Report to SECAF

AIR FORCE INSPECTOR GENERAL SUMMARY REPORT CONCERNING THE HANDLING OF SEXUAL ASSAULT CASES AT THE UNITED STATES AIR FORCE ACADEMY

14 September 2004

I. INTRODUCTION

This is a summary report of the activities of the Air Force Inspector General's Office pertaining to the review of cases and examination of individual complaints related to sexual assault at the United States Air Force Academy.[1] It provides a summary of fifty-six separate Air Force Office of Special Investigations (AFOSI) case reviews and the Air Force Senior Official Inquiries Directorate's (SAF/IGS) ten reports of investigation and thirteen reports of inquiry (ROI).[2]

On 2 January 2003, an e-mail was sent under the pseudonym Renee Trindle to various recipients, among them the Secretary of the Air Force, the Chief of Staff of the Air Force, Senator Wayne Allard, Senator Ben Nighthorse Campbell, other U.S. Congressmen, and media representatives. The e-mail asserted there was a significant sexual assault problem at the Academy that had been ignored by the Academy's leadership. The Secretary immediately directed the General Counsel of the Air Force (SAF/GC) to establish a high-level Working Group to review cadet complaints concerning the Academy's program of deterrence and response to sexual assault. The Secretary also tasked the Working Group to review allegations of sexual assault reported from January 1993 through December 2002. The Secretary subsequently directed the Air Force Inspector General to review individual AFOSI cases and to investigate cadet complaints concerning the alleged mishandling of sexual assault cases. This summary report provides the results of the Inspector General's effort.

To protect the privacy rights of those involved, this summary report will not identify any individuals by name or give specific case details that might identify complainants or witnesses.

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[1] Throughout this summary report the United States Air Force Academy is referred to as the Academy. Some exhibits and attachments may also refer to the Academy as USAFA and the AFA.

[2] For the purposes of this report, the acronym ROI encompasses three distinct and different types of reports. First, ROI can refer to the AFOSI reports of investigation used to record investigative findings. Secondly, ROI can refer to SAF/IGS reports of investigation used to record findings when a complainant identified a specific complaint against a specific individual. Lastly, it can refer to SAF/IGS reports of inquiry used to record analyses of generalized concerns raised by an individual or when a complainant refused to cooperate with a formal investigation. ROI will be used throughout this report, and the reader should apply it to the context of the information provided.

II. SCOPE AND AUTHORITY

The Secretary of the Air Force has sole responsibility for the function of The Inspector General of the Air Force.[3] The Inspector General performs duties prescribed by the Secretary or the Chief of Staff and has the authority to inquire into and report upon the discipline, efficiency, and economy of the Air Force.[4] The Inspector General must cooperate fully with the Inspector General of the Department of Defense (DoD-IG).[5]

In February 2003, based on direction from the Secretary, the Inspector General initiated two parallel reviews. The first established an AFOSI team[6] tasked to review all complaints reported to and investigations conducted by AFOSI Detachment 808, located at the Academy, from January 1993 to December 2002. The second, led by SAF/IGS, investigated individuals' allegations that their complaints of sexual assault had been mishandled by Academy officials or AFOSI.

The Air Force and DoD Inspectors General agreed DoD-IG would conduct concurrent oversight of SAF/IGS efforts. In early March 2003, the roles and responsibilities were outlined, and an agreement was reached that SAF/IG would review each individual complaint and DoD-IG would provide oversight. DoD-IG also conducted investigations when complainants would not discuss their allegations with SAF/IGS investigators.

It is important to note that the Secretary of the Air Force tasked the Air Force Inspector General to investigate the issues and complaints raised by individual complainants and not to reinvestigate AFOSI criminal investigations. SAF/IGS only examined Academy senior leadership actions if complainants identified them specifically in their allegations. To determine leadership accountability for the overall Academy situation, the Fowler Panel[7] recommended DoD-IG conduct an independent review separate from this report.

III. AFOSI REVIEW PROCESS

In response to the Secretary of the Air Force tasking, the Inspector General tasked AFOSI to review all sexual assault investigations and ROIs conducted at the Air Force Academy in the relevant time period.

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[3] Title 10, United States Code, Section 8014.
[4] These authorities are outlined in Title 10, United States Code, Section 8020.
[5] Title 10, United States Code, Section 8020(d).
[6] The average experience level of the agents conducting the review was ten years. Two of the eleven reviewers had Masters of Forensic Sciences degrees and had served as forensic science consultants in the field. Six of the eleven reviewers served as AFOSI detachment commanders or special-agents-in-charge, and the majority of those held these positions on multiple occasions.
[7] At the direction of Congress, The Secretary of Defense appointed seven private U.S. citizens with expertise in the United States military academies, behavioral and psychological sciences, and standards and practices relating to proper treatment of sexual assault victims to conduct an independent review of misconduct allegations at the Air Force Academy. In their September 2003 report they provided recommendations to improve the policies, procedures, and climate at the Academy.

AFOSI developed specific review guidelines to ensure a thorough evaluation of policies and investigative procedures for each sexual assault investigation completed by AFOSI Detachment 808. These guidelines included assessing whether sexual assault evidence collection kits were used, whether relevant evidence was correctly seized and shipped for analysis, whether appropriate interviews were conducted, whether the servicing AFOSI forensic science consultant[8] was consulted for advice or assistance, and whether appropriate investigative steps were conducted. The review included critical assessment of investigative sufficiency, evidence handling, and the detachment's evidence program.

The team identified fifty-six formal AFOSI cases investigating sexual assault[9] during the prescribed timeframe, including five alleged sexual assaults that occurred prior to January 1993 but not reported to AFOSI until January 1993 or later.[10] Of these fifty-six formal cases, investigations were conducted into thirty-one allegations of rape, eighteen allegations of indecent assault, four allegations of offenses against a child, two allegations of sodomy, and one allegation of attempted rape.[11] The review also included a review of nine complaints received by Detachment 808 that did not result in a formal investigation, referred to as "information" files.

IV. AFOSI FINDINGS, ANALYSIS, AND CONCLUSION

Investigative Sufficiency

The AFOSI team reviewed all fifty-six completed Academy investigations to determine investigative sufficiency. None of the findings, alone or in combination, affected the sufficiency of the investigations or the ability of the commander to take action.

Findings:

- In ten of fifty-six formal cases, a logical investigative step was omitted. In six of the ten cases, additional witness interviews should have been completed; in two cases, the subject was not offered a polygraph examination; in one case, a sexual assault examination was not sought from the victim; and in one case, the investigators did not adequately corroborate statements made by the subject during the interview.

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[8] AFOSI has officer special agents who receive graduate-level training in aspects of the forensic sciences. These specially trained agents are referred to as forensic science consultants and are geographically distributed throughout the world to provide AFOSI field elements with on-scene assistance, telephonic advice, expert coordination, and training in forensic science specialties.

[9] While there is no specific offense of "sexual assault" defined in the Uniform Code of Military Justice (UCMJ), the UCMJ does define a family of crimes that normally would be considered acts of sexual assault, among them rape (Article 120), sodomy by force and without consent (Article 125), indecent assault (Article 134), assault with intent to commit rape or sodomy (Article 134), carnal knowledge (Article 120), and indecent acts or liberties with a child (Article 134).

[10] The Secretary's guidance was to review cases initiated between January 1993 and December 2002; however, due to the ongoing nature of the process, the review actually included cases initiated through February 2003.

[11] These offenses represent the most egregious offenses, not necessarily all of the offenses, investigated in each case.

- In three of fifty-six formal cases, there was a lack of compliance with internal policies requiring mandatory coordination with a servicing forensic science consultant.

- In two of fifty-six formal cases, reports did not indicate why some evidence was collected but not sent to the laboratory for analysis.

- In the nine information files, the reviewers found that the investigative actions taken were in compliance with AFOSI policies and were appropriate for the circumstances as documented.

The above numbers reflect the total aggregate findings identified during the review. Four investigations had more than one of the above findings present.

Analysis:

It is difficult to assess the impact on the investigations where investigative steps were omitted. For example, a polygraph examination of the subject may have been of significant probative value in resolving the allegation. In other cases, the outcome of an omitted investigative step such as an additional witness interview may have had no impact at all. Furthermore, while an omission may have been an oversight, it is also possible that an investigator intentionally omitted a step based on available facts but failed to document the decision process in the ROI. Nonetheless, these findings demonstrate the need for increased attention to thorough examination and documentation.

AFOSI guidance required consultation with the servicing forensic science consultant on all rape investigations. These investigations frequently involve complex medicolegal issues requiring special expertise in the identification and collection of physical and biological evidence. A forensic science consultant can ensure forensic related evidence is properly handled and appropriate laboratory examinations are requested. Furthermore, a forensic science consultant can suggest additional investigative steps that may be probative to the investigation. In cases where consultations are not accomplished, it is possible that evidence with the potential to assist in proving or disproving an allegation might not be collected.

In March 2004, AFOSI issued a policy letter requiring coordination with a forensic science consultant on all sexual assault investigations, not just on rape investigations. The policy further requires units to consult with the forensic science consultant regarding the type of evidence to be collected and in determining the evidence to be sent to a forensic science lab for analysis. This coordination must be annotated in the ROI.

In two cases, the report did not indicate why evidence was collected but not sent to the laboratory for analysis. It was the opinion of the reviewers that a laboratory analysis of this evidence would not have been probative in confirming or refuting the allegations. Increased requirements for coordination with the forensic science consultant as stated above are intended, in part, to ensure that in future investigations, evidence is properly forwarded to laboratories for

appropriate analysis in a timely manner, or the decision not to send it is properly documented in the report.

In an effort to improve the thoroughness of sexual assault investigations, in December 2003 AFOSI instituted additional training at Detachment 808 and throughout AFOSI. An advanced workshop was developed that focuses on unique aspects of sexual assault investigations, including victim awareness, trauma sensitivity, legal perspectives and challenges, and biological and DNA evidence. AFOSI is in the process of developing a similar workshop for field agents to be held at each of its AFOSI Regional Headquarters, collocated with the major commands.

One of the information files reviewed included an allegation about which the AFOSI review team and the Working Group had differing opinions. AFOSI's initial decision to document the allegation in an information file was based on a review of the available evidence (approximately 900 days had elapsed between the alleged incident and the report to AFOSI) and consultation with the wing legal office. The AFOSI team that reviewed the information files determined that, based on available documentation, AFOSI's decision not to conduct a criminal investigation was a reasonable one. In the Working Group's review of the same nine information files, they determined that the allegation warranted a full criminal investigation. Based on the Working Group's recommendation, the Secretary subsequently directed AFOSI to conduct a criminal investigation into the matter. AFOSI did so and presented their investigative findings to the subject's current commander for action.

Conclusion:

It was the opinion of the AFOSI review team that the findings identified did not, alone or in combination, affect the sufficiency of the investigations or the ability of the commander to take action. Nonetheless, the findings did demonstrate both the need for additional training in the investigation and documentation of sexual assaults throughout AFOSI and the need for clearer guidance in AFOSI policy regarding consulting with forensic science consultants in these cases.

Evidence Handling

The AFOSI team conducted an inspection of sexual assault and rape investigation case files at Detachment 808 that were open or awaiting command action and all evidence maintained in their evidence storage facility. In addition, the AFOSI Inspector General (AFOSI/IG) examined Detachment 808's compliance with overall evidence handling instructions and policy, with special emphasis placed on the handling of sexual assault evidence. The AFOSI/IG reviewed all of the Detachment 808 closed sexual assault/rape investigation case files archived at HQ AFOSI, Andrews AFB, Maryland, involving seizure of evidence using a sexual assault kit.

Except for the early disposition of evidence as noted below, it was the opinion of the AFOSI team that the administrative areas of noncompliance involving evidence seizure, logging, storing, and/or safeguarding would not have jeopardized the chain of custody of an item of

evidence or otherwise affected the value of the evidence in judicial proceedings.

Findings:

- There were administrative areas of noncompliance involving evidence seizure, logging, storing, and/or safeguarding.

- Use of tamper-proof evidence tape was not consistent.

- One item of evidence, a spiral notebook, had to be repackaged to ensure loose pages remained with the notebook and were annotated on the tag.

- An evidence tag from a 1996 case did not account for all items documented in the report of investigation (no evidence was missing).

- An incorrect administrative entry indicated one piece of evidence had been out of the control of detachment personnel when, in fact, it had not.

- The Management Information System inventory sheet listed five out of twenty-five items with a "Last Chain of Custody Information" date different than the date reflected on the back of evidence tags.

- Two pieces of evidence in a sexual assault investigation not involving an Academy cadet had not been appropriately logged into the detachment's electronic evidence tracking system.

- Following the AFOSI/IG initial review of Detachment 808's evidence program, AFOSI/IG was notified of two possible additional discrepancies involving evidence at Detachment 808; a subsequent AFOSI/IG Internal Affairs review did not substantiate these allegations.

- Detachment 808 properly maintained evidence disposition instructions and logbooks at the detachment on their closed investigations dating back to February 2001.

- In one case, evidence was disposed of prior to the completion of final command action.

Analysis:

The AFOSI/IG review accounted for all evidence at Detachment 808 and confirmed that all items listed in evidence inventory logs were on hand or had been shipped for laboratory analysis. Thirty-eight evidence tags involving various crimes were on hand. Thirteen of the thirty-eight tags directly related to two sexual assault cases where the investigation was still ongoing or final command action had not yet been taken. The review concluded that all evidence

tags accurately documented the chain of custody.

With two exceptions, AFOSI policy leaves use of tamper-proof evidence tape to the discretion of the agents; however, the inspectors concluded the detachment should standardize their use of the tape. In the opinion of the inspectors, none of the items without tape suffered degradation or contamination.

In the 1996 case in which a piece of evidence was not identified on the evidence tag, the item at issue was present. The detachment identified the discrepancy prior to evidence disposition and took corrective action by including it on the evidence tag. The review confirmed the evidence had been in detachment control during the investigation.

The review confirmed that where the "Last Chain of Custody Information" dates in the Management Information System were different from those on the evidence tag, the difference was the result of a problem with the information system software, not human error. The difference in dates had no effect on evidentiary value.

Concerning the evidence that was not logged into the Detachment's electronic tracking system, the review confirmed there was no impact on the value of the evidence in judicial proceedings because entries made in the electronic evidence tracking system are only used administratively, not to establish the chain of custody.

In the last finding, disposal of evidence prior to final command action was the result of a breakdown in procedures between AFOSI and the wing legal office. Normal procedures mandate that evidence be retained until all command action has been taken. In this case, following an Article 32 hearing at which the determination was made not to refer court-martial charges, Detachment 808 submitted a request to the wing legal office for disposal of the evidence. A judge advocate, unaware that the convening authority had forwarded the subject's case to the Secretary for administrative discharge, concurred with the request. In the end, the early disposal of the evidence had no impact on the administrative resolution of the case; however, if some type of punitive action (rather than administrative discharge) had been pursued, the evidence no longer would have been available.

Conclusion:

While a review of Detachment 808's evidence handling revealed the findings noted above, the team determined that, overall, the detachment's evidence handling procedures were sound and the identified findings did not affect the validity of the chain of custody or impact the final disposition of the investigations.

Evidence Program

In addition to the review of how individual pieces of evidence were handled at Detachment 808, AFOSI/IG conducted a review of the detachment's evidence program and the

administrative procedures in place to ensure proper documentation, safeguarding and storage of evidence, and compliance with AFOSI policies and procedures. The inspectors accounted for all evidence at Detachment 808 and concluded the Detachment's program was sound.

Findings:

- Evidence inventories were conducted semiannually, or upon change of primary evidence custodians.
- Evidence custodians received and completed mandatory evidence custodian training prior to assuming their duties.
- Evidence custodians were properly appointed in writing.
- The evidence facility was sufficient to prevent theft, unauthorized entry, and/or degradation due to environmental conditions.
- The facility was maintained in a well-organized manner; refrigeration units, bins, and sufficient shelf space were all available; and all evidence was labeled and easy to identify.
- Only evidence custodians had control over evidence storage facilities.
- All evidence was shipped via U.S. Postal Service registered mail or Federal Express or was hand carried by detachment personnel to ensure accountability.

Conclusion:

The review of Detachment 808's evidence program concluded the detachment was following established guidance and procedures. AFOSI/IG and the AFOSI team concluded Detachment 808's evidence program was properly managed and complied with AFOSI expectations and standards.

Summary

AFOSI's comprehensive assessment found Detachment 808's criminal investigative procedures followed Air Force guidance and demonstrated a sound program. AFOSI's formal case investigations produced sufficient evidence that allowed commanders to take appropriate action. The findings identified in evidence handling procedures were administrative in nature. Although the one situation where evidence was destroyed before final command action had been taken did not affect the outcome of the case, it did, however, represent a breakdown in procedures. Bottom line: including the one procedural breakdown, nothing found during the review jeopardized the chain of custody, caused legal errors, or impacted the final disposition of cases.

V. SAF/IGS INVESTIGATION AND INQUIRY PROCESS

As noted earlier, the Inspector General tasked the Senior Official Inquiries Directorate to investigate all complaints made by individuals who came forward or were referred to SAF/IGS. SAF/IGS identified twenty-eight complainants who had in some way expressed concern with the way the Academy handled their cases.[12]

Identifying the number and identities of the complainants was problematic. In voicing their concerns, some contacted multiple sources and some used pseudonyms. The facts as publicly reported in some cases did not always track with the facts stated in official investigative reports. After resolving these issues, SAF/IGS identified twenty-eight possible cases for investigation. (The number of cases and complainants reported to congressional or media sources did not equal the number of cases and complainants that SAF/IGS investigated because of the multiple reporting venues.) Of the twenty-eight, nineteen cases were referred from the SAF/GC Working Group, eight from DoD-IG, and one from the Air Force Legislative Liaison office.

To investigate an individual's complaint, SAF/IGS attempted to obtain the individual's firsthand testimony. In order to talk to as many of the complainants as possible, the Inspector General sent a memorandum to DoD-IG on 9 May 2003 soliciting help in obtaining the names of any complainants they had received from congressional sources. DoD-IG forwarded eleven names to SAF/IGS (three of which had already been identified from other sources).

Four of the original twenty-eight cases were transferred to DoD-IG to perform the entire investigation. These cases were transferred because the complainant felt more comfortable with DoD-IG performing the investigation, the complainant wanted part of the case investigated by DoD-IG, or the nature of the primary complaint would have created the appearance of self-investigation by having SAF/IGS investigate a subordinate AFOSI unit and/or IG personnel. One of the original twenty-eight cases was delayed until June 8, 2004, awaiting completion of the general court-martial of the alleged assailant. That case is not summarized in this report because the investigation is ongoing. ROIs concerning the remaining twenty-three individuals have been completed, and the Air Force Inspector General has taken closure action. These twenty-three reports were forwarded to DoD-IG for their oversight review; they completed this review in Sep 04 and concurred with all twenty-three reports.

SAF/IGS investigating officers (IOs) were unable to interview all complainants in the twenty-eight identified cases. In nine instances, the complainants stated they did not want their concerns investigated or could not be contacted. Despite these obstacles, as of the date of this summary report, all complainants who expressed a willingness to speak to SAF/IGS IOs have

[12] Some of the individuals who made complaints to SAF/IGS were the same persons identified as victims in the criminal investigations; some never raised their allegations to AFOSI, so no criminal investigation had been conducted.

been interviewed. In all complainant interviews, IOs from SAF/IGS and/or DoD-IG and a SAF/IGS legal advisor were present.

Air Force Inspector General Complaints Process: Air Force Instruction (AFI) 90-301, *Inspector General Complaints,* provides regulatory guidance for the receipt, processing, conduct, and quality review of Air Force Inspector General investigations. The first step in the process was to identify the complainant and the nature of the complaint. Once SAF/IGS received the name of a potential complainant, an IO attempted to contact her via telephone, e-mail, or registered letter. Telephone calls were made in the following priority order: to the individual, if the number was available; to the individual's parents, as listed in any available records; to a third-party individual, if identified for any reason. If telephone or e-mail contact was unsuccessful, the IO sent the individual a registered letter, including a date by which to respond. If the IO did not receive a response by the requested date, a second registered letter was sent to inform the individual that her case would be closed by a specified date if no response was received. In the context of this letter, the term "closed" meant that SAF/IGS would investigate the case as best it could without any further input from the individual.

Once an individual agreed to an interview, the IO obtained her sworn testimony and clarified her specific complaint, which included identifying a subject whenever possible. During the interview, if the complainant had not previously reported her assault to AFOSI, the IO encouraged her to do so. In one instance, the complainant agreed to provide AFOSI with a sworn statement. AFOSI conducted an investigation of the allegations, and the completed ROI was subsequently provided to command for review and appropriate action.

The IO and legal advisor then researched the legal and statutory authorities that govern the alleged offenses and framed allegations of wrongdoing.[13] For example, the complainant may have alleged that her commanding officer punished her because she reported that a male cadet had sexually assaulted her. The framed allegation might have been written as follows: Major John Smith reprised against Cadet Jane Doe in violation of 10 U.S.C. 1034, by wrongfully awarding her forty demerits after she made a protected communication to AFOSI. The IO then gathered all available written and electronic documentation applicable to the case and interviewed witnesses, including subject matter experts with knowledge relevant to the allegations. Individuals accused of wrongdoing were generally interviewed last. All interviews were recorded, transcribed as verbatim testimony, and included as attachments to the ROI.

Next, the IO reviewed all documentation, validated the verbatim testimony, wrote the ROI, and submitted it to the Office of The Judge Advocate General of the Air Force, Administrative Law Division (AF/JAA), for a legal sufficiency review. The ROI included an introduction, how the complaint came to the attention of the IG, the scope and authority for the IO to conduct the investigation, a detailed background of the complaint, the findings, analysis,

[13] While a complainant might have verbalized only two to three concerns or issues, the IO had the latitude to frame more allegations than concerns or issues raised by the complainant in order to conduct a more focused and thorough investigation into the alleged wrongdoing on the part of the subject.

and conclusions regarding the allegations, and any collateral issues identified during the investigation. Collateral issues are issues that were not specified by the complaint or framed into an allegation by the IO; however, during the investigation the IO found evidence that suggested problems warranting further review.

AF/JAA assigned a lawyer (other than the legal advisor assigned to work with the IO) to review the ROI and determine whether the analysis and conclusions were legally sufficient. Because reports of inquiry, as opposed to investigations, did not contain significant issues in dispute or identify a specific subject of wrongdoing, a SAF/IGS legal advisor determined the legal sufficiency of the inquiry.

Once complete, the IO submitted the ROI and the legal review to the Air Force Inspector General for review and approval. The ROI was not considered complete and closed until the Inspector General approved it. After approval, the package was sent to DoD-IG for its review and oversight. DoD-IG has provided oversight for all these investigations and inquiries.

After the Air Force Inspector General approved the ROI, a letter relaying the results of the investigation was sent to the complainant. If the ROI substantiated any allegations, the ROI was sent to command channels for appropriate action and disposition.

VI. SAF/IGS FINDINGS, ANALYSIS, AND CONCLUSION

SAF/IGS undertook a review of the twenty-three complaints that Academy officials had not adequately or appropriately responded to allegations of rape or sexual assault. This review resulted in thirteen inquiries and ten investigations.[14]

Inquiries:

In nine of the thirteen inquiries, the individual refused to provide a statement of her concerns or register a formal complaint about her experiences. In four of the thirteen inquiries, the individual articulated her concerns to either DoD-IG and/or SAF/IGS investigators. In those four inquiries, thirteen concerns or issues were examined. The issues examined included, but were not limited to, having rape kits at the Academy hospital, failure to prosecute the alleged offender, and harassment by fellow cadets. IOs obtained testimony and available documentation to address all thirteen concerns or issues. SAF/IGS provided each individual a written response addressing the specific concerns or issues identified.

Investigations:

In the ten cases resulting in investigations, the complainants registered

[14] Reports of inquiry are generated to record analyses of generalized concerns raised by an individual or are generated when a complainant refused to cooperate with a formal investigation. Reports of investigation are generated to record findings when a complainant identified a specific complaint against a specific individual.

their complaints with DoD-IG and/or SAF/IGS investigators. In the ten cases resulting in investigations, SAF/IGS IOs framed fifty-nine allegations of violations of law or regulation.

Finding:

Of the fifty-nine allegations, four were substantiated and fifty-five were not.[15]

Analysis:

Of the fifty-nine allegations, nineteen involved alleged violations of some function or service associated with the Victim and Witness Assistance Program (VWAP) as implemented at the Academy by the Cadet Counseling Center.[16] Three of these allegations were substantiated. (These account for three of the four substantiated allegations.)

Twenty-five of the fifty-nine allegations were framed as reprisal.[17] Allegations of reprisal require not only examination of the adverse personnel actions taken against a complainant, but also the motives of officials responsible for the actions. The complainants identified a broad spectrum of individuals they believed reprised against them following their reports of sexual assault or their reports of infractions committed by others. The number of reprisal allegations lodged is as follows:

- Commandant of Cadets – one
- Vice Commandant of Cadets – two
- Training Group Commander – one
- Unidentified Academy officials – one
- Group Air Officer Commanding (AOC) – one
- Squadron AOC – five
- Other cadets – nine
- Faculty members – two
- Officers in the Cadet Counseling Center – three

The preponderance of the evidence developed during the investigation of the twenty-five-reprisal allegations demonstrated that the complainants were not victims of reprisal.

[15] After our investigations were completed, the Department of Defense Inspector General's Military Reprisal Investigations Office determined in one case that a cadet group Air Officer Commanding (AOC) and a cadet squadron AOC did not follow proper procedures for a commander-directed emergency mental health evaluation.
[16] The Air Force VWAP is designed to guide victims and witnesses to services that are available to assist them. In the Air Force VWAP, a member of the base legal office serves as the focal point to help victims and witnesses make contact with available services such as emergency medical and social services, restitution, compensation or other relief, and public and private counseling. Legal office representatives provide status updates during the pretrial investigation, prosecution of the case, and the post-trial status of the accused.
[17] 10 U.S.C. 1034, "Military Whistleblower Protection Act," prohibits reprisal.

Nine allegations were framed against members of the complainants' chain of command for abuse of authority. In each case, the preponderance of the evidence did not support a finding that a commander or superior acted beyond the scope of his or her authority or in an arbitrary or capricious manner in their actions concerning the complainants.

Four allegations addressed violations of policy or standards. Two of these allegations involved the referral of the complainant for a non-emergency mental health evaluation; one of these was substantiated because the commander had not followed the required procedures for a non-emergency mental health evaluation. Two cases involved allegations of making a false official statement; however, the preponderance of the evidence did not support the allegations.

One allegation concerned the quality of the AFOSI investigation. The preponderance of the evidence did not support this allegation.

The final allegation alleged the complainant was wrongfully placed in the squadron of her alleged assailant. The facts revealed that thirty-three months had elapsed between the time the alleged assailant had departed the Academy and when the complainant was placed in his former squadron. The preponderance of the evidence demonstrated no wrongdoing on the part of any individual making this assignment and no errors in the procedures for assigning members to cadet squadrons.

Conclusion:

SAF/IGS investigators substantiated four allegations where the preponderance of the evidence demonstrated that the actions of an individual, or individuals, did not comply with the standards or directives in effect at the time. In three cases, the Academy failed to comply with provisions of either the Air Force's or Academy's Victim and Witness Assistance Program. In the fourth case, the Academy failed to comply with the guidance for a commander-directed non-emergency mental health evaluation.

Separate Victim and Witness Assistance Programs: The evidence in three complaints demonstrated the complainants were not provided the service as prescribed in Air Force Regulation 111-1, *Military Justice Guide,* Chapter 11, later replaced by AFI 51-201, *Administration of Military Justice*, Chapter 7, as further specified at the Academy by United States Air Force Academy Instruction 50-201, *Cadet Victim/Witness Assistance and Notification Procedures*. The Cadet Counseling Center victim advocate fulfilled part, but not all, of the Air Force VWAP liaison's role, and the evidence showed this inconsistency created confusion with all involved parties.

The Academy VWAP was intended to be the sole program to assist cadet victims, but it varied from the Air Force program. Academy personnel who received a report of a sexual assault were directed to contact the Cadet Counseling Center for assignment of a victim advocate for the victim. The Cadet Counseling Center's victim advocate fulfilled part, but not all, of the

Air Force VWAP liaison's role, and the evidence showed this inconsistency created confusion with all parties involved.

Improper Mental Health Referrals: The evidence in one case demonstrated that the complainant's commander referred her for a mental health evaluation without following the process outlined in DoDI 6490.4, *Requirements for Mental Health Evaluations of Members of the Armed Forces*, DoDD 6490.1, *Mental Health Evaluations of Members of the Armed Forces,* and AFI 44-109, *Mental Health and Military Law.*

The preponderance of the evidence in the case revealed the complainant was directed by her commander to go to an appointment with a psychologist at the Academy Hospital Life Skills Department. The procedures outlined under AFI 44-109, *Mental Health and Military Law,* were not followed, and the IO substantiated the allegation. The IO then further examined his actions, but no evidence revealed the referral to be an act of reprisal or intentional abuse of authority.

Summary:

This summary report represents the completed portion of the response to the Secretary's directive to the Air Force Inspector General to investigate individual cadet complaints concerning the handling of their reported sexual assault case. Of the twenty-eight cases initially reviewed by this office, four were transferred for various reasons to DoD-IG to perform the investigations. Of the remaining twenty-four cases, thirteen were closed as inquiries and ten were investigated to the fullest extent possible and closed. The investigation of the last case was delayed until June 8, 2004, awaiting completion of the general court-martial of the alleged assailant. That case is now under investigation and is not summarized in this report.

From the thirteen inquiries, four complainants presented thirteen concerns or issues that were examined. Appropriate evidence was obtained to address these thirteen concerns or issues, and each complainant was provided a response. From the ten investigations, fifty-nine allegations were developed and investigated. By a preponderance of the evidence, four of the fifty-nine allegations were substantiated and fifty-five were not.

VII. OBSERVATIONS

In addition to the findings identified by AFOSI and SAF/IGS, several issues collateral to the primary reviews, inquiries, and investigations were identified. While changes may have occurred since the completion of our investigations, the issues are reported here as observations to ensure an opportunity for evaluation and oversight.

Timeliness of Assault Reporting: In twenty-two of the fifty-six AFOSI investigations, collection of forensic evidence was impeded by the length of time between the date of the alleged offense and the date it was reported to Detachment 808. The average delay between incident and reporting to AFOSI was fifty-four days. Such lengthy delays impacted AFOSI investigators' ability to collect relevant forensic evidence from victims, subjects, and crime scenes and may

have impacted witnesses' recollection. When documented, victims stated various reasons for waiting to report, including fear of expulsion, humiliation, and embarrassment; that they didn't consider the act to be rape; they weren't ready to seek assistance; and they thought their chain of command was already handling the matter.

Lack of Victim Assistance Documentation: During the investigations, IOs found the victim advocates operating under USAFAI 51-201 consistently stated they had little, or no, recollection of events surrounding their assistance to victims, and they maintained little or no documentation on the victims they assisted. SAF/IGS also found no documentation of victim assistance provided under the VWAP process. Significantly, the Air Force VWAP required little in the way of documenting assistance provided to victims and witnesses.

Lack of Training for Chaplains Assigned to Perform Counseling for Victims of Sexual Assault: USAFAI 51-201, paragraph 2.12.1, required that the Cadet Counseling Center to "prepare and maintain a lesson on sexual assault, victim assistance, and notification procedures as part of the cadet Professional Development Program, AOC training, and Military Training Advisor (MTA) training." It additionally stated that "all AOCs and other Academy personnel having duties which entail assisting sexual assault victims or working on assault cases (e.g., medical, counseling, law enforcement personnel) [would] receive training which prepare[d] them to effectively handle these cases and work with victims." The investigations revealed that five Academy chaplains, responsible for on call counseling to cadet victims of sexual abuse, had no specialized training to perform this service.

Sexual Assault Reporting: Since it was first implemented, USAFAI 51-201 has required every faculty member and cadet to report all cases of sexual assault to the Cadet Counseling Center. Personnel at the Cadet Counseling Center were then required to report all cases to both the Commandant of Cadets (so he could report to and advise the Superintendent) and the investigations branch of the 10th Security Forces Squadron (for trend analysis). The issues in two SAF/IGS investigations involved determining whether Cadet Counseling Center personnel made the notifications required by USAFAI 51-201. In the Cadet Counseling Center's files for both of these cases, there was no documentary evidence to prove either the Commandant or security forces had been notified, nor was there conclusive testimonial evidence that notifications were made. While not a specific focus of our investigations, IOs encountered incidents where officials in the cadet's chain of command were unaware that the cadet had reported she had been sexually assaulted--this highlights the importance of fulfilling all notification requirements.

Commander-Directed Mental Health Evaluations: The evidence demonstrated confusion among Academy personnel concerning commander-directed mental health evaluations. In the substantiated case, the process used did not comply with the requirements of DoDD 6490.1, DoDI 6490.4, and AFI 44-109.

Communication: A recurring complaint we encountered was that the Academy did not provide sufficient information to cadets regarding the status of their cases. As noted above, this was in part due to the separate victim/witness programs at the Academy. Another contributing

factor was the nature of the Privacy Act, which, based on the facts and circumstances of a given case, might limit the amount of personal information about the alleged offender that could be released. The Air Force General Counsel has stated that the Academy's interpretation of the Privacy Act "may have been narrower that the law would allow."[18].

USAFAI 51-201 provided further restrictions: "When cases are handled through the cadet disciplinary system, the information about disposition is private and can only be released to the victim with the accused cadet's consent." These restrictions on the release of information appear to have fostered a degree of suspicion on the part of the complainants in these investigations who complained they were left to guess at the outcome of their complaints. This led to misperceptions that the Academy was either hiding the issues or did not care about victims.

Lack of Amnesty or Misunderstanding of the Amnesty Program: The investigations revealed that the Academy had an amnesty policy that recognized some cadet victims and witnesses tend not to report offenses if they were engaged in some type of cadet misconduct when the assault occurred. The amnesty policy was put into place to encourage victims and witnesses to report sexual assaults by allowing them to be excused from cadet infractions committed at the time of the assault. Evidence revealed that the rules and the application of the amnesty policy were not well defined or understood by all cadets and Academy personnel.

Complaints arose when cadets perceived they were punished for cadet infractions uncovered during the sexual assault investigation when they believed they should have been granted amnesty. This situation eroded the complainants' confidence in the Academy sexual assault program and in the ability of the Academy to respond effectively to reports of sexual assault.

Involvement of Alcohol and Consensual Sex: Eleven of the twenty-eight cases investigated by SAF/IGS involved alcohol use by the complainant and/or the accused, and some involved consensual sexual activity between the two prior to and/or following the reported sexual assault. These issues, with their complex legal questions concerning consent, made resolving these cases problematic, both factually and legally.[19]

Air Force Academy Record Keeping: During SAF/IGS's investigations, personnel at the Academy were asked to provide all records associated with the complainants. This was an in-depth request that covered all documents associated with the complainant and the subject, including, but not limited to, cadet personnel records, medical, academic, legal, honor, and counseling records. In some cases, IOs experienced considerable difficulty reconstructing individual cadet administrative or cadet disciplinary actions. Cadet records are generally destroyed between ninety days and one year after a cadet has left the Academy. The inability to

[18] The Report of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy, Jun3 2003; page iv-v

[19] The issues of consent and consent with reference to alcohol use were also identified and analyzed as problematic in *The Report of the Working Group Concerning the Deterrence of and Response to Incidents of Sexual Assault at the U.S. Air Force Academy*, June 2003.

reconstruct records completely or to identify disciplinary actions taken in any given case made the determination of what actually occurred and the resultant actions difficult to resolve.

Fear of Reporting: During the investigations, IOs found some complainants said they didn't report their sexual assault promptly because they were afraid of what might happen. Their fears included being punished by command for other infractions incidental to the alleged assault, the fear that other cadets would be punished by command, fear of being harassed or ostracized by their fellow cadets, fear of not being believed or supported, and the fear of a possible negative impact on their careers.

Cadet Loyalty to Peers Above Loyalty to Air Force: The investigations revealed there was a tendency for cadets to place loyalty to peers above loyalty to the Air Force. This misplaced loyalty appeared to result in cadets tolerating behavior, such as violations of alcohol policies, cadet fraternization, and sexual activities on Academy grounds, that were often associated with sexual assault.

Administrative Errors: During one SAF/IGS investigation, an administrative error in the discharge of a cadet was identified. The subject of a sexual assault investigation requested and received a resignation in lieu of involuntary separation. The Secretary of the Air Force approved a general (under honorable conditions) discharge. However, there was an administrative error, and the cadet's DD Form 214, block 24, *Character of Service*, was annotated "honorable" instead of "general (under honorable conditions)." The cadet is now a noncommissioned officer in the Army.[20]

VIII. CONCLUSION

Eighteen months of reviews, research, and interviews have been compiled into over 1000 pages of Reports of Investigation and Reports of Inquiry. Bottom line: The AFOSI team of experts concluded that none of the findings they identified impacted the final disposition of any case or the commander's ability to take action. The investigators from the Senior Official Inquiries directorate identified four instances where Academy officials did not follow established procedures or instructions. However, their review of all the allegations, concerns, and issues identified for investigation, revealed no evidence of intentional mishandling or willful neglect on the part of any Academy official in their actions to address the issues of sexual assault in these cases.

//SIGNED//

STEVEN R. POLK
Lieutenant General, USAF
The Inspector General

[20] The Air Force Inspector General sent a letter to the Army Inspector General informing him of this issue.