlisted airmen will be in the chain of command, and will assist the AOC in maintaining good order and discipline.

- Military Training Leaders (MTLs) will receive specific training in the combination of skills required in the cadet setting.

- AOCs and MTLs will be placed on orders in the chain of command to the Commandant of Cadets, and will be noted as such in the organizational charts of the Academy.

- The duties of the AOC and MTL will be clearly defined in written instructions based on parallel activities in the active duty Air Force.

- The primary place of duty of the AOCs and MTLs is in the cadet squadron or all other areas best facilitating their involvement in the daily life and routine of the cadets in that squadron.

- AOCs will be commanders and will be so designated on G-Series orders. They will have Uniformed Code of Military Justice authority and responsibility commensurate with their rank.

Broader Academy Climate

The academic and athletic elements of the Academy will be recognized as contributions to the military purpose of the institution.

- As noted, the Director of Athletics will report to the Commandant. Those engaged in intercollegiate athletics will be required to engage in military and leadership training equivalent to their classmates. Off-season athletes will be required to participate in squadron activities.

- The Academy Board will be re-chartered as the Senior Executive Board. The board members will act as advisers to the Superintendent regarding the balance of time devoted to academic and officer development activities with responsibility for final decisions resting solely upon the Superintendent.

- Department Chairs will participate in an Academic Board that will report to the Dean.

- Communications among the military, academic and athletic departments will ensure that the status of cadet probations, current status of active or inactive participation on athletic teams, and academic progress are openly and promptly communicated across departments.

- Appropriate academic courses in leadership and character development will be made part of the core academic curriculum. A lecture series sponsored by the Secretary of the Air Force and supported by senior Air Force leadership will emphasize the moral and ethical standards expected of Air Force officers. The Department of Behavioral Science and Leadership will offer courses in military leadership.

- All candidates for Permanent Professor slots will be interviewed and selected by the Secretary and Chief of Staff. Unless extended by the Secretary of the Air Force, a Permanent Professor will be expected to retire in the rank held at 30 years of service. The senior officer in each department will be held accountable for all subordinate military officers and will ensure good order and discipline within his/her department.

- Department Chairs will rotate among the faculty within that department. No faculty member will hold a departmental chair for a period exceeding five years.

- Officer assignment policies and tour lengths at the Air Force Academy will be reviewed and revised by the Secretary of the Air Force. USAFA assistant and associate professors should be recruited from the top personnel out of the line force, teach for a designated period, and then return to the line.

- With the exception of those designated at the discretion of the Secretary and Chief of Staff, all graduates of the Academy will enter the Air Force as 2nd Lieutenants in operational line AFSCs at the wing level or below. Our objective is to ensure that all physically qualified Academy graduates become fully immersed into expeditionary wing level operations, maintenance, and staff or mission support squadrons of the Air Force. It is imperative that graduates first gain experience in the front line warfighting mission of the Air Force before branching off into non-combat related fields. Law school, medical school, liberal arts graduate schools or functional career fields such as acquisition or public affairs may be pursued only after these officers have proven themselves as operational Air Force professionals.

- Those cadets interested in cross commissioning to other military services will retain that option under existing regulations.

- Pilot training slots will be evenly divided between Academy and ROTC scholarship accessions. In addition, OTS accessions may compete for pilot training slots.

- In accordance with Title 10, U.S.C., all AFROTC cadets who are appointed as officers in the Air Force in May or June will have the same date of rank with Academy graduates, regardless of their graduation date. After twelve months, the lineal list will be published. The top officer for that year group will be the top graduate from the United States Air Force Academy. All other Second Lieutenants with this date of rank will be slated according to their cadet performance – either at the Academy or in the AFROTC program. Any cadets may have their lineal ranking as officers affected by disciplinary action during their time at the Academy or AFROTC.

Appendix B. Statute and Policy

June 13, 1985	Air Force issues Regulation (AFR) 160-12, "Medical Services – Professional Policies and Procedures" • Incidents involving rape and other sex offenses are within AFOSI investigative purview • When medical personnel acquire information during their official duties relating to these matters or other serious offenses, they should promptly refer it to the servicing AFOSI unit
November 8, 1985	Congress enacted Public Law (P.L.) 99-145, Section 1223, "Authority for Independent Criminal Investigations by Navy and Air Force Investigative Units" • The Secretaries of the Navy and Air Force establish regulations giving NCIS and AFOSI authority to initiate and conduct criminal investigations based on authority of the Director, NCIS, and the Commander, AFOSI • Congress intended to strengthen Navy and Air Force criminal investigative organizations so that high-ranking officers would not be able—in reality or perception—to interfere with criminal investigations
July 11, 1986	IG DoD promulgated DoD Instruction (DoDI) 5505.3, "Initiation of Criminal Investigations by Military Criminal Investigative Organizations," to ensure independent, objective and effective MCIO investigations • The decision to initiate a criminal investigation rests entirely with the MCIO • Only the Secretary of the Military Department may direct the MCIO to delay, suspend, or terminate an investigation other than an investigation that IG DoD requests, and only IG DoD may direct the MCIO to delay, suspend, or terminate an IG DoD-requested investigation • Commanders not assigned to the MCIO may not impede an investigation • When a commander outside the military criminal investigative organization objects to the opening of a criminal investigation for operational or other reasons, that commander shall report the circumstances immediately via the chain of command to the Secretary of the Military Department concerned. • The Secretary of the Military Department must promptly resolve any problem that arises as a result of the MCIO initiating an investigation, and the IG DoD must be provided a copy of the report and resolution

	• MCIO Commanders must report promptly, through their chains of command to the Secretary of their respective Military Department, any attempt to impede an investigation or investigative technique
May 1, 1989	Air Force adopted Regulation (AFR) 23-18, "Organization and Mission – Field Air Force Office of Special Investigation (AFOSI)" • AFOSI is the only US Air Force organization authorized to investigate matters that fall within its overall mission." • Crimes that AFOSI investigates include arson, bribery, homicide, counterfeiting and sex offenses
November 29, 1989	Air Force adopted Regulation (AFR) 124-4, "Initiating AFOSI Investigations and Safeguarding, Handling, and Releasing Information from AFOSI Investigative Reports" • Commanders promptly advise AFOSI of any matter that falls within AFOSI investigative responsibility • Commanders refer matters and offenses that fall within AFOSI investigative responsibility • All referrals must be accompanied by all known information on the matter to be investigated."
November 29, 1990	Air Force revises Air Force Regulation 124-4, "Initiating AFOSI Investigations and Safeguarding, Handling, and Releasing Information from AFOSI Investigative Reports" • Commanders promptly advise AFOSI of any matter that falls within AFOSI investigative responsibility • Commanders refer matters and offenses that fall within AFOSI investigative responsibility • All referrals must be accompanied by all known information on the matter to be investigated."
June 23, 1992	USAFA issues Air Force Cadet Wing Regulation (AFCWR) 537-7, "Sexual Assault Notification Procedures" • "It is imperative that Security Police and OSI be notified immediately of any sexual assault."
September 7, 1993	Air Force issues Policy Directive (AFPD) 71-1, "Special Investigations, Criminal Investigations and Counterintelligence" • If a crime is committed by Air Force personnel or on Air Force installations, or if it is otherwise of interest to the Air Force, the Air Force will thoroughly investigate and refer it to appropriate authorities for action. • Laws and directives impose disciplinary action on Air Force members and civilian employees who do not comply with these policies. • Only the Secretary of the Air Force through the Air

	Force Inspector General may direct AFOSI to delay, suspend, or terminate an investigation • AFOSI conducts criminal investigations, including violations of the UCMJ or other US laws and statutes • Air Force commanders refer to AFOSI all criminal matters and offenses for which AFOSI is responsible
March 3, 1995	Air Force revises AFPD 71-1, "Special Investigations, Criminal Investigations and Counterintelligence" • clarifies the AFOSI role as the sole Air Force agency authorized to conduct counterintelligence activities and operations; Specifies resources accessible to AFOSI special agents; clarifies coordination required prior to reassignment of persons under investigation; and includes new metrics and charts.
November 1, 1995	Air Force issues Mission Directive (AFMD) 39, "Air Force Office of Special Investigations" • "The Air Force Office of Special Investigations (AFOSI) is a field operating agency under the direction and guidance of the Air Force Inspector General (SAF/IG). It performs as a federal law enforcement agency with responsibility for conducting criminal investigations . . ." • The AFOSI Commander "Reports to SAF/IG" and "Exercises command authority over all assigned personnel, facilities, property and funds, and is delegated the independent authority to initiate criminal investigations according to Public Law 99-145" • Investigates crimes against people and personal and US Government property.
May 9, 1997	Air Force Surgeon General waives reporting requirements in AFI 44-102, "Community Health Management" • USAFA medical personnel were no longer required to report ". . . incidents involving . . . aggravated assault, rape, [and] other sex offenses . . . to . . . AFOSI . . . or other authorities as appropriate," if the incident involved a USAFA cadet • The waiver was temporary and required review after one year (The review did not occur and the waiver remained in effect until May 27, 2003, when the *Agenda for Change* was adopted)
July 16, 1997	USAFA implements USAFA Instruction (USAFAI) 51-201 • ". . . **If the victim is willing to make a formal complaint** (i.e., report the assault to law enforcement authorities), the person the cadet victim reported to should immediately notify AFOSI. If requested, that person should accompany the cadet victim to make the report and will remain with the cadet victim at least until the arrival of the victim

	advocate. Additionally, **if the crime is recent,** the 10 SPS [Security Forces] need to be called immediately to secure any potential crime scene. . . ." (Emphasis added) • ". . . [Cadet Counseling Center] . . . **is required to inform [the Commandant] . . . of reported sexual assault immediately** because the Commandant is the Commander responsible for both cadet victims and cadet perpetrators. This General Officer must ensure the safety of each cadet and the good order and discipline of the entire Cadet Wing. Consequently, the **Commandant advises the Superintendent on the merits and limitations of authorizing an investigation**. At times, this **may mean** an investigation is begun without the consent of the sexual assault victim. . . ." (Emphasis added) • ". . . Clinic, Emergency Room and Mental Health Clinic are **waived from reporting** cases of suspected rape or sexual assault against cadet victims directly to the 0ffice of Special Investigations (OSI) as specified in AFI 44-102, Chapter 1, Section U, Paragraph 1.52.l. Instead, medical personnel **will report all cases** of suspected rape or sexual assault against cadet victims **concurrently** to [Cadet Counseling Center] . . . and to the Commandant of Cadets. The first report should be made to [Cadet Counseling Center] . . . and will include all pertinent details including the name of the victim to enable [Cadet Counseling Center] . . . to assign a victim advocate. The second **report will be made to the Commandant** of Cadets and **will include ONLY** the following information: 1) A cadet has reported being raped or sexually assaulted, 2) [Cadet Counseling Center] . . . has been notified and will be calling the Commandant with further details, and 3) the medical status of patient is stable, serious, or critical. Medical personnel **will NOT give the Commandant** of Cadets the names of the victim and perpetrator **and WILL NOT contact** OSI, SFOI, or the Victim's AOC **unless the victim has given explicit consent** to those disclosures." (Emphasis added) • "AOCs will expeditiously report all sexual assaults to their chain of command (Group AOC, 34 Training Group Commander and . . . [Commandant] and to . . . [Cadet Counseling Center]. The **AOC will ensure the victim is informed about all such notifications**. Names and **identifying information will be reported only with the victim's permission**. **If the victim is willing to report to investigative authorities**, AOCs should report the assault to AFOSI and/or . . . [Security Forces]. If the AOC is the first person to receive a victim's complaint, the AOC will follow the notification guidelines in paragraph 2.8. **Regardless of whether any formal complaint is made to law enforcement authorities**, AOCs (if notified about the assault) will ensure victims are made aware of all available medical and other support services, provided full opportunity to take advantage of those services, and assigned a victim advocate. Additionally, **if the crime is**

	recent, the . . . [Security Forces] needs to be called immediately to secure any potential crime scene evidence." (Emphasis added) • "To encourage cadets to report sexual assaults and to ensure they receive available medical and counseling services, **cadet victims will generally not be disciplined for self-identified violations** of cadet regulations (such as pass violations, unauthorized alcohol consumption or unauthorized dating, which may have occurred in connection with an assault. AOCs may still counsel cadets about such violations: however, the **decision whether or not to sanction other witnesses for related minor offenses will be made on a case-by-case basis**." (Emphasis added)
August 1, 1997	Air Force issues Instruction (AFI) 71-101V1, "Criminal Investigations" • Rule 25, If case category is Sex Offenses—Rape, carnal knowledge, sodomy, indecent exposure, sexual misconduct, voyeurism, and child molestation, then contact AFOSI about: Rape, sodomy, carnal knowledge, child molestation, or cases involving serious bodily harm. • Contact AF Security Forces about localized investigations (excluding child molestation and rape), including carnal knowledge, indecent exposure, sexual misconduct, and voyeurism on a case-by-case basis.
July 1, 1999	Air Force revises Policy Directive (AFPD) 71-1, "Criminal Investigations and Counterintelligence" • When Air Force personnel commit criminal offenses, illegal activity occurs on an Air Force installation, or Air Force security is breached or compromised, the Air Force must thoroughly investigate criminal allegations and intelligence threats and refer them to appropriate authorities for action • Only the Secretary of the Air Force through the Air Force Inspector General may direct AFOSI to delay, suspend, or terminate an investigation
December 1, 1999	Air Force revises Instruction (AFI) 71-101V1, "Criminal Investigations" • No revisions pertained to sexual assault investigations or AFOSI investigative purview.
April 18, 2000	USAFA revises Instruction (USAFAI) 51-201, "Cadet Victim/Witness Assistance and Notification Procedures • Updates office titles and phone numbers throughout • Adds Memorial Hospital [Colorado Springs, CO] as medical service provider for rape protocols
June 21, 2002	IG DoD revises DoDI 5505.3, "Initiation of Criminal Investigations by Military Criminal Investigative Organizations"

	• Commanders ensure that actual or suspected criminal allegations involving DoD affiliated persons, property, or programs under their control, are referred to the appropriate MCIO or law enforcement organization.
April 16, 2003	Congress enacted P.L. 108-11 requiring a "Panel to Review Sexual Misconduct Allegations at United States Air Force Academy" (The Fowler Panel) • Secretary of Defense appoints a seven-member panel from among private United States citizens with expertise in behavioral and psychological sciences and standards and practices relating to proper treatment of sexual assault victims (including their medical and legal rights and needs), as well as the United States Service academies, to investigate reports that at least 56 cadets had been sexually assaulted at USAFA • The panel to begin work by May 8, 2003, and report results to Congress within 90 days
November 7, 2003	The House of Representatives enacted H.R. 1588, Section 526, "Defense Task Force on Sexual Harassment and Violence at the Military Service Academies" • The House Armed Services Committee requires the Secretary of Defense to establish a DoD task force to more effectively address sexual harassment and violence at the US Military Academy and the US Naval Academy. The task force will be required to report their findings to the Secretary, and should include recommendations to improve efforts such as victim's safety programs, offender accountability, sexual harassment prevention, and standard guidelines for training personnel at the academies. The committee also requires the Secretary to assess the effectiveness of the corrective action taken at the Air Force Academy resulting from various investigations of sexual assault and harassment. • The Secretary of Defense through the Secretaries of the military departments, shall direct each Superintendent to conduct an assessment during each academy program year beginning in 2004 and continuing through 2008, to determine the effectiveness of the academy's policies, training, and procedures on sexual harassment and violence to prevent criminal sexual harassment and violence involving academy personnel. • The 2004 assessment was conducted by the Inspector General of the Department of Defense.

Appendix C. Scope and Methodology

We performed this evaluation from April 14, 2003, through October 1, 2004. Our overall objectives were to (1) oversight the Air Force Working Group's determinations reported on June 17, 2003, "The Report of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy," and (2) assess Air Force leadership accountability for sexual assault problems at USAFA spanning the past decade since 1993. In accomplishing these objectives, we evaluated the adequacy and effectiveness of the policies/ requirements that govern sexual assault incidents at USAFA, including:

- whether USAFA policies/requirements for sexual assaults complied with Federal statute, and DoD and Air Force policies, and;

- whether USAFA policies/requirements for sexual assaults adversely affected incident reporting, investigation, victim assistance, or crime adjudication/remediation; and

- whether AFOSI thoroughly investigated sexual assault incidents involving USAFA cadets.

We collected and analyzed all applicable Federal statutes, and DoD, Air Force, AFOSI, and USAFA policies/requirements that have governed sexual assault reporting, investigation and adjudication over the past 10 years. We also assessed each criminal investigative case involving a USAFA cadet that AFOSI opened over the last 10 years. We reviewed each case for investigative thoroughness, timeliness and outcome, and to identify any barrier to reporting, investigating, or adjudicating the case. Where appropriate or beneficial, we interviewed the responsible investigator(s), office manager(s), and headquarters staff to ensure clarity and complete understanding.

In assessing requirements, we compared statutory and policy requirements with actual practices to identify non-compliance issues. We also compared the different statutes and policies to identify differences in statutory, DoD, Air Force and USAFA requirements that might lead to confusion or inconsistent application of requirements. In assessing actual practices, we collected any formal guidance related to the practice and interviewed proponents and users as appropriate or beneficial to ensure clarity and complete understanding. In any instance where USAFA policy or operating practice governing sexual assault reporting appeared inadequate, we identified and interviewed the proponents and others as necessary, and reviewed historical documentation to determine the justification for the sexual assault systems and processes in effect at USAFA. Based on the overall results, we then assessed the individual Air Force Working Group determinations for factual accuracy and completeness, and whether we agreed with the working group's conclusions and recommendations.

Our evaluation included reviewing:

- support/assistance programs available to USAFA victims, including;
  - the Victim/Witness Assistance Program; and

  - cadet counseling services;

- confidentiality afforded to cadet victims at USAFA;
- medical support/protocols used for sexual assault investigations involving USAFA cadets;
- unique or academy-specific procedure that USAFA uses for judicial proceedings or non-judicial punishments in sexual assault cases;
- the extent to which USAFA uses "victim amnesty," or similar programs in addressing victim violations related to or involved in sexual assault incidents;
- USAFA grievances systems or redress methods that relate to or have a bearing on sexual assaults at USAFA;
- training on sexual assault, sexual harassment, equal opportunity, or other related areas required for USAFA cadets;
- security available for USAFA cadets when on academy grounds and in dormitories; and
- USAFA systems, processes, or methods used in remediating sexual assault incidents.

In assessing leadership accountability for sexual assault problems at USAFA, we identified leaders, managers and others that made decisions, or were authorized to make decisions, on matters related to sexual assault problems at USAFA over the last 10 years. We then conducted formal, on-the-record interviews and, whenever possible, collected documentation to corroborate the oral testimony. Overall, we conducted more than __ interviews during the evaluation, including 144 formal on-the-record interviews to assess accountability. The interviews included current and former Air Force officials, as well as current and former USAFA cadets, as follows:

- Three Secretaries of the Air Force;
- Four Chiefs of Staff of the Air Force;
  - Two Deputy Chiefs of Staff of the Air Force;
- Five General Counsels of the Air Force;
  - Two Deputy General Counsels of the Air Force;
- Two Surgeons General of the Air Force;
- Four Inspectors General of the Air Force;
- Three Commanders of Air Force Office of Special Investigations;
  - Five AFOSI Detachment Commanders at USAFA;
- Two Judge Advocate of the Air Force;

  - One Deputy Judge Advocate of the Air Force;
  - Three AFOSI Judge Advocates;
  - Four USAFA Judge Advocates;
- Three Superintendents of U.S. Air Force Academy;
- Five Commandants of the Cadet Wing of U.S. Air Force Academy;
  - Three Vice Commandants of Cadet Wing of U.S. Air Force Academy;
- One Dean of Faculty of U.S. Air Force Academy;
- Five current and former staff members, Sexual Assault Services Group, U.S. Air Force Academy; and
- Current or former USAFA cadets.

Appendix D. Prior Coverage

General Accounting Office Reports

GAO-03-1001, "Military Education: Student and Faculty Perceptions of Student Life at the Military Academies," is a report responding to surveys conducted at the military academies dealing with perceptions of student life. The survey did not query students and faculty on specific incidents of alleged sexual assault at the academies. In terms of sexual harassment, about half of the students at each academy responded that their academy's emphasis on the prevention of sexual harassment was about right. However, female students were more likely than male students to report that the prevention of sexual harassment is generally or greatly underemphasized. Twenty-five percent of female students at the Military Academy, 21 percent at the Naval Academy, and 37 percent at the Air Force Academy responded that the prevention of sexual harassment is generally or greatly underemphasized. The results of the 1994 survey of students on sexual harassment issues showed that the majority of women students experienced some form of gender-based harassment that interfered with their performance or created an intimidating, hostile, or offensive environment.

GAO-NSIAD-99-27, "Gender Issues: Information to Assess Service members' Perceptions of Gender Inequities Is Incomplete," is based on various surveys and studies of perceptions of military personnel, articles in service-orientated publications, and discussions with experts in the military personnel area. The GAO identified two major areas where studies indicate that servicemen and service women perceive inequities: 1) career opportunities (including assignment policies and other factors that may have an impact on career advancement) and 2) physical fitness and body fat standards. Although this report did not focus on military academies, it did highlight a relevant perception of active duty military males. Men fear that women will claim sexual harassment if they are pushed too hard when it comes to job performance.

GAO/NSIAD-95-49, "DoD Service Academies: Comparison of Honor and Conduct Adjudicatory Processes," in this report GAO reviewed the adjudicatory systems used at the academies to make decisions on student conduct and performance. This report (1) compares the honor and conduct systems at each academy and describes how the various systems provide common due process protections and (2) describes the attitudes and perceptions of students toward these systems.

Although the honor systems at the academies have many similarities, there are some prominent differences among them. The honor codes at the Military and Air Force academies include no-toleration clauses that make it an honor offense to know about an honor offense and not report it, while at the Naval Academy failure to act on a suspected honor violation is a conduct offense. Differences also exist in the standard of proof that is used in honor hearings, "beyond a reasonable doubt" used at the Air Force Academy versus "a preponderance of the evidence" used at the other academies. A large majority

of the students questioned the reasonableness of many of the minor rules and regulations in the conduct codes. Also, many students perceive academy handling of conduct offenses, the application of rules and regulations, and the imposition of disciplinary actions as inconsistent.

GAO/NSIAD-95-58, "DoD Service Academies: Update on Extent of Sexual Harassment," - Similar to our previous findings, the majority of academy women reported experiencing at least one form of sexual harassment on a recurring basis in academic year 1993-94, while the highest percentage of men indicating exposure to some form of recurring sexual harassment was about 11 percent. The proportion of women at the Naval and Air Force academies who reportedly experienced some form of sexual harassment a couple of times a month or more often represented a statistically significant increase from the 1990-91 levels. Again, the most common forms of sexual harassment were verbal comments and visual displays. The comparison of the 1990-91 and 1994 results appears in appendix I. In our 1994 follow-up survey, we added a question on sexual harassment tailored after the wording of the DOD definition of sexual harassment issued in 1988. This was suggested at the Senate Armed Services Committee's hearing on our January 1994 report. This new question focused on the incidence of more overt, physical forms of sexual harassment in addition to verbal forms. Responses to this new question indicated that between 36 percent and 42 percent of the women at each academy have been subjected at least once or twice over the year to (1) physical, gender-related behavior that interfered with their performance or created a hostile environment or (2) unwelcome, deliberate physical contact of a sexual nature. Also, from 11 percent to 22 percent of the academy women reported encountering sexual advances that were tied to some aspect of their academy careers. Responses to the questions added to the 1994 survey are shown in appendix II. Academy men tended to perceive an improvement in the atmosphere for reporting sexual harassment, with significant declines in the percentages seeing negative consequences as likely to accrue to those who report sexual harassment. The responses of academy women, however, showed no such change in perceived consequences.

GAO/NSIAD-94-95, "Military Academy: Gender and Racial Disparities," reports how well the Military Academy treats women and minorities. The GAO had reported separately on disparities at the Naval Academy and the Air Force Academy. This report addresses 1) differences in performance and experience indicators between man and women and between whites and minorities for the classes of 1988 through 1992, 2) perceptions of the fairness of the treatment that female and minority cadets receive, and 3) actions the Academy has taken to enhance the success of women and minorities at the Academy.

Male and female cadets differed in some of their experiences at the U.S. Military Academy. For example, women consistently received offers of admission at higher rates than men, but also consistently experienced higher attrition than men. Women's academic grades were lower than men's, particularly during freshman and sophomore years, despite generally higher academic predictor scores. In contrast, women's physical

education grades were somewhat higher despite lower predictor scores in this area. Although reviewed more frequently for Honor Code violations and for failure to meet academic standards, women were recommended for separation less often. A GAO survey of cadets, staff, and faculty revealed perceptions that women were generally treated the same as men. Some male cadets, however, viewed women as receiving better treatment in some areas.

GAO/T-NSIAD-94-111, "DoD Service Academies: Further Efforts Needed to Eradicate Sexual Harassment," - Statement by [redacted]

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The academies have not met the goals of DoD's Human Goals Charter or its policy of providing an environment that is free from sexual harassment. Although relatively few cases of sexual harassment were formally reported, responses to our survey indicated that nearly all academy women reported experiencing at least one form of sexual harassment during academic year 1991. The most common forms of harassment were verbal comments. Our survey also showed **a** relationship between students experiencing a high degree of sexual harassment and those feeling stress. The academies generally have met and gone beyond the minimum requirements DOD has established for sexual harassment eradication programs. For example, the academies have published policy statements on the issue and have conducted prompt and thorough investigations of reported incidents. Among the additional actions taken by the academies are more extensive tracking and monitoring of incidents and providing more options for reporting and dealing with harassment. However, the inspectors general have not conducted reviews at the academies that included sexual harassment prevention and education as an item of special interest. Moreover, none of the academies has developed usable trend data to assess the effectiveness of its sexual harassment eradication program. The Military and Air Force academies have not conducted routine, systematic program evaluations. A disciplined evaluation approach is critical to determining whether current efforts to eradicate harassment are working or new efforts should be tried. In reviewing the efforts of other organizations, we also identified several approaches to sexual harassment prevention that may prove effective at the academies.

GAO/NSIAD-94-6, "DoD Service Academies: More Actions Needed to Eliminate Sexual Harassment,"- A GAO survey found widespread sexual harassment at the nation's military academies, with between 93 and 97 percent of female students reporting some form of sexual harassment in 1991. The most common forms of harassment were derogatory personal comments and suggestions that standards had been lowered for women. GAO found a strong link between harassment and stress. The academies generally have complied with the minimum requirements the Defense Department has set for programs to eliminate sexual harassment. Inspectors General have yet, however, to expressly review sexual harassment prevention and education at the academies. Moreover, none of the academies has developed usable data to assess whether their sexual harassment eradication programs are working. In reviewing the efforts of other organizations, GAO noted several approaches to preventing sexual harassment that may

prove effective at the academies. GAO summarized this report in testimony before Congress; see: DOD Service Academies: Further Efforts Needed to Eradicate Sexual Harassment, by [redacted], before the Subcommittee on Force Requirements and Personnel, Senate Committee on Armed Services.

GAO/NSIAD-93-244, "Air Force Academy: Gender and Racial Disparities" - Performance indicators for male and female cadets showed mixed results—each group fared better in some comparisons and worse in others. For example, women have not fared as well as men in their admissions qualification rates and their physical fitness test scores. Women also had higher attrition rates than men did, and proportionately fewer women were in the top 15 percent of their graduating classes. Men, however, received proportionately fewer admissions offers than women and had lower academic admissions scores.

A GAO survey of cadets revealed perceptions that women generally received treatment equal to that of men. However, a higher percentage of men than women perceived that women were treated better, and a slightly higher percentage of women than men perceived that they were treated worse. Over the past few years, the Academy has taken a number of steps that should help women succeed at the Academy. However, it does not have a consolidated database to analyze changes in student performance indicators. Neither has it established criteria for determining when performance differences are significant. Finally, the Academy has not documented specific actions it has taken or plans to take to implement prior equal opportunity recommendations

GAO/T-NSIAD-92-41, "DoD Service Academies: Status Report on Reviews of Student Treatment," is testimony before the Subcommittee on Manpower and Personnel, Committee on Armed Services, U.S. Senate by [redacted], National Security and International Affairs Division. xx stated that in the area of harassment, they found that sexual harassment occurs more frequently than is reported to officials. In response to survey questions about the types and extent of harassment experienced, significant numbers of female respondents at all academies reported personally experiencing various types of verbal and visual (graphic) harassment fairly often, once or twice a month or more.

GAO/NSIAD-92-57, "DoD Service Academies: Academy Preparatory Schools Need a Clearer Mission and Better Oversight,"- The schools' missions are not clearly defined. Their mission statements refer to preparing "selected" individuals for academy admission. The schools appear to be pursuing differing goals regarding specific subgroups such as enlisted personnel, females, minorities, and recruited athletes-the primary groups the schools now serve. For example, about 50 percent of the students enrolled at the Air Force prep school were recruited athletes; this is about double the percentage of recruited athletes at the Army and Navy schools.

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The Department of Defense (DOD) has limited information on the quality of the schools' programs. Program reviews of the prep schools conducted by service academy faculty do

not assess the schools against a uniform set of quality and performance standards. DOD lacks the tools and information it needs to assess whether the schools are cost-effective. GAO'S review indicated that the Navy, Army, and Air Force preparatory programs cost about $39,800, $50,900, and $60,900, respectively, for each student entering an academy.

Air Force Reports

Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy - Fowler Commission: "In addition to maintaining an Air Force entity external to the Academy to provide effective oversight, it is important to ensure that the tenures of key Academy personnel are sustained for an appropriate period of time to provide an effective balance between the need for stability and the need for reinvigorated leadership. The Panel is concerned that the short tenures of the prior Superintendents and the Commandants of Cadets to three years in order to provide for greater continuity and stability in Academy leadership"

"The Panel recommends that the Air Force extend the tour length of the Superintendent to four years and the tour length of the Commandant of Cadets to three years in order to provide for greater continuity and stability in Academy leadership."

Headquarters, United States Air Force, "The Report of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy." Secretary Roche directed the General Counsel of the Air Force to lead a high-level working group to review cadet complaints, and the policies, programs and practices of the Academy to deter and respond to incidents of sexual assault, with a view toward making recommendations as appropriate. Secretary Roche also tasked the Working Group to review cases of sexual assault that had been reported from January 1993 to December 2002.

The Working Group found no systemic acceptance of sexual assault at the Academy, institutional avoidance of responsibility, or systemic maltreatment of cadets who report sexual assault. Instead, the Working Group found considerable attention to programs intended to encourage reporting, avoid incidents of sexual assault and support victims. However, the Working Group also found the focus on sexual assault issued had varied over time and lessened in recent years, and a number of culture and process matters are problematic. Collectively, they produced a less than optimal environment to deter and respond to sexual assault or bring assailants to justice. They demonstrate work that needs to be done to ensure that victim support and institutional value are consistently addressed.

Air Force Academy Honor Climate Assessment Task Force, "On the Honor Code and System," August 2001, – Based on evidence developed during the assessment, the Task Force identified two overarching findings. First, while the lecture format of honor instruction at the Air Force Academy adequately covers the rudimentary aspects of the Honor Code and Honor System, it fails to intellectually engage cadets in grasping the centrality and criticality of honor in discharging – or failing to discharge – the daunting

responsibilities and authorities attendant to a commission in the United States Armed Forces. It is not enough, not nearly enough, to lecture only on the principle and virtue of honor to young adults; this vital building block of character must be understood and internalized as central to the credibility and effectiveness of the profession of arms.

Other DoD Reports

Defense Manpower Data Center Report No. 96-014 – In March 1994, the Deputy Secretary of Defense asked the Secretary of the Air Force and the Under Secretary of Defense (Personnel and Readiness) to develop a sexual harassment policy action plan. This plan was provided in April 1994, and included among its elements (1) the establishment of a Defense Equal Opportunity Council Task Force on Discrimination and Sexual Harassment to review the Military Services' discrimination complaints systems and recommend improvements, and (2) the conduct of a Department-wide sexual harassment survey.

Based on the data collected in this study, there is evidence that sexual harassment is declining significantly in the active-duty Military Services. Between 1988 and 1995, the percentage of women reporting incidents of sexual harassment declined nine percentage points. On the other hand, sexual harassment remains a major challenge that all the Services must continue to combat.

Report No. 96-075 Management and Administration of the United States Air Force Academy, February 23, 1996

This audit was requested by the Senate Subcommittee on Personnel, Committee on Armed Services. The objectives were to determine whether the operations of the United States Air Force Academy (Academy) were within the intent and scope of United States Code, title 10, and DoD guidance; to evaluate the economy and efficiency of the operations of the Academy; and to follow up on position management recommendations in a previous IG, DoD, audit report.

The Academy was generally operating within the intent and scope of United States Code, title 10, and DoD guidance. The Academy also had begun implementing the recommendations made in the prior IG, DoD, report. However, the audit did identify conditions warranting management action.

The Athletic Association unnecessarily disbursed about $30,000 for lodging and meals for the football team; inappropriately received appropriated funding support; accrued significant overtime; accepted travel benefits from private companies; and did not distinguish between contract personnel and Government employees.

The Academy also incorrectly designated about 150 civil engineering positions as military-unique and authorized 33 positions that were not essential for the accomplishment of its mission or for the maintenance of the quality of life of the Cadet Wing. In addition, the Academy designated three positions as military-unique, although

the duties and responsibilities of those positions could be accomplished more cost-effectively by using civilians.

Appendix E. Case Reviews

During March 20 through July 16, 2003, we reviewed 56 AFOSI sexual assault investigative case files, which is the total sexual assault cases that AFOSI identified as involving a U.S. Air Force Academy (USAFA) cadet opened over the last 10 years.[1] The cases involved incidents that occurred between August 1, 1991, and November 17, 2002, and reported to AFOSI during January 7, 1993 through February 21, 2003. To ensure appropriate emphasis on current policy and conditions, as opposed to historical conditions that might not truly reflect current policy and requirements, we also segregated the cases and reviewed those opened over the last 3 years (18 cases). In addition, to relate actual cases to the results of a survey that we conducted during May 2003, to assess current climate/culture at the academy, we segregated the cases and looked at those opened after May 1999 (20 cases). The post May 1999 period would coincide as best as possible with the cadet class years involved in the survey.

Investigative Case Statistics

Three (5 percent) of the 56 AFOSI sexual assault investigations were closed after investigation because the victim withdrew the complaint (1 case) or recanted the allegations (2 cases).[2] The table below shows overall characteristics for the remaining 53 cases.

Table 1
AFOSI Sexual Assault Investigations

	Last 10 Years		Last 3 Years		Since May 1999	
	No.	**%**	**No.**	**%**	**No.**	**%**
Assault Alleged/Investigated	**53**	**100**	**16**	**100**	**18**	**100**
Rape	23	44	7	44	9	50
Sodomy[3]	5	9	1	6	1	6
Indecent Assault/Act	25	47	8	50	8	44
Alleged Assault Involved	**26**	**49**	**8**	**50**	**9**	**50**

[1] Five of these investigations are still not complete. Investigative work continues in two cases, and courts martial are pending in the remaining three cases. We also reviewed one investigation involving consensual sex that came to our attention during the evaluation. This case was investigated during the 10-year period and involved a female who was a cadet when a sexual relationship began between her and a Military Member assigned to USAFA. The relationship began in the early-1980s, continued for a number of years, and resulted in the Military Member being discharged from the Service. This case did not involve a sexual assault and, therefore, did not fit within the parameters for our evaluation. It is not included in our case analysis.

[2] These cases all involved first year (freshman) cadet victims.

[3] Most of the sodomy cases involved anal rape of a female.

Alcohol						
Victim Only	2	4	0	0	0	0
Suspect Only	10	19	5	31	5	28
Both Victim and Suspect	14	26	3	19	4	22
Alleged Assault Occurred	**53**	**100**	**16**	**100**	**18**	**100**
On-Base at USAFA	34	64	10	63	11	61
In Dorm Room at USAFA	22	42	8	50	9	50
Off-Base Away from USAFA	19	36	6	37	7	39
Victims of the Alleged Assaults[4]	**61**	**100**	**18**	**100**	**21**	**100**
Non-Cadet	19	31	9	50	10	48
Cadet Freshman, Candidate, or Basic Trainee	15	25	6	33	8	38
Cadet Sophomore	14	23	2	11	2	9
Cadet Junior	9	15	1	6	1	5
Cadet Senior	4	6	0	0	0	0
Suspects of the Alleged Assaults	**58**	**100**	**16**	**100**	**18**	**100**
Unknown Suspect	6	10	2	13	2	11
Non-Cadet	5	9	1	6	1	6
Cadet Freshman, Candidate, or Basic Trainee	9	16	1	6	2	11
Cadet Sophomore	9	16	1	6	1	6
Cadet Junior	9	16	3	19	3	16
Cadet Senior	20	33	8	50	9	50
No. Cadet Victim and Cadet Suspect Cases	27	51	6	38	7	39
No. Freshman Victim and Upper-Class Suspect Cases	6	11	5	31	5	28

Based on the information in Table 1:

- Most (53 percent) AFOSI sexual assault investigations at USAFA involve rape or sodomy allegations, as opposed to lesser crimes such as indecent acts.

- Most alleged assaults (64 percent) occur on-base at the academy and a large proportion (42 percent) occur in academy dormitories.

- A large proportion (49 percent) of the incidents involve alcohol use and these incidents usually involve both the victim and suspect using alcohol.

[4] Includes two male victims. Victims were 96 percent female and 4 percent male.

- The largest victim category is cadets (71 percent), and *first year female* cadets (including candidates and basic trainees) are (1) much more likely to be sexually assaulted, ***or*** (2) much more likely to report a sexual assault after it occurs, ***or*** (3) both more likely to be assaulted and to report the assault.

- Cadet seniors (36 percent of the suspects) are by far more likely to commit a sexual assault than other cadets, with the odds about equal for the remaining three class years.

- Most (51 percent) of the sexual assault investigations involve victims and suspects who are both cadets.

- 11 percent of the sexual assault investigations involve freshmen cadet victims and upper-class cadet suspects.

AFOSI was the primary criminal investigative organization in most, but not all the investigations, and the incidents were usually not reported to law enforcement immediately. Once the incidents were reported, they were generally investigated on a timely basis. Table 2 below presents this information, and current investigation status, for the AFOSI investigations.

Table 2
AFOSI Sexual Assault Investigations
Incident Notification and Investigation

	Last 10 Years		Last 3 Years		Since May 1999	
	No.	**%**	**No.**	**%**	**No.**	**%**
Who Investigated the Incident						
AFOSI	47	89	12	75	14	78
Joint AFOSI/Other Law Enforcement	5	9	3	19	3	17
Other Law Enforcement/AFOSI Monitor	1	2	1	6	1	5
Average No. People/Organizations Notified Before Reporting to AFOSI	4		4		4	
Average No. Days Elapsed Between Incident and Reporting to AFOSI	127		232		209	
Average No. Days to Investigate	64		79		76	

Case						
Current Investigation Status						
Investigative Work Continuing	2	4	0	19	0	
Suspect Unknown and Not Identified Through Investigation (Case Closed)	5	9	2	12	2	
Investigation Cleared Suspect	1	2	1	6	1	
Case Referred to Prosecutor/Academy for Action	46	87	13	63	15	
No. of Suspects Referred for Action[5]	48		13		15	

As can be seen in Table 2:

- AFOSI was directly involved in most of the investigations, but in one case only monitored the civilian police department investigation.

- On average, more than 4 months (127 days) elapsed before the incident was reported to AFOSI, which likely contributed to the investigations not identifying suspects in 9 percent of the cases and producing insufficient evidence to prosecute/act in another 19 percent of the cases—over the last 3 years, the delay was more than 7 months (232 days).[6]

- Investigation cleared the suspect in one case and resulted in referring 48 suspects for prosecution or other action.

Table 3 below presents information on the resulting prosecutions and other actions.

[5] Two cases each had two suspects.

[6] After this much time, a sexual assault examination on a victim or suspect likely would not produce any useful evidence. Similarly, any physical evidence possible from a crime scene examination would most likely be lost, and even witness memories likely would have diminished substantially.

Table 3
AFOSI Sexual Assault Investigations
Prosecutions and Other Actions

	Last 10 Years		Last 3 Years		Since May 1999	
Prosecution/Academy Action[7]						
Court Martial/Trial Conducted	7	15	3	23	3	20
Acquitted at Trial	2	29	0	0	0	0
Sentenced to Confinement or Probation	5	71	3	100	3	100
Court Martial/Trial Pending	3	6	3	23	3	20
Article 15 Punishment	4	8	0	0		
Accused Resigned or was Disenrolled from USAFA and/or Discharged from the Military	15	31	4	31	5	33
Required to Repay Education Cost	2	20	2	50	2	50
Honor Code Sanctions Imposed	10	21	0	0	1	7
Insufficient Evidence to Prosecute/ Act	9	19	3	23	3	20

As indicated in Table 3:

- A large proportion of the investigations result in courts martial (21 percent) and/or disenrollment from USAFA (31 percent)—over the last 3 years, these proportions increased slightly overall to 23 percent and 31 percent, respectively.

- The large portion of the remaining cases result in Article 15 punishment (8 percent), or honor code sanctions (21 percent)—over the last 3 years, these proportions declined to 0 percent and 0 percent, respectively.

[7] An individual case may have more than one action, e.g., a court martial or trial that results in confinement time may also result in discharge from Military Service and disenrollment from the academy. We have categorized actions based on the most serious action in the case, beginning with court martial/trail, e.g., the 7 suspects shown with court martial are not among the 15 suspects shown as resigned or disenrolled from the academy. **NOTE**: Actions are based on information in the investigative files. As recognized in the Air Force IG report, Academy records are inadequate to determine all actions in the cases.

- 19 percent, however, do not result in punitive action because the evidence is insufficient—over the last 3 years, this proportion increased slightly to 23 percent.

Investigative Case Reviews

In completing the protocol and assessing the individual cases, we noted several instances where a victim or witness statement indicated a sexual assault (other than the one under investigation) had occurred. Our case assessments, therefore, included reviewing statements and other case information to identify all such crime indications and determine whether additional investigations should have been initiated. If so, we determined whether the additional investigations were initiated. We also assessed each case for indicators of (1) alcohol or drug involvement, (2) barriers to incident reporting, investigative work, or prosecution, and (3) investigative timeliness and thoroughness.[8] In assessing investigative timeliness and thoroughness, we focused specifically on investigations opened during the last 3 years (cases opened during calendar years 2000-2003, or 18 of the 56 total investigations), since these cases would best reflect investigative performance under current policies and procedures. Because we identified problems with investigative timeliness and/or thoroughness in several cases, we assessed these cases to determine whether the timeliness or thoroughness problems were sufficiently serious to have impacted case outcome and, if so, whether the investigation should be reopened. In each case, we also conducted a follow-up interview(s) with the case agent to afford the case agent an opportunity to provide clarifying information or explain the investigative deficiency.

Additional Investigations Should Have Been Opened. Statements and information in two cases indicated that sexual assaults other than the ones under investigation had occurred and should have led to additional investigative case openings.[9] Information on these cases follows:

- **Investigation No.** [redacted]: During interview, the victim (a non-cadet who resided in the Colorado Springs area) indicated that [redacted] had sexual relations with other cadets the previous year, when [redacted] would have been only 15 years old. AFOSI did not pursue the possible statutory rape crime. (**NOTE**: In following up on this matter with AFOSI on May 27, 2003, an AFOSI/HQ representative [redacted] advised that [redacted] did

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[8] Information on alcohol involvement in the cases is shown in the previous section (Table 1)

[9] Our initial review identified a possible third case (Investigation No. [redacted] where an additional investigation(s) should have been opened. In this case, the victim (a cadet in her junior year at USAFA) stated during interview that [redacted] had also been raped during [redacted] freshman year and told her AOC, but the AOC did nothing with the information. In following up on this matter with AFOSI on May 27, 2003, however, the AFOSI representative provided a copy of agent notes that we had overlooked in the file indicating the case agents did follow-up and a second interview indicated the previous rape occurred during high school before the victim attended USAFA. This additional information resolved the issue in our initial case review.

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not believe the victim clearly indicated the sexual activity or the cadets involved. However, the investigative file did not indicate that the case agent asked the victim questions to resolve or clarify these issues. As a result of our findings, the matter was referred to the AFOSI legal office and this office has recommended that AFOSI locate and re-interview the victim to ascertain if any rape occurred during the timeframe involved.)

- **Investigation No.** [redacted]: During interviews, two witnesses indicated that the subject had also sexually assaulted them. AFOSI did not pursue these allegations. (**NOTE**: In following up on this matter with AFOSI on May 27, 2003, we learned that as a result of our findings, the two allegations were sent to the AFOSI legal office for comment and/or recommendation.) **b2**

Barriers to Reporting, Investigating and Prosecuting Sexual Assaults at USAFA. Our case reviews identified various barriers to addressing sexual assaults at USAFA, as follows:

- We identified barriers to *reporting* sexual assaults at USAFA in 25 (45 percent) of the 56 cases. The primary barrier to reporting a sexual assault was the USAFA policy adopted in July 1997, under which USAFA personnel were prohibited from reporting a sexual assault to law enforcement without permission from the victim or USAFA Superintendent.[10] Other reporting barriers that we identified involved victims who were hesitant to report or delayed reporting a sexual assault because they (1) feared getting into trouble for underage drinking, (2) feared their assailants and believed the assailants would commit additional acts/abuses against them if they reported the sexual assaults, or (3) were embarrassed for allowing themselves to be in places or situations permitting the sexual assaults to have occurred.

- We identified barriers to *investigative work* in 6 (11 percent) of the 56 cases. These barriers were all beyond AFOSI control and included (1) USAFA staff giving "rights advisements" and advising suspects to retain legal counsel before AFOSI was notified, which limited investigator ability to gain cooperative relations with suspects and, thereby, attain possible confessions, and (2) USAFA staff advising victims that they did not have to talk to AFOSI, thereby delaying reports to AFOSI and potentially causing losses of physical and other evidence essential to identifying suspects and solving the crimes. As shown in the previous section (Tables 2 and 3), AFOSI did not identify suspects in 9 percent of the cases. In an additional 19 percent (28 percent total), the evidence was insufficient to result in prosecution or action against the suspects. We cannot hold conclusively that these consequences resulted directly from

[10] This policy was set aside in May 2003, under the Agenda for Change

delayed reporting, but the delayed reporting certainly would have been a major contributing factor.

Investigative Timeliness and Thoroughness. Investigative work in 5 (28 percent) of the 18 cases opened in the last 3 years was untimely or not completed thoroughly. These investigative deficiencies generally did not impact the case outcomes. In one (20 percent) of these cases, however, case outcome may have been impacted adversely. In our view, nothing would be gained from re-opening investigations in any of these cases.[11] Information on these cases follows:

- **Case Number** [redacted] (Victim: [redacted]; Subject: [redacted]) **b2**
  The timeliness or thoroughness problems identified were.

  (1) The victim alleged that other cadets rode in the auto, [redacted], with [redacted] and subject. The other cadets were not pursued as witnesses. During follow-up interview with the case agent [redacted], the case agent advised that the additional witnesses were not pursued because the victim could not identify any co-rider for interview. (**NOTE**: Based on the investigative case file, AFOSI briefly interviewed the subject before rights advisement and [redacted] admitted driving victim to [redacted] dorm and kissing [redacted], but denied any sexual activity. Subject then requested counsel, which ended the interview.)

  (2) The [redacted] was not located for crime scene processing or owner interview. According to the case agent, in an attempt to locate the vehicle, subject's sponsor was contacted because it is common practice for cadets to use their sponsor's vehicles; however, no sponsor vehicle came close to matching [redacted]. The case agent advised, however, that the sponsor was not interviewed regarding the issues. ([redacted] did not give a specific reason for not interviewing the sponsor.) The case agent further advised that [redacted] did not ask the sponsor if the sponsor had ever seen subject driving a vehicle matching the [redacted] description. We asked the case agent if [redacted] contacted Security Forces to help locate the vehicle. [redacted] responded that Security Forces cannot track vehicles by type or color, and must have the registration number from the DoD sticker to identify a vehicle on base. Finally, when queried as to whether [redacted] tried to locate subject friends, or USAFA staff who knew subject, to identify possible witnesses or the vehicle owner, the case agent stated that [redacted] vaguely remembered these type investigative steps, but nothing was **b6**

[11] We do not believe that timeliness or thoroughness deficiencies impacted the outcomes in four cases. In the remaining case, the deficiencies involved physical evidence identification and crime scene processing. The time elapsed since the deficiencies occurred would preclude obtaining meaningful, tangible evidence that would support current prosecution efforts.

developed and the investigative steps were not documented as they should have been.

(3) Sign-in sheets at Vanderberg Hall were not checked to help identify witnesses, establish date and time, or otherwise support victim's statement. The case agent advised that C1Cs and C2Cs are not required to sign out of their dorm areas and while C3Cs and C4Cs are, past experience has shown most do not or list vague or really broad locations, i.e., Denver. (**NOTE**: While touring the academy dorms on June 25, 2003, the duty AOC advised us that cadet one degrees and two degrees are required to sign out when they leave the academy reservation.)

Had these thoroughness problems not occurred, the case outcome could have been significantly different.

- **Case No.** [redacted] (Victim: [redacted], Subject: [redacted]) During interviews, two witnesses ([redacted] and [redacted]) told AFOSI that the subject had also sexually assaulted them. In following up with the case agent [redacted], the case agent did not remember witness [redacted] or why nothing was done regarding [redacted] allegations. The case agent did remember witness [redacted], advising that [redacted] attended the [redacted]. The case agent believed that [redacted] allegation was a "passing comment." However, he did not recall following up with [redacted] to clarify. Additionally, the case agent did not recall any coordination with the Denver Police Department regarding [redacted] allegation. **b2** **b6**

- **Case** No. [redacted] (Victim: [redacted], Subject: Unknown) The timeliness or thoroughness problems were: **b2**

  (1) Bed linens and clothing (PJs) were not seized as evidence. The case agent [redacted] advised that the case involved kissing and fondling only. As a result, [redacted] did not believe that hair evidence, which might have been found on the items, would have proven anything. Additionally, based on previous cases, [redacted] advised that cadet rooms were noted for having lots of hair present. In response to questions, however, the case agent agreed that the sheet and blanket, which had been issued to the victim recently when [redacted] started basic training, should not have had much hair. Additionally, the case agent did not query the victim about whether [redacted] changed the sheets. The case agent agreed that this was an important step, since a subject had not been identified. The case agent believed that [redacted] discussed this issue with the Detachment Commander (DETCO) during the investigation, but no such discussion was documented in the case file. **b6**

(2) Canvass interviews were not completed to identify a possible subject. According to the case agent, canvass interviews were not done because the victim's roommate refuted the victim's entire statement concerning the alleged crime. However, due to oversight, the case agent did not obtain a signed, sworn statement from the roommate, even though the statement was the reason the case agent did not pursue other investigative leads.

- **Case No.** [redacted] (Victim: [redacted], Subject: [redacted]) The timeliness or thoroughness problems were. b2 b6

(1) Subject's ring was not seized and checked for blood evidence. The case agent advised that another agent, the duty agent when the incident occurred, collected evidence from the subject. The case agent was not involved in seizing subject evidence. The case agent and duty agent both handled evidence collected from the victim. Security Forces Squadron (SFS) handled the sexual assault kit, which was turned over to AFOSI when AFOSI entered the case. The duty agent could not recall why the ring was not collected as evidence, but believed the subject did not have the ring when he collected subject evidence.

(2) Crime scene was not processed--no photo, sketch, or evidence collection. According to the case agent, AFOSI was not involved until approximately one week after the incident and witnesses reported that the victim had cleaned up the blood at the crime scene. As a result, the case agent did not believe that processing the crime scene would have added value to the case. The case agent also believed that the DETCO and Regional Forensic Coordinator (RFC) discussed this issue and decided not to process the scene. The duty agent recalled a discussion with the case agent involving going to the crime scene and taking carpet, but could not recall who decided not to do so. He also could not explain why the evidentiary items referenced in RFC crime scene processing guidance were not collected. Additionally, he could not recall if the DETCO was involved in the meeting or made the decision not to process the crime scene. Finally, he believed that the case agent coordinated this issue with the Aurora Police Department, but did not know about a specific discussion.

- **Case No.** [redacted] (Victim: [redacted]; Subject: [redacted]) The timeliness and/or thoroughness problems were: b2

(1) E-mails between victim and subject indicate that the sexual activity might have been consensual, and also tend to contradict the victim's statement that [redacted] did not yell during the alleged assault because [redacted] feared cadet discipline. The victim, however, was not re-interviewed b6

regarding the e-mails to assess credibility in [redacted] allegations. The re-interview could have resulted in the victim recanting [redacted] story in whole or part. According to the case agent [redacted], a re-interview was considered, but [redacted] and the DETCO decided against one because of a "gray area" concerning confrontational sexual assault victim interviews. In this regard, the case agent advised that this type re-interview would have been done at his subsequent duty assignment, but the USAFA environment is different because cadet victims come to the academy with strong congressional or senatorial backing. When questioned further regarding a clarification versus confrontational interview, the case agent said a "fine line" separated the two and he was afraid to cross that fine line in the academy environment. **b6**

(2) A Forensic Science Consultant (FSC) was not contacted, even though required in AFOSI guidance. The case agent advised that [redacted] was unsure why FSC coordination was not documented in the case file. [redacted] opined that FSC coordination for the case might have been documented in case [redacted], which involved the same subject. However, that case file also did not reflect FSC coordination. **b2**

(3) AFOSI did not follow-up with the Staff Judge Advocate (SJA) after receiving a SJA letter saying no action was pending in the case. The case agent could not explain the omission.

b6

(4) After receiving e-mail traffic between the victim and subject on May 2, 2002, the case agent waited more than 2 weeks, until May 17, 2002, to read the e-mails. According to the case agent, the victim was looking for the e-mails May 2-5, 2002, provided them to [redacted] during this timeframe, [redacted] rceived the final ones on May 5, 2002, and [redacted] should have shown May 5, not May 2, as the receipt date in the case file. He could not explain why [redacted] did not review them until May 17, 12 days after a May 5 receipt date.

(5) A month expired before the case agent asked the ADC for permission to talk to subject. The case agent was unable to explain the delay. **b2**

- **Case No.** [redacted] (Victim: [redacted]; Subject: [redacted]) Timeliness or thoroughness problems were: **b6**

(1) Crime scene was not visited or diagrammed. The case agent could not recall specifically why a crime scene visit was not conducted. However, since the subject and victim agreed the sex act took place and the only question was consent, the case agent did not believe that visiting the crime scene would have added value to the investigation. According to the case agent, the decision not to visit the crime scene

involved the type of issue that would have been cleared/discussed with the DETCO, even though such a discussion was not documented in the case file.

(2) Investigation did not include an attempt to locate a semen stain on the floor. According to the case agent, the subject and victim agreed that the events occurred, and visiting the crime scene and attempting to collect a semen stain would not have added value to the investigation. Additionally, the case agent asserted that (a) locating the stain would not have proven anything, since there would not have been a way to determine when the stain was deposited, and (b) the DETCO would have approved the decision not to visit and/or process the crime scene. The DETCO agreed, advising that it was [redacted] decision not to process the crime scene and collect the stained carpet as evidence. According to the DETCO, cadet rooms are all basically the same and there would not have been a way to determine when a stain was deposited on the floor. As a result, the DETCO believed that it would have been pointless to collect stain evidence.

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(3) The door lock on the victim's room was not checked to validate the victim's allegation. The case agent did not recall the door lock being a factor in the investigation, stating [redacted] had been told that cadets generally do not lock their doors.

Although we understand the rationale for not completing some investigative steps in this case, thorough crime scene processing in an alleged violent crime case is fundamental and generally should not be omitted. Processing the crime scene in this case might not have produced conclusive evidence as the case agent and DETCO surmise, but would have given them an additional basis for addressing the consent issue in victim and subject interviews. Doing so might have answered the consent issue and helped ensure the most appropriate case outcome.

Air Force General Counsel Report (SAF/GC)

According to the SAF/GC report (page 156, section entitled, "Review of Sexual Assault Cases")

> "Pursuant to the Secretary's guidance to evaluate the effectiveness of the Academy's sexual assault deterrence and response processes, we undertook an analysis of the investigated cases containing allegations of sexual assault at the Academy. The purpose of this analysis was to evaluate whether, in light of the available evidence, the criminal dispositions taken by the Academy leadership appeared to be reasonable. The review was performed by staff team members having military justice expertise."

The reviewers concluded (p. 164):

> ". . . of the forty-three cases considered, we disagreed with the reasonableness of the criminal disposition of one case. We questioned, but could not form an opinion on, four others. Although there were cases where we would have favored use of formal criminal processes to resolve close factual issues, disciplinary action generally appeared to be within reasonable boundaries of discretion. We did not attempt to assess the reasonableness of characterization of discharge."

Our evaluation did not include efforts to validate this portion of the SAF/GC report.

Conclusions

Based on reviewing the investigative case files and conducting follow-up interviews with the case agents and other AFOSI personnel, 5 (28 percent) of the 18 investigations opened during the last three years (CY 2000 through CY 2003) omitted investigative steps necessary to thoroughness. In one case (6 percent), the investigative omissions might have affected the case outcome.

Appendix F. Evolution of Confidential Sexual Assault Reporting

LtGen Hosmer Era (USAFA Superintendent, Jun. 1991- Jun. 1994)

In 1993, after meeting with female USAFA cadets and hearing that many knew another cadet who had been sexually assaulted, LtGen Hosmer began a counseling program to deal with the "medical and emotional problem" experienced after a sexual assault.[1] However, he did not view them as sexual assaults, advising instead that ". . . I heard a number of the specific cases. . . . I would characterize . . . all of them . . . as heavy pressure from a peer, often the girl was a virgin, not prepared for the event, . . . realized later what she'd done, and was traumatized . . ."[2] As a result, he directed a USAFA [redacted], to form a small group of nurses and get the word out that cadets could talk to these people in confidence.[3] According to LtGen Hosmer, his intention was for the nurses to encourage cadets to report matters for investigation when they were told something that should be investigated as a crime.[4] In practice, however, he explained that the matter would not be reported if the cadet did not want to report to police.[5] In addition, he conceded that the nurses were not qualified to distinguish between criminal and non-criminal sexual behavior. In fact, he said, it ". . . was not her business."[6] LtGen Hosmer began this program as an informal process without prior Air Force knowledge or approval. The Commandant of Cadets during the period June 1993 to November 1994 was not aware of the program.[7]

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LtGen Hosmer also viewed the problem as a counseling record security matter—the counseling center location permitted observing anyone entering or leaving the counseling center; command officials could access counseling records maintained in the center; and during prosecution, counseling record releases could be ordered. He, therefore, believed that cadets did not trust the Cadet Counseling Center to protect their records from disclosure. He did not take any direct action to alter or improve cadet perceptions regarding counseling records, such as relocating the counseling center or directing USAFA commanders not to access the records.[8] Instead, he excluded the Cadet Counseling Center from the confidential reporting process and established the informal counseling system with nurses instead of using the professional counselors and mental health staff employed by the Cadet

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1 December 3, 2003, Hosmer Interview Transcript, p. 11.
2 Ibid, p. 7
3 Ibid, p. 12
4 Ibid, p. 14
5 Ibid, p. 13
6 Ibid, p. 17
7 February 25, 2004, Gen Patrick K. Gamble Interview Transcript, p. 16; Immediately prior to becoming the USAFA Superintendent, LtGen Hosmer was the SAF/IG and AFOSI reported to him directly. Accordingly, there is no basis for LtGen Hosmer not to know or fully understand AFOSI investigative responsibility or independent authority to conduct investigations.
8 Ibid, p. 33

Counseling Center.[9] He believed the cadets needed someone to talk to about their sexual experiences in a manner that would remain confidential. His process focused on the victim.[10] When asked if he had considered repeat offenders, LtGen Hosmer advised that someone (possibly AFOSI) had told him about this possibility, so he thought this would be ". . . another chance to catch them."[11] LtGen Hosmer apparently did not consider the fact that this would mean another crime would occur before a criminal could be pursued and, if the next crime were subject to the same reporting process, the criminal likely would avoid prosecution again. In addition, he did not establish any system, procedure, or process to measure program effectiveness or accomplishments. He received "aperiodic characterizations of the traffic" concerning confidential reports that the nurses received," but only the nurses knew identities and incident details.[12]
LtGen Hosmer retired from the Air Force in June 1994.

[redacted]

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[9] Ibid, p. 41
[10] Ibid, p. 12
[11] Ibid, p. 59
[12] April 8, 2003, Hosmer Interview transcript, p. 60
[13] Fowler Report, p. 15
[14] Air Force Cadet Wing Regulation 537-7, June 23, 1992, p. 2

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LtGen Oelstrom Era (USAFA Superintendent, Aug. 1997-Jun. 2000)

Upon becoming USAFA Superintendent in August 1997, LtGen Oelstrom wanted to know if women had been accepted into all aspects of USAFA life. After a 6-month study and determining that they had, he turned his focus to improving the cadet character development program.[77]

In mid-November 1997, the Honorable F. Whitten Peters was confirmed as the Under Secretary of the Air Force. Upon being sworn into office, Under Secretary Peters also became the acting Secretary, which continued until August 1999, when he was confirmed as Secretary of the Air Force and served in that capacity until January 2000.[78]

In September 1998, LtGen Nicholas B. Kehoe replaced LtGen Swope as SAF/IG.

In December 1998, the Chief, USAFA Sexual Assault Services Committee, briefed LtGen Oelstrom and other USAFA leaders. The briefing, which was entitled "We Have a Problem," was based on 1996-1997 social climate survey results indicating that 24 percent of female cadet had been sexually assaulted since arriving at USAFA. The briefing did not result in LtGen Oelstrom taking any direct action.

In June 1999, BrigGen Mark A. Welsh III replaced BrigGen Lorenz as Commandant of Cadets.

BrigGen Welsh realized early that there were problems with how USAFA processed sexual assaults. Early in his tenure, he spoke with [redacted], Chief, Victim Advocate Program, and received an overview on the sexual assault reporting process. After the meeting, BrigGen Welsh decided that no one was closing the loop with the chain of command. He was bothered that the Commandant heard about a sexual assault through a phone call. According to BrigGen Welsh, he ". . . had the feeling that if anybody ever wanted to cut off that report, it would happen. I'm not sure that there was any way to guarantee that everyone who had concern, that the Commandant knew about it. And as the Wing Commander I felt I had to."[79] The Vice Commandant [redacted] commented similarly:

> ". . . One thing we found out, when General Welsh and I got over there, is that for actual incidents themselves that there was no real formal way of up channeling things and kind of keeping track of

[77] Air Force Working Group Report, p. 15
[78] March 4, 2004, Peters Interview Transcript, p. 4
[79] March 26, 2003, Welsh Interview Transcript (Air Force Working Group), p. 28

> things. And part of that probably started with the desired, you know, keep confidentiality when the cadets want it and that sort of thing. . . ."[80]

As a result, BrigGen Welsh and [redacted] decided to develop a notification form.[81] BrigGen Welsh recalled that he began this change around Spring 2000.[82] He also recalled asking then [redacted] from May 31, 2000 to July 29, 2001, to begin drafting a notification form. BrigGen Welsh reviewed a draft. AFOSI looked at the draft as well, because:

> ". . . I wanted to make sure that [redacted], AFOSI Detachment Commander] was comfortable and whoever the colonel was who was the Deputy Chief of the AFOSI at the time who came out to the Academy and talked to us about this, that they had a chance to see it and comment. As a result, there was a coordination process that took a while to get it finalized."[83]

BrigGen Welsh advised that he intended to use the form as a tool for final decisions. Once BrigGen Welsh received a form, he intended to meet with whomever was involved in the process to obtain more information and then determine how to proceed. He explained that ". . at the Academy you don't want lots of pieces of paper floating around with lots of information anywhere, and so I don't think you needed everything to be on that piece of paper. That wasn't the intent."[84]

According to the [redacted], there were two forms, a documentation form, and the notification form that [redacted] and BrigGen Welsh requested. The documentation form was used to provide information for the CASIE database. The notification form was used to notify the Commandant or Vice Commandant, Victim Advocate Program Chief, and the Sexual Assault Services Branch Chief. The notification form included basic details on the event and victim treatment, but not biographical information. This form was initiated to better document the victim notification and assistance process.[85]

In late 1999, two incidents resulted in AFOSI investigations that prompted renewed AFOSI action to address the confidential reporting policy. However, according to BrigGen Taylor "The practical application of that policy was an issue of daily concern by OSI at the Air Force Academy."[86] One investigation was initiated on October 31, 1999, after two female cadets talked, decided that the same male cadet had sexually assaulted them both during a 1-2 week period, and one then came forward to AFOSI. At approximately the same time, on

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80 [redacted] Interview Transcript (Air Force Working Group), p. 12
81 Ibid, 13
82 May 2, 2003, Welsh Interview Transcript (Air Force Working Group), p. 15
83 Ibid, 12
84 Ibid, 12-13
85 [redacted] Interview Summary, pp. 3-5
86 December 2, 2003, Taylor Interview Transcript, p. 20

November 29, 1999, AFOSI opened an investigation after a former cadet complained about an on-and-off sexual relationship that she had with a USAFA chaplain beginning some 10 years earlier when she was a USAFA cadet. As a result of these incidents, in November 1999, the AFOSI Commander (BrigGen Taylor) wrote a memorandum to an AFOSI staff officer in SAF/IG outlining recent events at USAFA and objecting to a system that "sets a dangerous precedent for circumventing Air Force Policy."[87] The memorandum pointed out that USAFAI 51-201 did not comply ". . . with higher Air Force publications." The memorandum also pointed out that the temporary waiver to AFI 44-102 had expired, USAFA medical personnel were no longer relieved from reporting sexual assaults, and AFPD 71-1 required commanders to "[r]efer to AFOSI all criminal matters and offenses for which AFOSI is responsible." The memorandum also addressed the USAFA "premise behind the provision" authorizing the USAFA Commandant to decide whether a sexual assault would be investigated, stating that this premise "sets a dangerous precedent of circumventing Air Force policy. However, after preparing the memorandum and possibly forwarding it to the AFOSI staff officer in SAF/IG, the AFOSI Commander decided to use a different approach. He had already raised the matter with the current and previous SAF/IG, and apparently was concerned that the memorandum would not produce a desired result.[88] In any event, he decided to approach the issue differently. BrigGen Taylor contacted the Air Force General Counsel (Jeh C. Johnson), a personal acquaintance, and asked Johnson to initiate an SAF/GC review ". . . so it doesn't look like AFOSI is complaining."[89] According BrigGen Taylor, Johnson was:

[redacted]

Johnson characterized Taylor's attitude at the time as:

[redacted]

BrigGen Taylor apparently gave Johnson the memorandum that he had drafted, because Johnson advised:

[redacted] **b5**

[87] Undated Taylor Memorandum to SAF/IGX, Subject: "Reporting Procedures for Sexual Assaults at USAFA"
[88] Based on interview, BrigGen Taylor was "almost certain" that he briefed LtGen Kehoe on ". . . the issue when Kehoe was in-briefed . . . " as the new SAF/IG in October 1998.
[89] Based on characterization in a subsequent e-mail from SAF/IGX [redacted] **b6**
[90] December 2, 2003, Taylor Interview Transcript, p. 21
[91] February 11, 2004, Johnson Interview Transcript, p. 12

[redacted] b5

Johnson also recalled that his [redacted] headed the working group formed to review the matter. He also recalled that [redacted] involvement was based on their mutual agreement or because ". . . [redacted] was the one who dealt with Academy issues, [redacted] and people in his office. . . ."[93] b6

On January 10, 2000, [redacted] e-mailed the [redacted] Office of the Air Force Judge Advocate General (Wilder), who headed the working group that redrafted the USAFA draft policy, to begin working group meetings. In the e-mail, [redacted] advised:

[redacted] b5

On February 9, 2000, the SAF/GC (Johnson) sent SAF/IG (LtGen Kehoe) a memorandum advising that his office had received questions following a criminal case and, in responding to the questions, had become concerned about AFI 51-201 and other guidance. According to the memorandum:

[redacted][94] b5

SAF/IG (LtGen Kehoe) apparently agreed to contact the USAFA Superintendent (LtGen Oelstrom), because the first working group meeting was held on March 29, 2000. In addition to [redacted], the following individuals attended the meeting:

- [redacted], USAFA;
- [redacted] to the Air Force Surgeon General, Office of Air Force Surgeon General (may have provided input rather than actually attending the meeting); b6

[92] February 11, 2004, Johnson Interview Transcript, p. 18

[93] February 11, 2004, Johnson Interview Transcript, p. 23; The Fowler Panel criticized [redacted], who was lead attorney for the Air Force Working Group team, for not disclosing his substantial previous involvement. This issue is addressed in Part V-Responsibility.

[94] February 9, 2000, Mr. Jeh C. Johnson, Air Forced General Counsel Memorandum, Subject: Air Force Academy Policy

- [redacted] AFOSI;
- [redacted], SAF/IG; and
- [redacted], SAF/IG.

Over the ensuing 14 months until May 2001, the following additional individuals worked with or were associated with the group, which was identified in various correspondence as the "AFA Sexual Assault Procedure Study Group:"[95]

- LtGen Kehoe, SAF/IG;
- LtGen Raymond Huot, SAF/IG;
- MajGen William Moorman, Air Force Judge Advocate General;
- [redacted], AF/JAG;
- [redacted], Staff Attorney, Office of Air Force General Counsel;
- [redacted], SAF/IGX;
- [redacted], Staff Officer, SAF/IGX;
- [redacted], Staff Officer, SAF/IGX;
- [redacted], XOGV, AFOSI;
- [redacted], XOG, AFOSI

LtGen Dallager Era (USAFA Superintendent, Jun. 2000-Apr. 2003)

In June 2000, LtGen John Dallager replaced LtGen Oelstrom as USAFA Superintendent.

In preparation for a July 18, 2000, [redacted] Working Group meeting, on July 11, 2000, [redacted] e-mailed the AFOSI [redacted] and asked him to propose changes to the USAFA policy (USAFAI 51-201), using specific proposed changes ". . . so we will have commonality of language and perhaps can merge to an actual compromise change, not just a concept." The e-mail indicated that [redacted] had requested the same input from the USAFA Staff Judge Advocate [redacted]. In response, the USAFA Staff Judge Advocate prepared a July 13, 2000, memorandum and the AFOSI Staff Judge Advocate prepared a July 14, 2000, memorandum.

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The AFOSI memorandum provided ". . . **it remains the position of AFOSI that AFOSI must be notified** of all such sexual assaults for possible investigation by

[95] January 2000-May 2001 [redacted] Working Group e-mails.

AFOSI as is required by current Air Force policy in AFPD 71-7 [sic] and AFI 51-201. **For discussion purposes**, however, we offer the following draft modifications to USAFAI 51-201 as possible solutions to the issues raised by the Academy's current policy." (Bolding added for emphasis) In essential part, AFOSI then proposed ". . . using the same basic framework of sexual assault reporting as is found in the Academy instruction . . ." to ". . . allow for all the initial victim support services to engage and continue. . . ." The AFOSI proposal continued:

> "In those cases, however, where command and supervisory personnel . . . [including medical and Cadet Counseling and Leadership Development Center personnel] learn of a sexual assault on a cadet from the victim or any other source then these authorities will be **required to make a timely report to AFOSI**. An **AFOSI** special agent **will then be permitted to meet with the victim** for an in-person interview and to explain the investigative process, answer questions, and take a report of the assault. At the conclusion of this interview if the victim does not desire for an investigation to ensue, then, **absent a request from the Academy Superintendent, AFOSI, upon receipt of a written and signed declination from the victim, will not open an investigation but will merely document the incident in the AFOSI data base**." (Emphasis added)[96]

AFOSI then recommended specific additions and deletions to USAFAI 51-201 based on the proposal.

The USAFA memorandum[97], on the other hand, did not offer changes and, instead, praised the unique sexual assault program, claiming that ". . . **USAFA has reviewed its policy against available statistical data**, and concluded that it has been a **success, meeting all original objectives**. . . ." Other salient points from the memorandum are:

- "Prior to policy implementation, USAFA received virtually no reports of sexual assault with the exception of a spike in reports in [Academic Year] AY92/93 following a serious rape incident and Superintendent intervention."

- "Following policy implementation, cases are being reported that would never have come to light (approximately 12 per year) and our victims are getting the support they need."

- "One of the important safety valves designed into the system . . . was that the Commandant of Cadets would be briefed on all cases and **could override the victim's confidentiality in aggravated situations**." (Emphasis added)

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[96] [redacted], AFOSI Staff Judge Advocate Memorandum, Subject: AFOSI Draft changes to USAFAI 51-201
[97] [redacted], USAFA Judge Advocate Memorandum, Subject: Study Group Taskings

- "USAF AI 51- 201, paragraph 2.8.1.2.1 goes one step further and **requires the Commandant to advise the Superintendent on 'the merits and limitations of authorizing an investigation**.'"

- "Our experience has been that the serious cases get reported, investigated and prosecuted (when the evidence warrants). **The less serious (and prosecutable) acquaintance assault cases are handled in a manner that maximizes victim recovery and retention at USAFA**." (Emphasis added)

- "**While it might be said that we are allowing future officers to go unpunished, just the opposite is true**: we are bringing cases to light that would never have been reported and increasing the likelihood that perpetrators will be identified." (Emphasis added)

- "If some cases are not investigated, **AFOSI statistics** of sexual offenders based on source of commission **do not bear out the proposition that USAFA is graduating a higher percentage** of officers in this category."

- "Finally, our cadets understand and accept the fact that **the rules which govern their conduct at USAFA are unlike the rules which apply in the "real" Air Force**. **Perhaps** in this case **the rules which apply in** the **USAF** are the ones **which need to be** examined and **changed**." (Emphasis added)

- "Recent results from **our Cadet Social Climate Survey (AY 99 through Dec 99)**, reflect that 74.8 percent of all female cadets would fear reprisal if they reported sexual harassment by another cadet. That number has been very consistent over the preceding two climate surveys. It should be noted that for the same survey period, 40.5 percent of all female cadets reported experiencing sexual harassment from other cadets. The numbers for the preceding three years are 29, 32 and 48 percent, respectively. **We have no statistics regarding the number of cadets who would fear reprisal for reporting a sexual assault**, although it can be surmised that the numbers would be equivalent." (Emphasis added)[98]

- "Since Academic Year 95/96, DFBLC has received a total of 72 sexual assault reports. Of these, 44 involved cadet perpetrators (3 cases involved non-cadet victims), 11 involved non-cadet perpetrators, and the remaining cases did not identify the status of the perpetrator. . . . 72 hours . . . is normally considered the outside limit for a reliable rape protocol (in those cases involving rape) and . . . **one can assume that a crime scene will normally have been compromised within that time frame**. Of the 72 cases, . . . only 8 were reported within the 72 hour window. This is consistent with the fact that **most of our cases involve acquaintance**

[98] In 1999, USAFA changed from conducting climate surveys in the Fall to conducting them in the Spring. A formal climate survey covering the period referenced was not completed until Spring 2000. The basis for this position, therefore, is unclear.

assault situations and are not reported until some time after the event." (Emphasis added)

- ". . . [I]f we consider AY98/99, we know that 23 female respondents reported being sexually assaulted since coming to USAFA, but that DFBLC only received 12 complaints during that same time frame. This means that 11 complaints were not reported or were reported elsewhere. In AY99/00 survey data indicates that 26 female respondents reported being sexually assaulted, but only 16 complaints were received by DFBLC. Again, the **delta indicates underreporting or reporting elsewhere**. I am unaware that AFOSI has processed any cases that were not previously reported to DFBLC, and so my assumption is that we still experience some underreporting of sexual assault cases here at USAFA."

The USAFA position was based on the fundamental concept that "prosecutable" acquaintance assault cases are "less serious" and should be handled in a manner to maximize "victim recovery and retention at USAFA," even though this would mean USAFA might also retain and graduate sex offenders. The USAFA Staff Judge Advocate went so far as to suggest that Air Force rules should be changed in line with the USAFA program.

The USAFA data supporting these propositions were based largely on USAFA Climate Surveys, which used a definition for sexual assault that was different from the one used in the Air Force generally. This difference effectively negated any comparison based on Air Force wide data—"apples to oranges." In addition, the claim that AFOSI statistics ". . . do not bear out the proposition that USAFA is graduating a higher percentage of [sex offender] officers. . . ." was based on comparing sexual assault rates for USAFA graduates with those for officers graduated from ROTC, Officer Training School (OTS), and Direct/Other programs. The comparisons, however, did not attempt to account for demographics. In reality, the caliber of individuals admitted into and graduated from USAFA should result in lower crime rates for USAFA graduates. However, the data showed that the sexual assault rates per thousand were 7.484 for USAFA graduates, 6.199 for ROTC graduates, 10.381 for OTS graduates, and 9.664 for Direct/Other sources. The fact that the USAFA rates were not lower than all the other categories should have been a cause for concern, but was not. The fact that the USAFA rate was 20.7 percent higher than the ROTC rate certainly should have been a concern, but was not.

On interview, the USAFA memorandum author [redacted] advised that [redacted] did not trust the data completely because [redacted] knew they were based on a sexual assault definition different from the UCMJ definition, but used the data anyway. [redacted] also conceded that [redacted] did not have a basis in policy or fact for the position that ". . . one can assume that a crime scene will normally have been compromised within that time frame [72 hours]. . . ." In fact, [redacted] acknowledged having been both a criminal prosecutor and defense counsel, and knew that crime scene processing is necessary even after 72 hours. In explaining [redacted] statements to the [redacted]

b6

Working Group, he advised . . . I didn't say destroy, but . . . maybe, a less reliable process after the . . . passage of a couple of days. . . ." In explaining that certain of the [redacted] Working Group members were uncomfortable with the statistics used in his presentation, he acknowledged that ". . . OSI was primarily uncertain about those numbers. . . ."[99] **b6**

Following the working group meeting, on July 21, 2000, the USAFA [redacted] e-mailed the Judge Advocate General (MajGen William A. Moorman) sharing his views on the meeting. The e-mail advised that:

[redacted] **b5**

It is unclear as to why this e-mail was sent to the [redacted]. It appears to have been a "back-channel" correspondence to keep the Judge Advocate General's office apprised. The e-mail did not include other addressees and others were not copied for information. The [redacted] however, forwarded the e-mail to other Judge Advocate General officials (including [redacted]) on July 25, 2000. **b6**

On July 28, 2000, [redacted] e-mailed the Air Force General Counsel (Johnson) advising:

[redacted] **b5**

The e-mail also forwarded an e-mail to the working group members sent earlier the same day proposing a modified sexual assault reporting process.[100] The proposal, which an [redacted] newly employed in [redacted] office prepared with guidance from [redacted] and [redacted] immediate supervisor, was ". . . intended to balance many of the interests expressed by the AFA and AFOSI regarding cadet sexual assault cases at the Academy."[101] The **b6**

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[99] October 29, 2003, [redacted] Interview Transcript, pp. 16-17 & 26-29

[100] The e-mail is addressed to [redacted], who forwarded it to the Office of the Secretary of the Air Force—original says SAF [redacted] and, in turn, to the [redacted], SAF/IG (LtGen Kehoe), and Deputy SAF/IG (MajGen Robert J. Winner). **b6**

[101] On interview, the [redacted] that she did not work on the project alone and depended on [redacted] and [redacted] supervisor for guidance. [redacted] also advised that she was unaware of laws and directives establishing AFOSI independent investigative authority, and the direction to her was to look at the situation as if there were no regulations and to balance the competing AFOSI and USAFA interests. [redacted] Interview Transcript, pp. 12-15.

proposal, titled "Procedures to be instituted when a sexual assault occurs," outlined roles for the superintendent, the commandant, the Cadet Counseling Center, the victim advocate and AFOSI, and provided that AFOSI would not be allowed to:

[redacted] b5

b6

In forwarding the proposal for comment, [redacted] advised:

[redacted] b5

In July 2000, LtGen Edgar R. Anderson, Jr., who retired from the Air Force as the Air Force Surgeon General on November 15, 1996,[103] complained (the Anderson Complaint) to Senator Mary Landrieu (D, Louisiana) that BrigGen John Hopper, while acting as Commandant of Cadets from 1994 to 1996, intentionally covered up sexual assault problems at USAFA. LtGen Anderson gave Senator Landrieu a copy of the four-page point paper that [redacted] prepared in Spring 1996, describing the USAFA culture and sexual assault problems. He raised the issue to Congress at that time because BrigGen Hopper had been nominated to become Vice Commander, Air Education and Training Command, and for appointment to lieutenant general rank, which required congressional approval. b6

On July 27, 2000, Senator Landrieu wrote to the Senate Armed Services Committee, forwarding the point paper and stating:

> "General Anderson alleged that several incidents of sexual abuse and misconduct occurred at the Air Force Academy during the tenure of Major General John Hopper. Furthermore, several of these incidents were not investigated, and may have been deliberately covered-up. General Anderson's report, provided to the Air Force Chief of Staff, appears to substantiate these allegations. General Anderson has stated his willingness to go on record with these allegations. I believe that you will find General Anderson to be credible."[104]

The Senate Armed Services Committee referred the Anderson Complaint to the Assistant Secretary of Defense (Force Management Policy). That office referred the matter to the Air Force. Between August 3 and 28, 2000, the SAF/IG Senior Official Inquiries Directorate (SAF/IGS) conducted a complaint analysis into the allegations against BrigGen Hopper. SAF/IGS concluded that the evidence did not warrant investigating BrigGen Hopper for wrongdoing. SAF/IG (LtGen Raymond J. Huot) approved closing the complaint on August 30, 2000, as one of his first actions as SAF/IG. (LtGen Huot replaced LtGen Kehoe as SAF/IG in August 2000.) Other than relating the results to the Senate Armed

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[102] It appears that this proposal is the same as the one referred to as the "Compromise Proposal" in the Air Force Working Group Report, p. 20. It also appears that the proposal was distributed to at least certain individuals prior to the formal distribution, because a copy was sent to SAF/IG (LtGen Kehoe) on July 27, 2000. July 27, 2000, Harvey e-mail to SAF/IG

[103] LtGen Anderson, together with Col Hall and the then Deputy Surgeon General (LtGen Roadman) first raised the issues to the Air Force Chief of Staff (Gen Fogleman) on June 3, 1996.

[104] July 27, 2000, Letter to the Chairman, Senate Armed Services Committee

Services Committee, the complaint did not result in further action.[105] The Anderson Complaint processing is discussed in detail in the report at Part V (Accountability) in the section addressing LtGen Huot's accountability for USAFA sexual assault problems.

On August 8, 2000, the [redacted], Office of [redacted] e-mailed the Air Force Judge Advocate General (MajGen Moorman), Subject: "FYI – Disturbing turn of events." The e-mail advised: **b6**

[redacted] **b5**

On August 9, 2000, the AFOSI [redacted] sent [redacted] a memorandum rejecting [redacted] compromise proposal, advising: **b6**

[redacted] **b5**

[redacted]

[105] An August 23, 2003, Colorado Springs Gazette Telegraph (The Gazette) news article again raised the Anderson allegations, indicating that a whistleblower had taken a four-page report to Senator Landrieu and others in July 2000, and "[t]op Air Force officials and members of Congress knew of the Air Force Academy's sex-assault problems years ago but didn't take action. . . ."

[redacted].

[redacted]

b5

[redacted]

On August 16, 2000, the attorney who prepared the proposal [redacted] e-mailed [redacted] advising that [redacted] and the Principal Deputy General Counsel (Florence Madden) had met with SAF/IG (LtGen Kehoe).[106] According to the e-mail:

b6

[redacted]

b5

[redacted]

b6

On August 23, 2000, [redacted] responded to the e-mail, asking:

[redacted]

b5

[106] The Principal Deputy was apparently acting for the General Counsel who was on leave

[107] The "two-letter level" apparently refers to individuals who report to the Air Force Secretary directly, such as the SAF/IG, SAF/GC, USAFA Superintendent, [redacted], and Air Force Surgeon General, i.e., the same officials who have been participating in the matter for several years.

b6

[redacted] continued monitoring the situation and attempting to broker a compromise between AFOSI and USAFA until approximately May 2001, but the AFOSI memorandum rejecting the compromise proposal, coupled with the Principal Deputy General Counsel's advice that [redacted] probably would support AFOSI's statutory authority, effectively ended the [redacted] Working Group effort. In explaining [redacted] position and why the matter was never elevated to the Secretary of the Air Force, [redacted] advised: **b6**

[redacted] **b5**

In August 2000, the AFOSI Commander (BrigGen Taylor) met with the new SAF/IG (LtGen Huot) about AFOSI concerns with AFOSI sexual assault reporting. According to testimony, the new SAF/IG ". . . was noncommittal and [his] . . . guidance and direction was to let the process work through and see what happened. . . ."[109]

On September 13, 2000, [redacted] e-mailed the General Counsel (Johnson) advising: **b6**

[redacted] **b5**

[108] [redacted] Interview Transcript, pp. 57, 60, 73 & 75

[109] December 2, 2003, Taylor Interview Transcript, p. 29 **b6**

[redacted] b5

On October 17, 2000, [redacted] e-mailed his staff attorney [redacted] and a SAF/IG staff officer [redacted] advising that: b6

[redacted] b5

On October 20, 2000, the USAFA [redacted] e-mailed the Superintendent and copied the Commandant, providing information to prepare the Superintendent for the upcoming meeting with the AFOSI Commander. The e-mail strongly endorsed the USAFA confidential reporting system, claiming that ". . . [t]hese are cases that would never have come to light without cadet confidence in the confidentiality of their report . . . and suggesting ". . . [p]erhaps the AF should adopt a version of this system for our operational bases. . . ." Specifically, the [redacted] advised the Superintendent (LtGen Dallager) that: b6

> ". . . Since I will be TDY . . . next week I wanted to forward [redacted] e-mail to you along with my comments so that you could prepare for your meeting with BG Taylor on the 30th of October. I will also provide a file . . . that you can read for background. Before I discuss the specifics of SAF/GC's e-mail, it may be helpful to review BG Taylor's concerns. **First, he believes that our system teaches cadets a process that is contrary to the existing system in the Air Force**. I would answer him by saying that (1) this is not the only USAFA process that is different from the AF--we have created unique systems for honor, discipline, assignments, etc. that work well for us in our social environment. The fact that we treat cadets differently is justified by our elaborate selection process, the enormous expenditure of time and resources in educating cadets, the unique circumstances of Academy life, and the political nature of Academy appointments, to name a few considerations. (2) our system works! The stats bear out the fact that we have had far more reports under our support driven system than under the old prosecution driven system. These are cases that would never have come to light without cadet confidence in the confidentiality of their report. (3) Perhaps the AF should adopt a version of this system for our operational bases. By fostering reports, we foster deterrence

since a perpetrator is less likely to commit a crime of violence it he knows the victim is more likely to report it. **Second, BG Taylor feels that allowing the cadet to make up his/her mind to prosecute unfairly puts the decision making burden on the cadet at a time when the cadet does not need any additional stress**. I would answer this concern by saying (1) this is what the cadets want (2) If they are under additional stress, what better place for them to be than DFBLC getting professional help rather than the informal underground cadet process that existed previously. (3) DFBLC does not put pressure on anyone to report. They explain options and counsel, but it's up to the cadet. All the literature talks about the revictimization and loss of control rape victims feel when they are subjected to a criminal process. That is probably a greater source of stress. **Third, he does not think our system captures sufficient data to identify repeat offenders, especially when they are graduated and out in the Air Force**. I would answer this by saying that (1) the vast majority of our cases are 'date rape' one on one scenarios where alcohol is involved and judgments are impaired. They are not the classic serial rapist scenarios. (2) Those cases that may be serious are identified and investigated (mention case of Basic Cadet who complained that her stepfather was her 'boyfriend'). Also, USAFA is not graduating officers who are more likely than other commissioning sources to commit sexual offenses. **[AF]OSI's own data shows sex offender rates per thousand by commissioning source as follows: ROTC, 6.199; USAFA, 7.484; OTS, 10.381; Direct/Other, 9.664.** (3), the best way to catch offenders is to increase reports. The best way to do that is to offer confidentiality. **Fourth, BG Taylor does not think our cadets are getting a balanced presentation from DFBLC on their options especially regarding prosecution**. I would answer this by saying (1) that this is required by our regulations, i.e., a balanced presentation (2) we have asked OSI to talk to cadets in the past (on condition that anonymity be preserved) (3) that this perception is based on a lack of criminal reporting from DFBLC which is limited due to the 'date rape' scenarios that are common in these cases, i.e., **they are not prosecutable cases** to begin with and the cadets know it and don't want to go thru an unproductive process.

With regard to the specific proposals, let me take them in order:

1. **OSI informed of report and decides if it is a case they would want to handle**. If they get the same info as the Comm (i.e., no names) I guess there would be no problem. Since most of the cases are date rapes, they would probably not be interested in many. This would also give them a chance to collect evidence if it was a case they were interested in.

2. **OSI meets with cadet victim to provide benefits of an investigation (conducted at DFBLC with counselor present)**. This would only occur if OSI wanted to take the case. Of course, the big issue here is anonymity. OSI would want a name so they could

index the case.

3. **OSI informed of report and decides if it is a case they would want to handle**. If they get the same info as the Comm (i.e., no names) I guess there would be no problem. Since most of the cases are date rapes, they would probably not be interested in many. This would also give them a chance to collect evidence if it was a case they were interested in.

4. **OSI meets with cadet victim to provide benefits of an investigation (conducted at DFBLC with counselor present)**. This would only occur if OSI wanted to take the case. Of course, the big issue here is anonymity. OSI would want a name so they could index the case (discussed below). We would not want to disclose the name because it will deter reports. Comm does not get names now because it will deter reports and OSI would be same. We might be able to allow meeting if cadet could remain anonymous, but would have to be careful that meeting did not turn into an interview.

5. **OSI handles crime scene**. Again, OK as long as anonymity is preserved. SF [Security Forces] does this now anyway. In reality, most reports are received long after the crime scene has been compromised.

6. **If cadet does not want investigation, Comm is briefed, receives OSI input and decides whether to override confidentiality**. Supt is briefed on decision not to override and ratifies. This is probably a good idea--provides visibility and top cover.

7. **OSI can appeal decision not to investigate in exceptional cases**. This is a big exception and would need to be carefully worded. What is exceptional? Who decides appeal? What are the timelines? This is a command vs. OSI independence issue and would require a lot of trust if implemented.

8. **If final decision is not to investigate, OSI opens a "0" file**. This is for OSI internal use only and does not feed into DCII (federal) system. Again, problem is anonymity for victim and fact that if perpetrator is known, his name gets indexed and he doesn't even have a chance to defend himself. . . ." (Emphasis added)

On or about October 30, 2000, BrigGen Taylor traveled to USAFA and met with the USAFA Superintendent (LtGen Dallager) to find an amenable solution.[110] Following the meeting, on November 19, 2000, BrigGen Taylor sent an e-mail to [redacted] stating: **b6**

". . . We have had two referrals since my meeting with the Sup. I am not ready to declare victory as we still are not made aware of ALL complaints, but I found the Sup receptive to our concerns and

[110] July 16, 2003, Taylor Interview Transcript, p. 17

> looking for a methodology to get us involved while assuring the anonymity of the victim is protected. He said that he would get back with me. If I do not hear from him by the end of the month...I will give a call. I think we made good progress but only time will tell. . . ."[111]

In January 2001, Air Force Secretary Peters resigned leaving the Air Force Secretary position vacant until Secretary Roche arrived in June 2001. Lawrence W. Delaney was acting Secretary during the interim time.

On January 20, 2001, the SAF/GC (Johnson) left Government Service. On interview, he claimed that he did not know the USAFA confidential sexual assault reporting policy conflicted with statutory and policy requirements, advising:

> ". . . If you had told me in 1999 that this reg[ulation] is expressly at odds with public law or a DoD reg[ulation] that would have set alarm bells off for me as the general counsel of the Air Force. And I think I would have concluded that this is something that needs to be addressed. . . . My recollection is that I was presented with the issue as a matter of competing policy and felt that it was something that had to be resolved. . . . I remember [redacted] or Frank . . . telling me that . . . movement was happening, that progress was being made. That it was a difficult issue, it was an emotional issue and that progress was being made in the right direction. . . ."[112]

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In May 2001, the AFOSI Commander (BrigGen Taylor) met with the USAFA Commandant of Cadets (BrigGen Welsh), to discuss AFOSI concerns about the confidential sexual assault reporting policy. The meeting resulted in USAFA agreeing to inform AFOSI of all sexual assaults without compromising victim identities when victims did not want a law enforcement investigation. In testimony, BrigGen Taylor stated that, under the agreement, AFOSI ". . . would have authority or opportunity to go talk directly to the Superintendent on those cases where we felt very strongly, which would have been all of them. . . ." The AFOSI Commander's (BrigGen Taylor) May 4, 2001, e-mail following that meeting stated:

> ". . . I have given serious thought to that discussion and believe that you and the Sup have significantly improved the process to the point where it might be a model for our Air Force in approaching this issue. I have asked our folks to get with my successor, Eric Patterson, and perhaps to schedule a visit with you for an in-depth briefing on the current program and its benefits. I would also recommend that a representative from AF/JA and GC also get the update. **Many of the concerns that I have had with the program since its inception have appeared to be overcome**. I'd like to see if we can get buy in for similar efforts across the Air Force. This may also have applicability for our suicide prevention program in the vein of a limited privileged communication effort to get our people the help they need without mental health or criminal stigma...just a

[111] Air Force Working Group Report, p. 20 and Exhibit 94; November 19, 2000 Taylor e-mail to [redacted].
[112] February 11, 2004, Johnson Interview Transcript, pp. 37, 40, & 43

thought. . . .[113]

The AFOSI Commander (BrigGen Taylor), however, retired from the Air Force in May 2001, and the agreement was never implemented. Even though he alerted his successor (BrigGen Leonard E. Patterson) to the situation, the successor AFOSI Commander did not follow-up or ensure the agreement was implemented.[114]

On June 1, 2001, Congress confirmed James G. Roche, PhD, as Secretary of the Air Force.

On August 3, 2001, BrigGen Silvanes Taco Gilbert III replaced MajGen Welsh as USAFA Commandant of Cadets.[115] In assigning BrigGen Gilbert, the Air Force Chief of Staff (Gen Michael E. Ryan) directed him to restore good order and discipline at USAFA. According to BrigGen Gilbert:

> ". . . I was . . . summoned to the Chief of Staff's office, and he laid out his agenda for the Academy. . . . [W]e had major drug issues. We had drug rings . . . operating in the dorms. We had disciplinary issues. We had already had another special investigation of the honor code, because there were problems with the honor code. The honor code -- lost its honor. The military academy had lost its focus.
>
> . . . [H]e called me in, General Ryan, and he said, I want you to go in and reestablish honor. . . [in] the honor code, **reestablish military discipline**. . . . [T]here was not even an established uniform of the day. Everybody just wore whatever they wanted to wear. And he said, I want you to **reestablish the military focus** at the Academy. . . . [a]nd . . . 'this is not going to be popular. You are going to get **resentment from the staff**, you're going to get **resentment from the cadets**, you are going to get **resentment from the media** and be **criticized**. But **this is what I want you to do, and stay the course**. . . .'"[116] (Emphasis added)

In August 2001, the two-page notification form (Appendix G, pp. 1-2) that BrigGen Welsh required was changed to a one-page form (Appendix G, p. 3) when [redacted] assumed duties as the new [redacted]. [redacted] thought the two-page form violated USAFAI 51-201, because it disclosed too much information.[117] [redacted] advised that she changed the form after BrigGen Welsh left, with the [redacted] approval.[118] [redacted] did not change the form due to a victim complaint, as the SAF/GC and Fowler Panel reported. [redacted] also advised that, during [redacted] tenure (July 2001-July 2002), [redacted] received 27 confidential sexual assault reports, completed and distributed a notification form on each, and received the forms back in about a

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[113] May 4, 2001, Taylor e-mail to Welch, Subject: "My Visit"
[114] Fowler Report, pp. 28-30
[115] Air Force Working Group Report, p. 20
[116] March 18, 2004, Gilbert Interview Transcript, p. 42
[117] [redacted] Interview Transcript, pp. 5-6
[118] Ibid, p. 7. The Vice Commandant, however, did not recall the action (September 3, 2004, Rivers e-mail, Subject: "Additional Questions")

week.[119] [redacted] indicated that all proper notifications were made and were annotated on the forms. [redacted] added that BrigGen Welsh supported the program, but BrigGen Gilbert did not and wanted too much victim information.[120]

On September 6, 2001, Gen John Jumper became the Air Force Chief of Staff, replacing Gen Ryan, who retired in October 2001.

On September 11, 2001, international terrorists attacked the United States destroying the World Trade Center twin towers in New York City and severely damaging the Pentagon in Arlington, Virginia.

In Fall 2001, BrigGen Gilbert started a training program review, which involved several exchange cadets from the other Service academies to compare training programs. According to BrigGen Gilbert, USAFA had digressed into a fourth class system. One thrust of the review was to build a true four-class training program and determine what cadets were expected to accomplish during each training program year. To make the USAFA program more like the Air Force, BrigGen Gilbert instituted training folders, as found in any operational unit.[121]

In Fall 2001, or Spring 2002, BrigGen Gilbert also addressed the AOC quality and training. Ratings had continued to decline to the point where only 4 of 24 rated-AOC billets were filled with rated officers. The issue was raised at a CORONA and BrigGen Gilbert subsequently worked out a process with the Commander, Air Force Personnel Center (AFPC) under which AFPC would take over the AOC selection process, but BrigGen Gilbert would have veto power. That process was used at USAFA in 2003, for the first time.[122]

In May 2002, Col Laurie S. Slavec assumed duties as the Commander, 34th Training Group, reporting directly to BrigGen Gilbert.

[redacted]
Development, briefed BrigGen Gilbert, advising that character and honor program studies recommended dropping gender and race programs at USAFA because they were no longer needed. However, BrigGen Gilbert believed the needs might be cyclical and decided to retain the programs.[123]

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[119] Ibid, p. 49
[120] Ibid, p. 13
[121] March 21, 2003, Gilbert Interview Transcript (Air Force Working Group), p. 27
[122] Ibid, pp. 28-30
[123] March 18, 2004, Gilbert Interview Transcript, p. 46; [redacted] Interview Transcript (Air Force Working Group), p. 28. [redacted] stated, "did you hear about the honor climate assessment that General Carns and General Hosmer kind of put together? They rated [sic] a report, I got it right here. It talks about they make one of the recommendations is eliminating the Human Relations Division. And it says, 'We believe that this challenge is well behind the Academy,' meaning human relations, 'and no longer justifies its being assigned as a cadet wing function.' I was really upset that that was in that report, that General Carns who had General Hosmer on there and some others that they would -- they were aware of the same numbers that the Commandants and the Superintendents were aware of. And I know the Department of Defense, Air Force spends probably half a million dollars. SAIC got the contract to do this and for them to say something like that. So General Dallager and General Gilbert, they would look at this and they have got some of the smartest people in the land telling them that we believe this challenge of human relations is well behind the Academy and no longer justifies even being assigned as a Cadet Wing function. I mean, that's a problem, I think, but any way, that's a different issue."

In spring 2002, BrigGen Gilbert shut-down the "Dodo"[124] and blocked the "E-Dodo" at the computer system firewall. BrigGen Gilbert stated, ". . . I found it had turned from cadet humor into a degrading, offensive, many times obscene publication that was exceptionally, heavily censored. There was a feeling because it was censored, that makes it okay to publish." BrigGen Gilbert explained:

> ". . . The climate that we have here that I think is so detrimental . . . I don't think it's meant to be malicious . . . but they don't understand the impact of some of the things they do. The off color joke that nobody corrects. The picture or notice or whatever that they put on the bulletin board that they don't realize may be potentially offensive to someone. I ran into this in the spring of 2002 with the publication of the 'Dodo.'"[125]

BrigGen Gilbert subsequently worked with the "Dodo" staff to try and develop an acceptable product.[126]

[redacted], a copy of a letter was received at Air Force Headquarters from the attorney of [redacted] by [redacted] and who complained that the Academy had not handled the case well. This was the first indication Secretary Roche had of a significant issue regarding sexual assault at the Academy. The General Counsel conducted a review of the matter and as a result a number of corrective measures were initiated at the Academy and actions taken Air Force-wide to address concerns associated with the case. Also, in June of 2002, Secretary Roche learned of an Academy English Department dinner that had occurred in April of 2002 involving a skit containing wholly inappropriate sexual content. He was disturbed both by the incident itself, and the lack of an appropriate response by the leadership of that Department. General Jumper and Secretary Roche immediately became involved to correct the situation.[127]

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On June 28, 2002, "A Concerned Citizen" wrote the Secretary of the Air Force (Secretary Roche), the Air Force Chief of Staff (Gen Jumper), and several other addressees.[128] The June 28, 2002, anonymous letter (Concerned Citizen Complaint) stated, in part:

> "FEMALE CADETS ARE BEING RAPED AND SEXUALLY HARASSED BY MALE CADETS AND ACADEMY OFFICIALS REFUSE TO PROSECUTE THE MALE RAPISTS. Female cadets are afraid to report sexual harassment because they end up getting reprimanded and punished by their Air Officer Commanding (AOC). Yes, that is correct; AOCs punish the females for reporting being

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[124] In his March 21, 2003 statement to the Air Force Working Group, BrigGen Gilbert described the "Dodo" as sort of an underground student newspaper that contains cadet humor. It has been at USAFA since USAFA has existed, or at least back to the early sixties. The "E-Dodo" is an electronic version that is not officially connected to the Academy in any way. Some former graduates or people who had been disenrolled from the Academy were taking the "Dodo" name and making an electronic version and using it to communicate a lot of the same type of material which BrigGen Gilbert found counter to good order and discipline (discussed previously).

[125] March 21, 2003, Gilbert Interview Transcript (Air Force Working Group), p. 37

[126] Ibid, p. 38

[127] Congressional Questions for the Record, Senate Armed Services Committee

[128] We identified the author, who told us that the letter was mailed to Secretary Roche, Gen Jumper, and each "cc:" addressee. We could not account for why Secretary Roche did not receive the letter.

raped. What is even more incredible is the current Commandant of Cadets has actually told female Cadets that have been raped that it is their fault. Let me restate that: THE COMMANDANT OF CADETS TELLS FEMALE CADETS THAT BEING RAPED IS THEIR FAULT! I hope you (sic) shocked by this because I find it unbelievable. (Upper case font used for emphasis by complainant.)

Here are a couple of examples. Last summer a female cadet was within a few weeks of reporting to USAFA. She was raped by an upper classmen during her initial summer training and the junior officers who were present were aware of this incident were not allowed to speak of it during meetings with commanders. The young lady left the Academy shortly after the incident and returned home. The male cadet still attends the USAF Academy. During this past year a female cadet was brutally raped in a dormitory bathroom. Several witnesses observed the cadet being forcibly dragged into the bathroom, heard her screams and did nothing to help. The Commandant dropped all charges against the male cadet. Also, over this past year, there have been over 22 rapes and none of the rapists have been prosecuted.

Some of the counselors who treat abused cadets are concerned that this might make it in the news and give the USAF Academy a bad name. Imagine that, counselors are more concerned about USAFA's reputation than the victims' healing. Female cadets have been told that one of the reasons that commanders do not prosecute rapists is to protect the Academy's reputation.

Please do not believe me, especially since I am not signing this letter (Incidentally, I am not signing this letter because I will be severely punished by Academy Officials if they discovered who I am). Please request the Justice Department, specifically, the FBI investigate the charges. Do not allow the Air Force to conduct its own internal investigation because if you do, you will become an accomplice to rape! Let the FBI discover what the truth is and if I am correct, then you have a responsibility to take swift action against any commander implicated in this scandal, both current and past commanders.

I love my Air Force. I want the raping of female cadets to stop but more importantly I want USAFA commanders to prosecute male rapists and if they do not have the intestinal fortitude to take legal action against rapists, then they need to be relieved of duty."

The Air Force Chief of Staff's office received the letter on July 2, 2002. Using an "AF/CC tasker," a staff official referred the complaint to SAF/IG with instructions to include this letter in an "ongoing review."[129] The SAF/IG Senior

[129] On February 3, 2004, we interviewed the staff officer in Legislative Liaison, Budget Appropriations, that handled the anonymous letter. The staff officer advised that information relating to USAFA (some related to sexual assault) came into the office and were routinely routed to SAF/IG, which is why he used the term "ongoing review" in the tasker.

Official Inquiries Directorate (SAF/IGS) conducted a "complaint analysis"[130] into allegations against BrigGen Gilbert, the Commandant of Cadets. The Concerned Citizen Complaint processing is discussed in detail in the report at Part V (Responsibility) in the section addressing LtGen Huot's contribution to USAFA sexual assault problems.

The USAFA Superintendent, LtGen Dallager, also received the anonymous letter in late June or early July and discussed it with his Inspector General and Judge Advocate to decide how to respond to possible media queries. Approximately 1 week later, various USAFA officials again met and discussed how they would respond to media queries and other such things. It appears that USAFA actions related to the anonymous letter stopped once the SAF/IGS inquiry began.[131]

From September 26, 2002 to November 12, 2002, BrigGen Gilbert attended CAPSTONE (a 6-week course for new General Officers).[132] Shortly after returning from CAPSTONE, BrigGen Gilbert left again on a temporary duty assignment. By the time he returned to USAFA, the cadets were away for Thanksgiving and Christmas breaks.[133]

BrigGen Gilbert described Fall 2002, and Spring 2003, as "sort of the sexual assault piece." According to BrigGen Gilbert, in Fall 2002, it became obvious that the sexual assault reporting system was broken:

> ". . . [B]ecause of the information that I wasn't getting and it was exceptionally frustrating to me. We had built a system of feedback predicated on the assumption that the Commandant cannot be trusted and, these are my words, cannot be trusted and didn't care about their people. I say that because we built a system so we can go to the cadets and say, 'we will protect your anonymity if you come in to the CASIE system and the Commandant and the chain of command will not know anything about your report.' That was the way we advertised it to our cadets and that is the way we ran our program. . . ."[134]

In Fall 2002, BrigGen Gilbert proposed reorganizing the sexual assault program several times. He proposed that "the program be placed under one commander, either the Commandant or the Air Base Wing commander, who would thus be best positioned to recognize when situations needed attention and could marshal necessary resources immediately."[135] He asked LtGen Dallager for greater authority over the program and proposed structural changes, including that the "CASIE program" be put under a commander. He proposed moving the

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130 AFI 90-301, "Inspector General Complaints," Paragraph 2.13., January30, 2001, provides: "Conducting a Complaint Analysis. A complaint analysis is a preliminary review of allegations and evidence to determine the potential validity and relevance of the allegations to the Air Force and to determine what action, if any, is necessary within IG, command, or other channels. A formal analysis is not required when no allegations or evidence of wrongdoing exist and the issue can be handled through IG assistance. A complaint analysis will always result in one of the following: investigation, dismissal, referral or transfer of the complaint."

131 July 23, 2002, SAF/IGS Interview Transcript, Col James Moody, pp. 2-4

132 Air Force Working Group Report, p. 142

133 Air Force Working Group Report, p. 142

134 March 21, 2003, Gilbert Interview Transcript (Air Force Working Group), pp. 36-37

135 July 10, 2003, Gilbert Interview (Fowler Panel), p. 3

organization under the Commandant, because he felt he was not getting the information needed to address sexual assault issues.[136] BrigGen Gilbert stated:

> ". . . it was evident to me in the flow of information I was getting that the flow of information between counselors and AOCs, between the Counseling Center, DFBLC, CASIE, the Training Group, et cetera. I mean, it was broken at just about every juncture. And that was one of the principle reasons why I went to the Superintendent and asked for the system to be changed, because I felt it needed to be streamlined to make sure somehow the information was flowing to the people that needed it to make the changes. . . ."[137]

In Fall 2002, BrigGen Gilbert also became concerned about bad statistics; that the social climate survey program was not working.[138] [redacted], informed BrigGen Gilbert that the Spring 2002 survey was invalid, and data for the past 4 years had been invalid. [redacted] also informed BrigGen Gilbert "you could ascertain from the data in the spring of 2002 social climate survey, that gender relations needed some improvement."[139] BrigGen Gilbert stated: **b6**

> ". . . So we immediately took some aggressive steps to do that. We moved the respect and responsibility workshop, which is human relations, respect for genders and race, moved that -- in our training program. We increased the amount and the quality of our gender education programs in basic training. I upgraded the quality of individuals we put into our human relations program. I looked across the board at different areas where we could impact this. I directed renewed emphasis going to the dorms to make sure that bulletin boards and improper things were pulled down.
>
> And it's not like you'd walk through the halls and you'd see the pornographic pin-ups or anything else, but, you know, there's still stuff that we don't tolerate in the Air Force, but were being tolerated at the Academy. And I said, No, we're not going to; take it down. I gave that direction to the squadrons, and I would do it myself walking through the dorms.
>
> So, trying to recalibrate where we were, taking action through the Cadet Interaction Committee, where all of our human relations individuals would come and meet with me and try to get that word out. Cadet-X (phonetic) letters, which would describe a situation, we'd get all the cadets to discuss. We reinvigorated that. So we tried to, among other things . . . take a pretty broad and aggressive step to address gender relations as an issue at the Academy as soon as we found out that it was an issue. . . ."[140]

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136 March 18, 2004, Gilbert Interview Transcript, pp. 31-32
137 March 21, 2003, Gilbert Interview Transcript (Air Force Working Group), p. 86
138 March 18, 2004, Gilbert Interview Transcript, p. 70
139 Ibid, p. 46
140 Ibid, pp. 46-47

BrigGen Gilbert initiated efforts to "fix it" by requiring survey questions relevant to the day (because the same issues facing the Academy now are not the same issues they faced 20 years ago), and by identifying a methodology to administer the survey that would produce useful data. BrigGen Gilbert took the matter to the Character Development Commission requesting assistance. He began attending meetings personally after nothing was happening. However, nothing happened by March 2003, when he was reassigned.[141]

In Fall 2002, BrigGen Gilbert discovered that cadets lacked confidence in the sexual assault reporting process and could subvert the reporting system to cover their own misdeeds. BrigGen Gilbert subsequently issued a Cadet Information File, which clarified that cadet disciplinary action was secondary to UCMJ discipline, and that cadet disciplinary action would be held in abeyance until all investigations were complete.[142] Additionally, BrigGen Gilbert asked his military attorneys to monitor AFOSI interviews in response to a concern that AFOSI was insensitive.[143] BrigGen Gilbert stated,

> ". . . Similarly, earlier realizing that there was some misunderstanding about how the disciplinary system worked, I required all the cadets to read the disciplinary regulation and I tested them on that, because I felt like knowledge is power, and I wanted them to understand it. Because we did everything we could to make it not only an effective training tool, but a fair tool; and the more people knew about it, the more confidence they would have in that system. . . ."[144]

On December 13, 2002, an e-mail from [redacted] was received at USAFA, Subject: USAFA Assault – Please Read. The e-mail was written in the first person by someone purporting to be a rape victim and detailing problems related to prosecuting her assault, as well as myriad problems associated with sexual assaults at USAFA. On December 17, 2002, [redacted], forwarded the e-mail to [redacted], Office of the USAFA Judge Advocate, who in turn referred it to [redacted].[145]

According to BrigGen Gilbert, the e-mail expressed a "lack of confidence in our system," and "there was a problem with the information in that e-mail. . . [t]he processes were described inaccurately; the advice that was given to the women in

b6

[141] Ibid, pp. 48-49

[142] Ibid, pp. 22 & 36; AFCWI 51-201, "Discipline and Probation System," contained CIF 03-11, March 25, 2003, that addresses "cases involving allegations of assault, sexual assault, sexual harassment, or rape, no disciplinary action will be taken against cadets involved in the situation until the investigations are complete. These allegations will be thoroughly investigated by the appropriate agencies."

[143] Ibid, p. 36

[144] Ibid, pp. 22-23

[145] Air Force Working Group Report, Footnote 4 states, "E-mail from Renee Trindle to Dr. James G. Roche, Secretary of the Air Force, Exhibit 1. 'Renee Trindle' is a pseudonym. In addition to Dr. Roche, the e-mail was sent to General John Jumper, Chief of Staff of the Air Force, Sen. Wayne Allard, Sen. Ben Campbell, other US Congressmen, and two media representatives. The e-mail was also sent out earlier to numerous others under the pseudonym 'John Smith.' E-Mail from [redacted], ~~December~~ 13, 2002, Exhibit 2. The author also provided advice to female cadets at the Air Force Academy on how to deal with the issues of sexual assault."

the e-mail was inaccurate." BrigGen Gilbert said he immediately engaged with the superintendent and with [redacted], Department of Behavioral Sciences and Leadership, who began drafting the correct procedures.[146]

BrigGen Gilbert was on convalescent leave in January 2003, due to complications following what he thought would be minor surgery.[147] While convalescing at home, BrigGen Gilbert learned during a meeting that LtGen Dallager had been unaware Gen Ryan had tasked BrigGen Gilbert with restoring good order and discipline at USAFA. LtGen Dallager did not know prior to the meeting and described "this" [USAFA senior leadership] as a "dysfunctional family."[148] BrigGen Gilbert stated:

> ". . . I felt that we, again, trying to act on the charter that I had been given by General Ryan and where I felt the Chief of Staff had told me he wanted me to take the Cadet Wing. There was a consistent resistance from the other mission elements, as we call them here, to the point where the word that was coming back between Execs, you know how Execs tend to talk from time to time, but from the Superintendent's Exec to my Exec, was the 'Supe' was going to read me the riot act because I wasn't getting along well with the other mission elements. In fact, when I was still convalescing at home, I still couldn't leave the house because I was in a machine that was moving my leg back and forth all day long, the Superintendent and all the mission elements basically came to my house to tell me that I wasn't playing well in the sand box with everybody else. The measure of merits seemed to be, 'Let's just get along.' I felt that we had some major issues here that we can't just get along anymore, that we need to address. That was not appreciated, so they came to the house and met for a couple of hours and took turns telling me how screwed up I was and that I wasn't coordinating, communicating, and I was off the mark as far as getting along with everybody. . . ."[149]

b6

On January 2, 2003, Secretary Roche received an e-mail from "Renee Trindle [redacted]" which appeared to be the same as the "John Smith" e-mail. This e-mail caused Secretary Roche to direct SAF/GC to establish a high-level working group[150] and assess complaints about USAFA processes related to sexual assault allegations, including the following actions:

- Review cadet complaints concerning the Academy's program of deterrence and response to sexual assaults since 1993.

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146 March 18, 2004, Gilbert Interview Transcript, p. 33
147 Air Force Working Group Report, p. 142
148 March 18, 2004, Gilbert Interview Transcript, p. 43
149 March 21, 2003, Gilbert Interview Transcript (Air Force Working Group), p. 87
150 Air Force Working Group Report, p. i

- Ensure that cadets, former cadets, and other members of the Academy community who may have constructive comments are provided an opportunity to provide them.

- Establish a factual foundation related to the last 10 years to assist in evaluating the effectiveness and appropriateness of the Academy's processes to deter or respond to sexual assault.

- Evaluate how well the Academy's process to assist victims and punish offenders has worked in the last 10 years and make recommendations for appropriate change.[151]

The Secretary also tasked the Air Force Working Group with reviewing sexual assault cases that had been reported January 1993 to December 2002. In conducting this review, the working group was to keep in mind both "the goal of the Academy to develop leaders of character for tomorrow's Air Force, and ordinary Air Force processes."[152]

In February 2003, BrigGen Gilbert saw his first sexual assault notification forms, which consisted of three boxes: was a cadet involved; was the security forces notified; and did the victim consent to an investigation. He returned the form to the Sexual Assault Services Branch after having written on it, "I need more information than this if I am going to do anything with regard to this issue." "[153]

On March 26, 2003, the Secretary of the Air Force and the Air Force Chief of Staff published the *Agenda for Change*.

On April 10 2003, LtGen Dallager transferred command of the 34th Training Wing from BrigGen Gilbert to BrigGen John Weida. BrigGen Weida was also named Acting Superintendent pending the arrival of LtGen John W. Rosa, Jr. to replace LtGen Dallager. [redacted] replaced [redacted] as Vice Commandant. Col Slavec was reassigned shortly thereafter. **b6**

On April 16, 2003, the Inspector General of the Department of Defense announced the "Evaluation of Policies and Practices at the Military Service Academies Regarding Response to Sexual Assaults."

On April 16, 2003, Congress enacted P.L. 108-11, establishing the "Panel to Review Sexual Misconduct Allegations at United States Air Force Academy." The Public Law required the Secretary of Defense to appoint a seven-member panel from among private United States citizens who had expertise in behavioral and psychological sciences and standards and practices relating to proper treatment of sexual assault victims (including their medical and legal rights and needs), as well as the United States military academies, to investigate reports that

151 Air Force Working Group Report, Exhibit 3
152 Ibid
153 March 18, 2004, Gilbert Interview Transcript, p. 48

at least 56 cadets had been sexually assaulted at USAFA. The panel was to begin work by May 8, 2003, and report results to Congress within 90 days.[154]

On June 17, 2003, the Air Force published the Air Force Working Group Report, *The Report of the Working Group Regarding the Deterrence of and Response to Incidents of Sexual Assault at the US Air Force Academy.* The report did not mention either the Anderson Complaint or the Concerned Citizen Complaint.

On September 22, 2003, the Fowler Panel Report, *Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy*, was published. The Fowler Panel recommended (among other things) that the Inspector General of the Department of Defense thoroughly review the accountability of Academy and Air Force Headquarters leadership for the sexual assault problems at the Academy over the last decade. The Panel specified that the review should include assessing:

- the actions taken by leaders at Headquarters, Air Force as well as those at the Academy, including General Gilbert, General Wagie and Colonel Slavec.
- the adequacy of personnel actions taken,
- the accuracy of individual performance evaluations,
- the validity of decorations awarded and the appropriateness of follow-on assignments.[155]

The Fowler Panel stated concern that Col Slavec received a medal recognizing her performance while assigned to USAFA and indicated that such recognition seemed premature. The Fowler Panel also expressed concern that the Air Force Working Group did not address "ineffective oversight by Air Force leadership," which the report characterizes as "one of the most significant contributors to the current controversy." According to the Fowler Report:

> ". . . Members of the Working Group knew about the prior involvement of Air Force leadership since they or their offices were engaged in the issues over the past ten years. Yet the General Counsel apparently made a determination not to include any of this information in the Working Group Report. Instead, the General Counsel left the matter for another study and another day. . . ."[156]

Additionally, the Fowler Panel recommended that we report our review results to the House and Senate Armed Services Committees and to the Secretary of Defense.[157]

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[154] P.L. 108-11-April 16, 2003, 117 STAT. 609, TITLE V--PANEL TO REVIEW SEXUAL MISCONDUCT ALLEGATIONS AT UNITED STATES AIR FORCE ACADEMY
[155] Fowler Report, p. 42
[156] Ibid, p. 41
[157] Ibid, p. 42

On September 24, 2003, Ms. Fowler testified before the SASC regarding the Panel report. As a result of the testimony, SASC members requested that our review include "an assessment of the accountability of current, as well as previous Air Force leadership." Since the Fowler Panel questioned omissions in the Air Force Working Group Report and indicated "the Air Force General Counsel attempted to shield Air Force Headquarters from public criticism by focusing exclusively on events at the Academy," SASC also requested that we investigate the allegation, as well as reasons for omissions in the Air Force Working Group Report.[158]

On September 30, 2003, the Senate Armed Services Committee conducted a hearing to receive testimony from Secretary Roche, Gen Jumper, and SAF/GC (Walker).

On November 21, 2003, SAF/IG forwarded via fax a copy of the June 28, 2002 anonymous letter from "Concerned Citizen" addressed to Secretary Roche along with a copy of the July 2, 2002 AF/CC tasker to SAF/IG and a copy of the SAF/IG complaint analysis approved by SAF/IG LtGen Huot.

[158] September 25, 2003, Senate Armed Services Committee Letter to the Inspector General of the Department of Defense

Appendix G. Example USAFA Notification Forms

Control Number: AY 00/01-0[illegible]

SEXUAL ASSAULT SERVICES TRACKING SHEET
For
SEXUAL ASSAULT REPORTS AND NOTIFICATIONS
Academic Year 2000/2001 (1 Aug 2000 – 1 Aug 2001)

Who made Sexual Assault notification?	Date	Time
☐ Hotline (phone contact)		
☐ CASIE Rep (face-to-face)		
☒ Victim Advocate	22 Sep 01	0100
☐ Third Party (please specify)		

Name of person completing this report (interviewer): [redacted]

Information on limited confidentiality of DFBLC: If you are a victim of a crime, relevant information may be released to investigative and judicial officials if approved by the Superintendent. USAFAI 51-201 states that DFBLC will report what they know of a case to 34TRW/CV and SFAI, but victim will retain control over confidentiality unless 34TRW/CC and USAFA/CC determine an investigation is needed to safeguard the Cadet Wing.

☒ Has victim has been notified of DFBLC confidentiality policy? (Yes) No (circle one)
Interviewer acknowledges that victim has been notified and understands the confidentiality policy.
[redacted] (interviewer initials) [illegible] (date & time)

USAFAI 51-201 states that the person whom the victim reported the incident to should inform the victim of his/her right 1) to contact a Staff Judge Advocate (HQ USAFA/JA) for restitution due or protection from harassment and intimidation and 2) to contact AFOSI to file a complaint and begin an investigation of the incident.

☒ Has the victim has been informed of his/her right to contact HQ USAFA/JA and AFOSI? (Yes) No (circle one)
Interviewer acknowledges that victim has been informed of his/her right to contact HQ USAFA/JA and AFOSI.
[redacted] (interviewer initials) [illegible] (date & time)

Victim Information

Gender: F Class Year: 2004

Alleged Offender Information

Gender: M Class Year: unknown

Is/Was the perpetrator a member of victim's squadron at the time of the assault? unknown

Relationship to victim: unknown - stranger

Type of Assault

	No	Completed	Attempted	Victim Unsure	Info Not Obtained
vaginal intercourse, forcible	☐	☒	☐	☐	☐
anal oral & digital penetration	☐	☐	☐	☒	☐

Required Actions

☐ Interviewer acknowledges that the parties below have been notified of incident
_____ (interviewer initials) _____ (date & time)

☐ Victim Advocate (VA) assigned to victim? Name _____ Date & Time _____
VA acknowledges that he/she has been notified of incident and assigned to victim
_____ (VA initials) _____ (date & time)

☐ 34 TRW/CV notified? Name _____ Date & Time _____
34 TRW/CV acknowledges that he/she has been notified of incident
_____ (34 TRW/CV initials) _____ (date & time)

☐ SFOI notified? Name _____ Date & Time _____

Additional Actions

☑ 34 TRW/CC notified? Name [redacted] Date & Time _____
34 TRW/CC acknowledges that he/she has been notified of incident
[redacted] (34 TRW/CC initials) [redacted] (date & time)

☐ Does 34 TRW/CC support the victim's desire for confidentiality OR does he/she recommend that the case be investigated? **Maintain Confidentiality / Investigate** (circle one)
34 TRW/CC confirms his/her recommendation to maintain confidentiality OR forward case to be investigated
[redacted] (34 TRW/CC initials) [redacted] (date & time)

☐ USAFA/CC notified? Name _____ Date & Time _____
USAFA/CC acknowledges that he/she has been notified of incident
_____ (USAFA/CC initials) _____ (date & time)

☐ Does USAFA/CC support the victim's desire for confidentiality OR does he/she recommend that the case be investigated?
Maintain Confidentiality / Investigate (circle one)
USAFA/CC confirms his/her recommendation to maintain confidentiality OR forward case to be investigated
_____ (34 TRW/CC initials) _____ (date & time)

Written Comments & Additional Remarks (e.g., incident description, any medical treatment received, developments, etc.)

[redacted]

Control Number: AY 01/02-002

SEXUAL ASSAULT SERVICES TRACKING FORM
FOR
SEXUAL ASSAULT REPORTS AND NOTIFICATIONS
AY 01/02 (1 Aug 2001 - Aug 2002)

Who made the notification?	Date	Time
☐ CASIE Hotline (phone contact)		
☐ Victim Advocate		
☐ CASIE Member (face-to-face)		
☑ Third Party	11 Sep 01	

Name of person completing this report: [redacted]

Information on limited confidentiality of DFBLC: If you are a victim of a crime, relevant information may be released to investigative and judicial officials if approved by the Superintendent. USAFAI 51-201 states that DFBLC will report the notification to the 34TRW/CV and SFOI.

☑ **Has victim been informed of DFBLC confidentiality policy?** Yes (No)

USAFAI 51-201 states that the person with whom the victim reported the incident must inform the victim of his/her right to contact 1) a Staff Judge Advocate (HQ USAFA/JA) for restitution due or protection from harassment and intimidation and/or 2) AFOSI to file a complaint and begin an investigation of the incident.

☑ **Has the victim been informed of their right to contact HQ USAFA/JA and/or AFOSI?** Yes (No)

USAFAI 51-201 affords the victim the option of having a victim advocate assigned to them.

☑ **Has the victim been informed of their right to a victim advocate?** Yes (No)

☐ **Additional information attached per the victim's consent.**

Required Actions:

☑ SFOI notified? (Yes) No

☑ 34TRW/CV acknowledges notification of the reported incident.
Initials [redacted] Date 11 Sep 01

☑ 34TRW/CC acknowledges notification of the reported incident.
Initials [redacted] Date 11 Sep 01

☐ USAFA/CC acknowledges notification of the reported incident.
Initials _____ Date _____

Additional Remarks: [redacted]

When completed: RETURN TO DFBLC

Appendix H. Report Distribution

Office of the Secretary of Defense

Under Secretary of Defense for Personnel and Readiness
General Counsel, Department of Defense
Deputy General Counsel (Inspector General)*

Department of the Air Force

Secretary of the Air Force*
Assistant Secretary of the Air Force (Financial Management and Comptroller)
Inspector General, Department of the Air Force*
Commander, Air Force Office of Special Investigations

Congressional Committees and Subcommittees, Chairman and Ranking Minority Member

Senate Committee on Appropriations
Senate Subcommittee on Defense, Committee on Appropriations
Senate Committee on Armed Services
Senate Committee on Governmental Affairs
House Committee on Appropriations
House Subcommittee on Defense, Committee on Appropriations
House Committee on Armed Services
House Committee on Government Reform
House Subcommittee on Government Efficiency, Financial Management, and Intergovernmental Relations, Committee on Government Reform
House Subcommittee on National Security, Veterans Affairs, and International Relations, Committee on Government Reform
*Recipient of draft report

Appendix I. Responsible Official Comments

LtGen Bradley C. Hosmer Comments

BRADLEY C. HOSMER
Post Office Box 1128
CEDAR CREST, NEW MEXICO 87008

NOV 18 2004

Mr. James L. Pavlik
Assistant Inspector General
Department of Defense
400 Army Navy Drive
Arlington, VA 22202-4704

Mr. Pavlik

I appreciate the opportunity to reply to your tentative conclusion that I "share responsibility for creating, contributing to or abiding a confidential sexual assault reporting program that circumvented both statutory and policy requirements and, thereby, interfered with criminal investigations."

I respectfully disagree. The confidential program I established at the Air Force Academy in 1993 did not circumvent "statutory and policy requirements and, thereby, interfere with criminal investigations." To the contrary, the program supplemented and enhanced the effectiveness of those policies and made additional criminal investigations possible.

Before I exercised command judgment and took action, the effectiveness of the existing policies and procedures was severely compromised by the failure of sexual assault victims to officially report the incidents, preventing the initiation of criminal investigations. The action I took in fact increased the use of official reporting procedures and enhanced criminal investigations.

During the seventeen months between March 1993 and my retirement on 30 June 1994, the number of sexual assault cases officially reported for criminal investigation increased, because victims could come forward initially with assurance of privacy. I was advised periodically regarding the new program. I was advised that cadet victims who initially came forward in confidence about a sexual assault since they arrived at the Academy decided, as a result of the counseling to report officially the previously-unreported incidents for appropriate investigation under the existing statutory and policy requirements.

I believe that your tentative conclusion misconstrues testimony taken out of context and fails to account both for the events surrounding the decision and the larger problem at hand. I would like, therefore, to preface my response by establishing the context for my decision to establish a confidential reporting program as an option for victims of sexual assault at the Academy. This decision appears to be the central fact on which your conclusion is based.

The Situation:

In early 1993 I knew of sexual assaults at the Air Force Academy, because a small number had been reported and investigated, with suitable action taken. As far as I knew, both disciplinary and criminal actions were proceeding appropriately. Then, in the course of a meeting with almost all of the women cadets in late February, I learned there were a significant number of sexual assaults that were not being reported, despite the victims' interest in receiving help. They were not being reported because the victims feared their privacy would not be respected. Recent events had confirmed their fears, when over a victim's objection, counseling records were provided as evidence in a proceeding against a sexual offender. They were also aware that official reporting, consistent with policy and regulation, would likely lead to investigation and, if UCMJ action resulted, to a role as public witness at a criminal trial. These factors strongly deterred official reporting.

I also learned of events of a sexual but non-criminal nature that caused women cadets emotional distress. Some of the women involved wished to have medical or emotional help from the Air Force, but they were deterred because they believed their privacy could not be assured by any agency at the Academy.

This fact forced two conclusions. First, there were cadets who needed emotional and medical treatment who were not getting it. Some few managed to find welfare agencies in Colorado Springs and, on their own, obtained such help as they could in their very limited free time. Many received no treatment whatever.

Second, there were sexual abusers who were not being sought because their offenses were not known. The fact that sexual abuse was required to be reported officially in fact had the effect of suppressing reporting. Existing policy and regulation in this matter were self-defeating. It seemed that only the most egregious cases became officially known.

For those egregious cases, the disciplinary and criminal system appeared to be functioning well, as cited earlier. My concern that all sexual abusers be caught is clear in the Academy newspaper (Falcon Flyer) report of my meeting with the entire Academy population, on or about 1 March 1993[1] and other documents.[2]

What Actions Were Available?

The action in strict conformity with policy and regulation appeared to me to

- explain to the women cadets why reporting would be good for the Academy,
- explain that reporting was officially required, and then
- order them to do so.

[1] Falcon Flyer, 4 Mar 93 (Tab 1).
[2] Press conference transcript of 3 March 1993 (Tab 2), 22 June Policy Regarding Sexual Assault Cases (Tab 3), and August 1993 USAFA Policy Regarding Sexual Misconduct (Tab 4).

Information then available about reporting rates in cohort groups reinforced my own view, based on frank discussions with the women cadets, that such an order would be wishful thinking. It would drive reporting of sexual abuse further underground, thus assuring even more victims would go without care and increasing the chance of sexual abusers offending again and becoming commissioned.

In addition, such action would prevent commanders from knowing whether programs being developed to reduce sexual abuse were effective. Data on a significant fraction of abuse events would be needed to track trends. The number of abuse events reported at that time was too small to suggest trends with any confidence. If I explained to women cadets that when they reported an assault they could not expect privacy, reports would shrink even further.

Finally, such action would cause a loss in credibility, confidence and trust in command – because it would be an order inappropriate in the circumstances and seen by cadets and other personnel as an attempt by command to deflect responsibility elsewhere rather than solve the problem.

The Command Judgment

Instead of an action conforming strictly and solely to the policies and regulations you cite in your attachment, I decided to supplement the tools available by providing a confidential 'hot line', available 24 hours a day, which led to medical and emotional support and assured those who came to it of privacy if they wished. This arrangement was designed to make gains on the three critical points. First, it would assure a larger proportion of victims received emotional support and, when appropriate, medical care.

Second, I believed that in the hands of an experienced practitioner victims could be persuaded to give medical evidence (rape kit procedure) and eventually to report officially, leading to an investigation. Both proved to be true. Even if some victims might never report officially, every one who did was a gain.

Third, all abuse events coming into a confidential hot line would serve as data for following trends, whether the victim decided to report officially or not. So the effect of preventative programs could therefore be followed.

Summary: The actions taken in March 1993 supplemented a healthy disciplinary and criminal process by encouraging victims to come forward. Until then, victims were deterred from reporting because of existing policy and regulation. More reports by victims increased the chance of obtaining information leading to criminal or disciplinary action, assured medical and emotional treatment of victims, and provided significant feedback on the effectiveness of prevention programs.

This arrangement had the potential to be the goose that laid golden eggs, whereas unreasonably strict and literal application of policy and regulation would have slaughtered it.

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I hope that this summary of the situation, choices and actions taken in 1993 provides a fuller and more balanced picture than testimony from my unrefreshed memory ten or more years after the event, given in response to DOD-IG interview questions that led the direction of conversation and narrowed it to the matter of allowing victims to report with confidence of privacy. That action only supplemented a much broader, more complete campaign that dealt with other imperative issues in addition to criminal misconduct. The part of this campaign dealing with criminal misconduct was well established and working properly.

Without this fuller and more balanced picture, the quotes that you attribute to me are misleading and portray my decision in a prejudicial fashion.

DOD-IG Specific Assertions and Comment

From the foregoing, you will understand that I reject your conclusion that I "interfered with criminal investigations". To be more specific, I will address your letter in detail. What follows *in italics* is from the attachment to your letter, explaining your tentative conclusion.

> *In 1993, after meeting with female USAFA cadets and hearing that more than half knew of another cadet who had been sexually assaulted, Lt Gen Hosmer began a counseling program to deal with the "medical and emotional problem" experienced after a sexual assault. He directed a USAFA nurse, an active duty Lieutenant Colonel, to form a small group of medical professionals (nurses) and get the word out that cadets could talk to these people in confidence.*

Your assertion that over half of the female cadets knew of another cadet who had been sexually assaulted is, I believe, misleading. The correct number is less than half. In context, the relevance of this statement was the extent of knowledge of assault among women cadets, not the number of assaults. The number of actual assaults cited in that discussion was far smaller, on the order of a tenth the number who knew a victim.[3]

Publicizing the availability of confidential reporting was not left to the nurses. I announced the initiation of the confidential, 24-hour hotline in a meeting of all Academy personnel on or about 1 March. I explained the change in reporting obligations. All this was reported in the Academy newspaper.[4]

> *Lt Gen Hosmer advised us that his intention was for the nurses to encourage cadets to report matters for investigation when they were told*

[3] I also learned from the women cadets of many non-criminal incidents, as a result of which the women cadets wished to have at least emotional support or treatment. They would not ask for it, however, for fear their privacy would not be protected. Thus, criminal assault was only one part of the problem we had to solve.

[4] Falcon Flyer (Tab 1).

something that should be investigated as a crime. In practice, however, he explained that the matter would not be reported if the cadet did not want to report to police.

While it is possible that a cadet could rely upon the confidential reporting program and still withhold an official report of a sexual assault, I am not personally aware that any did. Furthermore, the *Report of the Working Group* and the report from the *Fowler Panel* do not provide any evidence to support the assertion that cadets who had been sexually assaulted and availed themselves of the confidential reporting program later failed to report their case through formal channels. In fact, I believe that [redacted] would tell you that [redacted] and [redacted] staff were able to persuade each of their rape victims to report, which was one of their objectives from the start.

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The access to confidential or private reporting improved upon the situation faced by commanders and prosecutors then and today: if the victim declines to testify publicly, they have no case. The confidentiality arrangement improves the chances, in my view, of persuading the victim/witness to testify. The results appear to confirm this to be true.

Lt Gen Hosmer did not view the problem as a sexual assault problem, but as a counseling record security matter, because command officials could access cadet counseling records. He believed the cadets needed someone to talk to about their sexual experience in a manner that would remain confidential. Specifically, according to Lt Gen Hosmer:

"...I heard a number of the specific cases...I would characterize...all of them...as heavy pressure from a peer, often the girl was a virgin, not prepared for the event, ...realized what she'd done, and was traumatized..."

Her own mind was not that she was a victim of abuse as much as she was a victim of stupidity, and her concern was that, in the circumstances we had then, she didn't feel she had anywhere she could turn to get appropriate counseling, help, and what have you, because of the phobia that existed on the part of the cadets about lack of privacy in their counseling records. That was the core issue...

So when I did the confidentiality policy, it was not in my own mind, anyway, closely linked to sexual abuse.

Your explanation suggests I was not concerned about sexual assault, but was focused on security of counseling records. This is a misconstruction built into the DOD-IG interview on 3 Dec 03, because the questions were focused on the confidential reporting system, not on sexual abuse incidents or command actions to pursue perpetrators. "The problem" as defined in the interview was whatever led me to establish the confidential reporting

system.[5] As is clear from the interview, that "problem" was the women cadets' fear of loss of privacy and the official ignorance of ground truth that resulted.

The narrow focus of the discussion omitted discussion of actions in the much broader, more complete campaign that dealt with other imperative issues in addition to criminal misconduct. The part of this campaign which dealt with criminal misconduct was well established and working properly.

My concern about finding sexual abusers is clear from, for example, the Academy newspaper report of my all-hands commander's call on or about 1 March, 1993[6], and from the transcript of the press conference I gave on 3 March, 1993.[7]

> *Lt Gen Hosmer's testimony included the following additional salient points regarding his action:*
>
> - *Cadets who came forward to ask for help might not have done so without confidentiality. AFOSI likely would not have received the information anyway and, through his process, at least the traumatized cadet got help.*

It is more correct to say that cadets who came forward because of confidentiality were urged to report officially (all that I know of did so), while without confidentiality none of them would have reported at all.

> - *The nurses were not qualified to distinguish between criminal and non-criminal sexual behavior, it "...wasn't their business."*

Since the nurses were to encourage cadets who reported confidentially to then report officially, without distinction, this point appears to have no bearing on the outcome.

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[5] DOD-IG interview, p.3 "When did you decide that the ... Academy needed a sexual assault reporting system that was vastly different from the rest of the USAF?" P. 30 "What was your thought process in feeling that you needed to put in place a confidential reporting system?" (Tab 5).
[6] Falcon Flyer "Sexual assault is a crime that must be prosecuted. ... We must actively prosecute criminal activity, and we will not commission those guilty..." (Tab 1).
[7] Transcript of press conference: "...we intend to take aggressive action where crimes are committed to investigate, and where we can, prosecute. ... (In response to question) "We have dismissed cadets for sexual incidents below the criminal level. We have and will." (To another question) "I do know that...there are many [civil] rapes and assaults that go unreported, because the system makes it so difficult. ... you all know...our criminal justice system simply does not allow [an anonymous accuser]. So the ugly side of these affairs is that the person involved...at some point has to become fully visible as a victim [witness]...we're trying to make at least the opening rounds of that easy enough so that eventually the victim can feel free to be part of it [a prosecution]. And I've asked them to do this, I had explained there is no free lunch in these matters. It's a difficult problem and solving it will involve some sacrifices." (Tab 2).

- *He considered repeat offenders/predators, but someone (He thought possibly AFOSI.) told him they likely would offend again. His thinking was there would be another chance to catch them.*

One purpose of confidential reporting was to encourage victims to talk about the event and eventually to report in a manner leading to prosecutions, thus reducing repeat offenders to the lowest possible level. Confidential reporting was an improvement on mandatory official reporting, which yielded fewer reports and a greater chance that offenders would have an opportunity to repeat. In either case, any commander hopes that the offender who is not identified will eventually be found and prosecuted.

His process focused on the victim. The perpetrator wasn't given a lot of attention.

This assertion is seriously incorrect. As a summary of the interview, this statement simply reflects the fact the questions centered on the victims and confidentiality. In fact the perpetrator was given a great deal of attention. Again, see the press conference of 3 March and the Academy newspaper reporting on the all-hands commander's call. Additionally, on 22 June 1993 I issued a USAFA policy letter which stated

> Allegations of sexual assault will be fully investigated and investigation results will be reviewed by the commanders and the Staff Judge Advocate. The circumstances of each case will dictate the appropriate course of action, but *criminal prosecution will be considered in every case.* (emphasis added)[8]

- *He did not have a formal process to measure program effectiveness. He received periodic characterizations of the traffic concerning confidential reports that the nurses received. Only the nurses knew identities and incident details.*

I disagree with the implication that a lack of a formal measuring process rendered the confidential reporting program invalid or weak. It is important to recall that the confidential reporting program was established on or about 1 March 1993. My tenure at the Academy concluded on 1 July 1994 – only 17 months later.

During those 17 months, I met periodically with [redacted] and other members of the Academy to receive feedback on whether the program was working effectively. During that time, as I recall there were approximately six calls made to the hotline. Some involved events that preceded the cadet's arrival at the Academy. By all indications the program was succeeding as envisioned. For instance, I was aware of two cases wherein cadets had chosen to report under the confidential program and [redacted] was successful in persuading those two cadets to report their cases to AFOSI. I am not aware

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[8] Sexual Assault Policy, (Tab 3). See also my 19 Apr 93 letter to all Academy Personnel regarding Disposition of Sexual Assault Allegations (Tab 15).

of any case where a cadet who had chosen to report under the confidential program refused to report to AFOSI an assault that involved military personnel.

The fact that originally only the nurses knew the identities and incident details was a crucial aspect of the confidential reporting program. At the time that the program was implemented, the female cadets were extremely and primarily concerned about issues regarding confidentiality. There had been widespread discussions among the cadets about a 1992 court-martial case wherein so-called confidential arrangements had failed to protect the identity of the victim. In that case the identity of the victim had been disclosed when the investigative and prosecution teams had obtained the victim's records from the cadet counseling center over the objections of the victim. This was precisely the type of action that caused victims to refuse to report incidents, and to seek medical and emotional treatment at civilian facilities off the Academy grounds.

It is important to note that the confidential reporting program was designed to address an immediate crisis by supplementing existing practices, and it was envisioned that in time it would be replaced by a more formalized, structured program if the situation warranted. This is, in fact, what occurred when my successor worked with Headquarters Air Force and promulgated USAFA Instruction 51-201, *Cadet Victim/Witness Assistance and Notification Procedures*, (July 15, 1997).

- *He did not take any direct action to alter or improve the cadet perceptions regarding counseling center and its records, such as directing USAFA commanders not to access the records. He excluded his counseling center from the confidential reporting practice and established a counseling system with nurses instead of using the professional counselors and mental health staff employed by the cadet-counseling center.*

It was not possible to alter or improve the cadets' perceptions because their perceptions were based on fact. In addition to the investigative and prosecution teams, various members of the Academy leadership were entitled to view a cadet's counseling center records, reports of investigation, and other sensitive documents. For DoD-IG to suggest that I should have denied USAFA commanders access to records flies in the face of the most fundamental leadership qualities and triggers multiple investigative issues. Such action would have surely, and rightfully, been characterized as gross abuses of authority, and could correctly be construed as undue command influence and impeding criminal investigations.

The use of nurses in the confidential reporting program was a conscious decision on my part. It was clear that the otherwise excellent and highly regarded program at the Cadet Counseling Center was not trusted by sexual assault victims, because cadets knew it could not protect their privacy. I selected [redacted], a senior Air Force nurse, to spearhead the confidential program because [redacted] was widely known and respected at the Academy and widely trusted, especially by women cadets. [redacted] possessed extensive experience working with female cadets. [redacted] volunteered for the position and she had a

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serious, though outgoing and open personality. It was clear to me that she had the ability to tap into the cadet grapevine and help establish the program.

- *He did not think to establish a multidisciplinary response to the problem, primarily because he did not think he was dealing with a criminal problem. He thought it was a medical and emotional problem.*

This repeats the earlier seriously incorrect statement. Again, context is critical in understanding my decision. The stem of this exchange with the DoD-IG interviewer is the question (page 30) "what was your thought process that you needed to put in place a confidential process?" In the discussion that followed I characterized my challenge – which in this context meant my ignorance of ground truth, before the meeting with the women cadets which led to offering cadets confidentiality – as caused by emotional and medical matters, not criminal.[9] The Falcon Flyer, the 3 March press conference, and the 22 June Policy Regarding Sexual Misconduct cited above show my views of the criminal aspect of these events[10].

I was well aware of the criminal aspect of the reporting issue. We had a working, functioning criminal system that yielded results via the UCMJ and cadet disciplinary systems. However, that system appeared to achieve results at the expense of the victim and her needs with the result that reports of sexual assault were suppressed. What I discovered when I met with the female cadets is that they were not coming forward to report crimes because they were afraid of being forced to testify, afraid of being ostracized, and afraid of the impact upon their cadet and Air Force careers. Consequently, they were going off base for assistance or attempting to manage without. As their commander, I had troops that were not being cared for by any military system or organization. And I was presiding over an Academy that had an undercurrent of criminal activity about which I had little or no valid information since, in essence, the system in place – existing policy and regulation – suppressed victim reporting.

By adding a layer of confidentiality onto the existing reporting system, we created an overall multidisciplinary response. The Academy had a criminal system, and a helping agency in the Cadet Counseling Center, but it was shy one area that was supplied by the confidential reporting program.

- *Other than with his new program, he did not know how to reestablish confidence in the Cadet Counseling Center, after the center was required to release a cadet's records during a criminal prosecution or administrative discipline process.*

The cadets' distrust of the Cadet Counseling Center's ability to protect their privacy was based on fact. Re-establishing their confidence either required that cadets knowingly

[9] (Tab 5, page 30).
[10] Tabs 1, 2, and 3, respectively.

accept a falsehood -- not possible – or that the Superintendent illegally assert authority he did not have to forbid access to investigators, prosecutors, and subordinate commanders.

The Superintendent was, and is, the commander of a Direct Reporting Unit. As such, I made an assessment of all the facts before me, consulted with my Staff Judge Advocate, and discussed the matter with subordinate commanders, as well as the AFOSI detachment commander, and members of the Academy leadership. I then made a command decision that the benefits of a confidential reporting program outweighed any drawbacks, and I implemented the program.

> *Lt Gen Hosmer conceded that he did not request Air Force permission before implementing the new program at USAFA, and that there was not a paper trail of approvals. However, he claimed that he spoke with then Secretary of the Air Force, Dr. Sheila Widnall, often and thought she was comfortable with what he was doing.*

As noted above, I did not seek Headquarters Air Force permission when responding to what was clearly a crisis situation at the Academy. I did not believe I was violating policy or interfering with solutions to this pressing problem. I did discuss the matter with the acting Secretary of the Air Force, Mr. Michael Donley, telephonically on different occasions and face to face in the Pentagon. On or about 11 May 1993 I provided him with an in-person update when he visited the Academy. These discussions included our findings and intended actions including the confidential reporting program. These discussions left me with the clear impression that Secretary Donley had no objections to the proposed actions. In fact, in a recent letter to me Mr. Donley states that he met with SAF/MI, DP, JA, IG, PA, LL, and the AFA Group to discuss the AFA assault investigation, and that later I provided him with updates at which Gen McPeak was also present.[11]

I discussed the program that we had implemented with Doctor (not yet Secretary) Widnall in or about April 1993. This was a courtesy to the Secretary-designate, to assure that she knew enough about the subject if the matter came up in confirmation hearings or other pertinent discussions. The confidential reporting program was implemented at the Academy on or about 1 March 1993. Dr. Widnall did not assume her duties as the Air Force Secretary until 6 August 1993. Thus, seeking her "permission" would not have been appropriate. I explained to her the issue that confronted the Academy and how we were working to resolve it. After her confirmation, I kept her reasonably informed of what was, by then, an established program.

In the same manner, I kept the Board of Visitors (BOV) informed of developments and actions taken by the Academy. The attached talking paper was provided to the BOV and discussed during their meeting in October 1993. This represents an update of a flow of information that started not later than May 1993.[12]

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[11] Donley Letter, (Tab 6).
[12] Board of Visitors, Extract, (Tab 7).

I did not directly discuss the matter with Gen McPeakprior to the implementation. However, after the program was implemented, I discussed it with Mr. Donley, the Acting Secretary of the Air Force and Gen McPeak in the Pentagon on 12 April.[13] It would have been an occasional topic of conversation, and I mentioned it at subsequent CORONAs at which General McPeak was present. The BOV talking paper cited above contains virtually the same information that was discussed inthe Fall 1993 CORONA.

Also, a great deal of media publicity attended the program rollout."[14] Clearly, if Gen McPeak or any official at Headquarters AirForce was dissatisfied with the program, they had ample opportunity to register their objection. No such objection was ever raised during my tenure. As previously noted, the informal confidential reporting program was subsequently formalized and ratified by Headquarters Air Force with the promulgation of USAFA Instruction 51-201, *Cadet Victim/Witness Assistance and Notification Procedures*, on 15 July 15 1997 and when theinstruction was again published on 18 April 2000.

> *In addition, he pointed out that his work, including the confidentiality aspects, was reported in the press. For example, a March 1993 Denver Post article reported that Lt Gen Hosmer promised cadets confidentiality and prosecutions, and stressed that cadets did not have to report through the chain of command. The same news article reported that Congresswoman Patricia S. Schroeder praised him and quote her saying "I think they figured out that...there is finally going to be a zero tolerance for all of this."*[15]

I have attached for your consideration contemporary press articles clearly demonstrating that the confidential reporting program was widely publicized at the Academy and throughout the nation.[16] Press accounts often overlooked the point that confidentiality was expected to improve disciplinary and criminal actions--but Rep. Schroeder saw it clearly.

> *Additionally, Lt Gen Hosmer advised us that he received "praise from the E Ring" (Pentagon senior leadership).*

After the flurry of media reporting of the program, I received spontaneous, favorable comments from senior DoD officials in the Pentagon that indicatedthat they had knowledge of the problem, the approach to resolve it, and thatthey expected that it would be effective. Additionally, I received similar comments from members of Congress.

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[13] Donley Letter (Tab 6).
[14] See newspaper articles located in Tabs 8 and 9.
[15] (AF Academy chief declares war on sex-assault problem, Tab 8, page 3).
[16] (Tab 9).

Such comments confirm that the actions we took at the Academy were well known among key officials in Washington.

> *We were not able to reconcile his public pronouncements of confidentiality with his creation of an undisclosed counseling program wherein nurses would get the word out on the street that cadets could talk to them in confidence.*

Any insinuation that the program was "undisclosed" or secretly implemented ignores the facts. As noted above, this was one of the most highly publicized program rollouts in Academy history. Furthermore, the nurses were not expected to "get the word out", rather I unveiled the program to the entire Cadet Wing at an All-Hands-Meeting on or about 1 March 1993 and that meeting was followed by a press conference, articles in the Falcon Flyer and a variety of other media.[17]

Additionally, I would like to direct your attention to a number of documents that I have attached to this response. The first is a 28 May 1993 letter that I provided to all of the Cadet Commanders that states that earlier I had briefed all of the Cadet Commanders about the alleged sexual assault, that I announced a "major effort to fix the problems" and that I made pursuit of the offenders a major focus of interest.[18] Next, I would request that you review the extract of a memo that was sent to me by [redacted] a member of the Law Faculty in 1993. In her memo she states that from her perspective

> *...the Hotline was well staffed, well-publicized, and we had built-in controls regarding the legal strength of any cases that would be reported, including:*
>
> *a. Once we decided to implement the Sexual Assault Hotline, [redacted] trained female officers from SG, the Behavioral Science department and the Law department to handle hotline questions. This was not simply a small group of nurses.*
>
> *b. Lack of Publication: We publicized the Hotline throughout the cadet wing, including Fairchild Hall and the two dormitories. I personally saw flyers stuck to the walls in Fairchild Hall, and I personally placed flyers in the squadron in which I served as Associate AOC, CS-04. I spoke about the Hotline at the Street Smarts programs I gave every semester. Finally, all female attorneys in the law department informed all of their students that they were available for confidential conversations with cadets if they had any questions concerning sexual assault.*
>
> *c. My colleague in the Law Department, [redacted] answered Hotline calls, served on the Hotline Committee, and [illegible]*

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[17] (Tabs 1, 2, 8 and 9).
[18] Letter to Cadet Commanders, 28 May 93 (Tab 10).

available to answer any legal questions regarding criminality of actions reported. I was also a close personal friend of Alma Guzman, and we spoke regularly about the types of calls they were receiving...

2. Multidisciplinary response:

a. Street Smarts: Besides the Hotline, [redacted] *and I developed a Street Smarts program, in which we spoke bluntly to young men and women about rape, sexual assault, and keeping safe in an unpredictable environment. We organized and presented a very candid, informative program that covered campus safety, dating, and rights and responsibilities of young men and women. We gave it four times to several hundred cadets over the next year before I PCSed to the Pentagon...*

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b. (Mentoring Program) In addition, my colleague, [redacted] *and I realized that although there were many more women officers at the Academy than there had been a decade earlier, we were still separated from the cadets by the rank and social structure that existed. We decided to provide more contact between female officers and cadets. We published a directory to distribute to female cadets, including biographical information on over 90 female officers who wanted to participate, that is, to be available to listen to women cadets and answer any questions they may have.* [redacted] *did the footwork to contact the women and put together the list.*

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c. Besides the Sexual Assault Hotline, the USAFA Mentor Program, and the Street Smarts presentations, DFBL (at your direction) spearheaded a committee to increase respect and dignity among all cadets. I also organized a Women's Leadership Symposium in April 1994 (at which we mentioned the Hotline), bringing in superior civilian and military role models from across the country.

I believe that these steps illustrate a multidisciplinary response to the problem. I described these actions in detail to [redacted] *DOD-IG, in several e-mails, as well as a personal interview with him and* [redacted] *Investigator, DOD-IG, on 17 Feb 2004 at Wright-Patterson AFB.*

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[redacted] memo demonstrates the extent to which the actions taken in 1993 were a broad, multi-disciplinary supplement to the standard tools available through policy and regulation at the time.

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Consistent with my desire to ensure that the entire cadet and Air Force community know of the program I made efforts to begin the process to formalize the program through the

[redacted] (Tab 11).

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Ad Hoc Committee on Respect and Dignity. In June of 1993 the Committee presented me with an initial report (which I have been unable to retrieve from the Academy archives), and on 15 April 1994 I was given a progress report that included an update on the sexual assault/rape hotline. According to that report the hotline was "sufficiently publicized", and staffed by trained volunteers who received "high-quality training" from "JAG, OSI, and SG". Publicity also included "educational posters concerning sexual assault/rape posted in every squadron with the hotline number prominently displayed." The report further noted that there had been a basewide announcement for volunteers.[20] Air Force officers who were cadets from that era also provided me with their recollections of events and a short extract has been attached to this response.[21]

> *Additionally, the Commandant of Cadets at the time told us he did not know about the confidential reporting process and two victims, who reported sexual assaults (one in 1993 and the other in 1994), told us they did not know about a confidential process.*

First, I believe that you are misinformed about what the Commandant of Cadets knew about the confidential reporting program. I have spoken with Lt Gen (ret.) Richard Bethurem, USAF, who was the Commandant from June 1992 to June 1993, and he assures me that he was aware of the program. In fact, he was one of the key Academy leaders upon which I relied for candid opinions.

Second, I am not aware of the circumstances surrounding the two cadets that you cite. While I am encouraged by the fact that the victims made official reports, your bare statement does not provide me with sufficient information upon which I can comment.

I fear that these allegations may be based on statements taken out of context. To fully address these allegations I again request that I be provided with redacted copies of the witnesses' testimony.

> *When Lt Gen Hosmer made decisions that deviated from established DoD and AF policies, he had a command responsibility to seek higher level approval.*

The Air Force Academy is a Direct Reporting Unit of the United States Air Force and the Superintendent is the commander of that military organization. All commanders have a responsibility to maintain good order and discipline within their organization and to take actions that promote and protect the health and welfare of its members and the integrity and strength of the organization. For the reasons discussed in the succeeding section of this response, I disagree with the sion to implement a confidential reporting program deviated from Simply put, I made command decisions based upon what was it e cadet victims and the Cadet Wing and those decisions squarel tion afforded military commanders and within the parameters of the applicable DoD and AF policies. There

[20] Respect and Dignity at the Air Force Academy – Follow-up Report, 15 Apr 94, (Tab 12).
[21] Extract of Cadet Recollections (Tab 13).

was no requirement for me to seek higher level approval. However, in the event that my superiors disagreed with my decisions they had ample notice and opportunity to countermand my decisions. Not only did they not countermand my decisions, they fully supported them.[22]

> *His actions violated Air Force and Academy policy that required commanders and medical personnel to report sexual assaults to AFOSI. They also violated DoD policy because they interfered with criminal investigative agencies use of investigative techniques, including interviewing witnesses and victims' of crimes and collecting evidence. DoD policy also vests the decision authority about whether to investigate a matter with the criminal investigative organization.*

First, an overall comment: the actions I took were in the interest of the Academy, the Air Force and the DoD. The actions were taken because policy and regulation requiring reports of sexual assaults, taken alone, were part of the problem – they actively suppressed reporting. DoD policy vests decision authority for investigations with criminal investigative organizations – but it also holds commanders responsible for the good order and discipline of their commands. In this instance a tension exists between the two requirements. Existing criminal investigative practices needed to be augmented with other practices to resolve that tension.

In support of this DoD-IG allegation, the following sources of policy guidance were cited:

- DoD Instruction (DoDI) 5505.3, *Initiation of Investigations by Military Criminal Investigative Organizations*, July 11, 1986
- Air Force Regulation (AFR) 23-19, *Organization and Mission – Field Air Force Office of Special Investigation (AFOSI)*, May 1, 1989
- Air Force Regulation (AFR) 124-4, *Initiating AFOSI Investigations and Safeguarding, Handling, and Releasing Information from AFOSI Investigative Reports*, November 29, 1990
- Air Force Policy Directive (AFPD) 71-1, *Special Investigations Criminal Investigations and Counterintelligence*, September 7, 1993
- Air Force Regulation (AFR) 160-12, *Medical Service – Professional Policies and Procedures*, June 13, 1985
- Air Force Cadet Wing Regulation (AFCWR) 537-7, *Sexual Assault Notification Procedures*, June 23, 1992.

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[22] Donley Letter (Tab 6).

Paragraph 4 of DoDI 5505.3 establishes the policy regarding initiation of criminal investigations. That paragraph states:

> 4.1. The commanders of the military criminal investigative organizations and their subordinate commanders shall be authorized to initiate criminal investigations. The military criminal investigative organizations shall not be required to solicit nor shall they solicit from commanders outside the military criminal investigative organizations requests or authorizations to initiate investigations. This does not preclude discussions with commanders concerning initiation of a criminal investigation, as set forth at subsection 4.6. However, in each case the decision to initiate a criminal investigation remains with the criminal investigative organization. Any commander or the Inspector General, DoD (IG, DoD), pursuant to DoD Directive 5 106.1 (reference (a)), may request the military criminal investigative organizations initiate criminal investigations in addition to investigations initiated by the investigative organizations.
>
> 4.2. Only the Secretary of a Military Department, or as specified in subsection 4.3., the IG, DoD, may direct a military criminal investigative organization to delay, suspend, or terminate an investigation.
>
> 4.3. Only the IG, DoD, may direct a military criminal investigative organization to delay, suspend or terminate an investigation being conducted at the request of the IG, DoD, pursuant to reference (a).
>
> 4.4. Commanders outside the military criminal investigative organizations shall not impede the use of investigative techniques permissible under law or regulation, which the military criminal investigative organizations consider necessary.
>
> 4.5. Where military criminal investigative organizations require resources, personnel, or facilities not under their command or control to accomplish their mission, coordination is required through normal command and resource processes.
>
> 4.6. The military criminal investigative organizations shall advise appropriate commanders of the initiation and status of investigations, in accordance with the provisions of DoD Directive 7050.5 (reference (d)), DoD Instruction 5505.2 (reference(e)), and applicable regulations of the Military Department concerned.

Upon review it is clear that this policy is intended to imbue commanders of military criminal investigative organizations, such as AFOSI, with the ability to initiate investigations whenever they deem appropriate, and that once such investigations are initiated, then no other commander outside the investigative organization may impede

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that investigation. The confidential victim reporting program initiated on or about 1 March 1993 did nothing to contradict this policy.

First, no Academy commander, including the Superintendent and Commandant, ever required AFOSI commanders to solicit requests or authorizations to initiate investigations. Furthermore, in those instances where AFOSI commanders advised me of their decision to initiate a case, I wholeheartedly supported them.

Second, there was never an instance where I directed AFOSI to delay, suspend, or terminate an investigation. Rather, on 22 Jun 1993, I issued a policy letter that restated my direction that allegations of sexual assault would be fully investigated[23].

Third, at no time did I ever direct AFOSI to delay, suspend, or terminate an investigation conducted by the direction of any Inspector General.

Fourth, at no time did I ever impede the use of investigative techniques permissible under law or regulation, which the military criminal investigative organizations considered necessary. In fact, when AFOSI desired to conduct an unprecedented number of interviews (in the hundreds) of male cadets in an attempt to solve an alleged rape in February of 1993, I readily agreed despite the disruption that the interviews caused to the cadets' daily education and training regimen.

Fifth, in every instance where AFOSI required resources, personnel, or facilities not under their command or control to accomplish their mission I ensured that they received them. For example, in response to the alleged rape in February of 1993, I more than tripled the size of the Academy's AFOSI detachment in an effort to solve the crime.

Finally, I was fully apprised of the range of AFOSI investigations, to include sexual assault cases. I attended the typical investigative and military justice updates conducted occasionally by AFOSI and the legal office.

The next series of regulations and instructions referenced in your letter highlight the interdependencies and responsibilities between AFOSI and commanders. For instance, paragraph 3.b.1(a) of AFR 23-18 establishes AFOSI authority and policy regarding criminal investigations. That paragraph states:

> 3. Elements and Objectives. AFOSI is the only agency in the US Air Force authorized to carry out certain responsibilities for the Secretary of the Air Force Inspector General (SAF/IG). Specifically, these are:
>
> a. Organizational. Organizes, activates, or deactivates units under AFOSI control and assigns a territory for each unit to investigate.
>
> b. Investigative Operations.

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[23] (Tab 3).

> (1) Conducts investigations within the US Air Force. Investigations include alleged major crimes against people, personal property, the federal government or its property according to regulations and laws and as authorized by agreements (AFRs 124-11 and 124-12); These crimes include:
>
> (a) Arson, bribery, homicide, counterfeiting, sex offenses, impersonation, improper use or diversion of federal government property or employees, forgery, robbery, housebreaking drug abuse, and other crimes that violate the Uniform Code of Military Justice or other federal laws and directives.

Paragraph 3 of AFR 124-4 enumerates commanders' responsibilities to include the responsibility to "[p]romptly advise AFOSI of any matter that falls within AFOSI investigative responsibility (see AFR 23-18)." Paragraph 5(a) of the same AFR states that

> Commanders refer matters and offenses that fall within AFOSI investigative responsibility to the AFOSI units designated in AFR 124-6. All referrals must be accompanied by all known information on the matter to be investigated.

From those quoted paragraphs DoD-IG has fashioned a policy determination that a commander is without discretion when confronted with a sexual assault and must make an immediate referral to AFOSI. I contend that this policy determination is in error and misreads the entirety of the cited regulations.

Paragraph 2(a)(1) of AFR 124-4 allows for commanders "responsible for the security, discipline, and law enforcement of a command or installation" to refer a matter to AFOSI for an investigative determination. That referral is not automatic, nor is it immediate. As noted above, paragraph 3 of AFR 124-4 requires a "prompt" referral to AFOSI. The reason that "prompt" is not synonymous with "immediate" in this context is to give effect to paragraph 5(b) of AFR 124-4 which provides that

> Commanders do not need to refer matters which, while falling within the investigative scope of AFOSI, are such that proper action can be taken without additional AFOSI inquiry or an investigation is not otherwise deemed warranted (see AFR 124-1). In these cases, tell AFOSI about the matter.

The authors of both the *Report of the Working Group* and the *Fowler Panel* recognized that the Academy's definition of sexual assault covered some acts that would not normally be considered crimes of sexual assault in the Air Force or in the civilian criminal justice system. Consequently, a commander when confronted with a sexual assault was expected to exercise discretion in ascertaining the facts of the assault and, of necessity, reporting to AFOSI would not have been immediate.

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As noted above, and in my testimony on 3 December 2003, I made a reasoned command decision to implement a confidential reporting system for anyone wanting private access to medical or emotional support, including victims of sexual assault. This allowed victims who would otherwise not report their assault to receive medical and emotional assistance, and then allowed [redacted] and [redacted] assistants the opportunity to persuade the victim to make a formal report to AFOSI. Once again, I am not aware of any instance where a serious sexual assault, such as rape, uncovered via the confidential reporting program, was not referred to AFOSI. If, over a decade later, DoD-IG has found such a case, I would welcome receiving the details.

You have referred to my attention the provisions of AFPD 71-1, *Special Investigations Criminal Investigations and Counterintelligence*, September 7, 1993 to reinforce the responsibilities of AFOSI and commanders. First, I note that the AFPD was not in effect when the confidential reporting system was established on or about 1 March 1993. Second, my thoughts regarding the AFPD provisions were captured in my response to the similar provisions of DoDI 5505.3.

Your letter cites AFR 160-12 for the proposition that medical personnel are required to report certain serious incidents to AFOSI. Paragraph 53 states:

> Incidents involving suspected child abuse, homicides, suicides, attempted suicide, robbery, aggravated assault, rape, other sex offenses, intentional prescription drug overdose, and narcotic overdose episodes are within the investigative purview of AFOSI. When medical personnel acquire information *during their official duties relating to these matters or other serious offenses*, they should promptly refer it to the servicing AFOSI unit... (emphasis added)

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One of key tenets of the confidential reporting system was that victims would be able to contact personnel qualified to assist victims in obtaining a wide variety of medical, emotional and psychological support. It would have been totally inconsistent to establish a sexual assault hotline wherein the recipient of the call was required to refer the matter to the AFOSI. Consequently, I elected to place [redacted] and [redacted] assistants outside the ambit of the military treatment facility. By recasting their official duties as more analogous to victim liaisons the requirements of AFR 160-12, paragraph 53, were not applicable. In this manner, [redacted] and [redacted] assistants were able to defer the victim's decision to report to AFOSI until the full range of support opportunities had been presented to the victim. Once the victim's immediate needs were addressed and the victim was apprised of other avenues of support, then the victim was encouraged to make an official report to AFOSI.

The success of this approach is underscored in a chart attached to a 3 Nov 04 letter from [redacted] to Lt Gen (ret.) Raymond P. Huot.[24] That chart reveals that during the mandatory reporting years from academic year 85-86 through academic year 91-92

[24] [redacted] Letter (Tab 14).

only one sexual assault was reported within that seven year period. However, once the confidential reporting program was instituted there were 15 sexual assaults reported in that year alone. Clearly, something had changed that encouraged sexual assault victims to report and to receive emotional and physical assistance.

The final item of policy guidance to which your letter referred concerned AFRWR 537-7. That Academy regulation represented the procedures for reporting sexual assaults prior to the establishment of the confidential reporting program. It was this regulation and its unyielding reporting requirements that drove female cadet victims to elect to suffer a sexual assault in silence rather than endure the notoriety and intrusiveness that resulted from reporting. It was the overwhelming dissatisfaction with this regulation that led me to develop the supplementary confidential reporting program.

This Academy regulation was approved by the deputy commandant for the Cadet Wing. As the Superintendent and his superior commander, I could have ordered waivers or deviations from the regulation or even rescission of the regulation. In effect, that is what occurred when the confidential reporting program was established. The formal rescission occurred when my successor established USAFA Instruction 51-201, *Cadet Victim/Witness Assistance and Notification Procedures*, (July 15, 1997).

In resolving this crisis situation I was faced with a multitude of regulations. I believed at that time, that nothing in those regulations prevented a commander responsible for good order and discipline of a military organization from applying discretion and simple common sense in the formulation of a solution. I maintain that same belief today.

> *Air Force Chief of Staff, Gen McPeak and Secretary Widnall did not know the details of the confidential reporting. Gen McPeak told us "I didn't know that he had a special confidentiality deal, " and that he was not aware that some sexual assaults at USAFA were not being reported to AFOSI.*

Gen McPeak and Secretary Widnall may not have known the details of the confidential reporting program; however, they, and Secretary Donley, were aware of the program due to my discussions with them at various points after the program was implemented. Again, I am unaware of any sexual assaults that were not reported to AFOSI after the implementation of the program. At the same time, it was clear to me in March 1993 that *prior* to the implementation of the program there were sexual assaults that were not reported to AFOSI or to any entity at USAFA.

> *Gen McPeak also said that since Lt Gen Hosmer reported to him, if he were going to make a major policy decision, he should have consulted with him (McPeak).*

As discussed earlier, I made command decisions based upon what was in the best interest of cadet victims and those decisions squarely fell within the discretion afforded military commanders and within the parameters of the applicable DoD and AF policies. As I have

not been granted a copy of Gen McPeak's testimony I am not aware of the context of his response. However, it is clear to me that on this point Gen McPeak has been misinformed about the method by which the confidential reporting program was established and the policies under which it operated. Since there was no break with existing DoD or AF policy, there was no requirement for me to seek higher level approval. However, the publicity surrounding the program rollout provided ample notice and detail such that if in 1993 Gen McPeak or his staff disagreed with my decisions they had the opportunity to reverse it. The confidential reporting program was a topic of conversation with CORONA participants and the Academy's Board of Visitors.[25] No objection was ever raised. In fact, the program was praised for addressing an obvious need.

> *According to former Secretary Widnall, Lt Gen Hosmer stopped by to see her 3 to 4 months before she became Secretary, and he did tell her how he was dealing with sexual assaults as USAFA. She also knew that he had met with female cadets and was trying to approach the problem from a perspective that addressed character development, leadership and training. However, he never asked her whether he could deviate from Air Force policy, and she did not recall ever discussing the program in "technical terms" with anyone, including Lt Gen Hosmer.*

I share Secretary Widnall's recollection on this point. As discussed earlier, I spoke with then Doctor (not yet Secretary) Widnall in or about April 1993 as a courtesy. There was no need to brief her regarding the "technical terms". She merely needed to be familiar with the problem and the program in case the matter came up in her confirmation hearings or other pertinent discussions. The confidential reporting program was implemented at the Academy on or about 1 March 1993 and Dr. Widnall did not assume her duties as the Secretary until 6 August 1993. Thus, seeking her "permission" would not have been appropriate.

Conclusion

It should be evident that in the spring of 1993 I faced a complex human problem that required a decisive and inventive approach. In implementing the confidential reporting program I intended to augment or supplement the regulatory- and policy-based approach that was inadequate to the needs of the victims and to the Air Force. I have no doubt that the evidence shows that the actions taken were consistent with command responsibility and operated within the existing policy, regulatory and legal framework.

The program was implemented and developed with full engagement of the Academy leadership and senior Air Force leaders were apprised of our efforts. The program, by any objective measure, was effective and improved four critical factors:

[25] Board of Visitors materials (Tab 7) and Donley Letter, 2 Nov 04 (Tab 6).

- care and welfare of victims,
- identification and pursuit of perpetrators,
- command awareness of the scope of the sexual assault problem, and
- development of sexual assault prevention programs.

My bottom-line conclusion is that implementation of this multifaceted treatment and prevention program was an essential supplement to Air Force policy and regulation and corrected deficiencies in the Academy's sexual assault prevention, treatment and response.

As noted above, I have been unable to obtain DoD-IG transcripts that I believe would be beneficial to my position. Consequently, I again request full disclosure of transcripts and any other documents related to this matter. Finally, while I appreciate the opportunity to respond to your tentative conclusion, I would request that I be granted an additional opportunity to respond if your conclusions vary from those in your letter of 28 September, before you publish your final report.

Sincerely,

Bradley C. Hosmer
Lt. Gen. USAF Ret

Exhibit List w/Tabs Attached

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Mr. James L. Pavlik
Assistant Inspector General
Department of Defense
400 Army Navy Drive
Arlington, VA 22202-4704

15 November 2004

Dear Mr. Pavlik

Your fieldwork, initiated from the "Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy" (Fowler Report), alleges that I helped create a confidential sexual assault reporting program. From that you also allege I circumvented statute and policy and interfered with criminal investigations. You also allege I failed to notify or seek review of the Secretary of the Air Force (SECAF) or the Chief of Staff (CSAF) prior to program implementation. Inclusion of the information that follows in your final deliberations will ensure you have a more complete picture of the matter and motives as I know them. I request this response be included as part of the final report for public view.

To adequately assess the role I and my fellow general officers played, one must first develop a clear picture of what the USAFA was facing in the spring of 1996. I will attempt to set this matter before you as it appeared to me in 1996, as well as the Air Force Judge Advocate General, the Air Force Surgeon General, the Superintendent of the USAFA and other senior leaders. Most of this factual background is also echoed in the "Report of the Panel to Review Sexual Misconduct Allegations at the U.S. Air Force Academy" published in September 2003 and also known as the "Fowler Report."

The Problem: Silence from Victims of Sexual Assault

In the early 1990s, it became readily apparent the normal approach to addressing sexual assault allegations was not serving the needs of victims or society. Cadets weren't reporting and therefore, offenders were not being called to account for their actions. Why? In large measure, it was because the cadets did not trust investigators from the Air Force Office of Special Investigations (AFOSI). By reputation at least, AFOSI investigators were known to be intimidating and callous with regard to the plight of alleged victims. For victims who sought psychological help to deal with the trauma of sexual assault, they first had to overcome an institutional barrier to reporting a fellow cadet as well as perceived stigma of weakness in needing the help of a mental health professional. Once the victims reported an allegation of sexual assault, Air Force policy

compelled the mental health professional to report the matter to the AFOSI. So, in a sense, the AFOSI's reputation, whether based in reality or not, created an unhealthy silence. Until cadets had confidence in a reporting system, neither the USAFA nor HQ USAF could know the scope of sexual assault problems at the USAFA, much less investigate those cases that should be pursued. In addition, cadets who had been victimized were not getting the help they needed in dealing with the trauma of sexual assaults.

In response to this situation, General Bradley C. Hosmer put into place a reporting program in 1993 that included confidentiality for the alleged victim that was continued by [redacted]. In his testimony before the Fowler panel, General Hosmer testified he had frequent conversations about the policy with then Air Force Secretary Sheila E. Widnall. He never received any indication from Air Force Headquarters, AFOSI or the Academy's Security Police that there were problems or disagreements with his program. Under General Stein, the USAFA continued the policy. In 1995 a Social Climate Process Action Team (PAT) consisting of cadets, faculty and staff studied the issue. The PAT recommended that in responding to a sexual assault, the victim's confidentiality and desires be respected, and that a major impediment to reporting of assault was a lack of trust in the system. General Stein also reported the discovery of a cadet sexual assault underground support group. It existed as an underground mutual aid society because victims did not want to report incidents to law enforcement. Further, the Fowler Report indicates counselors did not encourage victims to report crimes to the AFOSI. In other words, counselors were given the de facto role of determining whether a victim should report a serious crime or not. This dynamic interfered with the timely investigation and prosecution of sexual assaults.

Confidentiality with Commander Override

I came into the picture as the Air Force Inspector General in late April 1996. The program built by Generals Hosmer and [redacted] came before me for review in mid 1996, just before the Khobar Towers bombing, another case that I put tremendous effort into during this period. Generally, my duties included formulation of policies that enabled commanders in the field to lawfully execute their assigned responsibilities. As an officer with over 15 years experience in command positions, I emphasized building effective, practical tools to place in the hands of commanders. Much of this effort focused on provision of sound policies, implementation of effective training and providing trained personnel.

As I began to consider [redacted] request for a review of the USAFA, I sought advice from [redacted] As you know from my June 1996 memorandum to [redacted] I ultimately suggested a revision putting the Commandant of Cadets in a prominent decision-making role for every case involving allegations of sexual assault. The program I endorsed ensured the Commandant of Cadets reviewed every USAFA sexual assault allegation and

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placed on the Commandant the responsibility of deciding which cases must be investigated by law enforcement regardless of the victim's wishes.

In effect, I worked to ensure a seasoned Air Force commander makes the call in balancing the severity of the allegations, the interests of reluctant and possibly traumatized alleged victims and the needs of society. Anyone who's dealt with sexual assault cases knows these interests are not always congruent. This is a far cry from circumventing investigation and certainly not a program designed to interfere with AFOSI's independent investigatory charter. In fact, commanders regularly make decisions on what should be referred to AFOSI, Security Forces investigators, civilian law enforcement or commander-directed investigators regarding allegations of all types. The objective at the USAFA was to get cadets to make timely reports of sexual assault and not bury them.

Increased reporting of sexual assaults at the Academy indicates the program worked. Prior to the extension of greater care for the victim, reporting of sexual assault at the Academy was nonexistent. During the Fowler Panel's investigation of sexual assault issues at the USAFA, former Congresswoman Tillie Fowler, expressed her view that if the Air Force did away with confidentiality reporting, the statistics on sexual assaults might look good in the future but that would likely be because we drove the problem underground again. An excerpt from the panel's September 2003 final report reflects its' view:

> *"The Panel finds the problems associated with the former Academy policy of confidential reporting were not necessarily caused by allowing for privileged communications, but were the result of a confidentiality policy which, over time, was poorly implemented and lacked responsible governance and oversight. The Panel further finds that the* Agenda for Change *reaction which eliminated confidential reporting swings the pendulum too far in the opposite direction and creates a significant risk that victims will not come forward at all and thus lose the benefits afforded by professional counseling."*

[redacted] has consistently taken the same position. [redacted] served as the Surgeon General's subject matter expert on the mental health aspects of sexual assault during the period of my involvement. Additionally, I am not aware of even a single complaint that someone or some process interfered with AFOSI's prerogative to investigate a particular case. Instead, I am confident cases of sexual assault at the USAFA were investigated without impediment during my tenure as the Inspector General. I never heard otherwise, and I was in a position to know about it. Based on the above and subsequent reviews, including the Naval Academy's decision to model the core of its program on ours, I believe we succeeded.

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I remain convinced our program addressed the situation confronting the USAFA in the best way possible. At least four different dynamics converge in this. First, victims must have a safe haven where they can be restored; confidentiality is the key here because it gets them in the door. Second, sexual assaults range from an unwanted advance to rape; not all allegations require the formality of an AFOSI investigation. Third, victims, society and the Academy at large need to have criminals prosecuted and wrongdoers disciplined; commander involvement is essential to these judgments. Fourth, our system of criminal investigation and trial by court-martial for the most serious cases can easily cause victims further trauma. The program I endorsed drew a line between one extreme of honoring only the needs of the alleged victim and the other extreme of enforcing the law to meet the needs of society at large. Honoring only the immediate desire of victims to put behind and forget the trauma would remove victims from that process and allow offenders to become commissioned officers. It's an admittedly tough process for a traumatized young person to endure. Because victims never receive therapeutic benefit from the process of interrogation by law enforcement, interview by attorneys, testimony and cross examination in the courtroom, it takes a commander's judgment to determine the right way to proceed. This is how misconduct and crimes are handled across the Air Force, and the program I supported held true to that principle. It certainly did not circumvent any statute or policy.

Keeping Leadership Informed

You also allege I failed to keep the Secretary of the Air Force (SECAF) and the Chief of Staff of the Air Force (CSAF) informed regarding the program to improve the handling of sexual assault allegations at the USAFA. Nothing could be further from the truth. Though now in November 2004, I cannot recall specific conversations from 1996-1998, I never concealed any of my activities and I was in the regular practice of keeping my bosses, the SECAF and CSAF, informed of the big issues I was facing. It may also be helpful to review the command structure that governs the USAFA. The superintendent of the USAFA works directly for the SECAF and the CSAF, and I have no reason to believe the superintendent kept matters of this level of importance hidden during 1996-1998. Any systemic problems and approaches to resolving such problems must be known to the SECAF and the CSAF in the regular course of business. Evidence of the CSAF's involvement is apparent in his direction to send [redacted] to the USAFA to assess and help develop a plan to improve the sexual assault situation.

Additional Actions

The suggested revision of the USAFA process to establish the Commandant as a focal point for sexual assault complaints was only a part of the overall effort to improve the situation. The holistic approach taken to this problem by my fellow senior officers and I required the USAFA conduct training for incoming cadets on this issue and values in general. We recognized that many pre-existing attitudes leading to these assaults were imported as new cadets entered the Academy. General Stein had a list of actions he

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needed to take, and much of it was based on the expert advice received from [redacted] A major element involved training the entire USAFA population on ways to prevent sexual assault.

As part of my responsibility for overseeing the AFOSI mission, I discussed the issue of confidential reporting with Commandant override on more than one occasion with my AFOSI commander, Brig Gen Francis Taylor. I understood his concerns and desire for every allegation of sexual assault to be within the purview of AFOSI. He expressed concern that cases would be impeded from reaching AFOSI for investigation. I found this concern rooted not in the new process but in its implementation and a common AFOSI frustration that victims of sexual assault frequently delay in reporting. The USAFA process I endorsed was intended to accelerate victim identification and the process of investigating sexual assaults and it did. Before the USAFA process was put in place, no reports of sexual assault were being made. After the new USAFA process was put into practice, reports were made and investigations were conducted, some due to Commandant override of victims' wishes. Thus, I concluded Brig Gen Taylor's concern did not warrant a complete reversal. As we dug deeper, I learned that part of the problem lay with the training and capabilities of individual AFOSI agents assigned to the USAFA detachment. I replaced the leadership at this detachment and brought a female agent on board. We conducted training on sexual assault victim interrogation. I also caused AFOSI to institute a command-wide reporting system so that sensitive cases would be reported to higher echelons faster and overall AFOSI activities would be more visible from my level as well as the AFOSI commander's.

Final Thoughts

I urge you to reexamine your tentative conclusions, not because of pride in my own reputation, but because the offer of limited confidentiality with commander override was absolutely necessary at the USAFA. Look at the problem of silence at the USAFA. This was an era where female cadets simply weren't reporting anything, and that's the most dangerous situation possible. We recognized the problem and took action that was absolutely lawful and in line with practices successfully employed across the Air Force. We focused the solution on a senior commander's judgment.

When I was presented with the USAFA process during my first week as TIG, I challenged it from all angles. I looked at how the problem is (or is not) addressed at colleges and universities across our nation. I spoke with my daughter who had recently graduated from college. I considered the unique environment at the USAFA. I weighed heavily the AFOSI charter. I sought legal advice. Clearly, the status quo was not helping root out crime. I remain convinced the insertion of a seasoned commander into the USAFA's confidentiality program was not only lawful, but above all smart, effective and time-tested across the military.

When you look at the evidence compiled by subsequent commissions, working groups, reports of experts like [redacted] and actual numbers of cases investigated

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at USAFA since 1997, I believe you will find the revised USAFA policy succeeded. The combined experience of the Academy Superintendent, the AF Judge Advocate General, the Surgeon General and me in dealing with cadets and others in their age group was applied in considering the matter of sexual assault in the USAFA environment. Knowing the issues, challenges and opportunities afforded by statute, policy and Air Force custom, the considered, deliberate action taken by us resulted in a much improved environment as noted in the Fowler Report. I trust the results of the program as instituted and in which I had a hand will be recognized for their significance in improving the climate for all USAFA cadets. In its entirety, the action ensured appropriate care was extended to victims, gave victims the confidence to come forward, and increased Air Force opportunity to investigate criminal allegations.

Richard T. Swope

RICHARD T. SWOPE
Lieutenant General (Ret), USAF

10 October 2004

Mr. James L. Pavlik
Assistant Inspector General for Investigative Policy and Oversight
Department of Defense
400 Army Navy Drive
Arlington, Virginia 22202-4704

Dear Mr. Pavlik:

I received your letter of 28 September 2004 presenting the tentative conclusions of your fieldwork for the evaluation of the Air Force response to sexual assault at the Air Force Academy. I disagree with your conclusions, with one exception, and submit the facts from my perspective as I recall them.

It is a fact. On 3 June 1996, I initiated a meeting between General Fogleman (Chief of Staff of the United States Air Force), Lt. General Edgar R. Anderson (Surgeon General United States Air force), [redacted] and myself (Deputy Surgeon General and Commander Air Force Medical Operations Agency). The Office of the Surgeon General was fully aware that the sexual assault problems at the Academy were rooted in the cultural, social and gender climate. We presented a four-page summary of the issues, which [redacted] had identified as a result of a consultation to the Academy regarding an impaired psychiatrist. This individual had contributed to the alienation and victimization of the victim cadets. [redacted] concluded that the system:

1. Did not provide a safety net for the victimized cadets for immediate medical and counseling needs, and
2. Had no coordinated policy that encouraged reporting of sexual assault to authorities and therefore the Academy leadership was unaware of the full extent of the problem (Attach 1)

After informing General Fogleman of these observations, he directed us to provide whatever support to the Academy that we felt was indicated. [redacted] returned to USAFA and met for two days with [redacted]. During this time, I spoke with [redacted] on the telephone, and in addition to the plan to revitalize the SASC as an IPT to address climate and culture issues at the Academy, as outlined by [redacted] in follow-up memos to General Stein and General Fogleman (Attach. 2), we agreed on the following recommendations:

1. A billet for an additional psychiatrist would be established at the Academy. A [redacted] psychiatrist was identified and plans were made to divert her assignment to the Academy.
2. A psychiatrist would be provided to the Academy on manning assistance TDY to begin working with the Cadet Counseling Center in advance of newly assigned personnel and that this psychiatrist would be tasked to work with the Counseling Center to address the cadet climate on sexual assault. [redacted] from Wilford Hall Medical Center was sent to the Academy, and he remained there for months, meeting regularly with [redacted] and communicating frequently with [redacted] was tasked to review and re-accomplish multiple Medical Evaluation Boards on cadet victims of sexual assault.

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3. A[redacted]ychiatrist would attend BCT training for incoming cadets. A[redacted]psychiatrist spent the month of August at the academy working with BCT staff and cadets.

[redacted]returned to the Academy in August 1996 to assess progress. [redacted]met with the Counseling Center staff, and the staff at the 10th medical group. [redacted]met with me after this visit to discuss a pending request from General Stein to approve a waiver of mandatory reporting for medical personnel in a draft USAFA Instruction 51-201.

It is a fact. On February 14, 1997, I was a part of a team comprised of myself, Lt. General Swope (SAF/IG) and [redacted] that received a briefing from [redacted] (Attach. 3) [redacted] presented a comprehensive approach to addressing the issue of support to the individual and a request for support of a waiver. Following the briefing we met with the "underground" support group of victims. This meeting was held in a room with the curtains drawn and was composed of 10-15 female cadets. The meeting was very disturbing. The group very clearly articulated that:

1. [redacted] was a trusted leader and that he was working to provide support to them.
2. The culture of the Academy was punitive to the victim and lack of confidentiality in reporting resulted in re-traumatizing them rather than supporting their emotional and clinical needs.
3. They felt, bottom line, that they were not safe and, therefore, sought support from the support group rather that report incidents to appropriate authorities.
4. The single official support system they had confidence in was the student counseling center (DFBLC).

At the conclusion of the day at the Academy, there was agreement that the Superintendent was on the right track and that the AF/SG staff would work the waiver package (Attach. 4) for the Academy to support their current practice. The waiver was to be included in an USAFA Instruction (Attach. 5). The expressed purpose of this USAFA Instruction was to:

1. Ensure victims of sexual assault are provided immediate and continued medical, counseling and other necessary support services to assist in full recovery.
2. Encourage cadets to report assaults to law enforcement authorities, so timely and effective investigations could be undertaken to support appropriate disciplinary action,
3. Promote an environment in which cadets may disclose the fact of an assault and cooperate with investigative efforts without fear of reprisal or intimidation" USAFI 51-201, July 15, 1997. p.4.

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I want to reiterate strongly that the waiver was specifically designed to get support for the victim and not to avoid reporting. The request was for a waiver to bring the academy in line with the national standard of confidentiality for sexual assault victims, to assure that they get the immediate support they need and to demonstrate that leadership at the Academy understood the requirement to support the victim, the Academy and the Air Force.

The waiver that was subsequently granted had more restrictions than requested. The waiver:

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1. Was granted for a single year and required renewal to remain in effect
2. Required reporting to the DFBLC and the Commandant of Cadets
3. Required the DFLBC to report to Security Police Office of Investigations (SPOI)

We are dealing with a false dichotomy in setting up the issue as patient confidentiality vs. law enforcement. The 2000 data from the USAFA Sexual Assault Policy working Group (Attach. 6) supports the conclusion that reporting is directly linked to victims feeling of safety and control. During the 1986-1993 time of mandatory reporting w/o confidentiality there were no reported assaults. Once the confidentiality of reporting was implemented informally, in 1993, the number of cases reported increased. Once the formal confidentiality policy was instituted, in the fall of 1996, the reporting became consistent. To think that there were no assaults in the 1986-1993 times is not credible. Only with reporting and confidentiality can the Commander begin to grasp the magnitude of the problem and begin to introduce the cultural and gender training/accountability to change the environment. If a culture does not remove the barriers to report assault and drives the support underground, there will be neither investigations nor prosecutions for clear criminal behavior. If victim support is provided and reporting is encouraged, then there is an increased probability of obtaining the required forensic material and building a case for prosecution. The USAFA policies were designed to promote the support of the individual, the defining of the magnitude of the problem and subsequent prosecution of the criminal cases.

Conclusions: The bold face type is the allegations stated in the letter dated 28 September 2004 from Mr. James Pavlik (Attach. 7)

1. **"Lt. General Roadman ignored clear warnings that the USAFA sexual assault problems were rooted in the culture, social climate and gender problems."**

This is not correct. Rather than ignore the warnings, I helped raise them to the CSAF's attention, pointing out the cultural and systemic causes. After that, as Surgeon General, I endeavored to fix the problem. If I did not succeed in this effort, it was not for lack of a good faith effort. The facts clearly demonstrate my personal involvement, and that of my staff, in working with the Superintendent to energize the SASC. The regular visits to the Academy by the consultants, and the robusting of medical resources to provide assistance and guidance as requested by the Superintendent further illustrate the extent of the efforts that were put forward to resolve the problem.

2. **"(He) entered into an agreement and granted a policy waiver designed to withhold sexual assault reporting from criminal investigators"**

This is not correct. The expressed purpose of this USAFA Instruction was to 1) ensure victims of sexual assault are provided immediate and continued medical counseling and other necessary support services to assist in full recovery, 2) encourage cadets to report assaults to law enforcement authorities so timely and effective investigations can be undertaken to support appropriate disciplinary action, and 3) promote an environment in which cadets may disclose the fact of an assault and cooperate with investigative efforts without fear of reprisal or intimidation. To the best of my recollection, prior to effecting the waiver, I consulted with other medical experts, and coordinated, in writing, with the Air Force Inspector General, to whom the commander of the OSI reported, and the Air Force Judge Advocate General.

3. **"The waiver was instrumental to enabling USAFA to formalize a confidential sexual assault reporting program designed to circumvent both statutory and policy requirements."**

This is not correct. The waiver was not designed to circumvent anything! The waiver was to formalize a confidential reporting system to increase the probability of prompt reporting and prompt treatment of the victim and to encourage, through counseling, the reporting to law enforcement. This brought the USAFA into alignment with West Point, the Naval Academy and most student counseling services.

4. **"Lt. General Roadman did not meet his obligation to monitor and follow-up on the waiver he granted to ensure the specific conditions that he included in the waiver were satisfied".**

It is true that my system did not identify that the waiver had expired after a year. For that I am responsible. Everything in the waiver was included in the subsequent AFAI 51-201 (15 July 1997). I received regular input from my Psychiatry Consultant on the progress being made on sexual assault. Col. Hall reported that she was in contact with DFBLC between 1997 and 1998 and that cadet victims were coming forward and receiving care. The relationship between the 10th medical group mental health providers and the counseling center was positive and functioned effectively as a clinical support system. It was apparent that confidential reporting should be continued.

In summary--The information I received, including that contained in briefings at the USAFA, caused me to conclude that a waiver of the reporting requirement was called for, in order to facilitate identification of the incident, patient treatment and promote collection of forensic evidence and prosecution. This is not an issue that gives rise to an "easy" and clear-cut answer. However, I weighed all relevant information and made a decision intended to further the interests of the patient/victim and the Air Force while at the same time promoting the ends of justice. Thus after coordinating the recommendation to waive the requirement, I in fact implemented the waiver.

Charles H. Roadman II, MD
Lt. General USAF/MC (Ret)

LtGen Tad E. Oelstrom Comments

15 Oct 2004

Dear Mr Pavlik:

In response to your letter of 28 September 2004, I would like to thank you for providing me with advance notification of one of the tentative conclusion in the draft report of the DoD Inspector General concerning the sexual misconduct allegations at the United States Air Force Academy.

While I appreciate being afforded the opportunity "to correct any factual error" that impacts the tentative conclusion or "provide any additional information" for consideration before finalizing the conclusion and issuing the report, it is impossible to do so without a copy of the entire report including all statements or testimony regarding my tenure as Superintendent of the United States Air Force Academy. To date, I have not been provided a copy of the entire report nor given access to all evidence relevant to my tenure as Superintendent.

Regarding the excerpted portion of the draft report attached to your 28 September 2004 letter, the conclusions drawn from the cited facts are clearly erroneous. Therefore, I strongly disagree with the ultimate conclusion rendered in the report that I created, contributed to, or abided "a confidential sexual assault program that circumvented both statutory and policy requirements and, thereby, interfered with criminal investigations."

Sincerely,

Tad Oelstrom

TAD J. OELSTROM
Lieutenant General (Ret), USAF

TOTAL P.02

7622 Shreve Road
Falls Church, VA 22043-3316
703-849-8473

October 11, 2004

Mr. James L. Pavlik
Assistant Inspector General for Investigative Policy and Oversight
The Inspector General
Department of Defense
400 Army Navy Drive
Arlington, VA 22202-4704

Dear Mr. Pavlik:

Thank you for the opportunity to comment on your September 28, 2004 letter and extracts from the DoD/IG's Congressionally requested evaluation of the Air Force's response to sexual assaults at the Air Force Academy. I will comment briefly on the contents of the attachment, but would like to start with two points, realizing that you are simply fulfilling your responsibilities as requested by the Congress. First, it is quite disconcerting to be asked to recall specific facts and circumstances related to events that occurred several years earlier. Clearly, memories fade with time and the recollection of facts is frequently inaccurate in context or incomplete. Second, it is difficult to provide a comprehensive response with the limited information provided in the attachment and absence of the supporting documentation.

Presented as Fact: General Taylor raised issues regarding the unique USAFA sexual assault reporting program to his boss, SAF/IG (Lt Gen Kehoe). The AFOSI Commander may have raised the issue to Lt Gen Kehoe previously during his initial in-brief as SAF/IG in 1998, but not "...as something that I thought he needed to do something about...until 1999 or 2000 when we reengaged on it."

Comment: I do not refute the statement that Gen Taylor raised the issue with me in 1999 or 2000, although as I stated in my interview, I do not recall specific dates or details of any dialogue we had. Based on my open and continuing working relationship with General Taylor, it is likely that he would have advised me that he had approached the Air Force General Counsel about the policy conflict at the Academy and that he thought it warranted attention. However, the statement that the issue may have been raised during my initial in-brief as SAF/IG appears speculative at best. Either there is evidence that it was raised then or there isn't. This would presume that General Taylor knew of the problem in 1998, but did not think it warranted attention at that point. I do not recall any such subject being raised during my in-brief and apparently General Taylor did not either.

Presented as Fact: On February 9, 2000, SAF/GC sent a memorandum to SAF/IG (Lt Gen Kehoe) asking him to sponsor a review.

Comment: I concur that such a memorandum was sent, although I have not seen it and did not recall the memorandum or the subsequent review until presented with several related emails during my interview with the DoD/IG. Notably, when I first

arrived at the interview, I was prepared to say that I was not familiar with the cases of sexual assault at the Academy that had been reported in the media. To my knowledge, the Air Force IG had not been involved in any complaints or other special investigations related to sexual assaults at the Academy. That said, a statement your people made during my interview reminded me that, shortly before my retirement, the Secretary of the Air Force had asked the SAF/IG to review aspects of the cases of a number of alleged sexual assaults at the Academy. While I do not recall initiating such a review, it is likely that, if asked by the Secretary to do so, I would have written the terms of reference used by the colonel who was tasked with conducting the review. As far as I know, this review was ongoing at the time of my departure. As a point of emphasis, it is notable that the SAF/GC memorandum was presented in the context of a policy conflict at the Academy, not ongoing sexual assault investigations. Moreover, while the SAF/GC memorandum suggested that SAF/IG sponsor the review, it was actually chaired by a senior executive service representative from [redacted]

Presentedas Fact: In a February 16, 2000 email to SAF/IG (Lt Gen Kehoe), [redacted] supplied information to prepare Lt Gen Kehoe for telephoning the request to the USAFA Superintendent (Lt Gen Oelstrom).

Comment: Although I do not recall this specific email or the specific details of a call to Lt Gen Oelstrom, it is most likely that I did since he would have appointed the USAFA member of the review group. I would likely have paraphrased from the talking points provided by [redacted] Again, the context of the points provided were a policy conflict that needed to be resolved, not the handling of specific cases.

Presented as Fact: From January 2000 until approximately August 2000, [redacted] working group that included AFOSI, SAF/GC, AF Surgeon General (AF/SG), and USAFA representatives, which worked to resolve the issues. As evidenced by a series of emails, Lt Gen Kehoe was kept abreast of the working group's efforts during the review period.

Comment: Although I cannot recall specific details of any updates, it is evident from the emails shown to me during my interview and from normal operating procedures in SAF/IG, that I would have been kept abreast of the review group's work. As a matter of fact, you should check on whether the OSI, per se, was represented on the review group. Although [redacted] and his successor had an OSI background and represented OSI at the Air Force headquarters level, they technically worked for SAF/IG, not AF/OSI and reported indirectly to the IG through their supervisor. Unless there is evidence to the contrary, the above statement should read "SAF/IG" in lieu of "AFOSI."

Presented as Fact: Lt Gen Kehoe was either the addressee or courtesy copied on at least seven emails covering the At Lee working group activities between February 2000 and August 2000. The last email was in August 2000 and reflected that Lt Gen Kehoe met with the [redacted] concerning the Air Force Academy sexual assault reporting policy. The meeting occurred during the [redacted] working group review. The two agreed that a workable compromise between AF/OSI ad USAFA could not be reached and should be resolved at the "two-digit level."

Comment: I met with [redacted] on several occasions while [redacted] was the acting deputy General Counsel. While I cannot recall discussing specific details

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related to the policy review group, I do not refute that it happened. However, it would have been very unusual to reach a conclusion on what must be done if the work of the review group was still ongoing. Your evaluation should clearly determine the status of the review group at the point of the referenced meeting and specify when the review group concluded its work, and whether any final report was issued. I do not recall ever seeing a report or specific recommendations from the review group, which would have been normal practice at the conclusion of their work.

Presented as Fact: The AFOSI Commander assumed that "...the IG, the GC, and the CC (USAFA Superintendent) would have to sit and discuss the way forward." He believed that once they made a decision at that level "...they would inform me of what that decision was." The AFOSI Commander did not know if the "two-digit level" discussion occurred, but he never received any feedback. Lt Gen Kehoe began terminal leave in late August 2000, and then retired without resolving the issue.

Comment: I think the record will show that I was on leave or permissive TDY during much of August 2000 too. I do not present this as an excuse, but simply to explain my limited direct engagement on this or other issues during this timeframe. I was totally comfortable with my deputy handling ongoing work during my absence. In addition, when all was said and done, neither the SAF/GC nor the SAF/IG would have had any authority to impose a solution on this issue. The Superintendent of the Air Force Academy worked directly for the Chief of Staff and any conclusions or recommendations from the review group would have been presented to the Secretary or the Chief of Staff for resolution with the Academy superintendent.

Presented as Fact: On interview, Lt Gen Kehoe did not recall the AFOSI Commander expressing concerns about the unique USAFA sexual assault reporting policy, or details about the [redacted] working group.

Comment: This statement is correct until I was shown one or more emails referring to the working group. At that point, I did recall the existence of the group, but not specifics related to it deliberations or any specific conversation with Gen Taylor. That is reflected in my replies to the DoD/IG. My recollections of the specifics of the review group were at the time of the interview and still today are vague at best.

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Again, I thank you for the opportunity to comment on the portion of your evaluation related to my involvement in this matter. I sincerely hope that my input is a helpful and constructive addition to your evaluation report.

Sincerely,

Nicholas B. Kehoe

Nicholas B. Kehoe
Lieutenant General (USAF-Ret)

3

LtGen Raymond P. Huot Comments

November 4, 2004

From: Lieutenant General (Ret.) Raymond P. Huot
18 Sullivan Street
Lexington, MA 02420-1115

To: OIG/DOD
400 Army-Navy Drive
Arlington, VA 22202-4704
Attention: Mr. James L. Pavlik
Assistant IG for Investigative Policy and Oversight

Subject: Response to DOD/IG tentative conclusion letter and attachment, dated 28 September 2004, addressed to me, Lt. Gen. (Ret.) Raymond P. Huot

Dear Mr. Pavlik

As per your request, the attached document is my preliminary response to your tentative conclusions from your draft report for consideration. I request the right to respond again when you have provided me with all documents I have requested and then again when provided with your final report.

I request that this response and all attachments be included as part of the final report for public view if your final conclusions are unchanged from your tentative conclusions. However, if the findings will be different, I request another opportunity to submit a response, or, at minimum, reassess whether the provided response will be made public.

As per my request for an extension to properly respond, I received a 20 October 2004 letter from John Perryman allowing 14 days from receipt of additional information that I request. Information was last received on 26 October 2004.

Sincerely

Raymond P. Huot
Lieutenant General (Ret), USAF

Attachment: Factual Response to Tentative Conclusion Letter

Response to DODIG tentative conclusion letter and attachment, dated 28 September 2004, addressed to me, Lt. Gen. (Ret.) Raymond P. Huot

This information is provided in response to a 28 September 2004 letter and attachment created from a draft DODIG report prepared in response to tasking from the Senate Armed Services Committee to include "an assessment of the accountability of current as well as previous Air Force leadership." The DODIG letter and attachment (hereinafter referred to as "draft report") on my involvement as the Air Force Inspector General from August 2000 to January 2004 cites a tentative conclusion (TC) in the cover letter that: "Our tentative conclusion is that you share responsibility for creating, contributing to, or abiding a confidential sexual assault reporting program that circumvented both statutory and policy requirements and, thereby, interfered with criminal investigations." The attachment that allegedly supports the TC concludes with allegations that: "LtGen Huot did not satisfy his responsibilities as SAF/IG in deciding the Anderson and Concerned Citizen Complaint, or his responsibility as a prominent AFGC Working Group member. As was the case with the predecessor SAF/IG, LtGen Huot also did not meet his obligation to investigate and resolve violations of law, policy, procedure, and regulation." I strongly believe that the facts do not support these conclusions.

2000 Anderson/Hopper Complaint

With regard to the July 2000 complaint from Lt. Gen. (Ret.) Edgar Anderson, Jr., the basis of his complaint was very clearly focused on then Maj. Gen. John Hopper, Jr.'s actions during Gen. Hopper's tenure as Commandant of Cadets from 1994 to 1996. This is reflected in Sen. Landrieu's letter to Sen. Warner as noted in the second footnote on page 1 of this draft report and in the 27 July 2000 Sens. Warner and Levin letter to ASD (FMP) which states: "Enclosed is information the committee received from Lt. Gen. Edgar Anderson, Jr., USAF, concerning the nomination of Maj. Gen. John Hopper, Jr., USAF, for promotion to Lieutenant General. The committee would appreciate receiving the Department's views on the enclosed material prior to considering the nomination of Maj. Gen. Hopper." This 27 July 2002 letter was the letter that was forwarded to the Air Force Inspector General, Lt. Gen. Kehoe – my predecessor. As noted in the draft report, the completed complaint analysis of Gen. Anderson's complaint was in my in-box when I assumed the SAF/IG position. Of note, I was not the SAF/IG when this complaint's allegation was framed, not part of discussions on how this case was to be handled, and not included in any discussions while the case investigation was proceeding. That said, I fully acknowledge my responsibilities and duties in approving this complaint analysis. The following discussions are relevant.

During my discussions with the SAF/IGS Investigating Officer, [redacted] he informed me that Gen. Anderson harbored ill feelings against Gen. Hopper based on circumstances related to Gen. Anderson's son's departure from the Air Force Academy during Gen. Hopper's tenure as Commandant of Cadets. The Investigating Officer also informed me that the entire complaint which Gen. Anderson submitted was the identical report provided to him by ther[redacted] in May-June 1996, and, that this report had been allegedly provided by Gen. Anderson to then Air Force Chief of Staff, Gen. Fogleman, in the summer of

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1996. The Investigating Officer documented and also informed me that, in his telecons with Gen. Anderson in early August 2000:

1) Gen. Anderson declined to discuss this complaint in person with SAF/IG.

2) Gen. Anderson informed him that he had no personal knowledge of the information contained in the complaint.

3) When asked if he would provide an unredacted copy of the complaint so that the Investigating Officer could get the names of the female cadets listed (they were blacked out in the redacted version), Gen. Anderson said he would talk to his attorney and get back to him; no names were ever provided.

4) Gen. Anderson offered no reason why he had waited until this time to re-engage this issue – four years after he had allegedly provided this same information to then Air Force Chief of Staff, Gen. Fogleman.

With that background, from my perspective at the time, it appeared that Gen. Anderson's complaint was filed with the express purpose of attempting to delay or block Gen. Hopper's promotion.

On page 2 of the draft report, the statement on lines 3 and 4 states: "Other than relating the results to the SASC, [regarding Gen. Hopper] further action was not taken on the complaint." This implies that the only thing the Investigating Officer examined was Gen. Hopper's involvement. This was clearly not the case. The following extracts from the 28 August 2004 Complaint Analysis are pertinent:

> *"In addition to the specific case references, the document forwarded by Gen. Anderson also contains several opinions or conclusions regarding the management of sexual abuse and misconduct cases at the Academy. The evidence developed by the IO provides additional information regarding some of those statements:*
>
> *a. The document states that no formal, sanctioned program existed at USAFA to address the needs of cadets who had been assaulted. While there may not have been a program in effect designed to specifically address the needs of cadets who had been assaulted, there were a number of programs and agencies in place where cadets could go for assistance. These included: the DFBLC, Mental Health Clinic, Center for Character Development, Chaplain, OSI, Legal Office, and Security Police." [The investigating officer included numerous attachments and documentation reflecting efforts and procedures to assist potential victims and witnesses. This included the latest Victim and Witness Assistance Program (VWAP) Guidelines which had been updated in the 18 April 2000 USAFA Instruction 51-201.]*
>
> *b. The document also states that "no one has ultimate responsibility for the appropriate handling – investigation and treatment (individual victim and community) of the incident." While different offices often become involved*

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in a sexual misconduct case at the Academy, these offices fall within the command structure of the Academy and report directly or indirectly to the Commandant."

"One month prior to the end of Gen. Hopper's tour, the Air Force IG coordinated on a draft Academy Operating Instruction that endorsed the Academy's position on victims having some say in how their cases were considered (Atch 4). The draft Operating Instruction was also coordinated with JA, AFOSI, and Social Actions. On 22 May 97, the AF/SG granted a limited waiver of the requirement for the DFBLC, clinic, emergency room, and mental health clinic to report all cases of sexual assault to the AFOSI to allow greater input from the victim of a sexual assault concerning the case (Atch 5).

On 15 Jul 97, the Academy formally published a new sexual assault reporting policy which required all cases to be reported to the DFBLC. The policy requires persons receiving a report of sexual assault to encourage the victim to report it to law enforcement and/or command authority. That person must also notify the DFBLC. The DFBLC must report all cases to the Commandant who advises the Superintendent on the merits and limitations of authorizing an investigation. Depending on the circumstances of each case and the input of the victim through the DFBLC, an investigation could be opened without the consent of the victim.

As noted above, the Academy's policy on the proper handling of sexual assault and rape cases began to evolve after Gen. Hopper's arrival, and it continues to be the focus of much attention today (Atch 7 and 18). In June of 1996, The Inspector General sent a memorandum to USAFA/CC, "Sexual Assault Victim Assistance and Notification Procedures." *This memorandum essentially approved the Academy's emphasis on protecting the victim's rights by giving her or him more say in how the case is handled (Atch 4). The TIG's position was that all sexual assaults should be reported to the Commandant of Cadets. 'Reporting to a single officer promotes consistency and places the responsibility for follow-on decisions on the officer who will be held accountable for those decisions' (Atch 4). On 22 May 97 HQ USAF/SG issued a Temporary, Limited Waiver of AFI 44-102,* Reporting Requirements, *to USAFA/CC (Atch 5). The waiver allowed Cadet Clinic personnel to report suspected cases of sexual assault concurrently to The DFBLC and the Commandant. In July of 1997, USAFA published USAFA Instruction 51-201,* Cadet Victim/Witness Assistance and Notification Procedures *(Atch 3). This instruction and the one that followed in April of 2000, continued to refine the Academy's policy on the handling of sexual assault / rape cases (Atch 2 and 3)."*

"Since Gen. Anderson stated that he had discussed the information contained in his current complaint with Gen. Fogleman and Maj. Gen. Hawley, former TJAG, the IO contacted both retired officers to determine the extent of their recollections on this matter (Atch 12, 28 and 29). Although Gen. Fogleman did recall having a discussion about the handling of sexual assault cases at the

Academy with Lt. Gen. Anderson, he could not recall any of the specifics (Atch 28). He stated that usually when subordinates brought problems to him they also brought a recommended solution, and he believed that this was probably true in this case (Atch 28). The General concurred that the policy letter that then TIG, Lt. Gen. Swope, issued in Jun 96 may have been the solution that had been proposed or was being worked at the time of his discussion with Lt. Gen. Anderson (Atch 28). [redacted] *had no recollection of any conversation or a report from Gen. Anderson dealing with sexual assaults at the Academy (Atch 29).*

Gen. Anderson's successor as Air Force Surgeon General, Lt. Gen. (ret) Roadman, did recall that he had been very involved with working with the Academy in developing a workable policy for the handling of reports of sexual assault and rape at the Academy (Atch 30)."

Although somewhat lengthy, I included the above quotes from the Investigating Officer's report to clearly show that the Investigating Officer went well beyond examining Gen. Hopper's involvement in this complaint analysis investigation and reviewed the efforts taken after the date of the complaints made in 1996. Clearly it appeared that whatever systemic problems existed pre-1996 had been addressed. I was aware of no complaint regarding concerns over sexual assault handling at the Air Force Academy from 1996 to 2000 and the events faced by Gen. Anderson were all pre-1996 and appeared to have been addressed in multiple reviews. All of the events reported were pre-1996 and there had been an extensive review of the processes by Lt. Gen. Swope in 1996. Under the policy finalized in USAFA Instruction 51-201, *Cadet Victim/Witness Assistance and Notification Procedures*, 15 July 1997 and reaffirmed in the 18 April 2000 version of the USAFAI, the Commandant and the Superintendent were clearly chartered to have the final say as to which cases would be forwarded to OSI for investigation and which cases were of a minor nature such that the victim request for confidentiality could be respected.

In my view, the fact that Gen. Anderson did not choose to include a copy of [redacted] 8 June 96 report as a part of his complaint was also significant. In this report, which she had provided to then Chief of Staff, Gen. Fogleman, Lt. Gen. Anderson (then the Air Force Surgeon General), and [redacted] specifically addressed USAF actions addressing the issues in the prior complaint (i.e., "Lt. Gen. Anderson's" complaint). Although [redacted] felt more needed to be done [redacted] report stated: "During my meetings with you (referring to [redacted] and others at the Academy I became aware that a great deal of background work had already been accomplished to address these identical concerns" (went on to iterate specifics)...and "The Leadership at USAFA is aware, actively concerned, and has been engaging the problem." Additionally, in [redacted] 10 June 96 memorandum to the Academy Superintendent and Air Force Chief of Staff, Gen. Fogleman, [redacted] goes on to state that, in her 5-7 June 96 meetings with the Superintendent, "We agreed to reactivate the SASC [Sexual Assault Services Committee] and reconfigure this group as an IPT .... consideration will be given to membership/outside consultant/Charter/Focus – the culture. ....consideration will be given about how best to link up efforts with sister academies .... this initiative will begin this summer, before the beginning of the academic year." During my discussions with the Investigating Officer, he expressed the view that [redacted] the author of Lt. Gen. Anderson's complaint,

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was essentially satisfied with Air Force efforts to address these issues and, in fact, [redacted] had been deeply involved in those efforts herself.

The attached 3 November 2004 letter from [redacted] (Attachment 1) verifies that information. The following are key excerpts from that letter:

"I returned to USAFA on 5 June 1996, met with [redacted] over the course of two days and learned that USAFA was actively addressing the problem of sexual assaults with multiple initiatives. I noted in a follow-up memo on 8 June 1996 that 'a great deal of the background work had already been accomplished' and it was clear that the USAFA leadership was 'aware, actively concerned, and has been engaging the problem.' My 8 June 1996 memo was an information memo, not a report of a review or a request for specific action. From my perspective, this was a good news story, I believed that positive steps were underway and I had offered to continue in a consultant capacity, should [redacted] wish." Regarding the 2000 timeframe, she states in this same letter:

> *"In 2000 I was asked to provide background information on sexual assault to the working group led by [redacted] in the GC office. I was unable to attend a working group meeting and so asked [redacted] to attend. I contacted the USAFA Cadet Counseling Center to obtain a status update on how the confidentiality policy was working and confirmed it was working well. I had received no additional information on the problem of sexual assaults at USAFA since 1998. In 2000, I responded to the inquiries of the working group as stated. Based on my inquiry in 2000, I only had indications that the USAFA sexual assault reporting program was functioning as designed and claimed by USAFA."*

On page 4 of the draft report, Secretary Peters' testimony states: "...but I thought that the IG was going to go on after that and look at the issues." At no time was I aware of any expectation from Secretary Peters, anyone on his staff, or anyone else to further investigate any of the issues contained in Gen. Anderson's complaint. There have been instances where IG is tasked to look at something (e.g., Khobar Towers, Ron Brown crash) and they do. Here, SAF/IG did take action in the form of coordination with the Air Force General Counsel to establish the [redacted] Working Group which GC then took control of. (Attachment 2 and its attachment 1)

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On page 5, the draft report incorrectly asserts: "As established in the complaint analysis file, the official academy policy was rooted in a policy waiver in which a previous SAF/IG had participated. As an apparent result, the investigating officer did not check further and during his review, Lt. Gen. Huot apparently did not question the omission. Had they done so, they might have learned that the waiver had expired under its terms..." Whereas this section says that I "did not question the omissions," page 7 of the draft report acknowledges that: "LtGen Huot was also aware that the investigating officer obtained substantial information during the complaint analysis including Lt Gen Roadman's 1997 waiver." There was no omission – the letter was a part of the attachments to the complaint analysis. This section also incorrectly implies that because a previous IG had participated in the establishment of the Academy's existing policy, neither the IO nor I checked to see if the waiver had been extended. Because the waiver letter was authorized and signed by the Air Force Surgeon General, I fail to understand the rationale

behind such conjecture. Although the draft report was correct in noting that the Investigating Officer, reviewers, and I had not recognized that the Air Force Surgeon General's letter had expired, recognizing that fact would have made no substantive difference. In fact, in January, the previously referenced Air Force General Counsel established a Sexual Assault Working Group ([redacted] group) to review USAFA's program. That group – which was ongoing when I became SAF/IG – did review the processes for reporting and should have looked at the waiver letter. SAF/GC found the program was acceptable as demonstrated in the fact that they did nothing to change the system that had been in place since the 1997 waiver letter. Thus, the Air Force through the GC made a decision to extend the 1997 waiver by their inaction, if not in writing.

A correction: The quote from my testimony mid-page 6 was not transcribed correctly. On line 6 after [redacted] "who…", there was another interruption to the tape (not reflected in the draft report). As I recall, I mentioned both then [redacted] and then [redacted] in my interview statement. The interruption to the tape failed to record that. In that missing testimony, I recall pointing out that [redacted] had stated that a considerable amount of her information had come from then [redacted] a former Air Force psychiatrist, and then [redacted] – a nurse practitioner at the Air Force Academy at the time. The Investigating Officer also interviewed both of these people.

With regard to the draft report's discussion on page 8 regarding sexual assault reporting, I take issue with several points. First, the draft report states that increases in sexual assault reporting in 1993-95 "might have been attributable to the confidential sexual assault program, and Lt. Gen. Hosmer's continued attention to that program." In footnote 27, the draft report expands by saying "we seriously doubt any increase in AFOSI investigation is attributable to the USAFA program." I would submit that, in my view, the preponderance of historical evidence would clearly indicate that increases in sexual assault reporting – and related investigations – were directly attributable to Gen. Hosmer's actions which extend well beyond a change to the confidential reporting policy. Those changes included the addition of a 24-hour sexual assault "hot line," a policy to allow case-by-case victim amnesty for victim misconduct related to the sexual assault incident, the commissioning of a Center for Character Development supervised by the Commandant of Cadets that focused on sexual assault issues, and other significant changes. The draft report also states: "Thus, if Lt. Gen. Huot assumed that the increases [in reporting] resulted from the USAFA program, he should have followed the same logic and questioned the declines. He did not." It is reasonable to draw the conclusion that Gen. Hosmer's efforts and numerous other changes at the Academy leading up to the 2000 timeframe caused the number of sexual assault incidents to decline over time. At the time, I viewed these declines in a positive manner, assuming that USAFA's programs were working and fewer sexual assaults were occurring. I was not alone in this reasonable belief, as [redacted] and many others shared my views (*see* Attachments 1 and 2). Until the early 2003 timeframe, no other indicators to alert me or my staff to a problem, such as IG complaints, news articles, etc., came to my attention to indicate that the revised USAFA program was not working.

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AFOSI/Confidentiality Policy

With regard to my discussions with the OSI Commander, Brig. Gen. Frank Taylor, the draft report does not properly characterize my involvement. I did not "ignore the AFOSI concerns." First of all, as I recall, Frank and I discussed the issues surrounding the confidential reporting policy at the Academy. I acknowledged Frank's points from the OSI perspective, but also understood that these were essentially the same points that had been previously debated before Air Force leadership changed the policy several years prior at the Academy to one allowing confidentiality. At the meeting with Frank, I believe that I asked that he work with the Commandant of Cadets and/or the Superintendent to discuss OSI concerns and consider adjustment(s) to reporting procedures if appropriate. As I recall, it was shortly after meeting with Frank Taylor that I called the USAFA Superintendent, then Lt. Gen. Dallager, and discussed the Academy's existing procedures and OSI's concerns. I asked Gen. Dallager's assistance in this matter in addressing OSI's concerns as he and his staff addressed those issues with the [redacted]led Air Force Academy Sexual Assault Policy Working Group (I was not a member of this Working Group – AFOSI was a participant).

As the SAF/IG, I had no authority over the Superintendent since the Air Force Academy was a Direct Reporting Unit (DRU) to the Air Force Chief of Staff. I did exercise my legitimate authority to direct the Commander of AFOSI to work directly with the USAFA Commandant/Superintendent to address those concerns. In fact, Brig. Gen. Taylor did exactly that. In November 2000, he met with the Air Force Academy Superintendent, Lt. Gen. Dallager and, as The Panel to Review Sexual Misconduct Allegations at the Air Force Academy report (Fowler Report) reflects, Brig. Gen. Taylor reported to the [redacted]working group that he "found the Su perintendent receptive to our concerns." Brig. Gen. Taylor also met with the Commandant of Cadets, then Brig. Gen. Mark Welsh, in the May 2001 timeframe to further modify reporting from the Academy's Cadet Counseling Center – an agreement which, if implemented correctly, would likely have adequately addressed Brig. Gen. Taylor's concerns. Throughout this process, I do not recall that Brig. Gen. Taylor ever came back to me to express any added concerns or to seek my further intervention or involvement. Additionally, within the General Counsel led Air Force Working Group Concerning the Deterrence of and Response to Incident of Sexual Assault at the U.S. Air Force Academy (AFWG or Air Force General Counsel Working Group) (I will discuss more on my involvement with this group later), I openly advanced one consistent Air Force policy to deal with sexual assaults across our Air Force.

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The issue of confidentiality in reporting at the Academy was, and remains even today, a highly debated and very controversial topic. The 26 June 1996 letter written by then SAF/IG, Lt. Gen. Dick Swope, to the Academy Superintendent was significant in my view in that it established the basis and rationale for the policy which existed during most of my tenure as the SAF/IG.

The following is an extract from that letter and is relevant to the discussion that follows:

> *"Our rework of the OI [Academy Operating Instruction] was premised on the fundamental principle that both the Air Force and the victim have important, but sometimes competing interests in the aftermath of a sexual assault. Both interests need to be met to the largest extent possible. Undeniably, the Air Force has an important interest in maintaining morale, good order and*

discipline at the Academy, in protecting cadets from crime, and in eliminating those cadets who are unsuitable for commissioning. Additionally, the Air Force and the Academy have a critical interest in establishing a responsible policy that is understandable, defensible and acceptable to the American people and can also survive media scrutiny. This policy must satisfy the public expectation that the Academy enforces high standards of conduct and does not tolerate or appear to condone wrongdoing. On the other hand, we must accommodate the significant physical and emotional needs of sexual assault victims. The policy should encourage victims to seek medical assistance and professional support, must assure victims can report assaults in an atmosphere free from undue publicity or reprisal, and must protect victim privacy and dignity.

To meet the Air Force's interests, we believe all sexual assaults should be reported to the officer primarily responsible for maintaining morale, good order and discipline within the cadet wing. In our opinion, that officer is the Commandant of Cadets. Reporting to a single officer promotes consistency and places the responsibility for follow-on decisions on the officer who will be held accountable for those decisions. This arrangement preserves the chain of command and virtually mirrors reporting requirements in operational units such as squadrons and groups.

We believe the establishment of a single notification point at a high level within the Academy is an absolute necessity.

In addition to protecting Air Force interests, the OI establishes policies to support victims and remove barriers to reporting sexual assaults."(emphasis added)

The portion in bold was a key piece in my view regarding OSI's involvement. By having this provision, the Commandant of Cadets should have been informed of all sexual assault incidents. As per this instruction, the Commandant of Cadets advises the Superintendent regarding the "merits and limitations of authorizing an [OSI] investigation" and then the Commandant and/or the Superintendent could authorize a breach of the confidentiality policy. This process was essentially formalized in USAFA Instruction 51-201 and known as "override authority." (USAFAI 51-201, *Cadet Victim/Witness Assistance and Notification Procedures*, para. 2.8.1.2.1, 1997 and 2000 versions).

In essence, if the Cadet Counseling Center (or other source) reported a situation which was potentially a crime, the Commandant would be notified and would advise the Superintendent. The Commandant and/or Superintendent would exercise his override authority to have OSI conduct an investigation even if the potential victim did not want OSI involved. It was, and remains, my view that if the information flow to the Commandant had been properly executed in a thorough and timely manner, the Air Force's responsibility to have OSI investigate all possible criminal activities would have been met while allowing the policy of confidentiality to encourage potential victims to come forward to report and get appropriate medical and professional support.

The 13 July 2000 USAF/JA letter attached to this complaint analysis added to my view that this system was working as planned: "Our experience has been that the serious cases get reported,

investigated and prosecuted (when the evidence warrants). The less serious (and less prosecutable) acquaintance assault cases are handled in a manner that maximizes victim recovery and retention at USAFA." Unfortunately, as investigative activity in the 2003 timeframe revealed, the Cadet Counseling Center reporting to the Commandant of Cadets was not occurring as it should have been.

[redacted] Office of The Judge Advocate General, USAF, Pentagon, Washington, DC, prepared an affidavit with 17 attachments (Attachment #2) which I have included as a part of my response. [redacted] who was a member of the 1996 HQ USAF working group which recommended the establishment of the Air Force Academy's limited confidentiality program, included a section in his affidavit which is relevant. Although the affidavit includes a more lengthy discussion, I highlight the following:

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> *"This review is relevant to the tentative conclusion that LG Huot shares responsibility for creating, contributing to or abiding a confidential assault program that circumvented both statutory and policy requirements. First, it must be understood that the proposal forwarded by LG Swope in 1996 to the USAFA was far from novel. What the process proposed was to make the Commandant the focal point for sexual assault complaints. In this role, the Commandant would be the functional equivalent of any unit commander (the "unit" at the USAFA being the cadet corps, vice a Squadron, Group or Wing). Unit Commanders throughout the military Services have the responsibility under the Uniform Code of Military Justice to maintain discipline and the authority to dispose of misconduct. The proposed changes from the 1996 review formally required the Commandant of Cadets to make the same decisions any commander receiving a report of sexual assault or misconduct would have to make: to dispose of it himself or herself or refer it for investigation to either Security Forces or the OSI. The proposal did not purport to relieve the Commandant of any responsibilities inherent in command and it was fully expected that any case warranting criminal investigation would be referred for investigation through exercise of the Commandant's override authority. In all candor, the working group recognized we were putting the Commandant in a very unenviable position, one that would be dependent on good internal communication within the USAFA, but found this to be the best solution available.*
>
> *The Working Group recognized that not every sexual assault requires a formal criminal investigation (OSI or otherwise): the term "sexual assault" covers a wide variety of conduct ranging in severity from an unwanted touching – a kiss on the cheek – to forcible rape. In practice and by Air Force Instruction, only serious crimes would have fallen within the jurisdiction of OSI: rape, sodomy, and cases involving serious bodily harm (See AFI 31-206, Atch 2, rule 28, Sexual Offenses). Minor sexual assault offenses would fall within the jurisdiction of Security Forces or be handled by a commander. In short, the Working Group fully anticipated that the Commandant would override the desires of any cadet wherever the severity of the incident required criminal investigation. Far from being an attempt to circumvent the law, it was an*

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attempt to regularize a process analogous to command and correct the process existing in 1996; a process that we understood provided for absolute confidentiality and consequently allowed cadets to control the investigation of sexual misconduct. The process we proposed mirrored that of the rest of the Air Force.

As far as the viability of the USAFA process, I am aware that Commandants did exercise their discretion to override the wishes of cadets who desired confidentiality and these cases were referred to OSI and fully investigated. Additionally, JA personnel at the USAFA informed me that the cases about which the OSI expressed concern were often delayed not because of the Academy's internal process, but the failure of the complainant to come forward in a timely fashion to make a report to anyone. In summary, I concluded the USAFA process itself was not the underlying cause of OSI's expressed concerns and the concerns, while valid, were a bit overstated because the OSI was criticizing the process rather than the execution of the process."

Although the Air Force has now eliminated the confidentiality policy at the Academy, the issues over what is the best policy for DOD and the Air Force continue to be debated. During my session with the Fowler Panel, former Congresswoman, Tillie Fowler, expressed her view that if the Air Force did away with confidentiality reporting, the statistics on sexual assaults might look good in the future but that would likely be because we drove the problem underground again. An excerpt from the panel's September 2003 final report reflects the panel's view:

"The Panel finds the problems associated with the former Academy policy of confidential reporting were not necessarily caused by allowing for privileged communications, but were the result of a confidentiality policy which, over time, was poorly implemented and lacked responsible governance and oversight. The Panel further finds that the Agenda for Change *reaction which eliminated confidential reporting swings the pendulum too far in the opposite direction and creates a significant risk that victims will not come forward at all and thus lose the benefits afforded by professional counseling."*

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[redacted] has consistently taken the same position (Attachment 1). In her 3 November 2004 letter [redacted] states:

"I have and continue to remain a strong advocate of the use of at least limited confidentiality for victims of sexual assault. Confidential reporting is the standard at universities, colleges and the other military academies (West Point, Annapolis)... The goal of the USAFA policy was to obtain the trust of the cadets and encourage them to report. I believe, based upon my involvement over the years and three visits to USAFA, that the policy formalized in 1997 was designed to accomplish just that. The goal of this program has never been to stop reporting or impede criminal investigations in any way. In fact, the opposite is true. Once we get individuals to come in for help, we can encourage them to go forward to the criminal investigative system. If they won't report in the first place, we are unable to conduct any type of investigation... As cadets

were provided limited confidentiality, their confidence in leadership went up and they felt comfortable reporting assaults and, thereby, obtaining medical help. At the same time, the Commandant of Cadets retained the role of commander by being able to refer reports of assault for criminal investigation even without the consent of the victim (command override)... At no time was the policy of confidentiality adopted at USAFA designed to circumvent law or policy or to interfere with criminal investigations. The policy, in design and in fact, at least through 2000, encouraged cadets to report sexual assaults, thereby opening the possibility of a criminal investigation."

My purpose in this discussion is to clearly point out that I did not "ignore AFOSI concerns" as the draft report alleges – either in 2000 or in subsequent activities of the Air Force Working Group, the Fowler Panel, or in other internal working discussions. I, like many others, was involved in trying to find the right answer for our Air Force and Air Force Academy.

On page 9 of the draft report, in reference to information contained in a 13 July 2000 USAFA/JA letter, it is important to note that the USAFA/JA letter was specifically requested and the data therein was being examined by the [redacted]ed Air Force Academy Sexual Assault Review Committee. Thus, from the SAF/IG perspective, this information was available to and being examined in an appropriate group outside the Air Force Academy. Additionally, I would note the following excerpts from that same letter:

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"We now have four years of data to evaluate and I think it is safe to say the program has been a success ... Prior to policy implementation, USAFA received virtually no reports of sexual assault ... Following policy implementation, cases are being reported that would never have come to light (approximately 12 per year) and our victims are getting the support they need. Our female cadets tell us that confidentiality means a lot to them and they would never have come forward without it.

One of the important safety valves designed into the system and recognized by Lt. Gen. Swope's 26 June 1996 memorandum concurring in the program was that the Commandant of Cadets would be briefed on all cases and could override the victim's confidentiality in aggravated situations. USAFAI 51-201, paragraph 2.8.1.2.1 goes one stop further and requires the Commandant to advise the Superintendent on 'the merits and limitations of authorizing an investigation.' Our experience has been that the serious cases get reported, investigated and prosecuted (when the evidence warrants). The less serious (and prosecutable) acquaintance assault cases are handled in a manner that maximizes victim recovery and retention at USAFA."(emphasis added)

This letter goes on to discuss USAFA's activities in comparing the Air Force Academy with other service academies.

"Both Annapolis and West Point were reluctant to provide sexual assault statistics for review by our study group, and asked that any data they provided be 'close hold.' USNA has averaged two to 13 sexual misconduct cases annually, ranging from inappropriate sexual contact to sexual assault. In 1999,

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there were 10 such cases, two of which were serious enough to warrant expulsion of the midshipmen involved. USMA's Center for Professional Military Ethics stated that they receive very few cases of cadets reporting sexual assault due to 'fear of reprisal, punishment (due to alcohol use), or the belief that nothing will be done.'"

Additionally, the letter included the following:

"I am unaware that AFOSI has processed any cases that were not previously reported to DFBLC, and so my assumption is that we still experience some underreporting of sexual assault cases here at USAFA. As a point of interest, the 1999 edition of Military Psychology (Vol 11, No. 3) is devoted to the topic of sexual harassment of active duty military members. I will bring a copy to our meeting. According to the survey, 78% of female military personnel had experienced at least one instance of unwanted sex-related behavior in the past 12 months. This figure was 74% for the Air Force. When the question refined for unwanted sexual attention (i.e., unwanted attempts to stroke, fondle, or kiss) the figures were 42% for DOD and 35% for the Air Force. When these figures are correlated with some of the data provided by AFOSI and SG, it would appear that DOD, USAF, and USAFA all mirror the underreporting problem that is prevalent at the national level."

My point in going through all of this is to point out that my staff and I were well aware that the Air Force had been engaged and was still actively engaged in working this tough problem. From my perspective, progress had been made, and was still being made, to improve the situation at USAFA.

Even now, with the Chief of Staff and Secretary's "Agenda for Change" in place, only the future will tell whether that effort has the right answers or whether more or different efforts need to be undertaken.

Concerned Citizen Complaint

Regarding the "Concerned Citizen Complaint," by way of background, IGS received this complaint approximately two years after working the Hopper case. As mentioned earlier, during those two years, no other case concerning Air Force Academy sexual assault problems/issues was brought to light anywhere across the SAF/IG complaints arena (IGS or IGQ). Other cases concerning the Academy were worked by SAF/IGS. This is significant in that between 1999 and 2003, SAF/IGS investigators were involved in interviewing staff and cadets at the Air Force Academy. In one case that involved a minor assault that was not sexual in nature (a female cadet was dragged into a men's latrine, and given what cadets referred to as a "swirly" – dunked into a latrine and flushed), 28 individuals at the Air Force Academy were interviewed (permanent party and cadets of both sexes). In this particular case, the Chief of Sexual Assault Services was interviewed, explained that the incidents being examined were not sexual assaults and also did not offer any information about sexual assault problems at USAFA. In another case involving an inappropriate English Department Dining-In, 13 interviews were conducted. No issues/problems regarding sexual assaults were raised in any interviews or discussions. Although portions of that

dining-in were alleged to be offensive because of their sexual nature, none of the witnesses came forward to the investigator to claim there was a problem with sexual assaults at the Academy.

The complaint analysis on the "Concerned Citizen Complaint" was, in fact, focused on the Commandant of Cadets, Brig. Gen. S. Taco Gilbert. The other broader allegations were not individually broken out and investigated based primarily on the Investigating Officer's reliance on the Air Force Academy's report of their responses to sexual assaults over the period August 2001 to August 2002 – the same period covered by the anonymous complaint. That information was included in an August 2002 Air Force Academy response to a Congressional tasking from the office of The Honorable Patty Murray. That USAFA response, which was in the complaint analysis, states:

> *"16 sexual assaults were reported to have occurred at USAFA from 1 August 2001 to 1 August 2002. Out of the 16 cases one involved a civilian victim. Each of these reported sexual assaults were investigated to the fullest extent possible according to USAFA Instruction 51-201. In 10 cases the victims wishes to remain anonymous, did not prov[ide] any perpetrator identification, and did not wish any law enforcement investigation. In 1 case the victim consented to completion of a rape kit, but did not provide perpetrator information, and did not wish any law enforcement investigation. Five (5) cases were forwarded to AFOSI for investigation, out of the five one was forwarded without victim consent by the Superintende[nt] due to safety of the Cadet Wing. Out of the five cases forwarded to AFOSI, one was determined to be a false report. Two cases resulted in lack of evidence to proceed with formal charges, one of which was the case forwarded without victim consent. One case progressed to an Article 32 hearing with a subsequent recommendation by the Investigating Officer that the Government will not be able to prove the case at trial. The perpetrator was recommended to Secretary of the Air Force (SECAF) for administrative disenrollment by the Superintende[nt], with an Other Than Honorable discharge. Although the perpetrator departed USAFA, this case is still pending final disposition from SECAF. One case, with the civilian victim, resulted in a court martial conviction (Atch 3:3-4).*
>
> *From the above information, the evidence shows that Academy officials properly followed procedures for investigating those 16 rape and sexual assault incidents which were formally reported over the previous year."*

The draft report cites concerns regarding who the Investigating Officer did not interview regarding the allegation that the Commandant of Cadets tells female cadets that being raped is "their fault." A subsequent very thorough SAF/IGS Investigation (ROI Case [redacted] USAFA [redacted] was completed and reviewed/concurred with by DOD/IG, which verified that there was no wrongdoing on Brig. Gen. Gilbert's part in this case. Additionally, at the time of the 2002 investigation there was no other specific information which would have indicated a need to try to ferret out broad-based allegations regarding: "females were afraid to report for fear of being punished by their AOCs; AOCs punished female cadets for reporting being raped; and, counselors who treated abused cadets were more concerned about USAFA getting a bad name than with the victims' healing." None of the many layers of review of this

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complaint analysis questioned either of these areas – not the legal advisor helping the investigating officer, not the IGS Director, not the Deputy SAF/IG, not myself – SAF/IG, and not the DOD/IG. On the last point, SAF/IGS sent a copy of this complaint analysis to DOD/IG on 21 August 2002 for their review – six days after my approval. DOD/IG never came back to me or IGS citing the issues in this current 28 September 2004 draft report.

AF General Counsel Working Group

As noted in the draft report, I was a member of the General Counsel led Air Force Working Group Concerning the Deterrence of and Response to Incident of Sexual Assault at the U.S. Air Force Academy (AFWG or Air Force General Counsel Working Group). The charter of this Working Group was focused on "policies, programs, and practices" and to "provide recommendations for change." This focus was driven by the Secretary of the Air Force, Dr. Roche, and Chief of Staff, Gen. Jumper, who made it very clear that they wanted to be sure that appropriate changes to Air Force Academy policies, programs, and procedures were accomplished as soon as possible – before the Air Force Academy fall session began. Early in this process (February 2003), Dr. Roche directed that SAF/IG investigate any former or current female cadet's allegations that their complaints of sexual assault had been mishandled by the Air Force Academy or AFOSI officials. Additionally, at my recommendation, Dr. Roche directed that a highly experienced, hand-picked AFOSI team review all investigations conducted (and complaints reported to AFOSI) by the AFOSI Detachment located at the Academy from January 1993 to December 2002. DOD Inspector General and I agreed that DOD IG would conduct concurrent oversight of SAF/IG efforts. Additionally, DOD-IG agreed that they would conduct investigations if any complainants refused to discuss their allegations with SAF/IG.

Based on the above, my participation in the AFWG was primarily focused on being the "functional head" who represented OSI interests. As such, my AFOSI Commander, Brig. Gen. Eric Patterson, and my staff directorate, SAF/IGX, supported working level meetings with this Working Group. At the senior level, the Air Force General Counsel, Ms. Mary Walker, provided for senior-level meetings and discussions approximately three times during the existence of this Working Group. During those discussions, I advocated uniform sexual assault reporting and procedures across our Air Force. My opinions and inputs as a "prominent AFGC Working Group member" were noted as just that – inputs. It was quite clear that the SAF/GC, Mary Walker, held tight control of all information, recommendations, and inputs to SECAF. (*see also* Attachment 2, and its attachment 8) The paper report itself also demonstrates this fact as only Ms. Walker signed the document.

During this process, I instructed the IG staff within all my IG directorates (IGS, IGQ, IGX, and IGI) to provide any information that was deemed pertinent or requested by the AFWG staff. When asked by the DoD IG during their interview of me on this investigation whether or not the AFWG had been provided the [redacted] Complaint (Hopper report) or the Concerned Citizen Complaint (Gilbert report), I honestly did not know. In fact, I was surprised to find out they did not have those reports. Since that time, I have discovered that my earlier assumption that the AFWG had this information was correct.

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[redacted] attached affidavit clearly shows that Air Force General Counsel's Working Group had these reports and that the draft report is factually incorrect again. The following sections of that affidavit are pertinent to the Lt. Gen. Anderson complaint (Hopper case).

> ***"As to Lt Gen Huot's alleged failure to advise the GC's working group of the 2000 complaint against Lt Gen Hopper and the 2002 anonymous complaint, that information was either known personally to the GC or conveyed to significant members of her Working Group. That the Working Group acting for the GC failed to act on it is not a failure on LG Huot's part and the tentative conclusion that he did so should be dropped.*** [redacted] *actual knowledge of the LG Hopper complaint analysis and apparently* [redacted] *the decision not to pursue the information. (Attachment 8) Both* [redacted] *and the GC had actual knowledge of the 2002 anonymous complaint as evidenced by* [redacted] *very specific email to the GC.* ***(Attachment 7)" (emphasis added)***
>
> ***"The GC Working Group was aware of the LG Hopper complaint analysis and a senior member of the Working Group chose not to pursue it because the "charter" did not include an examination of what was known in the Headquarters. (Attachments 8 and 17) It is strikingly odd that those who made the conscious decision not to pursue what was known to the Headquarters, and in fact disregarded it when brought to their collective attention, are now saying that if they'd only known about the LG Hopper complaint analysis, their approach would have been different. It is clear that if there is fault to be found it lies in the formulation of the charter of the Working Group and the decision not to pursue what was known in the Headquarters, rather than in the failure of LG Huot to provide information (information that was personally known to the*** [redacted] ***and/or the GC)."***
>
> ***"While I was in the front office to brief the TJAG, I happened to run into*** [redacted] *who was there for some other purpose, and took the opportunity to brief him personally on the 2000 complaint analysis involving LG Hopper.* [redacted] *was working as* [redacted] *right hand man or "Chief of Staff" on the Academy effort and I felt he needed to know immediately that there was an issue. I gave him the history of the case, pointed out the relevant documents in the report, including the* [redacted] *memo and* [redacted] *memo, and gave him my assessment of the significance of it vis-à-vis the ongoing review. (Attachment 8)"*
>
> ***"Later that day or the next, I happened to be in IGS and saw the Hopper report being copied. When I asked about it I was told that the copies were for JA, meaning my front office, and I assumed they were being prepared for GC, CV and CVA. Based on this observation, when I returned to my office I followed up my earlier recommendation to the TJAG with an email to both MG Fiscus and MG Rives indicating that I saw copies of the Hopper report being made and asked if there were any follow-on taskings for me. I received an email back***

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from MG Rives telling me that GC had been advised, but he didn't know about CV and CVA."

Regarding the "Concerned Citizen Complaint," [redacted] affidavit references and attaches an e-mail which clearly shows that the Air Force General Counsel, Mary Walker, and [redacted] were both aware of this report. The following is an excerpt from [redacted] affidavit:

> *"Recently, however, I discovered an email from [redacted] to the GC clearly showing that both were on notice of this complaint. (Attachment 7) [redacted] describes the nature of the complaint in detail and the GC forwarded the report to the SECAF, although it is unknown whether the SECAF ever received the email. I was told the email was posted to a public web site rather than to the SECAF's email account."*

A portion of the draft report "Conclusions" appears to imply that for some reason I may have deliberately withheld the Anderson Complaint (Hopper complaint) or the Concerned Citizen Complaint (Gilbert complaint) – or information therein – from the AFWG. For the record, let me clearly state that I did not, in any way, whether negligently, willfully, or intentionally withhold those reports – or information contained in those reports – from the Air Force General Counsel Working Group. I would gladly submit to a polygraph regarding this point.

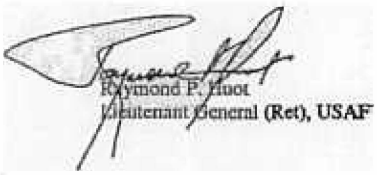
Additionally, I would submit that the statement in the draft report conclusions which states: "As was the case with the predecessor SAF/IG, Gen. Huot also did not meet his obligation to investigate and resolve violations of law, policy, procedure, and regulation" is simply not supported by the facts. I, like many others, worked very hard to do the right thing regarding sexual assault issues and reporting at the Air Force Academy.

In fact, I would note that in addition to SAF/IG's superb efforts in investigating individual cadet or former cadet complaints and AFOSI's involvement in investigating cases over a ten-year period, I succeeded in instituting a program to conduct comprehensive compliance inspections of the Air Force Academy – something that had been dropped in the early 1990s and something I felt was an absolute necessity to provide the Air Force Academy with proper oversight. This program will inspect all aspects of the Air Force Academy on a regularly scheduled basis. In addition, based on my recommendation to the Chief of Staff and the Secretary of the Air Force, I directed that a Special Interest Item on sexual assaults be implemented across the U.S. Air Force. This SII mandated that all major commands (MAJCOM) Inspectors General review sexual assault policy and procedures implementation compliance as a part of all scheduled unit compliance inspections.

Conclusion

In summary, I strongly believe that the information provided herein clearly shows that I met my responsibilities as the Air Force Inspector General in dealing with the Anderson and Concerned Citizens Complaints, in supporting AFOSI investigations of sexual assaults at the Air Force Academy, and in supporting the Air Force General Counsel Working Group. Quite frankly, the draft report language smacks of attempts at sensationalism in reporting rather than an objective analysis and statement of facts. As supported above, many of the facts and the entire conclusion

of the DODIG set out in the draft report are inaccurate. The draft report should be amended accordingly.



Raymond P. Huot
Lieutenant General (Ret), USAF

Attachments:

1. Letter from [redacted] and one attachment, 3 November 2004
2. Affidavit of [redacted] and 17 attachments, 1 November 2004

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Appendix J. Management Comments

SECRETARY OF THE AIR FORCE
WASHINGTON

16 Nov 2004

MEMORANDUM FOR THE INSPECTOR GENERAL OF THE DEPARTMENT OF DEFENSE

SUBJECT: Report of the Evaluation of Sexual Assault Problems at the United States Air Force Academy

Thank you for the opportunity to review a draft copy of the subject report. Your work validates the direction we set and, for the most part, the actions we have taken as a result of the Agenda for Change, the Air Force Working Group Report and the Fowler Panel Report. We have implemented truly sweeping reforms at the U.S. Air Force Academy, many aspects of which are beyond the scope of your report.

I appreciate the determinations of non-responsibility that you have made and trust that you will provide the necessary assurances to the Senate Armed Services Committee regarding those individuals.

Regarding your determinations of responsibility, I will give careful attention to your report, together with the responses of those individuals and any other relevant information, in determining appropriate corrective actions.

Your report supports and sustains the misperception that the Air Force only responded to the Academy's sexual assault problems once those problems became public. The facts are clear and incontrovertible. Immediately upon receipt of an email from a cadet victim, albeit using a pseudonym--weeks before significant media or Congressional interest materialized--I ordered the Air Force General Counsel to do an initial investigation. This was followed by my direction to form the Working Group.

Your report is written from an investigation-centric mindset that may not take into account fully the complexity in balancing the legitimate, sometimes competing interests, commanders and others must address in caring for victims, ensuring appropriate factual determinations and responding to criminal conduct. Without commenting on any individual case, I must observe that the report appears to ignore that, in the main, Air Force people were wrestling with very difficult issues and were motivated by a desire to accomplish the best for victims and the Department of Defense (DoD). While there were errors in execution, it cannot be overlooked that they were trying, years ahead of the rest of us, to address the very issues that we are now, collectively, attempting to resolve across DoD and the nation.

I must also observe that there is a repeated conclusion throughout the report that law and policy documents were circumvented by the existence of a program of confidentiality at the Academy. This is an area where reasonable minds can disagree. While there were certainly errors in execution, it is our view that confidentiality could be lawfully instituted then, and could be now, admittedly in very complicated and organizationally difficult ways. The more

significant issue, however, is whether it is the best resolution of the complex issues. I believe the problems with confidentiality at the Air Force Academy should be carefully considered as the DoD and Congress address this issue. I look forward to a department-wide resolution, and will implement the result with dispatch.

Regarding the recommendations in your report:

I agree with 1, 2, 4, 5, 6, 7, and 8. Several of these recommendations have already been accomplished by the Air Force, or their accomplishment is in progress.

Regarding recommendation 2, I signed a memorandum in April 2004, making clear the Commander, Air Force Office of Special Investigation (AFOSI), has direct access to me on criminal investigation matters. I understand the reasoning in your report and agree in principle with your recommendation. Specific organizational details have yet to be worked out.

I do not agree with recommendation 3 as stated. Our experience has shown that the current procedure best solves the initial concern of many victims about talking with criminal investigators. At the same time, it ensures that AFOSI investigators are immediately notified and participating in the response processes. Further, the "non-credentialed agent" position on the Academy Response Team is a unique development opportunity for OSI agents, providing an unparalleled opportunity to work with and learn from victims who may be reluctant to involve law enforcement authorities. Finally, the process we now have in place is so effective in supporting victims that the formal involvement of criminal investigators is normally delayed only a matter of hours.

Regarding recommendations 4 and 5, the climate, culture, and our mechanisms for dealing with sexual assault at the Air Force Academy are vastly different today than one year ago. We have new leadership in whom the cadets have confidence and trust; a renewed focus on character and officer development; a correction and rehabilitation system that relies upon the Uniformed Code of Military Justice; comprehensive sexual assault prevention education; and a compassionate, multi-functional victim response capability. A blanket amnesty program was an essential part of turning around the previous Academy climate, and in restoring trust and confidence between cadets and Academy leadership. The goals I had for the amnesty component of the Agenda for Change have been largely accomplished and I am prepared to implement your recommendations.

I agree with recommendations 6 and 7. The Victim and Witness Assistance Program is a key component of the Defense Department's sexual assault response capability. It must be properly managed, and, owing to its focus on supporting victims through the investigation and criminal prosecution phases of sexual assault response, the Staff Judge Advocate is the appropriate management official for the program. On this important foundation, we have expanded our victim support capabilities with designated liaisons who facilitate access to services--even after the investigation and prosecution phases of assault response are complete.

Finally, my staff forwarded separately a list of areas they believed warranted correction in the report. I have reviewed this list and concur with their judgment. Given the very short time allowed for comment on this report, any omission from this list should not be taken as acquiescence, and I reserve the opportunity to forward additional comments if appropriate.

James G. Roche
Secretary of the Air Force

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Appendix K. IG DoD Speech to Corps of Cadets

INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

USAFA LAUNCH OF THE THREE SERVICE ACADEMIES SEXUAL ASSAULT AND LEADERSHIP SURVEY: "SETTING THE BAR FOR A 'HIGHER STANDARD'"

Remarks as Delivered by Inspector General Joseph E. Schmitz of the Department of Defense. U.S. Air Force Academy, Colorado Springs, CO, Monday, April 19, 2004.

Thank you General Rosa for that introduction, and congratulations to all you 4/C Cadets for earning your "prop & wings" over the weekend.

As we conduct this Sexual Assault survey, I would ask that you not think of it as just an additional burden caused by a few "bad eggs." This survey is about an exemplary conduct leadership standard first codified by Congress in 1775.

Allow me to read verbatim "Article I" from the 1775 Navy Regulations, drafted by John Adams and enacted by our Continental Congress on November 28, 1775:

> [quote] "The Commanders of all ships and vessels belonging to the THIRTEEN UNITED COLONIES, are strictly required to shew in themselves a good example of honor and virtue to their officers and men, and to be very vigilant in inspecting the behaviour of all such as are under them, and to discountenance and suppress all dissolute, immoral and disorderly practices; and also, such as are contrary to the rules of discipline and obedience, and to correct those who are guilty of the same according to the usage of the sea."[1] [close quote]

During the 1990s, as the Army was dealing with a major sexual assault scandal at Aberdeen Proving Grounds, the U.S. Congress reenacted this exact same leadership standard for the Army and the Air Force -- and for the Navy, although Article I of the Navy Regulations had been continuously on the books since 1775.

When Congress reenacted this long-standing Navy leadership standard in 1997, the accompanying committee report explained its purpose and significance:

> [quote] "This provision will not prevent an officer from shunning responsibility or accountability for an action or event. It does, however, establish a very clear standard by which Congress and the nation can measure officers of our military

[1] Rules for the Regulation of the Navy of the United Colonies of North America," November 28, 1775 (http://www.history.navy.mil).

services. The [Senate Armed Services] committee holds military officers to a higher standard than other members of society. The nation entrusts its greatest resource, our young men and women, to our military officers. In return, the nation deserves complete integrity, moral courage, and the highest moral and ethical conduct."[2] [close quote]

Always remember this "higher standard." You are not just students at any college or university: you are leaders of character in training -- members of the greatest military power in the history of mankind. One of our former Commander-in-Chief's had something to say about such power and greatness, which I commend to you today in the context of the survey you are about to take.

President Theodore Roosevelt admonished once that "the main source of national power and national greatness is found in the average citizenship of the nation. Therefore," he said, "it behooves us to do our best to see that the standard of the average citizen is kept high; and the average cannot be kept high unless the standard of the leaders is very much higher."[3]

Last year, Senator John Warner, Chairman of the Senate Armed Services Committee (who, by the way, has also served a Secretary of the Navy), told me that the challenges facing the service academies associated with sexual assault "go to the heart and soul of our Armed Forces. Please get it right."

Since then, we have been working closely with General Rosa and the other two Academy Superintendents to "get it right."

You may have read press accounts of what you and we have been doing here at the Air Force Academy, and what we have been doing back in Washington with Air Force and Congressional leaders. This survey is your opportunity now to tell it as it is — to help your senior leaders with straightforward feedback in an anonymous forum.

The survey is both voluntary and completely anonymous. I would encourage you to be as honest and detailed as you can be in answering the survey questions. If you would like to speak with someone anonymously, you can also meet one-on-one with any of my staff members who will be administering the survey over the next few days.

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[2] Senate Armed Services Committee, "National Defense Authorization Act for Fiscal Year 1998" (Report to Accompany S. 924), p. 277, quoted in the Introduction, "The Declaration of Independence and the Constitution of the United States of America" (www.defenselink.mil/pubs/liberty.pdf).

[3] T. Roosevelt, "Citizenship in a Republic" (delivered April 23, 1910), reprinted in AMERICAN IDEALS: THE STRENUOUS LIFE, REALIZABLE IDEALS 509 (Charles Scribner's Sons, New York 1926), quoted in the Introduction, "The Declaration of Independence and the Constitution of the United States of America" (www.defenselink.mil/pubs/liberty.pdf).

Again, please remember that this survey is not just about a few bad eggs. It is about an exemplary conduct leadership standard that the Congress and the nation expects of you. It is a standard that ought to be "very much higher" than that of the average citizen.

Our goal is to provide General Rosa and the other two Superintendents with the most accurate information we can so that he — and they — can make important decisions about how best to train you to understand better and to conform to that "higher standard."

Thank you very much.