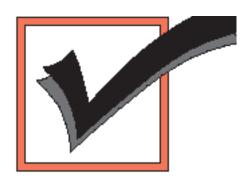
JAGMAN INVESTIGATIONS

HANDBOOK



ADMINISTRATIVE INVESTIGATIONS

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INTRODUCTION

Almost every naval officer will have contact with an administrative investigation (commonly referred to as a "JAGMAN" investigation) during their military career, either as an investigating officer or as a convening authority. The basic regulations governing such investigations are contained in the *Manual of the Judge Advocate General* (JAGMAN). The primary purpose of an administrative investigation is to provide the convening authority and reviewing authorities with information regarding a specific incident which occurs in the Department of the Navy. These officials will then make decisions and take appropriate action based upon the information contained within the investigative report.

Incidents investigated pursuant to the JAGMAN often provide the basis for a later claim against the Navy. This claim may even evolve into a lawsuit. When a suit is filed, the first document that is requested by both the attorneys representing the Navy and attorneys on the other side is the JAGMAN investigation. There is nothing that will serve and protect the Navy's interest more effectively than a thorough, comprehensive and properly documented investigation. Once a lawsuit is filed, it is likely the investigating officer will have been transferred and witnesses will have left the area. It is time-consuming, frustrating, and often counter-productive to try to reconstruct an incident or correct a slip-shod investigation after months or years have passed. The key, then, is a thorough investigation conducted as soon after the incident as possible.

This handbook is designed to assist commanding officers and investigating officers with the administrative investigation process. There is no substitute for a working knowledge of Chapter II of the JAGMAN; this handbook is **not** designed to replace reference to, and study of, the source document. Rather, this publication gives you a simplified "nuts and bolts" summary to initially orient your approach to the investigative process.

The organizational approach to this handbook is to discuss how an investigating officer (IO) goes about conducting a Preliminary Inquiry, Command Investigation, or Litigation Report Investigation¹. Sample forms and report formats are provided. The checklists contained in this handbook will be particularly useful to both the IO and the convening authority (CA) in ensuring that the investigative report includes all necessary information and enclosures. The IO should review the checklists contained herein **prior** to initiating his/her investigative effort to see if there are specific informational requirements given the nature of the incident under investigation.

Additional information is provided regarding Line of Duty/Misconduct determinations and special considerations that apply in death cases. A discussion of command endorsements is also included.

Should you have any questions regarding JAGMAN investigations that are not answered

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 $^{^{1}}$ Courts and Boards of Inquiry are <u>not</u> addressed - refer to JAGMAN, Chapter II, and JAGINST 5830.1 for procedures applicable to these more formal investigations.

in this handbook, you are encouraged to contact your station or staff judge advocate or the nearest Regional Legal Service Office/Marine Law Center. Questions may also be directed to the Civil Law Department, Naval Justice School, DSN 948-3800, COMM (401) 841-3800.

PRELIMINARY INQUIRY

The preliminary inquiry (PI) is a quick and informal investigative tool that can be used to determine initially whether a particular incident is serious enough to warrant some form of JAGMAN investigation. A PI is not necessarily required, however, it is "advised" for all incidents potentially warranting an investigation.

Method of inquiry. The convening authority (CA) may conduct a PI personally or appoint a member of the command to do so. There are no requirements nor restrictions governing how the inquiry is to be accomplished. The goal is to take a "quick look" at a particular incident (e.g., a minor fender-bender), and gather enough information so that an informed decision can be made regarding whether some sort of JAGMAN investigation is truly necessary. Generally, the PI should not take any longer than three (3) working days. If more time is required, it means that the inquiry officer is attempting to do too much or has not been sufficiently instructed as to what issue(s) is to be addressed (see page II-3 for a PI checklist).

Upon completion of the PI, a report is tendered to the CA. The PI report need not be in writing, but some form of limited documentation is advisable (see page II-5 for a sample PI report). JAGMAN 0203.

Command options. Upon reviewing the results of the PI, the CA should take one of the following actions:

- (1) Take no further action. Where further investigation would serve no useful purpose, there is no need to convene a JAGMAN investigation. This is an appropriate course where the PI reveals that the incident is likely to be of little interest to anyone outside the immediate command or that the event will be adequately investigated under some other procedure (e.g., NCIS investigation, MLSR/survey procedure, etc.). JAGMAN 0204(b)(1). As a matter of practice, documentation of the PI and the command decision is advisable.
 - (2) Conduct a command investigation. JAGMAN 0204(b)(3), 0209.
- (3) Convene a litigation-report investigation. *Consultation with the "cognizant judge advocate" is required.* JAGMAN 0204(b)(4), 0210.
- (4) Convene a court or board of inquiry. In the event of a "major incident," If the CA is not a general court-martial convening authority (GCMCA) and therefore not empowered to convene a court or board of inquiry, the officer exercising general GCMCA over the command involved or general officer in the chain-of-command, or any superior flag or general officer will immediately take cognizance over the case as the CA.. JAGMAN 0203(b)(2). If the CA concludes that the incident is not in fact a "major incident" or concludes that a court or board of inquiry is not warranted, then the CA shall report such conclusion to the next superior in the chain-of-command before convening another type of investigation.

NOTE: Whenever a question exists about how a particular incident or event should be investigated, a commander should discuss the matter with a cognizant judge advocate. JAGMAN

0203.

Reporting the results of PIs. After deciding which of the command options to exercise, the CA is to report that decision to his/her immediate superior in the chain-of-command (ISIC). This does **not** require a special, stand-alone report; command decisions on PIs are to be relayed in the context of existing situational reporting systems. You should determine if your ISIC has issued guidance on what types of incidents should be or should not be reported.

Review of command decision. The initial determination of which option to exercise is a matter of command discretion. Superiors in the chain-of-command may direct that an option be reconsidered or that a particular course of action be taken. For example, a superior may feel that a litigation-report investigation may be the preferred method of investigating and documenting a particular incident and direct that a subordinate convene such an investigation rather than a command investigation. JAGMAN 0204(e).

PRELIMINARY INQUIRY CHECKLIST

| CA appoints a preliminary inquiry officer. |
|---|
| Begin work on the inquiry immediately upon hearing that you are to be appointed, whether or not you have received an appointing order in writing. |
| Decide what the purpose and methodology of your inquiry will be. |
| Can this preliminary inquiry be completed in three working days? If not, you may be trying to do too much. Further clarification from the CA may be necessary. |
| Has this incident involved a member of the command and/or occurred within the command? If not, are you the appropriate command to conduct the preliminary inquiry and/or any administrative investigation? |
| Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? (If yes, refer to JAGMAN 0201(d)). |
| Is this considered a "major" incident? (Refer to JAGMAN Appendix A-2-a for a definition of a "major" incident.) |
| If believed to be a "major" incident, refer to JAGMAN 0203(b)(2), (f), 0204(b)(5), 0210(a)(1). |
| Obtain any available documentation pertaining to the inquiry, i.e. copies of rules and regulations, instructions, correspondence and messages, logs, standard operating procedures, personnel records, medical records, official reports, vehicle accident report forms, etc. |
| Locate and preserve evidence, i.e. real objects (firearms, bullets, etc.) and note physical locations (accident sites, etc). |
| Draw up a list of possible witnesses. |
| Conduct an interview of any witness you deem relevant to your inquiry, those that will provide you with enough information to understand what occurred and enable you to make an informed recommendation to the CA. |
| If a witness is not physically available, an interview may be conducted via telephone or message. |
| Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty, of his/her rights under Article 31, UCMJ. (Refer to page IX-1 of this handbook for a sample form.) |

Preserve all evidence, witness statements, documentation gathered during the preliminary inquiry, for possible use in any administrative investigation that may be subsequently

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convened.

SAMPLE PRELIMINARY INQUIRY REPORT

(Date) From: (Name and rank of individual conducting preliminary inquiry) (Title of authority ordering preliminary inquiry) To: PRELIMINARY INQUIRY INTO (DESCRIPTION OF INCIDENT) Subj: Ref: (a) JAGMAN Section 0203 This reports completion of the preliminary inquiry conducted in accordance with reference 1. (a) into (description of incident). 2. Personnel contacted: (List individuals with name, rank, title, unit, and telephone number). Materials reviewed: (List documents, objects, materials, tangibles reviewed and, if of 3. probable evidentiary value, where stored together with name of the custodian of such material and that person's phone number). Summary of findings: (The inquiring official should provide a brief summary of their 4. findings to the commander. While the summary need not extend beyond one paragraph, it should be as long as required to provide the commander with a reasonably good picture of what occurred and should support the recommendations provided below. In addition, it should document what is not known about the event in question). 5. Recommendation: (The inquiring official should provide a recommendation on subsequent command action: consult a judge advocate; no further investigation warranted; command investigation; litigation-report investigation; board of inquiry; or court of inquiry. If the inquiring official: concludes that any injuries may result in a finding of 'not in the line of duty" or "misconduct," then it must be accompanied by a recommendation to convene a formal

Name, rank, unit, telephone

FIRST ENDORSEMENT

_____ Concur with recommendation

Other:

investigation; or, recommends disciplinary action, then such a recommendation should be followed by a recommendation to conduct a formal investigation or a Preliminary Inquiry

pursuant to Rule for Courts-Martial 303.

COMMAND INVESTIGATIONS

By far the most common administrative investigation is the Command Investigation. The Command Investigation (CI) functions to search out, develop, assemble, analyze, and record all available information relative to the incident under investigation. The findings of fact, opinions and recommendations developed may provide the basis for various actions designed to improve command management and administration, publish "lessons learned" to the fleet, and allow for fully informed administrative determinations.

When required. CIs are likely to be the appropriate investigative tool for incidents involving: aircraft mishaps; explosions; ship stranding or flooding; fires; loss of government funds or property; firearm accidents; security violations; injury to servicemembers, where such injury is incurred while "not in the line of duty"; and deaths of servicemembers where there is a "nexus," or connection, to naval service.

A CI would **not** be used for the following: "Major" incidents, (*see* JAGMAN Appendix A-2-a for definition); incidents that have resulted or are likely to result in claims or litigation against or for the Navy or the United States; and incidents which have the potential for causing significant damage to the environment (a litigation-report investigation should be conducted instead). If a "major" incident, the GCMCA will assume cognizance of the case and decide whether to convene a court or board of inquiry. If a claim or litigation issue appears to be the *primary purpose* for the investigation, then a litigation-report investigation is required.

Rules on Convening. A CI will be convened, in writing, by the CA (*see* page III-3 for a sample convening order). When the CA feels that the investigation of an incident is impractical or inappropriate for the command to investigate, another command may be requested to conduct the investigation. See JAGMAN 0205(b). When circumstances do not allow for completion of an investigation, (e.g., deployments), requests for assistance may be directed to superiors in the chain-of-command. When more than one command is involved, a single investigation should be conducted and coordination/cooperation is required. Special convening rules for incidents involving injuries to Marine Corps personnel are contained in JAGMAN 0205(e).

Time Periods. The CA will prescribe when the report is due, normally 30 days from the date of the convening order. The CA may grant extensions as needed. Requests and authorizations for extensions need not be in writing, but must be noted in the preliminary statement of the final report.

Conducting the Investigation: Helpful Hints. The general goal is to find out who, what, when, where, how and why an incident occurred. The IO should decide what the purpose and methodology of his/her investigation is **before** starting to collect evidence. The IO should review **all** applicable checklists contained in Part G of the JAGMAN (sections IX and X of this handbook) to determine what specific informational requirements exist.

One of the principle advantages of the CI is that the IO is not bound by formal rules of

evidence: the IO may collect, consider and include in the record any matter relevant to the investigation that is believable and authentic. Photographs, maps, sketches, etc., are always helpful to reviewing authorities in understanding what has occurred. So too are present sense impressions (e.g., noise, texture, smell, observations) that are not adequately portrayed in other evidence. You may record these impressions in a simple memorandum for inclusion in the CI record.

In handling witnesses, there are several things to keep in mind. You may obtain information by personal interview, correspondence, or telephone inquiry. If a witness is unable to review and/or sign a statement, you may simply make a summary of the conversation and certify it to be accurate. Before interviewing witnesses, ensure you understand when and what rights advisements may be required: if you suspect a military member has committed a criminal offense, Article 31, UCMJ, warnings are required; when interviewing a service member concerning the incurring of injury, warning under JAGMAN 0212(c) is required; if you are asking for personal information (as opposed to information related to performance of duty), Privacy Act advice is necessary. Refer to section IX of this handbook for forms.

Each witness should be interviewed separately. Let the witness tell what happened; don't ask questions that suggest answers. Ask for clarification if the witness is speaking in broad or vague terms (e.g., "He was drunk"; "What gave you that impression?"; "He had an odor of alcohol about him, his eyes were bloodshot, he was slurring his speech and unable to maintain his balance"). Try to obtain as much information during the interview as possible; the relevance of a particular fact may not become clear until later in the investigation.

A checklist to help you conduct the CI is contained on page III-4.

Writing the Investigation: Helpful Hints. The key to writing a good CI is organization. As IO, you must take the time to reconstruct the incident in your mind, pulling together all the evidence. You must then document the incident in a **readable** fashion. Remember, the CA and reviewing authorities will want to understand the incident from a reading of the facts. Often a recitation of the facts in chronological, step-by-step form is easiest to follow. Keep your findings of fact as clear and concise as possible.

In drafting opinions and recommendations, the IO should address responsibility and accountability. All areas which need corrective action must also be addressed.

A checklist to help you prepare the CI report is contained on page III-8.

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SAMPLE COMMAND INVESTIGATION CONVENING ORDER

Ser Info Date From: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Pendleton, CA To: Captain _____, USMC Subj: COMMAND INVESTIGATION OF THE FIRE THAT OCCURRED AT ____ ON ____ AUGUST 20___ Ref: (a) JAGMAN, Chapter II 1. This appoints you, per chapter II of reference (a), to inquire into the facts and circumstances surrounding the fire that occurred at _____ on _ August 20_. 2. Investigate the cause of the fire, resulting injuries and damages, and any fault, neglect, or responsibility therefor, and recommend appropriate administrative or disciplinary action. Report your findings of fact, opinions, and recommendations in letter form by _ September 20__, unless an extension of time is granted. If you have not previously done so, read chapter II of reference (a) in its entirety before beginning your investigation. You may seek legal advice from _____ during the course of your investigation. 3. 4. By copy of this appointing order, Commanding Officer, Headquarters Company, is directed to furnish necessary clerical assistance. Colonel, U.S. Marine Corps Copy to: CG, MCB CamPen, CA CO, HQCo, HQBn, MCB, CamPen, CA

0210(a)(1).

THE COMMAND INVESTIGATION CHECKLIST

GETTING STARTED CA appoints an investigating officer in writing. Begin work on the investigation immediately upon hearing that you are to be appointed, whether or not you have received a convening order in writing. Carefully examine the convening order to determine the scope of your investigation. Determine when the investigative report is due to the CA. If you can not reach that deadline, request an extension. Review all relevant instructions on your investigation, i.e. JAGMAN Chapter 2, etc. Determine which checklists may apply to your investigation and review them carefully to determine what information is required. Refer to sections IX and X of this handbook. Decide what the purpose and methodology of your investigation will be. Where is evidence likely to be located? How can such evidence best be obtained and preserved? Has this incident involved a member of the command and/or occurred within the command? If not, are you the appropriate command to conduct the investigation? Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? (If yes, refer to JAGMAN 0201(d)). Is this considered a "major" incident? (Refer to JAGMAN Appendix A-2-a for definition.) If believed to be a "major" incident, refer to JAGMAN 0203(b)(2), (f), 0204(b)(5),

II. HANDLING WITNESSES

| (NOTE: | You may wish to gather and review other types of evidence before interviewing any or all witnesses.) |
|--------------------|--|
| _ Draw | up a list, to be supplemented as the investigation progresses, of all possible witnesses. |
| | mine if witnesses are transferring, going on leave, hospitalized, etc., which might take out of the area before review of the investigation is completed. |
| | Inform the CA, orally, with confirmation in writing, immediately upon learning that a material witness might leave the area before review of the investigation is completed. |
| _ Condu | act an intensive interview of each witness, i.e. names, places, dates, and events that are nt. |
| | ss statements should be as factual in content as possible. If a witness makes a vague ent ("he was drunk"), try to pin down the actual facts. |
| | itness is not physically available for an interview, attempt to conduct it via telephone, r message. |
| perform collect | e any military witness who may be suspected of an offense, misconduct, or improper mance of duty, of his/her rights under Article 31b. Ordinarily, an investigation should relevant information from all other sources before interviewing a suspect. <i>See</i> IAN 0214(d)(2) (Refer to page IX-1 of this handbook for a sample form.) |
| aggrav | e each witness prior to signing any statement relating to the origin, incident, or vation of any disease or injury that he/she has suffered, of his/her right not to sign such ement. (Refer to page IX-2 of this handbook for a sample form). See JAGMAN e.). |
| that Pr | rivacy Act statement required for the witness interviewed? JAGMAN 0207(e) requires rivacy Act statements be obtained from each witness from whom personal information n. (Refer to page IX-3 of this handbook for a sample form.) |
| _ Record | d the interview of each witness in detailed notes or by mechanical means. |
| _ Reduc | e each witness' statement to a complete and accurate narrative statement. |

IV. OTHER EVIDENCE

Make a list of any other information which may be of assistance to reviewing authorities in understanding the incident investigated (real objects, physical locations, maps, charts, photographs, your personal observations, etc.).

| Examine your list of possible information to ensure that you have obtained all such information personally available to you. |
|--|
| If unable to obtain certain information, attempt to obtain if via fax, message, telephone, or mail. |
| Attempt to reduce such information to a form, such as photographs or sketches, which can be conveniently included in your investigative report. |
| Take all steps possible to insure that any evidence not an enclosure to the investigative report will be kept in an identified place, safe from tampering, loss, theft, and damage, pending review of the investigation. |

DRAFTING THE CI REPORT

(NOTE: REFER TO PAGE III-12 OF THIS HANDBOOK FOR SAMPLE FORMAT) Classification of the report, (secret, confidential, etc.). Omit classified information unless absolutely essential (see JAGMAN 0208(b)). PRELIMINARY STATEMENT State that all reasonably available evidence was collected or is forthcoming and that each directive of the CA has been met. Set forth the nature of the investigation. Relate any delays or difficulties encountered, including non-availability of evidence or failure to interview relevant witnesses. Explain any conflicts in evidence, which evidence is considered more reliable, and why. Note any extensions requested and granted. Note the limited participation by any member or advisor. If social security numbers contained in the report were obtained from sources other than the individual (i.e., from service records), so state. Indicate where original items of evidence are maintained, how they are being safeguarded, and the name and phone number of the responsible custodian. Any other information necessary for a complete understanding of the case. **FINDINGS OF FACT**. A fact is something that is or happens. Distinguish in your own mind the differences between the terms "fact", "opinion", and "recommendation". Conduct an evaluation of the evidence or lack of evidence. Review any special fact-finding requirements pertaining to the specific incident in the JAGMAN checklists. When drafting the findings of fact, be specific as to persons, times, places, and events. Reference after each finding of fact, the enclosures to the report that support the finding of fact.

| | Identify by grade or rate, service number, organization, occupation or business, and residence person(s) connected with the incident. |
|------|--|
| | Make appropriate findings of fact for <u>all</u> relevant facts, including information already stated in the preliminary statement. The preliminary statement is <u>not</u> a substitute for findings of fact. |
| | Place findings of fact in chronological and/or logical order. |
| | Is each fact a separate finding? |
| | Is each finding of fact supported by an enclosure? |
| | Are all enclosures used? (if not used, delete the enclosure.) |
| | Ensure that, when read together, the findings of fact <u>tell the whole story</u> of the incident without having to refer back to the enclosures. |
| | Does the story flow? Is it <u>readable</u> ? |
| | IONS are reasonable evaluations, inferences, or conclusions based on the facts found. one are value judgements. |
| | Ensure that each of your opinions are exactly that, not findings of fact or recommendations. |
| | Ensure that each opinion references the finding(s) of fact that support it. |
| | Ensure that you have rendered those opinions required by the convening order, as well as any others you feel are appropriate. |
| RECO | DMMENDATIONS are proposals made on the basis of the opinions. |
| | Ensure that each of your recommendations are exactly that, not findings of fact or opinions. |
| | Ensure that each recommendation is logical and consistent with the findings of fact and opinions. |
| | Address those recommendations specifically required by the convening order and any others considered appropriate. |
| | Recommend any appropriate corrective, disciplinary, or administrative action. |
| | Enclose a draft of a punitive letter of reprimand if recommending such action. |

| | Draft and send, under separate cover, a non-punitive letter of caution if recommending such action. |
|-------|--|
| SIGNI | NG |
| | Sign your report. |
| ENCL | OSURES |
| | Convening order. |
| | All evidence in logical order. |
| | Is each statement, affidavit, transcript or summary of testimony, photograph, map, chart, document, or other exhibit, a separate enclosure? |
| | Are any reproduced documents certified to be true copies? |
| | Have you complied with the special marking requirements applicable to photographs? <i>See</i> JAGMAN, 0207(b)(4) and 0208(g)(1). |
| | Are enclosures listed in the order in which they are cited in the body of the investigation? |
| | Ensure that you do not have inappropriate material in the investigation: NCIS reports of investigations; aircraft mishap reports; Inspector General reports; polygraph examinations; medical quality assurance investigations. |
| CONC | CLUDING ACTION |
| | Have you stretched your imagination to the utmost in gathering and recording all possible information on the incident investigated? |
| | Have you checked and double-checked to ensure that your findings of fact, opinions, recommendations, and enclosures are in proper order? |
| | Have you carefully proofread your Investigative Report to guard against embarrassing clerical errors? |
| | Have you signed your Investigative Report? |

SAMPLE COMMAND INVESTIGATION REPORT

| | | Ser Info Date |
|--------------------------------------|--|--|
| From: To: | Captain, USMC Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Per | ndleton, CA |
| Subj: | SAME AS SUBJECT ON CONVENING ORDER | |
| Encl: | Convening order and modifications thereto (if any were issued) Summary (or verbatim) of sworn (or unsworn) testimony of | _ (a witness) dent) |
| diagra enclos charts respon | E: Testimony of each witness, observations of the investigator ams, and suitable reproductions of tangible evidence should be listed a ures to the investigative report. The location of all original evidence, tangible items, and so forth, and the name and phone number asible for its safekeeping must be stated in the report, either on each encountry statement. | nd attached a e, such as logs of the officia |
| | Preliminary Statement | |
| JAGM the na report | ragraph 1 of an investigative report must contain information in the form of ent." Contents may require continuation in one or more additional paragraphs (AN 0208(c)) for required contents. Where applicable, an investigating officer me and organization of any judge advocate consulted. Extensions of time should be noted here. Also state in appropriate cases that the matter was and NCIS expressed no objection to proceeding with the investigation. | s. In general, see r should indicate to complete the |
| | Findings of Fact | |
| 1 2 3 | [encls (), ()] [encls (), ()] [encls (), ()] | |

Note: Findings of fact constitute an investigating officer's description of details of events based on evidence. Findings must be as specific as possible about time, places, and persons involved. Each fact may be made a separate finding. An investigating officer may determine the most effective presentation for a particular case. Each fact must be supported by testimony of a witness, statement of the investigative officer, documentary evidence, or tangible (real) evidence attached to the investigative report as an enclosure. Each finding of fact must reference each enclosure that supports it.

Opinions

| 1 | [FF() |
|---|-------|
| 2 | [FF() |
| 3 | [FF() |

Note: An opinion is a reasonable evaluation, reference, or conclusion based on facts found. Each opinion must be supported by findings of fact. Determination of line of duty and misconduct is properly stated as an opinion.

Recommendations

1.

2.

3.

Note: If an investigating officer recommends trial by court-martial, a charge sheet drafted by the investigating officer may be prepared and submitted to the convening authority with the investigative report. See R.C.M. 307, MCM 2008. The charge sheet should not be signed; i.e., charges should not be preferred since preferral starts the "speedy trial clock" running. Before preferring charges, the local trial service office or staff judge advocate should be consulted. Unless specifically directed by proper authority, an investigating officer must not notify an accused of charges. Notification is the responsibility of the commanding officer of an accused. See R.C.M. 308 and 707, MCM 2008. If a punitive letter of reprimand or admonition is recommended, a draft of the recommended letter must be prepared and forwarded with the investigative report. Proposed nonpunitive letters of caution must <u>not</u> be forwarded with the report. See section 0209(f).

(SIGNATURE OF INVESTIGATING OFFICER)

RETENTION AND RELEASE OF COMMAND INVESTIGATIONS

The GCMCA to whom the CI is ultimately forwarded is the authority who decides whether release under the Freedom of Information Act (FOIA) or Privacy Act (PA) will be made. While FOIA/PA releases are nothing new to fleet units, the release of JAGMAN investigations is new. SECNAVINST 5720.42 (series) and SECNAVINST 5211.5 (series) should be consulted before releasing a CI. Guidance for all types of investigations, except for litigation reports, may be obtained from Office of the Judge Advocate General (OJAG), Administrative Law Division (Code 13) at (703) 604-8228 (commercial) or 664-8228 (DSN).

Release of litigation-report investigations. OJAG (Code 15) is the custodian and the only release authority for litigation-report investigations. FOIA/PA requests must be forwarded to the Code 15 for action and the requester informed. JAGMAN 0210(h).

Release of CI's. Investigative reports, evidence, and documents compiled by investigating officials cannot be released until the report is final. The GCMCA to whom the report is forwarded to ultimately is the release authority. Each custodian with release authority will either release the record in its entirety or, if necessary forward it to the cognizant Initial Denial Authority (IDA) recommending withholding some or all of the record. Normally, except for an official release (e.g. responding to a Congressional Inquiry, a Federal Court Order, or to another Federal Agency) something is withheld from every investigation rendering the release a partial denial. Even withholding one social security number or home address requires forwarding the record to an IDA for release. The same is true for a total denial. Check with your ISIC for more specific guidance.

Frequent communication with the requester is important. Keep them informed of their request's status. Remember FOIA is a *release statute* and it is DoN's policy is to release as much as the rules allow. Where the requested investigation is not complete, keep the requester informed as to its progress and estimated release date.

While each CI must be completely reviewed, the following are normally withheld: social security numbers, home addresses, and telephone numbers (including home E-mail addresses), dates of birth, names of certain officials (NCIS, FBI, CIA agents, and confidential informants/sources), state/local civilian law enforcement material, military death certificates, descriptions of injuries of others, medical records of a living individual, medical boards, medical specialty reviews and peer reviews, alcohol and /or drug classes for living individuals, embarrassing items, names on rosters (also plans of the day) of deployable units, fitness reports and evaluations (including NATOPS, training records, grades, and class status), references to disciplinary/administrative actions being taken or contemplated (e.g. NJP, letters of reprimand, non-punitive letters, etc.), motor vehicle citations and criminal charges (unless convicted), disapproved findings of fact, opinions, or recommendations (or all findings of fact, opinions, and recommendations where they relate to claims or potential litigation), classified material, trade secrets, and certain terms (e.g. "FOR OFFICIAL USE ONLY,""CONFIDENTIAL not for release," and "PERSONAL FOR"). The terms listed need not be cited in the cover letter but should be redacted so the requester does not believe he is getting something in violation of law. This list is only a general guide and is not exhaustive.

The following are normally released: BAC results, article 31 warning forms, and non-adverse Line of Duty determinations (which are released if the requester is the subject of the report). For military personnel: name, rank, date of rank, gross salary, past duty assignments, office/duty telephone numbers (including office E-mail), source of commission, promotion sequence number, awards and decorations, attendance at professional and military schools, and duty status. For civilians: name, grade, position, date of grade, gross salary, present and past assignments, and office telephone number (including office E-mail).

Time Limit. Under FOIA/PA the recipient of the request has 20 working days to initially respond (e.g. grant or deny the request, provide an interim response, or refer the request to the proper records custodian). Under FOIA, this limit can be extended through either formal or informal means. Extension beyond 30 days of PA requests is difficult and is discouraged.

Death Cases. The timing and substance of releasing death case records depends on the identity of the requester. Next-of-kin (NOK) are entitled to a copy of the investigation by federal law. Navy practice is to release an advance copy, upon request, to the NOK as soon as it has been reviewed by a flag officer. Grieving family members should not be further aggravated by obstructing their access to information concerning the member's death. The FOIA/PA 'first in/first out' processing rules do not apply to NOK releases which should be given priority. Consideration must be given to the potential impact of such a report. When practical, releasing authorities should ensure hand delivery of the report by someone who can discuss it with the family. Normally this will be the CACO but another appropriate person can be assigned (e.g. a family/personal friend or technical expert). Extreme caution must be taken with regard to release of autopsy reports and other graphic materials. These should be segregated under separate cover and sealed in an envelope with a warning attached. NOK should be advised that they can request the DoD Inspector General (IG) review any military investigation into a death from a self-inflicted cause.

Release to non-NOK requesters is more restrictive. Autopsy reports, graphic materials, and other sensitive items (e.g. suicide notes, last words, highly personal or embarrassing information) are normally *not* released. Although the privacy rights of a deceased are extinguished, remaining family members have a privacy interest where release of the information would cause unreasonable embarrassment or distress to the family.

Copies of all death investigations must be routed to the Naval Safety Center. In cases involving Naval personnel, a copy of the LOD determination shall be made in writing and forwarded to the Chief of Naval Personnel (PERS-62); if involving Marines, Headquarters, U.S. Marine Corps (MMSR-6). For adverse determinations, a complete copy of the investigation shall be forwarded. *See* JAGMAN 0225, 0229(d).

Retention of investigations. The CA must maintain a copy of all CI's for a minimum of 2 years. After two years all CI's should be forwarded to a Federal Record Storage Facility for permanent storage (see SECNAVINST M-5210.1(Series)). The JAG Manual gives no guidance concerning retention time for litigation-report investigations only that the convening authority retain a copy and forward the original to OJAG. You should retain your copy for at least 2 years.

LITIGATION-REPORT INVESTIGATIONS

Convening a litigation-report investigation is appropriate whenever the *primary purpose* of the investigation is to prepare and defend the legal interests of the Navy in claims proceedings or civil litigation. While closely resembling the command investigation in method of evidence collection and report preparation, there are special rules for the litigation-report investigation.

Special requirements. A litigation-report investigation must be: convened only after consultation with a "cognizant judge advocate" (*see* JAGMAN, Appendix A-2-a for definition); conducted under the direction and supervision of a judge advocate; protected from disclosure to anyone who does not have an official need to know; conducted primarily in anticipation of claims and/or litigation; and ultimately forwarded to the Judge Advocate General.

NOTE: When investigations are conducted in anticipation of litigation but are not conducted under the direction and supervision of a judge advocate or are handled carelessly, they cannot be legally protected from disclosure to parties whose litigation interests may be adverse to the interests of the United States. It is imperative that litigation-report investigations be conducted in accordance with the rules as stated in JAGMAN 0210.

Rules on convening. After first consulting with the cognizant judge advocate, a litigation-report investigation will be convened, in writing, by the CA (refer to page V-3 of this handbook for a sample convening order). The judge advocate responsible for supervising the investigation will be named in the convening order; this does not mean that the judge advocate acts as the IO, rather the judge advocate will be responsible for overseeing the conduct of the investigation and preparation of the report.

Conducting the Investigation: Helpful Hints. As with the CI, the general goal of the litigation-report investigation is to document who, what, when, where, how and why an incident occurred. The IO must consult with the supervising judge advocate and decide what the purpose and methodology of his/her investigation is before starting to collect evidence. If available, the IO should review the checklists contained in sections V and IX of this handbook to determine what specific informational requirements exist.

The IO is **not** bound by formal rules of evidence in gathering information: the IO may collect, consider and include in the record any matter relevant to the investigation that is believable and authentic. Photographs, maps, sketches, etc., are always helpful to reviewing authorities in understanding what has occurred. So too are present sense impressions (e.g., noise, texture, smell, observations) that are not adequately portrayed in other evidence. You may record these impressions in a simple memorandum for inclusion in the litigation report.

In handling witnesses, there are several things to keep in mind. You may obtain information by personal interview, correspondence, or telephone inquiry. The IO should **never** obtain signed or sworn statements during the course of a litigation-report investigation **unless** he/she has consulted with the supervising judge advocate. Before interviewing witnesses, ensure you understand when

and what rights advisements may be required: if you suspect a military member has committed a criminal offense, Article 31, UCMJ, warnings are required; when interviewing a service member concerning the incurring of injury, warning under JAGMAN 0212(c) is required; if you are asking for personal information (as opposed to information related to performance of duty), Privacy Act advice is necessary. Refer to section IX of this handbook for forms.

Each witness should be interviewed separately. Let the witness tell what happened; don't ask questions that suggest answers. Ask for clarification if the witness is speaking in broad or vague terms (e.g., "He was drunk"; "What gave you that impression?"; "He had an odor of alcohol about him, his eyes were bloodshot, he was slurring his speech and unable to maintain his balance"). Try to obtain as much information during the interview as possible; the relevance of a particular fact may not become clear until later in the investigation.

A checklist to help you conduct the litigation-report investigation is contained on page V-4.

Writing the Investigation: Helpful Hints. The key to writing a litigation-report investigation is **organization**. As IO, you must take the time to reconstruct the incident in your mind, pulling together all the evidence. You must then document the incident in a **readable** fashion. Remember, the CA and reviewing authorities will want to understand the incident from a reading of the facts. Often a recitation of the facts in chronological, step-by-step form is easiest to follow. Keep your findings of fact as clear and concise as possible.

The IO must **not** draft opinions and/or recommendations unless specifically directed to by the supervising judge advocate. Where the IO or CA feels an opinion and/or recommendation from the IO should be included, the supervisory judge advocate should be informed. Where the supervisory judge advocate feels the IO should express and opinion and/or recommendation, such should be directed. Any direction for or authorization to the IO to express an opinion and/or recommendation should be clear and specific.

A checklist to help you prepare the litigation-report is contained on page V-8.

Protection. The IO must properly mark the litigation-report investigative report. See, JAGMAN 0210(e)(5). Copies of the report, and any of the working notes of the IO, must be maintained in files marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" and safeguarded against improper disclosure. A judge advocate should be consulted before releasing the report, or any portion thereof, to anyone.

SAMPLE LITIGATION-REPORT INVESTIGATION APPOINTING ORDER

5800 Ser Info Date

| From: Commanding Officer, Naval Su To: Lieutenant | |
|---|--|
| 0 | ESTIGATION OF THE FIRE THAT OCCURRED AT BASE NLON, ON AUGUST 20 |
| Ref: (a) JAGMAN, Chapter II | |
| that occurred at Quarters XYZ, Naval prepare the related litigation-report. D supervision of LCDR, J. | ppointed to investigate the circumstances surrounding the fire Submarine Base New London, on _ August 20_, and to buring the investigation, you will be under the direction and AGC, USN. Consult LCDR before beginning the investigation and the submarked before consulting LCDR |
| litigation and for the express purpose of in this matter. As such, it is privileged official need to know of its progress | ned and your report is being prepared in contemplation of assisting attorneys representing interests of the United States and should be discussed only with personnel who have an or results. If you have any doubt about the propriety of particular individual, then you should seek guidance from |
| resulting injuries and damages, and a findings to LCDR by _S express any opinions or recommendation | ances surrounding the fire, including the cause of the fire, any fault, neglect, or responsibility therefor. Report your eptember 20_, unless an extension of time is granted. Do not ons unless LCDR directs you to do so. Label ONLY: ATTORNEY WORKPRODUCT," and take |
| | (Signature of CA) |
| Copy to: COMSUBGRU TWO | |

0210(a)(1).

THE LITIGATION-REPORT INVESTIGATION CHECKLIST

GETTING STARTED Convening authority (CA) consults with cognizant judge advocate. ____ CA appoints an investigating officer in writing, identifying the judge advocate under whose direction and supervision the investigation will be conducted. The IO must consult with the assigned judge advocate **before** beginning the investigation. Carefully examine the convening order to determine the scope of your investigation. Determine when the investigative report is due to the CA. If you can not reach that deadline, request an extension. Review all relevant instructions on your investigation, e.g. JAGMAN Chapter 2, etc. __ Determine which checklists may apply to your investigation and review them carefully to determine what information is required. Refer to sections IX and X of this handbook. Decide what the purpose and methodology of your investigation will be. ____ Where is evidence likely to be located? How can such evidence best be obtained and preserved? Has this incident involved a member of the command and/or occurred within the command? If not, are you the appropriate command to conduct the investigation? Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? (If yes, refer to JAGMAN 0201(d). Is this considered a "major" incident? (Refer to page JAGMAN Appendix A-2-a of this handbook for definition.) If believed to be a "major" incident, refer to JAGMAN 0203(b)(2), (f), 0204(b)(5),

PRIOR TO OBTAINING ANY OF THE BELOW INFORMATION CONSULT WITH THE ASSIGNED JUDGE ADVOCATE.

II. HANDLING WITNESS

| (NOT | E : You may wish to gather and review other types of evidence before interviewing any or all witnesses.) |
|------|---|
| Dra | w up a list, to be supplemented as the investigation progresses, of all possible witnesses. |
| | ermine if witnesses are transferring, going on leave, hospitalized, etc., which might take nout of the area before review of the investigation is completed. |
| | _ Inform the CA, orally, with confirmation in writing, immediately upon learning that a material witness might leave the area before review of the investigation is completed. |
| | duct an intensive interview of each witness, e.g. names, places, dates, and events that are vant. |
| | Witness statements should be as factual in content as possible. If a witness makes a vague statement ("he was drunk") try to pin down actual facts. |
| | witness is not physically available for an interview, attempt to conduct it via telephone, or message. |
| perf | rise any military witness who may be suspected of an offense, misconduct, or improper formance of duty, of his/her rights under Article 31b, UCMJ. (Refer to page IX-1 of this dbook for a sample). |
| aggı | rise each witness prior to signing any statement relating to the origin, incident, or ravation of any disease or injury that he/she has suffered, of his/her right not to sign such a ement. (Refer to page IX-2 of this handbook for a sample). See JAGMAN 0212(c). |
| that | Privacy Act statement required for the witness interviewed? JAGMAN 0207(e) requires Privacy Act statements be obtained from each witness from whom personal information is in. (Refer to page IX-3 of this handbook for a sample.) |
| Rec | ord the interview of each witness in detailed notes. |
| Red | uce each witness' statement to a complete and accurate narrative statement. |
| | Witnesses will <u>not</u> , in most cases, be asked to make a written statement or to sign a statement that the investigator has prepared. DO NOT attach signed witness statements as enclosures to the investigation, unless the supervising judge advocate so directs. |

If unable to obtain a certain document, attempt to obtain it via fax, message, telephone, or

Obtain originals or certified true copies of all documents available to you.

mail.

PRIOR TO OBTAINING ANY OF THE BELOW INFORMATION CONSULT WITH THE ASSIGNED JUDGE ADVOCATE

OTHER EVIDENCE

| Make a list of any other information which may be of assistance to reviewing authorities in understanding the incident investigated (real objects, physical locations, maps, charts, photographs, your personal observations, etc.). |
|--|
| Examine your list of possible information to ensure that you have obtained all such information personally available to you. |
| If unable to obtain certain information, attempt to obtain them via fax, message, telephone, or mail. |
| Attempt to reduce such information to a form, such as photographs or sketches, which can be conveniently included in your investigative report. |
| Take all steps possible to insure that any evidence not an enclosure to the investigative report will be kept in an identified place, safe from tampering, loss, theft, and damage pending review of the investigation. |

DRAFTING THE LITIGATION REPORT (REFER TO PAGE V-12 OF THIS HANDBOOK FOR SAMPLE FORMAT)

PRELIMINARY STATEMENT

| | Include this statement: "This report was prepared under the supervision of a judge advocate in contemplation of litigation by or against the United States." |
|------|--|
| | State that all reasonably available evidence was collected or is forthcoming and that each directive of the CA has been met. |
| | Set forth the nature of the investigation. |
| | Relate any delays or difficulties encountered, including non-availability of evidence or failure to interview relevant witnesses. |
| | Explain any conflicts in evidence, which evidence is considered more reliable and why. |
| | Note any extensions requested and granted. |
| | Note the limited participation by any member or advisor. |
| | If social security numbers contained in the report were obtained from sources other than the individual (e.g., from service records), so state. |
| | Indicate where original items of evidence are maintained, how they are safeguarded, and the name and phone number of the responsible custodian. |
| | Any other information necessary for a complete understanding of the case. |
| FINI | DINGS OF FACT . A fact is something that is or happens. |
| | Distinguish in your own mind the differences among the terms "fact", "opinion", and "recommendation". |
| | Conduct an evaluation of the evidence or lack of evidence. |
| | Review any special fact-finding requirements pertaining to the specific incident in the JAGMAN checklists. |
| | When drafting the findings of fact, be specific as to persons, times, places, and events. |

| | Reference after each finding of fact, the enclosures to the report which support the finding of fact. | |
|--|--|--|
| | Identify by grade or rate, service number, organization, occupation or business, and residence person(s) connected with the incident. | |
| | Make appropriate findings of fact for <u>all</u> relevant facts, including information already stated in the preliminary statement. The preliminary statements is \underline{not} a substitute for findings of fact. | |
| | Place findings of fact in chronological and/or logical order. | |
| | Is each fact a separate finding? | |
| | Is each finding of fact supported by an enclosure? | |
| | Are all enclosures used? (if not used delete the enclosure). | |
| | Ensure that, when read together, the findings of fact <u>tell the whole story</u> of the incident without having to refer back to the enclosures. | |
| | Does the story flow? Is it <u>readable</u> ? | |
| NOTE: OPINIONS AND RECOMMENDATIONS ARE NOT MADE BY THE IO UNLESS DIRECTED BY THE SUPERVISORY JUDGE ADVOCATE. | | |
| | | |
| DIRI OPIN | | |
| DIRI OPIN | ECTED BY THE SUPERVISORY JUDGE ADVOCATE. NIONS are reasonable evaluations, inferences, or conclusions based on the facts found. | |
| DIRI OPIN | NIONS are reasonable evaluations, inferences, or conclusions based on the facts found. ions are valuable judgements. | |
| DIRI OPIN | NIONS are reasonable evaluations, inferences, or conclusions based on the facts found. ions are valuable judgements. Ensure that each of your opinions are exactly that, not findings of fact or recommendations. | |
| OPIN Opini | NIONS are reasonable evaluations, inferences, or conclusions based on the facts found. It is that each of your opinions are exactly that, not findings of fact or recommendations. Ensure that each opinion references the finding(s) of fact that support is. | |
| OPIN Opini | NIONS are reasonable evaluations, inferences, or conclusions based on the facts found. It is that each of your opinions are exactly that, not findings of fact or recommendations. Ensure that each opinion references the finding(s) of fact that support is. Ensure you discuss each opinion with the supervisory judge advocate. | |
| OPIN Opini | NIONS are reasonable evaluations, inferences, or conclusions based on the facts found. It is said that each of your opinions are exactly that, not findings of fact or recommendations. Ensure that each opinion references the finding(s) of fact that support is. Ensure you discuss each opinion with the supervisory judge advocate. OMMENDATIONS are proposals made on the basis of opinions. | |
| OPIN Opini | NIONS are reasonable evaluations, inferences, or conclusions based on the facts found. It is is that each of your opinions are exactly that, not findings of fact or recommendations. Ensure that each opinion references the finding(s) of fact that support is. Ensure you discuss each opinion with the supervisory judge advocate. OMMENDATIONS are proposals made on the basis of opinions. Ensure that each of your recommendations are a exactly that, not findings of fact or opinions. Ensure that each recommendation is logical and consistent with the findings of fact and | |

JAGMAN Investigations Handbook

investigations; aircraft mishap reports; Inspector General reports; polygraph examinations;

medical quality assurance investigations; sworn or signed witness statements.

CONCLUDING ACTION

| Is the report marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" on the top center of each page? |
|--|
| Have you stretched your imagination to the utmost in gathering and recording all possible information on the incident investigated? |
| Have you checked and double-checked to ensure that your findings of fact, opinions, recommendations, and enclosures are in proper order? |
| Have you carefully proofread your Investigative Report to guard against embarrassing clerical errors? |
| Have you signed your Investigative Report? |

SAMPLE LITIGATION-REPORT INVESTIGATION

| | | | 5800 Ser Info Date |
|-------|---------------------------------------|--|--------------------------|
| From: | Lieutenant Commander | , JAGC, USN | |
| | Lieutenant | , USN | |
| To: | Commanding Officer, Naval Submarin | | |
| Subj: | SAME AS SUBJECT ON CONVENI | NG ORDER | |
| Encl: | (1) Convening order and modification | s thereto (if any were issued) | |
| | (2) Summary of statement of witness (| Do not include signed statements) | |
| | (3) Summary of statement of witness | | |
| | (4) Description of | _ (evidence found at scene of the fire |) |
| | (5) Photograph of | depicting | |

NOTE: Summarized statement of each witness, observation of the investigator, photographs, diagrams, and suitable reproductions of tangible evidence should be listed and attached as enclosures to the investigative report. The location of all original evidence, such as logs, charts, tangible items, and so forth, and the name and phone number of the official responsible for its safekeeping must be stated in the report, either on each enclosure or in the preliminary statement.

Preliminary Statement

1. Paragraph 1 of a litigation-report must contain information in the form of a "preliminary statement." Contents may require continuation in one or more additional paragraphs. In general, see section 0208(c) for required contents. The name and organization of the supervisory judge advocate should be listed and the following language must be included: "This investigation is being conducted and this report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing the interests of the United States in this matter."

| | Findings of Fact |
|----|------------------|
| 1 | [encls (), ()] |
| 2. | [encls (), ()] |
| 3 | [encls (), ()] |

Note: Findings of fact constitute an investigating officer's description of details of events based on evidence. Findings must be as specific as possible about time, places, and persons involved. Each fact may be made a separate finding. An investigating officer may determine the most effective presentation for a particular case. Each fact must be supported by the (unsigned, narrative) statement of a witness, statement of the investigating officer,

documentary evidence, or tangible (real) evidence attached to the investigative report as an enclosure. Each finding of fact must reference each enclosure that supports it.

<u>Opinions and Recommendations</u> are not made by the investigating officer unless directed by the supervisory judge advocate. Before the report is submitted to the convening authority, however, the supervisory judge advocate should normally add appropriate opinions and recommendations and may request the assistance of the investigating officer in drafting them. Each opinion must be supported by findings of fact, and each recommendation must be supported by an opinion.

(SIGNATURE OF INVESTIGATING OFFICER)

(SIGNATURE OF SUPERVISORY JUDGE ADVOCATE)

LINE OF DUTY / MISCONDUCT DETERMINATIONS

To assist in the administration of naval personnel issues, the commanding officer is required to inquire into certain cases of injury or disease incurred by members of his or her command. When these inquiries are conducted, the commanding officer is required to make what is referred to as a line of duty (LOD)/misconduct determination. As in most matters, the type of inquiry and the degree of formality of the report will depend upon the circumstances of the case.

Reason for LOD/misconduct determinations. Adverse LOD/misconduct determinations can affect several benefits and/or rights administered by the Department of the Navy, including: extension of enlistment; withholding of longevity and retirement multipliers for the time missed, and; denial of disability retirement and/or severance pay.

WhenLOD/misconduct determinations are required. Findings concerning LOD/misconduct must be made in every case in which a member of the naval service incurs a **disease** or injury that:

- 1. *Might* result in permanent disability; or
- 2. results in the physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation). JAGMAN 0212.
- 3. Death.

What constitutes "line of duty?" Injury or disease incurred by naval personnel while on active duty service is presumed to have been incurred "in line of duty" unless there is clear and convincing evidence that it was incurred:

- 1. As a result of the member's own "misconduct." There must be clear and convincing evidence that the injury was intentionally incurred or the result of willful neglect which demonstrates a reckless disregard for foreseeable and likely consequences.
- 2. While avoiding duty by deserting.
- 3. While absent without leave, and such absence materially interfered with the performance of required military duties (generally, in excess of 24 hours).
- 4. While confined under sentence of a court-martial that included an unremitted dishonorable discharge.
- 5. While confined under sentence of civil court following conviction of an offense that is defined as a felony by the law of the jurisdiction where convicted.

Preliminary Inquiries (**PI's**). Each injury or disease requiring LOD/misconduct determinations *must* be reviewed through use of a PI. JAGMAN 0222(a)(1). Upon completion of the PI, the command is to report the results to the GCMCA through use of the Personnel Casualty Report system. JAGMAN 0222(b), MILPERSMAN 1770-010. A copy of the PI report is delivered to the appropriate medical department for inclusion in the health or dental record. If the medical officer and the commanding officer are of the opinion that the injury or disease was incurred "in line of duty" and "not as a result of the member's own misconduct," then appropriate entries stating such are entered in the health record. **No further investigation** is required, unless directed by the GCMCA. JAGMAN 0222(c).

Command Investigations (CI's). As noted above, use of the PI and health record entries will provide sufficient documentation where injuries or disease are found to have occurred while in the line of duty, not due to misconduct. CI's are only required when:

- 1. the injury or disease was incurred in such a way that suggests a finding of "misconduct" or "not in line of duty" might result (JAGMAN 0222(d)(1), (2));
- 2. there is a reasonable chance of permanent disability and the CA considers an investigation essential to ensuring an adequate official record;
- 3. the injury involves a Naval or Marine Reservist and the CA considers an investigation essential to ensuring an adequate official record.

In endorsing a CI, the CA must specifically comment on the LOD/misconduct opinion and take one of the following actions:

- 1. If the CA concludes that the injury or disease was incurred "in line of duty" and "not due to a member's own misconduct," that shall be expressed (regardless of whether it differs from or concurs with the IO's opinion). JAGMAN 0223(a)(1).
- 2. If, upon review of the report or record, the convening (or higher) authority believes the injury or disease was incurred *not* "in line of duty" or "due to the member's own misconduct," the member *must* be informed of the preliminary determination and afforded an opportunity, not to exceed 10 days, to submit any desired information to try and convince the CA otherwise. The member may be permitted to review the investigative report before providing any information. If the member decides to present information, it shall be considered by the CA and appended to the record. If the member elects not to provide information, or the 10 day period lapses without submission, then such shall be noted in the endorsement. JAGMAN 0223(a)(2).

The CI is forwarded to a GCMCA with an assigned judge advocate. The GCMCA shall indicate approval, disapproval or modification of conclusions concerning misconduct and line of duty. A copy of such action will be returned to the CA so that appropriate entries may be made in the member's service and medical records. JAGMAN 0223(b)(1).

Required warning. Any person in the Armed Forces, prior to being asked to make or sign any statement relating to the origin, incidence, or aggravation of any disease or injury that he or she has suffered, shall be advised of the right not to make such a statement. (Refer to page IX-2 of this handbook for sample form).

Mental responsibility. Suicide and a **bona-fide** suicide attempt, as distinguished from a suicide gesture, creates a strong inference of a lack of mental responsibility. As such, suicides or bona-fide suicide attempts are considered as acts committed in the line of duty/not due to own misconduct in light of the fact that the member demonstrated a lack of mental responsibility, and is therefore not responsible for his or her actions. However, a self-inflicted injury, not prompted by a serious suicidal intent, is a suicidal gesture, and is deemed to be incurred as the result of the member's own misconduct, unless evidence establishes otherwise that the member lacked mental responsibility. JAGMAN 0218, 0222(d)(1)(c).

Refer to page VI-4 of this handbook for a checklist to assist you in preparing LOD/misconduct determinations.

LINE OF DUTY/MISCONDUCT CHECKLIST

(JAGMAN 0212 - 0232)

| Is a LOD/misconduct determination required? |
|--|
| Possible permanent disability? |
| Physical inability to perform duties for 24 hours or more? |
| A PI must be conducted. |
| See Section II of this Handbook for considerations in carrying out a PI. |
| The results of the PI are reported to the GCMCA via the Personnel Casualty Report (MILPERSMAN 1770-010). |
| Ensure medical receives a copy of the PI. |
| If the CA determines this injury was incurred "in the line of duty, not due to misconduct," ensure medical record entries stating as such are made. |
| A command must convene a CI when: |
| The results of the PI indicate that the injury was incurred under circumstances which suggest a finding of "misconduct" might result. These circumstances include, but are not limited to, all cases in which the injury was incurred: |
| while the member was using illegal drugs; |
| while the member's blood alcohol content was of .10 percent by volume or greater. This does not preclude the convening of an investigation if the blood-alcohol percentage is lower than .10, if the circumstances so indicate; |
| as a result of a bona fide suicide attempt; and |
| while the member was acting recklessly or with willful neglect. |
| The results of the PI indicate that the injury was incurred under circumstances that suggest a finding of "not in line of duty" might result. |
| Was the servicemember in a desertion status at the time of injury? |
| Was the servicemember UA at the time of injury? |
| Was the servicemember in the Brig with a dishonorable discharge at the time of the injury? |

| Was the servicemember in jail as a result of a civilian felony conviction at the time of the injury? |
|--|
| There is a reasonable chance of permanent disability and the commanding officer considers the convening of an investigation essential to ensure an adequate official record is made concerning the circumstances surrounding the incident. |
| The injured member is in the Naval Reserve or the Marine Corps Reserve and the commanding officer considers an investigation essential to ensure an adequate official record is made concerning the circumstances surround the incident. |
| CI is necessary, the following information must be included in the final report. The erations contained in Section III of this Handbook also pertain. |
| Identifying data of all persons, military or civilian, killed or injured. |
| Name, sex, age. |
| Military grade or rate, regular or reserve, armed force, station or residence. |
| Experience/expertise, where relevant. |
| Civilian title, business or occupation, address. |
| Experience/expertise, where relevant. |
| All relevant records must be obtained, including: military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquest or medical examiners' reports, and pathological, histological, and toxicological studies. |
| Place of injury occurrence, the site and terrain, to include photographs, maps, charts, diagrams or other relevant exhibits. |
| Duty status of injured person: leave, liberty, unauthorized absence (UA), active duty, active duty for training, or inactive duty for training at time of injury. |
| Whether any UA status at time of injury materially interfered with his/her military duty. |
| Nature/extent of injuries, including description of body parts injured. |
| Extent of hospitalization. |
| Cost from any civilian medical facilities |

JAGMAN Investigations Handbook

0218.

Mental disease or defect. Psychiatric evaluation warranted?

Training. Formal/on the job. Adequacy. Engaged in tasks different from those in which trained. Engaged in tasks too difficult for skill level. Emergency responses/reaction time. Supervision (adequate/lax/absent). Design factors. Equipment's condition, working order. Operating unfamiliar equipment/controls. Operating equipment with controls that function differently than expected due to lack of standardization. Unable to reach all controls from his/her work station and see and hear all displays, signals, and communications. Provided insufficient support manuals. Using support equipment which was not clearly identified and likely to be confused with similar but noncompatible equipment. Environmental factors. Harmful dusts, fumes, gases without proper ventilation. Working in a hazardous environment without personal protective equipment or a line-tender. Unable to hear and see all communications and signals.

The CI must clearly document all facts leading up to and connected with the injury or death.

Some of the information to be addressed might include:

JAGMAN Investigations Handbook

Remember to consult other applicable checklists for information requirements. For example, if a sailor injured himself in a motor vehicle accident, the IO would also need to gather that information listed in JAGMAN A-2-u for inclusion in the final CI.

fitting clothes, no shirt, conventional eyeglasses vice safety glasses).

Improper clothing (leather heels, conventional shoes vice steel-toed shoes, loose-

SPECIAL CONSIDERATIONS IN DEATH CASES

The circumstances surrounding the death of naval personnel, or of civilian personnel at places under military control, may be recorded in a variety of ways, such as autopsy reports, battlefield reports, and medical reports. Investigations conducted pursuant to the JAGMAN may also focus on such deaths and may incorporate other official reports as enclosures. Since reports pertaining to deaths of military member are, by law, generally releasable to family members, and since the deceased cannot contribute to the investigation process, special considerations prevail in the investigation of death cases.

NOTE: NCIS must be notified per SECNAVINST 5430.107 series on any death case involving actual or suspected criminal conduct.

Time limitations. Investigating Officers should complete an administrative investigation concerning death cases within 20 days from the date of the death or its discovery. The CA may extend the investigation for good cause. The CA and subsequent reviewers have 20 days to review and endorse the investigation. If a command does not comply with these time limits, the command must comment on this fact in its endorsement of the investigation. JAGMAN 0225(e)

Preliminary Inquiry (PI). A PI should be conducted into the death of a member of the naval service or into the death of a civilian that occurs at a place under naval control. At the conclusion of the PI, the CA must determine which of the options listed in JAGMAN 0204 will be exercised, and report that decision to the next superior in the chain-of-command.

A command investigation under the JAGMAN will normally **not** be conducted if the PI shows that the death:

- (1) was the result of a previously know medical condition and the adequacy of military medical care is not reasonable in issue; or
 - (2) was the result of enemy action.

Limited Investigations. Where the death of a servicemember occurred at a location within the U.S. and not under military control, while the member was off-duty, and there is no discernable "nexus," or connection, between the circumstances of the death and the naval service, the command need only obtain a copy of the investigation conducted by civilian authorities and retain it as an internal report. JAGMAN 0226(c). The command shall document, in writing, the reasons for making the determination to conduct a limited investigation, attaching the enumerated reasons to the internal report.

Command Investigations (CI). A CI (or in some cases, a litigation-report investigation) will be conducted if the PI shows:

1. The case involves civilian or other non-naval personnel found dead aboard an activity under military control where the death was apparently caused by suicide or other unusual circumstances:

- 2. the circumstances surrounding the death places the adequacy of military medical care reasonably at issue;
- 3. there exists a probable "nexus," or connection, between the naval service and the circumstances of the death of a servicemember; or
- 4. it is unclear if enemy action caused the death, such as in possible "friendly-fire" incidents.

Line of Duty Determinations: A Line of Duty/Misconduct opinion shall be made in all death cases retroactive to 10 September 2001 and regardless of nexus to naval service, pursuant to the National Defense Authorization Act of Fiscal Year 2002 and NAVADMIN 065/03. (THIS INCLUDES SUICIDES). LOD determinations effect annuity calculations under the Uniformed Services Survivor Benefits Program. JAGMAN 0229(d).

SBP annuities are calculated as a percentage of the SBP base amount (normally either 35% or 55% of the base amount). When a servicemember's death is determined to be in the LOD, regardless of retirement eligibility, the SBP base is equal to retired pay as if the service member retired with 100% disability (this equals 75% of the member's base pay or high-36 pay. JAGMAN 0229(b). However, if the servicemember is determined to be not in the LOD, then the SBP eligibility and annuity calculations fall under the rules existing before the NDAA of FY 2002; that is, if the servicemember was ineligible for retirement at the time of death, SBP is inapplicable. If the servicemember was eligible for retirement at the time of death, then the SBP annuity would be paid to a qualified survivor, however, it will not be computed on the basis of a nominal total disability retirement. JAGMAN 0229(c).

All active duty death cases must be subject to at least a PI in accordance with JAGMAN 0203. The command conducting the PI will determine if the PI is sufficient to make a LOD determination or if a CI is required. If the command completing the investigation is not a GCMCA with an assigned staff judge advocate (SJA), the command will forward the PI/CI to the first GCMCA in the chain-of-command with an assigned SJA. The GCMCA with an assigned SJA will make the formal LOD determination, subject to a limited review by Commander, Navy Personnel Command if the determination is adverse. JAGMAN 0229(d).

Before making an adverse LOD determination in a death investigation, the GCMCA or his or her SJA shall afford a known potential SBP beneficiary the opportunity to review the report of investigation and provide relevant information to the GCMCA. The known potential SBP beneficiary will normally have 30 calendar days from receipt of the report of investigation to submit information to the GCMCA. JAGMAN 0229(d).

Independent Reviews. Prior to endorsement of an investigation that calls into question the deceased's conduct, the CA may wish the report to be reviewed to ensure thoroughness, accuracy of the findings, and fairness to the deceased member. The individual selected to conduct this review shall have no previous connection to the investigative process and must be outside the CA's immediate chain of command. To the extent possible, the reviewer should possess training,

experience, and background sufficient to allow critical analysis of the factual circumstances. The reviewer is not to act as the deceased's representative, but rather provide critical analysis from the perspective of the deceased, tempered by the reviewer's own experience, training, and education. If the reviewer believes comments are warranted, such comments shall be completed and provided to the CA within ten working days of the report's delivery to the reviewer. The CA is to consider any comments submitted by the reviewer and take any action deemed appropriate. The comments shall be appended to the investigative report. JAGMAN 0231.

Special routing of death cases. An advance copy of all death investigations, with the exception of only a PI or limited investigation, shall be provided to the cognizant Echelon II Commander after the first endorsement. The original report shall note the forwarding of the advance copy, and each subsequent endorser shall provide an advance copy of their endorsement to the Echelon II Commander. JAGMAN 0232.

COMMAND ENDORSEMENTS

COMMAND INVESTIGATIONS

Review and forwarding. Upon completing the investigative report, the IO submits the report to the CA, who reviews it and takes one of the following actions:

- 1. Returns the report to the IO for further inquiry or corrective action, noting any incomplete, ambiguous, or erroneous action of the IO;
- 2. determines that the investigation is of no interest to anyone outside the command and chooses to file the investigation, without further forwarding, as an internal report;
- 3. transmits the report by endorsement to the next appropriate superior officer, typically to the GCMCA over the CA. The CA's endorsement will set forth appropriate comments, recording approval or disapproval in whole or in part, of the investigation's proceedings, findings, opinions, and recommendations. In line of duty/misconduct investigations, the CA is required to specifically approve or disapprove the line of duty/misconduct opinion.

If the CA corrects, adds, or disapproves findings of fact, opinions, or recommendations, the following language would be used in the endorsement as appropriate;

| k | The finds of fact are hereby modified as follows: (modification) |
|----------|--|
| k | The following additional findings of fact are added: (numbers start after the last findings of fact in the basic investigation). |
| k | Opinion in the basic correspondence is not substantiated by the findings of fact because and is therefore disapproved (modified to read as follows:). |
| k | The following additional opinions are added: (numbers start after the last opinions in the basic investigation). |
| k | Recommendation is not appropriate for action at this command; however, a copy of this investigation is being furnished to for such action as deemed appropriate. |
| k | Additional recommendations: (numbers start after the last recommendation in the basic investigation). |

The action recommended in recommendation has been accomplished by

(has been forwarded to _____ for action; etc.).

The CA's endorsement must specifically indicate what corrective action, if any, is warranted and has been or will be taken. Whenever punitive or nonpunitive action is contemplated or taken as the result of the incident under inquiry, such action should be noted in the endorsement. JAGMAN 0209(f)(2). CA's can expect superior commanders to require subsequent reports on how lessons learned have been implemented; if administrative investigations are to be effective tools, "tenacious follow-up action is required."

Punitive letters, or copies of recommended drafts, shall be included as enclosures. Nonpunitive letters are *not* to be mentioned in endorsements or included as enclosures. JAGMAN 0209(f)(2)(d).

Routing the CI. Upon completion of the endorsement, the CA forwards the original investigative report through the chain-of-command to the GCMCA over the CA. **CI's are not routinely forwarded to JAG** (copies may be sent to OJAG, Code 15, if the investigation is a matter of potential interest to the JAG). The subject matter and facts found will dictate the exact routing of the report; for example, area coordinators may be included as via addresses if the investigation relates to an issue affecting their area coordination responsibilities.

One complete copy of the investigation should be forwarded with the original for each intermediate reviewing authority (additional copies are required in death cases). JAGMAN 0209(f)(3). Advance copies of the report of investigation shall be forwarded by the CA in the following cases:

- (1) For CI's involving injuries and deaths of naval personnel, or material damage to a ship, submarine, or Government property (excluding aircraft), advance copies are sent to Commander, Naval Safety Center. In aircraft mishap cases, copies of investigations are sent to the Naval Safety Center only upon request. JAGMAN 0209(f)(3)(c).
- (2) When the adequacy of medical care is reasonably in issue and which involve significant potential claims, permanent disability, or death, advance copies of the CI are sent to the Naval Inspector General, Chief, Bureau of Medicine and Surgery (two copies). JAGMAN 0210(f)(2)(a).

Retention of CI's. The CA must maintain a copy of all CI's for a minimum of two years after which it should be forwarded to a federal records storage facility for storage.

Release of CI's. The GCMCA to whom the CI is ultimately forwarded is the authority who decides whether release under the Freedom of Information Act or Privacy Act will be made.

LITIGATION-REPORT INVESTIGATIONS

Review and forwarding. Upon receiving the litigation-report investigation, the CA reviews the documents and takes one of the following actions:

- 1. Return the investigation to the supervisory judge advocate for further inquiry; or
- 2. endorse and forward the report. JAGMAN 0210(f)(1).

Unlike the endorsement of a CI, the CA may only make limited comments in endorsing litigation-report investigations. The CA may comment on those aspects of the report which bear on the administration or management of the command, including any corrective action taken. The CA shall *not* normally approve or disapprove of the findings of fact. JAGMAN 0210(f)(1)(a). The CA's endorsement must be marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT."

Routing the investigation. Upon completion of the endorsement, the CA forwards the original investigative report to the Judge Advocate General (Code 15), via the Staff Judge Advocate of the GCMCA in the chain of command. JAGMAN 0210(f)(2). One complete copy of the investigation should be forwarded with the original for the GCMCA. JAGMAN 0209(f)(3). Copies of the report are to be provided to superiors in the chain of command and to other commands which have a direct need to know. Dissemination of the report *shall not* otherwise be made without first consulting a judge advocate. JAGMAN 0210(f)(2).

Retention of litigation-report investigations. The original CA is required to retain a copy of the litigation-report investigation, kept in a file marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" and safeguard against improper disclosure. JAGMAN 0210(f). The JAGMAN does not prescribe a time period for retention; therefore, before destroying, consultation with a judge advocate or OJAG (Code 15) is advised.

Release of litigation-report investigations. For all litigation-report investigations, the Judge Advocate General retains release authority. Convening and reviewing authorities are **not authorized** to release litigation report investigations or their contents. JAGMAN 0210(f)(2), (h).

ARTICLE 31 RIGHTS

| Nai | me: | | | | | Kan | k/Rate: | | | Acti | vity: |
|-----|------------|--------------|--|--|--|---|---|--|---|---|----------------------|
| | | | Unit: | | | | | | | | • |
| Tel | ephone i | number: | | | | | | | | | |
| | opiioiio i | | | | | | | | | | |
| I | have | been | advised | that | I | may | be suspected and that: | of | the | offense(s) | of: |
| | | | | | | | | | | | |
| | [] | | ve the right | | | | | | | | |
| | [] | Any mart | | s I do | make | may b | e used as evidence | e agai | nst me | in trial by co | ourt- |
| | [] | cour lawy | nsel may b ver appoint | e a cived to ac | vilian et as r | lawyei ny cour | yer counsel prior to retained by me a sel without cost to | t my me, o | own ex | xpense, a mil | itary |
| | [] | | ve the rigiver present | | | | tained civilian law v. | yer a | nd/or a | appointed mil | itary |
| | [] | • | | _ | | | erview at any time. | | | | |
| | | | | | WAl | IVER (| OF RIGHTS | | | | |
| | [] | | fully under I expres I expres me or a question I expres intervie This ac me, and | stand the saly desired to saly do a militating. saly do w. knowled | hem, sire to not of not of the column of the | and that o waive o make a desire to wyer ap desire to ent and y promi | that I have read the :: my right to remain a statement. consult with either pointed as my cource have such a lawy waiver of rights is ses or threats having been used again | silent. er a ci nsel w er pre made g bee | vilian l ithout o esent w freely n made | awyer retaine cost to me pricith me during and voluntaril | d by or to this y by |
| (W | itness sig | gnature/o | date) | | | (Me | ember signature/date | e) | | | |
| Un | derstand | ing my r | ights under | U.C.N | 1.J. A | article 3 | 1, I wish to make th | e foll | owing | statement: | |
| | | | | | | | | | | | |

WARNING ADVISEMENT ABOUT STATEMENTS REGARDING ORIGIN OF DISEASE OR INJURY

COMPLIANCE WITH SECTION 0212 OF THE JAG MANUAL

| I, | have been advised that: |
|---------------------------|---|
| discovered on misconduct; | questions have arisen concerning whether or not my injury/disease, sustained or 20, was incurred in the line of duty or as a result of my own |
| • | in the event such injury/disease is determined to have been incurred not in the line of sult of my own misconduct, I will be required to serve for an additional period beyond istment to make up for the duty time lost; |
| - | lost duty time will not count as creditable service for pay entitlement purposes; |
| - day immediate | I may be required for forfeit some pay (where absence from duty in excess of one ely follows intemperate use of liquor or habit-forming drugs); |
| | if I am permanently disabled and that disability is determined to have been the result or was incurred not in the line of duty, I may be barred from receiving disability pay as well as veteran's benefits; |
| - aggravation of | I may <i>not</i> be required to give a statement relating to the origin, incidence, or any disease/injury that I may have. |
| I do/do not des | sire to submit a statement. |
| | |
| Date | Signature |
| Witness Signa | ture |
| Witness Name | /Rate/Grade/Unit/Telephone Number |
| | |

09/09

PRIVACY ACT STATEMENT

| Name: | Rank/Rate: |
|--|--|
| Activity: | _ Unit: |
| Telephone number: | |
| Today,, 20, I acknowle guidelines of the Privacy Act. | edge that I have received the following advisement under the |
| 93-579) which requires that Federal age | e with the provisions of the Privacy Act of 1974 (Public Law encies must inform individuals who are requested to furnish s to certain facts regarding the information requested below. |
| - · · · · · · · · · · · · · · · · · · · | 5 U.S.C. § 301. Specify, if possible, other statutory applicable to the matter under investigation. |
| Authorities applicable to various invest | igations: |
| a. Requirement that enlisted member or alcohol. 10 U.S.C. § 972. | rs make up time lost due to misconduct or abuse of drugs |
| b. Retirement or separation for phys | ical disability. 10 U.S.C. §§ 1201-1221. |
| c. Manual for Courts-Martial. | |
| d. Uniform Code of Military Justice. 940. | . 10 U.S.C. §§ 815, 832, 869, 873, 935, 936, and 938- |
| e. Military Claims Act. 10 U.S.C. § | 2733. |
| f. Foreign Claims Act. 10 U.S.C. §§ | § 2734, 2734a, 2734b. |
| g. Emergency payment of claims. 10 | 0 U.S.C. § 2736. |
| h. Non-Scope claims. 10 U.S.C. § 2 | 737. |
| i. Duties of Secretary of the Navy. 1 | 10 U.S.C. § 5013. |

1. Duties of the Commandant of the Marine Corps. 10 U.S.C. § 5043.

5150.

j. Duties of the Office Chief of Naval Operations. 10 U.S.C. §§ 5031-5033, 5035-5036.

k. Duties of the Bureaus and Offices of the Department of the Navy and duties of the Judge Advocate General. 10 U.S.C. §§ 5021-5024, 5131-5133, 5135, 5137-38, 5141-5142a, 5148-

- m. Reservists' disability and death benefits. 10 U.S.C. § 1074.
- n. Requirement of exemplary conduct. 10 U.S.C. § 5947.
- o. Promotion of accident and occupational safety by Secretary of the Navy. 10 U.S.C. § 7205.
 - p. Admiralty claims. 10 U.S.C. § 7622-7623.
 - q. Federal Tort Claims Act. 28 U.S.C. §§ 1346, 2671-2680.
 - r. Financial liability of accountable officers. 31 U.S.C. §§ 3521, 3527, 3531.
 - s. Military Personnel and Civilian Employees' Claims Act of 1964. 31 U.S.C. §§ 240-243.
 - t. Federal Claim Collection Acts. 31 U.S.C. §§ 3521, 3526, 3529, 3701-3702, 3717-3718.
- u. Forfeiture of pay for time lost due to incapacitation caused by alcohol or drug use. 37 U.S.C. § 802.
 - v. Eligibility for certain veterans' benefits. 38 U.S.C. § 105.
 - w. Postal claims. 39 U.S.C. §§ 406, 2601.
 - x. Medical Care Recovery Act. 42 U.S.C. §§ 2651-2653.
 - y. Public Vessels Act. 46 U.S.C. §§ 781-790.
 - z. Suits in Admiralty Act. 46 U.S.C. §§ 741-752.
 - aa. Admiralty Extension Act. 46 U.S.C. § 740.
 - bb. Transportation Safety Act. 49 U.S.C. § 1901.
- 2. **PRINCIPAL PURPOSE(S)**: The information which will be solicited is intended principally for the following purpose(s):

[Specify each purpose listed below for which the record of the particular investigation could reasonably be used:]

a. Determinations on the status of personnel regarding entitlements to pay during disability, disability benefits, severance pay, retirement pay, increases of pay for longevity, survivor's benefits, involuntary extensions of enlistments, dates of expiration of active obligated service, and accrual of annual leave.

- b. Determinations on disciplinary or punitive action.
- c. Determinations on liability of personnel for losses of, or damage to, public funds or property.
 - d. Evaluation of petitions, grievances, and complaints.
- e. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.
 - f. Other determinations, as required, in the course of naval administration.
 - g. Public information releases.
- h. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.
- 3. **ROUTINE USES**: In addition to being used within the Departments of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Department of Veterans Affairs for use in determinations concerning entitlement to veterans' and survivors' benefits; to Servicemembers' Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

4. MANDATORY/VOLUNTARY DISCLOSURE - CONSEQUENCES OF REFUSING TO DISCLOSE:

- a. Where disclosure is voluntary, <u>as usually is the case</u>, use one of the following statements, or a combination of the following statements, as applicable:
- (1) Where an individual is a subject of an investigation for purpose 2a or 2b, above: "Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determinations] [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative

record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possibly could prevent the investigation from obtaining evidence, which may be needed to support a favorable determination."

- (2) Where an individual is a subject of an investigation for purpose 2c, above: "Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held liable for repayment of the Government's loss would be based on the other evidence in the investigative record."
- (3) Where the individual is a claimant or potential claimant in an investigation for purpose 2e, above: "Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have made or may make against the Government as a result of the incident under investigation."
- (4) Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purpose 2e, above: "Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in a Naval medical facilities."
- (5) In any other case: "Disclosure is voluntary, and if you do not provide the requested information, any determinations or evaluations made as a result of the investigation will be made on the basis of the evidence that is contained in the investigative record."
- b. In the <u>unusual</u> situation where a specific statute, regulation, or lawful order of competent authority requires an individual to disclose particular information for the Government's benefit in furtherance of a Government interest, policy, or objective, the following statement should be used: "Disclosure of (specify the particular relevant information required) is mandatory under (cite the statute, regulation, or order), and refusal to disclose that information will subject you to possible disciplinary or criminal proceedings. Disclosure of any other information requested is voluntary, (and there will be no adverse effects if you elect not to disclose it) (but election not to disclose the information could"

| (Signature and date) | |
|----------------------|--|

AIRCRAFT ACCIDENTS

(JAGMAN A-2-n)

NOTE: PARTICIPATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB) OR THE FEDERAL AVIATION AGENCY (FAA) IS COVERED BY OPNAVINST 3750.15 (SERIES). REMEMBER, THE JAGMAN IO MUST MAINTAIN AND PROTECT THE PRIVILEGED NATURE OF THE AIRCRAFT MISHAP INVESTIGATION (AMI) AND SHALL NOT RELY UPON THE AMI NOR OBTAIN ANY EVIDENCE FROM THE AMI NOR DISCUSS THE CASE WITH THE AMI INVESTIGATOR(S). SEE JAGMAN A-2-n.

| If a possibility exists that witnesses will testify before the AMI and the JAGMAN investigation, the JAGMAN IO shall explain to such witnesses the reasons for the apparent |
|--|
| duplication of effort. This is particularly important with non-military witnesses. The explanation shall cover: |
| The different objectives of the two investigations; |
| The reasons why procedures vary; |
| The need to preserve the privileged nature of the aircraft accident safety investigation; and |
| The fact that since neither command nor administrative action may alter the privileged character of statements provided to the aircraft accident safety investigation, such statements will not be available to the JAGMAN investigation from any official source. |
| Identity of the pilot(s), co-pilot(s), naval flight officer(s) (NFO), air crew and any passengers. |
| Background, history, training, experience of the pilot(s), co-pilot(s), naval flight officer(s), and air crew(s). |
| Their degree of familiarity with the type of aircraft involved. |
| The military or civilian status of all personnel on board, e.g., Regular, Reserve, or retired; active duty, inactive duty, inactive duty training; TAD, TDY, leave, liberty. |
| Type, model, and bureau number of the aircraft involved. |
| Identification of the squadron, detachment, or unit authorizing the fight and the official who authorized the flight. |
| If a privately-owned or rented aircraft was involved, identify the owner, authorization for the |

| flight, existence of private insurance, and extent of damage. |
|---|
| The identity of all individuals who were killed, injured, or who suffered property damage as a result of the mishap, including: |
| Name, age, address (home and work), telephone number, occupation, injured and/or deceased; and |
| A complete description of how injuries occurred (refer to JAGMAN, Chapter II, Part F, for special considerations in death cases). |
| Sociological, psychological, and human factors related to the accident, including: |
| Potential stress factors, fatigue, use of medication, or intoxication. |
| Type, duration, and purpose of the flight, briefing of the pilot, and other pertinent information regarding the particular flight, including: |
| The use of night vision goggles; or |
| Other mission-specific factors relevant to aircraft or air crew equipment or performance. |
| Weather conditions throughout the flight. |
| Preflight history of the aircraft. |
| Compliance or noncompliance with pertinent technical directives, including: |
| Flight hours since the last overhaul; |
| Discrepancies noted on recent "Yellow Sheets"; VIDS/MAF Forms; OPNAVINST 4790.2 [Series]; and |
| Flight hours since the last intermediate check. |
| Description of flight path and maneuvers of the aircraft during the flight, including manner of descent and impact. |
| Positions of external control surfaces (landing gear, canopy, etc.) during flight. |
| Presence, condition, and use of safety, communication, escape, and survival equipment. |
| Post-accident examination of the aircraft |

| Detailed description of all damage to the aircraft, including: |
|--|
| Wreckage diagrams, disassembly and inspection reports, wreckage photographs, and data on engine, fuselage, and control surfaces. |
| Examination of the scene of the accident, to include: |
| It's precise location; |
| A description of the terrain; and |
| A complete listing and cost of damage or destroyed Government and non-Government property. |
| Description of rescue operation employed, effectiveness, and any difficulties encountered. |
| All instructions in effect at the time of the accident concerning procedures relating to this particular flight, including applicable local an regional flight rules governing the flight and copies of air charts in effect and in use. |
| Performance data on aircraft in question under prevailing wind, weather, and temperature conditions. |
| In the case of deaths resulting from the accident, the precise medical cause thereof (substantiated by medical records). |
| Cause, nature, and extent of any injuries, including line of duty/misconduct determinations if required. |
| Involvement of other aircraft, if any. |
| The roles of supervisory, support, and controlling personnel. |
| When the evidence concerning the accident is sufficient to do so, an opinion or opinions as to the cause or the causes of the accident. |
| When the evidence is not sufficient to form an opinion or opinions as to the cause or causes of the accident, a description of those factors, if any, which in the opinion of the investigator(s) substantially contributed to the accident. |

MOTOR VEHICLE ACCIDENT CHECKLIST

(JAGMAN A-2-u)

| Vehicle(s) identified, including vehicle identification number (VIN), license plate number, make, model, year, and color. |
|---|
| Identify the driver(s) and owner(s), to include the name, age, addresses (home and work), and telephone numbers. |
| For military members indicate their military status at the time of the accident (e.g., active duty, TAD, leave, liberty, etc.), their grade/rank, and the name, address, location and Unit Identification Code (UIC) of their unit. |
| If an individual died or is incapacitated as a result of the accident, provide similar identifying information for the next-of-kin or legal representative. |
| If a Government vehicle was involved, identify the unit to which the vehicle was assigned, and the individual at the unit who authorized use of the vehicle, and its authorized purpose. |
| Private vehicle involved: name, address, policy numbers, and telephone numbers of the insurer of the vehicle, including the amount and type of insurance carried. |
| Time of the accident. |
| Light and weather conditions. |
| Effect on driving conditions. |
| Location of accident (e.g., highway number, direction of travel, milepost number, street name, intersection). |
| Road and terrain factors, road characteristics. |
| Any obstructions to the driver's vision. |
| Speed of the vehicles involved as evidenced by testimony of witnesses, skid marks, condition of road, and the damage to the vehicles. |
| Actions of other vehicles involved in the accident, including any part played by them in creating the conditions that resulted in the accident. |
| Traffic conditions at the scene and their effect on the accident. |
| Traffic laws and regulations in force pertinent to the accident, including traffic safety devices, signs, and markings (e.g., school zone, no passing zone, railroad crossing, reduced speed limit). |

| Any regulations to use safety devices installed in the vehicles (e.g., seat belts, child carriers). |
|---|
| Copies of statues, ordinances, or regulations should be made an enclosure. |
| Mechanical condition of the vehicles involved. |
| If a mechanical defect or condition (e.g., faulty or worn brakes/tires), is determined to have contributed to the accident, include the relevant maintenance history of the vehicle. |
| Physical condition of the driver(s), including intoxication, fatigue, use of medications or drugs, or other medical conditions, number of hours of sleep prior to the accident, number of hours worked. |
| The amount of alcohol consumed, results of any blood alcohol or other test for intoxication. |
| Any medications or drugs taken prior to the accident. |
| Any unusual stress or abnormal condition that might have affected the driver's alertness. |
| The opinion section should address any reasonable inferences that may be drawn from these facts relevant to the cause of the accident. |
| Driving experience of the driver(s) both generally and in the type of vehicles being driven, to include the state which licensed the driver. |
| Any previous loss of driving privileges and driving-related convictions. |
| Safety devices installed and whether they were being used at the time of the accident. |
| Conduct of passenger(s). Opinions may include reasonable inferences on the effect of any passenger's conduct on the driver(s). |
| Facts and opinions relevant to knowledge by any passenger of any impairment of the driver at the time the passenger entered or had a reasonable opportunity to leave the vehicle. |
| Damage to vehicle fully described (including photos, if available) and repair costs. |
| Damage to other property (including photos, if available) and repair costs. |
| Nature and extent of personal injuries and medical cost, documented by relevant medical records, bills, and receipts. |

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NOTE: Motor vehicle accidents involving Government vehicles almost always involve the potential for claims for or against the Government. In such cases, refer to the "Claims" Checklist in this handbook and include all the facts and opinions required.

Pertinent recommendations on matters of safety procedures.

EXPLOSIONS CHECKLIST

(JAGMAN A-2-t)

| Date, time, and location of the explosion by compartment name and number. |
|---|
| Type of explosion. |
| Kind and quantity of the materials, gases, etc., that were involved. |
| Measurable time intervals, if any, between explosions. |
| Existence of barricades and protective gear and the effect of the explosion on them. |
| Existence of any natural obstructions such as a hill, forest, or other object intervening between the site of the explosion and the areas affected. |
| Description of any loss or damaged to Government and private property. |
| Estimated dollar amount needed to replace or repair the loss or damage to property. |
| Range and extent of damage as indicated by maps or photographs showing: |
| Radius of complete destruction; |
| Radius of structural damage beyond economical; |
| Radius of repairable structural damage; |
| Radius of general glass breakage; |
| Distances that significant missiles were projected, including kind and weight; |
| Distance between locations, if explosions occurred at more than one location; and |
| Distance between ships and other vessels or structures affected and distances to nearby ships or structures not affected. |
| Approximate shape and dimensions of crater, if any, including depth and kind. |
| Weather and atmospheric conditions and their effect on shock waves. |
| Personnel involved and the extent of the involvement. |
| Personnel qualifications in terms of the PQS system or other required safety qualifications. |

the cognizant trial service office or staff judge advocate.

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STRANDING OF A SHIP CHECKLIST

(JAGMAN A-2-p)

NOTE: THE STRANDING OF A NAVY SHIP, UNLESS INSIGNIFICANT DAMAGE RESULTS, IS USUALLY A MAJOR INCIDENT. A COURT OF INQUIRY WILL NORMALLY BE CONVENED UNLESS OTHERWISE DIRECTED BY THE COGNIZANT GCMCA.

| Tactical situation. |
|--|
| Pertinent logs, charts, orders, regulations. |
| Condition of the sea and weather. |
| Light conditions, visibility. |
| Rate and direction of the tidal stream. |
| Time of tide. |
| Any other factors involving natural elements. |
| Navigational factors. |
| Sailing directions/coast pilot. |
| Fleet guide. |
| Track laid out/DR plot indicated/fixes plotted/track projected. |
| Notices to mariners. |
| Compass errors/application. |
| Depth of water and type of bottom. |
| Navigation reference points coordinated (radar/visual, points logged/plotting team coordinated). |

| Material factors. |
|---|
| Radar, fathometer, compasses, ship's depth indicators, ship's speed log. |
| Alidades, bearing circles, peroruses, periscopes, bearing repeaters. |
| Ship's draft/submerged keel depth |
| Ship's anchor. |
| Ship's control system. |
| Navigation fix errors and navigation reset errors. |
| Ship's course and speed. |
| Mechanical or electronic deficiency or failure of the ship. |
| Ascertain the cause and responsibility for the stranding and resulting damage. |
| Was the proper chart provided by the Department of the Navy used? |
| Was the position of the ship at the last favorable opportunity to avoid the casualty accurately determined? |
| If not, when was it last accurately ascertained? |
| Steps take during the time land was in sight to correct the ship's course and speed. |
| Personnel factors (posted/qualified): CDO, OOD , diving officer, navigator, piloting officer, fathometer operator, lookouts, helmsman, planes man, bearing takers, CIC team, leadsman, line handlers, local pilot. |
| Location of conning officer. |
| Personnel qualified in accordance with PQS requirements for the systems operation and maintenance. |
| Communications factors: Radio, telephone, IC systems, oral (audibility/understanding). |
| Assistance factors (tugs). |

COLLISION CHECKLIST

(JAGMAN A-2-q)

NOTE: ALL VESSEL COLLISIONS AND ALLISIONS, A VESSEL AND FIXED OBJECT, ARE ADMINARLTY INCIDENTS. CONSULT CHAPTER XII OF JAGMAN AND OJAG (CODE 11) FOR REQUIRED INVESTIGATIONS AND GUIDANCE.

| Tactic | al situation existing at the time of the collision. |
|------------|---|
| Person | nnel manning and qualifications: |
| | CDO, OOD, diving officer, helmsman, lookouts; |
| | CIC team (sonar team, fire control tracking party and navigation team); and |
| | phone talkers. |
| Locati | on of conning officer. |
| Locati | on of commanding officer. |
| Materi | ial factors: |
| | Radar, sonar, navigational lights, periscopes, compasses, ship control systems; |
| | ballast, blow and vent systems; and |
| | UNREP special equipment. |
| Comm | nunication factors. |
| | Radio, telephone, oral, signal systems. |
| | Interferences (e.g., background noise level). |
| Rules- | of-the-road factors. |
| | Operating area factors. |
| | Adherence to op area boundaries. |
| | Existence of safety lanes. |
| | Depth constraints (depth separation, depth changes, out-of-layer operations). |

navigation team properly briefed.

ACCIDENTAL OR INTENTIONAL FLOODING OF A SHIP CHECKLIST $({\sf JAGMAN~A\text{-}2\text{-}r})$

| Is flooding "significant" enough to document? |
|--|
| Location of flooding (compartment noun name and number). |
| Date and time of flooding. |
| Type of flooding (e.g., fresh or salt water, oil, JP-5, etc.). |
| Source of flooding (internal or external). |
| Pipe rupture or valve failure. |
| Tank rupture/hull rupture/shaft seal failure. |
| Open to sea through designed hull penetration. |
| Other. |
| Flooding detection method. |
| Time duty emergency party called away, general quarters sounded. |
| Response time. |
| Dewatering equipment used (effective, available, operative). |
| Time flooding was stopped or brought under control. |
| Time required to dewater. |
| Time space was last inspected prior to flooding. |
| Compartments flooded and rate of flooding. |
| Amount of flooding (effect on list, trim or depth control). |
| Draft forward and aft and list of ship before and after damage. |
| General distribution and amount of variable weights before damage. |

Opinion on whether the occurrence of a similar type of flooding is possible on a similar ship.

FIRES CHECKLIST

(JAGMAN A-2-s)

NOTE: IF THE INVESTIGATED MISHAP IS A FIRE OF UNKNOWN ORIGIN AFFECTING DON PERSONNEL OR PROPERTY UNDER NAVY/MARINE CORPS CONTROL, ANY INVESTIGATION SHALL BE COORDINATED WITH NCIS.

| Is fire "significant" enough to document? |
|--|
| Date, time and location of fire, (compartment noun name and number). |
| Class of fire (A, B, C, D). |
| Time fire detected. |
| Means of detection. |
| Time fire started. |
| Time fire reported. |
| Time fire alarm sounded. |
| Time fire located. |
| Time started fighting fire. |
| Time general quarters sounded or fire party called away. |
| Time assistance was requested. |
| Time assistance arrived. |
| Time boundaries set. |
| Time fire extinguished. |
| Time reflash watch set. |
| Fire did/did not reflash. |
| Extinguishing agents used (indicate effectiveness). |
| Fire main water (submarines: trim/drain system water). |

| Light water, foam (portable/installed), C02 (portable/installed), PKP, Steam smothering, flooding, other. |
|--|
| Extinguishing equipment (indicate availability and operability). |
| Pumps (portable/installed) size and quantity. |
| Nozzles/applicators (LC and HC). |
| Foam maker, vehicles, educators, type and size of hoses, other. |
| Firefighting organization used. |
| Nucleus fire party. |
| Repair party (condition I or II watches). |
| Inport fire party. |
| Outside assistance (explain). |
| Fire party/repair locker personnel assigned per appropriate publications, ships organization and regulations manual, battle bill, etc. |
| Number of personnel responding and their level of fire-fighting and damage control training. |
| Personnel duties and responsibilities. Assigned in writing? |
| Fire/repair locker organization charts properly maintained? |
| Damage control system diagrams up to date and available for use? |
| System of communications. Communications effectively established between control stations? |
| Protective equipment used (indicate details and assessments of availability, operability, and effectiveness). |
| OBAs, EAB masks, fire suits, boots, gloves, helmets, other. |
| Alarm system. |
| CO2 flooding high temperature other |

| How it spread. |
|--|
| Through hot deck/bulkhead. |
| Through hole in deck/bulkhead. |
| By explosion (type). |
| Through vent ducts. |
| By liquid flow. |
| By wind. |
| Electric power in area. |
| Jettison bill (current, used). |
| If ship underway, course changes (snorkeling, surfaced). |
| Automatic vent closures. |
| Magazines flooded. |
| Operational problems. |
| OBAs/canisters effective, sufficient number. |
| EABs effective. |
| Sufficient water and pressure. |
| Flooding problems. |
| Drainage problems (installed/portable). |
| Lighting (explain). |
| Adequate equipment readily available. |
| Adequate intra-ship communications. |
| Other (explain). |

| Material discrepancies of any equipment used. |
|--|
| Determine all heat/ignition sources possible then eliminate those that are improbable. |
| Operating personnel qualified in accordance with PQS requirements for the systems operation and maintenance. |
| Identity of personnel that were injured or killed (with full description of injuries, medical records, autopsy reports). |
| Description of physical effects of the fire. |
| Include photographs or diagrams to document range and extent of damage. |
| Date of last inspection of involved spaces with any noted discrepancies. |
| Ship's location at time of fire. |
| Ship's condition of readiness. |
| Effect on ship's ability to carry out its mission. |
| Estimated dollar amount of damage or repairs required. |
| Overall assessment of effectiveness of fire/repair locker organization and leadership. |
| Opinion on the cause of fire and the factors that contributed to the spread of the fire. |
| Opinion on whether the occurrence of a similar type of fire is possible on a similar ship. |
| |

LOSS OR EXCESS OF GOVERNMENT FUNDS OR PROPERTY CHECKLIST (JAGMAN A-2-v)

NOTE ON LOSS OF FUNDS: CHAPTER 6, SECTION 0607, DEPARTMENT OF DEFENSE FINANCIAL MANAGEMENT REGULATION (DOD 7000.14-R), VOLUME 5, "DISBURSING POLICY AND PROCEDURES," PROVIDES SPECIFIC PROCEDURES, FINDINGS AND RECOMMENDATIONS FOR INVESTIGATION OF MAJOR LOSSES OF FUNDS DUE TO PHYSICAL LOSS, OR ILLEGAL, INCORRECT, OR IMPROPER PAYMENT. COMMAND INVESTIGATIONS APPOINTED UNDER THE JAGMAN ARE USED IN THE CASE OF MAJOR LOSSES OF FUNDS, DEFINED AS THOSE LOSSES OF \$750.00 OR MORE OR ANY PHYSICAL LOSS WHERE THERE IS EVIDENCE OF FRAUD WITHIN THE ACCOUNTING FUNCTION, REGARDLESS OF THE DOLLAR AMOUNT.

NOTE ON LOSS OF PROPERTY: FOR LOSSES OF GOVERNMENT PROPERTY, THE COMMAND MAY USE A SURVEY PROCEDURE UNDER APPLICABLE NAVY OR MARINE CORPS REGULATIONS IN LIEU OF A JAGMAN INVESTIGATION. THE FINANCIAL LIABILITY INVESTIGATION OF PROPERTY LOSS (DD FORM 200) MEETS THE INVESTIGATIVE REQUIREMENTS IN MOST SITUATIONS.

| Any a | countable individual must receive the special notice contained in JAGMAN A-2-v(e). |
|-------------|---|
| | items were lost or found in excess and the exact dollar value of the loss or excess, e.g., ty, vouchers, cash, and so forth. |
| The na | ature of the loss or excess (inventory gain or loss, cash shortage, or overage, etc.). |
| In case | es of loss of funds, whether the loss was |
| | loss of proceeds of sale of Government property; or |
| | physical loss of funds (e.g, embezzlement or fraudulent acts of subordinate finance personnel); or |
| | result of illegal or unproper payment (e.g., payments on forged checks or vouchers). |
| How t | he loss or excess is being carried in the command's accounts. |
| Identit | ry and position of the accountable officer. |
| | Identity and position of any other person who had custody of the funds or property. |
| | The general reputation of the accountable individuals for honesty and care in the handling and safeguarding of funds or property entrusted to them. |

Opinion as to cause of irregularity, or if cause cannot be determined, most likely cause.

for financial liability under Section 0607, Chapter 6, DOD 7000.14-R.

An opinion whether the loss or excess was proximately caused by the fault or negligence of any accountable individual or by an act of a non-accountable individual that can be the basis

CLAIMS FOR OR AGAINST THE GOVERNMENT CHECKLIST (JAGMAN A-2-m)

NOTE: CA'S SHOULD CONSULT WITH THE COGNIZANT JUDGE ADVOCATE REGARDING THE TYPE OF INVESTIGATION TO CONVENE IN ANY CASE IN WHICH THERE IS POSSIBILITY OF A CLAIM FOR OR AGAINST THE GOVERNMENT.

| The identity of individuals involved, including name, rank/grade, unit, age, address (home and work), telephone number, occupation. |
|--|
| How they were involved? |
| Killed as a result of the incident (identifying information for the next-of-kin or legal representative must be provided). |
| Injured party. |
| Owner of property damaged. |
| Military member whose acts or omissions are alleged to have caused the harm. |
| Witness. |
| Information on how those involved may be located. |
| Permanent address that will be accurate for at least 5 years after the accident. |
| Indicate each individual's status. |
| Military: Regular or Reserve, on active duty, TAD, leave, liberty, etc., at the time of the incident. |
| Civilians: Federal employee, personal services contractor employed by an independent contractor, etc. |
| If maintenance or training is involved, identify the individual responsible for the maintenance or training issue. |
| Date, time, and place of incident, including a full description of location, terrain, weather light conditions, obstructions, and photographs of the site. |
| Nature of the claim (e.g., wrongful death, personal injuries, property damage). |

| A factua | al description of how the individual(s) was injured, |
|---------------|---|
| | What equipment was being used. |
| | Who was operating the equipment. |
| | Who was supervising (or should have been supervising). |
| | Whether equipment failed or was operated incorrectly. |
| | If equipment failure, the maintenance history of the equipment. |
| If the in | ijury occurred on Government property. |
| | The condition of the property. |
| | Who is responsible for the property's upkeep. |
| | Authority for the injured party to be present on Government property. |
| The nat | ure and extent of personal injuries. |
| | Amount of medical, dental, and hospital expenses incurred, supported by itemized bills or receipts for payment. |
| Nature a | and extent of treatment. |
| | Number of days hospitalized. |
| | Name and address of all treating hospitals and medical facilities. |
| | Name(s) and addresses of all treating physicians or other care givers. |
| | Extent and nature of all follow-on or outpatient care. |
| | Prognosis. |
| | Degree of disability, if any (total, partial permanent, partial nonpermanent). |
| | Necessity for future treatment and estimated costs. |

Original purchase price.

Salvage value of property.

Date of purchase.

| Government property damaged. |
|---|
| Estimates or bills of repair and receipts. |
| Original purchase price. |
| Date of purchase. |
| Salvage value of property. |
| If no damage, so state. |
| Whether the claimant has insurance for this type of damage or injury. |
| Insurance company. |
| Policy number. |
| Policy provisions relevant to this claim or incident. |
| Extent of coverage and limits on liability. |
| Whether a claim has been or will be made against the insurance carrier, the status of any such claim. |
| Names and addresses of other owners, if claimant is not the sole owner of the property. |
| Existence of any police or other investigative report, name and addresses of investigating officer and unit, custodian of original investigation (provide a copy of any police report as an enclosure). |
| Whether civilian or military criminal charges were filed. |
| Jurisdiction in which they were filed. |
| Status or final disposition of those charges. |
| Existence of any law, regulation, or order relevant to the incident and whether it was violated. |
| If a stray animal was involved, whether the jurisdiction has an "open range" law (attach a copy as an enclosure). |
| An opinion whether any military personnel involved were acting in the scope of their |

| employment at the time of the incident. |
|---|
| An opinion regarding the cause(s) of the incident. If the facts are insufficient to form an opinion regarding cause(s), indicate factors which significantly contributed to the incident. |
| An opinion regarding fault or negligence. |
| An opinion whether a claim is likely to be filed, the amount likely to be claimed, and names and addresses of any potential claimants and their legal representatives. |
| An opinion whether a claim should be filed by the Government for personal injuries to its employees or property damage. |
| Sonic boom/jet noise/artillery noise: |
| Detailed description of the alleged damage; |
| Photographs of the allegedly damaged building or structure involved, including significant details of construction, size of rooms, age, and general state of repair; |
| Detailed examination and description of any alleged plaster damage; |
| Existence or absence of glass damage in the allegedly damaged building or structure and whether any other glass damage resulting from the incident was reported and verified; |
| Whether windows and doors were open or shut at the time of the boom; |
| Whether any loose objects, such as dishes, glassware, or trinkets inside the building or structure were moved as the result of the boom; |
| Existence or absence of similar damage to other buildings in the immediate neighborhood; |
| Type of surrounding community development, type of construction, and density of buildings or structures in the immediate area, and so forth; |
| Occurrence or absence of seismic disturbances registered in the locality at the time involved; |
| Other potential sources of damage, such as heavy truck or rail traffic, explosions or earthquakes, and their distance and direction in relation to claimant's building or structure; |
| Any unusual weather or climatic conditions that may have affected the building or |

| structure: |
|--|
| Complete physical description of the aircraft alleged to have caused the damage, including markings, whether jet or propeller driven, and any other distinctive characteristics; |
| Full description of the approximate altitude, maneuvers, speed, direction of flight, time of day, date, formation, and number of aircraft; |
| Any complaints of noise or sonic booms received by any duty office which coincides with the alleged damage; and |
| Authorization, description of flight, aircraft involved, applicable charts, and air controller transcripts or audiotapes of aircraft in the vicinity of the alleged damage. |

HEALTH CARE INCIDENTS CHECKLIST

(JAGMAN A-2-x)

NOTE: INVESTIGATIONS UNDER JAGMAN A-2-x ARE SEPARATE FROM ANY QUALITY ASSURANCE INVESTIGATION CONDUCTED BY THE STAFF OF A MILITARY TREATMENT FACILITY SOLELY FOR QUALITY ASSURANCE PURPOSES.

| Comprehensive chronology and description of all relevant facts. |
|---|
| Identification of all involved health care providers, including: |
| Credentials (education, training, and experience). |
| Status (trainee or staff; Government employee or contractor). |
| Role (attending, consulting, supervision). |
| Full identification of the staff physician responsible for the patient's care at the time of the incident. |
| If maintenance of equipment or training of personnel is involved, identify the individual(s responsible for the maintenance or training at issue. |
| Patient information. |
| Name, date of birth, age, sex, address, phone number, marital status, dependents occupation. |
| Medical history. |
| Condition immediately prior to incident. |
| Current condition. |
| Nature and extent of injuries alleged to have occurred. |
| Additional treatment required. |
| Prognosis. |
| Degree of disability. |

| 8 | , <u>8</u> , -y _F |
|-----------|--|
| - | pecial studies must be retrospectively reviewed to assess whether the original retations were accurate. |
| | Retrospective reviews must be structured as "blind" reviews, e.g., the reviewer should not be aware of the previous interpretation. |
| | A summary containing the name and credentials of the person conducting the retrospective review and that person's findings must be included with the investigation. The summary should not be signed by the reviewer. |
| Copie | s of all relevant documents. |
| | MTF staff bylaws. |
| | MTF policies, procedures, and protocols (clinical/surgical, nursing, and ancillary services such as the laboratory or pharmacy, and health care administrative policies) in effect at the time of the incident. |
| | All relevant logbook entries pertaining to the patient maintained by labs/clinics/offices (e.g., emergency room logs reflecting arrival/departure times, ambulance log book/trip sheets/rescue service reports, and centralized appointment registers/printouts or pharmacy history printouts. |
| | All patient information pamphlets, brochures, or sheets which were provided to the patient. |
| | In cases involving contract providers, a copy of the contract. |
| | |

| In cases involving possible equipment/device failure. |
|--|
| Photographs of equipment/devices taken before the equipment/device is moved, used again, altered, tested, or repaired. Photographs must be annotated to reflect the time, date and identity of the person who took the photograph. |
| The date, location, and names of the persons involved in the evaluation of the equipment/device and the findings thereof. Equipment/devices must be removed from service and secured until examined by appropriate technical representatives. Equipment/devices must not be used, altered, tested, or repaired until properly evaluated. |
| Copies of maintenance reports and any protocols. |
| Review of the staffing levels (physician, nursing, corpsman, and ancillary) at the time of the incident. |
| "Currency" of members to perform their duties at the time of the incident. |
| "Orientation" to perform the duties assigned at the time of the incident. |
| The standard of care for any practices, procedures, policies, protocols, or systems involved in the incident and the basis which establishes that standard of care (provide a copy of relevant medical literature, text, treatises, articles, policy, practices, or procedures). |
| This refers to clinical/surgical procedures, nursing procedures, ancillary services such as the medical laboratory or pharmacy procedures, and health care administrative policies. The source and date of documents relevant to the standard of care must be provided. |
| Summaries of expert reviews of the care documented by the investigation. |
| Identify the reviewer and the reviewer's credentials. |
| Evaluation (e.g., expert opinion) describing the duty that was owed the patient (standard of care). |
| Manner in which the duty was either met or not met. |
| In instances where the duty was not met, an opinion on whether the act or omission resulted in harm to the patient and, if so, a description of the harm, including an explanation of how the harm may affect the patient in the future. |

| | Where there has been a deviation from the standard of care, an opinion regarding the cause(s) or contributing factors for any deviation from the standard, the name(s) of persons responsible for the deviation, and a description of corrective action, if required, in terms of personnel, equipment, or policy. |
|-----------------------|---|
| statem intervi | provider whose actions are at issue must be provided an opportunity to make a ent for inclusion in the investigation. The IO should summarize the results of the ew using care to be as accurate and complete as possible. Summaries of interviews roviders shall not be signed, instead authenticated by the IO's signature. |

FIREARM ACCIDENTS CHECKLIST

(JAGMAN A-2-y)

NOTE: IF AN INCIDENT INVOLVES ACCIDENTAL OR APPARENTLY SELF-INFLICTED GUNSHOT WOUNDS, A CI IS REQUIRED.

| Date, time of day, and names and addresses of witnesses present. |
|--|
| Description of physical location of incident and light and weather conditions. |
| Description of the firearm. |
| Mechanical condition. |
| Safety mechanisms. |
| Whether the safety mechanisms were used by the firearm handler. |
| Authorization for possession of the firearm. |
| How, when, and where it was obtained. |
| Description of firearm handler's formal training, experience, and familiarity with the firearm's condition, safety procedures, and proper use. |
| Discussion of any psychological problems, mental impairment due to drug or alcohol use and mental responsibility of the firearm handler. |

POLLUTION INCIDENTS CHECKLIST

(JAGMAN A-2-z)

NOTE: REFERENCE SHOULD BE MADE TO OPNAVINST 5090.18 FOR ADDITIONAL FACT-FINDING AND REPORTING REQUIREMENTS.

| Location and circumstances of the spill, including: |
|---|
| Weather and conditions at the site (visibility, darkness, presence/phase of the moon). |
| How, when, and by whom the spill was detected. |
| Description of the activity occurring when the spill occurred (e.g., shifting fuel, taking on fuel, pumping bilges). |
| Type of material (e.g., fuel, oil, other hazardous material). |
| Estimated quantity of material spilled and the basis for the estimate. |
| Source of the spill, (e.g., tank, drum, or valve). |
| Identity of personnel involved, including: |
| Name, rank/grade, unit, address (home and work). |
| Training and experience for task. |
| Who was (or should have been) providing supervision. |
| Whether required reports were made (e.g., reports required by OPNAVINST 5090.1 series, reports to the National Response Center, reports required by state and local law, reports to the Navy operational chain-of-command). |
| Whether local SOPA and command instructions were complied with. |
| Description of cleanup. |
| Membership of the quick response team and training. |
| Response time. |
| Actions taken. |
| |
| Equipment used. |

| Effectiveness of equipment and personnel. |
|---|
| Availability and readiness of equipment and personnel. |
| Nature and extent of damages to Government and private property. |
| Personal injuries, if any, including name of injured parties and extent of injuries. |
| Relevant training documents (e.g., Personnel Qualification Standard (PQS) records) deck/watch logs, and engineering logs which support the facts. |
| An opinion regarding the cause of the spill. |
| Faulty equipment, container, fitting, valve. |
| Operator error/safety. |
| Operational procedure error. |