

# Investigation Manual

## CHAPTER 5 - THE PRINCIPAL INVESTIGATION

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## CHAPTER 5 - THE PRINCIPAL INVESTIGATION

0501 **INTRODUCTION:** As discussed in paragraph 0203, the purpose of an IG investigation is to obtain facts sufficient to enable responsible authorities to make intelligent decisions about corrective, remedial, or disciplinary action. The preceding chapter discussed the first, or preliminary phase of the investigation. This chapter proceeds on the assumption that a decision has been made to conduct a complete IG investigation, and a specific IG office has been identified to conduct that investigation. The principal investigation starts with the assignment of the investigator(s) who will conduct the investigation and the creation of the initial investigation plan. Note, however, that if the complainant was not interviewed during the preliminary inquiry, the investigator may do so before preparing the investigative plan. Return to Chapter Table of Contents.

0502 **OVERVIEW:** This chapter discusses the investigative plan, notification, evidence collection and analysis, and common problems encountered during the principal investigation. Since most IG investigations concern subjects rather than suspects, this chapter uses the term subject to refer to both categories except when it is necessary to distinguish them. Return to Chapter Table of Contents.

### PART ONE - THE INVESTIGATIVE PLAN

0503 **PURPOSE OF THE INVESTIGATIVE PLAN:** The investigative plan is simply the outline of how the investigator intends to carry out the investigation in order to obtain the facts necessary to enable responsible authorities to make appropriate decisions. It serves as a checklist to ensure all necessary points are covered in an efficient manner. Although a plan is created at the start of an investigation, it should be updated continually, not only to document the steps that have been completed, but also to reflect changes that become necessary as the evidence is developed. A well thought-out investigative plan that is conscientiously updated becomes the outline of the investigative report. Return to Chapter Table of Contents.

0504 **REQUIREMENT FOR INVESTIGATIVE PLAN:** Every investigation is conducted in accordance with some plan, whether it is deliberate or accidental, efficient or haphazard. Poor planning not only wastes resources, but diminishes the credibility of the investigator and the IG organization. Therefore, every investigator should make a conscious effort to devise an effective, efficient investigative plan. The plan need not be elaborate or formal. In simple cases, it need be no more than a statement of the allegations and a list of the witnesses to

be interviewed about each allegation. However, because there is always the possibility that another investigator will be required to take over an investigation in the event of an unexpected illness or other emergency, it is essential that the investigator commit even the most simple plan to writing and place it in the case file so that another investigator may take over the case easily should the need arise. Return to [Chapter Table of Contents](#).

**0505 ELEMENTS OF A GOOD PLAN:** More complicated investigations require more comprehensive and detailed investigative plans. Some of the items that may appear in a good investigative plan include:

- a contact list;
- a notification list;
- background information;
- an allegations list;
- an outline of proof, including legal theory and evidence required for each allegation;
- a list of witnesses and documents for each allegation;
- an interview sequence plan;
- a chronology of events; and
- logistical information.

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**0506 THE CONTACT LIST:** This section of the plan identifies every person the investigator intends to contact in connection with each allegation to be investigated. The list should contain the name, title, rank or grade, address, phone number and other pertinent information, including their relationship to the investigation, of each person. The contact list usually grows as the investigation proceeds. In addition to complainants, subjects, and witnesses, the list should include cognizant COs, XOs, supervisors, local IG office personnel, or other points of contact within the subject command, the JAGC or OGC attorney available for legal assistance, and technical experts such as personnel specialists. The contact list facilitates day-to-day contact efforts during the investigation, and makes it easy to prepare the list of "persons interviewed" when writing the report. It can also be used as a method to keep track of who has been notified of the existence of the investigation. Return to [Chapter Table of Contents](#).

**0507 NOTIFICATION LIST:** Often a part of the contact list, the notification list should include the name of everyone who has been, or should be, told an IG investigation is taking place, and the dates of notification. It may also include a list of every person the complainant has identified as having knowledge of:

- the allegations; or
- the complainant's intent to request an IG investigation.

People who should be considered for notification include:

complainants;  
responsible authorities and convening authorities;  
commanders and/or management at the subject command;  
subjects; and witnesses.

The factors that should be considered in deciding whether, and when, to notify these people are discussed later in this chapter. Return to [Chapter Table of Contents](#).

**0508 BACKGROUND INFORMATION:** This part of the plan may be used to explain how the allegations were received and to highlight information about the complainant's willingness to be identified with the allegations. It should contain any information about previous investigations of similar allegations requested by the complainant, previous investigations of the allegations, the subjects, or the subject command. In simple cases, information that would appear in other sections, such as applicable laws or regulations, may be included here. Return to [Chapter Table of Contents](#).

**0509 ALLEGATION LISTS:** Every allegation made by the complainant should be set forth in this section, worded in the manner suggested in [paragraph 0428](#). Those allegations the investigator has decided not to investigate, or to refer to another organization for action, should be included, with an explanation for that decision. Other allegations the investigator believes warrant investigation based on the facts presented by the complainant, or facts developed during the course of the investigation, should also be included, with a statement as to whether they will be addressed in the instant investigation, deferred for later action, or referred to another organization. Listing all of the allegations in one place will help someone unfamiliar with the case obtain a quick overview of the nature and scope of the investigative effort required. Return to [Chapter Table of Contents](#).

**0510 OUTLINE OF PROOF:** An outline of proof necessary to substantiate each allegation should be prepared in more complex cases. Each outline should start with a statement of the allegation framed by the investigator. It should include a list of applicable standards and how they apply (the legal theory); the facts necessary to prove or disprove the allegation given the applicable legal theory, the likely sources of those facts (complainant/witness/subject interviews, documents), and the standard of proof (usually preponderance of the credible evidence) required to sustain the allegation. Return to [Chapter Table of Contents](#).

**0511 WITNESS AND DOCUMENT LISTS:** The sources of facts in the outline of proof will lead to the creation of a witness list and a document list for each allegation. These lists can be used to create the list of allegations and documents to be discussed with each witness. These lists also may be used when making

the outline for witness interviews and document collection. Return to [Chapter Table of Contents](#).

**0512 INTERVIEW SEQUENCE PLAN:** The witness and document lists can be reviewed to determine the minimum number of witnesses that will be necessary to interview, which allegations should be discussed with them, and the order in which they should be interviewed. As a general rule, start with the complainant and end with the subject. After the complainant, consider starting with collateral witnesses outside the command to minimize the embarrassment to the subject and disruption to the command should you make an early determination the allegations are unfounded. Remember to include those witnesses who may have information that may tend to disprove the allegation. Return to [Chapter Table of Contents](#).

**0513 CHRONOLOGY OF EVENTS:** A timeline or chronology of what happened is useful in almost every case. It is most important to have a good understanding of the order in which events occurred before interviewing subjects. The chronology is also very useful in bringing a new investigator up to speed on the case. Return to [Chapter Table of Contents](#).

**0514 LOGISTICS:** Travel arrangements, local transportation, lodging, access to secured spaces and classified documents, interview rooms, number of investigators required for interviews, office space and equipment are some of the logistical considerations that may impact the efficiency and effectiveness of an investigation. The investigative plan should demonstrate how these matters will be addressed. Return to [Chapter Table of Contents](#).

**0515 UPDATING THE PLAN:** The investigative plan should be updated as the investigation proceeds. Note whether, and how, the facts necessary for each allegation have been established during the course of the investigation. Make changes to the plan that may be necessary to reflect information obtained during the interview process. Add new allegations to be investigated as they are developed, indicating whether they will be explored as part of this case, or through a separate inquiry. A good plan carefully updated throughout the investigation will facilitate writing the investigative report. Return to [Chapter Table of Contents](#).

**0516 SENSITIVITY TO REPUTATION:** In creating the investigative plan, it is important to remember that the mere fact someone is being investigated by the IG tends to bring their reputation into question, even if the allegations are not substantiated. Thus, when it is possible to make initial inquiries in a roundabout way, consider taking this approach first. For example, if dealing with allegations of leave abuse, an initial step might be to contact the personnel or finance office assigned to the command in which the subject works before going to the command itself. To help protect innocent subjects in the preliminary phase of an investigation, some investigators would ask to review the leave records of

several different people in order to make it appear this is just a routine audit or evaluation of an organization, rather than an investigation of a targeted subject. Return to [Chapter Table of Contents](#).

## PART TWO - NOTIFICATION

0517 **GENERAL CONSIDERATIONS:** Invasion of privacy, damage to reputation, and the risk of compromising an investigation are important factors to be weighed when deciding who should be notified of an investigation, and when. On the surface, these concerns suggest investigators should delay notifying subjects and subject commands of the existence of an IG investigation until the last possible moment. Yet from the moment the investigation begins, there is a risk subjects and subject commands will learn of the investigation despite the investigator's best efforts to conceal it from them. Knowledge of an investigation that comes through unofficial sources may result in unnecessary speculation about the nature, purpose, and subjects of the inquiry. This may result in as much adverse impact on privacy, reputation, and the effectiveness of the investigative effort as premature official disclosure by the investigator. Moreover, the investigator can use the notification process to minimize speculation and the likelihood of deliberate or inadvertent interference, concealment of evidence, or reprisal by using the notification process to set the ground rules for the conduct of the investigation. Items to consider in connection with specific players in an investigation are discussed in the following paragraphs. Return to [Chapter Table of Contents](#).

0518 **COMPLAINANTS:** In most cases, complainants should be notified as soon as the decision to conduct an investigation is made. This alleviates fears that no one is looking at the matter, and reduces the likelihood of multiple investigations of the same issue. Complainants may be told they will be advised of the general results of the investigation upon its conclusion. If the notification is oral, the file should be documented to reflect notification. Complainants should also be informed if the IG office decides no investigation is appropriate. Complainants need not be provided status reports, but there is nothing wrong with advising them that an investigation is still in progress or of the expected timeframe for its completion, since they will be provided that information if they file a FOIA request before the investigation is completed. Return to [Chapter Table of Contents](#).

0519 **MANAGEMENT:** Word of an investigation usually spreads rapidly throughout the organization in which the investigation takes place. Unless there is a specific need to conceal the existence of the investigation from senior management in the subject command, courtesy and professionalism dictate they be notified before the first contact with witnesses who work in the organization.

A solid, professional start is particularly important when the investigator will require the assistance of the command during the course of the investigation. If the initial notice is oral, the investigative file should reflect who was contacted.

A personal courtesy visit early in the investigation is also helpful to establish good rapport. If there is an IG organization attached to the subject command, the investigator may choose to make the notification through that IG office. During the personal visit, the investigator may choose to advise the command of the general nature of the allegations, or may state the specific allegations as framed by the investigator if that will not compromise the investigation. Note, however, that the command may not be apprised of the complainant's identity, or allowed to review or make copies of any correspondence from the complainant, unless the case file clearly shows the complainant has agreed to permit such action. Many investigators prefer not to provide this information to the command even when the complainant does not object.

During the courtesy visit, it is appropriate to discreetly remind command officials not to discuss the investigation with others, especially witnesses, and to be careful to avoid any action that might be construed as reprisal for initiating or cooperating with the investigation. For example, they should be advised that it is improper to ask people whether they are the complainant. It is also improper to ask witnesses what was discussed during their interviews.

In a very small number of cases, it may be possible to determine whether there is any substance to an allegation before contact with anyone in the subject command becomes necessary. For example, an allegation that a senior member of the command was arrested for misconduct might not need to be reported to the command if the investigator first checked with the local police department and learned that the subject was actually a witness to the misconduct and arrest of someone else.

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**0520 SUBJECTS:** In most cases, subjects become aware they are being investigated during the course of an investigation, and notice may become necessary to prevent them from interfering with the investigation. Moreover, subjects against whom credible derogatory information is developed must be provided an opportunity to comment on that information, usually during the subject interview. Thus, subjects will have to be notified at some point in most investigations.

Usually, subjects are interviewed near the end of the evidence gathering stage of an investigation, after the investigator has interviewed everyone else believed to have pertinent information about the case. Thus, the investigator does have the option to defer notifying the subject until the investigation is almost complete. However, the likelihood subjects will learn details of the investigation from someone other than the investigator increases with the number of interviews. Subjects who are not officially informed of the existence and nature of an investigation involving them before they learn about it from unofficial sources may become upset, regard the investigation as unprofessional, exhibit resentment during the interview, or do other things to interfere with the investigation. Sometimes, apprising subjects of the

investigation near its beginning and discretely warning them not to interfere, may avoid these problems. Therefore, the investigator needs to balance these competing considerations in deciding when to notify the subject. In deciding when to notify the subject, the investigator should also consider whether it would be useful to conduct a preliminary interview with the subject shortly after the complainant is interviewed, and a more extensive interview after all of the witnesses have been interviewed. In cases where the complainant and subject are in agreement over the basic facts, this may save investigative effort. For example, when there is a question about the applicable rules to apply to a set of facts or the interpretation of those rules, getting the subject's position, especially to determine who the subject may have consulted before taking action, may help to focus subsequent interviews. In rare cases, it may never become necessary to notify or interview subjects. The previous description of the witness incorrectly alleged to have been arrested is one example. However, it can be argued that people have the right to be informed a case was opened under their name even when no credible derogatory information was developed. This decision is best left to the investigating IG office in each case.

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**0521 WITNESSES:** Witnesses do not need to be notified of the existence of an investigation until it is time to interview them, or make arrangements for their interview.

Because witnesses may desire to consult with counsel before being interviewed, the investigator may wish to notify witnesses who were directly involved in the matter under investigation far enough in advance to permit them that opportunity, or be prepared to suspend or defer the interview while they do so. Note that investigators do not have to advise witnesses that they may consult with counsel. In practice, witnesses are unlikely to seek counsel, especially when they provide only background information, such as descriptions of normal office procedures.

Witnesses who ask about the nature of the allegations when notified may be told in advance of the interview if the investigator believes there is some value in having the witness prepare for it. In some cases the investigator may decide to apprise witnesses of the information sought, and ask them to obtain and review pertinent files, regulations, etc. in preparation for the interview. In other cases, the investigator may decide to request witnesses do nothing to prepare for the interview. The investigator should advise witnesses whether or not they may, or should, discuss the matter with others in preparation for the interview. In most cases, witnesses should be discouraged from talking with others, especially those who also will be witnesses. In some cases, however, witnesses should be encouraged to prepare in advance with others, as, for example, when the investigator seeks specific documents or wants certain types of analyses to be conducted before the interview.

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### **PART THREE - GATHERING AND EVALUATING EVIDENCE**

**0522 EVIDENCE DISTINGUISHED FROM FACTS AND INFORMATION:** During the course of an investigation, the investigator may obtain a great deal of information, including expressions of opinion and statements of facts, as well as materials, such as documents or physical objects. For the purpose of an IG investigation, evidence consists of information and materials that may be used to prove facts that tend to demonstrate whether or not the allegation should be sustained. Return to [Chapter Table of Contents](#).

**0523 REQUIRED STRENGTH OF THE EVIDENCE:** Almost every investigation requires the exercise of judgment to determine the amount and quality of evidence that must be gathered to prove a fact. To a large extent, this depends on the action that will be taken based on those facts, a matter committed to the discretion of the responsible authority. The strength or weight of the evidence necessary for management to decide to take corrective action may be very low. For example, the mere possibility that classified information was compromised would be sufficient to warrant a change in security procedures, even if the likelihood that the information was compromised is low. At the other extreme, the strength of the evidence necessary to support facts used to convict a person of criminal conduct in connection with the compromise of classified information is so high that we require facts to be established "beyond a reasonable doubt." Knowing when enough evidence has been gathered requires the IG office to anticipate what the responsible authority is likely to do. Periodic consultation with that official may be useful to ensure the investigative effort is sufficient to satisfy expectations without going overboard and expending time and resources unnecessarily. Consultation with the responsible authority's attorney may also be useful, especially to establish the manner in which testimony should be preserved. Return to [Chapter Table of Contents](#).

**0524 PRESERVING ORAL EVIDENCE:** Many of the facts developed in IG investigations are based on oral evidence obtained during an interview that is subsequently reduced to writing in some manner. Ensuring the accuracy of the writing is not easy, but it is essential to a professional investigation. The techniques include:

- the investigator's notes;
- a "results of interview" report (ROI) written by the investigator;
- a written statement prepared by the investigator and/or the interviewee that is signed by the interviewee;
- the sworn statement of the interviewee; and
- a tape or stenographic recording of the interview that is available for subsequent transcription.

The ultimate consideration is the investigator's ability to establish that the facts presented in the investigative report and supporting documents are accurate and complete when the person from whom those facts were obtained denies them. A corollary is the ability of the government trial attorney to use the investigator's work product to impeach and discredit a recanting witness. The following should be considered:

At the very minimum, investigators should review their notes with interviewees before concluding the interview. The investigator may write important facts in sentence form and ask the witness to initial them to indicate agreement. Witnesses who have first-hand or personal knowledge of facts that are important to prove or disprove an allegation should be asked to provide sworn statements. This is particularly important when the nature of an allegation is such that disciplinary action is likely to result if it is substantiated. In many cases, the most candid statements are obtained if they are prepared and signed before the interview is concluded.

At the investigator's discretion, interviewees may be asked to read the investigator's interview notes or subsequent report of the interview, to help ensure accurate reporting. This may help investigators ensure they understood the interviewee and combat later charges they did not accurately report what the interviewee said. Interviewees who pose no objections effectively adopt the investigator's statements as their own. This technique is particularly helpful with expert witnesses, or others who provide technical information in areas with which the investigator is unfamiliar.

Investigators should decline to provide interviewees copies of their notes or reports of interview, on the grounds that inadvertent disclosure of such documents to others could prejudice the investigation, and should point out that a witness who does not have such a document can not be pressured into providing it to others. The situation is more difficult when witnesses are asked to prepare their own statements, and the investigator may have to be more flexible in those cases.

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**0525 DOCUMENTARY EVIDENCE:** Documents are important sources of evidence in most cases. Issues relating to the use of documents as evidence in litigation are discussed in [Chapter 7](#). Interviewers should review that chapter before collecting documents to determine the kind of questions that must be asked of witnesses in order to provide attorneys information necessary to lay the proper evidentiary foundation for their introduction. In addition, the following considerations apply:

It is not necessary to obtain the original of a document for most purposes. However, the investigator should insist on obtaining the best possible copy, should note from whom the copy was obtained, and where the original is located. In order to preserve the document in its original state, it is a good

practice to write such information on the back of the document. Should it become necessary to show this information on the face of the document later, it may be placed on a removable sticker that is fastened to the front of the document before making a second copy.

If there are any material differences between the original and the copy (some colors of ink do not reproduce well) be sure to note this fact in the investigative file. Use a second copy of the document to annotate the differences between the original and the first copy. If handwriting on a document is not perfectly legible, ask the writer, or someone familiar with the handwriting, to transcribe the handwriting.

In some cases, it is important to know who prepared and reviewed the document, as well as who signed it. Likewise, it may be necessary to identify all people who saw or received the document after its preparation. Be sure to ask witnesses who obtained a copy of the document whether they made any marks on it. Review those documents and make copies of any "non-identical duplicates" when appropriate.

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**0526 CORROBORATING EVIDENCE:** One measure of the strength of evidence is the number and type of sources for it. The number of sources necessary depends on the extent to which any particular fact is disputed. In general, the investigator should attempt to obtain two unbiased or disinterested sources to establish the existence of any fact. The statement of two witnesses who are willing to testify in a disciplinary action, or one witness and a document would satisfy this requirement. Complainants and subjects are not considered unbiased. However, when they agree that a particular event occurred, additional corroboration is unnecessary. This is one of the reasons why it is often advisable to conduct a preliminary interview of the subject early in the investigation. In many IG investigations, there is general agreement about what happened; the rationale or motivation for the action is the real issue. Conversely, when there is no clear agreement as to what happened, the investigator should interview more witnesses, although it is the credibility of the witness, not sheer numbers, that should lead the investigator to decide which statements to accept as facts. In those cases where it appears that disciplinary action may be appropriate, the investigator needs to consider an interviewee's willingness to testify in determining how many witnesses are necessary to interview to establish a fact. Return to [Chapter Table of Contents](#).

**0527 STANDARD INTERVIEW PROCEDURES:** There are a few things that should be done in most, if not all, interviews. They are discussed in some detail in [Chapter 6](#). In summary, they include the following:

The Opening - This sets the tone of the investigative interview. It starts with the introduction of the investigators, the display of credentials, and the explanation of the purpose of an IG investigation. Investigators should never underestimate

the effect of such ceremony during the investigation. It tends to make interviewees take the matter more seriously. They should be provided information about the Privacy Act, and how their testimony may be used. The Oath - It is not necessary to put all interviewees under oath for the interview. However, many people expect to be put under oath, and it helps to impress upon them the gravity of the matter. On the other hand, some people become reluctant to talk freely when put under oath. It is more common to put complainants and subjects under oath than it is ordinary witnesses. Whether or not the investigator decides to administer an oath, it is appropriate to remind interviewees that knowingly making a false statement to an investigator is a violation of federal law, whether or not the interviewee is under oath. The oath itself is very simple:

*Do you swear or affirm that the testimony you are about to give shall be the truth, the whole truth, and nothing but the truth?*

Probe for Bias or Influence - Ask interviewees what they have heard about the investigation, whether anyone has discussed it with them, and what, if anything, they have done to prepare for the interview. In particular, ask if any of the prior testimony has been related to them, and whether anyone has asked what they will say to the investigator, or has attempted to suggest what they should say. Ask if they have any special relationship to the subject, the complainant (if the complainant's identity may be revealed), other witnesses, any victims, etc. such as relation by blood or marriage and any contact outside of the office (golf partners, members of same club, church, visit in each others homes, etc.). Ask if there is any reason why they cannot be fully objective in answering the questions during the interview. Ask if they have any reason to fear reprisal for their testimony.

The Closing - Determine the interviewee's wishes as to implied or express confidentiality. Ask if the interviewee is willing to testify in any judicial or administrative proceedings that may result from the investigation. Decide whether to grant any degree of express confidentiality. Caution interviewees not to discuss their testimony with anyone else, and to contact the investigator immediately if they believe any action has been taken against them in reprisal for their cooperation with the investigation.

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**0528 GETTING STARTED - INTERVIEW THE COMPLAINANT:** If the investigators assigned to the case were not the people with whom the complainant made initial contact, they should interview the complainant as close to the start of the investigation as possible. If the complainant can be interviewed at a site away from the subject command, investigators may consider conducting that interview before meeting with management officials or the local point of contact. In general, investigators should adhere to the procedures outlined in [paragraphs 0409 through 0418](#). If the initial contact was with another investigator, as is most likely to be the case, the investigators should go over any materials obtained from the initial contact with the complainant to ensure

accuracy and to update them if necessary. The investigators should take particular care in discussing confidentiality issues with the complainant and carefully document any express grant of confidentiality (see [Chapter 3](#)). Return to [Chapter Table of Contents](#).

**0529 GETTING STARTED - BRIEFING MANAGEMENT:** If the investigative plan calls for a courtesy visit with management officials, this should be arranged as soon as the investigators check in with the local point of contact. If management has already been notified of the investigation, a courtesy visit is not mandatory. Often, it is sufficient for the investigators to advise the point of contact that they are available for a courtesy call. Note that the courtesy call can be used to tell management what is expected from the command in the way of cooperation and non-interference. A discussion of reprisal couched in terms of inadvertent actions that could be misconstrued is an effective way of addressing this serious matter up front. Management will want to know as much as possible about the allegations. Investigators may brief the issues to management unless they have a reason to believe such action would compromise the investigation. Investigators should not identify complainants or show anyone copies of written complaints without the complainant's consent. However, when complainants have consented to allow management and/or subjects to know their identity or read their complaint, providing that information at the outset of the investigation puts the command "on notice" that actions taken with respect to that person will be subject to strict scrutiny and eliminates the argument that management did not know that person had "blown the whistle" when it took the action. Return to [Chapter Table of Contents](#).

**0530 UPDATE THE PLAN AS INTERVIEWS PROGRESS:** As the investigators proceed with the process of examining documents and interviewing witnesses in accordance with the investigative plan, it is common to develop new issues or allegations. Investigators should update the investigative plan as this information develops in order to determine whether, when, and how these allegations or issues should be developed. Investigators need to pay particular care to the possibility that people initially thought to be witnesses should be treated as subjects or suspects due to the discovery of new evidence. Investigators must constantly evaluate the sufficiency of the evidence as it is developed in order to determine when it is appropriate to conclude the investigation. Return to [Chapter Table of Contents](#).

**0531 THE INVESTIGATOR MUST DECIDE WHAT HAPPENED:** When witnesses disagree over what happened, the investigator's job is to reconcile those differences if at all possible. This usually will require the investigator to update the plan and interview more witnesses or search for other documents. It also may require the investigator to choose between conflicting versions of events. Although the investigator's report should clearly indicate which facts are disputed, the report should also state which version is more credible, and why. In many cases, this will depend on the investigator's evaluation of witness credibility

during the interview. See Chapter Six for a discussion of techniques that may assist in evaluating credibility. Return to [Chapter Table of Contents](#).

**0532 CONCLUDING THE ON-SITE INVESTIGATION:** When the investigator has finished gathering evidence from the site, management should be notified, and the investigator should generally be available to attend an exit meeting if requested. The investigators should express appreciation for the support received, and indicate whether there were any significant problems that hindered the conduct of the investigation. The investigators should also advise management whether the command climate suggested a concern over reprisal for cooperating with the investigators. The investigators should not comment on the substance of their findings, noting that the investigation is not considered complete until the investigative report is completed and approved by the investigators' superiors. Management may be advised of the general timeframe in which to expect the report to be finalized, and who to contact for a status update. Return to [Chapter Table of Contents](#).

#### **PART FOUR - COMMON PROBLEMS**

**0533 UNCOOPERATIVE COMMANDS:** On rare occasions, a command may refuse to make witnesses available for interview, or engage in other activity that impedes the investigation. In such cases, investigators should immediately advise the senior member of the command of the conduct in question and ask that it be corrected. If the senior member fails to take appropriate action, investigators should state that the senior member's superiors will be apprised of the situation and report the problem back to the investigator's IG office for action. If the problem is not corrected after a phone call to the appropriate superior, the matter shall be reported in writing to the responsible authority with a copy to the Naval Inspector General. Return to [Chapter Table of Contents](#).

**0534 REQUESTS TO HAVE OTHER PEOPLE ATTEND INTERVIEW:** In most cases, it is not appropriate to allow witnesses to have friends or relatives present during the interview, because this tends to inhibit candor and full disclosure. The investigator may permit third parties to be present if it appears this would facilitate communications during the interview. The interview record should reflect the presence of third parties. As an alternative, suggest the friend be available in a nearby room. Refer to Chapter 3 for matters relating to the right to have counsel and union representatives present during an interview. See the following paragraph for methods of dealing with interviewees who refuse to testify unless third parties are permitted to be present. Return to [Chapter Table of Contents](#).

**0535 REFUSAL TO TESTIFY:** Military personnel and civilian federal employees must answer all questions relating to an investigation except those that may be self-incriminating (where immunity has not been granted) and some questions relating to privileged communications. See [Chapter 3](#) for a discussion of immunity issues. See [Chapter 7](#) for a discussion of privileges. In general, the

only privileged communications are attorney-client, husband- wife, and certain communications with clergymen. Note that, with the exception of military attorneys assigned in accordance with service regulations to serve as counsel for individuals, there is no attorney-client privilege between government attorneys and DoN personnel. DoN personnel may also refuse to answer questions that involve classified information until they receive assurances that the investigator has the proper clearance. When DoN personnel improperly refuse to submit to an interview or answer questions, the investigator should arrange for their superior officer or supervisor to issue them written directions to cooperate with the investigator. Civilians who are not federal employees have no legal obligation to submit to an interview. Witnesses who have "convenient" memory lapses concerning matters that may constitute a felony should be reminded that 18 USC 4, "Misprision of Felony," makes it a crime punishable by fine or imprisonment to conceal such information. Return to [Chapter Table of Contents](#).

**0536 FALSE TESTIMONY:** Interviewees who knowingly make false statements may be subject to prosecution under Articles 107 or 134 of the UCMJ, and 18 USC 1001, "False Statements." Investigators who believe this may be happening should provide a warning that advises of the penalties for false statements. Interviewees should also be advised they are subject to disciplinary action, which in many cases is a more effective warning. Typical warnings statements include:

*For Civilian Personnel - I consider it my duty to advise you that under the provisions of Section 1001, Title 18, United States Code, whoever in any matter within the jurisdiction of any Department or Agency of the United States knowingly and willfully falsifies, conceals, or covers up by a trick, scheme or device, a material fact, or makes any false, fictitious, or fraudulent statement or representation, shall be fined not more than \$10,000 or imprisoned for not more than five years, or both. Additionally, any person who wilfully and contrary to his/her oath testifies falsely while under oath may be punished for perjury in accordance with Section 1621, Title 18, United States Code. Do you understand?*

*For Military Personnel - (including anyone subject to UCMJ) I consider it my duty to advise you that any person subject to the UCMJ who, with intent to deceive, signs any false record, return, regulation, order or other official document, knowing the same to be false, may be subject to action under the provisions of Article 107, UCMJ. Additionally, under the provisions of Article 134, UCMJ, any person subject to the UCMJ who makes a false statement, oral or written, under oath, not believing the statement to be true, may be punished as a court martial may direct. Do you understand?*

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**0537 REQUESTS FOR ADVICE:** Sometimes an interviewee may request advice from the investigator. Investigators should decline to provide such advice except as it relates to their rights and duties in connection with the investigation, or the

procedures relating to the interview. For example, when witnesses ask if they may consult with an attorney prior to the interview, it is appropriate to advise that they may do so. However, if a witness then asks whether consultation would be appropriate in this case, the investigator should decline to answer that question. Return to [Chapter Table of Contents](#).

**0538 WITNESS INTIMIDATION:** Investigators who believe there may have been tampering or interference with a witness should immediately report the matter to the witness's commander and request action be taken to ensure this ceases immediately. If the commander does not cooperate, or if the commander is suspected of being a party to the action, investigators shall advise their IG office and request appropriate action. Investigators shall document all incidents of suspected tampering or interference, place them in the case file, and forward a copy to NAVINSGEN. Return to [Chapter Table of Contents](#).

**0539 REPRISAL:** Investigators who are told by witnesses that they have been subjected to reprisal action for cooperating with the investigation shall conduct an interview of the witness with regard to this matter and forward it to their IG office for action. The IG office shall initiate an investigation, using a different investigator, if possible, and shall give it the highest possible priority. Upon developing any credible evidence to support an allegation of reprisal, the IG office shall notify NAVINSGEN immediately. Return to [Chapter Table of Contents](#).

**0540 REFUSAL TO SWEAR OR AFFIRM TESTIMONY:** DoN personnel may be directed to provide testimony under oath or affirmation. Witnesses who object should be advised that they may be disciplined for giving false testimony even if they are not under oath. They should also be advised that since other witnesses are providing testimony under oath, their testimony is likely to be deemed less credible. However, in the few cases where this is a problem, it is often sufficient to take unsworn testimony and note the refusal for the record. Return to [Chapter Table of Contents](#).

**0541 LOSING IMPARTIALITY:** Investigators must be especially careful to avoid situations which may make it appear they are not impartial. For example, engaging in social activities with anyone involved in the investigation would be inappropriate. In some cases, an investigator may discover that friends, relatives, or long-time working acquaintances will be witnesses in an investigation. Investigators who believe they can remain impartial should still disqualify themselves because the appearance of impartiality will be lost. Of course, investigators who find that they actually are biased, for whatever reason, must immediately disqualify themselves, even if there is no appearance problem. Return to [Chapter Table of Contents](#).