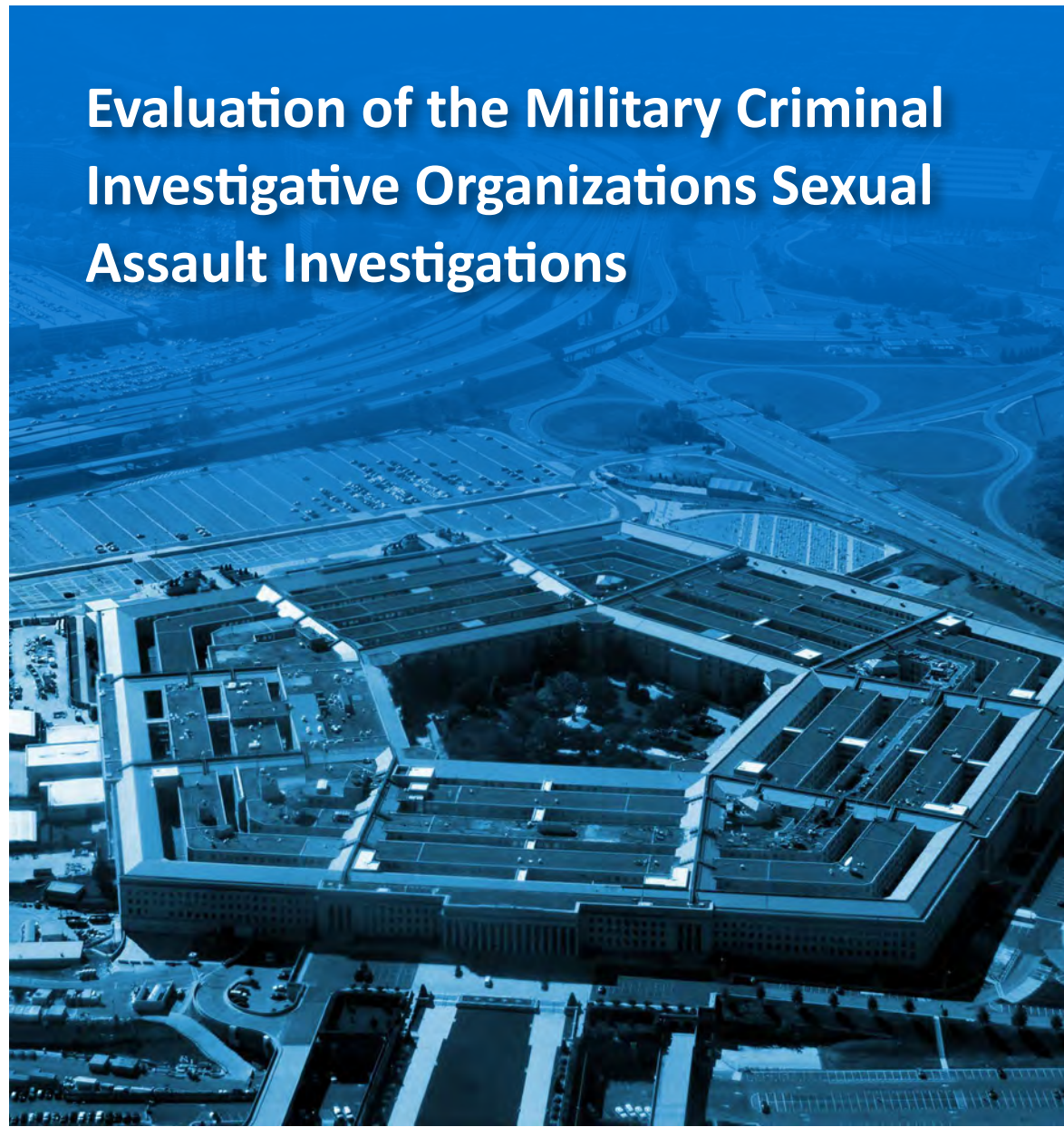




INSPECTOR GENERAL

Department of Defense

JULY 9, 2013



Evaluation of the Military Criminal Investigative Organizations Sexual Assault Investigations

INTEGRITY ★ EFFICIENCY ★ ACCOUNTABILITY ★ EXCELLENCE

Report Documentation Page

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Results in Brief

Evaluation of the Military Criminal Investigative Organizations Sexual Assault Investigations

July 9, 2013

Objective

We evaluated the Military Criminal Investigative Organizations' (MCIOs') sexual assault investigations completed in 2010 to determine whether they completed investigations as required by DoD, Military Service, and MCIO guidance. Our evaluation focused on the following question:

Did the MCIOs investigate sexual assaults as required by guiding policies and procedures?

Findings

- Most MCIO investigations (89 percent) met or exceeded the investigative standards.
- We returned cases with significant deficiencies (11 percent) to the MCIOs for corrective action.
- Although 83 cases had no deficiencies, most of the remaining investigations had deficiencies that were not deemed significant.
- The U.S. Army Criminal Investigation Command (CID) and Air Force Office of Special Investigations (AFOSI) policy guidance does not direct the collection of clothing articles that a victim or suspect might have placed on themselves shortly after the assault, if different from the clothing worn during the assault.
- Naval Criminal Investigative Service (NCIS) policy does not require NCIS investigators to notify or coordinate with their servicing

Findings Continued

judge advocate(s) upon initiating an investigation.

- CID guidance regarding records checks does not provide a definitive timeliness requirement. NCIS policy on this topic needs improvement.
- NCIS needs policy to require Sexual Assault Response Coordinator (SARC) notifications and documentation.

Recommendations

- The Director and Commanders of the MCIOs implement measures to improve crime scene processing, evidence collection, supervision, and documentation to reduce investigative deficiencies.
- The Commanders of CID and AFOSI evaluate their existing policies regarding the collection of clothing worn by suspects and victims subsequent to a sexual assault.
- The Director of NCIS evaluate current policy regarding the timely notification and coordination with servicing judge advocates upon the initiation of sexual assault cases, as well as the continued coordination with the servicing judge advocates until final case disposition.
- The Commander of CID and Director of NCIS evaluate existing policy guidance regarding the timely completion of records checks.
- The Director of NCIS implement policy requiring SARC notifications and documentation.

Comments

Overall, the Commander, CID, agreed with our recommendations. The Director, NCIS, and the Commander, AFOSI, agreed in part with our recommendations, but objected to our assessment in a number of areas in the report. See the recommendations table on the next page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
The Director and Commanders of the Military Criminal Investigative Organizations		1, 2.a, 3.a, 3.b, and 3.c
The Commander, U.S. Army Criminal Investigation Command		7
The Director, Naval Criminal Investigative Service	7 and 9	2.b, 4, 5, 6.a, 6.b, and 8
The Commander, Air Force Office of Special Investigations		2.b, 2.c, 4, 6.a, and 6.b



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

July 9, 2013

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR POLICY
SECRETARIES OF THE MILITARY DEPARTMENTS
COMMANDER, U.S. ARMY CRIMINAL INVESTIGATION COMMAND
DIRECTOR, NAVAL CRIMINAL INVESTIGATIVE SERVICE
COMMANDER, U.S. AIR FORCE OFFICE OF SPECIAL
INVESTIGATIONS
DIRECTOR, DOD SEXUAL ASSAULT PREVENTION AND RESPONSE
OFFICE

SUBJECT: Evaluation of the Military Criminal Investigative Organizations Sexual Assault Investigations (Report No. DODIG-2013-091)

This report is provided for review and comment. We evaluated Military Criminal Investigative Organizations' (MCIOs') sexual assault investigations to determine whether they achieved DoD, Military Service and MCIO investigative standards. This was a self-initiated project to meet our statutory obligation to provide policy, oversight, and performance evaluation of all DoD activities relating to criminal investigation programs.

We determined that most (89 percent) of the sexual assault complaints reviewed met investigative standards. We returned cases with significant deficiencies to the responsible MCIOs for corrective action. Significant deficiencies are key evidence not being collected, crime scenes not examined, and witness or subject interviews not conducted or not thorough. We also found that certain MCIO policies and practices regarding the collection of physical evidence, crime scene examinations, legal coordination, and records checks need improvement. Lastly, investigative interviews, for all the MCIOs, could benefit from increased emphasis on thoroughness by supervisors, training, and policy improvements.

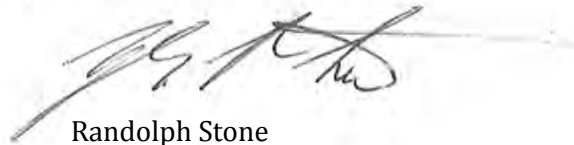
Additionally, we invite your attention to the "Case Detail Data" which provides factual data on a myriad of sexual assault characteristics. This information may prove helpful in combatting sexual assault in the Department of Defense.

We considered management comments on a draft of this report when preparing the final report. DoD Directive 7650.3 requires that recommendations be resolved promptly. Overall, the Commander, U.S. Army Criminal Investigation Command (CID), agreed with our recommendations. The Director, Naval Criminal Investigation Service (NCIS), and the Commander, U.S. Air Force Office of Special Investigations (AFOSI), agreed in part with our recommendations.

Please provide comments that conform to the requirements of DoD Directive 7650.3 by August 30, 2013. Please send a portable document file (.pdf) containing your comments to chris.redmond@dodig.mil. Copies of management comments must

contain the actual or electronic signature of the authorizing official. If you arrange to send classified comments electronically, you must send them over the SECRET Internet Protocol Router Network (SIPRNET).

We appreciate the courtesies extended to the evaluation staff during the review. For additional information on this report, please contact Mr. Chris Redmond at (703) 604-8556.

A handwritten signature in black ink, appearing to read 'R. Stone', is positioned above the printed name.

Randolph Stone
Deputy Inspector General
Policy and Oversight

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Introduction

Objectives

We evaluated the Military Criminal Investigative Organizations' (MCIOs)¹ sexual assault investigations to determine whether they were adequately investigated. Our evaluation focused on the following question:

Did the MCIOs investigate sexual assaults as required by guiding policies and procedures?

Background

The DoD Inspector General (IG) has statutory authority in accordance with the Inspector General Act of 1978 for policy, oversight, and performance evaluation with respect to all DoD activities relating to criminal investigation programs. This authority is embodied in DoD Directive (DoDD) 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 20, 2012, and DoD Instruction (DoDI) 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," March 24, 2011. The DoD IG's responsibilities regarding the DoD's sexual assault investigations are further specified in DoDD 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," January 23, 2012, and DoDI 6495.02, "Sexual Assault Prevention and Response Program Procedures," June 23, 2006. This guidance directs the DoD IG to develop policy and to oversee the DoD's criminal investigative organizations' investigations of sexual assaults.

Within DoD, the MCIOs are responsible for investigating most sexual assaults.² In the Army, the U.S. Army Criminal Investigation Command (CID) investigates all sexual assault complaints. Whereas, at the time of this evaluation, the Air Force Office of Special Investigations (AFOSI) did not normally investigate wrongful sexual contact (formerly indecent assault) and indecent exposure.³ Wrongful sexual contact involves improper, unwanted touching of a sexual nature with the specific intent to demean the victim and gratify the lust of the accused's sexual desires. Both the NCIS and AFOSI, in accordance with Service policies, exercised independent discretion regarding the investigation of

¹ The MCIOs include the U.S. Army Criminal Investigation Command, Naval Criminal Investigative Service, and Air Force Office of Special Investigations.

² Sexual assault includes rape, forcible sodomy (oral or anal sex), and other unwanted sexual contact that is aggravated, abusive, or wrongful (to include unwanted and inappropriate sexual contact) or attempts to commit these acts. The definition generally encompasses offenses classified under Articles 120 and 125 of the 2007 and 2008 version of the Uniform Code of Military Justice. Navy Masters at Arms, Navy and Air Force command officials, and Air Force Security Forces investigate offenses involving unwanted sexual touching outside the clothing.

³ Definitions in the 2007 and 2008 version of the Uniform Code of Military Justice were in effect at the time of this review.

wrongful sexual contact (formerly indecent assault) offenses based on the complexity of the case. As a result, NCIS conducted 31 investigations and AFOSI conducted 7 of these investigations compared to CID, which conducted 61 investigations. Although NCIS conducted 31 investigations, some NCIS wrongful sexual contact (or indecent assault) investigations may have been referred to the Navy Masters at Arms and Marine Corps CID investigators, based on policy guidance in effect at the time. Air Force Security Forces investigators typically investigated wrongful sexual contact complaints for the Air Force. Current DoD policies implemented in January 2013⁴ require the MCIOs to investigate all sexual assaults.

Additionally, the MCIOs are responsible for developing Service-specific investigative policy and requirements governing the conduct of sexual assault investigations and the training of assigned special agents in accordance with the Services' training standards.

In August 2011, the DoD IG formed the Violent Crime Division within the Investigative Policy and Oversight Directorate having the primary purpose of providing oversight to the MCIOs in the area of violent crimes, to include sexual assaults.

The DoD IG initiated this project to evaluate whether the MCIO sexual assault investigations were adequately investigated in compliance with policy and guidance.

DoD Policy and Requirements

DoDD 6495.01, October 6, 2005, requires:

an immediate, trained response capability for each report of sexual assault in all locations, including deployed locations, and ensure victims of sexual assault are protected, treated with dignity and respect, and receive timely access to treatment and services

Within DoD, the MCIOs provide a trained response capability to investigate reported sexual assaults in all locations.

DoDI 6495.02 establishes requirements and responsibilities regarding DoD's response to sexual assaults for DoD Components including the DoD Sexual Assault Prevention and Response Office (SAPRO), the DoD IG, and the Secretaries of the Military Departments.

⁴ DoDI 5505.18, "Investigation of Adult Sexual Assault in the Department of Defense," January 25, 2013, now requires the MCIOs to "initiate investigations of all offenses of adult sexual assault of which they become aware . . . regardless of the severity of the allegation."

The Instruction designates the MCIO criminal investigators as DoD sexual assault first responders.

Scope and Methodology

The evaluation focused on the adequacy of MCIO investigations of adult sexual assaults. By reviewing closed (completed and adjudicated) sexual assault investigations, we determined whether the MCIOs conducted investigations in accordance with DoD, Service, and MCIO policies and procedures. A closed investigation means investigative work and adjudication actions were complete.

This review was based on a simple random sampling of completed cases closed in 2010 and included sexual assault offenses (of adult victims) defined under Articles 120 and 125, Uniform Code of Military Justice (UCMJ), worked by the MCIOs. Table 1 depicts the case totals for the sexual assault investigations closed in 2010.

Table 1. Calculation of Total Cases Reviewed

Explanation	Total	CID	NCIS	AFOSI
Case Population	2,263	1,082	704	477
Sample Cases	584	216	195	173
Cases Excluded	81	18	36	27
Cases Missing	2	0	2	0
Net Total Reviewed	501	198	157	146

We developed sexual assault case review protocols for each MCIO based on each MCIO's investigative policies and procedures. The review protocols were developed to uniformly determine compliance with DoD, Service, and MCIO requirements that were in effect during the period we examined. They also addressed, in detail, investigative steps required to complete a thorough sexual assault investigation. We noted deficiencies and identified investigations with significant deficiencies, and when practicable, recommended follow up or corrective action.

Although we identified a sample size of 584 cases, information about 83 cases was not included in our project. We excluded 81 from the review for one of the following three reasons: 1) the investigation was determined to be a monitor-type investigation in which another investigative entity conducted the bulk of the investigative activity; 2) adjudication of the case extended into 2011 (therefore, the case was not closed in 2010 even though the investigative activity was complete); or 3) the victim in the case was

a juvenile rather than an adult victim.⁵ Additionally, as reflected in Table 1, NCIS was unable to locate (either the hard or digital copies) two case files. This resulted in a sample size of 501 cases.

We engaged DoD IG's Quantitative Methods Division (QMD) analysts for computations of the case sample selection and statistical calculations and projections to the total case population. The QMD analysts opined that the calculation of projections to the total case population, based on the sample (see Appendix D for details of projected totals based on sample results) would not be adversely affected by the cases that were excluded or missing (83 cases) from the original random sampling of 584 cases.

See Appendix A for details of the scope and methodology. See Appendix B for a list of references used throughout this report.

⁵ On January 29, 2013, DoD OIG initiated an evaluation of the MCIOs' child sexual assault investigations.

Finding

Condition of the MCIOs' Sexual Assault Investigations

To determine the condition of the sexual assault investigations, we focused on the following question.

Did the MCIOs Investigate Sexual Assaults as Required by Guiding Policies and Procedures?

Most of the cases we reviewed (445 of 501 cases or 89 percent) met investigative standards or did not have significant deficiencies. Eighty-three cases met investigative standards because they had no deficiencies. Although we found deficiencies in 362 cases, they were not significant because they did not have a negative impact on the investigation. Eleven percent (56 of 501) of the cases we reviewed had significant deficiencies.⁶ We returned the cases with significant deficiencies to the MCIOs for resolution. Of the 56 cases returned, the MCIOs reopened 31 cases for additional investigative work. For the remainder, the MCIOs determined additional investigative activity was not practicable due to the amount of time elapsed or based on their judgment that additional efforts would be futile. We will oversee the results of reopened investigations.

The primary offenses observed during this review were rape, aggravated sexual assault, aggravated sexual contact, abusive sexual contact, indecent acts, wrongful sexual contact, indecent assault, forcible sodomy (oral or anal sex), sodomy, assault with intent to commit rape, and attempted rape.

The cases reviewed included incidents in which neither the subject nor the victim consumed/ingested alcohol or drugs, as well as cases in which the subject(s) used alcohol and/or drugs to facilitate sexual assaults.

The offenses occurred both on and off military installations, and in some instances, the exact location where the offense occurred could not be determined. Offenses occurred in a variety of settings, such as bars/nightclubs, barracks/dorms, overseas deployed billets, hotels, and residences.

We observed and documented the types of relationships between the subject and the victim, to include determining the subject's or the victim's military affiliation. We also

⁶ See page 7 for examples of significant investigative deficiencies.

analyzed a host of other victim- and subject-specific data such as age, pay grade, and gender.

Twenty-seven incidents were initially reported as restricted reports,⁷ but each victim later elected to pursue an unrestricted report.⁸

We also collected and analyzed the disciplinary actions taken against the subjects of the investigations. We did not analyze whether the action was appropriate. The propriety or appropriateness of disciplinary actions taken by commanders, based on legal guidance, was not within the scope of this evaluation. Disciplinary actions taken against the subjects included court-martial, punitive discharge, administrative separations, civilian prosecution, nonjudicial punishment, reprimand, counseling, other actions, and no action taken. See Appendix C, Table C-35, for details.

Cases with No Deficiencies or Minor Deficiencies

Of the 501 cases reviewed, 445 (89 percent) either had no deficiencies or the deficiencies noted did not have a negative impact on the investigation. Eighty-three cases had no investigative deficiencies. The remaining 362 cases had one or more deficiencies but the deficiencies were minor and did not adversely affect the successful resolution of the investigation. Table 2 depicts a breakdown by MCIO of the number of cases, with and without deficiencies.

Table 2. Cases with No Deficiencies or Minor Deficiencies

Category	Total	CID	NCIS	AFOSI
Cases w/o Deficiencies	83	41	20	22
Cases with Minor Deficiencies	362	144	111	107
Total	445	185	131	129

See Appendix C for details of all sample results.

⁷ According to DoDD 6495.01, E2.1.10 (October 6, 2005, version in effect at the time of this review), restricted reporting is “[a] process used by a Service member to report or disclose that he or she is the victim of a sexual assault to specified officials on a requested confidential basis. Under these circumstances, the victim’s report and any details provided to healthcare personnel, the SARC [Sexual Assault Response Coordinator], or a VA [Victim Advocate] will not be reported to law enforcement to initiate the official investigative process unless the victim consents or an established exception is exercised . . .”

⁸ Section E2.1.16 of DoDD 6495.01 states that unrestricted reporting is “[a] process a Service member uses to disclose, without requesting confidentiality or restricted reporting, that he or she is the victim of a sexual assault. Under these circumstances, the victim’s report and any details provided to healthcare personnel, the SARC, a VA, command authorities, or other persons are reportable to law enforcement and may be used to initiate the official investigative process.”

Cases with Significant Deficiencies

Of the 501 cases reviewed, 56 cases had significant deficiencies. Table 3 depicts a breakdown by MCIO of the number of cases with significant deficiencies.

Table 3. Cases with Significant Deficiencies

Category	Total	CID	NCIS	AFOSI
Returned	56	13	26	17
Reopened*	31	7	14	10

*DoD IG will oversee the results of reopened investigations

Significant deficiencies included:

- key evidence was not collected from the crime scene, the victim, or the subject;
- crime scene examinations were not completed, not completed thoroughly, or not completed before the loss of crucial evidence;
- witness interviews were not thorough or not conducted; and
- subject or victim interviews were not thorough or reinterviews of subject or victims did not sufficiently develop new information.

We provided information including the documented deficiencies on all 56 significantly deficient investigations to the respective MCIOs. We asked the MCIOs to consider our findings and, where practicable, reopen those cases to conduct additional investigative activity to correct shortcomings. In some instances, reopening the investigation would not be a prudent use of investigative resources due to the length of time elapsed or judgment that additional efforts would be futile. Table 3 also depicts a breakdown by MCIO of the number of returned significantly deficient cases that were reopened by the MCIOs to conduct additional investigative activity.

Cases Returned to CID: On June 7, 2012, we returned 13 cases to CID for consideration of our findings. On June 29, 2012, CID agreed to reopen 4 of the 13 cases to conduct additional activity. They declined to pursue additional investigative activity in the nine remaining cases because they believed it would not alter the outcome of the case or a significant amount of time had elapsed since the incident, causing additional investigative activity to be impracticable. After reviewing CID's response, we disagreed with their assessment of seven of the nine remaining cases. We provided additional rationale regarding the seven cases for CID to consider. On January 7, 2013, CID advised that they

reopened three of those cases. No additional investigative activity will be undertaken on the remaining four cases for the reasons stated above.

Cases Returned to NCIS: On August 2, 2012, we returned 26 cases to NCIS for consideration of our findings. On September 5, 2012, NCIS advised that they reopened 11 of the 26 cases to conduct additional activity. On October 9, 2012, NCIS advised that they reopened one additional case (12 of the 26 cases) to conduct additional activity. They declined to pursue additional investigative activity on the 14 remaining cases because they believed it would not alter the outcome of the case or too much time had elapsed, causing additional investigative activity to be impracticable. After reviewing NCIS' response, we disagreed with their assessment of 2 of the 14 remaining cases. We provided additional rationale regarding the two cases for NCIS to consider. On December 28, 2012, NCIS advised that they reopened one case and intend to reopen the remaining case. On February 14, 2013, NCIS advised that they reopened the final case.

Cases Returned to AFOSI: On April 23, 2012, we returned 17 cases to AFOSI for consideration of our findings. On May 21, 2012, AFOSI agreed to reopen 10 of the 17 cases to conduct additional activity. They declined to pursue additional investigative activity in the seven remaining cases because they believed it would not alter the outcome of the case or too much time had elapsed, causing the recommended investigative activity to be impractical. After reviewing AFOSI's response, we agreed with their assessment of the seven remaining cases.

Missing Cases

As previously mentioned, we were unable to review two NCIS cases because NCIS personnel could not locate the files. The NCIS records management officials were unable to determine what happened to the two missing case files. NCIS officials stated that field office personnel where the investigations were conducted indicated they had mailed the files to NCIS headquarters for digital scanning as required by NCIS policy. Once the field office confirmed the existence of the digitized files in the NCIS case management system, they destroyed the local copies. A search by NCIS personnel for the original files and the digital copies failed to locate the two missing cases. After NCIS officials could not locate the two cases, they initiated a records inventory to determine the accountability of other sexual assault investigative records.

Analysis of Investigative Deficiencies

We analyzed the deficiencies found in a total of 418 cases. Our analysis disclosed six categories of deficiencies including: 1) interview and post-interview, 2) evidence, 3)

crime scene documentation and processing, 4) subject-focused actions, 5) investigative coordination/notification, and 6) documentation (investigative and administrative) deficiencies. In addition, we included case data such as types of sexual assault, where the assault occurred, use of alcohol or drugs, and the relationship between the subject and the victim.

Interview and Post-Interview Deficiencies

In total, 399 of the 501 sample cases had interview and post-interview deficiencies. We categorized them by subject, victim, and witness interview and post-interview deficiencies to more efficiently analyze the results. Table 4 depicts a breakdown by MCIO of the number of cases with interview deficiencies.

Table 4. Cases with Interview and Post-Interview Deficiencies

Total	CID	NCIS	AFOSI
399	140	145	114

Subject Interview and Post-Interview Deficiencies

We found two issues related to the thoroughness of subject interviews and post-interview actions. They were: 1) the interview documentation did not address all elements of the offense(s), or pertinent information surrounding the assault was omitted and should have been captured by investigators (for example, investigators did not capture information about the suspect’s alibi in an effort to substantiate or refute the alibi) and 2) investigators did not pursue relevant investigative leads generated from the interview.⁹ Table 5 depicts a breakdown by MCIO of the number of cases with subject interview deficiencies. Additionally, not reflected in Table 5, one subject was not advised of his legal rights as required. Although not advising a subject of their legal rights could have an adverse effect on a case, our review indicates this to be anomalous and not a systemic issue. In two instances (one for NCIS and one for AFOSI), the subject was never interviewed and the file provided no explanation.

Table 5. Subject Interview and Post-Interview Deficiencies

Category	Total	CID	NCIS	AFOSI
Subject interview was not thorough or did not address all elements of the offense investigated.	67	24	22	21
Investigators did not follow up on logical leads stemming from interviews.	78	18	31	29

⁹ See Appendix C for additional information on the two areas of concern.

Victim Interview and Post-Interview Deficiencies

We separated victim interview thoroughness and post-interview action deficiencies into four areas of concern as follows: 1) the interview was not considered thorough because the documentation of the interview did not address all elements of the offense(s), or pertinent information surrounding the assault was omitted and should have been captured by investigators; 2) investigators never followed up on relevant investigative leads generated from the interview; 3) investigators did not attempt to corroborate pertinent information the victim provided to them; and 4) investigators did not address or investigate the victim’s recantation. Additionally, we found two items not related to the thoroughness of interviews but shortcomings related to operational and administrative interviews requirements as follows: 1) investigators did not issue or failed to document that they issued a DD Form 2701¹⁰ to victims and 2) investigators did not provide routine or recurring briefings to the victims on the status and various aspects of the investigations or investigators failed to document that the briefings were conducted (CID and NCIS). DoD guidance requires that victims receive recurring case status briefings but it does not specify from whom. Both CID and NCIS policies have supplemented their Service policies and require investigators to periodically brief victims. For the Air Force, these briefings are provided by the victim’s commander. The AFOSI reports of investigations we reviewed did not include information related to victim briefings. Table 6 depicts the total and a breakdown by MCIO for each of the areas of concern of the number of cases with specific deficiencies.¹¹

Table 6. Victim Interview and Post-Interview Deficiencies

Category	Total	CID	NCIS	AFOSI
Interview was not thorough or did not address all elements of offense.	98	27	35	36
Logical leads stemming from interview were not developed or pursued.	132	39	51	42
Information provided was not corroborated.	44	14	13	17
Victim’s recantation was not addressed or investigated.	11	0	3	8
Victim was not issued a DD Form 2701.	79	66	N/O*	13
Routine/recurring victim briefs were not conducted in accordance with (IAW) MCIO policy.	179	64	115	N/A

*Not Observable. There were 111 instances in which we were unable to verify NCIS’ compliance with the issuance of the DD Form 2701, because the case activity records, where the information is normally documented, had been destroyed IAW Secretary of the Navy Manual-5210.1 (SECNAV M-5210.1), “Department of the Navy Records Management Program, Records Management Manual,” November 2007 (Rev.).

¹⁰ The DD Form 2701, “Initial Information for Victims and Witnesses of Crime,” provides recipients with an understanding of the military criminal justice process, actions to take in certain situations, a list of victim rights, and contact information if additional assistance is needed.

¹¹ See Appendix C for additional information on the eight areas of concern.

Witness Interview and Post-Interview Deficiencies

Witness interview and post-interview action deficiencies were broken down into five areas of concern as follows: 1) significant witnesses were identified but not interviewed, and the file contained no documented explanation for why they were not interviewed; 2) the initial witness the victim confided in was not interviewed; 3) canvass interviews were not conducted when appropriate; 4) the interview was considered not thorough because pertinent information surrounding the assault was omitted and should have been captured by investigators (for example, investigators often did not explain discrepancies between witness, subject, or victim testimony when appropriate, or investigators annotated the general opinion from a witness rather than descriptive observations in relation to a victim or subject's intoxication); and 5) investigators never followed up on relevant investigative leads generated from the interview.¹² Table 7 depicts the total and a breakdown by MCIO for each of the areas of concern of the number of cases with specific deficiencies. We found no noted instances of witness information not being corroborated.

Table 7. Witness Interview and Post-Interview Deficiencies

Category	Total	CID	NCIS	AFOSI
Significant witnesses were identified but not interviewed, and the file was not documented to explain why.	173	38	74	61
Initial witness the victim confided in was not interviewed.	9	4	2	3
Canvass interviews were not conducted.*	28	10	11	7
Witness interview was not thorough.	102	43	26	33
Investigators did not follow up on logical leads stemming from interviews.	98	33	30	35

*Canvass interviews are interviews conducted in the immediate vicinity of a crime scene in an effort to identify potential witnesses or information related to the matter being investigated.

CID and NCIS policies fully address the elements of thorough interviews including: 1) establishing and understanding the elements of the offense(s) being investigated; 2) investigating inconsistencies in victim, witness, or suspect statements; and 3) investigating subject/suspect alibis. Although AFOSI policies address the first two elements of thorough interviews, AFOSI has no policy guidance pertaining to investigating subject/suspect alibis. We believe that these principles, if applied to the interview process, will result in more thorough interviews. In addition, CID's practice of documenting interviews in narrative, and question and answer format is thorough, and it routinely captured necessary details of interviews.

¹² See Appendix C for additional information on the five areas of concern.

Evidence Deficiencies

In total, 127 of 501 cases had evidence deficiencies. We separated the evidence deficiencies into five areas of concern.¹³ Table 8 depicts a breakdown by MCIO of the number of cases with evidence deficiencies.

We narrowed these deficiencies down to one specific action requiring additional oversight during future investigations, that is, the failure to collect all items of physical evidence (for example, clothing, deoxyribonucleic acid [DNA] samples, phone records, text records) identified by subjects, victims, or witnesses. We observed incidents when investigators did not seize clothing items identified during investigative activity that were worn by victim(s) or subject(s) during or immediately after an alleged sexual assault. In other instances, the victim(s) or subject(s) used cell phones to discuss alleged sexual assaults or details pertaining to them that were never collected and exploited for evidentiary value. Finally, we observed instances when investigators did not collect DNA on potential suspects or other key participants in an investigation in an effort to exclude them as potential suspects.

Table 8. Evidence Deficiencies

Investigators did not:	Total	CID	NCIS	AFOSI
Collect all items of physical evidence identified by subject(s), victim(s), or witness(es).	95	31	39	25
Submit collected physical evidence to U.S. Army Criminal Investigation Laboratory (USACIL) for examination, if appropriate.	2	0	2	0
Submit collected evidence to USACIL in a timely manner.	25	11	3	11
Coordinate lab submission with forensic science consultant (FSC) (AFOSI) or special agent-in-charge (CID).	23	11	N/A	12
Have lab request form reviewed by FSC.	14	N/A	N/A	14

Note: The disparity in the number of cases with evidence deficiencies and the total number of deficiencies is due to some cases having multiple deficiencies.

Collection of Evidence

We noted investigators were not collecting the subject’s or victim’s clothing or certain relevant articles of clothing worn during the assault or shortly thereafter as evidence. As indicated in Table 8, of the 501 investigations, 95 contained evidence collection deficiencies. Among those deficiencies, we discovered about one-third of the evidence collection deficiencies involved investigators not collecting the clothing from the victim

¹³ See Appendix C for additional information on the five areas of concern.

or suspect as required by organizational policy. Most of these deficiencies occurred in cases of rape or aggravated sexual assault when the crime was reported within a day after the incident. Additionally, guiding MCIO policies regarding the collection of the subject or victim's clothing were inconsistent.

All of the MCIOs have policy advising agents to collect clothing from the subject or victim; however, subtle differences exist between each MCIOs' policies. For example, CID policy requires the collection of the subject or victim's clothing regardless of its probative value but it does not address the collection of any articles of clothing the subjects or victims might have placed on themselves following an assault, if that clothing was something other than what the subject or victim wore during the assault. NCIS policy advises agents to collect clothing worn by the subject or victim during the assault, as well as clothing the subject or victim might have placed on themselves following the assault when the clothing was different than what the subject or victim wore during the assault. However, NCIS policy relies on the word "should" instead of "will" or "must," which provides investigators discretion to decide an article of clothing's probative value and to choose when they should collect the clothing. AFOSI policy does not address the collection of articles of clothing the subject or victim might have placed on themselves immediately following an assault, if that clothing was something other than what the victim or suspect wore during the assault. Clothing worn during a sexual assault as well as clothing worn immediately following a sexual assault may contain evidence.

Crime Scene Documentation and/or Processing Deficiencies

In total, 218 cases had crime scene documentation and/or crime scene processing deficiencies. We separated the crime scene documentation and/or processing deficiencies into five areas.¹⁴ Table 9 depicts a breakdown by MCIO of the number of cases with crime scene documentation and/or processing deficiencies.

We narrowed these deficiencies down to four specific actions requiring additional oversight during future investigations as follows: 1) crime scene examination or validation, 2) crime scene photography, 3) crime scene sketches, and 4) evidence collection. Neither AFOSI nor NCIS consistently evaluated and/or documented crime scenes during the course of their sexual assault investigations. We also observed trends indicating that investigators failed to collect all items of physical evidence (such as clothing, DNA samples, phone records, and text records). Crime scene validations are less thorough examinations of a scene. These less thorough examinations may be appropriate in an investigation when there is a significant delay in reporting it to law enforcement and collection of

¹⁴ See Appendix C for additional information on the five areas of concern.

physical evidence is no longer possible. Validations normally consist of documenting observations, photographing, and preparing sketches. Validations are important because they provide valuable investigative information and assist during interviews. In addition, the documentation from validations helps others understand how events occurred.

Table 9. Crime Scene Documentation and/or Processing Deficiencies

Investigators did not:	Total	CID	NCIS	AFOSI
Examine or validate the crime scene.	129	25	51	53
Have authority to search the scene.	9	4	3	2
Photograph the scene.	156	28	56	72
Sketch the scene.	207	33	86	88
Collect potential evidence from the scene.	21	3	9	9

Note: The disparity in the number of cases with crime scene documentation and/or processing deficiencies and the total number of deficiencies is due to some cases having multiple deficiencies.

Crime Scene Examination/Search

As reflected in Table 9, crime scene examinations or validations were not conducted in 129 of the reviewed cases. In 61 investigations, the report of the sexual assault was made within 7 days of the date of the incident and a crime scene should have been available; however, the investigators did not conduct a crime scene examination and did not attempt to collect physical evidence from the scene. In the remaining 68 cases, investigators could have responded to the scene(s) to validate them by documenting observations, photographing, and preparing sketches.

CID routinely completed crime scene examinations. CID policy requires agents to promptly respond to a crime scene when it is available. We found that CID crime scene processing and documentation was thorough and routinely included detailed observations, photographs, and sketches.

Fifty one of the NCIS investigations reviewed lacked a crime scene examination. NCIS policy regarding crime scene processing uses the word “should” throughout; therefore, it does not explicitly require an investigator to conduct a crime scene examination. However, when NCIS used a Major Case Response Team (MCRT),¹⁵ the quality of NCIS crime scene processing increased. The MCRTs conducted thorough and detailed crime scene examinations, which included photography and sketches of the scene.

¹⁵ The MCRT provides a 24-hour surge capability of highly trained agents who are trained in crime scene processing techniques and are summoned to all major incidences to search, locate, photograph, document, collect, and preserve physical evidence.

Fifty three of the AFOSI investigations reviewed lacked a crime scene examination. The AFOSI does not have specific mandatory guidance to establish when to conduct a crime scene examination. The AFOSI guidance for crime scenes is covered in AFOSI Manual (AFOSIMAN) 71-124, “Crime Scene Handbook,” September 30, 2003. This is a how-to manual regarding searches, seizures, and evidence collection procedures. The AFOSIMAN does not establish policy requirements for conducting crime scene examinations. Additionally, AFOSI Manual 71-122, volume 1, “Criminal Investigations,” May 29, 2008, which establishes procedures for general investigative methods, refers readers to AFOSIMAN 71-124 for procedures on searches, seizures, and evidence collection procedures.

Subject-Focused Action Deficiencies

In total, 190 cases had deficiencies in administrative requirements related to the processing of subjects of sexual assault investigations. These deficiencies are not related to the thoroughness of the sexual assault investigations but are important in identifying and “titling” the subject in the investigative report and indexing the subject in the Defense Central Index of Investigations (DCII).¹⁶ We separated the deficiencies into two areas of concern.¹⁷ Table 10 depicts a breakdown by MCIO of the number of cases with subject-focused action deficiencies.

Table 10. Cases with Subject-Focused Action Deficiencies

Investigators did not:	Total	CID	NCIS	AFOSI
Title/index subject(s) IAW DoDI 5505.07.	14	1	13	0
Comply with guidance regarding the release of subjects to unit personnel.	187	47	103	37

Note: The disparity in the number of cases with deficiencies shown and the total number of deficiencies is due to some cases having multiple deficiencies.

Investigative Coordination/Notification Deficiencies

In total, 103 cases had investigative coordination/notification deficiencies. We categorized investigative coordination/notification deficiencies into four areas of concern.¹⁸ Table 11 depicts a breakdown by MCIO of the number of cases with investigative coordination/notification deficiencies.

¹⁶ The DCII System is an automated central index that identifies investigations conducted by DoD investigative agencies, and personnel security determinations made by DoD adjudicative authorities.

¹⁷ See Appendix C for additional information on the two areas of concern.

¹⁸ See Appendix C for additional information on the four areas of concern.

Table 11. Cases with Investigative Coordination/Notification Deficiencies

Investigators did not:	Total	CID	NCIS	AFOSI
Receive headquarters or supervisor approval to close short ¹ (AFOSI) (administratively close) or as a Final C ² (CID) investigation.	20	4	N/A	16
Coordinate/notify forensic science consultant.	13	N/A	N/A	13
Notify the sexual assault response coordinator (SARC). ³	78	34	N/A ⁴	44
Coordinate with trial counsel.	21	6	N/A ⁵	15

Note: The disparity in the number of cases with deficiencies shown and the total number of deficiencies is due to some cases having multiple deficiencies.

- ¹ According to AFOSIMAN 71-121, paragraphs 9.1.1.3.1 and 9.1.1.3.3, closed short (administrative closure) is when information is obtained indicating the investigation should not have been initiated or the investigation is no longer the responsibility of AFOSI.
- ² CID Regulation 195-1, paragraph 4.10, states that a criminal investigation may be terminated prior to exhausting all investigative leads and a Final (C) report of investigation be prepared when the CID investigative resources could be better employed on other investigations and when certain other criteria exist.
- ³ According to DoDD 6495.01, paragraph E2.1.15.1 (October 6, 2005 edition), the SARC is the central point of contact for coordinating appropriate and responsive care for sexual assault victims.
- ⁴ In spite of DoD policy that requires SARC notifications in all sexual assault complaints, NCIS policy did not require SARCs to be notified. Notwithstanding, SARC notifications were documented in 71 of 157 investigations, but they were not documented in 86.
- ⁵ Although NCIS policy does not require coordination with trial counsel, it “strongly encourages” early and continuous contact with trial counsel or other appropriate attorney. NCIS documented such contacts in 100 instances in the reports we reviewed.

MCIO/Judge Advocates Coordination and Collaboration

In 57 NCIS cases there was no initial and continuing coordination with the supporting Judge Advocate (JA) or Assistant U.S. Attorney (AUSA). Both CID and AFOSI have specific guidance requiring investigators to develop a process of continued interaction with their respective JAs/AUSAs throughout the life cycle of their investigations. We observed clear guidance and strong interaction between CID investigators and their servicing JAs/AUSAs throughout the life cycle of their cases. We observed robust interaction between AFOSI investigators and their respective JAs, along with detailed guidance. NCIS policy does not specify that investigators are required to notify or coordinate with their servicing JA at the initiation of investigations, nor does it specify that NCIS and the servicing JA/AUSA are required to establish a collaborative relationship throughout the life cycle of an investigation. However, NCIS Manual for Investigations, NCIS 3, Chapter 6, “Investigative Theory and Procedures,” December 2006, section 6-2.3, states that “...strong consideration should be given to early and continuous contact with trial counsel or other appropriate attorneys when conducting an investigation.”

Investigative and Administrative Documentation Deficiencies

In total, 88 cases had investigative and administrative documentation deficiencies. The investigative and administrative documentation deficiencies were broken down into four areas of concern.¹⁹ Table 12 depicts a breakdown by MCIO of the number of cases with investigative and administrative documentation deficiencies.

Table 12. Cases with Investigative and Administrative Documentation Deficiencies

Category	Total ¹	CID	NCIS	AFOSI
Required supervisory reviews not documented.	72	11	N/O ²	61
Review/inclusion of other law enforcement agency's report not documented.	4	1	3	0
Location of offense not fully identified.	13	0	0	13
Case agent notes were not retained through the appellate review process.	5	N/A	5	N/A

¹ The disparity in the number of cases with investigative and administrative documentation deficiencies and the total number of deficiencies is due to some cases having multiple deficiencies.

² Not Observable. In 141 instances, we were unable to verify whether supervisory reviews were conducted in the NCIS investigations because the case activity records and supervisor review records, where the information is normally documented, had been destroyed IAW SECNAV M-5210.1.

Additionally, we found disparate policies and practices among the MCIOs related to report of investigation documentation, the timely completion of Defense Central Index of Investigations records checks pertaining to victims and suspects, and the filing and retention of investigative notes as discussed below.

Timely Records Checks

We noted that CID and NCIS showed trends of not documenting or not conducting law enforcement records checks,²⁰ or failing to do them in a timely manner. Although not required by DoD guidance, we observed that AFOSI, IAW its policy guidance, conducted records checks at the onset of its investigations. AFOSI guidance requires that investigators conduct records checks within the first 2 days of an investigation and preferably prior to the initial subject or victim interview. If investigators fail to meet this requirement, they are required to document this fact in the report of investigation. This practice provides additional details and background about key participants in the investigation, which in turn leads to more thorough and insightful interviews. In addition, timely records

¹⁹ See Appendix C for additional information on the four areas of concern.

²⁰ Law enforcement records checks include, but are not limited to, local, state, and national law enforcement criminal history checks.

checks also enhance officer safety by providing investigators with information regarding weapons, officer safety information (for example, the individual is known to assault law enforcement personnel), and criminal history that would otherwise be unknown if investigators failed to complete the checks early in the investigative process. CID guidance requires that investigators complete criminal records checks “promptly,” but it does not provide a definitive timeliness standard.

CID guidance emphasizes the importance of conducting prompt records checks for subjects, suspects, complainants, and victims; however, the language in this guidance does not establish a timeliness standard. In one CID case, investigators failed to realize that the subject of an active sexual assault investigation had been identified as the subject of a previous sexual assault investigation. NCIS guidance indirectly requires that records checks be conducted within the first 3 days of an investigation (first day if a priority case). Although NCIS policies indirectly provide a timeliness standard, we found a majority of the cases reviewed (82 of 157) did not meet the standard. In one NCIS case, investigators did not identify that the subject of an investigation had a record of illegal activity until after the subject had been interviewed. We observed instances in CID and NCIS cases when investigators failed to complete records checks before interacting with subjects.

Report of Investigation Documentation

The reports of investigation and supporting files of NCIS and AFOSI often lacked basic case information such as date, time, location of occurrence, and offenses under investigation. For example, in one victim’s statement in an AFOSI report of investigation, the victim described an assault occurring in her home but she did not specify her home address in the statement, and it was not documented anywhere in the report or supporting file. CID provides basic information at the beginning of each report of investigation on a title page, or as much of the information as is known, which simplifies locating basic case information for commanders and JAs/AUSAs reading the reports.

Investigative Case Notes

Investigative case notes are often the first investigative documentation produced as part of an investigation. As such, they may provide vivid and timely details agents can refer to when completing more concise and formal case reporting and when testifying at trial. Although DoD has no standardized policy for creating and retaining investigative case notes, each MCIO has unique procedural guidance.

A review of AFOSI guidance revealed that investigators are encouraged to complete thorough, detailed, and legible investigative case notes. These notes are maintained with the original case file and retained at the AFOSI File Repository. The effectiveness of AFOSI's policy and procedures regarding investigative case notes was evident when we observed lengthy and detailed case notes that were readily available with the respective case file. AFOSI guidance requires investigators to maintain all original agents' notes relating to allegations and complaints. The guidance explains how investigators were to save and attach agent's notes to investigative activities documented in their investigative management system and procedures for completing, retaining, and storing.

CID Regulation (CIDR) 195-1, "Criminal Investigation (Operational Procedures)," March 22, 2010, version 11, section 7-7c.4, specifies that "[a]ll investigative interview/crime scene related notes prepared by special agents will be maintained in the case folder." CIDR 195-1, section 5-7c.6, further states that "[s]pecial care will be taken to see that any written statement and/or notes are secured in the case file and retained for purposes of the Jencks Act.²¹" This same CID policy also outlines procedures for the retention of case notes associated with investigations that take place in deployed areas, and how agent's notes regarding investigations in deployed areas will be forwarded to the U.S. Army Crime Records Center. Field Manual 3-19.13, "Law Enforcement Investigations," January 10, 2005, describes the importance of documenting the initial actions and observations of the first military policeman to respond to an incident and how they are vital in providing information to substantiate investigative considerations. Investigative case notes are maintained with the local case file and are destroyed IAW investigative file retention standards in CID policy.

NCIS guidance specifies that agents on a Special Agent Afloat (SAA)²² assignment can destroy investigative case notes no longer required for administrative/court-martial action upon completion/termination of their assignment. However, if administrative/court-martial action is being considered and/or pending, "rough notes" should be forwarded to the homeport NCIS Resident Agency for inclusion in the case file. NCIS guidance mandates that accurate and complete investigative documentation, supported by investigator notes and other pertinent documentation, obtained during the course of an investigation be placed in the case file. NCIS policy requires case activity records (CAR), case review records (CRR), agent notes, and investigative plans be kept in the case

²¹ The Jencks Act (section 3500, title 18, United States Code [18 U.S.C. § 3500]), requires the government (prosecutor) to produce a verbatim statement or report made by a government witness or prospective government witness (other than the defendant), but only after the witness has testified.

²² The NCIS SAA Program was initiated in Europe in March 1967. Since its inception, its purpose has been to provide professional investigative support to afloat operational elements of the Department of the Navy throughout the world.

file while the investigation is open. The case file, CAR, CRR, and case agent's notes can be destroyed, if they are no longer needed, 1 year after the case is closed. NCIS Manual 1, Chapter 19, "File Retention and Disposal of Closed Case Law Enforcement and CI/CT/CIO Investigations and Security Clearance Adjudication Cases," October 2007, supplements SECNAV M-5210.1 and further defines those NCIS files to be destroyed or retained. NCIS Manual 1, Chapter 19, excludes cases ". . . awaiting judicial, administrative or appellate action . . ." from the 1-year destruction requirement and requires them to be maintained in "Extended Retention" files.

Labeling of CID case notes with the originator's name, date, place, and case number was not always accomplished. AFOSI consistently used a cover sheet to clearly label case agent notes in the investigative case file. Additionally, there were disparate levels of ease in retrieving case notes when we requested them. The AFOSI case notes were all maintained in the investigative case file at the file repository to allow for easy retrieval. The CID agent notes were maintained in the case file at the field unit where the investigation was conducted. CID agent notes were retrieved in response to our request, with only a few exceptions. With the exception of five investigations reviewed, the NCIS case agent notes were either destroyed IAW Navy and NCIS policy or not maintained in the case file or in the case agent's possession and therefore, were not retrievable. In a few instances among all of the MCIOs, we found notes pertaining to proposed investigative leads annotated in case notes that were not accomplished, nor was there additional documentation explaining why these leads had not been accomplished. However, when available, case notes provided pertinent details of interviews, crime scenes, and other investigative activity that was later incorporated into the respective report of investigation.

Demographic and Other Case Data

In addition to analyzing the cases for compliance with guiding policies, we gleaned information related to various topics including: alcohol use by the subject and victim; age ranges; pay grades; locations where the offenses occurred; the relationship, if any, between the subject and victim; numbers of unrestricted cases from previously restricted reports; primary offenses investigated; cases with multiple subjects and victims; comparisons of military pay grades between subjects and victims; and various other items. We did not draw conclusions concerning the data. The data are for information only and for possible future analysis if compared to data gleaned from comparable statistical samples. See Appendix C for details.

Conclusions

Most of the cases we reviewed (445 of 501 cases or 89 percent) met investigative standards or did not have significant deficiencies. Eleven percent (56 of 501) of the cases we reviewed had significant deficiencies. We returned the cases with significant deficiencies to the MCIOs for resolution. A total of 83 cases (17 percent) had no deficiencies. Eighty-one percent of the remaining cases (362 of 445) had deficiencies; however, the deficiencies did not have a significant impact or an adverse effect on the investigation.

We found 56 of 501 (11 percent) cases had significant deficiencies that likely affected the outcome of the investigation. Significant deficiencies included:

- key evidence was not collected from the crime scene, the victim, or the subject;
- crime scene examinations were not completed, not completed thoroughly, or not completed before the loss of crucial evidence;
- witness interviews were not thorough or not conducted; and
- subject or victim interviews were not thorough or reinterviews of subject or victims did not sufficiently develop new information.

Interviews

Thoroughness and documentation of MCIO investigative interviews need improvement. AFOSI needs policy guidance on investigating or explaining inconsistencies in statements provided by victims, witnesses, subjects, and suspects. Moreover many MCIO investigations did not clearly establish the elements of the offense and did not resolve investigative inconsistencies in statements provided by victim(s), witnesses, and subjects/suspects.

The CID process of obtaining written statements in the form of narrative followed by questions and answers is the most effective in obtaining the required information from victim(s) and in establishing the elements of the offense(s) being investigated.

Collection of Evidence

MCIO policies regarding collection of physical evidence need improvement. CID and AFOSI policy guidance does not direct the collection of clothing articles that a victim or suspect may have placed on themselves shortly after the assault, if different from the clothing worn during the assault. Although NCIS policies recommend collecting these items, it is discretionary. NCIS and AFOSI policy regarding the collection of clothing articles worn by the victim and suspect during the assault is not directive or authoritative

and allows investigators discretion as to when and what pieces of physical evidence they must collect.

Crime Scene Examination/Search

The policies and supervision regarding crime scene examinations for NCIS and AFOSI are not adequate. NCIS policy addresses crime scenes; however, it uses the word “should” throughout the guidance and due to this ambiguity, does not specifically require an investigator to conduct a crime scene examination. AFOSI lacks crime scene examination policy guidance. It has a crime scene manual, but it is a guide and not a policy document.

MCIO/Legal Coordination and Collaboration

NCIS policy regarding MCIO/legal coordination and collaboration is not adequate. It does not address the need for NCIS investigators to notify or coordinate with their servicing JA upon initiating an investigation. Further, NCIS policy does not create a requirement for continued coordination between investigators and legal personnel throughout the life cycle of an investigation.

Report of Investigation Documentation

NCIS and AFOSI can better support action commanders, legal personnel, and other customers by providing readily identifiable information regarding the location(s), dates, and times of occurrence, as well as offenses under investigation in each report of investigation.

Timely Records Check

CID and NCIS policy guidance on records checks needs improvement. CID guidance regarding records checks does not provide a definitive timeliness requirement. NCIS policy establishes an indirect timeliness requirement that may contribute to the poor compliance noted in our review. The NCIS policy that relates to records checks of suspects and victims does not have a timeliness requirement. However, NCIS Manual 1, Chapter 25, “SSD Report Writing,” January 2010, requires records checks to be included in the ROI (Open), that is, required to be produced within 1 day or 3 days, depending on the priority of the investigation, and when an investigation is initiated. AFOSI policy AFOSIMAN 71-118, volume 4, “General Investigative Methods,” April 2009, pertaining to the completion of records checks is specific and requires investigators to obtain “as much detail and background about the investigation as possible before an interview.”

Investigative Case Notes

CID and NCIS policies regarding the retention of investigative case notes raise both practical and legal issues. AFOSI retains case notes permanently, but both CID and NCIS dispose of case notes at some point following adjudication and completion of the appeals process. We referred this issue to the DoD IG Policy and Programs Division to determine the need for DoD policy on the retention of investigative case notes and other internal documents, such as the NCIS CAR and CRR, and to determine whether MCIO policies comply with Federal law, such as the Jencks Act.

Missing Cases

The process NCIS uses to transfer closed investigative files from field elements to the NCIS Headquarters Records Management Division for digitization and subsequent destruction of hard copy files needs improvement to preclude the loss of critical criminal record files that require permanent retention. NCIS policy establishes the method that case files are to be sent, how the Records Management Division confirms receipt of the investigative files, and when the copy of the case file maintained by the field unit is to be destroyed. Despite the policy guidance, NCIS could not locate two cases requested by the review team.

SARC Notifications

In spite of DoD policy that requires SARC notifications in all sexual assault complaints, NCIS policy does not require SARCs to be notified. Notwithstanding, NCIS investigators documented SARC notifications in 71 of 157 investigations.

Management Comments on the Report and Our Response

Some management comments highlighted initiatives enacted by the MCIOs subsequent to the completion of our fieldwork and preparation of the draft report. We appreciate the efforts undertaken to improve MCIO sexual assault investigations; however, we did not modify our report to reflect programmatic changes that occurred after the draft report was issued.

The Director, NCIS, expressed concerns that we evaluated NCIS investigations against DoD and NCIS policies that did not exist in 2010, and our report does not reflect the current status of NCIS' adult sexual assault investigation program. We responded by memorandum (May 13, 2013) and assured the Director, NCIS, that we relied on the information NCIS provided in response to our data call of November 29, 2011, and coordination with NCIS

representatives to identify the applicable Navy and NCIS policies. We agree with the Director's assertion that our evaluation does not reflect the current status of NCIS' adult sexual assault investigation program. The scope included sexual assault investigations closed in 2010. The results provide a snapshot for that timeframe only. We met with NCIS representatives to discuss our evaluation of NCIS management comments on May 5, 2013. NCIS comments not related to the recommendations are addressed in the following sections.

Report Section: Background

NCIS Comments

The draft report stated "Both NCIS and AFOSI, in accordance with Service policies, exercised independent discretion regarding the investigation of a wrongful sexual contact, indecent acts, or indecent exposure offenses based on the complexity of the case." NCIS commented that NCIS policy requires the initiation of an investigation into all wrongful sexual contact (formerly indecent assaults) allegations. Investigative guidance, General Administration memorandum (GEN ADMIN): 23A-0056 provided to all NCIS field elements on December 9, 2008, reiterated that "[a]ll allegations of wrongful sexual acts or contacts shall be investigated."

Our Response

Within the scope of our evaluation, Navy and NCIS guidance provided conflicting direction relative to the initiation of wrongful sexual contact and indecent assault investigations. Navy policy, SECNAV Instruction 5430.107, "Mission and Functions of the Naval Criminal Investigative Service," December 28, 2005, para 3.i., defines a "Major Criminal Offense" as "[a]ny offense punishable under the Uniform Code of Military Justice (UCMJ), or similarly framed federal, state, local, or foreign statutes, by confinement for a term of more than one year." Further, para 7.a., states in part "NCIS is a federal law enforcement agency that . . . investigates major criminal offenses, . . ." The maximum punishment for wrongful sexual contact established by the Manual for Courts-Martial, 2008 MCM, Part IV, Article 120 f (7), is "[d]ishonorable discharge, forfeiture of all pay and allowances, and confinement for 1 year." Therefore, technically, wrongful sexual contact (formerly indecent assault) is not a "major criminal offense" as defined by Navy policy, and not an NCIS investigative responsibility. This is reinforced by NCIS interim policy: GEN ADMIN: 23B-0025, JUN05, which states: "Felony level sexual assaults will continue to be investigated/tracked through disposition by NCIS, and minor incidents will be properly referred to the appropriate military authority for resolution." This policy has not been rescinded or incorporated into any other NCIS policy. A May 1, 2013, e-mail from NCIS

confirmed that this GEN ADMIN: 23B-0025 is still valid. We were not aware of NCIS GEN ADMIN: 23A-0056, 2.e., 09DEC08, during the course of this evaluation.

With the publication of DoDI 5505.18, "Investigation of Adult Sexual Assault in The Department of Defense," January 25, 2013, the MCIOs will investigate all sexual assault complaints to include wrongful sexual contact.

Report Section: Victim Interview and Post-Interview Deficiencies

NCIS Comments

NCIS disagreed with our finding that the "victim was not issued a DD Form 2701," in 111 instances. NCIS commented that its policy, NCIS Manual 3, Chapter 6, section 20.4, m., requires documentation of issuance of the DD Form 2701 in the Case Activity Record and the Investigative Plan, which are maintained as notes in the original case file.

Our Response

As documented previously in this report, NCIS did not provide case notes (including case activity records, case review records, investigative plans, etc.) for our review. IAW NCIS/ Navy policy guidance, they destroyed these items with the case file.

Therefore, we revised the report to state: "In 111 instances, we were unable to verify NCIS' compliance with the issuance of the DD Form 2701, because the case activity records, where the information is normally documented, had been destroyed IAW SECNAV M-5210.1."

Report Section: Evidence Deficiencies

NCIS Comments

NCIS did not agree with our finding that in three NCIS investigations they did not submit evidence to USACIL. NCIS commented they reviewed the three investigations and found that evidence in one case was submitted to USACIL. Further, the remaining two investigations involved subjects who claimed the sexual acts were consensual, and IAW policy, USACIL will not conduct an analysis when subjects admit to the sexual act but claim consent.

Our Response

We reduced the findings from three investigations to two. In one instance, evidence had been submitted for DNA examination, but additional evidence, which was probative to

the investigation, was not subsequently submitted. In the second investigation, we found that although the case involved a subject claiming consensual sex, the evidence deemed probative was not DNA evidence and should have been submitted.

Additionally, NCIS' assertion that USACIL will not accept evidence on cases when the subject admits sexual contact but claims consent is not accurate. USACIL has not published policies restricting the submission of DNA for analysis when consent was an issue. The only policy USACIL was aware of had been issued by CID on February 3, 2005, Operational Memorandum 001-05, "Submission of Physical Evidence to Serology Division, U.S. Army Criminal Investigation Laboratory (USACIL) for DNA Examination/Analysis." This policy memorandum stated that USACIL will accept evidence for DNA analysis under the following conditions:

- a. The suspect recants his statement.
- b. The suspect's confession/admission is anticipated to become inadmissible. This cannot be a "what if", but a documented issue with the confession/admission (i.e., no or improper rights advisement, failure to obtain the suspect a lawyer when requested, etc).
- c. Charges have been preferred for courts-martial or civilian court, and the trial counsel, with the explicit approval of the Staff Judge Advocate or Chief of Justice, or local civilian prosecutor requests that the examination be conducted and is needed for trial.

Evidence meeting these exceptions will be forwarded to USACIL for examination. The SAC will review the laboratory request. SAC reviews will be annotated in either the Agent Activity Summary (AAS) or on the actual laboratory request.

NCIS does not have an organizational policy addressing the submission of DNA evidence when the subject of a sexual assault allegation claimed that the encounter was consensual.

Report Section: Investigative Coordination/Notification Deficiencies

NCIS Comments

NCIS disagreed that investigators did not notify the SARC in 86 instances (Table 11). NCIS stated that NCIS agents work with SARCs to ensure all victims are assigned a Victim Advocate who accompanies the victim during the NCIS interview, if they so desire, but NCIS policy, NCIS Manual 3, Chapter 34-4.4, does not require agents to document SARC notification in NCIS Reports of Investigation.

Our Response

DoDI 6495.02, para E4.3.1, requires the SARC be notified of all incidents of reported sexual assault. The SARC, in turn, will assign a Victim Advocate to assist the victim.

We revised Table 11 in the NCIS column on the SARC notification row to reflect “N/A”, and we revised Table Note 3 to reflect that although neither Navy nor NCIS policies require SARC notifications, they are required by DoD policy. Notwithstanding, we found documentation that NCIS personnel notified a SARC in 71 of 157 investigations.

In addition, we added a recommendation that the Director, NCIS, revise policies to coincide with DoD policy requirements and require documentation of SARC notifications in the case file or investigative report.

Report Section: Investigative and Administrative Documentation Deficiencies

NCIS Comments

NCIS disagrees that it was deficient in 141 investigations for supervisor reviews (Table 12). NCIS does not require case reviews to be documented in the ROI. The case reviews are documented in the case activity record, which is maintained in the original case file as notes. NCIS does not require notes to be sent to NCISHQ. The field case files are destroyed 1 year after a case is closed, or, with legal authorization, upon completion of the appeal process if the investigation resulted in a conviction. As this review involved investigations initiated during 2010; notes were no longer available for review.

IAW NCIS Manual 1, Chapter 19, section 19-8.1 and 19-8.1(a), NCIS stated that the

FO [field office] and NCISRA [NCIS resident agency] are the primary field repositories for closed investigations and operations.

... The FO and NCISRA shall retain files on closed investigations, operational, and collection matters to include specific phase Polygraph Examination cases for a period not to exceed one year as prescribed in SECNAV M-5210.1.

At the field level, this includes agent notes and other material (for example, original correspondence). The Manual states, "Exceptions include cases awaiting judicial, administrative, or appellate action ..."

Our Response

As a result of not being able to verify that the reviews were accomplished, we modified Table 12, under the NCIS column on the pertinent line to reflect "N/O" [not observable] and revised the report by adding Table Note 2.

Report Section: Investigative Case Notes

NCIS Comments

NCIS did not agree that labeling of NCIS case notes with the originator's name, date, place, and case number was not always accomplished. The case notes were not available for this review due to NCIS' policy of maintaining the notes with the original case file in the field office and the destruction policy, as previously noted.

In accordance with NCIS policy, NCIS Manual 1, Chapter 19, sections 19-8.1 and 19-8.1(a), the

FO and NCISRA are the primary field repositories for closed investigations and operations The FO and NCISRA shall retain files on closed investigations, operational, and collection matters to include specific phase Polygraph Examination cases for a period not to exceed one year, as prescribed in SECNAV M-5210.1.

At the field level, this includes agent notes and other material (for example, original correspondence). The Manual also states, "Exceptions include cases awaiting judicial, administrative, or appellate action ..."

Our Response

In response to our data call memorandum, NCIS provided case notes related to only five investigations. Our finding was based on only that material. Due to the small sample reviewed, we removed that portion of our finding related to NCIS.

Report Section: Investigative Case Notes

NCIS Comments

NCIS did not agree with our conclusion that NCIS retention of investigative case notes raises a legal issue. They stated that NCIS is in full compliance with legal requirements established by the Jencks Act because notes are maintained with the original case file throughout the life of the investigation, to include the appeal process for investigations that result in a criminal conviction (NCIS Manual 1, Chapter 19, section 19-8).

Our Response

NCIS' assertion of being in full compliance with the Jencks Act is incorrect. Further evaluation of the data collected has revealed that case agent notes for five investigations under appellate review were not provided for our review. Four of the investigations we reviewed are still under appellate review, and the fifth case completed appellate review subsequent to the conclusion of our case review.

In response to our data call memorandum, NCIS provided notes and materials associated to only five investigations. We were informed that all other notes and case review records were destroyed IAW policy. Based on that assertion, we conclude that NCIS improperly destroyed case documentation.

We stand by our conclusion that NCIS policy on retention of investigative case notes raises a legal issue.

Recommendations, MCIO Comments, and Our Response

Added Recommendations

We added Recommendation 9 for NCIS to require the notification of SARCs in all reported sexual assault investigations and document the notification within the investigative files.

1. Adequacy of Investigations

We recommend that the Director and Commanders of the Military Criminal Investigative Organizations emphasize thorough and timely completion of all sexual assault investigations to ensure that all investigations are completed as required by DoD, Military Service, and command regulatory guidance.

CID Comments

The Commander, CID, agreed with our recommendation. CID has issued guidance to all field elements re-emphasizing the need to conduct timely and thorough sexual assault investigations, noting the comments and recommendations provided in the report.

NCIS Comments

The Director, NCIS, agreed with our recommendation. NCIS emphasizes the thorough and timely completion of all NCIS investigations. The message of “Operational Excellence” as it has been referred to within NCIS, permeates throughout all NCIS investigative disciplines and has been a consistent message to field and headquarters components. Additionally, in recent years NCIS has implemented enhancements to its management oversight/inspection processes. The Staff Assistance Visit (SAV) Program is used to assess field performance and adherence to “Operational Excellence,” focusing on investigative quality, timeliness, and compliance with NCIS policy and standards. SAVs are initiated by the NCIS Deputy Director at his/her discretion. The Quality Assurance Visit Program is a program in which the NCIS geographic executive assistant directors for Atlantic, Pacific, and Global Operations conduct regularly scheduled visits to field offices to assess investigative quality, timeliness, and compliance with NCIS policy and standards.

AFOSI Comments

The Commander, AFOSI, agreed with our recommendation. Sexual assault investigations have been an AFOSI Commander’s special interest item (SII) for more than a year and have received significant, ongoing, high-level attention across the Command. In June 2012, Commander, AFOSI, published a Notice to Airmen (NOTAM) directing all AFOSI agents to increase focus and attention on improving the sufficiency and timeliness of AFOSI’s sexual assault investigations. The Commander, AFOSI, directed that all sexual assault investigations be reviewed and approved for investigative sufficiency before the final investigative report is published. The Commander, AFOSI, repeated this message through 2012 and into 2013 at leadership forums and commander’s calls. In December 2012, the Commander, AFOSI, published a second NOTAM to inform field agents AFOSI would soon begin investigating abusive/aggravated sexual contact allegations and again communicate the importance of urgently and sufficiently investigating all allegations of sexual misconduct and ensuring that the facts are accurately documented. In addition, in January 2012, AFOSI initiated a headquarters AFOSI case review process to assess investigative sufficiency.

Our Response

We recognize and applaud the MCIOs' commitment to timely and thorough sexual assault investigations. NCIS implementation of "Operational Excellence" coupled with its SAV program illustrates its recognized responsibility for improving the investigative processes for the organization. We also acknowledge AFOSI's efforts to highlight the significance of sexual assault investigations by designating the crime of sexual assault as an AFOSI Commander's SII for over a year. It is clear that the MCIOs understand the impact that the quality of their sexual assault investigations has on the Department. No further comments are required.

2. Interviews

- a. **We recommend that the Director and Commanders of the Military Criminal Investigative Organizations place increased emphasis on interview thoroughness through training, supervision, and policy improvements.**

CID Comments

The Commander, CID, agreed with our recommendation. CID has issued guidance to all its field elements re-emphasizing the need to conduct timely and thorough sexual assault investigations.

NCIS Comments

The Director, NCIS, agreed with our recommendation. NCIS acknowledges interview and interrogation techniques are central to the success of any investigations. The NCIS Training Academy dedicates approximately 75 hours to interview and interrogation techniques: 25 hours during the Criminal Investigations Training Program (CITP) and 50 hours during Special Agent Basic Training Program (SABTP). NCIS has also partnered with the U.S. Army to further develop and expand the USA Advanced Sexual Assault Course to include NCIS investigative perspective and practices. Currently, NCIS personnel attend training at Federal Law Enforcement Training Center (FLETC) and Fort Leonard Wood.

AFOSI Comments

The Commander, AFOSI, agreed with our recommendation. AFOSI stated it has improved the interview training provided to its agents. AFOSI has taught the cognitive interview (CI) technique since August 2012, at the behest of AFOSI's operational psychologists, in its advanced Sex Crimes Investigations Training Program course. AFOSI claims the CI technique, backed by many years of peer-reviewed scientific research, is expected

to empower sex crimes victims and improve their ability to provide more detailed information, which should enhance the Air Force's ability to pursue appropriate legal action in these cases. Further, the FLETC is planning to incorporate the CI technique into the initial skills training course attended by all AFOSI agent trainees. AFOSI are also teaching CI in our Advanced General Crimes Investigations Course, primarily attended by unit superintendents who oversee field investigations. Superintendents will also be given the tools to provide the training to field agents they supervise and to assess its proper use. Also, AFOSI has begun sending agents, who are assigned to installations with a high prevalence of sex crimes, to attend FLETC's Advanced Interviewing for Law Enforcement Investigators Training Program. Finally, in 2012, AFOSI incorporated a 4-week interviewing and interrogation block into its Basic Extension Program.

Our Response

The MCIO's comments are responsive to our recommendation. No further comments are required.

- b. We recommend that the Director, Naval Criminal Investigative Service, and the Commander, Air Force Office of Special Investigations, evaluate the benefits of using the combination of narrative and question and answer interview format to help ensure that facts and circumstances are documented thoroughly.**

NCIS Comments

The Director, NCIS, agreed with our recommendation and recognizes the combination of narrative and question and answer interview format and does not prohibit its use. There is no plan at this time to effect a change for taking statements, but NCIS will continue to emphasize the requirement for thorough statements regardless of the format used.

AFOSI Comments

The Commander, AFOSI, agreed with our recommendation. AFOSI has assessed the issue and made a research-informed decision not to use a question and answer format in the written statements obtained from subjects, victims and witnesses, based on input from our investigative psychologists and judge advocates. AFOSI stated that a more open, less suggestive questioning style is more appropriate to all interviews and interrogations. In addition, AFOSI policy directs agents to videotape all subject interviews. Videotaping subject interviews ensures both the exact words and context are accurately documented. AFOSI stated that its current interviewing style, together with written agent notes and

recorded subject interviews, provides the best method for conducting and documenting interviews.

Our Response

NCIS and AFOSI management comments are responsive. Both agencies evaluated their current policies regarding the use of a combined narrative and question and answer statement style as recommended. Although a combined narrative and question and answer style statement will not be prohibited by either organization, they assessed that their current style for taking statements is a more efficient means for obtaining information through written statements. No further comments are required.

- c. We recommend that the Commander, Air Force Office of Special Investigations, evaluate current policy and enhance its guidance on investigating subject/suspect alibis and the resolution of significant inconsistencies between statements of victims, witnesses, subjects, and suspects.**

AFOSI Comments

The Commander, AFOSI, agreed with our recommendation and believes its current policy and procedures for scoping investigations to the facts and circumstance of each case is appropriate for conducting investigatively sufficient cases. AFOSI has no specific policy regarding investigating subject/suspect “alibis,” per se. Investigating the validity of a subject/suspect’s alibi is addressed as part of a complete, properly scoped investigation based on the information and circumstances involved in each case, including possible defenses the accused may offer. AFOSI’s requirement for close coordination with Air Force JAG personnel throughout the lifecycle of investigations further ensures any anticipated alibi is addressed during the investigation. AFOSI does not feel it needs additional policy specifically pertaining to investigating subject alibis.

Our Response

AFOSI comments are responsive. AFOSI evaluated our recommendation and found its current policy sufficient to meet its investigative mission. We recognize the newly implemented practice of reviewing and evaluating 15 percent of its closed cases monthly may reduce or eliminate our concerns with subject/suspect alibis or inconsistencies between statements of victims, witnesses, suspects, or subjects during the course of their investigations. No further comments are required.

3. Collection of Evidence

We recommend that the Director and Commanders of the Military Criminal Investigative Organizations.

- a. Evaluate their existing policies and enhance their guidance regarding the collection of clothing worn by suspects and victims subsequent to a sexual assault.**

CID Comments

The Commander, CID, agreed with our recommendation. CID has issued guidance to all its field elements re-emphasizing the need to conduct timely and thorough sexual assault investigations.

NCIS Comments

NCIS disagreed and stated that as the current policy reflects that clothing worn by the victim or left at the scene by the subject should be seized vice must be seized. This is particularly important if the sexual assault just occurred and/or if the clothing has not been washed. Discretion must be given if the clothing has been washed unless required for corroboration purposes.

AFOSI Comments

The Commander, AFOSI, disagreed with our recommendation. AFOSI stated that the best approach is for agents to assess and identify items with evidentiary value, through mandatory expert forensic science consultation, in all sexual assault cases, early in an investigation. This approach better ensures all items that may have evidentiary value are identified and prioritized for collection in consideration of the facts and circumstances of the incident. In cases when a report is made soon after the assault, the clothing a victim changed into or worn by the victim at the time of the sexual assault medical examination would be seized as part of a Sexual Assault Forensic Examination (SAFE). In such instances, the clothing is collected as evidence and, in turn, agents must consider locating and seizing the clothing worn by the victim at the time of the assault. In cases involving a delayed report, the clothing a victim changed into may have since been washed and no longer offer a reasonable likelihood of containing evidence. Likewise, AFOSI agents are also trained to consider, locate, and seize the clothing the suspect wore and the clothing he/she changed into after the assault as these clothing items may too contain evidence and should, therefore, be located and seized. AFOSI will soon be publishing an updated crime scene manual that discusses the evidentiary value of various types of evidence. This manual, along with the existing mandatory expert forensic science consultation in

every sex crimes investigation, will further assist agents in identifying and collecting the right evidence, based upon the unique facts and circumstances of each case.

Our Response

MCIO management comments are responsive to the recommendation. Both NCIS and AFOSI evaluated their processes as recommended and asserted that their current guidance sufficiently addresses the issue of collecting clothing worn by both the subject and victim subsequent to an alleged assault. They maintain that discretion on whether to seize items of evidence is an important aspect of the criminal investigative process. No further comments are required.

- b. Conduct new or additional refresher training to highlight the critical nature physical evidence plays in sexual assault investigations and the subsequent prosecutions.**

CID Comments

The Commander, CID, agreed with our recommendation.

NCIS Comments

The Director, NCIS, agreed with our recommendation. NCIS has continuously provided training in conducting sexual assault investigations, which includes the significance of physical evidence. In addition, NCIS has partnered with the U.S. Army to further develop and expand the USA Advanced Sexual Assault Course to include NCIS investigative perspective and practices. Currently, NCIS personnel attend training at FLETC and Fort Leonard Wood.

AFOSI Comments

The Commander, AFOSI, agreed with our recommendation and is currently altering its annual sexual assault investigations refresher training to highlight it. AFOSI anticipates that the revised refresher training will be completed by September 1, 2013.

Our Response

MCIO comments are responsive to our recommendation. No further comments are required.

- c. Add evidence collection in sexual assault investigations as a special interest item during command inspections for the next 2 fiscal years at all levels.**

CID Comments

The Commander, CID, agreed with our recommendation.

NCIS Comments

The Director, NCIS, disagreed with our recommendation and stated that evidence collection in all investigations is by procedure already part of the review process from the first-line supervisor review to the NCIS IG inspection process. NCIS will continue to ensure all evidence is handled in accordance to policy and procedure.

AFOSI Comments

The Commander, AFOSI, disagreed with our recommendation. However, AFOSI agreed with the need for additional, special emphasis on ensuring that the right evidence is collected and processed in sexual assault cases, relational to the probative value the evidence might have based on the unique circumstances in each case. Therefore, in January 2012, AFOSI created the Performance Management Branch (PMB), a team of seven seasoned agents charged with reviewing a minimum of 15 percent of closed cases monthly to ensure investigative sufficiency. The PMB, using updated case review checklists, evaluates whether investigations meet a comprehensive list of requirements, to include whether agents collected all probative evidence. Reviewers compare the specific guidance offered to agents by their servicing forensic science consultant

Our Response

AFOSI comments are responsive and meet the intent of the recommendation. On inquiry, NCIS provided details on “Operational Excellence” efforts published in December 2011 and inspection program changes implemented in November 2010, which for the most part postdate the scope of this evaluation. The “Operational Excellence” program amplifies NCIS’ investigative oversight responsibilities at strategic and tactical levels; specifically addressing field unit execution of the NCIS mission and thoroughness of investigations. The Deputy Director emphasized sexual assault investigations and “SAC [Special Agent In Charge] Interest” and “functional awareness” of the overall status and timeliness of these investigations. In addition, during FY 2011, NCIS implemented a new inspection schedule for its management visit program. These inspections target a number of areas across the NCIS mission spectrum to include case reviews and evidence processes. Although NCIS disagreed with our recommendation, we find the steps taken subsequent to the period of our evaluation satisfy the intent of our recommendation. Therefore, NCIS comments are responsive. No further comments are required.

4. Crime Scene Examination/Search

We recommend that the Director, Naval Criminal Investigative Service, and the Commander, Air Force Office of Special Investigations, evaluate their policies and enhance their supervision regarding their agents' response to known and available crime scenes and evaluate the necessity for conducting a crime scene examination for all sexual assault investigations.

NCIS Comments

The Director, NCIS, agreed with our recommendation and will continue to place emphasis on the requirement to conduct crime scene documentation for delayed sexual assault reports. NCIS is unable to place a mandate for a crime scene examination for all sexual assault investigations because agents, at times, do not have access to the scene because of the location (for example, a foreign location such a port visit or combat zone).

AFOSI Comments

The Commander, AFOSI, agreed with our recommendation. On March 1, 2013, AFOSI added into policy the requirement that all crime scenes, when possible, must be located and documented (photographed/sketched) to accurately convey the location of the incident.

Our Response

NCIS and AFOSI's comments are responsive. Our observations do not include instances when the reasons for not conducting crime scene examinations provide well-documented, justifiable reasons. In instances, such as the examples provided in NCIS comments, the lack of a crime scene examination or validation should be well-documented and justified. No further comments are required.

5. MCIO/Judge Advocate General Coordination and Collaboration

We recommend that the Director, Naval Criminal Investigative Service, evaluate its current policy and enhance its guidance regarding the timely notification/coordination with servicing judge advocate(s) upon the initiation of sexual assault cases, as well as the continued coordination with the servicing judge advocate(s) until final case disposition.

NCIS Comments

The Director, NCIS, agreed with our recommendation. NCIS stated that NCIS requires investigators to notify or coordinate with the “convening authority” upon initiating a case, which often involves “SJA” for the command.

They further commented that NCIS policy does not require notification or coordination with the trial service office. NCIS commented that its current policy regarding “resolved criminal investigations” with military personnel identified as subjects or co-subjects, NCIS-3, Chapter 6-16.2., requires NCIS agents to brief “the military commander who has disciplinary responsibility for the individuals; this briefing will be documented in a ROI (INTERIM).” NCIS did not disagree with the recommendation, but did not agree with the draft report comments as written. Regardless, NCIS are currently changing its policy to ensure that all investigations will be coordinated with the prosecutive agency upon initiation of an investigation.

Our Response

We did not change our recommendation based on NCIS comments. However, we found NCIS deficient in 57 investigations for not coordinating with trial counsel. In arriving at this decision, we note NCIS Manual 3, Chapter 6, section 6-2.3, “Investigative Theory and Procedures,” December 2006, states that “strong consideration should be given to early and continuous contact with trial counsel or other appropriate attorneys when conducting an investigation.” As written, NCIS policy allows for discretion regarding trial counsel contacts. Therefore, we revised our findings to read “although NCIS policy does not require coordination with trial counsel, it ‘strongly encourages’ early and continuous contact with trial counsel or other appropriate attorney. NCIS documented such contacts in 100 instances in the 157 reports we reviewed.” Although NCIS did not agree with our evaluation of its processes, NCIS intends to establish a requirement that is responsive to our recommendation. No further comments are required.

6. Report of Investigation Documentation

We recommend that the Director, Naval Criminal Investigative Service, and the Commander, Air Force Office of Special Investigations.

- a. Ensure information related to the location(s) of incident, dates and times of occurrence, dates and times the incident(s) were reported, offenses under investigation, and other pertinent administrative data are properly documented within reports of investigations.**

NCIS Comments

The Director, NCIS, agreed with our recommendation and stated that emphasis has been, and will continue to be placed on ensuring all reports contain thorough and complete information. IAW NCIS Manual 3, Chapter 25, section 25.1-5.2(a-c), "ROI (OPEN)," the NCIS Report of Investigation (ROI) Open is primarily an internal NCIS document that reports the receipt of information, which serves to predicate the initiation of an investigation.

The Manual states:

The first paragraph of the Narrative portion should clearly state the reason for case initiation; i.e., reactive, reciprocal, details, and disposition, and if applicable, the relevant statute(s) that is/are suspected to have been violated. The ROI (OPEN) should answer, at minimum; who, what, where, when, why and/or how the offense was committed."

AFOSI Comments

The Commander, AFOSI, agreed with our recommendation and stated that the location(s) of the incident, dates and times of occurrence, dates and times the incident(s) were reported, offenses under investigation, and other pertinent administrative data should be properly documented within ROIs.

Our Response

NCIS and AFOSI comments are responsive to our recommendation. No further comments are required.

- b. Evaluate the benefits of preparing a report of investigation title page that includes the location(s) of incident, dates and times of occurrence, dates and times the incident(s) were reported, offenses under investigation, and other pertinent administrative data.**

NCIS Comments

The Director, NCIS, disagreed with our recommendation and stated that the reporting system used by NCIS satisfies the requirements of both its military and civilian customers. The information is contained in the Executive Summary, which is provided in every report upon initiation.

AFOSI Comments

The Commander, AFOSI, agreed with our recommendation and stated that it will further evaluate the benefits of preparing a ROI title page that includes all pertinent administrative data listed by DoD OIG. However, AFOSI stated that its preliminary assessment is that this requirement is not necessary. AFOSI ROIs typically contain all the information identified by DoD OIG. Additionally, action authorities, the appropriate base legal office, and other base authorities are provided updates throughout the investigation. The updates include the case details cited in the recommendation.

Our Response

NCIS and AFOSI comments are responsive to our recommendation. No further comments are required.

7. Timely Records Checks

We recommend that the Commander, U.S. Army Criminal Investigation Command, and Director, Naval Criminal Investigative Service, evaluate their existing policy and enhance their guidance regarding timely completion of records checks to ensure they adequately support investigations.

CID Comments

The Commander, CID, agreed and stated that CID has issued guidance to all its field elements re-emphasizing the need to conduct timely and thorough sexual assault investigations, noting the comments and recommendations provided in the report.

NCIS Comments

The Director, NCIS, disagreed with our recommendation. NCIS asserts that its current policies are adequate. IAW NCIS-1, Chapter 25, section 25.1-5.2.d. "Records Check," "[w]hen a NCIS investigation is initiated, it is the responsibility of the controlling field office to conduct complete records check of all subjects, co-subjects, and victims." These database checks are reported in the ROI (OPEN), which must be submitted within 3 business days of initiation of the investigation (OPEN).

Our Response

CID comments are responsive to our recommendation. No further CID comments are required.

We believe NCIS guidance on timeliness of records checks needs improvement to enhance results. NCIS Manual 1, Chapter 25, section 25.1-5.2.d., states “[t]hese database checks should be conducted at the earliest stage in an investigation with their results reflected in the ROI (OPEN).” The time requirements are outlined in NCIS Manual 1, Chapter 25, section 25.1-9.1.b., which establishes criteria for priority (I) and (II) investigations, i.e., 1 and 3 business days, respectively. We believe the records check policy should explicitly state the time requirement. Unclear policy guidance may contribute to the low compliance level found in the sample. We stand by our recommendation as written. We request further comments from NCIS in response to the final report.

8. Missing Cases

We recommend that the Director, Naval Criminal Investigative Service.

- a. Ensure the full accountability of all NCIS investigative files.**
- b. Correct policies and procedures to preclude the loss of additional records.**

NCIS Comment

The Director, NCIS, agreed with our recommendation and stated that NCIS has policy to ensure accountability of NCIS files and will ensure set policies are adhered to in order to avoid the loss of any case files.

Our Response

NCIS comments are responsive to our recommendation. No further comments are required.

9. Sexual Assault Response Coordinator Notifications.

We recommend that the Director, Naval Criminal Investigative Service, develop policy that requires its investigators to:

- a. Notify the Sexual Assault Response Coordinators in all reported sexual assault investigations.**
- b. Document the notifications within the investigative file.**

Management Comments Required

We request that NCIS provide comments on this recommendation.

Appendix A

Scope and Methodology

We conducted this review from February 2012 through September 2012. Our work included a review of adult sexual assault investigations completed (closed and adjudicated) in 2010 for investigative sufficiency and compliance with DoD, Service, and MCIO policy requirements effective at the time of investigation while noting observations and deficiencies.

We conducted the review in accordance with the professional standards for evaluation established by the Council of the Inspectors General for Integrity and Efficiency. We believe that the evidence obtained provides a reasonable basis for our observations and recommendations based on our objectives. We used professional judgment in making observations and recommendations.

We reviewed the MCIOs' sexual assault investigative policy guidance to assess the extent to which they addressed investigative activity expected to be conducted in response to sexual assault reports. We familiarized ourselves with tasks expected in any sexual assault investigation.

At the onset of the review, we sent a data call memorandum to each MCIO requesting the number of sexual assault investigations with adult victims closed and/or adjudicated in 2010 to establish the population. We worked with the DoD IG Quantitative Methods Division to determine a simple random sample number of cases to review based on a desired level of reliability giving us our sample size. The sample size was selected from the population using a 90-percent confidence level, 50-percent probability of occurrence at a 5-percent precision level. We excluded 81 cases from the review for one of three reasons: 1) the investigation was determined to be a monitor-type investigation in which another investigative entity (civilian police agency) conducted the bulk of the investigative activity; 2) adjudication of the case extended into 2011 (therefore, the case was not closed in 2010 even though the investigative activity was complete); or 3) the victim in the case was a juvenile rather than an adult victim. Additionally, the NCIS was unable to locate two cases we identified for review in our sample selection; neither the hard copy file nor the digital copy could be located. Our final total of cases to review was 501 cases.

The review of the adult sexual assault investigations was based on offenses defined under Article 120 UCMJ²³ as listed in the table and Article 125, forcible sodomy (of adult victims). The child sexual assault offenses are grayed-out but are included in the Table for edification. A limited number of case types (such as wrongful sexual contact) were not routinely investigated by all MCIOs during this period; however, they fell under the purview of this review.

Table. Article 120 Sexual Assault Offenses

Offense/Manual for Courts-Martial, Part IV, Paragraph 45
Aggravated sexual assault of a child
Aggravated sexual abuse of a child
Abusive sexual contact with a child
Indecent liberties with a child
Rape
Wrongful sexual contact
Aggravated sexual assault
Aggravated sexual contact
Abusive sexual contact
Indecent Acts
Pandering
Aggravated sexual assault of a child over 12
Aggravated abuse of a child
Abusive sexual contact with a child over 12
Indecent liberties with a child

We developed a sexual assault case review protocol for each MCIO based on each MCIO’s investigative policies and procedures. The review protocols addressed, in detail, all investigative steps required to complete a thorough sexual assault investigation ensuring compliance with applicable DoD, Service, and MCIO policies that were in effect during the life of the investigation.

In executing the review, we went to AFOSI and CID headquarters to review their investigations. NCIS provided its investigations electronically for us to review; therefore, we reviewed the files at DoD IG headquarters. In conducting the review, we noted observations and deficiencies found in the investigative files. An investigation

²³ Definitions in the 2007 and 2008 version of the UCMJ were in effect at the time of this review.

was classified as significantly deficient if investigative steps or an activity was not undertaken that the reviewer believed to have, or likely would have had, a significant impact and/or resulted in an adverse outcome of the investigation. Not all significantly deficient investigations warranted reopening. An example of a significantly deficient investigation that should be reopened would be an investigation that failed to fully identify and interview all potential victims. In this example, identifying and interviewing additional victims may lead to subsequent prosecution of an offender. The reopening of an investigation would not be expected or beneficial when the MCIIO failed to conduct time-critical investigative steps or failed to conduct them according to established policy. Examples include conducting telephone subject and victim interviews or failing to collect crucial evidence from a crime scene. These investigative steps are time sensitive and the opportunity to complete these steps cannot be replicated during the course of reopening the investigation. Although the failure to properly interview the victim, subject, or collect crucial evidence had a significant impact and/or adverse outcome of the investigation, reopening the investigation cannot overcome these errors.

Appendix B

References

Executive Order/Directive

None.

Federal Law

Public Law 108-375, "Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005," October 28, 2004.

DoD Issuances

DoD Directive (DoDD) 5106.01, "Inspector General of the Department of Defense (IG DoD)," April 13, 2006 and April 20, 2012.

DoDD 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," October 6, 2005 and January 23, 2012.

DoDD 1030.01, "Victim and Witness Assistance," April 13, 2004.

DoD Instruction (DoDI) 5505.18, "Investigation of Adult Sexual Assault in the Department of Defense," January 25, 2013.

DoDI 5505.03, "Initiation of Investigations by Defense Criminal Investigative Organizations," June 21, 2002 and March 24, 2011.

DoDI 5505.14, "Deoxyribonucleic Acid (DNA) Collection Requirements for Criminal Investigations," May 27, 2010.

DoDI 5505.11, "Fingerprint Card and Final Disposition Report Submission Requirements," June 20, 2006 and July 9, 2010.

DoDI 6495.02, "Sexual Assault Prevention and Response Program Procedures," June 23, 2006.

DoDI 1030.02, "Victim and Witness Assistance Procedures," June 4, 2004.

DoDI 5505.07, "Titling and Indexing Subjects of Criminal Investigations in the Department of Defense," January 27, 2003.

Service Issuances

Army Regulation (AR) 27-10, "Military Justice," November 16, 2005 and October 3, 2011.

AR 195-2, "Criminal Investigation Activities," May 15, 2009, and July 8, 2010.

AR 600-20, "Army Command Policy," November 30, 2009.

AR 195-5, "Evidence Procedures," June 25, 2007.

AR 190-45, "Law Enforcement Reporting," March 30, 2007.

Army Field Manual (FM) 3-19.13, "Law Enforcement Investigations," January 10, 2005.

Chief of Naval Operations Instruction (OPNAVINST) 1752.1B, "Sexual Assault Victim Intervention (SAVI) Program," December 29, 2006.

Secretary of the Navy Instruction (SECNAVINST) 5800.14A, "Notice of Release of Military Offenders Convicted of Sex Offenses or Crimes Against Minors," May 24, 2005.

SECNAVINST 5430.107, "Mission and Functions of the NCIS," December 28, 2005.

SECNAVINST 1752.4A, "Sexual Assault Prevention and Response," December 1, 2005.

Secretary of the Navy Manual 5210.1, "Department of the Navy Records Management Program, Records Management Manual," November 2007 (Rev.).

Air Force Instruction (AFI) 36-6001, "Sexual Assault Prevention and Response (SAPR) Program," September 29, 2008 and October 14, 2010.

AFI 51-201, "Administration of Military Justice," December 2007 with February 2010 change.

Air Force Policy Directive (AFPD) 36-60, "Sexual Assault Prevention and Response (SAPR) Program," March 28, 2008.

AFI 71-101 Volume 1, "Criminal Investigations," December 1, 1999.

AFPD 71-1, "Criminal Investigations and Counterintelligence," July 1, 1999.

MCIO Issuances

CID Regulation 195-1, "Criminal Investigation (Operational Procedures)," June 3, 2009 and March 22, 2010.

CID Pamphlet 195-10, "Crime Scene Handbook," June 30, 1999.

NCIS Manual for Investigations, "NCIS 3," July 2008.

NCIS Manual for Administration, "NCIS 1," July 2008.

AFOSIMAN 71-121, "Processing and Reporting Investigative Matters," January 13, 2009.

AFOSI Handbook (AFOSIH) 71-105, "An Agent's Guide to Conducting and Documenting Investigations," March 9, 2009.

AFOSI Manual (AFOSIMAN) 71-118 Volume 4, "General Investigative Methods & Evidence," April 30, 2009.

AFOSIMAN 71-122 Volume 1, "Criminal Investigations," May 29, 2008.

AFOSI Instruction (AFOSII) 35-101, "Public Affairs Policies & Procedures," October 6, 2006.

AFOSIMAN 71-124, "Crime Scene Handbook," September 30, 2003.

AFOSIMAN 71-103 Volume 3, "Technical Services," August 8, 2003.

AFOSIMAN 71-103 Volume 2, "Forensic Sciences," December 16, 2002.

AFOSIMAN 71-103 Volume 1, "Forensic Psychophysiological Detection of Deception Program," August 29, 2000.

AFOSII 71-107, "Processing Investigative Matters," March 15, 2000.

Supplemental Guidance

Army MEDCOM Regulation 40-36, "Medical Facility Management of Sexual Assault," January 21, 2009.

Appendix C

Case Detail Data

On request, the MCIOs provided a list of sexual assault cases totaling 2,263, which made up our population. We, in turn, forwarded the list to the DoD OIG QMD. The QMD analysts applied survey design methods to develop appropriate documentation or electronic instruments for collecting information. They are used as a specialized support element that provides detailed analysis tailored to specific projects. We asked QMD to provide a simple random sample of cases using a 90-percent confidence level and a 5-percent precision rate. They randomly selected a sample consisting of 584 cases (CID – 216, NCIS – 195, and AFOSI – 173) from the lists provided by the MCIOs for review. We provided each MCIO with a list of the randomly selected cases, which they made or attempted to make available for our review.

We excluded 81 cases from the review for one of three reasons: 1) the investigation was determined to be a monitor-type investigation in which another investigative entity conducted the bulk of the investigative activity; 2) adjudication of the case extended into 2011 (therefore, the case was not closed in 2010 even though the investigative activity was complete); or 3) the only victim in the case was a juvenile rather than an adult victim. Additionally, NCIS was unable to locate (either the hard or digital copies) two cases. Our final total of cases to review was 501 cases. Of the 501 cases reviewed, 83 cases were determined to have no investigative deficiencies (reflected in Table C.1).

Table C.1. Cases with No Investigative Deficiencies

Total	CID	NCIS	AFOSI
83	41	20	22

Of the 501 cases reviewed, 418 cases (CID – 157, NCIS – 137, and AFOSI – 124) contained investigative deficiencies. Investigative deficiencies were broken down into six subcategories: interview and post-interview deficiencies, evidence deficiencies, crime scene documentation and processing deficiencies, subject-focused actions, investigative coordination/notification, and documentation (investigative and administrative). The significance of each deficiency noted depended on the deficiencies’ detriment to the successful resolution of an investigation. Regardless of the category or total number of deficiencies within an investigation, a case annotated as having a single deficiency in any category was deemed deficient. Table C.2 depicts the cases with investigative deficiencies.

*Table C.2. Cases with Investigative Deficiencies
(Includes cases reopened following our review)*

Total	CID	NCIS	AFOSI
418	157	137	124

The remaining cases (362) had one or more deficiencies. Table C.2.a. depicts the breakdown of cases by MCIO.

Table C.2.a. Cases with Investigative Deficiencies

Total	CID	NCIS	AFOSI
362	144	111	107

Of the 501 cases reviewed, 56 cases (CID – 13, NCIS – 26, and AFOSI – 17) had significant deficiencies. Significant deficiencies included:

- key evidence was not collected from the crime scene, the victim, or the subject;
- crime scene examinations were not completed, not completed thoroughly, or not completed before the loss of crucial evidence;
- witness interviews were not thorough or not conducted; and
- subject or victim interviews were not thorough or reinterviews of subject or victims did not sufficiently develop new information.

Of the 56 cases identified as being significantly deficient, the DoD IG returned all of these investigations along with the documented deficiencies to the respective MCIOs to consider reopening and conducting additional investigative activity. As a result, 31 cases (CID – 7, NCIS – 14, and AFOSI – 10) or 55 percent were reopened by the MCIOs to conduct additional investigative activity. Table C.2.b depicts data regarding cases returned and reopened by the MCIOs.

Table C.2.b. Cases with Significant Deficiencies

Category	Total	CID	NCIS	AFOSI
Returned	56	13	26	17
Reopened	31	7	14	10

Cases Returned to CID: On June 7, 2012, we returned 13 cases to CID for consideration of our findings. On June 29, 2012, CID agreed to reopen 4 of the 13 cases to conduct

additional activity. They declined to pursue additional investigative activity in the nine remaining cases because they believed it would not alter the outcome of the case or too much time had elapsed, causing the recommended investigative activity to be impracticable. After reviewing CID’s response, we disagreed with their decision not to reopen seven of the nine remaining cases. We provided additional rationale regarding seven cases for CID to consider. On January 7, 2013, CID advised they reopened three of those cases. No additional investigative activity will be undertaken on the remaining four cases because CID believed it would not alter the outcome of the case or too much time had elapsed, causing the recommended investigative activity to be impracticable.

Cases Returned to NCIS: On August 2, 2012, we returned 26 NCIS cases to NCIS for consideration of our findings. On September 5, 2012, NCIS advised they reopened 11 of the 26 cases to conduct additional activity. On October 9, 2012, NCIS advised they reopened one additional case (12 of the 26 cases) to conduct additional activity. They declined to pursue additional investigative activity on the 14 remaining cases because they believed it would not alter the outcome of the case or too much time had elapsed causing the recommended investigative activity to be impracticable. After reviewing NCIS’ response, we disagreed with their decision not to reopen 2 of the 14 remaining cases. We provided additional rationale regarding the two cases for NCIS to consider. On December 28, 2012, NCIS advised they reopened one case and intend to reopen the remaining case. On February 14, 2013, NCIS advised that they reopened the final case.

Cases Returned to AFOSI: On April 23, 2012, we returned 17 AFOSI cases for consideration of our findings. On May 21, 2012, AFOSI agreed to reopen 10 of the 17 cases to conduct additional activity, but they declined to pursue additional investigative activity in the seven remaining cases because they believed it would not alter the outcome of the case or too much time had elapsed, causing the recommended investigative activity to be impractical. After reviewing AFOSI’s response, we agreed with their decision not to reopen the seven remaining cases.

Table C.3 depicts the total number of investigations with interview and post-interview deficiencies. Tables C.4 thru C.6 depict interview deficiencies categorized by subject, victim, and witness interviews in an effort to obtain a higher degree of fidelity.

Table C.3. Cases with Interview and Post-Interview Deficiencies

Total	CID	NCIS	AFOSI
399	140	145	114

Table C.4. Cases with Subject Interview and Post-Interview Deficiencies

Total	CID	NCIS	AFOSI
119	35	42	42

Table C.5. Cases with Victim Interview and Post-Interview Deficiencies

Total	CID	NCIS	AFOSI
332	115	142	75

Table C.6. Cases with Witness Interview and Post-Interview Deficiencies

Total	CID	NCIS	AFOSI
250	79	87	84

Tables C.7 thru C.9 depict breakdowns of specific deficiencies for the areas of subject, victim, and witness interviews.

Table C.7. Subject Interview and Post-Interview Deficiencies

Category	Total	CID	NCIS	AFOSI
Subject was never interviewed, and the file was not documented explaining why.	2	0	1	1
Subject interview not thorough or did not address all elements of the offense investigated.	67	24	22	21
Subject was not advised of legal rights (when required).	1	1	0	0
Investigators did not follow up on logical leads stemming from interviews.	78	18	31	29

We noted various deficiencies, which occurred during the subject interviews of the reviewed investigations. Based on the dynamics involved in subject interviews, we recognize there may have been reasons these logical investigative steps were not conducted. However, the reviewed cases did not contain supporting documentation explaining why the subjects were not interviewed nor did they indicate the reasons that all logical information was not addressed. The deficiency of not advising a subject of his legal rights as required could have an adverse effect on a case; however, the review results and projections indicate this is an anomaly (less than 1 percent of cases) versus a potential systemic issue.

Table C.8. Victim Interview and Post-Interview Deficiencies

Category	Total	CID	NCIS	AFOSI
Interview was not thorough or did not address all elements of offense.	98	27	35	36
Logical leads stemming from interview were not developed or pursued.	132	39	51	42
Information provided was not corroborated.	44	14	13	17
Victim's recantation was not addressed or investigated.	11	0	3	8
Victim was not issued a DD Form 2701.	79	66	N/O*	13
Routine/recurring victim briefs were not conducted IAW MCIO policy.	179	64	115	N/A

* Not Observable. There were 111 instances in which we were unable to verify NCIS' compliance with the issuance of the DD Form 2701 because the case activity records, where the information is normally documented, had been destroyed IAW SECNAV M-5210.1.

Table C.9. Witness Interview and Post-Interview Deficiencies

Category	Total	CID	NCIS	AFOSI
Significant witnesses were identified but not interviewed, and the file was not documented to explain why.	173	38	74	61
Initial witness the victim confided in was not interviewed.	9	4	2	3
Canvass interviews were not conducted.	28	10	11	7
Witness interview was not thorough.	102	43	26	33
Investigators did not follow up on logical leads stemming from interviews.	98	33	30	35

Table C.10 depicts the total number of cases that contained evidence deficiencies.

Table C.10. Cases with Evidence Deficiencies

Total	CID	NCIS	AFOSI
127	46	39	42

Table C.11 depicts a breakdown of specific deficiencies for the area of evidence.

Table C.11. Evidence Deficiencies

Investigators did not:	Total	CID	NCIS	AFOSI
Collect all items of physical evidence identified by subject(s), victim(s), or witness(es).	95	31	39	25
Submit collected physical evidence to USACIL for examination if appropriate.	2	0	2	0
Submit collected evidence to USACIL in a timely manner.	25	11	3	11
Coordinate lab submission with forensic science consultant (FSC) (AFOSI) or special agent-in-charge.	23	11	N/A	12
Have lab request form reviewed by FSC.	14	N/A	N/A	14

Table C.12 depicts the total number of cases that contained crime scene documentation and/or processing deficiencies. Of the 501 cases reviewed, 298 cases contained crime scene documentation and/or processing deficiencies (CID – 88, NCIS – 99, and AFOSI – 111).

Table C.12. Cases with Crime Scene Documentation and/or Processing Deficiencies

Total	CID	NCIS	AFOSI
218	40	88	90

Table C.13 depicts a breakdown of specific deficiencies for the areas of crime scene documentation and processing.

Table C.13. Crime Scene Documentation and Processing Deficiencies

Investigators did not:	Total	CID	NCIS	AFOSI
Examine the crime scene or validate the crime scene.	129	25	51	53
Have authority to search the scene.	9	4	3	2
Photograph the scene.	156	28	56	72
Sketch the scene.	207	33	86	88
Collect potential evidence from the scene.	21	3	9	9

Table C.14 depicts a breakdown of specific deficiencies for the area of subject focused actions.

Table C.14. Cases with Subject-Focused Action Deficiencies

Investigators did not:	Total	CID	NCIS	AFOSI
Title/index subject(s) IAW DoDI 5505.07.	14	1	13	0
Comply with MCIO-specific guidance regarding the release of subjects.	187	47	103	37

Table C.15 depicts a breakdown of specific deficiencies for the area of investigative coordination/notification.

Table C.15. Cases with Investigative Coordination/Notification Deficiencies

Investigators did not:	Total	CID	NCIS	AFOSI
Receive higher headquarters or supervisor approval to close short ¹ (AFOSI) (administratively close) or as a Final C ² (CID) an investigation.	20	4	N/A	16
Coordinate/notify forensic science consultant.	13	N/A	N/A	13
Notify the SARC. ³	78	34	N/A ⁴	44
Coordinate with trial counsel.	21	6	N/A ⁵	15

- ¹ According to AFOSIMAN 71-121, paragraph 9.1.1.3.1 and 9.1.1.3.3 closed short (administrative closure) is when information is obtained indicating the investigation should not have been created or the investigation is no longer the responsibility of AFOSI.
- ² CID Regulation 195-1, paragraph 4.10 states a criminal investigation may be terminated prior to exhausting all investigative leads and a Final (C) report of investigation may be prepared when the CID investigative resources could be better employed on other investigations.
- ³ According to DoDD 6495.01, paragraph E2.1 (October 6, 2005 edition) the SARC is the central point of contact for coordinating appropriate and responsive care for sexual assault victims.
- ⁴ In spite of DoD policy that requires SARC notifications in all sexual assault complaints, NCIS policy did not require SARCs to be notified. Notwithstanding, SARC notifications were documented in 71 of 157 investigations, while they were not in 86.
- ⁵ Although NCIS policy does not require coordination with trial counsel, it “strongly encourages” early and continuous contact with trial counsel or other appropriate attorney. NCIS documented such contacts in 100 instances in the reports we reviewed.

Table C.16 depicts a breakdown of specific deficiencies for the area of investigative and administrative documentation.

Table C.16. Cases with Investigative and Administrative Documentation Deficiencies

Category	Total ¹	CID	NCIS	AFOSI
Required supervisory reviews were not documented.	72	11	N/O ²	61
Review or inclusion of other related law enforcement agency's report was not documented.	4	1	3	0
Location of the offense was not fully identified.	13	0	0	13
Case agent notes were not retained through the appellate review process	5	N/A	5	N/A

¹ The disparity in the number of cases with investigative and administrative documentation deficiencies and the total number of deficiencies is due to some cases having multiple deficiencies.

² Not Observable. There were 141 instances in which we were unable to verify whether supervisory reviews were conducted in the NCIS investigations because the case activity records and supervisor review records, where the information is normally documented, had been destroyed IAW SECNAV M-5210.1.

The following tables begin the demographic and other data section and contain information on alcohol use by the subject and victim, their age ranges, pay grade, location where offense occurred, the relationship between the subject/victim, etc. These tables do not contain any information on deficiencies.

We identified the following details regarding intoxicant use (alcohol and/or drug) in the reviewed investigations.

- In 241 of the 501 cases reviewed, the subject was determined to have consumed alcohol at some point prior to the commission of the offense. Instances when prescription, over-the-counter, or illicit drugs, and/or a combination of alcohol and drugs were used by the subject were negligible.
- In 252 of the 501 cases reviewed, the victim was determined to have used alcohol. We also identified 16 instances when the victim had ingested prescription drugs at some point during the incident. The number of instances when the victim used illicit drugs, over-the-counter drugs, or a combination of drugs and alcohol was negligible.
- In 219 cases, both the victim and the subject ingested alcohol and/or drugs prior to the commission of a sexual assault.

- In two cases, the victims reported they were sexually assaulted after they unknowingly consumed an unknown intoxicating substance.

Table C.17 depicts the total number of cases where the subject(s) was or was not under the influence of alcohol and/or drugs. The table also shows, where applicable, the type of intoxicant the subject(s) used.

Table C.17. Cases with Subject Alcohol and/or Drug Use

	Total	CID	NCIS	AFOSI
Alcohol	235	87	73	75
Alcohol with prescription drug	3	1	2	0
Alcohol with illicit drug	2	1	1	0
Alcohol with unknown drug	1	0	0	1
Illicit drug	1	0	1	0
Unknown/undetermined	149	51	57	41
None	110	58	23	29

Table C.18 depicts the total number of cases in which the victim(s) was under the influence of alcohol and/or drugs. The table also shows, where applicable, the type of intoxicant the victim(s) used.

Table C.18. Cases with Voluntary Victim Alcohol and/or Drug Use

	Total	CID	NCIS	AFOSI
Alcohol	240	82	79	79
Alcohol with prescription drug	9	5	0	4
Alcohol with illicit drug	1	1	0	0
Alcohol with unknown drug	2	1	0	1
Prescription drug	16	2	5	9
Over-the-counter drug	1	1	0	0
Illicit drug	1	0	1	0
Unknown/undetermined	87	25	40	22
None	144	81	32	31

In two investigations, the victim unknowingly consumed an unknown substance. This information is depicted in Table C.19.

Table C.19. Cases with Involuntary Victim Alcohol and/or Drug Use

	Total	CID	NCIS	AFOSI
Alcohol with unknown drug	1	0	1	0
Unknown drug	1	1	0	0

Table C.20 depicts the total number of cases in which both the subject(s) and victim(s) were under the influence of alcohol and/or drugs.

Table C.20. Cases with Alcohol and/or Drug Use by Both Subject and Victim

Total	CID	NCIS	AFOSI
219	79	67	73

The majority of sexual assault incidents (310 of 501 or 62 percent) occurred on a military installation, while 175 of 501 (35 percent) occurred outside of a military installation. Most sexual assaults occurred either in a residence/home (177 of 501 or 35 percent) or barracks/dormitory (135 of 501 or 27 percent) and 41 of 501 (8 percent) occurred in a hotel/motel. These numbers indicate 62 percent of sexual assaults occurred in an environment familiar to the subject or victim. Additionally, 36 of the 501 (7 percent) cases occurred in a deployed area. Table C.21 depicts the number of cases where the crime occurred on or off the installation.

Table C.21. Cases Where the Sexual Assault Occurred On/Off the Installation

	Total	CID	NCIS	AFOSI
On installation	310	142	87	81
Off installation	175	53	62	60
Unknown	16	3	8	5

Table C.22 depicts the number of cases pertaining to incidents reported to have occurred in the Middle Eastern deployment areas.

Table C.22. Cases Where the Sexual Assault Occurred in Deployment Areas

Total	CID	NCIS	AFOSI
36	29	6	1

Table C.23 depicts where the sexual assault took place by the number of cases.

Table C.23. Where the Sexual Assault Occurred

	Total	CID	NCIS	AFOSI
Bar/nightclub	11	6	3	2
Barracks/dorm	135	54	42	39
Containerized housing unit/tent	13	9	4	0
Field training area	1	1	0	0
Government vehicle	3	1	2	0
Government/public building	37	22	6	9
Hotel/motel	41	15	15	11
Office/workplace	9	3	5	1
Park/beach	12	5	6	1
Parking lot	10	3	6	1
Private vehicle	10	4	5	1
Residence/home	177	61	40	76
Ship/vessel	11	0	11	0
Wooded/open area	11	8	2	1
Unidentified	20	6	10	4

Table C.24 depicts the number of cases that were previously reported under the restricted reporting procedures and later converted to an unrestricted report.

Table C.24. Cases from Previously Restricted Reports

Total	CID	NCIS	AFOSI
27	4	14	9

Table C.25 depicts the number of cases in which the victim(s) knew or had a relationship with the subject(s) prior to the sexual assault.

Table C.25. Cases Victim Knew or Had Relationship with Subject

Total	CID	NCIS	AFOSI
429	179	120	130

Although several offenses may have been investigated and/or charged, we documented only the primary offense investigated. The majority of the sexual assault investigations

reviewed fell into one of the following three categories: rape (175 or 35 percent), aggravated sexual assault (159 or 32 percent), or wrongful sexual contact (99 or 20 percent). As previously explained in the Background section of this report, some offenses (such as wrongful sexual contact) were not investigated to the same extent by all MCIOs; however, these offenses fell under the purview of this review.²⁴ Table C.26 depicts number of cases by type of offense investigated.

Table C.26. Primary Offense Investigated¹

	Total	CID	NCIS	AFOSI
Abusive sexual contact	23	10	5	8
Aggravated sexual assault	159	46	82	31
Aggravated sexual contact	10	7	2	1
Assault: intent to rape	2	0	0	2
Forcible sodomy	27	13	9	5
Indecent acts	3	0	1	2
Rape	175	59	27	89
Rape (attempted)	2	2	0	0
Sodomy: other	1	0	0	1
Wrongful sexual contact ²	99	61	31	7
Total	501	198	157	146

¹ Definitions contained in the 2007 and 2008 version of the UCMJ were in effect at the time of this review.

² With the change to the 2008 version of the UCMJ, indecent assault was removed and wrongful sexual contact was added in its place. The numbers reflected in wrongful sexual contact also contain the two cases (one each for CID and NCIS) investigated under the previous offense of indecent assault.

Table C.27 depicts the number of cases that involved multiple subjects.

Table C.27. Cases with Multiple Subjects

Total	CID	NCIS	AFOSI
38	21	10	7

²⁴ The AFOSI did not routinely investigate wrongful sexual contact or indecent assault, IAW Air Force Instruction 71-101, volume 1, "Criminal Investigations Program," December 1, 1999. As explained in the Background section, NCIS investigated some wrongful sexual contact cases, but not all, IAW applicable NCIS and Navy policies.

Table C.28 depicts the number of cases that involved multiple victims.

Table C.28. Cases with Multiple Victims

Total	CID	NCIS	AFOSI
23	17	4	2

Table C.29 depicts the number of cases that involved multiple subjects and multiple victims.

Table C.29. Cases with Multiple Subjects and Multiple Victims

Total	CID	NCIS	AFOSI
3	1	1	1

We identified the following details regarding the military rank relationship between the subject and the victim in the reviewed investigations.

- In 144 of 501 investigations, the subject was senior in grade (rank) to the victim.
- In 29 of 501 investigations, the victim was senior in grade to the subject.
- In 91 of 501 cases, both the subject and the victim were equal in grade.

We noted 38 of 501 cases with multiple subjects and 23 cases with multiple victims. In these instances, the cases identified two or more subjects as perpetrating the offense under investigation, or in the case of the victims, the case listed two or more victims being victimized in an individual investigation. As a result, a total of 560 subjects and 531 victims were identified.

We noted the following highlights of the 560 subjects in the reviewed investigations.

- Of the 560 subjects, 282 (about 50 percent) consumed alcohol prior to the commission of a sexual assault.
- The majority of subjects ranged in age from 18 to 23 (245 of 560 or 44 percent) and the second largest group of subjects were 24 to 29 years old (141 of 560 or 25 percent).
- Of the 560 subjects, 473 of them (84 percent) were military personnel. The majority were enlisted members (455 of 560 or 81 percent) with the junior enlisted grades of E-3s (133 of 560 or 24 percent) and E-4s (117 of 560 or 21

percent) comprising the largest pool of subjects. Although a limited number of commissioned officers perpetrated sexual assaults, the majority of subjects in the commissioned officers corps (10 out of 16 or 63 percent) were junior officers from O-1 through O-3 grades (company-grade officers).

- Of the 560 subjects, 187 (33 percent) received no punishment (adverse action taken against them) as a result of the investigation; 74 (13 percent) received nonjudicial punishment; 59 (11 percent) were convicted by courts-martial; and adverse action against 141 (25 percent) subjects was not applicable because the cases were either unfounded or the subjects were unknown.

Table C.30 depicts the military pay grade comparisons between subject and victim at the date of reporting the sexual assault.

Table C.30. Military Pay Grade Comparisons Between Subjects/Victims

	Total	CID	NCIS	AFOSI
Subject senior to victim	144	59	51	34
Victim senior to subject	29	14	10	5
Equal pay grade	91	28	39	24
Combination (multiple persons)	20	14	4	2
Unknown subject(s)	44	16	20	8
Not applicable	173	67	33	73

The following tables (C.31-C.43) address individual subjects and victims and not the number of cases. Therefore, the numbers noted will exceed the number of cases reviewed. This is due to the number of cases with multiple subjects and victims. There were a total of 560 subjects and 531 victims in the 501 cases we reviewed. These tables are statistical in nature and contain no deficiencies.

Table C.31 depicts the number of subjects that were under the influence of alcohol and/or drugs. The table also shows, where applicable, the type of intoxicant the subject(s) used.

Table C.31. Subjects Alcohol and/or Drug Involvement

	Total	CID	NCIS	AFOSI
Alcohol	276	99	88	89
Alcohol with prescription drug	3	1	2	0
Alcohol with illicit drug	2	1	1	0
Alcohol with unknown drug	1	0	0	1
Illicit drug	1	0	1	0
Unknown/undetermined	170	68	59	43
None	107	56	23	28

Table C.32 depicts the age ranges of each subject.

Table C.32. Age Range of Subjects

	Total	CID	NCIS	AFOSI
18-23	245	84	94	67
24-29	141	60	36	45
30-35	62	32	8	22
36-40	21	11	4	6
41-45	22	9	5	8
46-50	12	4	5	3
51-55	1	0	1	0
Over 55	1	0	0	1
Unknown	55	25	21	9

Table C.33 depicts the subject's affiliation.

Table C.33. Subject's Affiliation

	Total	CID	NCIS	AFOSI
Military	473	192	148	133
Civilian	33	9	5	19
Unknown	54	24	21	9

Table C.34 depicts the military subject's pay grade.

Table C.34. Military Subject's Pay Grade

	Total	CID	NCIS	AFOSI
E-1	26	13	9	4
E-2	48	22	19	7
E-3	133	38	53	42
E-4	117	50	31	36
Junior Enlisted	324	123	112	89
E-5	63	31	12	20
E-6	42	21	7	14
NCO	105	52	19	34
E-7	21	12	7	2
E-8	2	1	1	0
E-9	3	0	1	2
Senior NCO	26	13	9	4
Total Enlisted	455	188	140	127
W-1	0	0	0	0
W-2	0	0	0	0
W-3	1	1	0	0
W-4	1	0	1	0
W-5	0	0	0	0
Total Warrant	2	1	1	0
O-1	4	0	4	0
O-2	2	1	0	1
O-3	4	1	0	3
Company Grade	10	2	4	4
O-4	3	0	3	0
O-5	1	0	0	1
O-6	2	1	0	1
Field Grade	6	1	3	2
Flag Officer	0	0	0	0
Total Officer	16	3	7	6
Military Total	473	192	148	133

Table C.35 depicts the action that was taken on the subjects of the investigations.

Table C.35. Action Taken Against Subjects

	Total	CID	NCIS	AFOSI
Convicted by trial for sexual assault offenses	42	17	13	12
Convicted by trial for lesser non sexual assault offenses	17	5	12	0
Acquitted by trial	10	3	4	3
Discharged from service in lieu of trial	21	14	1	6
Employment terminated and no prosecution (civilian subject)	5	5	0	0
Nonjudicial (Article 15)	72	40	14	18
Nonjudicial and discharged	2	2	0	0
Reprimand/counseling	56	26	8	22
Unknown*	6	4	0	2
No action taken	187	48	71	68
Not applicable (unknown subjects or unfounded offenses)	141	61	50	30
Deceased before action taken	1	0	1	0
Totals	560	225	174	161

*For six investigations, that the MCIOs categorized as being closed, no disciplinary action information available.

We noted the following highlights of the 531 victims in the reviewed investigations.

- Of the 531 victims, 251 (47 percent) of them consumed alcohol, 16 (3 percent) used prescription drugs, and 10 (2 percent) used a combination of alcohol and prescription medications prior to the sexual assault. The review also disclosed that almost an equal number of victims 246 (46 percent) were determined not to have used any drugs or alcohol prior to the sexual assault. The victim pool was split almost 50/50 between victims who had used some form of drugs and/or alcohol prior to the sexual assault and those who had not.
- The majority of victims, 330 of 531 (62 percent), ranged in age from 18 to 23. The second largest group of victims (131 or 25 percent) was between the ages of 24 and 29 years old.
- Of the 531 victims, 500 (94 percent) were female and 31 (6 percent) were male.

- The majority of the victims, 366 of 531 (69 percent), were in the military, and 165 (31 percent) were civilians. There were 323 (61 percent) victims who were junior enlisted grades (E-1 through E-4). E-3s comprised the largest victim pool at 129 (24 percent) personnel, followed by E-2s with 79 (15 percent) personnel, and E-4s with 78 (15 percent) personnel. Among the few victims identified as commissioned officers, all six (100 percent) were company-grade officers (O-1 through O-3).

Table C.36 depicts the number of victims that were or were not under the influence of alcohol and/or drugs. The table also shows, where applicable, the type of intoxicant the victim(s) voluntarily used.

Table C.36. Victims Voluntary Alcohol and/or Drug Involvement

	Total	CID	NCIS	AFOSI
Alcohol	251	89	82	80
Alcohol with prescription drug	10	6	0	4
Alcohol with illicit drug	1	1	0	0
Alcohol with unknown drug	2	1	0	1
Prescription drug	16	2	5	9
Over-the-counter drug	1	1	0	0
Illicit drug	1	0	1	0
Unknown/undetermined	2	1	0	1
None or involuntary use	247	117	76	54

In three investigations, the victim involuntarily ingested alcohol and/or drugs. This information is depicted in Table C.37.

Table C.37. Victims Involuntary Alcohol and/or Drug Involvement

	Total	CID	NCIS	AFOSI
Alcohol with unknown drug	1	0	1	0
Unknown/undetermined	1	1	0	0
None or voluntary use	529	217	163	149

Table C.38 depicts the age ranges of each victim.

Table C.38. Age Range of Victims

	Total	CID	NCIS	AFOSI
Under 18	3	1	1	1
18-23	330	122	121	87
24-29	131	62	32	37
30-35	35	18	4	13
36-40	16	5	3	8
41-45	10	8	0	2
46-50	4	1	2	1
51-55	2	1	1	0
Over 55	0	0	0	0

Note: Although the scope of the evaluation involved only adult victims, there were three cases in which a victim under the age of 18 was included in the investigation with an adult victim.

Table C.39 depicts the victim’s affiliation.

Table C.39. Victim’s Affiliation

	Total	CID	NCIS	AFOSI
Military	366	153	134	79
Civilian	165	65	30	70

Table C.40 depicts the gender of the victims.

Table C.40. Victim’s Gender

	Total	CID	NCIS	AFOSI
Male	31	13	17	1
Female	500	205	147	148

Table C.41 depicts the military victim’s pay grade.

Table C.41. Victim’s Pay Grade

	Total	CID	NCIS	AFOSI
E-1	37	15	18	4
E-2	79	46	27	6
E-3	129	34	53	42
E-4	78	36	27	15
Junior Enlisted	323	131	125	67
E-5	25	13	6	6
E-6	8	4	1	3
NCO	33	17	7	9
E-7	2	1	0	1
E-8	1	0	1	0
E-9	0	0	0	0
Senior NCO	3	1	1	1
Total Enlisted	359	149	133	77
W-1	0	0	0	0
W-2	0	0	0	0
W-3	1	1	0	0
W-4	0	0	0	0
W-5	0	0	0	0
Total Warrant	1	1	0	0
O-1	1	0	1	0
O-2	4	2	0	2
O-3	1	1	0	0
Company Grade	6	3	1	2
O-4	0	0	0	0
O-5	0	0	0	0
O-6	0	0	0	0
Field Grade	0	0	0	0
Flag Officer	0	0	0	0
Total Officer	6	3	1	2
Military Total	366	153	134	79

For 531 victims, a relationship of some type (acquaintance, friend, or co-worker) existed between the victims and the subjects. In the majority of cases, the subjects were acquaintances (160 of 531, or 30 percent) or friends (110 of 531, or 21 percent) of the victim. In some instances (55 of 531, or 10 percent), the subject was identified as a co-worker of the victim. In 82 instances of 531 (15 percent), the subject was unknown to the victim or had no identified relationship with them. The relationship details for the remaining victims (124 of 531) can be found in Table C.42.

We also identified the following data regarding military subjects' affiliation with their victims.

- In 22 instances, the subject was the victim's supervisor; in rare instances, 4 of 531, the subject was subordinate to the victim.
- In one instance, the subject was the victim's roommate.
- In 5 instances, the subject was identified as the victim's recruiter.
- In one instance, the subject was the victim's instructor.

Table C.42 depicts the subject-to-victim relationship type.

Table C.42. Subject-to-Victim Relationship Type

	Total	CID	NCIS	AFOSI
Spouse	42	15	4	23
Ex-spouse	1	0	0	1
Boy/Girlfriend	15	6	2	7
Ex-Boy/Ex-Girlfriend	7	1	3	3
Supervisor	22	12	7	3
Subordinate	4	1	0	3
Coworker	55	27	20	8
Friend	110	34	37	39
Acquaintance	160	79	42	39
Roommate	1	0	0	1
Recruiter	5	2	3	0
Doctor/medic	2	0	2	0
Teacher/instructor	1	0	0	1
Coach	1	0	0	1
Other	3	2	0	1
Undetermined relationship	20	3	17	0
No or N/A relationship	82	36	27	19

Table C.43 depicts the number of victims that were cooperative during the investigation.

Table C.43. Victim Cooperative During Investigation

	Total	CID	NCIS	AFOSI
Yes	433	187	119	127
No	98	31	45	22

Appendix D

Memorandum of Results

November 26, 2012

Memorandum of Results

To: [REDACTED], Violent Crime Division,
Oversight Directorate, Investigative Policy and Oversight

From: [REDACTED], QMD/DPAO/AUDIT

Thru: [REDACTED], Technical Director, QMD/ DPAO/AUDIT

Subject: QMD Support in Review of Department of Defense Sexual Assault Investigations (Project No. 2011C019).

Objective. The objective of the project is to evaluate the adequacy of sexual assault investigations, specifically to determine whether the Military Criminal Investigative Organizations (MCIOs) investigative procedures comply with DoD and Military Service guidance, and whether the MCIOs adequately investigated sexual assaults as required by the standards. The evaluation scope will consider sexual assault investigations with adult victims closed in the calendar year 2010.

Population. The population for the three MCIOs for cases closed for sexual assaults during the calendar year 2010 is tabulated below:

	<u>MCIOs</u>	<u>Number of Closed Cases</u>
1.	AFOSI	477
2.	CID	1,082
3.	NCIS	704
	<i>Total</i>	<i>2,263</i>

Measures. The attribute measure was the number of deficiencies in the sexual assault cases during the investigation process.

Parameters. We designed the sample at 90% confidence level and 5% precision.

Methodology. We developed Simple Random Sample (SRS) plan for each MCIO, and randomly selected samples for each organization without replacement. A summary table of the population size, sample size, and the number of cases reviewed is provided below:

	<u>MCIOs</u>	<u>Population Size</u>	<u>Sample Size</u>	<u>Cases Excluded</u>	<u>Cases Missing</u>	<u>Cases Reviewed</u>
1.	AFOSI	477	173	27	0	146
2.	CID	1,082	216	18	0	198
3.	NCIS	704	195	36	2	157
	<i>Total</i>	<i>2,263</i>	<i>584</i>	<i>81</i>	<i>2</i>	<i>501</i>

During the review of the sample, the team could not locate 2 sample cases. They also determined that there were 81 cases out of the scope, and should not have been in the population.

The team reviewed each of the 501 sample cases, and provided to QMD the deficiencies or other related problems found in each sample case. After review and analysis of the sample results, we computed statistical projections based on the sample results for each MCIO by using SRS formulae, and then for DoD as a whole by using stratified sample formulae with the MCIOs as the three strata. These projections are included in the attached spreadsheet. Each line in the spreadsheet includes the relevant information, e.g., population and sample size, number of deficiencies (or related errors), statistically projected deficiencies and deficiency rate with the lower bound, point estimate, and upper bound.

An illustration of the interpretation of the statistical results for the first line in the attachment (and the following lines thereafter) for “Cases Excluded” would be: CID with a population of 1,082 cases and a sample of 216 cases has 18 cases excluded in the sample, and we are 90% confident that the projected number of cases excluded in the population is between 58 and 123, and the point estimate is 90; we are 90% confident that the rate of the number of cases excluded is between 5.3% and 11.3%, and the point estimate is 8.3%.

Attachment: Spreadsheet

Management Comments

CID Comments



DEPARTMENT OF THE ARMY
U. S. ARMY CRIMINAL INVESTIGATION COMMAND
27130 TELEGRAPH ROAD
QUANTICO, VIRGINIA 22134-2253

APR 26 2013

CIOP-ZC

MEMORANDUM FOR Department of Defense Inspector General, Violent Crime Division [REDACTED]
[REDACTED], 4800 Mark Center Drive, Alexandria, VA 22350-1500

SUBJECT: Report of the Evaluation of the Military Criminal Investigative Organizations Sexual Assault Investigations (Project No. 2011C019)

1. Reference your 21 March 2013 email referral of the draft subject report.
2. While we appreciate the opportunity to comment on your evaluation, it would have been helpful to have been provided the detailed evidence that supported the findings, conclusions and recommendations. Specifically, the report cited findings and made conclusions derived from investigations deemed adequate by your evaluation team; however, deficiencies found in adequate investigations were not provided back to the command for review and consideration.
3. CID is an organization dedicated to providing high quality criminal investigations to assure justice for the victims we serve. Although your finding that over 93% of our investigations were adequate and only 13 of 198 investigations were returned to this command, we strive for excellence in every investigation conducted; even those found adequate. With the foregoing in mind, and since receipt of the draft report, this command has issued guidance to all our field elements re-emphasizing the need to conduct timely and thorough sexual assault investigations, noting the comments and recommendations provided in your report.
4. My point of contact for this action is [REDACTED] (571) 305-4302 or DSN 312-240-4302.

A handwritten signature in black ink, appearing to read "D. Quantock", written over the typed name and title.

DAVID E. QUANTOCK
Major General, USA
Commanding

NCIS Comments



DEPARTMENT OF THE NAVY
HEADQUARTERS
NAVAL CRIMINAL INVESTIGATIVE SERVICE
27130 TELEGRAPH ROAD
QUANTICO VA 22134-2253

April 29, 2013

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL, POLICY AND
OVERSIGHT, DEPARTMENT OF DEFENSE OFFICE OF
INSPECTOR GENERAL

SUBJECT: NCIS Response to the Evaluation of the Military Criminal Investigative
Organizations (MCIO) Sexual Assault Investigations (Project No. 2011C019)

Prior to the initiation of the captioned DODIG project, the DODIG Violent Crimes Division (VCD) advised NCIS Senior Leadership the investigations reviewed for this project would be compared with existing DoD and NCIS policies. The enclosed response (TAB A) reflects concern the DODIG does not address NCIS' compliance with existing 2010 policies nor does the report reflect the current status of the NCIS' adult sexual assault investigation program.

In short, the DODIG report appears to evaluate NCIS investigations against standards nonexistent in DOD or NCIS policy during 2010. This contradicts the parameters initially briefed by the VCD. NCIS strives for operational excellence with an emphasis on thorough and timely investigations, and portions of the DODIG report will be utilized to further enhance adult sexual assault investigations. However, NCIS cannot concur with the report as written.

If you have any comments please contact Deputy Assistant Director [REDACTED]

[REDACTED] at [REDACTED] or [REDACTED]

A handwritten signature in blue ink that reads "Susan Raser".

Susan Raser
Executive Assistant Director
Criminal Investigation Directorate

Attachments:
As stated

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COMMENT MATRIX FOR Evaluation of the MCI0 Sexual Assault Investigations, Project 2011C019

(Please read instructions on back before completing form.)

#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/ R/ P
1		NCIS	ES	Findings	S	<p>COMMENT: NCIS requires that investigators must notify or coordinate with the convening authority upon initiation of a case, which often times will involve the SJA for the command. NCIS does not concur with the comment as written, but NCIS is currently in the process of changing the policy to ensure all investigations will be coordinated with the prosecutive agency upon initiation of an investigation.</p> <p>RATIONALE: The above has been a standing policy for NCIS via Chapter 25 (Report Writing), although a review of the chapter disclosed this was inadvertently not maintained in the chapter. Chapter 25 is in the process of being re-written; this policy, to include the notification of prosecutive agency will be included in the chapter.</p>	
2		NCIS	ES	Findings	C	<p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: DODIG reports that NCIS guidance regarding records checks does not provide a definitive timeliness requirement. NCIS does not concur as NCIS policy requires that database checks are completed and reported in the ROI (OPEN) report which must be provided within three (3) days of initiation.</p> <p>RATIONALE: NCIS-1, Chapter 25.1-5.2.d. Records Check. d. Records Check. When a NCIS investigation is initiated, it is the responsibility of the controlling field office to conduct complete records check of all subjects, co-subjects, and victims.</p>	
3		NCIS	2	2	S	<p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: NCIS policy requires the initiation of an investigation into all wrongful sexual contact "(former indecent assaults)". Investigative guidance, GEN: 23A-0056) provided to all NCIS field elements on 09DEC08 reiterated that "All allegations of wrongful sexual acts and contacts shall be investigated."</p> <p>Rationale: NCIS 3, Chapter 34, 1.1 and GEN: 23A-0056</p>	

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Final Report
Reference

Revised

Revised

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COMMENT MATRIX FOR Evaluation of the MCIO Sexual Assault Investigations, Project 2011C019

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#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/R/P
4		NCIS	11		S	<p>COMMENT: The findings report that in 111 NCIS investigations victims were not provided with the DD Form 2701 (VWAP). NCIS non-concurs with this finding as NCIS policy does not state that the VWAP is to be annotated in the investigative report. VWAP annotations are recorded in the Case Activity Record and the Investigative Plan which are maintained as notes in the original case file.</p> <p>RATIONALE: NCIS 3, Chapter 6, Section 20.4, m. "Special agents conducting interviews of victims and witnesses should annotate their case notes in some manner to document their provision of crime victim assistance information to that person."</p> <p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: The findings report that three (3) NCIS investigations were found in which evidence was not submitted to USACIL. NCIS Non-concurs with this finding.</p> <p>RATIONALE: A review of the three (3) investigations disclosed that evidence in one case was submitted to USACIL for analysis. The remaining two (2) investigations involved subjects who reported the sexual act was consensual. Per policy, USACIL will not conduct analysis when subjects admit to the act but claim consent.</p> <p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: The top chart cites NCIS deficient in 86 investigations in notifying the sexual assault response coordinator. NCIS non-concurs with this comment. Although NCIS agents work with the SARCs to ensure that all victims are assigned a Victim Advocate who accompany the victim during the NCIS interview is they so desire, NCIS policy does not require agents to document SARC notification via NCIS Reports of Investigation.</p> <p>RATIONALE: NCIS-3, Chapter 34-4.4</p>	Revised
5		NCIS	13		C		Revised
6		NCIS	17		C		Revised

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COMMENT MATRIX FOR Evaluation of the MCIO Sexual Assault Investigations, Project 2011C019

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#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/R/P
7		NCIS	17	1	C	<p>COMMENT: The top chart cites NCIS deficient in 57 investigations in coordinating with the trial counsel. NCIS Policy requires that investigators must notify or coordinate with the convening authority, which often times will involve the SJA for the Command. NCIS Policy does not require notification or coordination with the Service Trial Office. NCIS does not concur with the comment as written, but NCIS is currently in the process of changing the policy to ensure all investigations will be coordinated with the prosecutive agency upon initiation of an investigation.</p> <p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: The top chart cites NCIS deficient in 57 investigations in coordinating with the trial counsel. NCIS Policy requires that investigators must notify or coordinate with the convening authority, which often times will involve the SJA for the Command. NCIS Policy does not require notification or coordination with the Service Trial Office. NCIS does not concur with the comment as written, but NCIS is currently in the process of changing the policy to ensure all investigations will be coordinated with the prosecutive agency upon initiation of an investigation.</p> <p>RATIONALE: NCIS-3, Chapter 6-16.2. Resolved criminal investigations with military personnel identified as subjects or co-subjects will be briefed to the military commander who has disciplinary responsibility for the individuals; this briefing will be documented in a ROI (INTERIM). OPNAVINST 3100 of 22DEC09 requires the convening authority consult with a SJA prior to final disposition. In those resolved investigations identifying civilians, corporations or companies as suspects, similar documentation of the prosecutive referral is required.</p> <p>RATIONALE FOR DISPOSITION:</p>	

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COMMENT MATRIX FOR Evaluation of the MCIO Sexual Assault Investigations, Project 2011C019

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#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/ R/ P
8		NCIS	18		C	<p>COMMENT: The top chart cites NCIS deficient in 141 investigations for supervisor reviews. NCIS non-concurs as this comment is inaccurate. NCIS does not require case reviews to be documented in the Reports of Investigation. The case reviews are documented in the Case Activity Report which is maintained in original case file as notes. NCIS does not require notes to be sent to NCISHQ. The field case files are destroyed one year after a case is closed, or with legal authorization upon completion of the appeal process if the investigation resulted in a conviction. This review involved investigations initiated during 2010; notes were no longer available for review.</p> <p>RATIONALE: NCIS 1, Chapter 19-8 The FO and NCISRA are the primary field repositories for closed investigations and operations. The FO and NCISRA shall retain files on closed investigations, operational and collection matters to include specific phase Polygraph Examination cases for a period not to exceed one year as prescribed in SECNAV M-5210.1. At the field level, this includes Agent Notes and other material (e.g., original correspondence). Exceptions include the following: cases awaiting judicial, administrative, or appellate action.</p>	Revised
9		NCIS	19	1	S	<p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: Non-concur with comment that NCIS requires agents to conduct complete records checks, but does not impose a timeliness requirement.</p> <p>RATIONALE: NCIS 1, CHAPTER 25 (REPORT WRITING) NCIS policy requires that database checks are completed and reported in the ROI (OPEN) report which must be provided within three (3) days of initiation.</p>	Revised
10		NCIS	20		C	<p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: Non-concur with comment that labeling of NCIS case notes with the originator's name, date, place, and case number was not always accomplished. The case notes were not available for this review due to NCIS policy of maintaining the notes with the original case file in field, and the</p>	Deleted

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#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/R/P
11		NCIS	27	5	C	<p>destruction policy as previously noted.</p> <p>RATIONALE: NCIS 1, Chapter 19-8 The FO and NCISRA are the primary field repositories for closed investigations and operations. The FO and NCISRA shall retain files on closed investigations, operational and collection matters to include specific phase Polygraph Examination cases for a period not to exceed one year as prescribed in SECNAV M-5210.1. At the field level, this includes Agent Notes and other material (e.g., original correspondence). Exceptions include the following: cases awaiting judicial, administrative, or appellate action.</p> <p>RATIONALE FOR DISPOSITION:</p> <p>NCIS non-concurs with the comment that NCIS retention of investigative case notes raises a legal issue. This issue has reportedly been referred to the DoD IG Policy and Programs Division to determine compliance with "Federal law, such as the Jencks Act". Under the Jencks Act the government must be able to provide statements, to include notes, throughout the trial and appellate phase of an investigation. NCIS is in full compliance as notes are maintained with the original case file throughout the life of the investigation, to include the appeal process for investigations which result in a criminal conviction.</p> <p>RATIONALE: NCIS 1, Chapter 19-8 (cited above)</p>	
12		NCIS	28	1.	S	<p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: DODIG recommends the Director emphasize thorough and timely completion of all sexual assault investigations to ensure that all investigations are completed as required by DoD, Military Service, and command regulatory guidance.</p> <p>RATIONALE: NCIS emphasizes the thorough and timely completion of all NCIS investigations. The message of "Operational Excellence" as it has been</p>	

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COMMENT MATRIX FOR Evaluation of the MCI Sexual Assault Investigations, Project 2011C019

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#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/ R/ P
13		NCIS	28	2a	S	<p>referred to within NCIS, permeates throughout all NCIS investigative disciplines and has been a consistent message to field and headquarter components, see reference (a). Additionally, in recent years NCIS has implemented enhancements to its management oversight/inspection processes. The Staff Assistance Visit Program (SAV) is used to assess field performance and adherence to "operation excellence," focusing on investigative quality, timeliness, and compliance with NCIS policy and standards, see reference (b). SAVs are initiated by the NCIS Deputy Director at his/her discretion. The Quality Assurance Visit Program (QAV) is a program in which the NCIS geographic Executive Assistant Directors (EAD) for Atlantic, Pacific, and Global Operations conduct regularly scheduled visits to field offices to assess investigative quality, timeliness, and compliance with NCIS policy and standards, see reference (c).</p> <p>RATIONALE FOR DISPOSITION: COMMENT: DODIG recommends the Director place increased emphasis on interview thoroughness through training, supervision, and policy improvements. RATIONALE: NCIS acknowledges interview and interrogation techniques are central to the success of any investigations. The NCIS Training Academy dedicates approximately 75 hours to interview and interrogation techniques – 25 during CITP and 50 during SABTP. NCIS has also partnered with U.S. Army to further develop and expand the USA Advanced Sexual Assault Course to include NCIS investigative perspective and practices. Currently, NCIS personnel attend training at FLETC and Ft. Leonard Wood.</p>	
14		NCIS	28	2b	S	<p>RATIONALE FOR DISPOSITION: COMMENT: DODIG recommends the Director evaluate the benefits of using the combination of narrative and question and answer interview format to help ensure that facts and circumstances are documented thoroughly.</p>	

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COMMENT MATRIX FOR Evaluation of the MCIO Sexual Assault Investigations, Project 2011C019

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#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/R/P
15		NCIS	29	3.	S	<p>RATIONALE: NCIS recognizes the combination of narrative and question and answer interview format and does not prohibit its use. There is no plan at this time to effect a change for taking statements, but NCIS will continue to emphasize the requirement for thorough statements regardless of the format used.</p> <p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: DODIG recommends the Director evaluate his existing policies and enhance his guidance regarding the collection of clothing worn by suspects and victims subsequent to a sexual assault.</p> <p>RATIONALE: NCIS concurs as the current policy reflects that clothing worn by the victim, or left at the scene by the subject should be seized vice must be seized. This is particularly important if the sexual assault just occurred and/or if the clothing has not been washed. Discretion must be given if the clothing has been washed unless required for corroboration purposes. NCIS-3, Chapter 34.4.4 m.</p>	
16		NCIS	29	3b	C	<p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: DODIG recommends the Director conduct new or additional refresher training to highlight the critical nature physical evidence plays in sexual assault investigations and the subsequent prosecutions.</p> <p>RATIONALE: NCIS has continuously provided training in conducting sexual assault investigations, which includes the significance of physical evidence. In addition NCIS has partnered with U.S. Army to further develop and expand the USA Advanced Sexual Assault Course to include NCIS investigative perspective and practices. Currently, NCIS personnel attend training at FLETC and Ft. Leonard Wood.</p> <p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: DODIG recommends add evidence collection in sexual assault investigations as a special interest item during command inspections for the next 2 fiscal years at all levels.</p>	
17		NCIS	29	3c	S	<p>COMMENT: DODIG recommends add evidence collection in sexual assault investigations as a special interest item during command inspections for the next 2 fiscal years at all levels.</p>	

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COMMENT MATRIX FOR Evaluation of the MCI Sexual Assault Investigations, Project 2011C019

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#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/ R/ P
18		NCIS	29	4.	C	<p>RATIONALE: NCIS does not concur with making evidence collection in sexual assault investigations a special interest item during command inspections. Evidence collection in all investigation is by procedure already part of the review process from the first line supervisor review to the NCIS IG inspection process. NCIS will continue to ensure all evidence is handled in accordance to policy and procedure.</p> <p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: DODIG recommends the Director evaluate his policies and enhance supervision regarding their agents' response to known and available crime scenes and evaluate the necessity for conducting a crime scene examination for all sexual assault investigations</p> <p>RATIONALE: NCIS concurs and will continue to place emphasis on the requirement to conduct crime scene documentation for delayed sexual assault reports. NCIS will ensure that crime scene examination/documentation is completed for all sexual assault investigations. Documentation and justification will be required when NCIS is unable to complete a crime scene.</p> <p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: NCIS policy requires that investigators notify or coordinate with the convening authority upon initiation of the investigations, which often times will involve the SJA for the command. NCIS Policy does not require notification or coordination with the service trial office. NCIS does not concur with the comment as written, but NCIS is currently in the process of changing the policy to ensure all investigations will be coordinated with the prosecutive agency upon initiation of an investigation.</p> <p>RATIONALE: Current policy requires that NCIS agents provide investigative findings to the convening authority vice the Trial Service office. NCIS-3, Chapter 6-16.2. Resolved criminal investigations with military personnel identified as subjects or co-subjects will be briefed to the military commander</p>	
19		NCIS	29	5.	S	<p>COMMENT: NCIS policy requires that investigators notify or coordinate with the convening authority upon initiation of the investigations, which often times will involve the SJA for the command. NCIS Policy does not require notification or coordination with the service trial office. NCIS does not concur with the comment as written, but NCIS is currently in the process of changing the policy to ensure all investigations will be coordinated with the prosecutive agency upon initiation of an investigation.</p> <p>RATIONALE: Current policy requires that NCIS agents provide investigative findings to the convening authority vice the Trial Service office. NCIS-3, Chapter 6-16.2. Resolved criminal investigations with military personnel identified as subjects or co-subjects will be briefed to the military commander</p>	

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COMMENT MATRIX FOR Evaluation of the MCIO Sexual Assault Investigations, Project 2011C019

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#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/R/P
20		NCIS	29	6a	C	<p>who has disciplinary responsibility for the individuals; this briefing will be documented in a ROI (INTERIM).</p> <p>RATIONALE FOR DISPOSITION: COMMENT: DODIG recommends the Director ensure information related to the location(s) of incident, dates and times of occurrence, dates and times the incident(s) were reported, offenses under investigation, and other pertinent administrative data are properly documented within reports of investigations.</p> <p>RATIONALE: NCIS concurs; emphasis has been, and will continue to be placed on ensuring all reports contain thorough and complete information. The NCIS Report of Investigation (ROI) Open is primarily an internal NCIS document that reports the receipt of information which serves to predicate the initiation of an investigation, reference (g). The first paragraph of the Narrative portion should clearly state the reason for case initiation; i.e., reactive, reciprocal, details, and disposition, and if applicable, contain the relevant statute(s) that is/are suspected to have been violated. The ROI (OPEN) must answer, at minimum; who, what, where, when, why and/or how the offense was committed.</p> <p>RATIONALE FOR DISPOSITION: COMMENT: DODIG recommends the Director evaluate the benefits of preparing a report of investigation title page that includes the location(s) of incident, dates and times of occurrence, dates and times the incident(s) were reported, offenses under investigation, and other pertinent administrative data.</p> <p>RATIONALE: Non-concur; the reporting system utilized by NCIS satisfies the requirements of both its military and civilian customers. The information is contained in the Executive Summary which is provided in every report upon initiation.</p> <p>RATIONALE FOR DISPOSITION: COMMENT: DODIG recommends the Director evaluate his existing policy and enhance his guidance regarding timely completion of records checks to ensure they adequately support investigations.</p>	
21		NCIS	29	6b	C		
22		NCIS	30	7	C		

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COMMENT MATRIX FOR Evaluation of the MCI Sexual Assault Investigations, Project 2011C019

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#	CLASS	COMMAND POC NAME, PHONE, AND EMAIL	PAGE #	PARA #	COMMENT TYPE (C/S)	COMMENT AND RATIONALE	A/ R/ P
23		NCIS	30	8a and b	S	<p>RATIONALE: NCIS currently has adequate policy to address this area of concern. NCIS-1, Chapter 25-5.2.d. Records Check, reference (g). When a NCIS investigation is initiated, it is the responsibility of the controlling field office to conduct complete records check of all subjects, co-subjects, and victims. These database checks are reporting in the ROI (OPEN) which must be submitted within three (3) business of initiation of the investigation. (OPEN).</p> <p>RATIONALE FOR DISPOSITION:</p> <p>COMMENT: DODIG recommends the Director a. Ensure the full accountability of all NCIS investigative files. b. Correct policies and procedures to preclude the loss of additional records.</p> <p>RATIONALE: NCIS has policy in place to ensure accountability of NCIS files and will ensure set policies are adhered to in order to avoid the loss of any case files.</p> <p>RATIONALE FOR DISPOSITION:</p>	

UNCLASSIFIED

10

AFOSI Comments



DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE OFFICE OF SPECIAL INVESTIGATIONS
QUANTICO VIRGINIA

19 April 2013

MEMORANDUM FOR DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL

FROM: HQ AFOSI/XR
27130 Telegraph Road
Quantico, VA 22134

SUBJECT: AFOSI Response to DoDIG's Project No. 2011C019 Draft Report

1. The Air Force Office of Special Investigations (AFOSI) has reviewed DoDIG's Draft Report (Project No. 2011C019), "Evaluation of the Military Criminal Investigative Organizations Sexual Assault Investigations" dated March 21, 2013. We remain dedicated to improving OSI agents' ability to investigate sexual assaults and appreciate the opportunity to review and provide comment on the draft DoDIG report.

2. The report includes one finding specific to AFOSI, as follows: "The CID and AFOSI policy guidance does not direct the collection of clothing articles that a victim or suspect might have placed on themselves shortly after the assault, if different from the clothing worn during the assault." (Reference: "Results in Brief", page 3). Later in the report ("Findings," page 26) the concern is stated slightly differently, as follows: "...AFOSI policy regarding the collection of clothing articles worn by the victim and suspect during the assault is not directive or authoritative and allows investigators discretion as to when and what pieces or physical evidence they must collect."

AFOSI Comment: AFOSI non-concurs with blanket policy stating agents "must" collect clothing a victim or suspect changed into following an assault. Rather, AFOSI feels the best approach is for agents to assess and identify items with evidentiary value, through mandatory expert forensic science consultation, in all sexual assault cases, early in an investigation. This approach better ensures all items that may have evidentiary value are identified and prioritized for collection in consideration of the facts and circumstances of the incident. In cases where a report is made soon after the assault, the clothing a victim changed into, worn by the victim at the time of the sexual assault medical examination, would be seized as part of a Sexual Assault Forensic Examination (SAFE). In such instances, the clothing is collected as evidence and, in turn, agents must consider locating and seizing the clothing worn by the victim at the time of the assault. In cases involving a delayed report, the clothing a victim changed into may have since been washed and no longer offer a reasonable likelihood of containing evidence. Likewise, AFOSI agents are also trained to consider, locate and seize the clothing the suspect wore and the clothing he/she changed into after the assault as these clothing items may too contain evidence and should, therefore, be located and seized. AFOSI will soon be publishing an updated crime scene manual which discusses the evidentiary value of various types of evidence. This manual, along with the existing mandatory expert forensic science consultation in every sex crimes investigation, will further assist agents with identifying and collecting the right evidence, based upon the unique facts and circumstances of each case.

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3. The report also includes eight general recommendations for the MCIOs, five of which pertain, at least in part, to AFOSI and cover the *adequacy of investigations, interviews, collection of evidence, crime scene examination/search and report of investigation documentation*. In reviewing the draft report, HQ AFOSI identified the following issues warranting correction, clarification and/or comment.

a. Adequacy of Investigations: DoDIG recommended the Director and Commanders of the MCIOs “emphasize thorough and timely completion of all sexual assault investigations to ensure that all investigations are completed as required by DoD, Military Service, and command regulatory guidance.” (Page 28, Paragraph 1)

AFOSI Comment: Sexual assault investigations have been an AFOSI/CC special interest item for more than a year, and have received significant, ongoing, high-level attention across the Command. In June 2012, AFOSI/CC published a Notice to Airmen (NOTAM) directing all AFOSI agents increase focus and attention on improving the sufficiency and timeliness of OSI’s sexual assault investigations. AFOSI/CC directed that all sexual assault investigations be reviewed and approved for investigative sufficiency before the final investigative report is published. AFOSI/CC repeated this message through 2012 and into 2013 at leadership forums and commander’s calls. In December 2012, AFOSI/CC published a second NOTAM to inform field agents AFOSI would soon begin investigating abusive/aggravated sexual contact allegations and to once again communicate the importance of urgently and sufficiently investigating all allegations of sexual misconduct and ensuring the facts are accurately documented. In addition, in January 2012 AFOSI initiated a HQ AFOSI case review process to assess investigative sufficiency. This quality review process is further discussed in paragraph 3e.

b. Interviews: DoDIG recommended the MCIOs “place increased emphasis on interview thoroughness through training, supervision, and policy improvements.” (Page 28, Paragraph 2a)

AFOSI Comment: Concur. AFOSI agrees with DoDIG regarding the importance of conducting thorough interviews and the importance of stressing this beginning in initial, basic agent training. In fact, AFOSI has taken action over the last year to improve the interview training provided to our agents. AFOSI has taught the Cognitive Interview (CI) technique since August 2012, at the behest of AFOSI’s Operational Psychologists, in its advanced Sex Crimes Investigations Training Program (SCITP) course. The CI technique, backed by many years of peer-reviewed scientific research, is expected to empower sex crimes victims and improve their ability to provide more detailed information, which should enhance the Air Force’s ability to pursue appropriate legal action in these cases. Further, the Federal Law Enforcement Training Center (FLETC) is planning to incorporate the CI technique into the initial skills training course attended by all AFOSI agent trainees. We are also teaching CI in our Advanced General Crimes Investigations Course (AGCIC), primarily attended by unit superintendents who oversee field investigations. Superintendents will also be given the tools to provide the training to field agents they supervise and to assess its proper use. Also, AFOSI has begun cycling agents, who are assigned to installations with a

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high prevalence of sex crimes, through FLETC's Advanced Interviewing for Law Enforcement Investigators Training Program. Finally, in 2012, AFOSI incorporated a four-week long Interviewing and Interrogation block into our Basic Extension Program (BEP), further discussed in paragraph 4g.

c. Interviews: DoDIG recommended NCIS and AFOSI "evaluate the benefits of using the combination of narrative and question and answer interview format to help ensure that facts and circumstances are documented thoroughly." (Page 28, Paragraph 2b)

AFOSI Comment: Non-concur. AFOSI has assessed the issue and made a research-informed decision not to utilize a question and answer format in the written statements obtained from subjects, victims and witnesses, based on input from our investigative psychologists and judge advocates. We believe a more open, less suggestive questioning style is more appropriate to all interviews and interrogations. In addition, AFOSI policy directs agents to videotape all subject interviews. Videotaping subject interviews ensures both the exact words and context are accurately documented. AFOSI's feels its current interviewing style, together with written agent notes and recorded subject interviews, provides the best method for conducting and documenting interviews.

d. Interviews: The final recommendation pertaining to interviews is for AFOSI to "evaluate current policy and enhance its guidance on investigating subject/suspect alibis and the resolution of significant inconsistencies between statements of victims, witnesses, subjects, and suspects." (Page 28, Paragraph 2c)

AFOSI Comment Pertaining to Alibis: Non-concur with the need to enhance AFOSI guidance on alibis. The term "alibi" generally refers to a form of defense wherein an accused contends they were at some other place at the time of the alleged criminal incident. Very few sexual assault reports investigated by AFOSI involve a suspect offering an "alibi." However, when a suspect offers they were not present at the time of the incident, investigators evaluate the suspect's alibi. This may be done by conducting interviews of personnel who are able to substantiate or refute the alibi offered by the suspect. Evaluating the alibi may also involve seeking forensic evidence that places the suspect at the scene at the time of incident. AFOSI has no specific policy with regards to investigating subject/suspect "alibis," per se. Investigating the validity of a subject/suspect's alibi is addressed as part of a complete, properly scoped investigation based on the information and circumstances involved in each case, including possible defenses the accused may offer. AFOSI feels its current policy and procedures for scoping investigations to the facts and circumstance of each case is appropriate to conducting investigatively sufficient cases. AFOSI's requirement for close coordination with Air Force JAG personnel throughout the lifecycle of investigations further ensures any anticipated alibi is addressed during the investigation. AFOSI does not feel it needs additional policy specifically pertaining to investigating subject alibis.

DoDIG also recommended we evaluate our policy on resolving significant inconsistencies between statements made by victims, subjects and witnesses.

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AFOSI Comment Pertaining to Resolving Inconsistencies: Non-concur with the need to enhance guidance for resolving inconsistencies. AFOSI policy directs agents to conduct complete and thorough investigations. AFOSI agents are authorized to conduct follow-up interviews to address any significant inconsistencies as they arise. Resolving inconsistent statements and confusion of fact are an inherent part of conducting an investigatively sufficient case. AFOSI's requirement for close coordination with Air Force JAG personnel throughout the course of our investigations also serves to ensure significant inconsistencies are identified and addressed during the investigation. In addition, inconsistent statements are identified for resolution by the internal review process at the detachment and region before the case is closed. HQ AFOSI's quality review process identifies deficiencies in specific investigations and tracks trends in deficiencies to adjust focus, policy, and training across the command. Cases are returned to the field and agents are directed to conduct additional investigative activity any time a HQ's review reveals an investigation to be insufficient.

e. Collection of Evidence: DoDIG provided three recommendations pertaining to the MCIOs' collection of evidence in support of sexual assault investigations. The first recommendation outlined in paragraph 3a on page 29 has already been addressed in paragraph 2 of this response.

Secondly, DoDIG recommended AFOSI "conduct new or additional refresher training to highlight the critical nature physical evidence plays in sexual assault investigations and the subsequent prosecutions." (Page 29, Paragraph 3b)

AFOSI Comment: AFOSI concurs with DoDIG's emphasis on the importance of seizing all probative physical evidence and is currently altering its annual sexual assault investigations refresher training to highlight the same. AFOSI anticipates the revised refresher training will be completed by 1 Sep 2013.

Third, DoDIG recommends the MCIOs "add evidence collection in sexual assault investigations as a special interest item during command inspections for the next 2 fiscal years at all levels." (Page 29, Paragraph 3c)

AFOSI Comment: This recommendation appears to relate to the finding AFOSI policy does "... not direct the collection of clothing articles that a victim or suspect might have placed on themselves shortly after the assault." As noted in our response to this finding (paragraph 2, above), AFOSI does not concur with blanket policy requiring the collection of all such clothing. Therefore, AFOSI does not agree with the establishment of an SII pertaining to such evidence. However, AFOSI does agree with the need for additional, special emphasis on ensuring the right evidence is collected and processed in sexual assault cases, relational to the probative value the evidence might have based on the unique circumstances in each case. Therefore, in January 2012, HQ AFOSI stood up the Performance Management Branch (PMB), a team of seven seasoned agents charged with reviewing a minimum of 15 percent of closed cases monthly to ensure investigative sufficiency. The PMB, using updated case review checklists, evaluates whether investigations meet a comprehensive list of requirements, to include whether agents collected all probative evidence. Reviewers compare the specific guidance offered to agents by their servicing forensic science consultant

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with the list of evidence actually seized to determine whether agents collected all forensic evidence deemed probative by AFOSI's subject matter expert. The team also reviews the report of investigation in its entirety for mention of any non-forensic, probative evidence and evaluates whether agents were diligent in collecting the same. All AFOSI units receive monthly feedback from the team on investigative deficiencies.

f. Crime Scene Examination/Search: DoDIG recommends both AFOSI and NCIS "evaluate their policies and enhance their supervision regarding their agents' response to known and available crime scenes and evaluate the necessity for conducting crime scene examination for all sexual assault investigations." (Page 29, Paragraph 4)

AFOSI Comment: Concur. On 1 Mar 2013, AFOSI added into policy the requirement, where possible, for all crime scenes be located and documented (photographed/sketched) to accurately convey the location of the incident.

g. Report of Investigation Documentation: DoDIG recommended two changes to AFOSI's and NCIS' reports of investigation (ROI). First, they recommended we "ensure information related to the location(s) of the incident, dates and times of occurrence, dates and times the incident(s) were reported, offenses under investigation, and other pertinent administrative data are properly documented within reports of investigation." (Page 29, Paragraph 6a)

AFOSI Comment: Non-concur. All information cited by DoD/IG is currently documented and readily available within AFOSI's Investigative Information Management System (I2MS). When a case agent generates a final ROI, the ROI's cover page includes, among other things, the period of the report (from initial notification to final investigative step), subject and victim biographical information (to include unit or home address), and the offense description. Furthermore, a free-text "Summary of Investigation" provides the basic Who, What, Where, When, How, and sometimes Why of the investigation. In turn, more specific details are provided in either the individual activities listed in the ROI's Narrative section or within specific exhibits attached to the ROI. Case agents and field unit leaders are responsible for ensuring all key investigative questions are answered in all AFOSI investigations, not just sexual assaults, and this issue is now checked through additional AFOSI Region and AFOSI Headquarters-level sufficiency reviews.

Regarding the one example provided by DoDIG, in which the specific address of an assault (Victim's residence) was not readily recorded, no case file number was provided for the example; however, the victim's home address was undoubtedly documented on the front side of her written statement (AF Form 1168), on the victim's bio sheet completed prior to the interview, and/or on the victim's AF Form 686, *Substantive Investigations Records Check Summary*. In addition, the victim's home address is readily available to AFOSI through I2MS, which is linked/uploaded with the Defense Enrollment Eligibility Reporting System (DEERS).

h. Report of Investigation Documentation: The second recommendation made by DoDIG regarding AFOSI's and NCIS' ROIs was for each MCIO's HQ to "evaluate the benefits of preparing a report of investigation title page that includes the location(s) of the incident,

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dates and times of occurrence, dates and times the incident(s) were reported, offenses under investigation, and other pertinent administrative data.” (Page 29, Paragraph 6b)

AFOSI Comment: Concur. AFOSI will further evaluate the benefits of preparing a report of investigation title page that includes all pertinent administrative data listed by DoDIG. However, our preliminary assessment is this requirement is not necessary. AFOSI ROIs typically contain all the information identified by DoDIG. Additionally, action authorities, the appropriate base legal office (SJA), and other base authorities are provided regular updates throughout the investigation. These updates include the case details cited in the recommendation.

4. On April 23, 2012, DODIG released it’s, “Pre-Draft Results of U.S. Air Force Office of Special Investigations Adult Sexual Assault Closed Case Review (IPO Project No. 2011C019).” HQ AFOSI immediately began assessing and implementing suggestions to enhance the quality of its sexual assault investigations. We believe it is important to outline the many actions we have taken over the last year to continuously improve our investigation of adult sexual assaults.

a. AFOSI and JA collaboratively established a new special victim capability during the summer of 2012 to ensure the Air Force’s ability to investigate and prosecute sex offenses while supporting victims. This new capability is provided by 24 AFOSI sex crimes investigators and seven specially trained senior trial counsel who are currently designated as special victim prosecutors. In addition, each base has victim and witness assistance liaisons and trained paralegals to support the special victim capability. The Air Force is actively working to more effectively integrate these individual components. The Air Force has established a reach-back capability, physically located at Joint Base Andrews, MD and comprised of AFOSI’s Sexual Assault Investigations and Operations Consultant and a special victims senior trial counsel, available for consultation on sexual assault investigations worldwide. These two investigative and legal advisors provide assistance on especially difficult, high-interest and/or significant cases.

b. AFOSI developed and rolled-out an eight-day advanced sex crimes investigations training program (SCITP). The curriculum includes understanding the psychological and behavioral aspects of both victims and sexual offenders, alcohol and drug facilitated sexual assaults, crime scene processing, medical evidence in sexual crimes, cycle of violence (intimate partner sexual assault), investigative techniques, AFOSI policy pertaining to sexual assault investigations, special victims counsel, the prosecutor’s perspective, the Cognitive Interview (CI) technique and more. The Cognitive Interview, backed by many years of peer-reviewed scientific research, is expected to empower victims and improve their ability to provide the detailed information needed to enable the Air Force to take appropriate legal action in these cases. SCITP has evolved into a joint OSI/JA course, serving now as a robust platform to improve the Air Force’s cross-disciplinary investigative/legal handling of sexual assault cases. The fourth iteration of SCITP will be held in May 2013.

c. HQ AFOSI has published new policy, implementing all recent changes to the law (ex: retention of sexual assault evidence for five years) and higher-level directives pertaining to

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MCIO requirements for handling sexual assaults (ex: MCIOs must now open on all sexual assault matters).

d. AFOSI also developed a new Sexual Assault Investigative Plan Worksheet and Sufficiency Assessment Tool to help agents develop thorough investigative plans. AFOSI policy now dictates agents use this tool, which facilitates collaboration between agents and military justice attorneys by integrating legal sufficiency (Articles 120, 125 and 80 elements of proof) with investigative sufficiency (i.e. investigative activities apt to reveal information probative to the elements).

e. In June 2012, AFOSI/CC directed our Regions to conduct case reviews for all sexual assault investigations through their life cycle until closure. In early 2013, HQ published new policy directing Regions to review all open sex crimes investigations monthly. This new requirement further ensures the quality of AFOSI's sexual assault investigations.

f. In early 2013, HQ AFOSI furnished all field units with cutting-edge forensic light sources to greatly enhance agents' ability to detect the presence of physical and biological evidence at sexual assault crime scenes. HQ AFOSI also armed the field with new cyber tools that significantly improve agents' abilities to identify and collect probative digital evidence from computers and cell phones. These new tools will enable agents to conduct more complete investigations in a more timely manner, as they empower investigators to locate and seize digital evidence in the field rather than waiting for a laboratory to recover the same information.

g. HQ AFOSI now randomly selects, reviews and assesses fifteen percent of investigations closed each month and formally reports whether or not the investigations fail/meet/exceed AFOSI's sufficiency standards. Issues identified during case reviews are resolved with direct feedback to the field through a variety of venues and through changes to AFOSI policy and training, as appropriate.

h. HQ AFOSI reviewed all basic and advanced training programs in 2012 to identify opportunities to improve agents' handling of sexual assault cases. The assessment team recommended instructors increase their emphasis on sexual assault investigations in advanced courses to enhance journeyman investigators' ability to incorporate a variety of advanced skills/techniques in resolving these crimes. We subsequently doubled the sexual assault-specific blocks of instruction in our Advanced General Crimes Investigation Course (AGCIC). AGCIC is a train-the-trainer course for superintendents and criminal investigations branch chiefs. Instruction is geared towards preparing leaders to supervise investigations and provide on-the-job training to junior agents.

i. AFOSI's new Basic Extension Program (BEP) commenced in March 2012 to provide new agents enhanced knowledge and capabilities in core mission areas at the start of their careers by systematically building upon basic skills provided at the U.S. Air Force Special Investigations Academy (USAFSIA) using fully interactive distance learning courses. BEP's eight-week long criminal investigations course includes blocks of instruction on both adult

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sexual assault and child sexual abuse investigations. Agents also receive four weeks of instruction on conducting interviews and interrogations.

5. The numerous recent improvements outlined above, as well as the increased level of collaboration between AFOSI and Air Force JA, are improving the quality and professionalism of AFOSI's sexual assault investigations. I appreciate the opportunity to respond. My point of contact is [REDACTED], Criminal Investigations Program Manager. [REDACTED] may be reached at [REDACTED]

[REDACTED]
Director, Strategic Programs and Requirements

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Acronyms and Abbreviations

AFI	Air Force Instruction
AFOSI	Air Force Office of Special Investigations
AFOSIH	Air Force Office of Special Investigations Handbook
AFOSII	Air Force Office of Special Investigations Instruction
AFOSIMAN	Air Force Office of Special Investigations Manual
AFPD	Air Force Policy Directive
AAS	Agent Activity Summary
AR	Army Regulation
AUSA	Assistant United States Attorney
CAR	Case Activity Records
CI	Cognitive Interview
CID	U.S. Army Criminal Investigations Command
CODIS	Combined DNA Index System
CRR	Case Review Records
DA	Department of the Army
DCII	Defense Central Index of Investigations
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DoD IG	Department of Defense Inspector General
DNA	Deoxyribonucleic Acid
FLETC	Federal Law Enforcement Training Center
FM	Field Manual
FO	Field Office
GEN ADMIN	General Administration
FSC	Forensic Science Consultant
IAW	In Accordance With
JA	Judge Advocate
MCIO	Military Criminal Investigative Organization
MCRT	Major Case Response Team
NCIS	Naval Criminal Investigative Service
NCISRA	NCIS Resident Agency
NOTAM	Notice to Airmen
N/O	Not Observable
OPNAVINST	Department of the Navy Chief of Naval Operations Instruction
PMB	Performance Management Branch
QMD	Quantitative Methods Division
ROI	Report of Investigation

SAA	Special Agent Afloat
SAFE	Sexual Assault Forensic Examination
SAV	Staff Assistance Visit
SAC	Special Agent-in-Charge
SAPR	Sexual Assault Prevention and Response
SAPRO	Sexual Assault Prevention and Response Office
SARC	Sexual Assault Response Coordinator
SECNAVINST	Secretary of the Navy Instruction
SECNAV M	Secretary of the Navy Manual
SII	Special Interest Item
UCMJ	Uniform Code of Military Justice
USACIL	U.S. Army Criminal Investigative Laboratory
U.S.C.	United States Code
VA	Victim Advocate



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U.S. DEPARTMENT OF DEFENSE

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