

JAGMAN
INVESTIGATIONS
HANDBOOK



09/09

ADMINISTRATIVE INVESTIGATIONS

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INTRODUCTION

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

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

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

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

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

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

¹ Courts and Boards of Inquiry are not addressed - refer to JAGMAN, Chapter II, and JAGINST 5830.1 for procedures applicable to these more formal investigations.

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

PRELIMINARY INQUIRY

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

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

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

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

(1) Take no further action. Where further investigation would serve no useful purpose, there is no need to convene a JAGMAN investigation. This is an appropriate course where the PI reveals that the incident is likely to be of little interest to anyone outside the immediate command or that the event will be adequately investigated under some other procedure (e.g., NCIS investigation, MLSR/survey procedure, etc.). JAGMAN 0204(b)(1). As a matter of practice, documentation of the PI and the command decision is advisable.

(2) Conduct a command investigation. JAGMAN 0204(b)(3), 0209.

(3) Convene a litigation-report investigation. **Consultation with the "cognizant judge advocate" is required.** JAGMAN 0204(b)(4), 0210.

(4) Convene a court or board of inquiry. In the event of a "major incident," If the CA is not a general court-martial convening authority (GCMCA) and therefore not empowered to convene a court or board of inquiry, the officer exercising general GCMCA over the command involved or general officer in the chain-of-command, or any superior flag or general officer **will** immediately take cognizance over the case as the CA.. JAGMAN 0203(b)(2). If the CA concludes that the incident is not in fact a "major incident" or concludes that a court or board of inquiry is not warranted, then the CA shall report such conclusion to the next superior in the chain-of-command before convening another type of investigation.

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

0203.

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

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

PRELIMINARY INQUIRY CHECKLIST

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

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- _____ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that he/she has suffered, of his/her right not to sign such a statement. (Refer to page IX-2 of this handbook for a sample form). *See* JAGMAN 0212(c).

- _____ Is a Privacy Act statement required for any witness interviewed? JAGMAN 0207(e) requires that Privacy Act statements be obtained from each witness from whom personal information is taken. (Refer to page IX-3 of this handbook for a sample form.)

- _____ Does the CA desire/require the outcome to be documented in writing? (If yes, refer to page II-5 of this handbook for sample format.)

- _____ The preliminary inquiry officer makes his/her report to the CA.

- _____ Which of the command options does the CA choose in light of the preliminary inquiry?
 - _____ No further action.
 - _____ Command investigation.
 - _____ Litigation-report investigation.
 - _____ Refer the case immediately to the GCMCA if case is a potential “major incident.”

- _____ CA reports the result of the PI to the ISIC.

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

SAMPLE PRELIMINARY INQUIRY REPORT

(Date)

From: (Name and rank of individual conducting preliminary inquiry)

To: (Title of authority ordering preliminary inquiry)

Subj: PRELIMINARY INQUIRY INTO (DESCRIPTION OF INCIDENT)

Ref: (a) JAGMAN Section 0203

1. This reports completion of the preliminary inquiry conducted in accordance with reference (a) into (description of incident).
2. Personnel contacted: (List individuals with name, rank, title, unit, and telephone number).
3. Materials reviewed: (List documents, objects, materials, tangibles reviewed and, if of probable evidentiary value, where stored together with name of the custodian of such material and that person's phone number).
4. Summary of findings: (The inquiring official should provide a brief summary of their findings to the commander. While the summary need not extend beyond one paragraph, it should be as long as required to provide the commander with a reasonably good picture of what occurred and should support the recommendations provided below. In addition, it should document what is not known about the event in question).
5. Recommendation: (The inquiring official should provide a recommendation on subsequent command action: consult a judge advocate; no further investigation warranted; command investigation; litigation-report investigation; board of inquiry; or court of inquiry. If the inquiring official: concludes that any injuries may result in a finding of "not in the line of duty" or "misconduct," then it must be accompanied by a recommendation to convene a formal investigation; or, recommends disciplinary action, then such a recommendation should be followed by a recommendation to conduct a formal investigation or a Preliminary Inquiry pursuant to Rule for Courts-Martial 303.

 Name, rank, unit, telephone

FIRST ENDORSEMENT

 _____ Concur with recommendation

 _____ Other: _____

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Name, rank, unit, telephone

(Note: attachments may be added to the report as desired.)

COMMAND INVESTIGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SAMPLE COMMAND INVESTIGATION CONVENING ORDER

5800
Ser Info
Date

From: Commanding Officer, Headquarters Battalion, Marine Corps Base,
Camp Pendleton, CA

To: Captain _____, USMC

Subj: COMMAND INVESTIGATION OF THE FIRE THAT OCCURRED AT _____ ON
_____ AUGUST 20____

Ref: (a) JAGMAN, Chapter II

1. This appoints you, per chapter II of reference (a), to inquire into the facts and circumstances surrounding the fire that occurred at _____ on _ August 20_.
2. Investigate the cause of the fire, resulting injuries and damages, and any fault, neglect, or responsibility therefor, and recommend appropriate administrative or disciplinary action. Report your findings of fact, opinions, and recommendations in letter form by _ September 20_, unless an extension of time is granted. If you have not previously done so, read chapter II of reference (a) in its entirety before beginning your investigation.
3. You may seek legal advice from _____ during the course of your investigation.
4. By copy of this appointing order, Commanding Officer, Headquarters Company, is directed to furnish necessary clerical assistance.

Colonel, U.S. Marine Corps

Copy to:
CG, MCB CamPen, CA
CO, HQCo, HQBn, MCB, CamPen, CA

THE COMMAND INVESTIGATION CHECKLIST**I. GETTING STARTED**

- ___ CA appoints an investigating officer in writing.
- ___ Begin work on the investigation immediately upon hearing that you are to be appointed, whether or not you have received a convening order in writing.
- ___ Carefully examine the convening order to determine the scope of your investigation.
- ___ Determine when the investigative report is due to the CA.
 - ___ If you can not reach that deadline, request an extension.
- ___ Review all relevant instructions on your investigation, i.e. JAGMAN Chapter 2, etc.
- ___ Determine which checklists may apply to your investigation and review them carefully to determine what information is required. Refer to sections IX and X of this handbook.
- ___ Decide what the purpose and methodology of your investigation will be.
 - ___ Where is evidence likely to be located?
 - ___ How can such evidence best be obtained and preserved?
- ___ Has this incident involved a member of the command and/or occurred within the command?
If not, are you the appropriate command to conduct the investigation?
- ___ Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? (If yes, refer to JAGMAN 0201(d)).
- ___ Is this considered a "major" incident? (Refer to JAGMAN Appendix A-2-a for definition.)
 - ___ If believed to be a "major" incident, refer to JAGMAN 0203(b)(2), (f), 0204(b)(5), 0210(a)(1).

II. HANDLING WITNESSES

(NOTE: You may wish to gather and review other types of evidence before interviewing any or all witnesses.)

- _____ Draw up a list, to be supplemented as the investigation progresses, of all possible witnesses.
- _____ Determine if witnesses are transferring, going on leave, hospitalized, etc., which might take them out of the area before review of the investigation is completed.
- _____ Inform the CA, orally, with confirmation in writing, immediately upon learning that a material witness might leave the area before review of the investigation is completed.
- _____ Conduct an intensive interview of each witness, i.e. names, places, dates, and events that are relevant.
- _____ Witness statements should be as factual in content as possible. If a witness makes a vague statement ("he was drunk"), try to pin down the actual facts.
- _____ If a witness is not physically available for an interview, attempt to conduct it via telephone, mail or message.
- _____ Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty, of his/her rights under Article 31b. Ordinarily, an investigation should collect relevant information from all other sources before interviewing a suspect. *See* JAGMAN 0214(d)(2) (Refer to page IX-1 of this handbook for a sample form.)
- _____ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that he/she has suffered, of his/her right not to sign such a statement. (Refer to page IX-2 of this handbook for a sample form). *See* JAGMAN 0212(c).
- _____ Is a Privacy Act statement required for the witness interviewed? JAGMAN 0207(e) requires that Privacy Act statements be obtained from each witness from whom personal information is taken. (Refer to page IX-3 of this handbook for a sample form.)
- _____ Record the interview of each witness in detailed notes or by mechanical means.
- _____ Reduce each witness' statement to a complete and accurate narrative statement.

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- _____ If possible, obtain the signature of each witness, under oath and witnessed, on the narrative statement of his/her interview. If not possible, indicate on the narrative statement that it represents either an accurate summary, or verbatim transcript, of oral statements made by the witness.

- _____ Direct witnesses subject to naval authority not to discuss their statements. Witnesses not subject to naval authority may be requested not to discuss their statements.

- _____ Review your list of possible witnesses to ensure that you have interviewed all such witnesses.

III. DOCUMENTARY EVIDENCE

- _____ Make a list, to be supplemented as the investigation proceeds, of all possible documents, to include:
 - _____ Copies of relevant rules, regulations, instructions, standard operating procedures;
 - _____ relevant correspondence and messages;
 - _____ personnel records;
 - _____ medical records (clinical and hospital records, death certificates, autopsy reports, etc.);
 - _____ official logs and reports; and
 - _____ required forms (personnel injury forms, vehicle accident reports, etc.).

- _____ Examine your list of possible documents to ensure that you have obtained all such documents available to you.

- _____ If unable to obtain a certain document, attempt to obtain it via fax, message, telephone, or mail.

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

IV. OTHER EVIDENCE

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

- _____ Examine your list of possible information to ensure that you have obtained all such information personally available to you.

- _____ If unable to obtain certain information, attempt to obtain it via fax, message, telephone, or mail.

- _____ Attempt to reduce such information to a form, such as photographs or sketches, which can be conveniently included in your investigative report.

- _____ Take all steps possible to insure that any evidence not an enclosure to the investigative report will be kept in an identified place, safe from tampering, loss, theft, and damage, pending review of the investigation.

DRAFTING THE CI REPORT

(NOTE: REFER TO PAGE III-12 OF THIS HANDBOOK FOR SAMPLE FORMAT)

_____ Classification of the report, (secret, confidential, etc.). Omit classified information unless absolutely essential (*see* JAGMAN 0208(b)).

PRELIMINARY STATEMENT

_____ State that all reasonably available evidence was collected or is forthcoming and that each directive of the CA has been met.

_____ Set forth the nature of the investigation.

_____ Relate any delays or difficulties encountered, including non-availability of evidence or failure to interview relevant witnesses.

_____ Explain any conflicts in evidence, which evidence is considered more reliable, and why.

_____ Note any extensions requested and granted.

_____ Note the limited participation by any member or advisor.

_____ If social security numbers contained in the report were obtained from sources other than the individual (i.e., from service records), so state.

_____ Indicate where original items of evidence are maintained, how they are being safeguarded, and the name and phone number of the responsible custodian.

_____ Any other information necessary for a complete understanding of the case.

FINDINGS OF FACT. A fact is something that is or happens.

_____ Distinguish in your own mind the differences between the terms "fact", "opinion", and "recommendation".

_____ Conduct an evaluation of the evidence or lack of evidence.

_____ Review any special fact-finding requirements pertaining to the specific incident in the JAGMAN checklists.

_____ When drafting the findings of fact, be specific as to persons, times, places, and events.

_____ Reference after each finding of fact, the enclosures to the report that support the finding of fact.

-
-
- ___ Identify by grade or rate, service number, organization, occupation or business, and residence person(s) connected with the incident.
 - ___ Make appropriate findings of fact for all relevant facts, including information already stated in the preliminary statement. The preliminary statement is not a substitute for findings of fact.
 - ___ Place findings of fact in chronological and/or logical order.
 - ___ Is each fact a separate finding?
 - ___ Is each finding of fact supported by an enclosure?
 - ___ Are all enclosures used? (if not used, delete the enclosure.)
 - ___ Ensure that, when read together, the findings of fact tell the whole story of the incident without having to refer back to the enclosures.
 - ___ Does the story flow? Is it readable?

OPINIONS are reasonable evaluations, inferences, or conclusions based on the facts found. Opinions are value judgements.

- ___ Ensure that each of your opinions are exactly that, not findings of fact or recommendations.
- ___ Ensure that each opinion references the finding(s) of fact that support it.
- ___ Ensure that you have rendered those opinions required by the convening order, as well as any others you feel are appropriate.

RECOMMENDATIONS are proposals made on the basis of the opinions.

- ___ Ensure that each of your recommendations are exactly that, not findings of fact or opinions.
- ___ Ensure that each recommendation is logical and consistent with the findings of fact and opinions.
- ___ Address those recommendations specifically required by the convening order and any others considered appropriate.
- ___ Recommend any appropriate corrective, disciplinary, or administrative action.
- ___ Enclose a draft of a punitive letter of reprimand if recommending such action.

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_____ Draft and send, under separate cover, a non-punitive letter of caution if recommending such action.

SIGNING

_____ Sign your report.

ENCLOSURES

_____ Convening order.

_____ All evidence in logical order.

_____ Is each statement, affidavit, transcript or summary of testimony, photograph, map, chart, document, or other exhibit, a separate enclosure?

_____ Are any reproduced documents certified to be true copies?

_____ Have you complied with the special marking requirements applicable to photographs? *See* JAGMAN, 0207(b)(4) and 0208(g)(1).

_____ Are enclosures listed in the order in which they are cited in the body of the investigation?

_____ Ensure that you do not have inappropriate material in the investigation: NCIS reports of investigations; aircraft mishap reports; Inspector General reports; polygraph examinations; medical quality assurance investigations.

CONCLUDING ACTION

_____ Have you stretched your imagination to the utmost in gathering and recording all possible information on the incident investigated?

_____ Have you checked and double-checked to ensure that your findings of fact, opinions, recommendations, and enclosures are in proper order?

_____ Have you carefully proofread your Investigative Report to guard against embarrassing clerical errors?

_____ Have you signed your Investigative Report?

SAMPLE COMMAND INVESTIGATION REPORT

Ser Info
Date

From: Captain _____, USMC
 To: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Pendleton, CA
 Subj: SAME AS SUBJECT ON CONVENING ORDER

Encl: (1) Convening order and modifications thereto (if any were issued)
 (2) Summary (or verbatim) of sworn (or unsworn) testimony of _____ (a witness)
 (3) Summary (or verbatim) of sworn (or unsworn) testimony of _____ (a witness)
 (4) Statement of _____, signed by witness
 (5) Description of _____ (evidence found at scene of the accident)
 (6) Photograph of _____ depicting _____

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

Preliminary Statement

1. Paragraph 1 of an investigative report must contain information in the form of a "preliminary statement." Contents may require continuation in one or more additional paragraphs. In general, *see* JAGMAN 0208(c) for required contents. Where applicable, an investigating officer should indicate the name and organization of any judge advocate consulted. Extensions of time to complete the report should be noted here. Also state in appropriate cases that the matter was first referred to NCIS and NCIS expressed no objection to proceeding with the investigation.

Findings of Fact

1. _____ [encls (), ()]
2. _____ [encls (), ()]
3. _____ [encls (), ()]

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

Opinions

1. _____ [FF ()]
2. _____ [FF ()]
3. _____ [FF ()]

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

Recommendations

- 1.
- 2.
- 3.

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

(SIGNATURE OF INVESTIGATING OFFICER)

RETENTION AND RELEASE OF COMMAND INVESTIGATIONS

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

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

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

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

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

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

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

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

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

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

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

LITIGATION-REPORT INVESTIGATIONS

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

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

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

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

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

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

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

JAGMAN Investigations Handbook

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

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

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

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

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

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

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

SAMPLE LITIGATION-REPORT INVESTIGATION APPOINTING ORDER

5800
Ser Info
Date

From: Commanding Officer, Naval Submarine Base New London
To: Lieutenant _____, USN

Subj: LITIGATION-REPORT INVESTIGATION OF THE FIRE THAT OCCURRED AT
QUARTERS XYZ, NAVSUBBASE NLON, ON __ AUGUST 20__

Ref: (a) JAGMAN, Chapter II

1. Per reference (a), you are hereby appointed to investigate the circumstances surrounding the fire that occurred at Quarters XYZ, Naval Submarine Base New London, on __ August 20__, and to prepare the related litigation-report. During the investigation, you will be under the direction and supervision of LCDR _____, JAGC, USN. Consult LCDR _____ before beginning your inquiry or collecting any evidence. If you have not already done so, you should also read chapter II of reference (a) in its entirety before consulting LCDR _____.
2. This investigation is being convened and your report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing interests of the United States in this matter. As such, it is privileged and should be discussed only with personnel who have an official need to know of its progress or results. If you have any doubt about the propriety of discussing the investigation with any particular individual, then you should seek guidance from LCDR _____ before doing so.
3. Investigate all facts and circumstances surrounding the fire, including the cause of the fire, resulting injuries and damages, and any fault, neglect, or responsibility therefor. Report your findings to LCDR _____ by __ September 20__, unless an extension of time is granted. Do not express any opinions or recommendations unless LCDR _____ directs you to do so. Label your report "**FOR OFFICIAL USE ONLY: ATTORNEY WORKPRODUCT**," and take appropriate measures to safeguard it.

(Signature of CA)

Copy to:
COMSUBGRU TWO

THE LITIGATION-REPORT INVESTIGATION CHECKLIST

I. GETTING STARTED

- ___ Convening authority (CA) consults with cognizant judge advocate.
- ___ CA appoints an investigating officer in writing, identifying the judge advocate under whose direction and supervision the investigation will be conducted.
- ___ The IO must consult with the assigned judge advocate **before** beginning the investigation.
- ___ Carefully examine the convening order to determine the scope of your investigation.
- ___ Determine when the investigative report is due to the CA.
- ___ If you can not reach that deadline, request an extension.
- ___ Review all relevant instructions on your investigation, e.g. JAGMAN Chapter 2, etc.
- ___ Determine which checklists may apply to your investigation and review them carefully to determine what information is required. Refer to sections IX and X of this handbook.
- ___ Decide what the purpose and methodology of your investigation will be.
- ___ Where is evidence likely to be located?
- ___ How can such evidence best be obtained and preserved?
- ___ Has this incident involved a member of the command and/or occurred within the command? If not, are you the appropriate command to conduct the investigation?
- ___ Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? (If yes, refer to JAGMAN 0201(d).
- ___ Is this considered a "major" incident? (Refer to page JAGMAN Appendix A-2-a of this handbook for definition.)
- ___ If believed to be a "major" incident, refer to JAGMAN 0203(b)(2), (f), 0204(b)(5), 0210(a)(1).

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

II. HANDLING WITNESS

(NOTE: You may wish to gather and review other types of evidence before interviewing any or all witnesses.)

- _____ Draw up a list, to be supplemented as the investigation progresses, of all possible witnesses.
- _____ Determine if witnesses are transferring, going on leave, hospitalized, etc., which might take them out of the area before review of the investigation is completed.
- _____ Inform the CA, orally, with confirmation in writing, immediately upon learning that a material witness might leave the area before review of the investigation is completed.
- _____ Conduct an intensive interview of each witness, e.g. names, places, dates, and events that are relevant.
- _____ Witness statements should be as factual in content as possible. If a witness makes a vague statement ("he was drunk") try to pin down actual facts.
- _____ If a witness is not physically available for an interview, attempt to conduct it via telephone, mail or message.
- _____ Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty, of his/her rights under Article 31b, UCMJ. (Refer to page IX-1 of this handbook for a sample).
- _____ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that he/she has suffered, of his/her right not to sign such a statement. (Refer to page IX-2 of this handbook for a sample). *See JAGMAN 0212(c).*
- _____ Is a Privacy Act statement required for the witness interviewed? JAGMAN 0207(e) requires that Privacy Act statements be obtained from each witness from whom personal information is taken. (Refer to page IX-3 of this handbook for a sample.)
- _____ Record the interview of each witness in detailed notes.
- _____ Reduce each witness' statement to a complete and accurate narrative statement.
- _____ Witnesses will not, in most cases, be asked to make a written statement or to sign a statement that the investigator has prepared. **DO NOT attach signed witness statements as enclosures to the investigation, unless the supervising judge advocate so directs.**

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- ___ Indicate on the narrative statement that it represents an accurate summary of oral statements made by the witness.
- ___ Review your list of possible witnesses to ensure that you have interviewed all such witnesses.

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

III. DOCUMENTARY EVIDENCE

- ___ Make a list, to be supplemented as the investigation proceeds, of all possible documents, to include:
 - ___ Copies of relevant rules, regulations, instructions, standard operating procedures;
 - ___ relevant correspondence and messages;
 - ___ personnel records;
 - ___ medical records (clinical and hospital records, death certificates, autopsy reports, etc.);
 - ___ official logs and reports; and
 - ___ required forms (personnel injury forms, vehicle accident reports, etc.)
- ___ Examine your list of possible documents to ensure that you have obtained all such documents personally available to you.
- ___ If unable to obtain a certain document, attempt to obtain it via fax, message, telephone, or mail.
- ___ Obtain originals or certified true copies of all documents available to you.

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

OTHER EVIDENCE

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

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

PRELIMINARY STATEMENT

- _____ Include this statement: "This report was prepared under the supervision of a judge advocate in contemplation of litigation by or against the United States."
- _____ State that all reasonably available evidence was collected or is forthcoming and that each directive of the CA has been met.
- _____ Set forth the nature of the investigation.
- _____ Relate any delays or difficulties encountered, including non-availability of evidence or failure to interview relevant witnesses.
- _____ Explain any conflicts in evidence, which evidence is considered more reliable and why.
- _____ Note any extensions requested and granted.
- _____ Note the limited participation by any member or advisor.
- _____ If social security numbers contained in the report were obtained from sources other than the individual (e.g., from service records), so state.
- _____ Indicate where original items of evidence are maintained, how they are safeguarded, and the name and phone number of the responsible custodian.
- _____ Any other information necessary for a complete understanding of the case.

FINDINGS OF FACT. A fact is something that is or happens.

- _____ Distinguish in your own mind the differences among the terms "fact", "opinion", and "recommendation".
- _____ Conduct an evaluation of the evidence or lack of evidence.
- _____ Review any special fact-finding requirements pertaining to the specific incident in the JAGMAN checklists.
- _____ When drafting the findings of fact, be specific as to persons, times, places, and events.

-
-
- ___ Reference after each finding of fact, the enclosures to the report which support the finding of fact.
- ___ Identify by grade or rate, service number, organization, occupation or business, and residence person(s) connected with the incident.
- ___ Make appropriate findings of fact for all relevant facts, including information already stated in the preliminary statement. The preliminary statements is not a substitute for findings of fact.
- ___ Place findings of fact in chronological and/or logical order.
- ___ Is each fact a separate finding?
- ___ Is each finding of fact supported by an enclosure?
- ___ Are all enclosures used? (if not used delete the enclosure).
- ___ Ensure that, when read together, the findings of fact tell the whole story of the incident without having to refer back to the enclosures.
- ___ Does the story flow? Is it readable?

NOTE: OPINIONS AND RECOMMENDATIONS ARE NOT MADE BY THE IO UNLESS DIRECTED BY THE SUPERVISORY JUDGE ADVOCATE.

OPINIONS are reasonable evaluations, inferences, or conclusions based on the facts found. Opinions are valuable judgements.

- ___ Ensure that each of your opinions are exactly that, not findings of fact or recommendations.
- ___ Ensure that each opinion references the finding(s) of fact that support is.
- ___ Ensure you discuss each opinion with the supervisory judge advocate.

RECOMMENDATIONS are proposals made on the basis of opinions.

- ___ Ensure that each of your recommendations are a exactly that, not findings of fact or opinions.
- ___ Ensure that each recommendation is logical and consistent with the findings of fact and opinions.
- ___ Recommend any appropriate corrective, disciplinary, or administrative action.
- ___ Enclose a draft of a punitive letter or reprimand if recommending such action.

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___ Draft and send under separate cover a non-punitive letter of caution if recommending such action.

___ Ensure you discuss each recommendation with the supervisory judge advocate.

SIGNING

___ Is the report signed by the assigned judge advocate?

___ Sign your report.

ENCLOSURES

___ Convening order.

___ All evidence in logical order.

___ Is each statement, affidavit, transcript or summary of testimony, photograph, map, chart, document, or other exhibit, a separate enclosure?

___ Are any reproduced documents certified to be true copies?

___ Have you complied with the special marking requirements applicable to photographs?
See JAGMAN 0207(b)(4) and 0208(g)(1).

___ Are enclosures listed in the order in which they are cited in the body of the investigation?

___ Ensure that you do not have inappropriate material in the investigation: NCIS reports of investigations; aircraft mishap reports; Inspector General reports; polygraph examinations; medical quality assurance investigations; sworn or signed witness statements.

CONCLUDING ACTION

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

SAMPLE LITIGATION-REPORT INVESTIGATION

5800
Ser Info
Date

From: Lieutenant Commander _____, JAGC, USN
Lieutenant _____, USN
To: Commanding Officer, Naval Submarine Base New London
Subj: SAME AS SUBJECT ON CONVENING ORDER

Encl: (1) Convening order and modifications thereto (if any were issued)
(2) Summary of statement of witness (**Do not include signed statements**)
(3) Summary of statement of witness
(4) Description of _____ (evidence found at scene of the fire)
(5) Photograph of _____ depicting

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

Preliminary Statement

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

Findings of Fact

1. _____ [encls (), ()]
2. _____ [encls (), ()]
3. _____ [encls (), ()]

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

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

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

(SIGNATURE OF INVESTIGATING OFFICER)

(SIGNATURE OF SUPERVISORY JUDGE ADVOCATE)

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LINE OF DUTY / MISCONDUCT DETERMINATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

LINE OF DUTY/MISCONDUCT CHECKLIST
(JAGMAN 0212 - 0232)

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

- _____ Was the servicemember in jail as a result of a civilian felony conviction at the time of the injury?
- _____ There is a reasonable chance of permanent disability and the commanding officer considers the convening of an investigation essential to ensure an adequate official record is made concerning the circumstances surrounding the incident.
- _____ The injured member is in the Naval Reserve or the Marine Corps Reserve and the commanding officer considers an investigation essential to ensure an adequate official record is made concerning the circumstances surround the incident.

If a CI is necessary, the following information must be included in the final report. The considerations contained in Section III of this Handbook also pertain.

- _____ Identifying data of all persons, military or civilian, killed or injured.
- _____ Name, sex, age.
- _____ Military grade or rate, regular or reserve, armed force, station or residence.
- _____ Experience/expertise, where relevant.
- _____ Civilian title, business or occupation, address.
- _____ Experience/expertise, where relevant.
- _____ All relevant records must be obtained, including: military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquest or medical examiners' reports, and pathological, histological, and toxicological studies.
- _____ Place of injury occurrence, the site and terrain, to include photographs, maps, charts, diagrams or other relevant exhibits.
- _____ Duty status of injured person: leave, liberty, unauthorized absence (UA), active duty, active duty for training, or inactive duty for training at time of injury.
- _____ Whether any UA status at time of injury materially interfered with his/her military duty.
- _____ Nature/extent of injuries, including description of body parts injured.
- _____ Extent of hospitalization.
- _____ Cost from any civilian medical facilities.

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- ___ Amount of time "lost."
- ___ Physical factors and impairment.
 - ___ Tired (working excessive hours), hungry, on medication (prescribed or unauthorized), ill or experiencing dizziness, headaches or nausea, exposed to severe environmental extremes.
 - ___ Any alcohol or habit-forming drug impairment.
 - ___ Individual's general appearance, behavior, rationality of speech, and muscular coordination.
 - ___ Quantity and nature of intoxicating agent used.
 - ___ Period of time in which consumed.
 - ___ Results of blood, breath, urine or tissue test for intoxicating agents.
 - ___ Lawfulness of intoxicating agent.
- ___ Mental factors.
 - ___ Emotionally upset (angry, depressed, moody, tense).
 - ___ Mentally preoccupied with unrelated matters.
 - ___ Motivation.
 - ___ Knowledge of/adherence to standard procedures.
 - ___ Attempted suicide (genuine intent to die v. gesture or malingering). *See* JAGMAN 0218.
 - ___ Mental disease or defect. Psychiatric evaluation warranted?

The CI must clearly document all facts leading up to and connected with the injury or death. Some of the information to be addressed might include:

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

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- ___ Exposed to temperature extremes that could degrade efficiency, cause faintness, stroke or numbness.
- ___ Suffering from eye fatigue due to inadequate lighting or glare.
- ___ Visually restricted by dense fog, rain, smoke or snow.
- ___ Darkened ship lighting conditions.
- ___ Exposed to excessive noise/vibration levels.
- ___ Personnel protective equipment.
 - ___ Using required equipment for the job (e.g., seatbelts, safety glasses, hearing protectors).
 - ___ Not using proper equipment due to lack of availability (identify).
 - ___ Not using proper equipment due to lack of comfort or personal image (identify).
 - ___ Using protective equipment that failed and caused additional injuries (identify).
- ___ Hazardous conditions.
 - ___ Inadequate/missing guards, handrail, ladder treads, protective mats, safety devices/ switches, skid proofing.
 - ___ Jury-rigged equipment.
 - ___ Use of improper non-insulated tools.
 - ___ Incorrectly installed equipment.
 - ___ Defective/improperly maintained equipment.
 - ___ Slippery decks or ladders, obstructions.
 - ___ Improper clothing (leather heels, conventional shoes vice steel-toed shoes, loose-fitting clothes, no shirt, conventional eyeglasses vice safety glasses).

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

SPECIAL CONSIDERATIONS IN DEATH CASES

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

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

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

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

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

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

(2) was the result of enemy action.

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

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

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

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

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

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

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

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

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

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

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

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COMMAND ENDORSEMENTS

COMMAND INVESTIGATIONS

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

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

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

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

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

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

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

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

(1) For CI's involving injuries and deaths of naval personnel, or material damage to a ship, submarine, or Government property (excluding aircraft), advance copies are sent to Commander, Naval Safety Center. In aircraft mishap cases, copies of investigations are sent to the Naval Safety Center only upon request. JAGMAN 0209(f)(3)(c).

(2) When the adequacy of medical care is reasonably in issue and which involve significant potential claims, permanent disability, or death, advance copies of the CI are sent to the Naval Inspector General, Chief, Bureau of Medicine and Surgery (two copies). JAGMAN 0210(f)(2)(a).

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

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

LITIGATION-REPORT INVESTIGATIONS

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

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

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

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

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

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

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ARTICLE 31 RIGHTS

Name: _____ Rank/Rate: _____ Activity: _____
 _____ Unit:
 Telephone number: _____

I have been advised that I may be suspected of the offense(s) of:
 _____ and that:

- I have the right to remain silent.
- Any statements I do make may be used as evidence against me in trial by court-martial.
- I have the right to consult with lawyer counsel prior to any questioning. This lawyer counsel may be a civilian lawyer retained by me at my own expense, a military lawyer appointed to act as my counsel without cost to me, or both.
- I have the right to have such retained civilian lawyer and/or appointed military lawyer present during this interview.
- I have the right to terminate this interview at any time.

WAIVER OF RIGHTS

- I further certify and acknowledge that I have read the above statement of my rights and fully understand them, and that:
 - I expressly desire to waive my right to remain silent.
 - I expressly desire to make a statement.
 - I expressly do not desire to consult with either a civilian lawyer retained by me or a military lawyer appointed as my counsel without cost to me prior to questioning.
 - I expressly do not desire to have such a lawyer present with me during this interview.
 - This acknowledgment and waiver of rights is made freely and voluntarily by me, and without any promises or threats having been made to me or pressure or coercion of any kind having been used against me.

 (Witness signature/date)

 (Member signature/date)

Understanding my rights under U.C.M.J. Article 31, I wish to make the following statement:

**WARNING ADVISEMENT ABOUT STATEMENTS
REGARDING ORIGIN OF DISEASE OR INJURY**

COMPLIANCE WITH SECTION 0212 OF THE JAG MANUAL

I, _____ have been advised that:

- questions have arisen concerning whether or not my injury/disease, sustained or discovered on _____ 20__, was incurred in the line of duty or as a result of my own misconduct;
- in the event such injury/disease is determined to have been incurred not in the line of duty or as a result of my own misconduct, I will be required to serve for an additional period beyond my present enlistment to make up for the duty time lost;
- lost duty time will not count as creditable service for pay entitlement purposes;
- I may be required for forfeit some pay (where absence from duty in excess of one day immediately follows intemperate use of liquor or habit-forming drugs);
- if I am permanently disabled and that disability is determined to have been the result of misconduct or was incurred not in the line of duty, I may be barred from receiving disability pay or allowances, as well as veteran's benefits;
- I may **not** be required to give a statement relating to the origin, incidence, or aggravation of any disease/injury that I may have.

I do/do not desire to submit a statement.

Date

Signature

Witness Signature

Witness Name/Rate/Grade/Unit/Telephone Number

PRIVACY ACT STATEMENT

Name: _____ Rank/Rate:
 Activity: _____ Unit:
 Telephone number:

Today, _____, 20__, I acknowledge that I have received the following advisement under the guidelines of the Privacy Act.

This statement is provided in compliance with the provisions of the Privacy Act of 1974 (Public Law 93-579) which requires that Federal agencies must inform individuals who are requested to furnish personal information about themselves as to certain facts regarding the information requested below.

1. **AUTHORITY:** 44 U.S.C. § 3101; 5 U.S.C. § 301. Specify, if possible, other statutory authority listed below that is peculiarly applicable to the matter under investigation.

Authorities applicable to various investigations:

- a. Requirement that enlisted members make up time lost due to misconduct or abuse of drugs or alcohol. 10 U.S.C. § 972.
- b. Retirement or separation for physical disability. 10 U.S.C. §§ 1201-1221.
- c. Manual for Courts-Martial.
- d. Uniform Code of Military Justice. 10 U.S.C. §§ 815, 832, 869, 873, 935, 936, and 938-940.
- e. Military Claims Act. 10 U.S.C. § 2733.
- f. Foreign Claims Act. 10 U.S.C. §§ 2734, 2734a, 2734b.
- g. Emergency payment of claims. 10 U.S.C. § 2736.
- h. Non-Scope claims. 10 U.S.C. § 2737.
- i. Duties of Secretary of the Navy. 10 U.S.C. § 5013.
- j. Duties of the Office Chief of Naval Operations. 10 U.S.C. §§ 5031-5033, 5035-5036.
- k. Duties of the Bureaus and Offices of the Department of the Navy and duties of the Judge Advocate General. 10 U.S.C. §§ 5021-5024, 5131-5133, 5135, 5137-38, 5141-5142a, 5148-5150.
- l. Duties of the Commandant of the Marine Corps. 10 U.S.C. § 5043.

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

2. **PRINCIPAL PURPOSE(S)**: The information which will be solicited is intended principally for the following purpose(s):

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

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

- b. Determinations on disciplinary or punitive action.
- c. Determinations on liability of personnel for losses of, or damage to, public funds or property.
- d. Evaluation of petitions, grievances, and complaints.
- e. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.
- f. Other determinations, as required, in the course of naval administration.
- g. Public information releases.
- h. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

3. **ROUTINE USES:** In addition to being used within the Departments of the Navy and Defense for the purpose(s) indicated above, records of investigations are routinely furnished, as appropriate, to the Department of Veterans Affairs for use in determinations concerning entitlement to veterans' and survivors' benefits; to Servicemembers' Group Life Insurance administrators for determinations concerning payment of life insurance proceeds; to the U.S. General Accounting Office for purposes of determinations concerning relief of accountable personnel from liability for losses of public funds and related fiscal matters; and to the Department of Justice for use in litigation involving the Government. Additionally, such investigations are sometimes furnished to agencies of the Department of Justice and to State or local law enforcement and court authorities for use in connection with civilian criminal and civil court proceedings. The records of investigations are provided to agents and authorized representatives of persons involved in the incident, for use in legal or administrative matters. The records are provided to contractors for use in connection with settlement, adjudication, or defense of claims by or against the Government, and for use in design and evaluation of products, services, and systems. The records are also furnished to agencies of the Federal, State, or local law enforcement authorities, court authorities, administrative authorities, and regulatory authorities, for use in connection with civilian and military criminal, civil, administrative, and regulatory proceedings and actions.

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

a. Where disclosure is voluntary, as usually is the case, use one of the following statements, or a combination of the following statements, as applicable:

(1) Where an individual is a subject of an investigation for purpose 2a or 2b, above: "Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determinations] [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative

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

(2) Where an individual is a subject of an investigation for purpose 2c, above: “Disclosure is voluntary, and if you do not provide the requested information, any determination as to whether you should be held liable for repayment of the Government's loss would be based on the other evidence in the investigative record.”

(3) Where the individual is a claimant or potential claimant in an investigation for purpose 2e, above: “Disclosure is voluntary, but refusal to disclose the requested information could prevent the investigation from obtaining sufficient information to substantiate any claim which you have made or may make against the Government as a result of the incident under investigation.”

(4) Where the individual was treated at Government expense for injuries caused by third parties in connection with a matter being investigated for purpose 2e, above: “Disclosure is voluntary, but refusal to disclose the requested information could result in a requirement for you to assign to the Government your medical care claims against third parties in connection with the incident, or authorize withholding of the records of your treatment in a Naval medical facilities.”

(5) In any other case: “Disclosure is voluntary, and if you do not provide the requested information, any determinations or evaluations made as a result of the investigation will be made on the basis of the evidence that is contained in the investigative record.”

b. In the unusual situation where a specific statute, regulation, or lawful order of competent authority requires an individual to disclose particular information for the Government's benefit in furtherance of a Government interest, policy, or objective, the following statement should be used: “Disclosure of (specify the particular relevant information required) is mandatory under (cite the statute, regulation, or order), and refusal to disclose that information will subject you to possible disciplinary or criminal proceedings. Disclosure of any other information requested is voluntary, (and there will be no adverse effects if you elect not to disclose it) (but election not to disclose the information could”

(Signature and date)

AIRCRAFT ACCIDENTS

(JAGMAN A-2-n)

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

_____ If a possibility exists that witnesses will testify before the AMI and the JAGMAN investigation, the JAGMAN IO shall explain to such witnesses the reasons for the apparent duplication of effort. This is particularly important with non-military witnesses. The explanation shall cover:

_____ The different objectives of the two investigations;

_____ The reasons why procedures vary;

_____ The need to preserve the privileged nature of the aircraft accident safety investigation; and

_____ The fact that since neither command nor administrative action may alter the privileged character of statements provided to the aircraft accident safety investigation, such statements will not be available to the JAGMAN investigation from any official source.

_____ Identity of the pilot(s), co-pilot(s), naval flight officer(s) (NFO), air crew and any passengers.

_____ Background, history, training, experience of the pilot(s), co-pilot(s), naval flight officer(s), and air crew(s).

_____ Their degree of familiarity with the type of aircraft involved.

_____ The military or civilian status of all personnel on board, e.g., Regular, Reserve, or retired; active duty, inactive duty, inactive duty training; TAD, TDY, leave, liberty.

_____ Type, model, and bureau number of the aircraft involved.

_____ Identification of the squadron, detachment, or unit authorizing the flight and the official who authorized the flight.

_____ If a privately-owned or rented aircraft was involved, identify the owner, authorization for the

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flight, existence of private insurance, and extent of damage.

_____ The identity of all individuals who were killed, injured, or who suffered property damage as a result of the mishap, including:

_____ Name, age, address (home and work), telephone number, occupation, injured and/or deceased; and

_____ A complete description of how injuries occurred (refer to JAGMAN, Chapter II, Part F, for special considerations in death cases).

_____ Sociological, psychological, and human factors related to the accident, including:

_____ Potential stress factors, fatigue, use of medication, or intoxication.

_____ Type, duration, and purpose of the flight, briefing of the pilot, and other pertinent information regarding the particular flight, including:

_____ The use of night vision goggles; or

_____ Other mission-specific factors relevant to aircraft or air crew equipment or performance.

_____ Weather conditions throughout the flight.

_____ Preflight history of the aircraft.

_____ Compliance or noncompliance with pertinent technical directives, including:

_____ Flight hours since the last overhaul;

_____ Discrepancies noted on recent "Yellow Sheets"; VIDS/MAF Forms; OPNAVINST 4790.2 [Series]; and

_____ Flight hours since the last intermediate check.

_____ Description of flight path and maneuvers of the aircraft during the flight, including manner of descent and impact.

_____ Positions of external control surfaces (landing gear, canopy, etc.) during flight.

_____ Presence, condition, and use of safety, communication, escape, and survival equipment.

_____ Post-accident examination of the aircraft.

Basic Checklists for Specific Types of Incidents

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

MOTOR VEHICLE ACCIDENT CHECKLIST

(JAGMAN A-2-u)

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

Basic Checklists for Specific Types of Incidents

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

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- _____ If death resulted, indicate cause of death to include a copy of the death certificate and any autopsy reports as enclosures.

- _____ Name, age, address, and telephone number of any witnesses to the accident.

- _____ A description of their (witnesses) location in relation to the accident scene, their ability to observe from that location, and what they saw.

- _____ Name, address, and telephone number of any law enforcement official who investigated the accident.

- _____ Copy of any law enforcement or police report made concerning the accident should be included as an enclosure and the custodian of the original report should be indicated.

- _____ Any civilian or military criminal charges brought as a result of the accident and the ultimate resolution of those charges.

- _____ An opinion regarding the probable cause of the accident. If the evidence is insufficient to establish probable cause, those factors which in the opinion of the investigating officer contributed to the accident should be listed.

- _____ An opinion regarding the contributory or comparative negligence of any party, if any.

- _____ If not included in the facts relevant to military or criminal charges filed, an opinion concerning any laws, articles of the UCMJ, or regulations violated.

- _____ Whether or not the vehicles are economically repairable, and if not, their salvage value.

- _____ Whether or not the driver (in case of Government vehicle) was acting within the scope of employment pursuant to state law, and whether injuries sustained by military members were incurred in the line of duty or as result of misconduct.

- _____ Whether or not disciplinary action should be taken.

- _____ If Government property has been damaged, a recommendation as to the disposition of the property.

- _____ Should the Government initiate a claim?

- _____ Pertinent recommendations on matters of safety procedures.

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

EXPLOSIONS CHECKLIST
(JAGMAN A-2-t)

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

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- _____ The level of training of the personnel involved and whether the level of training met required standards.

- _____ Identity of personnel injured or killed (with full descriptions of injuries supported by medical records and autopsy reports).

- _____ Description of the safety precautions or operating procedures that were in effect at the time of the explosion and whether they were observed or violated.

- _____ Opinions on the probable cause(s) of the explosion.

- _____ An environmental assessment of the damage caused by the explosion may be necessary, particularly if there is evidence of chemical contamination of the surrounding area. Consult the cognizant trial service office or staff judge advocate.

STRANDING OF A SHIP CHECKLIST
(JAGMAN A-2-p)

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

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

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

Basic Checklists for Specific Types of Incidents

- ___ Organizational factors.
 - ___ Ship organization directives.
 - ___ Watch organization directives.
- ___ Action taken after grounding: Ship secured to prevent further damage (anchors kedged out, ballast shifted, cargo shifted).
 - ___ Draft reading/soundings taken.
 - ___ Damaged surveyed.
 - ___ Excess machinery secured.

COLLISION CHECKLIST (JAGMAN A-2-q)

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

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

Basic Checklists for Specific Types of Incidents

- ___ Weather, visibility, and other environmental factors.
- ___ Assistance factors:
 - ___ pilot - experience/language barrier; and
 - ___ tugs, line handlers.
- ___ Aides to navigation.
 - ___ Use and accuracy of charges;
 - ___ sailing directions/coast pilot;
 - ___ fleet guide;
 - ___ tide and current conditions as calculated and as experienced;
 - ___ maintenance of required navigational standards;
 - ___ notices to mariners;
 - ___ radar and visual points designated and logged; and
 - ___ navigation team properly briefed.

ACCIDENTAL OR INTENTIONAL FLOODING OF A SHIP CHECKLIST
(JAGMAN A-2-r)

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

Basic Checklists for Specific Types of Incidents

- ___ Extent of damage (list all items).
- ___ Include photographs or documents to document range and extent.
- ___ Summary of steps taken to control damage and to correct list, trim or depth.
- ___ Injured incurred by personnel.
- ___ Ship's location at time of flooding.
- ___ Ship's condition of readiness.
- ___ Effect of flooding on ship's ability to carry out mission.
- ___ Estimated dollar amount of damage or repairs required.
- ___ Opinion on the probable cause of the flooding, including the cause of progressive flooding of other compartments.
- ___ Opinion on whether the occurrence of a similar type of flooding is possible on a similar ship.

FIRES CHECKLIST

(JAGMAN A-2-s)

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

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

Basic Checklists for Specific Types of Incidents

- _____ Light water, foam (portable/installed), CO2 (portable/installed), PKP, Steam smothering, flooding, other.

- _____ Extinguishing equipment (indicate availability and operability).
 - _____ Pumps (portable/installed) size and quantity.
 - _____ Nozzles/applicators (LC and HC).
 - _____ Foam maker, vehicles, educators, type and size of hoses, other.

- _____ Firefighting organization used.
 - _____ Nucleus fire party.
 - _____ Repair party (condition I or II watches).
 - _____ Inport fire party.
 - _____ Outside assistance (explain).
 - _____ Fire party/repair locker personnel assigned per appropriate publications, ships organization and regulations manual, battle bill, etc.

- _____ Number of personnel responding and their level of fire-fighting and damage control training.
- _____ Personnel duties and responsibilities. Assigned in writing?
- _____ Fire/repair locker organization charts properly maintained?
- _____ Damage control system diagrams up to date and available for use?
- _____ System of communications. Communications effectively established between control stations?
- _____ Protective equipment used (indicate details and assessments of availability, operability, and effectiveness).
 - _____ OBAs, EAB masks, fire suits, boots, gloves, helmets, other.
 - _____ Alarm system.
 - _____ CO2 flooding, high temperature, other.

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

Basic Checklists for Specific Types of Incidents

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

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

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

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

- ___ Any accountable individual must receive the special notice contained in JAGMAN A-2-v(e).
- ___ What items were lost or found in excess and the exact dollar value of the loss or excess, e.g., property, vouchers, cash, and so forth.
- ___ The nature of the loss or excess (inventory gain or loss, cash shortage, or overage, etc.).
- ___ In cases of loss of funds, whether the loss was
 - ___ loss of proceeds of sale of Government property; or
 - ___ physical loss of funds (e.g, embezzlement or fraudulent acts of subordinate finance personnel); or
 - ___ result of illegal or improper payment (e.g., payments on forged checks or vouchers).
- ___ How the loss or excess is being carried in the command's accounts.
- ___ Identity and position of the accountable officer.
 - ___ Identity and position of any other person who had custody of the funds or property.
 - ___ The general reputation of the accountable individuals for honesty and care in the handling and safeguarding of funds or property entrusted to them.

Basic Checklists for Specific Types of Incidents

- _____ The experience and training of the accountable individual in the handling of funds or property.
- _____ The workload, including collateral duties, of the accountable individual at the time of the irregularity.
- _____ A description, with diagrams where appropriate, of the physical working conditions of the accountable individual who incurred the loss or excess.
 - _____ Physical security arrangements and devices.
 - _____ Security containers and persons with access to them and whether they were being used properly at the time of the irregularity.
- _____ Internal control procedures in effect in the division, department, or office where the irregularity occurred, and a statement whether they were being applied properly at the time of the irregularity.
 - _____ Information on recent inspections, assist visits, management control reviews, or other evaluations of procedures.
- _____ Identification of the regulations pertinent to the handling of the property or funds involved and were such regulations followed?
- _____ A description of remedial measures taken to prevent recurrence of the irregularity.
- _____ Opinion as to cause of irregularity, or if cause cannot be determined, most likely cause.
- _____ An opinion whether the loss or excess was proximately caused by the fault or negligence of any accountable individual or by an act of a non-accountable individual that can be the basis for financial liability under Section 0607, Chapter 6, DOD 7000.14-R .

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

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

_____ The identity of individuals involved, including name, rank/grade, unit, age, address (home and work), telephone number, occupation.

_____ How they were involved?

_____ Killed as a result of the incident (identifying information for the next-of-kin or legal representative must be provided).

_____ Injured party.

_____ Owner of property damaged.

_____ Military member whose acts or omissions are alleged to have caused the harm.

_____ Witness.

_____ Information on how those involved may be located.

_____ Permanent address that will be accurate for at least 5 years after the accident.

_____ Indicate each individual's status.

_____ Military: Regular or Reserve, on active duty, TAD, leave, liberty, etc., at the time of the incident.

_____ Civilians: Federal employee, personal services contractor employed by an independent contractor, etc.

_____ If maintenance or training is involved, identify the individual responsible for the maintenance or training issue.

_____ Date, time, and place of incident, including a full description of location, terrain, weather, light conditions, obstructions, and photographs of the site.

_____ Nature of the claim (e.g., wrongful death, personal injuries, property damage).

Basic Checklists for Specific Types of Incidents

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

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- ___ Salary/earnings lost due to time lost from employment
 - ___ Actual number of work days lost.
 - ___ Estimated compensation for that period based on hourly wage or salary.
 - ___ Full time, part-time, or self-employed.
 - ___ Diminished earning capacity.

- ___ If an individual died as a result of the incident under investigation and the estate or survivors may file a claim against the Government, consult with a judge advocate regarding the wrongful death or survival statute applicable in the jurisdiction where the harm occurred.

- ___ If an individual died.
 - ___ Time of death relative to the injury.
 - ___ Intervening treatment and state of consciousness.
 - ___ Cause of death as established by autopsy.
 - ___ Pre-existing medical conditions.
 - ___ Age.
 - ___ Occupation.
 - ___ Burial expenses.
 - ___ Heirs.

- ___ Amount of property damage.
 - ___ Include photographs before and after, if possible.
 - ___ Estimates or bills of repair and receipts.
 - ___ Whether any pre-existing damage existed.
 - ___ Original purchase price.
 - ___ Date of purchase.
 - ___ Salvage value of property.

Basic Checklists for Specific Types of Incidents

- ___ Government property damaged.
 - ___ Estimates or bills of repair and receipts.
 - ___ Original purchase price.
 - ___ Date of purchase.
 - ___ Salvage value of property.
 - ___ If no damage, so state.

- ___ Whether the claimant has insurance for this type of damage or injury.
 - ___ Insurance company.
 - ___ Policy number.
 - ___ Policy provisions relevant to this claim or incident.
 - ___ Extent of coverage and limits on liability.
 - ___ Whether a claim has been or will be made against the insurance carrier, the status of any such claim.

- ___ Names and addresses of other owners, if claimant is not the sole owner of the property.

- ___ Existence of any police or other investigative report, name and addresses of investigating officer and unit, custodian of original investigation (provide a copy of any police report as an enclosure).

- ___ Whether civilian or military criminal charges were filed.
 - ___ Jurisdiction in which they were filed.
 - ___ Status or final disposition of those charges.

- ___ Existence of any law, regulation, or order relevant to the incident and whether it was violated.
 - ___ If a stray animal was involved, whether the jurisdiction has an "open range" law (attach a copy as an enclosure).

- ___ An opinion whether any military personnel involved were acting in the scope of their

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employment at the time of the incident.

_____ An opinion regarding the cause(s) of the incident. If the facts are insufficient to form an opinion regarding cause(s), indicate factors which significantly contributed to the incident.

_____ An opinion regarding fault or negligence.

_____ An opinion whether a claim is likely to be filed, the amount likely to be claimed, and names and addresses of any potential claimants and their legal representatives.

_____ An opinion whether a claim should be filed by the Government for personal injuries to its employees or property damage.

_____ Sonic boom/jet noise/artillery noise:

_____ Detailed description of the alleged damage;

_____ Photographs of the allegedly damaged building or structure involved, including significant details of construction, size of rooms, age, and general state of repair;

_____ Detailed examination and description of any alleged plaster damage;

_____ Existence or absence of glass damage in the allegedly damaged building or structure and whether any other glass damage resulting from the incident was reported and verified;

_____ Whether windows and doors were open or shut at the time of the boom;

_____ Whether any loose objects, such as dishes, glassware, or trinkets inside the building or structure were moved as the result of the boom;

_____ Existence or absence of similar damage to other buildings in the immediate neighborhood;

_____ Type of surrounding community development, type of construction, and density of buildings or structures in the immediate area, and so forth;

_____ Occurrence or absence of seismic disturbances registered in the locality at the time involved;

_____ Other potential sources of damage, such as heavy truck or rail traffic, explosions or earthquakes, and their distance and direction in relation to claimant's building or structure;

_____ Any unusual weather or climatic conditions that may have affected the building or

Basic Checklists for Specific Types of Incidents

structure:

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

HEALTH CARE INCIDENTS CHECKLIST (JAGMAN A-2-x)

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

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

Basic Checklists for Specific Types of Incidents

- ___ Loss of chance of recovery.
- ___ Names and addresses of subsequent treating physicians or health care providers.
- ___ A copy of the claim and any other documents or correspondence which shed light on the claimant's or potential claimant's contentions concerning the matter.
- ___ Secure all of the medical records, inpatient, outpatient, and special studies (x-rays, tissue slides, EKG tapes, fetal monitoring strips, etc.).
 - ___ Indicate the date and person who secured those items and the current location and custodian of each.
- ___ Complete copy of the medical record. Entries must be reviewed to ensure handwriting is legible and, if illegible, typed transcripts should be attached to the investigation.
- ___ All special studies must be retrospectively reviewed to assess whether the original interpretations were accurate.
 - ___ Retrospective reviews must be structured as "blind" reviews, e.g., the reviewer should not be aware of the previous interpretation.
 - ___ A summary containing the name and credentials of the person conducting the retrospective review and that person's findings must be included with the investigation. The summary should not be signed by the reviewer.
- ___ Copies of all relevant documents.
 - ___ MTF staff bylaws.
 - ___ MTF policies, procedures, and protocols (clinical/surgical, nursing, and ancillary services such as the laboratory or pharmacy, and health care administrative policies) in effect at the time of the incident.
 - ___ All relevant logbook entries pertaining to the patient maintained by labs/clinics/offices (e.g., emergency room logs reflecting arrival/departure times, ambulance log book/trip sheets/rescue service reports, and centralized appointment registers/printouts or pharmacy history printouts.
 - ___ All patient information pamphlets, brochures, or sheets which were provided to the patient.
 - ___ In cases involving contract providers, a copy of the contract.

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

Basic Checklists for Specific Types of Incidents

- _____ Where there has been a deviation from the standard of care, an opinion regarding the cause(s) or contributing factors for any deviation from the standard, the name(s) of persons responsible for the deviation, and a description of corrective action, if required, in terms of personnel, equipment, or policy.

- _____ Each provider whose actions are at issue must be provided an opportunity to make a statement for inclusion in the investigation. The IO should summarize the results of the interview using care to be as accurate and complete as possible. Summaries of interviews with providers shall not be signed, instead authenticated by the IO's signature.

FIREARM ACCIDENTS CHECKLIST
(JAGMAN A-2-y)

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

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

POLLUTION INCIDENTS CHECKLIST
(JAGMAN A-2-z)

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

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

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