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**NATIONAL SECURITY AGENCY/CENTRAL SECURITY
SERVICE**



INSPECTOR GENERAL

REPORT OF INVESTIGATION

26 May 2015

IV-14-0092

Alleged Reprisal

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Approved for Release by NSA on 12-31-2019, FOIA Case # 85643 (litigation)

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(U) OFFICE OF THE INSPECTOR GENERAL

(U) Chartered by the NSA Director and by statute, the Office of the Inspector General conducts audits, investigations, inspections, and special studies. Its mission is to ensure the integrity, efficiency, and effectiveness of NSA operations, provide intelligence oversight, protect against fraud, waste, and mismanagement of resources by the Agency and its affiliates, and ensure that NSA activities comply with the law. The OIG also serves as an ombudsman, assisting NSA/CSS employees, civilian and military.

(U) AUDITS

(U) The audit function provides independent assessments of programs and organizations. Performance audits evaluate the effectiveness and efficiency of entities and programs and their internal controls. Financial audits determine the accuracy of the Agency's financial statements. All audits are conducted in accordance with standards established by the Comptroller General of the United States.

(U) INVESTIGATIONS

(U) The OIG administers a system for receiving complaints (including anonymous tips) about fraud, waste, and mismanagement. Investigations may be undertaken in response to those complaints, at the request of management, as the result of irregularities that surface during inspections and audits, or at the initiative of the Inspector General.

(U) INTELLIGENCE OVERSIGHT

(U) Intelligence oversight is designed to insure that Agency intelligence functions comply with federal law, executive orders, and DoD and NSA policies. The IO mission is grounded in Executive Order 12333, which establishes broad principles under which IC components must accomplish their missions.

(U) FIELD INSPECTIONS

(U) Inspections are organizational reviews that assess the effectiveness and efficiency of Agency components. The Field Inspections Division also partners with Inspectors General of the Service Cryptologic Elements and other IC entities to jointly inspect consolidated cryptologic facilities.

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I. (U) SUMMARY

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(U//~~FOUO~~) The NSA/CSS, OIG conducted this investigation in response to an allegation that [redacted] Chief, [redacted] GG-15, removed [redacted] from his position as Team Lead, [redacted], in reprisal for making a protected communication to [redacted].

(U//~~FOUO~~) On 3 July 2013, [redacted] reported to [redacted] a violation of conduct rules by [redacted]. [redacted] disclosure constituted a protected communication under NSA Whistleblower policy, which implements 10 U.S.C. § 1034. [redacted] subsequently removed [redacted] as [redacted] lead in the latter part of July 2013. The OIG assessed that [redacted] removal as team lead constituted an unfavorable personnel action. The OIG also established that [redacted] had knowledge of the protected communication prior to the personnel action. Therefore, a reasonable person could conclude that the protected communication was a contributing factor in [redacted] actions.

(U//~~FOUO~~) However, the OIG concluded that [redacted] demonstrated significant performance problems that led to his removal, independent of the protected communication. Prior to his protected communication on 3 July 2013, four individuals in [redacted] civilian and military chains of command observed recurring problems with his performance and documented those concerns in writing. Three of these individuals verbally counseled him – all prior to his protected communication. Two individuals testified that [redacted] removal as [redacted] lead was contemplated well before the protected communication. Therefore, the OIG concluded by preponderance of the evidence that [redacted] did not remove [redacted] as [redacted] lead in reprisal for his protected communication to [redacted].

(U//~~FOUO~~) Although the investigation did not substantiate the allegation of reprisal, to give fullest consideration to whether Agency personnel acted improperly, the OIG considered whether [redacted] actions created a "hostile work environment." The results of that investigation are contained in IV-14-0048 dated 11 March 2015. In summary, the OIG concluded that [redacted] engaged in conduct that created a hostile work environment and interfered with individuals' work performance in violation of NSA/CSS Personnel Management Manual (PMM), Chapter 366, §1-3(E), §§2-1 (A), (E) and NSA/CSS Policy 1-37, Annex D: Prohibition of Harassment.

(U//~~FOUO~~) A summary of this report of investigation will be provided to the Inspector General, Department of Defense. [redacted] and [redacted] will be informed of the results of the inquiry.

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II. (U) BACKGROUND

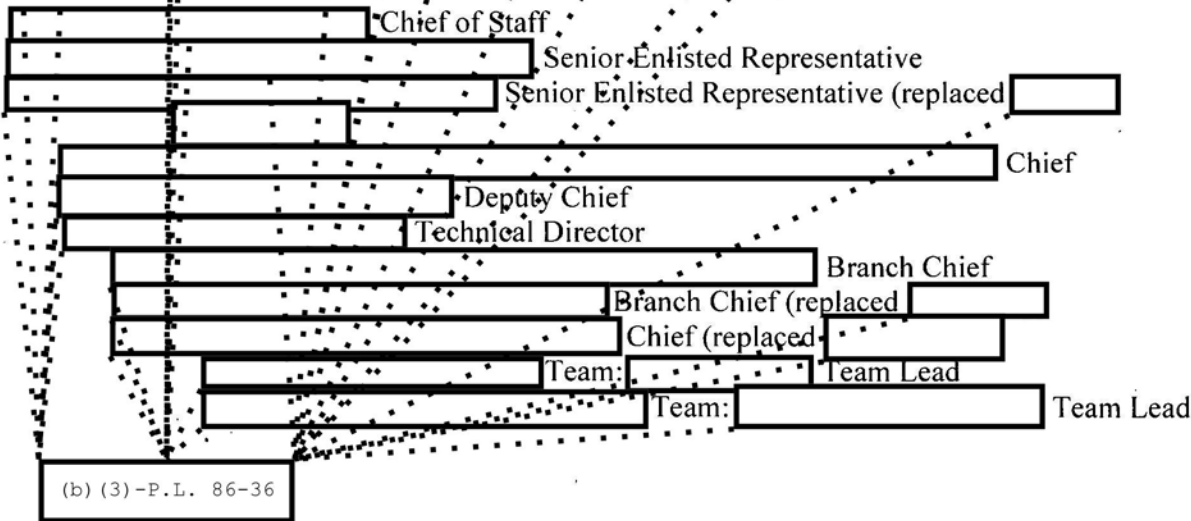
(U) Introduction

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(U//~~FOUO~~) [redacted] entered on duty with NSA on [redacted]. In September 2011, he became Chief, [redacted]. The [redacted] is a division of [redacted]. The [redacted] mission is to [redacted].

(U//~~FOUO~~) [redacted] worked in a branch [redacted] in [redacted] division. In approximately September 2012, [redacted] became team lead of the [redacted] a team in [redacted] was also a voting member of the Operational Change Board (OCB).¹ In July 2013, [redacted] was removed from his positions as [redacted] lead and OCB member.

(U//~~FOUO~~) Following is an organizational diagram with the names and positions of the witnesses who testified for the investigation.²



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¹ (U//~~FOUO~~) The OCB coordinates changes and outages of the operational systems. As a voting member, he was responsible for assessing how proposed changes to the infrastructure and scheduled outages would impact the [redacted] mission.

² (U//~~FOUO~~) These are the positions occupied by the individuals from late 2012 through late 2013; many have since moved to new positions.

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(U) Scope and Authorities

(U) The NSA OIG conducted this whistleblower reprisal investigation pursuant to Title 10, United States Code, Section 1034 (10 U.S.C. 1034), "Protected communications; prohibition of retaliatory personnel actions," (Appendix A) and DoD Directive 7050.06, "Military Whistleblower Protection" (Appendix B), which are implemented by NSA/CSS Policy 1-62, *Whistleblower Protection* (Policy 1-62), issued 6 July 2005, (Appendix C).³

(U//~~FOUO~~) NSA/CSS Policy 1-62 provides protection to NSA employees and members of the Armed Forces assigned, attached, or detailed to NSA/CSS who make a "protected communication." A protected communication is any lawful communication to a member of Congress or an IG, or a lawful communication of information which the communicant reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to a member of Congress, an IG, or any other person or organization (including any person or organization in the chain of command) designated under Agency policy or other established administrative procedures to receive such communications.

(U//~~FOUO~~) NSA/CSS Policy 1-62, paragraph 11, prohibits taking, or threatening to take, an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making a protected communication. Paragraph 9 defines a "personnel action" as an action that affects, or has the potential to affect, the employment opportunities, the current position, or the career of any employee or member of the Armed Forces assigned, attached, or detailed to NSA/CSS. Such actions include a promotion; a disciplinary or corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; and any other significant change in duties or responsibilities inconsistent with the employee's salary or grade level.

(U//~~FOUO~~) The elements of reprisal are protected communication; knowledge of the protected communication on the part of the Responsible Management Official (RMO); a personnel action taken, threatened, or withheld; and a causal connection between the protected communication and the personnel action. When the alleged victim of the reprisal is a member of the military, all four elements of reprisal must be established by a preponderance of the evidence in order for reprisal to be substantiated.⁴ If the evidence establishes that the personnel action would have

³ (U//~~FOUO~~) NSA/CSS Policy Memorandum 2013-03, Protecting Whistleblowers with Access to Classified Information, issued 14 June 2013, which is supplemental to NSA/CSS Policy 1-62, does not apply in this case. This policy memorandum implements Presidential Policy Directive 19, which does not apply to actions taken with respect to a member of the Military Services.

⁴ (U//~~FOUO~~) "Preponderance of the evidence" is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

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been taken, threatened, or withheld even absent the protected communication, then the complaint is not substantiated.

(U//~~FOUO~~) The OIG obtained sworn testimony from 11 witnesses, including the complainant, [redacted] and the RMO, [redacted]. The OIG also reviewed documentation provided by [redacted] and other witnesses. Finally, the OIG reviewed [redacted] email files (PSTs) over the relevant time period.

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(U) Sequence of Events

(U//~~FOUO~~) In approximately September 2012, [redacted] became team lead of the [redacted]

(U//~~FOUO~~) On 22 October 2012, [redacted] made a notation in his journal to talk to [redacted] about follow-through and project performance.

(U//~~FOUO~~) During the week of 3-7 December 2012, [redacted] made a notation in his journal to talk to [redacted] about missing meetings and being tardy.

(U//~~FOUO~~) On 5 February 2013, [redacted] made a notation in his journal to talk to [redacted] about interactions with contractors.

(U//~~FOUO~~) On 19 April 2013, [redacted] made a notation in his journal to talk to [redacted] about accountability, responsibility, and follow-through. (b) (3)-P.L. 86-36

(U//~~FOUO~~) On 23 April 2013, [redacted] was named the [redacted] (Operational Change Board) representative.

(U//~~FOUO~~) During the week of 13-17 May 2013, [redacted] made a notation in his journal to talk to [redacted] about letting him or [redacted] know in advance when he would miss a meeting.

(U//~~FOUO~~) On 30 May 2013, [redacted] Technical Director [redacted] emailed [redacted] to complain that he had not voted on many change requests (for the Operational Change Board) and that his feedback was needed (Appendix D).⁵

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(U//~~FOUO~~) On 12 June 2013, [redacted] emailed [redacted] (and copied Mr. [redacted] and [redacted] and wrote that [redacted] was not fulfilling the Operational Change Board role for the [redacted] as needed. He also wrote that he never received a reply to his email of 30 May 2013 (Appendix E).

(U//~~FOUO~~) On 25 June 2013, [redacted] emailed [redacted] (and copied [redacted] and [redacted] and wrote that [redacted] was not fulfilling his duties on the Operational Change Board. He concluded the message by writing, "I'd like him replaced." (Appendix F)

(U//~~FOUO~~) On 26 June 2013 (at approximately 1100) [redacted] and [redacted] had a heated exchange in which [redacted] hit his fist on the desk and raised his voice.

(U//~~FOUO~~) On 26 June 2013 (at 1204) [redacted] wrote an email to [redacted] (and copied [redacted] and [redacted] and told them about the exchange with [redacted] that morning. Additionally, [redacted] related that, "I must say that I am concerned about the

⁵ (U//~~FOUO~~) As the [redacted] representative to the OCB, [redacted] was responsible for assessing how proposed changes to the infrastructure and scheduled outages would impact the [redacted] mission. Proposed changes were announced and then members had a week to vote on them.

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effectiveness of [redacted] leadership of the [redacted] and of the [redacted] I'd like to talk to you about these concerns and how we can move forward." (Appendix G)

(U//FOUO) On 3 July 2013, [redacted] emailed [redacted] (and copied [redacted] and [redacted] and reported that on 26 June 2013, [redacted] displayed "unprecedented hostile behavior, extraordinary loud voice and aggressive tone. [redacted] reported that [redacted] slammed the desk repeatedly and he felt threatened and fearful. (Appendix H).

(U//FOUO) In July 2013 (exact date unknown), [redacted] was removed as [redacted] lead and Operational Change Board member.

(U//FOUO) On 19 July 2013, [redacted] submitted performance feedback (Operational Supervisor's Evaluation Input) to [redacted] Navy chain of command. [redacted] wrote that [redacted] "often needs reminding that something is due, when the due date is, and what the details of the assigned task were." He also wrote that [redacted] subordinates complained of a lack of direction and that there were recurring issues regarding military professionalism, specifically in regards to maintaining military bearing and demonstrating respect. "Multiple managers have been offended by the manner in which member has addressed them." (Appendix I)

(U//FOUO) On 29 July 2013, a replacement team lead for the [redacted] and new Operational Change Board member was identified.

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⁶ (U//FOUO) [redacted] testified that [redacted] told him he was removed as team lead approximately one week after the 26 June 2013 incident in [redacted] office. Though witnesses agreed that [redacted] was removed as team lead, none had any documentary evidence of his removal or the date when it happened. Therefore, the OIG gave [redacted] the benefit of the doubt and assumed that the personnel action took place after the protected communication.

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III. (U) FINDINGS**I. (U//~~FOUO~~) Did [REDACTED] make a protected communication? Yes.**

(U//~~FOUO~~) NSA/CSS Policy 1-62 prohibits taking, or threatening to take, an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making a protected communication. Policy 1-62, Paragraph 10, defines a protected communication as:

- a. (U) Any lawful communication of information to a Member of Congress or an IG; or
- b. (U) A lawful communication of information which the communicant reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to a member of Congress, an IG, or any other person or organization (including any person or organization in the chain of command) designated under Agency policy or other established administrative procedures to receive such communications.

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(U//~~FOUO~~) On 3 July 2013, [REDACTED] emailed his superior, Senior Enlisted Leader for [REDACTED] and reported that on 26 June 2013, [REDACTED] displayed "unprecedented hostile behavior, extraordinary loud voice and aggressive tone." [REDACTED] reported that [REDACTED] slammed the desk repeatedly and he felt threatened and fearful.

(U//~~FOUO~~) The OIG found that this communication is a protected disclosure. [REDACTED] contacted a supervisor in his direct chain of command, with what he reasonably believed to evidence a violation of, at minimum, rules or regulations, including the PMM Chapter on Personal Conduct as well as NSA/CSS Policy 1-37, which "outlines the Agency's commitment to a work environment free of conduct that interferes with another individual's performance or that creates an intimidating, hostile, or offensive environment." This is true even though [REDACTED] did not mention these specific rules – see *Smart v. Department of Army*, 98 MSPR 566 (2005).⁷

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⁷ (U) The court found that the correct standard for determining if the complainant made a valid disclosure is whether "in light of the complexity of these regulations, directive, and instruction ... the appellant has raised a nonfrivolous allegation that a person in his position ... could reasonably conclude that he disclosed evidence of a violation of a law, rule, or regulation."

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2. (U//FOUO) Was an unfavorable personnel action taken or threatened, or was a favorable action withheld or threatened to be withheld following the protected communication? Yes.

(U//FOUO) NSA/CSS Policy 1-62 defines a personnel action as an action that affects, or has the potential to affect, the employment opportunities, the current position, or the career of any employee or member of the Armed Forces assigned, attached, or detailed to NSA/CSS. Such actions include a promotion; a disciplinary or corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; and any other significant change in duties or responsibilities inconsistent with the employee's salary or grade level.

(U//FOUO) The OIG determined that [redacted] removal as [redacted] lead constituted a significant change in duties or responsibilities that had the potential to affect his military career. Although no witness could provide a list of duties or responsibilities for the [redacted] lead, the consensus was that [redacted] removal was a downgrade in responsibility. As [redacted] lead, [redacted] managed a mixed group of about 10 civilians, military, and contractors who were tasked with [redacted]. As team lead, [redacted] was tasked to ensure his team was completing the required coordination and assessments, from an operational and personnel management standpoint. He was also responsible for communicating with leadership, addressing any personnel issues that arose, and ensuring that contractors stayed within their statement of work. Following his removal, he was re-subordinated to more junior enlisted personnel.

(U//FOUO) Although none of the witnesses could affix a firm date to the event, all agreed that [redacted] was removed from his position as [redacted] lead. [redacted] testified that [redacted] told him he was removed as team lead approximately one week after an incident in [redacted] office on 26 June 2013. He further reported that on 29 July 2013, he was told that a replacement [redacted] lead (and OCB member) had been identified. Thus, a preponderance of the evidence established that an unfavorable personnel action (removal as [redacted] lead) was taken following the protected communication.

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(U//FOUO) The OIG determined that [redacted] removal as OCB member did not constitute a significant change in duties or responsibilities that had the potential to affect his military career. [redacted] Chair of the OCB, testified that as a member of the board, [redacted] was responsible for assessing how proposed changes to the infrastructure and scheduled outages would impact [redacted] mission. Proposed changes were announced and then members had a week to vote on them. The time commitment was about 30-60 minutes per week. In a standard 40-hour work week, this collateral duty represented no more than 2.5% of [redacted] workload.

3. (U//FOUO) Was the protected communication a contributing factor in the personnel action? Yes.

(U//FOUO) A "contributing factor" exists when the RMO had knowledge of the disclosure and acted within such a period of time that a reasonable person could conclude that the disclosures

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were a contributing factor in the personnel action. Therefore, the complainant can satisfy the contributing factor element by showing: that the RMO had knowledge of the disclosure and that the personnel action occurred within a period of time such that a reasonable person could conclude that the disclosure was a contributing factor in the personnel action.

(U//~~FOUO~~) Witnesses disagreed about the individual responsible (the RMO) for the personnel action. Ultimately, the OIG accepted the complainant's premise that [redacted] was responsible. This matter is discussed in Appendix J.

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(U//~~FOUO~~) [redacted] the RMO, testified that "within a few days" of the incident in his office on 26 June 2013, [redacted] told him that [redacted] had filed a complaint against him through the Navy and that it was working its way "through the chain." Therefore, [redacted] had knowledge of the protected disclosure prior to [redacted] removal in July 2013. Thus, a reasonable person could conclude that [redacted] disclosure was a contributing factor in the personnel action.

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4. (U) Would the same personnel action(s) have been taken, withheld, or threatened absent the protected communication? Yes.

(U//~~FOUO~~) The OIG found strong evidence that the removal of [redacted] as team lead would have been taken absent the protected communication because of documented performance problems. Furthermore, his removal had been contemplated by several people prior to his protected communication.

(U//~~FOUO~~) [redacted] former branch chief, [redacted] testified that after [redacted] became [redacted] lead, his performance deteriorated. He failed to complete assignments and lacked follow-through. [redacted] made notations in his journal on 22 October 2012 and 19 April 2013 to speak with [redacted] about his lack of follow-through. These notations provided concrete evidence of [redacted] performance problems well before his July 2013 protected communication.

(U//~~FOUO~~) [redacted] also testified that [redacted] "disappeared" for periods of time and his staff could not locate him. He acted unprofessionally with the contractors and raised his voice at them; which [redacted] documented in his journal on 5 February 2013. [redacted] met with [redacted] to counsel him about his performance, but he was resistant to taking direction from a civilian. Consequently, [redacted] enlisted his Deputy (and successor) [redacted] to help him. Together, they counseled [redacted] several times about his lack of accountability and responsibility.

(U//~~FOUO~~) In early 2013, [redacted] approached the point that he considered removing [redacted] as [redacted] lead because he had failed to meet performance metrics for a critical project. [redacted] met with [redacted], [redacted] and [redacted] to explain that the project was stalled because of [redacted]. [redacted] "wanted [redacted] gone" but [redacted] successfully argued to give him another chance. Thus, [redacted] initial desire to remove [redacted] dated back to early 2013, many months before the protected communication.

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(U//FOUO) [redacted] was cognizant of [redacted] performance problems first as [redacted]'s Deputy and later as the Branch Chief. [redacted] testified that [redacted] lacked professionalism, lacked follow-through, lacked organizational skills, and refused to accept responsibility for his actions and those beneath him. [redacted] made notations in his journal during the week of 3-7 December 2012 and 13-17 May 2013 about [redacted] missing meetings (months in advance of the protected communication). He stated that he informed [redacted] of [redacted] performance problems.

(U//FOUO) [redacted] testified that he verbally counseled [redacted] about his performance, his inability to follow military customs and courtesies, and failure to meet deadlines on more than one occasion. [redacted] described one incident in which he had given [redacted] a set of deliverables, which he acknowledged receiving. The day after the assignment was due, [redacted] asked [redacted] to produce his results. [redacted] denied knowledge of the assignment and was discourteous. [redacted] captured these criticisms in his input to [redacted] Operational Supervisor's Evaluation Input Form. In the evaluation, [redacted] wrote that, "member often needs reminding that something is due, when the due date is, and what the details of the assigned task were." He also wrote that there were "recurring issues regarding military professionalism, specifically in regards to maintaining military bearing and demonstrating respect" and "member repeatedly fails to take responsibility for his own/teams failures."⁸

(U//FOUO) [redacted] was not in a position to evaluate [redacted] performance. However, [redacted] told him that [redacted] was not performing "at an acceptable level" for a team lead and that he was considering replacing him. [redacted] did not think that [redacted] was removed from his position because of his protected communication. In his opinion, the removal of [redacted] was already underway before July 2013. In fact, [redacted], who told [redacted] that he was thinking about replacing [redacted], had already left the organization when the incident in [redacted] office took place.

(U//FOUO) [redacted] Technical Director [redacted] testified that in late May 2013, he noted that [redacted] was not fulfilling his responsibilities as the [redacted] representative to the OCB. After repeated attempts to compel [redacted] participation, he asked [redacted] to replace him as [redacted] OCB representative on 25 June 2013. Overall, [redacted] assessed [redacted] performance on the OCB as "poor." Although [redacted] was not involved with the decision to remove [redacted] as [redacted] lead, he recalled discussing [redacted] performance problems with [redacted] in approximately late June 2013. Although [redacted] testified that he had no direct knowledge of [redacted] performance as [redacted] lead, he remarked, "if [redacted] level of effort as OCB representative was indicative of his overall performance as [redacted] lead, then his removal likely was warranted."

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⁸ (U//FOUO) Because the exact date of the personnel action is unknown, this performance evaluation (dated 19 July 2013) may or may not have been signed after the personnel action. Regardless, it is supportive of [redacted] testimony and journal notations from earlier in the year.

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(U//FOUO) [redacted] testified that [redacted] was removed because he failed to deliver results, not because he "complained." However, [redacted] claimed that he did not personally make the decision; it was made by the branch chief, after consultation with him. On 26 June 2013, he met with [redacted] in his office because he was frustrated with him. He had issued guidance that tasking should be reviewed by leadership before responses were sent. [redacted] had not followed this directive; he explained that he thought he only had to inform leadership, not obtain approval. [redacted] thought that [redacted] was lying to him and became frustrated. He pounded his fist on the desk and told [redacted] to "stop." Following the meeting, [redacted] sent an email to [redacted] recounting what happened. He also wrote, "I must say that I am concerned about the effectiveness of [redacted] leadership of the [redacted]." [redacted] testified that he sent the email to explain what happened and to document [redacted] performance problems. Both the 26 June 2013 meeting and email took place prior to the protected communication.

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(U//FOUO) The OIG concluded that [redacted] demonstrated significant performance problems that led to his removal independent of the protected communication. Prior to the protected communication on 3 July 2013, [redacted] and [redacted] all observed recurring problems with [redacted] performance and documented those problems in writing. [redacted] and [redacted] also verbally counseled him - all prior to the protected communication. [redacted] and [redacted] also testified that [redacted] removal as [redacted] lead was contemplated well before the protected communication. Therefore, the OIG concluded by preponderance of the evidence, that [redacted] was removed as [redacted] lead for poor performance. Furthermore, the OIG concluded that this personnel action would have been taken absent the protected communication.

(U//FOUO) Although the investigation did not substantiate the allegation of reprisal, to give fullest consideration to whether Agency personnel acted improperly, the OIG considered whether [redacted] actions created a "hostile work environment." The results of that investigation are contained in IV-14-0048 dated 11 March 2015. In summary, the OIG concluded that [redacted] engaged in conduct that created a hostile work environment and interfered with individuals' work performance in violation of NSA/CSS Personnel Management Manual (PMM), Chapter 366, §1-3(E), §§2-1 (A), (E) and NSA/CSS Policy 1-37, Annex D: Prohibition of Harassment.

⁹ (U//FOUO) See Appendix J.

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V. (U) CONCLUSION

(U//FOUO) The NSA/OIG found that [redacted] made a protected communication to [redacted] on 3 July 2013. [redacted] subsequently removed [redacted] as team lead of the [redacted] in the latter part of July 2013. The OIG assessed that [redacted] removal as team lead constituted an unfavorable personnel action. The OIG also established that [redacted] had knowledge of the protected communication prior to the personnel action.

(U//FOUO) However, the OIG concluded that [redacted] had demonstrated significant performance problems that led to his removal, independent of the protected communication. Prior to the protected communication on 3 July 2013, four individuals in [redacted] civilian and military chain of command observed recurring problems with his performance and documented the problems in writing. Three of these individuals also verbally counseled him – all prior to the protected communication. Two individuals testified that [redacted] removal as [redacted] lead was contemplated well before the protected communication. Therefore, the OIG concluded by preponderance of the evidence, that [redacted] did not remove [redacted] as [redacted] lead in reprisal for his protected communication to [redacted].

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(U//FOUO) Although the investigation did not substantiate the allegation of reprisal, to give fullest consideration to whether Agency personnel acted improperly, the OIG considered whether [redacted] actions created a "hostile work environment." The results of that investigation are contained in IV-14-0048 dated 11 March 2015. In summary, the OIG concluded that [redacted] engaged in conduct that created a hostile work environment and interfered with individuals' work performance in violation of NSA/CSS Personnel Management Manual (PMM), Chapter 366, §1-3(E), §§2-1 (A), (E) and NSA/CSS Policy I-37, Annex D: Prohibition of Harassment.

[Redacted Signature Box]

Investigator

Concurred by:

[Redacted Signature Box]

Assistant Inspector General
For Investigations

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APPENDIX A

**(U) Title 10, United States Code, Section 1034, “Protected
communications; prohibition of retaliatory actions”**

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10 U.S. Code § 1034 - Protected communications; prohibition of retaliatory personnel actions

(a) Restricting Communications With Members of Congress and Inspector General Prohibited.—

(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) Prohibition of Retaliatory Personnel Actions.—

(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted;

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;

(iv) any person or organization in the chain of command;

(v) a court-martial proceeding; or

(vi) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications; or

(C) testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication under subparagraph (A) or (B), or filing, causing to be filed, participating in, or otherwise assisting in an action brought under this section.

(2) Any action prohibited by paragraph (1) (including the threat to take any unfavorable action, the withholding or threat to withhold any favorable action, or making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member's grade) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

(c) Inspector General Investigation of Allegations of Prohibited Personnel Actions.—

(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (4).

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of sections 920 through 920c of this title (articles 120 through 120c of the Uniform Code of Military Justice), sexual harassment, or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(C) A threat by another member of the armed forces or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to members of the armed forces or civilians or damage to military, Federal, or civilian property.

(3) A communication described in paragraph (2) shall not be excluded from the protections provided in this section because—

(A) the communication was made to a person who participated in an activity that the member reasonably believed to be covered by paragraph (2);

(B) the communication revealed information that had previously been disclosed;

(C) of the member's motive for making the communication;

(D) the communication was not made in writing;

(E) the communication was made while the member was off duty; and

(F) the communication was made during the normal course of duties of the member.

(4)

(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.

(B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Department of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).

(C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.

(D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.

(E) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).

(5) Neither an initial determination under paragraph (4)(A) nor an investigation under paragraph (4)(D) is required in the case of an allegation made more than one year after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(6) The Inspector General of the Department of Defense, or the Inspector General of the Department of Homeland Security (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is one or both of the following:

(A) Outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(B) At least one organization higher in the chain of command than the organization of the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(d) Inspector General Investigation of Underlying Allegations.— Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A), (B), or (C) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) Reports on Investigations.—

(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(4)(E), the Inspector General conducting the

investigation shall submit a report on the results of the investigation to the Secretary of Defense and the Secretary of the military department concerned (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to such Secretaries, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(4)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3) If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and the Secretary of the military department concerned (or to the Secretary of Homeland Security in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—

(A) of that determination (including the reasons why the report may not be submitted within that time); and

(B) of the time when the report will be submitted.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) Action in Case of Violations.—

(1) Not later than 30 days after receiving a report from the Inspector General under subsection (e), the Secretary of Homeland Security or the Secretary of the military department concerned, as applicable, shall determine whether there is sufficient basis to conclude whether a personnel action prohibited by subsection (b) has occurred.

(2) If the Secretary concerned determines under paragraph (1) that a personnel action prohibited by subsection (b) has occurred, the Secretary shall—

(A) order such action as is necessary to correct the record of a personnel action prohibited by subsection (b); and

(B) take any appropriate disciplinary action against the individual who committed such prohibited personnel action.

(3) If the Secretary concerned determines under paragraph (1) that an order for corrective or disciplinary action is not appropriate, not later than 30 days after making the determination, such Secretary shall—

(A) provide to the Secretary of Defense and the member or former member a notice of the determination and the reasons for not taking action; and

(B) when appropriate, refer the report to the appropriate board for the correction of military records for further review under subsection (g).

(g) Correction of Records When Prohibited Action Taken.—

(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—

- (A) shall review the report of the Inspector General submitted under subsection (e)(1);
- (B) may request the Inspector General to gather further evidence; and
- (C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.
- (3) If the board holds an administrative hearing, the member or former member who filed the application described in paragraph (1)—
- (A) may be provided with representation by a judge advocate if—
- (i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);
- (ii) the Judge Advocate General concerned determines that the member or former member would benefit from judge advocate assistance to ensure proper presentation of the legal issues in the case; and
- (iii) the member is not represented by outside counsel chosen by the member; and
- (B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).
- (4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.
- (5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).
- (6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.
- (h) Review by Secretary of Defense.**— Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.
- (i) Regulations.**— The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.
- (j) Definitions.**— In this section:
- (1) The term "Member of Congress" includes any Delegate or Resident Commissioner to Congress.
- (2) The term "Inspector General" means any of the following:
- (A) The Inspector General of the Department of Defense.
- (B) The Inspector General of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.
- (C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.
- (3) The term "unlawful discrimination" means discrimination on the basis of race, color, religion, sex, or national origin.

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APPENDIX B

(U) DoD Directive 7050.06, "Military Whistleblower Protection"

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Department of Defense **DIRECTIVE**

NUMBER 7050.06

July 23, 2007

IG DoD

SUBJECT: Military Whistleblower Protection

References: (a) DoD Directive 7050.6, subject as above, June 23, 2000 (hereby canceled)
(b) Title 10, United States Code
(c) Directive-type Memorandum, "Military Whistleblower Protection,"
December 6, 2004 (hereby superseded)
(d) Title 5, United States Code
(e) through (g), see Enclosure 1

1. REISSUANCE AND PURPOSE

This Directive:

1.1. Reissues Reference (a) to update policy and responsibilities for military whistleblower protection under section 1034 of Reference (b).

1.2. Includes a definition of the term "chain of command" to clarify that any person in a member of the Armed Forces' chain of command, including the supervisory and rating chain, may receive a protected communication.

1.3. Supersedes Reference (c).

2. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS

Terms used in this Directive are defined in Enclosure 2.

4. POLICY

It is DoD policy that:

- 4.1. Members of the Armed Forces shall be free to make a protected communication.
- 4.2. No person shall restrict a member of the Armed Forces from making lawful communications to a Member of Congress or an Inspector General (IG).
- 4.3. Members of the Armed Forces shall be free from reprisal for making or preparing to make a protected communication.
- 4.4. No person may take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in reprisal against any member of the Armed Forces for making or preparing to make a protected communication.
- 4.5. The Secretaries of the Military Departments shall issue general regulations making punishable under Article 92, Uniform Code of Military Justice (UCMJ), "Failure to Obey Order or Regulation," any violation of the prohibitions of paragraphs 4.2. and 4.4. by persons subject to the UCMJ, Chapter 47 of title 10, United States Code (U.S.C.) (Reference (b)).
- 4.6. The Heads of the DoD Components shall ensure that any violation of the prohibitions of paragraphs 4.2. and 4.4. by civilian employees under their respective jurisdictions may constitute the basis of appropriate disciplinary action under regulations governing civilian employees.
 - 4.6.1. Civilian appropriated fund employees are subject to the provisions of Chapters 75 and 99 of title 5 U.S.C. (Reference (d)).
 - 4.6.2. Civilian nonappropriated fund employees are subject to the provisions of DoD 1401.1-M, "Personnel Policy Manual for Nonappropriated Fund Instrumentalities," (Reference (e)).
- 4.7. No investigation is required when a member or former member of the Armed Forces submits a complaint of reprisal to an authorized IG more than 60 days after the date that the member became aware of the personnel action that is the subject of the allegation. An authorized IG receiving a complaint of reprisal submitted more than 60 days after the member became aware of the personnel action at issue may, nevertheless, consider the complaint based on compelling reasons for the delay in submission or the strength of the evidence submitted.

5. RESPONSIBILITIES

- 5.1. The Inspector General of the Department of Defense (IG DoD) shall investigate, or oversee DoD Component IG investigations of allegations that the prohibitions of paragraphs 4.2.

and 4.4. have been violated. To ensure compliance with this Directive and section 1034 of Reference (b) the IG DoD shall:

5.1.1. Expediently determine whether there is sufficient evidence to warrant an investigation of an allegation submitted to the IG DoD or to a DoD Component IG, other than a Military Department IG, by a member or former member of the Armed Forces that the prohibitions of paragraphs 4.2. and 4.4. have been violated.

5.1.2. Receive notification from a Military Department IG of all reprisal and/or restriction allegations submitted to them by members or former members of the Armed Forces and expediently notify the Military Department IG concerned of decisions to retain such allegations for investigation.

5.1.3. Review and approve the determination by a Military Department IG that investigation of an allegation submitted to an IG within the Military Department concerned is not warranted.

5.1.4. Expediently initiate, or request the DoD Component IG to initiate, an investigation when it has been determined that investigation of an allegation is warranted. When the IG DoD requests a DoD Component IG to conduct an investigation, ensure that the DoD Component IG conducting the investigation is outside the immediate chain of command (as established under DoD Component regulations) of the member or former member submitting the allegation(s) and the individual(s) alleged to have taken the reprisal action.

5.1.5. Review and approve the results of investigations into allegations of violations of paragraphs 4.2. and 4.4. conducted by DoD Component IGs. Initiate a follow-up investigation to correct inadequacies, or ensure that the DoD Component IG concerned corrects them, if the review determines that an investigation is inadequate.

5.1.6. Issue a report of investigation within 180 days of the receipt of an allegation of reprisal and/or restriction investigated by the IG DoD. The report of investigation shall include a thorough review of the facts and circumstances relevant to the allegation(s), relevant documents acquired during the investigation, and summaries or transcripts of interviews conducted. The report may include a recommendation(s) as to the disposition of the complaint. If a determination is made that the report cannot be issued within 180 days, notify the Deputy Under Secretary of Defense for Program Integration (DUSD(PI)), under the Under Secretary of Defense for Personnel and Readiness, and the member or former member of the reasons for the delay and when that report will be issued.

5.1.7. Notify the DUSD(PI) of the results of the investigation of the allegations of reprisal conducted by the IG DoD and provide a copy of the report of investigation to the member or former member not later than 30 days after completion of the investigation. A copy of the documents acquired during the investigation and summaries or transcripts of witness testimony shall be transmitted to the member or former member if he or she requests them. The copy of the report and supporting documents, if requested, released to the member or former

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member shall include the maximum disclosure of information possible under law. Records that are not required to be disclosed under section 552 of Reference (d) shall not be disclosed.

5.1.8. Advise the member or former member concerned that he or she may request review of the matter by the Board for Correction of Military Records (BCMR) concerned.

5.1.9. At the request of a BCMR:

5.1.9.1. Submit a copy of the report of investigation to the BCMR.

5.1.9.2. Gather further evidence.

5.1.10. Conduct, or request a DoD Component IG to conduct, a separate investigation of the allegation(s) contained in the protected communication when:

5.1.10.1. Such an investigation has not been initiated; or

5.1.10.2. An investigation of the allegation(s) contained in the protected communication has been conducted and the IG DoD determines the investigation was biased or inadequate.

5.1.11. When an investigation under subparagraph 5.1.10. is required, notify the DUSD(PI) of the results of the investigation and provide a copy of the report of investigation to the member or former member not later than 30 days after completion of the investigation. The report of investigation shall include a thorough review of the facts and circumstances relevant to the allegation, relevant documents acquired during the investigation, and summaries of interviews taken. A copy of the documents acquired during the investigation and summaries of witness testimony shall be transmitted to the member or former member if he or she requests them. The copy of the report released to the member or former member shall include the maximum disclosure of information possible under law. Records that are not required to be disclosed under section 552 of Reference (d) shall not be disclosed.

5.2. The DUSD(PI), under the Under Secretary of Defense for Personnel and Readiness, shall:

5.2.1. Receive reports on the results of investigations conducted under this Directive and section 1034 of Reference (b).

5.2.2. On behalf of the Secretary of Defense, within 90 days of receipt of a request submitted under Enclosure 3, section E3.3., review the final decision of the Secretary of the Military Department concerned on applications for correction of military records decided under this Directive and section 1034 of Reference (b), and decide whether to uphold or reverse the decision of the Secretary of the Military Department concerned. The decision on behalf of the Secretary of Defense is final.

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5.2.3. Have access to all research, reports, investigations, audits, reviews, documents, papers, or any other material necessary to carry out the responsibilities assigned to the DUSD(PI) by this Directive.

5.2.4. If necessary, obtain for review and request the Secretary of the Military Department concerned to comment on evidence considered by a BCMR when the Secretary of Defense is requested to reconsider the final decision of the Secretary of the Military Department.

5.2.5. Notify the IG DoD and the Military Department IG concerned of decisions made for the Secretary of Defense on requests submitted under Enclosure 3, section E3.3. and issue such DoD procedures as may be necessary to implement this section and the requirements of Enclosure 3, section E3.3.

5.3. The Secretaries of the Military Departments shall:

5.3.1. Ensure that consideration of all military whistleblower allegations submitted under section 1034 of Reference (b) are thorough, objective, and timely; and that corrective actions are taken promptly.

5.3.2. Ensure that their respective Military Department IGs:

5.3.2.1. Establish internal procedures for receiving, reporting, and investigating, under this Directive and section 1034 of Reference (b), allegations that the prohibitions of paragraphs 4.2. and 4.4. have been violated.

5.3.2.2. Notify the IG DoD within 10 working days of receiving any allegation that the prohibitions of paragraphs 4.2. and 4.4. have been violated and provide a copy of the written complaint to the IG DoD. When an allegation of reprisal and/or restriction is made against a senior official of the Department of Defense, the provisions of DoD Directive 5505.06 (Reference (f)) shall also apply.

5.3.2.3. Expediently determine whether there is sufficient evidence to warrant an investigation of an allegation that the prohibitions of paragraphs 4.2. and 4.4. have been violated.

5.3.2.4. Forward to the IG DoD for review any determination that there is not sufficient evidence to warrant investigation of a reprisal and/or restriction allegation. If the IG DoD concurs with the determination of the Military Department IG concerned that there is not sufficient evidence to warrant investigation of the reprisal and/or restriction allegation, the Military Department IG concerned shall so notify the member making the allegation.

5.3.2.5. Expediently initiate an investigation, when it has been determined that an investigation is warranted, of an allegation that the prohibitions of paragraphs 4.2. and 4.4. have been violated, or upon receiving a request from the IG DoD. Allegations of restriction under paragraph 4.2. that are received independent of allegations of reprisal may be investigated using applicable DoD component regulations. Reports of investigation of such allegations shall be forwarded to the IG DoD for approval.

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5.3.2.6. Provide the IG DoD with the report of investigation within 180 days of receiving the allegation of reprisal from the member or receiving a request from the IG DoD. The report shall include a thorough review of the facts and circumstances relevant to the allegations, relevant documents acquired during the investigation, and summaries or transcripts of interviews conducted. The report may include a recommendation as to the disposition of the complaint. If the Military Department IG makes a determination that the report cannot be issued within 180 days, notify the IG DoD, DUSD(PI), and the member or former member of the reason(s) for the delay and when the report will be issued.

5.3.2.7. Notify the DUSD(PI) of the results of the investigation and provide a copy of the report of investigation to the member or former member not later than 30 days after the IG DoD approves the report of investigation. A copy of the documents acquired during the investigation and summaries or transcripts of witness testimony shall be transmitted to the member or former member if he or she requests them. The copy of the report, and supporting documents, if requested, released to the member or former member shall include the maximum disclosure of information possible under law. Records that are not required to be disclosed under section 552 of Reference (d) shall not be disclosed.

5.3.2.8. Advise the member or former member concerned that he or she may request review of the matter by a BCMR.

5.3.2.9. At the request of a BCMR:

5.3.2.9.1. Submit a copy of the report of investigation to the BCMR.

5.3.2.9.2. Gather further evidence.

5.3.2.10. Conduct a separate investigation into the allegations contained in the member's protected communication when:

5.3.2.10.1. Such an investigation has not been initiated; or

5.3.2.10.2. An investigation of the allegation(s) contained in the protected communication has been conducted and the Military Department IG concerned determines the investigation was biased or inadequate.

5.3.2.10.3. The IG DoD requests the investigation be conducted.

5.3.2.11. When an investigation under subparagraph 5.3.2.10. is required, notify the DUSD(PI) of the results of the investigation and provide a copy of the report of investigation to the member or former member not later than 30 days after completion of the investigation. The report of investigation shall include a thorough review of the facts and circumstances relevant to the allegation(s), relevant documents acquired during the investigation, and summaries or transcripts of interviews taken. A copy of the documents acquired during the investigation and summaries or transcripts of witness testimony shall be transmitted to the member or former

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member if he or she requests them. The copy of the report released to the member or former member shall include the maximum disclosure of information possible under law. Records that are not required to be disclosed under section 552 of Reference (d) shall not be disclosed.

5.3.2.12. Ensure that the subject(s) of the investigation of an allegation of reprisal and/or restriction conducted under this Directive are afforded procedural protections, including the opportunity to present matters in their behalf, incident to administrative or disciplinary action, under DoD Component regulations or other established administrative procedures governing such action.

5.3.2.13. Publicize the content of this Directive to ensure that members of the Armed Forces and other DoD personnel fully understand its scope and application.

5.3.3. Based on the IG report of investigation, take corrective action to include providing assistance to members preparing an application to a BCMR when implementation of the recommendations of the report requires action by a BCMR. Notify the IG DoD of corrective action taken within 10 working days of taking such action.

5.3.4. Ensure that the BCMR shall:

5.3.4.1. Consider applications for the correction of military records at the request of a member or former member, or otherwise, who alleged that the prohibitions of paragraphs 4.2. and 4.4. have been violated.

5.3.4.2. In resolving such an application:

5.3.4.2.1. Review the report by the IG under subparagraphs 5.1.6., 5.3.2.6., and 5.4.1.3.

5.3.4.2.2. Request the IG DoD or the Military Department IG concerned to gather further evidence if needed.

5.3.4.2.3. Receive oral arguments, examine and cross-examine witnesses, take depositions as necessary, and, if appropriate, conduct a hearing. If a hearing is held, the requirements of Enclosure 3, section E3.2., shall apply.

5.3.4.2.4. If the BCMR determines that a personnel action was in reprisal under this Directive and section 1034 of Reference (b), it may recommend to the Secretary of the Military Department concerned that disciplinary action be taken against the individual(s) responsible for such personnel action.

5.3.5. Issue a final decision on an application submitted to the BCMR under this Directive within 180 days after the application is filed. If the Secretary of the Military Department concerned fails to issue a final decision within that time, the member or former member shall be deemed to have exhausted the administrative remedies under Section 1552 of Reference (b).

5.3.6. Advise the member or former member that he or she may request review of the matter by the DUSD(PI) on behalf of the Secretary of Defense, under section 5.2, and Enclosure 3, section E3.3., and that such a request must be made within 90 days of receipt of a decision by the Secretary of the Military Department concerned on the matter.

5.3.7. Order such action, consistent with the limitations in sections 1552 and 1553 of Reference (b), to correct the record of a personnel action prohibited by the policy above.

5.3.8. Notify the IG DoD and the Military Department IG concerned of a decision on an application for the correction of military records received from a member or former member of the Armed Forces under this Directive.

5.4. The Heads of the DoD Components (other than the Secretaries of the Military Departments) shall:

5.4.1. Ensure that their respective DoD Component IGs (as applicable):

5.4.1.1. On receipt of an allegation from a military member that the prohibitions of paragraphs 4.2. and 4.4. have been violated, advise the member that the allegation shall be forwarded to the IG DoD.

5.4.1.2. Forward the allegation to the IG DoD for determination of whether investigation of the allegation is warranted. When an allegation of reprisal and/or restriction is made against a senior official of the Department of Defense, the provisions of DoD Directive 5505.06 (Reference (f)) shall also apply.

5.4.1.3. At the request of the IG DoD, investigate the allegation that the prohibitions of paragraphs 4.2. and 4.4. have been violated and provide the IG DoD the report of investigation within 180 days of the request. The report shall include a thorough review of the facts and circumstances relevant to the allegation(s), relevant documents acquired during the investigation, and summaries or transcripts of interviews conducted. The report may include a recommendation as to the disposition of the complaint. The copy of the report submitted to the IG DoD for release to the member or former member shall include the maximum disclosure of information possible under law. Records that are not required to be disclosed under Section 552 of Reference (d) shall not be disclosed.

5.4.1.4. At the request of the IG DoD, investigate the allegation(s) contained in the member's protected communication. The report of investigation shall include a thorough review of the facts and circumstances relevant to the allegation(s), relevant documents acquired during the investigation, and summaries or transcript of interviews conducted. The report may include a recommendation as to the disposition of the complaint. A copy of the report for release to the member or former member shall be submitted to the IG DoD not later than 30 days after completion of the investigation, and shall include the maximum disclosure of information possible under law. Records that are not required to be disclosed under Section 552 of Reference (d) shall not be disclosed.

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5.4.2. Based on the IG report of investigation, take corrective action to include providing assistance to members preparing an application to the BCMR concerned when implementation of the recommendations of the report requires action by a BCMR. Notify the IG DoD of corrective action taken within 10 working days of taking such action.

5.4.3. Ensure that the subject(s) of the investigation of an allegation of reprisal and/or restriction conducted under this Directive are afforded procedural protections, including the opportunity to present matters in their behalf, incident to administrative or disciplinary action, under DoD Component regulations or other established administrative procedures governing such action.

5.4.4. Publicize the content of this Directive to ensure that members of the Armed Forces and other DoD personnel fully understand its scope and application.

6. EFFECTIVE DATE

This Directive is effective immediately.



Gordon England

Enclosures - 3

- E1. References (continued)
- E2. Definitions
- E3. Information Requirements

E1. ENCLOSURE 1

REFERENCES, (continued)

- (e) DoD 1401.1-M, "Personnel Policy Manual for Nonappropriated Fund Instrumentalities," December 1988
- (f) DoD Directive 5505.06, "Investigations of Allegations Against Senior Officials of the Department of Defense," April 10, 2006
- (g) DoD Directive 6490.1, "Mental Health Evaluations of Members of the Armed Forces," October 1, 1997

E2. ENCLOSURE 2DEFINITIONS

E2.1. Audit, Inspection, Investigation, or Law Enforcement Organizations. The Office of the Inspector General of the Department of Defense, the U.S. Army Audit Agency, the Naval Audit Service, the Air Force Audit Agency, and the Defense Contract Audit Agency. The law enforcement organizations at any command level in any of the DoD Components, the Defense Criminal Investigative Service, the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, and the Air Force Office of Special Investigations.

E2.2. Board for Correction of Military Records (BCMR). Any board empowered under Section 1552 of Reference (b) to recommend correction of military records to the Secretary of the Military Department concerned.

E2.3. Chain of Command. For the purposes of this Directive includes not only the succession of commanding officers from a superior to a subordinate through which command is exercised, but also the succession of officers, enlisted members or civilian personnel through whom administrative control is exercised, including supervision and rating of performance.

E2.4. Corrective Action. Any action deemed necessary to make the complainant whole; changes in Agency regulations or practices; administrative or disciplinary action against offending personnel; or referral to the U.S. Attorney General or court-martial convening authority of any evidence of criminal violation.

E2.5. Inspectors General (IGs)

E2.5.1. The IG of the Department of Defense.

E2.5.2. The Military Department IGs. These include the IG of the Army; the Naval IG; the IG of the Air Force; and the Deputy Naval IG for Marine Corps Matters.

E2.5.3. The IGs within the Military Departments. These include the IGs named in subparagraph E2.5.2. and IGs assigned or detailed under regulations of the Secretary concerned to serve at any command level in one of the Armed Forces.

E2.5.4. DoD Component IGs (other than Military Department IGs). These include the IGs assigned or detailed at any command level in one of the DoD Components other than the Military Departments.

E2.5.5. An IG appointed under Appendix 3 of Reference (d).

E2.6. Member of Congress. In addition to a Senator or Representative, or a member of a Senator's or Representative's staff or of a congressional committee, includes any Delegate or Resident Commissioner to the Congress.

E2.7. Member or Former Member of the Armed Forces. All Regular and Reserve component officers (commissioned and warrant) and enlisted members of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a Service in the Navy) on active duty; and Reserve component officers (commissioned and warrant) and enlisted members in any duty or training status (includes officers and enlisted members of the National Guard).

E2.8. Personnel Action. Any action taken on a member of the Armed Forces that affects, or has the potential to affect, that military member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under DoD Directive 6490.1 (Reference (g)); and any other significant change in duties or responsibilities inconsistent with the military member's grade.

E2.9. Protected Communication

E2.9.1. Any lawful communication to a Member of Congress or an IG.

E2.9.2. A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination, gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to any of the following:

E2.9.2.1. A Member of Congress, an IG, or a member of a DoD audit, inspection, investigation, or law enforcement organization.

E2.9.2.2. Any person or organization in the chain of command; or any other person designated pursuant to regulations or other established administrative procedures to receive such communications.

E2.10. Reprisal. Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication.

E2.11. Restriction. Preventing or attempting to prevent members of the Armed Forces from making or preparing to make lawful communications to Members of Congress and/or an IG.

E2.12. Senior Official. Active duty, retired, Reserve, or National Guard military officers in grades O-7 and above, or selected for promotion to grade O-7; current or former members of the Senior Executive Service; other current and former DoD civilian employees whose positions are deemed equivalent to that of a member of the Senior Executive Service (e.g., Defense Intelligence Senior Executive Service employees, Senior Level employees, Defense Intelligence Senior Level employees, and nonappropriated fund senior executives); and current and former presidential appointees.

E2.13. Unlawful Discrimination. Discrimination on the basis of color, national origin, race, religion, or sex, as set forth in Section 1034 of Reference (b).

E2.14. Whistleblower. For the purpose of this Directive, a member of the Armed Forces who makes or prepares to make a protected communication.

E3. ENCLOSURE 3
INFORMATION REQUIREMENTS

E3.1. FILING A COMPLAINT OF REPRISAL

Members or former members of the Armed Forces may submit complaints of reprisal (as defined in Enclosure 2, definition E2.10.) to the IG DoD or to an IG within a Military Department. Complaints of reprisal made to DoD Component IGs other than the IG DoD or an IG within a Military Department shall be forwarded to the IG DoD.

E3.1.1. Time Limits. No investigation is required when a member of the Armed Forces submits a complaint of reprisal to an authorized IG more than 60 days after the date that the member became aware of the personnel action that is the subject of the allegation. An authorized IG receiving a complaint of reprisal submitted more than 60 days after the member became aware of the personnel action at issue may, nevertheless, consider the complaint based on compelling reasons for the delay in submission or the strength of the evidence submitted.

E3.1.2. Address. Complaints of reprisal to the IG DoD may be made by telephone at (800) 424-9098, by email at hotline@dodig.mil, or by letter addressed as follows:

The Inspector General of the Department of Defense Office
ATTENTION: Defense Hotline
1900 Defense Pentagon
Washington, DC 20301-1900

E3.1.3. Content of Complaint. The complaint should include the following information.

E3.1.3.1. Member's full name, rank, duty status, duty title, organization, duty location, work and residence telephone numbers, and mailing and email addresses.

E3.1.3.2. A copy of the protected communication (as defined in Enclosure 2, definition E2.9.) and any reply about the matter. If a copy is not available, include the date of the protected communication; to whom the protected communication was made; the content of the protected communication; and whether the matter was investigated, when, and by whom.

E3.1.3.3. Identify the personnel action(s) (as defined in Enclosure 2, definition E2.8.) taken, withheld, or threatened to be taken or withheld. Provide documentation for the personnel action. If unavailable, describe the personnel action and the date of the action.

E3.1.3.4. Provide to the extent possible the full name, rank and/or grade, duty title, duty status, organization, duty location, and commercial or DSN telephone number of the officials responsible for signing, taking, recommending, or influencing the personnel action at issue. Indicate why and how any responsible official involved in the personnel action knew of the protected communication.

E3.1.3.5. Identify key witnesses that can support the reprisal complaint, and include telephone numbers to contact the witnesses.

E3.1.3.6. For additional guidance, visit the DoD Hotline web site at www.dodig.mil/hotline/index.html.

E3.2. HEARING HELD BY A BCMR

If a BCMR elects to hold an administrative hearing under subparagraph 5.3.4.2.3. of this Directive, the member or former member who filed the application:

E3.2.1. May be represented by a judge advocate if all of the following conditions exist:

E3.2.1.1. The IG investigation finds there is probable cause that a personnel action was in reprisal for a member of the Armed Forces making or preparing a protected communication.

E3.2.1.2. The Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case.

E3.2.1.3. The member is not represented by outside counsel retained by the member.

E3.2.2. May examine witnesses through depositions, serve interrogatories, and request the production of evidence, including evidence in an IG investigative record not included in the report released to the member or former member.

E3.3. APPEAL TO THE SECRETARY OF DEFENSE

A member or former member of the Armed Forces who has filed an application for the correction of military records under section 1034 of Reference (b) alleging reprisal for making or preparing a protected communication may request review by the Secretary of Defense of the final decision of the Secretary of the Military Department concerned on such application under this section and subparagraph 5.2.2. of this Directive.

E3.3.1. Requests based on factual allegations or evidence not previously presented to the cognizant BCMR shall not be considered.

E3.3.2. New allegations or evidence must be submitted directly to the BCMR for reconsideration under procedures established by the BCMR.

E3.3.3. Content of Appeal. The appeal to the Secretary of Defense must be in writing and include the following:

DoDD 7050.06, July 23, 2007

E3.3.3.1. Member's full name, rank, duty status, duty title, organization, duty location, and commercial or DSN telephone numbers.

E3.3.3.2. A copy of the application to the BCMR and the final decision by or for the Secretary of the Military Department concerned on such application.

E3.3.3.3. A statement of the specific reasons why the member or former member is not satisfied with the decision of the Secretary of the Military Department concerned and the specific remedy or relief requested.

E3.3.4. Time Limits. The request for review by the Secretary of Defense must be submitted within 90 days of receipt of the final decision by or for the Secretary of the Military Department concerned.

E3.3.5. Address. Address requests for review by the Secretary of Defense as follows:

Deputy Under Secretary of Defense for Program Integration
Attention: Director, Legal Policy
4000 Defense Pentagon
Washington, DC 20301-4000

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IV-14-0092

APPENDIX C

(U) NSA/CSS Policy 1-62

Whistleblower Protection

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IV-14-0092

**NATIONAL SECURITY AGENCY
CENTRAL SECURITY SERVICE
NSA/CSS POLICY 1-62**

Issue Date: 6 July 2005

Content Verified Current on 02 August 2010

(U) WHISTLEBLOWER PROTECTION

(U) PURPOSE AND SCOPE

(U) This policy implements References a-p and establishes the responsibilities and rights of individuals employed, assigned, or detailed to the NSA/CSS, or *applicants for employment*, who disclose information they reasonably believe is evidence of unlawful or improper conduct. This policy does not affect the Equal Employment Opportunity (EEO) rights and responsibilities of *NSA/CSS employees*.

(U) This policy applies to any *employee of the NSA/CSS*, any qualified applicant for employment, members of the Armed Forces assigned, attached, or detailed to the NSA/CSS, and Nonappropriated Fund Instrumentality (NAFI) employees and applicants.

WILLIAM B. BLACK, JR.
Acting Director

Endorsed by
Associate Director for Policy
DISTRIBUTION
D14
DJP1
DJP6 (VR)
DJP6 (Archives)

(U) This Policy supersedes NSA/CSS Regulation 30-3, dated 1 April 1996.

(U) OPI: Office of the Inspector General, D14, 963-0925s).

(U) The compilation of the information contained in this document is UNCLASSIFIED//FOR OFFICIAL USE ONLY. No section of this document shall be released without approval from the Office of Policy and Records (DJP).

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(U) POLICY

1. (U) All employees of the NSA/CSS and applicants for employment, members of the Armed Forces assigned, attached, or detailed to the NSA/CSS, and NAFI employees and applicants shall be free from *reprisal* for making or preparing to make a *protected communication*. Contractors shall not discriminate against or discharge an employee for disclosing to an appropriate government official information relating to a substantial violation of a law related to a contract (References a, b, c and e-j).

2. (U) No person shall restrict or intimidate another NSA/CSS employee or applicant, NAFI employee or applicant, or member of the Armed Forces assigned, attached, or detailed to the NSA/CSS, who wishes to make or prepare a protected communication in accordance with References b, and d-j.

3. (U) The NSA/CSS IG shall investigate and report, or refer allegations of reprisal against individuals to the appropriate Inspector General organization or other government entity, in accordance with this policy and Reference k.

(U) RESPONSIBILITIES

4. (U) The Office of the Inspector General (OIG) shall:

a. (U) Receive all allegations and evidence of reprisal consistent with the provisions of this policy and in accordance with Reference k;

b. (U) Conduct an investigation of the allegation (unless obviously frivolous) and prepare a Report of the Investigation (ROI) within 180 days of receipt of the allegation. The ROI shall include a thorough review of the facts and circumstances surrounding the allegation, the relevant documents acquired during the investigation and summaries of interviews conducted;

c. (U) If the ROI cannot be issued within 180 days of receipt of the allegation, notify the complainant and all management parties concerned of the reason(s) why the ROI will not be issued within that time period, and provide an estimate as to when the ROI will be issued;

d. (U) Obtain legal review of the ROI. In cases of substantiated reprisal, forward the ROI to the Associate Directorate for Human Resource Services, Employee Relations (MR) office for disciplinary action;

g. (U) Refer to the DoD IG any allegations of reprisal submitted by NAFI employees or applicants in accordance with References g and h;

h. (U) Refer to the DoD IG any complainants who seek to submit a complaint to

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Congress under the provisions of the Intelligence Community Whistleblower Protection Act in accordance with References l, m, n and o; and

i. (U) In accordance with Reference p, report to the DoD IG any allegations that an NSA senior official has engaged in reprisal.

5. (U) The Office of General Counsel (OGC) shall provide legal review of investigative findings and recommendations, if requested to do so by the IG.

(U) REFERENCES

6. (U) References:

a. (U) DoD Inspector General Memorandum, "Policy on Whistleblower Protection for DoD Employees, Standards Applied to Complaints," dated 7 January 2005.

b. (U) IG Act of 1978, Section 7, DoD IG Guidance Memorandum, dated 05 October 2009.

c. (U) Title 5, United States Code, Section 2301(c)(2).

d. (U) Title 5, United States Code, Section 2302, "Prohibited Personnel Practices."

e. (U) Title 10, United States Code, Section 1034, "Protected Communications: Prohibition of Retaliatory Personnel Actions."

f. (U) DoD Directive 7050.6, "Military Whistleblower Protection," dated 23 July 2007.

g. (U) Title 10, United States Code, Section 1587, "Employees of Nonappropriated Fund Instrumentalities: Reprisals."

h. (U) Department of Defense Directive 1401.03, "DoD Nonappropriated Fund Instrumentality Employee Whistleblower Protection," dated 23 April 2008

i. (U) Title 10, United States Code, Section 2409, "Contractor Employees: Protection From Reprisal for Disclosure of Certain Information."

j. (U) Federal Acquisition Regulation, Subpart 3.9, "Whistleblower Protections for Contractor Employees."

k. (U) NSA/CSS Policy 1-60, "NSA/CSS Office of the Inspector General," dated 6 July 2005

l. (U) The IG Act of 1978, Title 5, United States Code, Appendix III, as amended by the Intelligence Community Whistleblower Protection Act of 1998.

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m. (U) DOD Inspector General Memorandum, "Implementation of the Intelligence Community Whistleblower Protection Act of 1998," dated 11 March 1999.

n. (U) DOD Inspector General Memorandum, "Change to the Intelligence Community Whistleblower Protection Act of 1998," dated 5 March 2002.

o. (U) DOD Inspector General Memorandum, "Inspector General Implementation of the Intelligence Community Whistleblower Protection Act of 1998," dated 27 February 2004.

p. (U) DoD Directive 5505.06, "Investigations of Allegations Against Senior Officials of the Department of Defense," dated 10 April 2006.

(U) DEFINITIONS

7. (U) Applicant for Employment: Any person who is applying for employment with, or who is seeking assignment or detail to the NSA/CSS, other than an applicant who is a member of the Armed Forces or an applicant for a NAFI position.

8. (U) Employee of the NSA/CSS: Any civilian who is an assignee, detailee, or employee with the NSA/CSS.

9. (U) Personnel Action: Any action that affects or has the potential to affect the employment opportunities, the current position or the career of any employee of the NSA/CSS, any qualified applicant for employment, members of the Armed Forces assigned, attached, or detailed to the NSA/CSS, and NAFI employees and applicants. Such actions include a promotion; a disciplinary or corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards or training; and any other significant change in duties or responsibilities inconsistent with the employee's salary or grade level.

10. (U) Protected Communication:

- c. (U) Any lawful communication of information to a Member of Congress or an IG; or
- d. (U) A lawful communication of information which the communicant reasonably believes evidences a violation of law or regulation, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, when such communication is made to a member of Congress, an IG, or any other person or organization (including any person or organization in the chain of command) designated under Agency policy or other established administrative procedures to receive such communications.

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11. (U) Reprisal: Taking or threatening to take an unfavorable *personnel action*, or withholding or threatening to withhold a favorable personnel action, for making or preparing a protected communication.

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APPENDIX D

~~(U//FOUO)~~ 30 May 2013 Email from [redacted] to [redacted]

[redacted]
(b) (3) - P.L. 86-36

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

From: [redacted]
Sent: Thursday, May 30, 2013 9:43 AM
To: [redacted]
Subject: (U) Support to OCB?

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

Guys,

You have not voted on any of the past 15+ CR's. I really do rely on everyone's feedback to make the best decision for [redacted]. Any impacts to [redacted] are critical to understand.

Is there a problem?

Thanks,

[redacted]

(b) (3) - P.L. 86-36

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

From: [redacted]
Sent: Thursday, May 30, 2013 12:45 PM
To: [redacted]
Subject: Read: (U) Support to OCB?

Your message

To: [redacted]
Subject: (U) Support to OCB?
Sent: 5/30/2013 9:43 AM

was read on 5/30/2013 12:45 PM.

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

IV-14-0092

APPENDIX E

(b) (3) - P.L. 86-36

(U//~~FOUO~~) 12 June 2013 Email from [redacted] to [redacted]

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

[Redacted]

From: [Redacted]
Sent: Wednesday, June 12, 2013 9:54 AM
To: [Redacted]
Cc: [Redacted]
Subject: FW: (U) Support to OCB?

Importance: High
Follow Up Flag: Follow up
Flag Status: Flagged

(b) (3) - P.L. 86-36
(b) (6)

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

[Redacted]

[Redacted] is not full-filling the OCB role for the [Redacted] as needed. He never replied to my email below and I do have a read receipt. Just this week, the following CR's were received on Monday and have not been approved by [Redacted]

[Redacted]

initially but not the latest change

I see he is on leave today (June 12-13) and there was no one assigned apparently to take his place.

I'd like you to get this fixed. I also want to know why he didn't reply to me.

Call if questions.

Thanks,

[Redacted]

(b) (3) - P.L. 86-36

From: [Redacted]
Sent: Thursday, May 30, 2013 9:43 AM
To: [Redacted]
Subject: (U) Support to OCB?

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

Guys,

You have not voted on any of the past 15+ CR's. I really do rely on everyone's feedback to make the best decision for [Redacted] Any impacts to [Redacted] are critical to understand.

Is there a problem?

Thanks,

[Redacted]



(b) (3) - P.L. 86-36

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Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

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APPENDIX F

(b) (3) - P.L. 86-36

(U) 25 June 2013 Email from [redacted] to [redacted]

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

(b) (3) - P.L. 86-36
(b) (6)

[Redacted]

From: [Redacted]
Sent: Tuesday, June 25, 2013 9:55 AM
To: [Redacted]
Cc: [Redacted]
Subject: (U) [Redacted] OCB - REplacement
Follow Up Flag: Follow up
Flag Status: Completed

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

(b) (3) - P.L. 86-36

[Redacted]

This is my second note to you on [Redacted]. He has not consistently been updating CR's. He has not voted on those listed below which we all received on Friday. Our new procedures are to complete by the next full business day (Monday in this case). The end result is that if I wait, those deploying don't find out about approvals until the last minute. Thus the 2 business day policy for me to reply and next business day for [Redacted] voting members.

I'd like him replaced.

[Redacted]

Thanks,

[Redacted]

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IV-14-0092

APPENDIX G

(U) 26 June 2013 Email from [redacted] to [redacted]

[redacted]
(b) (3)-P.L. 86-36
(b) (6)

[redacted]
(b) (3)-P.L. 86-36

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

(b) (3) - P.L. 86-36
(b) (6)

[Redacted]

From: [Redacted]
Sent: Wednesday, June 26, 2013 12:05 PM
To: [Redacted]
Cc: [Redacted]
Subject: (U) Concerns with [Redacted]

Classification: UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

[Redacted]

Today, I had an unpleasant interaction with [Redacted] that I wanted to make you aware. Last week, [Redacted] and I met with [Redacted] to discuss requests and tasking that was being given to them from outside the [Redacted]. We provided guidance that any tasking or requests that they received or were going to be made needed to be approved by you or [Redacted] in your absence. We also reiterated to them that the [Redacted] is part of the [Redacted]. Today, [Redacted] made a request to [Redacted] requesting permission for some [Redacted] activities. This request was not discussed with [Redacted] or with [Redacted] or myself before being made. When I questioned [Redacted] about it, he told me that he interpreted the guidance we gave as he only need to keep us informed. I reiterated the guidance to him to make sure he understood. He told me that he did. The exchange between us did get heated and I did raise my voice. At one point I did hit my fist on my desk in frustration at which point [Redacted] told me not to get aggressive with him.

Additionally, on Tuesday [Redacted] and [Redacted] approached me with concerns about the [Redacted] effort. He was concerned about who was running the [Redacted] why [Redacted] Leadership was not participating in the meetings, and expressed concerns about some clearances not being processed until late. I asked him to document his concerns for us so that we could understand them and see what needed to be done to address them. Today, they informed that all of their concerns had been addressed and they had no concerns about the activities at this time.

I must say that I am concerned about the effectiveness of [Redacted] leadership of the [Redacted] and of the [Redacted]. I'd like to talk to you about these concerns and how we can move forward. Thanks,

[Redacted]

(b) (3) - P.L. 86-36

[Redacted]

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~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

IV-14-0092

APPENDIX H

(U) 3 July 2013 Email from [redacted] to [redacted]

[redacted]
(b) (3) - P.L. 86-36

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~

UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

[Redacted]

From: [Redacted]
Sent: Tuesday, June 03, 2014 12:04 PM
To: [Redacted]
Subject: FW: (U) Administrative Concerns

Classification: ~~CONFIDENTIAL~~ UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

Let me know if this works for you.

(U//~~FOUO~~)

[Redacted]

(b) (3) - P.L. 86-36

From: [Redacted]
Sent: Wednesday, July 03, 2013 1:14 PM
To: [Redacted]
Cc: [Redacted]
Subject: (U) Administrative Concerns

Classification: ~~CONFIDENTIAL~~ UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~

Note: this black box is not a FOIA redaction. It was blacked out in the original report.

Chief,

On June 26th, 2013, [Redacted] requested that [Redacted] and I come to see him in his office. The subject of the conversation appeared to be about why I was using [Redacted] as a resource of [Redacted] to figure out how to fulfill technical requests and questions in order to support [Redacted] in their current assessment about the [Redacted]. [Redacted] expressed I am not to speak to anyone outside the [Redacted] without going through him first, and obtaining his approval. I was following the direction from my branch chief [Redacted] before he went on leave, to work with [Redacted] in regards to technical questions and requests supporting [Redacted].

The meeting with [Redacted] began approximately around 1100 and it lasted around 10 minutes. I witnessed an unprecedented hostile behavior, extraordinary loud voice and aggressive tone from [Redacted]. He slammed the desks multiple times as he continued on what I perceived to be a rant towards both [Redacted] and I. This behavior happened on the evening of the day before around 1415, June 25th, 2013 when [Redacted] asked both [Redacted] and I to come in to his office for another issue. This time it appeared to be a vicious attack towards [Redacted] that included the same style of extraordinary angry behavior, accusations outside the scope of the meeting, and threatening him by saying that we will fire all the contractors on his team as a punishment.

I did not report this right away because I wanted to consult my Chain of Command first, but I did feel threatened. I admit that I had trouble focusing on tasks the following days because of this. I'm not comfortable with this leadership style because I expect my leaders to treat my peers and I with respect and dignity. I would not feel comfortable to be in the same office with [Redacted] in the future, and I'm afraid that this remarkable, angry behavior may escalate to something worse.

(b) (3) - P.L. 86-36
(b) (6)

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Thank you in advance for taking the time to become aware of my concerns, I truly appreciate it.

Very respectfully,

[Redacted signature area]

(b) (3) - P.L. 86-36

[Redacted line-through]

Note: The black box and these line-throughs were in the original report

~~Classified By: [Redacted]~~
~~Derived From: NSA/CSSM 1-52~~
~~Dated: 20070100~~
~~Declassify On: 20380001~~

Classification: ~~CONFIDENTIAL//~~

~~Classified By: [Redacted]~~
~~Derived From: NSA/CSSM 1-52~~
~~Dated: 20070100~~
~~Declassify On: 20380001~~

Classification: ~~CONFIDENTIAL~~

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IV-14-0092

APPENDIX I

(U) Operational Supervisor's Evaluation Input Form

19 July 2013

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~



OPERATIONAL SUPERVISOR'S EVALUATION INPUT FORM



Instructions: Evaluate the Employee in the following areas: Job Performance, Technical Expertise, Reliability, Leadership, Professionalism, and Coaching/Mentoring. Narrative comments are required in bullet format. Use qualitative measures and impact on mission where relevant. Ensure proper security classification (on feedback) is noted; add attachments if required.

Name Of Employee (Last, First, MI)	Employee Rank/Grade
Employee Duty Location	Employee's Service/Civilian Supervisor
Employee's Service/Civilian Supervisor's SID and Phone Number	Date
	20130717

(b) (3) - P.L. 86-36

Section I. Job Performance (Check applicable box concerning performance)

	Greatly Exceeds Standards	Above Standards	Meets Standards	Slightly Below Standards	Well Below Standards
1. Quality		<input checked="" type="checkbox"/>			
2. Timeliness			<input checked="" type="checkbox"/>		
3. Comments (Narrative comments are required in bullet format):					
- Submits excellent work; work not always submitted on time, nor is member always proactive in identifying why something is late					

Section II. Technical Expertise (Check applicable box concerning performance)

	Greatly Exceeds Standards	Above Standards	Meets Standards	Slightly Below Standards	Well Below Standards
1. Overall Knowledge		<input checked="" type="checkbox"/>			
2. Mission Understanding	<input checked="" type="checkbox"/>				
3. Demonstrated Technical Skills		<input checked="" type="checkbox"/>			
4. Comments (Narrative comments are required in bullet format):					
- Demonstrates a consistent ability to perform complex, highly technical tasks; understanding of mission generally exceeds that of peers					

Section III. Reliability (Check applicable box concerning performance)

	Greatly Exceeds Standards	Above Standards	Meets Standards	Slightly Below Standards	Well Below Standards
1. Trusted and Punctual	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Accomplishes Assigned Tasks	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Works independently with little supervision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
4. Comments (Narrative comments are required in bullet format):					
- Member often needs reminding that something is due, when the due date is, and what the details of the assigned task were					

PRIVACY ACT STATEMENT: Authority for collecting the requested information is contained in 10 U.S.C §§ 1601-1614; 50 U.S.C. § 402 note, 50 U.S.C. §§ 831-835; and Executive Order 12333. NSA's Blanket Routine Uses found at 58 Fed. Reg. 10,531 (1993) as well as the specific uses enumerated in GNSA01, GNSA08, GNSA09, and GNSA10 apply to this information. Authority for requesting your Social Security Number (SSN) is Executive Order 9397. The requested information you provide will be used to track and document the Agency's deployed personnel. Your disclosure of requested information, including SSN, is voluntary. However, failure to furnish the requested information, other than SSN, may delay or prevent the Agency in properly documenting your deployment, which may ultimately effect deployment entitlements.

UNCLASSIFIED//~~FOR OFFICIAL USE ONLY~~**Section IV. Leadership (check applicable box concerning performance)**

	Greatly Exceeds Standards	Above Standards	Meets Standards	Slightly Below Standards	Well Below Standards
1. Leads	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Mentors	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. Motivates Others	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Team Builder	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

5. Comments (Narrative comments are required in bullet format):

- Effective at motivating team and building a sense of common purpose
- Subordinates often complain of a lack of direction; multiple instances of member not following-up with subordinate, leaving subordinate to seek guidance elsewhere

Section V. Professionalism (check applicable box concerning performance)

	Greatly Exceeds Standards	Above Standards	Meets Standards	Slightly Below Standards	Well Below Standards
1. Exhibits Professionalism	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
2. Treats others with respect/equality	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Comments (Narrative comments are required in bullet format):

- Recurring issues regarding military professionalism, specifically in regards to maintaining military bearing and demonstrating respect; multiple managers have been offended by the manner in which member has addressed them
- Member repeatedly fails to take responsibility for his own/teams failures

Section VI. Coaching/Mentoring (check applicable box concerning performance)

	Greatly Exceeds Standards	Above Standards	Meets Standards	Slightly Below Standards	Well Below Standards
1. Coaching	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Mentoring	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

3. Comments (Narrative comments are required in bullet format):

- See above

Section VII. Recommendations for Future Responsibilities, Assignments, or Training
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Operational Supervisor's SID <input type="text"/>	Duty Phone Number 961-8540, <input type="text"/>
Operational Supervisor's Signature <input type="text"/>	Date <input type="text"/>
<input type="button" value="Submit by Email"/>	<input type="button" value="Attach"/>
<input type="text" value="(b) (3) - P.L. 86-36"/>	

~~UNCLASSIFIED//FOR OFFICIAL USE ONLY~~**Standard Operational Supervisor Input Form for NSA/CSS Personnel****Purpose:**

The purpose of this form is to ensure that the Service or Civilian chain has timely and relevant input from the operational supervisor when evaluating performance. Please be advised that the civilian employees have individual performance objectives, and operational supervisors may be asked to provide additional information (apart from this form) to assist the employee's official rater in evaluating the employee's performance.

Use:

This form should be used as a tool for operational supervisors to provide service/civilian supervisors with a record of the member's job performance, military bearing, and professionalism while under their supervision. The service/civilian supervisor will use this input for formal rating of the service member or civilian. This form is not intended to, nor will it be used as:

1. A replacement for service requirements,
2. A replacement for a civilian employee's official evaluation, or
3. A counseling tool, to replace performance improvement plans

Please use the following definitions as your rating standards. When rating individuals, consider quality, quantity, and timeliness.

Definitions:**Greatly Exceeds Standards:**

Considerably surpassed goals. Performance elements were achieved with maximum impact. Unprecedented or overwhelming success. Superior performance. Eligible for Within-Grade Increases, Promotion, Quality Step Increases, Cash Awards (GG15 and below), Performance Awards (bonuses) and Pay Level Adjustments (Seniors).

Above Standards:

Surpassed goals. Achieved results well beyond expectations. Excellent performance. Eligible for Within-Grade Increases, Promotion, Quality Step Increases, Cash Awards (GG15 and below), Performance Awards (bonuses) and Pay Level Adjustments (Seniors).

Meet Standards:

Consistently achieved goals. Met and occasionally went beyond expectations. Solid performance. Eligible for Within-Grade Increases, Promotion, Cash Awards (GG15 and below), Performance Awards (bonuses) and Pay Level Adjustments (Seniors).

Slightly Below Standards:

Sometimes achieved goals. Performance was less than needed to fully meet objectives.

Below Standards:

Did not achieve goals. Performed below expectations; performance adversely affected organizational effectiveness. A Performance Improvement Plan (PIP) is required.

Periodic:

Is defined by the military or civilian service requirement for feedback to the individual or chain of command.

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IV-14-0092

APPENDIX J

(U) OIG Determination of the Responsible Management Official

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IV-14-0092

(U//FOUO) Throughout the investigation, witnesses disagreed about the individual responsible (the RMO) for the personnel action. Ultimately, the OIG decided to accept the complainant's premise that [redacted] was responsible. The following explains the disagreement among the individuals involved and the OIG's rationale for accepting the premise that [redacted] was the RMO.

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(U//FOUO) [redacted] alleged that [redacted] removed him as [redacted] lead and Operational Change Board member in reprisal for his protected communication (his complaint about [redacted] branch chief) testified that he, not [redacted] was responsible for removing [redacted].

(U//FOUO) [redacted] testified that he had ongoing problems with [redacted] poor performance, lack of professionalism, lack of follow-through, lack of organizational skills, and refusal to accept accountability for his actions and those beneath him. [redacted] could not remember the date, but explained that after the "last straw," he personally removed [redacted] from his position. [redacted] had given [redacted] a set of deliverables in the weekly staff meeting. [redacted] repeated them back, and said he understood. The day after they were due [redacted] asked [redacted] where they were. [redacted] refused to even turn his chair around and allegedly said, "I don't know what you are talking about." When [redacted] pressed further, [redacted] allegedly shrugged and said, "you didn't send them in an email so I don't know about it." [redacted] spoke with [redacted] privately and reminded him of his previous counseling about [redacted] inability to follow military customs and courtesies and failure to meet deadlines. [redacted] told [redacted] he would likely be removed as team lead.

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(U//FOUO) [redacted] told [redacted] that he was approaching the point of asking the Navy to remove [redacted] altogether from the organization, but [redacted] resisted. [redacted] instead decided to remove him as Team Lead. Then, he spoke with [redacted] and told him that he planned to remove him in a way that wouldn't humiliate him in front of his team. There was an "agreement between the two of them" that [redacted] would tell the junior enlisted personnel that the original (work) effort had simply come to an end and it was time for [redacted] to "share the spotlight" and train others to fill the team lead role. [redacted] thus removed [redacted] gracefully without telling [redacted] team, "hey, your boss is fired."

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(U//FOUO) [redacted] thought he told [redacted] and his Deputy, [redacted] about his intention to remove [redacted] as team lead because he generally kept them informed. However, it was "100 percent" his decision to remove [redacted]. He was never told by [redacted] to remove [redacted] from that position. "His removal was me and I told him it was me. He should know it was not [redacted]"

(U//FOUO) [redacted] testified that he thought branch chief, [redacted] successor), made the decision to remove him. The branch chief would have discussed the removal with him, but the decision rested with the branch chief. Following the interview, [redacted] sent the OIG the following in an email, "From what I remember, the decision to make the change was a

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decision made by [redacted] with input from [redacted] and myself. We allow the Branch Chiefs to run their Branches but keeping both [redacted] and myself informed of activities and allowing us to provide input."

(U//~~FOUO~~) Upon hearing the above, the OIG recalled [redacted] to clarify his testimony. [redacted] recalled that [redacted] told him verbally that "management" had issued guidance that he would no longer be team lead. [redacted] assumed that "management" referred to [redacted] and his Deputy. [redacted] never personally told [redacted] that he removed him. [redacted] believed [redacted] was responsible because branch chiefs did not have the authority to make such a decision without the Division Chief's ([redacted]) ultimate approval. [redacted] acknowledged that [redacted] was upset about the complaints he had received about [redacted] performance on the OCB. However, [redacted] denied that [redacted] had ever threatened to remove him as [redacted] lead.

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(b) (6)

(U//~~FOUO~~) Other witnesses testified that [redacted] would not have made such a decision unilaterally. According to [redacted] and [redacted] controlled the division and branch chiefs did as they were told. [redacted] said that [redacted] made it clear that such decisions (specifically referring to [redacted] removal), would not be supported or authorized without his approval. [redacted] micromanaged the office and scrutinized all decisions made by branch chiefs. [redacted] himself had discussed the possibility of removing [redacted] with [redacted] and believed that [redacted] decision was made with either support or pressure from [redacted]

(U//~~FOUO~~) Although [redacted] denied responsibility for removing [redacted] as team chief, he did admit that he would have provided input to the decision. Furthermore, as [redacted] superior, [redacted] would not have been in a position to overturn [redacted] directives. Had [redacted] suggested removing him and [redacted] disagreed, the OIG doubts that [redacted] would have been removed. Therefore, the OIG assessed that [redacted] was the ultimate decision-maker and the RMO.

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