

# **JAGMAN**

# **Investigations**

# **Handbook**

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## INTRODUCTION

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

Incidents investigated pursuant to the JAGMAN may provide the basis for a later claim against the Navy; this claim may evolve into a lawsuit. When a lawsuit is filed, the first document requested by both the attorneys representing the Navy and attorneys on the other side is the JAGMAN investigation. **A thorough, comprehensive, and properly documented investigation is the best way to protect the Navy’s interest and the interests of any agencies, suspects, witnesses, victims, or families involved.** In the event of a lawsuit, the investigating officer will likely have been transferred, and witnesses will have left the area. It is time-consuming, frustrating, and often counter-productive to try to reconstruct an incident or correct an investigation after months or years have passed. The key for everyone involved is a thorough investigation conducted as soon after the incident as possible.

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

The handbook will discuss how an investigating officer (IO) conducts a Preliminary Inquiry, Command Investigation, or Litigation Report Investigation<sup>1</sup>. Some checklists are provided; others are cross-referenced and available in the JAGMAN itself.

The checklists in this handbook will be particularly useful to the IO and the convening authority (CA) in ensuring that the investigative report includes all necessary information and enclosures. The IO should review the checklists contained herein prior to initiating the investigative effort to see if there are specific informational requirements given the nature of the incident under investigation.

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

Should you have any questions regarding JAGMAN investigations that have not been answered in this handbook, you are encouraged to contact your station, staff judge advocate, or the nearest Navy Region Legal Service Office/Marine Legal Services Support Team. It is best practice to always consult, contact, and coordinate with a staff judge advocate during the course of any investigation, no matter how small. Questions may also be directed to the Civil Law Department, Naval Justice School, DSN 948-3800, COMM (401) 841-3800.

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<sup>1</sup> Courts and Boards of Inquiry are not addressed – refer to JAGMAN, Chapter II, and JAGINST 5830.1A for procedures applicable to these more formal investigations.

**PRELIMINARY INQUIRY**

The preliminary inquiry (PI) is a quick and informal analytical tool that can be used to initially determine whether a particular incident is serious enough to warrant some form of JAGMAN investigation. A PI is not necessarily required; however, it is “advised” for all incidents potentially warranting an investigation. A PI is a quick first look at an incident, it is not meant to provide all answers except in the simplest cases where no further investigation is necessary.

**Method of inquiry.** The convening authority (CA) may conduct a PI personally or appoint a member of the command. There are no requirements or restrictions governing how the inquiry is to be accomplished. The goal is to take a quick look at a particular incident (e.g., a minor fender-bender) and gather enough information so the CA can make an informed decision regarding whether a more in-depth JAGMAN investigation is necessary. Generally, a PI should not take longer than three working days. If more time is required, it generally means the inquiry officer is attempting to do too much or has not been sufficiently instructed on the issue(s) to be addressed *See* page II-3 for a PI checklist.

Upon completion of the PI, a report is tendered to the CA. The PI report need not be in writing, but some form of limited documentation is advisable. *See* JAGMAN Chapter 2, Appendix A-2-c, for sample documentation of a preliminary inquiry.

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

(1) Take no further action. If further investigation would serve no useful purpose, there is no need to convene a JAGMAN investigation. This is an appropriate course if the PI reveals the incident is likely to be of little interest outside the immediate command or the event will be adequately investigated under some other procedure more appropriate than a JAGMAN investigation (e.g., NCIS investigation, Missing Loss Stolen Recovered (MSLR) procedure, etc.). As a matter of practice, the PI results and the command decision should be recorded.

(2) Conduct a command investigation. A command investigation is a tool for gathering, analyzing, and recording relevant information about an incident or event of primary interest to the command. It will often follow a preliminary inquiry except in very simple cases, e.g., minor property loss.

(3) Convene a litigation-report investigation if a claim or civil litigation may be filed against the DON/USG or may be asserted on behalf of the DON/USG. In the event of a litigation report, consultation with the “cognizant judge advocate” is required under JAGMAN 0204(b)(4) and 0210. If an incident may even possibly result in a claim or civil litigation against the DON/USG, it is best practice to consult with a judge advocate from the outset of the preliminary inquiry.

**NOTE:** Whenever a question exists about how a particular incident or event should be investigated, a commander should discuss the matter with a judge advocate in accordance with JAGMAN 0203.

**Special considerations for sex-related offenses.** Commanders are required to immediately report all allegations of sex-related offenses to NCIS or a similar military criminal investigative organization. A command shall not conduct its own PI or CI into an allegation of a sex-related offense until after the cognizant military criminal investigative organization decides not to pursue the matter. If an allegation

of a sex-related offense arises during investigation of a different matter, contact NCIS. Do not continue the investigation unless approved by NCIS.

**Reporting the results of PIs.** After deciding which command option(s) to exercise, the CA must report that decision to the immediate superior in the chain of command (ISIC) pursuant to standing ISIC guidance. This does not require a special, stand-alone report, command decisions on PIs will be relayed in the context of existing situational reporting systems. Determine if your ISIC has issued guidance on what types of incidents should or should not be reported and the manner of reporting.

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

**Distinguish from Preliminary inquiry into reported offenses pursuant to Rule for Court-Martial 303.** Rule for Court-Martial 303 (R.C.M. 303) – contained within the Manual for Courts-Martial – separately references “preliminary inquiry into reported offenses.” R.C.M. 303 states: “Upon receipt of information that a member of the command is accused or suspected of committing an offense or offenses triable by court-martial, the immediate commander shall make or cause to be made a preliminary inquiry into the charges or suspected offenses.” Such a preliminary inquiry under R.C.M. 303 may or may not overlap with a JAGMAN preliminary inquiry. For example, an accident or incident that occurs on base, such as a minor fender-bender, may or may not implicate misconduct by a member of the command. If it is apparent that the preliminary inquiry is solely into a command member’s potential misconduct, the inquiry should cite R.C.M. 303. If the commander is considering remedial steps or measures unrelated to the discipline of a member of the command, the preliminary inquiry should cite JAGMAN 0203. In a scenario where the inquiry relates both to the discipline of a member of the command and other malfeasance or need for action, the preliminary inquiry should cite both R.C.M. 303 and JAGMAN 0203.

**PRELIMINARY INQUIRY CHECKLIST**

- \_\_\_\_\_ CA appoints a preliminary inquiry officer.
- \_\_\_\_\_ Contact a cognizant staff judge advocate.
- \_\_\_\_\_ Consult with the Office of General Counsel (OGC) if civilians are involved as witnesses, subjects, or complainants.
- \_\_\_\_\_ Begin work on the inquiry immediately upon hearing that you are to be appointed, whether or not you have received an appointing order in writing.
- \_\_\_\_\_ Decide what the purpose and methodology of your inquiry will be.
- \_\_\_\_\_ Can this preliminary inquiry be completed in three working days? If not, you may be trying to do too much. Further clarification from the CA may be necessary.
- \_\_\_\_\_ Does this incident involve a member of the command or did it occur within the command? If no, are you the appropriate command to conduct the preliminary inquiry and/or any administrative investigation?
- \_\_\_\_\_ Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? If yes, discuss with a cognizant staff judge advocate whether further investigation is appropriate or should be left to law enforcement agencies.
- \_\_\_\_\_ Could this be considered a “major” incident? JAGMAN Appendix A-2-a defines a “major incident” as an extraordinary incident occurring during the course of official duties resulting in multiple deaths, substantial property loss, or substantial harm to the environment, where the circumstances suggest a significant departure from the expected level of professionalism, leadership, judgment, communication, state of material readiness, or other relevant standard.
- \_\_\_\_\_ Obtain any available documentation pertaining to the inquiry, i.e., copies of rules and regulations, instructions, correspondence and messages, logs, standard operating procedures, personnel records, medical records, official reports, vehicle accident report forms, etc.
- \_\_\_\_\_ Locate, preserve, and secure evidence, i.e., real objects (logs, firearms, bullets, etc.), and note physical locations (accident sites, etc.).
- \_\_\_\_\_ Draw up a list of possible witnesses.
  - \_\_\_\_\_ Interview all witnesses you deem relevant, who will provide enough information to understand what occurred and enable you to make an informed recommendation to the CA on a future COA.
  - \_\_\_\_\_ For physically unavailable witnesses, conduct a telephone or email interview.

\_\_\_\_\_ If any witness may be the victim or witness to a crime, consult with NCIS and/or a judge advocate.

\_\_\_\_\_ **Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty of his/her rights under Article 31, UCMJ.** Refer to JAGMAN Appendix A-1-o for a sample form.

\_\_\_\_\_ Advise each witness, before signing any statement relating to the origin, incident, or aggravation of any disease or injury that the witness has suffered, of the witness' right not to sign such a statement and document compliance with this section. Refer to JAGMAN 0212(c) for further guidance and JAGMAN Appendix A-2-j for a sample form. **NOTE:** No signed witness statements should be taken in any incident involving personal injury or a potential claim against the DON.

\_\_\_\_\_ Assess whether investigation involves classified information. Do not handle or access information without appropriate security clearance. *See* JAGMAN 0126 for procedures on investigating lost or compromised classified information, including marking and classifying the report and enclosures. Consult NCIS to assess if loss or compromise of classified information meets criteria for a national security case. If so, the investigation must be overseen by a senior line commander designated National Security Case Disposition Authority.

\_\_\_\_\_ Does the CA desire/require the outcome to be documented in writing?

\_\_\_\_\_ If possible, review the analysis and outcome of the investigation with a judge advocate.

\_\_\_\_\_ The preliminary inquiry officer drafts and makes his/her report to the CA.

\_\_\_\_\_ Which of the command options does the CA choose in light of the preliminary inquiry?

\_\_\_\_\_ No further action.

\_\_\_\_\_ Command investigation (could include need for a Line of Duty investigation).

\_\_\_\_\_ Litigation-report investigation.

\_\_\_\_\_ If the case is a potential "major incident," discuss it immediately with the GCMCA or ISIC SJA.

\_\_\_\_\_ CA reports the PI result to the ISIC if required.

\_\_\_\_\_ Preserve all evidence, witness statements, and documentation gathered during the preliminary inquiry for possible use in any administrative investigation that may be subsequently convened based on the PI. Ensure these items are preserved in a secure location accessible to future investigators and commanders if the investigation is elevated. Document the chain of custody, noting anyone who handled evidence related to the investigation and the steps those individuals took to maintain the integrity of the evidence.

**COMMAND INVESTIGATIONS**

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

**When required.** CIs are likely to be the appropriate investigative tool for incidents involving aircraft mishaps; explosions; ship stranding or flooding; fires; loss of government funds or property; firearm accidents; security violations; injury to service members where such injury is incurred while “not in the line of duty”; and deaths of service members where there is a “nexus” or connection to naval service. A CI will often follow the completion of a PI when an incident warrants further investigation.

If a claim or litigation issue appears to be the primary purpose for the investigation, then a litigation-report investigation is required.

**Rules on Convening.** A CI will be convened, in writing, by the CA. See JAGMAN Appendix A-2-d for a sample CI convening order. When the CA believes the investigation of an incident is impractical or inappropriate for the command, another command may be requested to conduct the investigation. See JAGMAN 0205(b). When circumstances do not allow for the completion of an investigation (e.g. deployment), requests for assistance may be directed to the ISIC. If more than one command is involved, only one investigation should be conducted and coordination/cooperation is required. Special convening rules for incidents involving injuries to Marine Corps personnel are contained in JAGMAN 0205(e).

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

**Conducting the Investigation:** The goal is to find out who, what, when, where, why, and how an incident occurred. The IO should decide the purpose and methodology of his/her investigation **before** starting to collect evidence. The IO should review **all** applicable checklists contained in the appendices of JAGMAN Chapter II and Section XI of this handbook to determine specific informational requirements.

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

**Handling Witnesses:** The IO may obtain information from witnesses through personal interviews, correspondence, email, or telephone inquiries. If a witness is unable to review and/or sign a statement, the IO may simply make a summary of the conversation and certify it to be accurate. Before interviewing witnesses, it is important to understand when and what rights advisements may be required: if the military member is suspected to have committed a criminal offense, Article 31, UCMJ, warnings are required; when interviewing a service member about incurring an injury, a warning under JAGMAN

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0212(c) is required; if the IO is asking for personal information (as opposed to information related to performance of duty), Privacy Act advice is necessary. Refer to section IX of this handbook for forms. It is also important to determine if a witness may be a victim of or witness to a crime. This triggers certain rights, but victim notification and advice responsibilities are explicitly left to personnel other than the JAGMAN investigating officer. Consult NCIS or a judge advocate if you believe you are handling a witness who may be a victim or witness of a crime.

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

**A checklist to help you conduct the CI is contained on page III-3.**

**Writing the Investigation:** The key to writing a good CI is **organization**. The IO must reconstruct the incident in their mind, pulling together all the evidence. They must then document the incident in a **readable** fashion. Remember, the CA and reviewing authorities should be able to understand the incident from reading the facts. A recitation of the facts in chronological, step-by-step form is often easiest to follow; the complexity of the incident, however, may dictate other forms and formats. Keep findings of fact as clear and concise as possible.

When drafting opinions and recommendations, the IO should address responsibility and accountability. The IO must also address any other areas directed by the CA and that, in the IO's opinion, need corrective action.

When citing the Uniform Code of Military Justice (UCMJ) and other widely available references, guidance, and policies such as SECNAV and OPNAV instructions, the best practice is to incorporate recitation of offense elements or policy directives in the opinions section rather than including a finding of fact that restates the reference or guidance. Example of a best practice opinion incorporating a reference: "SN Jones violated Article 128, UCMJ (Assault Consummated by a Battery), by wrongfully punching SN Smith in the face with his fist. The elements of Article 128 are..." The opinion would then proceed to list the elements of the offense and apply the available facts to the elements.

**A checklist to help you prepare the CI report is on page III-7.**

**COMMAND INVESTIGATION CHECKLIST**

**I. GETTING STARTED**

- \_\_\_\_\_ CA appoints an investigating officer (IO) in writing.
- \_\_\_\_\_ Begin work on the investigation immediately; consult with the cognizant SJA and consult with OGC if civilians are involved.
- \_\_\_\_\_ Carefully examine the convening order to determine the scope of your investigation.
- \_\_\_\_\_ Determine when the investigative report is due to the CA.
  - \_\_\_\_\_ If you cannot reach that deadline, request an extension.
- \_\_\_\_\_ Review all relevant instructions on your investigation, i.e. JAGMAN Chapter 2, etc.
- \_\_\_\_\_ Determine which checklists may apply to your investigation and review them carefully To determine what information is required, refer to section XI of this handbook.
- \_\_\_\_\_ Decide what the purpose and methodology of your investigation will be.
  - \_\_\_\_\_ Where is evidence likely to be located?
  - \_\_\_\_\_ How can such evidence best be obtained and preserved?
- \_\_\_\_\_ Has this incident involved a member of the command and/or occurred within the command? If not, are you the appropriate command to conduct the investigation?
- \_\_\_\_\_ Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? If yes, refer to JAGMAN 0201(d) and deconflict investigations.
- \_\_\_\_\_ Is this incident under a safety investigation? If yes, refer to JAGMAN 0201(d).
- \_\_\_\_\_ Is this considered a “major” incident? Refer to JAGMAN Appendix A-2-a for definition.
  - \_\_\_\_\_ If it is believed to be a “major” incident, refer to JAGMAN 0203(b)(2), 0203(f), 0204(b)(5), and 0210(a)(1).
- \_\_\_\_\_ Is this investigation likely to require access to and inclusion of classified material? If yes refer to JAGMAN 0208(b) and contact a judge advocate.
- \_\_\_\_\_ Does the investigation require travel and/or other time-consuming administrative action? If yes, begin working soonest.

**II. HANDLING WITNESSES**

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

\_\_\_\_\_ Draw up a list, to be supplemented as the investigation progresses, of all possible witnesses.

\_\_\_\_\_ Consult OGC before interviewing any civilian witness.

\_\_\_\_\_ Consult NCIS and a judge advocate before interviewing any witness who may be a victim or witness of a crime.

\_\_\_\_\_ Determine if witnesses are transferring, going on leave, hospitalized, etc., which might take them out of the area before the investigation is reviewed.

\_\_\_\_\_ Immediately inform the CA, orally and with confirmation in writing, upon learning a material witness might leave the area before investigation review is complete.

\_\_\_\_\_ Conduct an intensive interview with each witness, i.e., names, places, dates, and events that are relevant.

\_\_\_\_\_ Witness statements should be objective and as factual in content as possible. If a witness makes a vague statement (“he was drunk”), ask for more detail and try to pin down the actual facts.

\_\_\_\_\_ If a witness is not physically available for an interview, conduct it via telephone or email.

\_\_\_\_\_ Advise any military witness suspected of an offense, misconduct, or improper performance of duty of their rights under Article 31(b), UCMJ. Ordinarily, an investigation should collect relevant information from all other sources before interviewing a suspect. See JAGMAN 0207(c)(2) and A-1-o. Refer to page X-1 of this handbook for more information.

\_\_\_\_\_ Advise each witness, before signing any statement relating to the origin, incident, or aggravation of any disease or injury that they have suffered, of their right not to sign such a statement. Refer to JAGMAN 0212(c) and A-1-j for further discussion and a sample form.

\_\_\_\_\_ Is a Privacy Act statement required for the witness? JAGMAN 0207(e) requires Privacy Act statements be obtained from each witness from whom personal information is taken. Refer to JAGMAN Appendix A-2-h for a sample form.

\_\_\_\_\_ Record each witness interview using detailed notes or by mechanical means. If you record the interview, state the time, date, and location. Summarize what action has been taken before the interview, i.e., 31(b) rights administered, and get a witness to affirm the summary on record. Be conscious that you may solicit classified information during the interview and take steps to secure the notes/recording at the conclusion or discuss with the witness the intent to remain “UNCLASS” during the interview, if applicable.

\_\_\_\_\_ Reduce each witness' statement to a complete and accurate narrative statement.

\_\_\_\_\_ If possible, obtain the signature of each witness, under oath and witnessed, on the narrative statement of their interview. If not possible, indicate on the narrative statement that it represents either an accurate summary or verbatim transcript of the witness' oral statements.

\_\_\_\_\_ Direct witnesses subject to naval authority not to discuss their statements. Witnesses not subject to naval authority may be requested not to discuss their statements. Let them know you may have follow-up questions.

\_\_\_\_\_ Review your list of possible witnesses to ensure that you have interviewed all such witnesses; make sure you have followed up and asked any lingering or additional questions.

### III. DOCUMENTARY EVIDENCE

\_\_\_\_\_ Make a list, which can be supplemented as the investigation proceeds, of all possible needed documents, to include:

\_\_\_\_\_ Copies of relevant rules, regulations, instructions, standard operating procedures;

\_\_\_\_\_ Relevant correspondence and messages;

\_\_\_\_\_ Personnel records;

\_\_\_\_\_ Medical records (clinical/hospital records, death certificates, autopsy reports, etc.);

\_\_\_\_\_ Official logs and reports; and

\_\_\_\_\_ Required forms (personnel injury forms, vehicle accident reports, etc.).

\_\_\_\_\_ Examine your list of possible documents to ensure you have obtained all such documents available to you.

\_\_\_\_\_ If unable to obtain certain documents, attempt to obtain them via email or mail.

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

### IV. OTHER EVIDENCE

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

\_\_\_\_\_ Examine your list of possible information to ensure you have obtained all such information personally available to you.

\_\_\_\_\_ If unable to obtain certain information, attempt to obtain if via email, telephone, or mail.

\_\_\_\_\_ Reduce such information to a form, such as photographs or sketches, which can be conveniently included in your investigative report.

\_\_\_\_\_ Take all necessary steps to ensure any evidence not an enclosure to the investigative report will be kept in an identified place, safe from tampering, loss, theft, and damage, pending review of the investigation.

\_\_\_\_\_ Take pictures, if possible.

**DRAFTING THE COMMAND INVESTIGATION REPORT**  
(See JAGMAN Appendix A-2-e for sample format)

\_\_\_\_\_ Appropriately mark the classification of the report (secret, confidential, etc.). Omit classified information unless absolutely essential. Refer to JAGMAN 0208(b) and QUICKMAN Section III for discussion on handling classified information.

\_\_\_\_\_ A good practice tip is not to number your enclosures while drafting the report. Instead, cite enclosures by name and wait until the report is finalized to change the names into numbers so if a fact or series of facts are moved within the report, it does not impact the enclosure numbers (especially with AutoFormat).

**PRELIMINARY STATEMENT**

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

\_\_\_\_\_ Set forth the nature of the investigation.

\_\_\_\_\_ State any delays or difficulties encountered, including unavailability of evidence or inability to interview relevant witnesses.

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

\_\_\_\_\_ Note any requests for extensions, whether granted or denied.

\_\_\_\_\_ Note limited participation by any member or advisor, i.e., witnesses who elected not to waive 31(b) rights and make a statement.

\_\_\_\_\_ State if PII in the report was obtained from sources other than the individual, i.e., from service records. PII obtained from the individual requires a Privacy Act statement signed by the individual and included as an enclosure.

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

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

**FINDINGS OF FACT.** A fact is something that is or happened.

\_\_\_\_\_ Distinguish the differences between the terms “fact,” “opinion,” and “recommendation.”

\_\_\_\_\_ Conduct an evaluation of the evidence or lack of evidence.

\_\_\_\_\_ Review the JAGMAN checklists for any special fact-finding requirements pertaining to the specific type of incident.

- \_\_\_\_\_ When drafting the FoF, be specific as to persons, times, places, and events.
- \_\_\_\_\_ After each FoF, reference in order the enclosures to the report that support the FoF. This enables the CA to easily and efficiently review the enclosures while reading the report. See above note about numbering.
- \_\_\_\_\_ Identify by grade or rate, service number, organization, occupation or business, and residence person(s) connected with the incident. A practice tip is to establish patterns of citation, especially in the background sections of the FoF. For example, as each member of an aircrew is addressed in the FoF, reference in order their designation letters, flight up-chit (medical clearance), logbook, and orders. By using this routine for every member of the crew, it addresses the same relevant facts with each, and assures nothing is overlooked or inadvertently not included in the enclosures.
- \_\_\_\_\_ Make appropriate FoF for all relevant facts, including information already stated in the preliminary statement. The preliminary statement is not a substitute for FoF.
- \_\_\_\_\_ Place findings of fact in chronological and/or logical order.
- \_\_\_\_\_ Is each fact a separate finding?
- \_\_\_\_\_ Is each FoF supported by an enclosure?
- \_\_\_\_\_ Are all enclosures used? If not used and not critical, delete the enclosure.
- \_\_\_\_\_ When read together, do the FoF tell the whole story of the incident without having to refer back to the enclosures?
- \_\_\_\_\_ Does the story flow? Is it readable?

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

- \_\_\_\_\_ Ensure each of your opinions are exactly that, not FoF or recommendations.
- \_\_\_\_\_ Ensure each opinion references the FoF(s) that support it.
- \_\_\_\_\_ Ensure you have rendered the opinions required by the convening order and any others you feel are appropriate.

**RECOMMENDATIONS** are proposals made based on the opinions.

- \_\_\_\_\_ Ensure each of your recommendations is exactly that, not a FoF or an opinion.
- \_\_\_\_\_ Ensure each recommendation is logical and consistent with the FoF and opinions.

- \_\_\_\_\_ Address any recommendations specifically required by the CA and any others considered appropriate. As IO, you have been tasked based on your ability, experience, etc.; the CA is expecting you to exercise it. Feel free to make recommendations for the service if required.
- \_\_\_\_\_ Recommend appropriate corrective, disciplinary, or administrative action. Practice tip: be specific, don't just recommend "disciplinary action," suggest a forum and charges, but not specific punishments.
- \_\_\_\_\_ Enclose a draft of a punitive letter of reprimand if you recommend such action.
- \_\_\_\_\_ Draft and send, under separate cover, a non-punitive letter of caution if recommending such action.

**SIGNING**

- \_\_\_\_\_ Sign your report.

**ENCLOSURES**

- \_\_\_\_\_ The first enclosure is always the convening order.
- \_\_\_\_\_ All evidence in logical order, tracking with the FoF.
- \_\_\_\_\_ Is each statement, affidavit, transcript, or summary of testimony, photograph, map, chart, document, or other exhibit a separate enclosure? Refer to JAGMAN 0208(g)(1) for definitions of these terms.
- \_\_\_\_\_ Are any reproduced documents certified to be true copies?
- \_\_\_\_\_ Have you complied with the special marking requirements applicable to photographs? Refer to JAGMAN 0207(b)(4) for a discussion of marking requirements.
- \_\_\_\_\_ Are enclosures listed in the order in which they are cited in the body of the investigation?
- \_\_\_\_\_ Ensure you do not have inappropriate material in the investigation: NCIS reports of investigations, aircraft mishap reports, Inspector General reports, polygraph examinations, and medical quality assurance investigations.

**CONCLUDING ACTION**

- \_\_\_\_\_ Have you stretched your imagination to the utmost in gathering and recording all possible information on the incident investigated?
- \_\_\_\_\_ Have you checked and double-checked to ensure that your FoF, opinions, recommendations, and enclosures are in proper order?



## Command Investigations

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- \_\_\_\_\_ Have you carefully proofread your report to guard against embarrassing clerical errors?
- \_\_\_\_\_ Have you consulted with your local and/or ISIC JAG/OGC/Legal?
- \_\_\_\_\_ Have you signed your Investigative Report?

**ADMIRALTY INCIDENTS, CLAIMS, AND INVESTIGATIONS**

The Secretary of the Navy is authorized by 10 U.S.C. §§ 8822-8823 to settle, compromise, and pay admiralty tort and salvage claims against the DON or receive payment for admiralty tort claims by the Navy in an amount not to exceed \$15,000,000. The Secretary is also authorized to delegate such authority. The Secretary has delegated to the Judge Advocate General settlement authority when payment or collection does not exceed \$500,000 and to the Deputy Assistant Judge Advocate General Admiralty and Claims Division (OJAG (Code 15)) when payment or collection does not exceed \$250,000. Settlement authority has not been delegated to individual commands.

**Admiralty incidents.** Any personal injury, loss of life, property damage, salvage, oil spill recovery/clean-up or rescue occurring at sea or on land, arising in whole or in part from the operation of any Navy-owned or operated ship, submarine, boat, gig, tug, barge, amphibious watercraft or vehicle, or vessel (including Morale, Welfare, and Recreation (MWR) vessels) upon navigable waters, or caused by ship-launched aircraft or weapons, is considered an admiralty incident. Similarly, any damage to Navy property arising from the operation of non-federal vessels is considered an admiralty incident; contact Code 15 for additional guidance.

**Reportable Admiralty incidents.** Admiralty incidents that may result in claims by or against the Navy must be reported to Code 15. There is no “de minimus” exception to this reporting requirement. Reportable admiralty incidents include:

- a. Death or injury to persons who are not military personnel or federal employees;
- b. Damage to property not owned by the federal government, except for property owned by active duty military personnel; and
- c. Damage to Navy property caused by non-federal vessels or entities.

**Initial reports.** Whenever a reportable admiralty incident occurs, the affected command is to notify Code 15 immediately by Naval message using the PLAD NAVY JAG WASHINGTON DC, by phone (202-685-4600), or by e-mail at [admiralty@navy.mil](mailto:admiralty@navy.mil) or [admiralty@navy.smil.mil](mailto:admiralty@navy.smil.mil). Code 15 staff will work with the command to determine whether an admiralty investigation per JAGMAN Chapter XI is necessary and assign a Code 15 admiralty attorney to assist in that investigation.

**Investigations of Reportable Admiralty Incidents.** The initial report of an incident is often supplemented by a JAGMAN investigation. The type of investigation is at the discretion of the command convening authority. Code 15 will evaluate the likelihood of a claim or litigation and recommend the most appropriate investigation. There are two types of admiralty investigation formats under JAGMAN Chapter XI: an Admiralty Letter Report (ALR) and a Dual-Purpose Investigation (DPI). Under certain circumstances, an investigation under JAGMAN Chapter II may be most appropriate; contact Code 15 for guidance.

**Admiralty Letter Report Investigation.** The JAGMAN Ch. XI ALR is used to investigate most reportable admiralty incidents. Its sole purpose is to gather information necessary to adjudicate or litigate anticipated admiralty claims. The precise form of an ALR is less important than the requirement that the circumstances of an incident be **completely** documented and all relevant witnesses identified, usually within **30 days** of the incident. The ALR shall consist of, at a minimum, a letter from the command

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principally involved in the admiralty incident, addressed to “Office of the Judge Advocate General (Code 15),” with the facts of the case in narrative form. ALRs should be convened only after consultation with Code 15 and a Code 15 admiralty attorney must be the supervising attorney. The original investigation, endorsements, and enclosures must be forwarded to Code 15. ALRs are prepared at the direction of attorneys in anticipation of litigation and are exempt from disclosure under the Freedom of Information Act. Code 15 is the Initial Denial Authority for all FOIA/PA requests for an ALR. Consult with Code 15 before disseminating ALRs outside the convening authority’s immediate staff.

**ALR Tips:**

1. **No witness statements.** The investigating officer (IO) shall only record unsworn summaries of witness statements. The IO shall not take written witness statements. If a statement exists, it shall be included as an enclosure to the report. Additionally, the IO should consult with the assigned Code 15 admiralty attorney before interviewing non-Navy personnel.
2. **Evidence.** Original documents should be saved. True copies of documents, logs, charts, photographs, video recordings, contracts, port services agreements, insurance policies, medical records, and other supporting information may be included in the report. Consult with the assigned Code 15 admiralty attorney regarding preserving electronic, documentary, and physical evidence, as requirements vary widely depending on the nature of the incident.
3. **Identify witnesses.** Include full name, rate/rank, email address, and billet for all witnesses, principles in the chain of command, watch-standers, and medical response personnel, and note follow-on assignments for witnesses scheduled to transfer. **All non-federal entities**, including injured individuals and parties that caused property damage or had property damaged by the Navy, must be identified.
4. **Format.** The ALR investigation **shall not** include opinions and recommendations. While a simple forwarding endorsement may be provided by the convening authority, no other endorsements are desired.
5. **Supervisory attorney.** The appointing order shall list the assigned Code 15 admiralty supervisory attorney. A staff judge advocate or general counsel may be an additional supervisory attorney.
6. **Markings.** Each page of the ALR shall be clearly marked “FOR OFFICIAL USE ONLY/ATTORNEY WORK PRODUCT.”

**Dual Purpose Investigation (DPI).** A JAGMAN Ch. XI Dual Purpose Investigation is used when the primary purpose for conducting the investigation is to gather facts and evidence to protect the legal interests of the DON/USG in claims and litigation, but the command also seeks to investigate non-claims matters, including safety, operational requirements, or accountability. The DPI shall adhere to the procedures for an ALR; the DPI report, however, may include opinions, recommendations, and endorsements. A DPI is prepared at the direction of attorneys in anticipation of litigation and is exempt from disclosure under the Freedom of Information Act. Code 15 is the Initial Denial Authority for FOIA/PA requests for DPIs. Consult with Code 15 before disseminating a DPI outside the immediate staff of the convening authority or endorsers.

**Command Investigations.** A JAGMAN Ch. II investigation may be appropriate when Code 15 determines the likelihood of a compensable claim or litigation is low, and other considerations outweigh that risk. These considerations include the desire to disclose the investigative report to the media, other U.S.

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## **Command Investigations**

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agencies, states, foreign governments, or individuals. Command investigations may be subject to disclosure under the Freedom of Information Act. A copy of the investigative report and all endorsements must be provided to Code 15 when complete. The General Court Martial Convening Authority (GCMCA) is the Initial Denial Authority for FOIA/PA requests for command investigation reports. Code 15 exercises no control over the dissemination of the report.

**RETENTION AND RELEASE OF INVESTIGATIONS**

The GCMCA to whom the CI is ultimately forwarded is the authority who decides whether release under the Freedom of Information Act (FOIA) or Privacy Act (PA) will be made. While FOIA/PA releases are nothing new to fleet units, the release of JAGMAN investigations is new. You should consult SECNAVINST 5720.42 (series) and SECNAVINST 5211.5 (series) and a Judge Advocate before releasing a CI. Guidance for all types of investigations, except for litigation reports, may be obtained from Office of the Judge Advocate General (OJAG), Administrative Law Division (Code 13) at (703) 614-7413 (commercial) or 224-7413 (DSN).

**Release of litigation-report investigations.** OJAG (Code 15) is the custodian and the sole release authority for litigation-report investigations. FOIA/PA requests must be forwarded to Code 15 for action and the requester informed. (see JAGMAN 0210h). **NOTE:** Documents do not become privileged solely by virtue of their inclusion as enclosures to a litigation report. While a litigation report is never released, enclosures may be disclosed as documents prepared in the ordinary course of business that are otherwise releasable under FOIA, PA, civil procedure discovery statutes, or other statutes, rules, or regulations. Any request for such documents should be forwarded to the release authority of the particular record in question. If released, any notation that the document was contained in the litigation report should be removed because that fact is protected by the attorney work product doctrine.

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

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

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

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terms listed need not be cited in the cover letter but should be redacted so the requester does not believe he is getting something in violation of law. This list is only a general guide and is not exhaustive. Consult a Judge Advocate.

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

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

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

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

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

**Retention of investigations.** The CA must maintain a copy of all CI's for a minimum of two years, including litigation reports. Refer to JAGMAN Chapter II for specific retention policies based on the type of investigation.

LITIGATION-REPORT INVESTIGATIONS

A litigation-report investigation is used to investigate an incident or event that may result in claims or civil litigation either against the DON for damage to personal property, personal injury, or death caused by Navy personnel or on behalf of the DON as an affirmative claim for damage caused to DON property by non-DON personnel. Its *primary purpose* is to prepare to defend the legal interests of the DON/USG in claims proceedings or civil litigation. While closely resembling the command investigation in evidence collection methods and report preparation, special rules exist for the litigation-report investigation.

**Special Requirements.** A litigation-report investigation must be: (1) convened only after consultation with a “cognizant judge advocate,” *see* JAGMAN, Appendix A-2-a for definition; generally, the judge advocate who, by regulation or practice, is responsible for providing legal advice to the concerned convening or reviewing authority; (2) conducted under the direction and supervision of a judge advocate; (3) protected from disclosure to anyone who does not have an official need to know; and (4) ultimately forwarded to the Judge Advocate General.

**NOTE:** When investigations are conducted in anticipation of litigation but are not conducted under the direction and supervision of a judge advocate or are handled carelessly, they cannot be legally protected from disclosure to parties whose litigation interests may be adverse to the litigation interests of the United States. The rules of JAGMAN section 0210 must be followed to avoid compromising this defense. Refer to QUICKMAN Section III for an additional discussion of special considerations in death cases.

**When a Litigation-Report Investigation is Inappropriate.** A litigation-report investigation should not be conducted into incidents involving the death of an active-duty service member or a civilian whose death occurred when accompanying military personnel in the field or as a result of military-related actions. Further, a litigation-report investigation may not be appropriate to investigate “major incidents” (as defined in JAGMAN, Appendix A-2-a), which generally involve significant public press and congressional interest and attention; however, it may be appropriate in conjunction with other investigations into “major incidents.”

**NOTE:** Litigation reports may not be required for motor vehicle accidents involving minor injuries or property damage less than \$5,000. A complete Standard Form 91 may be adequate to document this type of incident. **HOWEVER**, the potential for a serious claim is not always immediately evident. If in doubt, err on the side of caution and conduct a litigation report investigation. *See* JAGMAN Appendix, A-2-u for additional information on motor vehicle accident investigations.

**Helpful Hints for Conducting the Investigation:** As with a command investigation, the general goal of a litigation-report investigation is to document who, what, when, where, why, and how an incident occurred. “How” and “Why” may be the most important questions requiring critical thinking in gathering and analyzing information. **The Investigating Officer (IO) must consult with the supervising judge advocate and decide the purpose and methodology of his/her investigation before collecting evidence.** The IO should review the relevant JAGMAN Chapter II appendix and the checklists contained in section XI of this handbook to determine informational requirements for particular types of incidents (motor vehicle accidents, explosions, fires, health care incidents, etc.).

The IO is not bound by formal rules of evidence in gathering information but may collect, consider, and include in the record any matter relevant to the investigation that is believable and authentic. You may

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obtain information through personal interviews, correspondence, or telephone inquiries. You should **never** obtain signed or sworn statements during a litigation report investigation **unless** you have consulted with the supervising judge advocate per JAGMAN 0210(d)(2) before obtaining the sworn statement. Photographs, maps, sketches, etc., are always helpful for review authorities to understand what occurred, as are present sense impressions (e.g., noise, texture, and smell observations) not adequately portrayed in other evidence. Record these impressions in a memorandum and include as an enclosure to the litigation report. The report should state the source of any physical evidence included as an enclosure and any special instructions for disclosure. Refer to JAGMAN 0210(e)(3) for additional documentation required for all photographs included in the litigation report. Further, for all original evidence, such as logs, charts, tangible items, etc., the name and phone number of the official responsible for the evidence's safekeeping must be stated in the report, either on each enclosure or in the preliminary statement.

There are several things to keep in mind when handling witnesses. Before interviewing witnesses, know when and what rights advisements may be required: if you suspect a military member has committed a criminal offense, Article 31, UCMJ, warnings are required; when interviewing a service member concerning the incurring of disease or injury, warning under JAGMAN 0212(c) is required; if you are asking for personal information (as opposed to information pertaining to performance of duty), Privacy Act advice is necessary.

Fully identify all witnesses, including their full names, job titles, and how they were involved in the incident. Provide full locating information for all witnesses, including addresses, telephone numbers, and email addresses for their command, work, and home. If a witness is likely to transfer or leave the military in the foreseeable future, provide a timeframe and future contact information, if available. Each witness should be interviewed separately. Let the witness tell what happened; don't ask questions that suggest answers. Ask for clarification if the witness is speaking in broad or vague terms (e.g., "He was drunk"... "What gave you that impression?"... "He had an odor of alcohol about him, his eyes were bloodshot, he was slurring his speech and unable to maintain his balance"). Try to obtain as much information during the interview as possible; the relevance of a particular fact may not become clear until later in the investigation. After the interview, the IO should summarize the interview as completely and accurately as possible and sign the summary for inclusion in the litigation report.

See pages VI-4 through VI-7 for checklists to help you conduct the litigation-report investigation.

***Helpful Hints for Writing the Investigation Report.*** The key to writing a litigation-report investigation is **organization**. IOs must reconstruct the incident in their mind, pulling together all the evidence. They must then document the incident in a **readable** fashion. Remember, the CA and reviewing authorities will want to understand the incident from reading of the facts. Often, a recitation of the facts in chronological, step-by-step form is easiest to follow. Findings of fact should be as clear and concise as possible and reference each enclosure that supports them. There is no need to discuss state-specific law or legal theories; the Tort Claims Unit will research applicable law if a claim is filed in the future.

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

See page VI-8 for a checklist to help you prepare the litigation report.



**Protection.** The IO must clearly mark the top center of each page of the litigation report “FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT.” Copies of the report and any of the working notes of the IO must be maintained in files also marked “FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT” and safeguarded against improper disclosure. OJAG Code 15 is the sole release authority for litigation-report investigations and should be consulted before the report, or any portion thereof is released to anyone. NOTE: The protection of the privileged nature of litigation report investigations is CRITICAL, and these instructions must be followed to maintain and protect that privilege.

**Review by Supervisory Judge Advocate.** After completion of the investigation by the IO, the supervisory judge advocate should review the litigation report for accuracy and thoroughness. The supervisory judge advocate should also coordinate with the Tort Claims Unit in Norfolk to ensure that the report is sufficient to adjudicate any pending or potential claims.

**Forwarding.** Once the IO and the supervisory judge advocate have completed and signed the litigation-report investigation, an advanced copy of the report must be sent to OJAG Code 15, Investigations Branch, 1322 Patterson Avenue SE, Suite 3000, Washington Navy Yard, DC 20374-5066. When a claim is filed, the assigned adjudicator can check the Code 15 Investigations database and determine whether or not a litigation report investigation has been completed. After the litigation-report investigation process has been thoroughly completed and the litigation report endorsed by the CA, the original report and one copy should be sent to OJAG Code 15 at the same address.

THE LITIGATION-REPORT INVESTIGATION CHECKLIST

Preliminary Questions

- \_\_\_\_\_ Did the incident involve a member of the command and/or occur within the command?  
\_\_\_\_\_ If not, are you the appropriate command to conduct the investigation?
- \_\_\_\_\_ Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? If yes, refer to JAGMAN 0201(d) to coordinate with law enforcement.
- \_\_\_\_\_ Is this considered a “major” incident? (Refer to JAGMAN Appendix A-2-a for definition.)  
\_\_\_\_\_ If believed to be a “major” incident, refer to JAGMAN 0203(b)(2), (f), 0204(b)(5), and 0210(a)(1) and consult a judge advocate.

I. Getting Started

- \_\_\_\_\_ Convening Authority (CA) consults with cognizant Judge Advocate
- \_\_\_\_\_ CA appoints an investigating officer (IO) in writing, identifying the judge advocate under whose direction and supervision the investigation will be conducted.
- \_\_\_\_\_ IO must consult with the assigned judge advocate **before** beginning the investigation.
- \_\_\_\_\_ Carefully examine the convening order to determine the scope of your investigation.
- \_\_\_\_\_ Determine when the investigative report is due to the CA.  
\_\_\_\_\_ If you cannot reach that deadline, request an extension.
- \_\_\_\_\_ Review all relevant instructions on your investigation (e.g., convening order, JAGMAN Chapter II, etc.)  
\_\_\_\_\_ Determine which checklists may apply to your investigation and review carefully to determine what information is required. Refer to section X of this handbook.
- \_\_\_\_\_ Decide what the purpose and methodology of your investigation will be.  
\_\_\_\_\_ Where is evidence likely to be located?  
\_\_\_\_\_ How can such evidence best be obtained and preserved?
- \_\_\_\_\_ Decide what the purpose and methodology of your investigation will be.

\_\_\_\_\_ Contemplate whether there will be any need for classified information or handling of classified information. If so, consult the cognizant judge advocate.

**Prior to obtaining any of the below information, consult with the assigned Judge Advocate!**

**II. Handling Witnesses**

**NOTE:** You may want to gather and review other evidence before interviewing any or even all witnesses

\_\_\_\_\_ Draw up a list, to be supplemented as the investigation progresses, of all possible witnesses.

\_\_\_\_\_ Determine if witnesses are transferring, going on leave, hospitalized, etc., which might take them out of the area before review of the investigation is complete.

\_\_\_\_\_ Inform the CA orally, with confirmation in writing, immediately upon learning a material witness might leave the area before completing review of the investigation.

\_\_\_\_\_ Determine what rights advisements may apply to your prospective witnesses and prepare the appropriate forms. Refer to section IX of this handbook

\_\_\_\_\_ Advise any military witness suspected of committing an offense, misconduct, or improper performance of a duty of his/her rights under Article 31, UCMJ. See JAGMAN Appendix A-1-o for Suspect's Rights Acknowledgment/Statement.

\_\_\_\_\_ Advise each witness, before signing any statement relating to the origin, incident, or aggravation of any disease or injury that they have suffered, of their right not to sign such a statement. Refer to JAGMAN 0212(c) and A-1-j for further discussion and a sample from.

\_\_\_\_\_ Is a Privacy Act statement required for the witness? JAGMAN 0207(e) requires Privacy Act statements be obtained from each witness from whom personal information is taken. See JAGMAN Appendix A-2-h for a sample "Privacy Act Statement."

\_\_\_\_\_ Conduct an intensive interview of each witness, obtaining names, places, dates, events, and observations that may be relevant.

\_\_\_\_\_ Witness statements should be objective and as factual in content as possible. If a witness makes a vague statement ("he was drunk"), ask for more detail and try to pin down the actual facts.

\_\_\_\_\_ If a witness is not physically available for an interview, conduct it via telephone or email.

\_\_\_\_\_ Record each interview with detailed notes.

\_\_\_\_\_ Reduce each witness' statement to a complete and accurate narrative statement.

\_\_\_\_\_ DO NOT ask witnesses to make a written statement or sign a statement the investigator has prepared. **DO NOT attach signed witness statements as enclosures to the investigation unless directed to do so by the supervising judge advocate.**

\_\_\_\_\_ Indicate on the narrative statement that it represents an accurate summary of the oral statement made by the witness. Authenticate the statement with your signature.

\_\_\_\_\_ Review list of possible witnesses to ensure you have interviewed all available witnesses.

\_\_\_\_\_ If any witness may be the victim or witness to a crime, consult with NCIS and/or a judge advocate.

**Prior to obtaining any of the below information, consult with the assigned Judge Advocate!**

**III. Documentary Evidence**

\_\_\_\_\_ Make a list, which can be supplemented as the investigation proceeds, of all possible needed documents, to include:

\_\_\_\_\_ Copies of relevant rules, regulations, instructions, standard operating procedures;

\_\_\_\_\_ Relevant correspondence and messages;

\_\_\_\_\_ Personnel records;

\_\_\_\_\_ Medical records, clinical/hospital records, death certificates, autopsy reports, etc.;

\_\_\_\_\_ Official logs and reports; and

\_\_\_\_\_ Required forms (personal injury forms, vehicle accident reports, etc.)

\_\_\_\_\_ Examine your list of possible documents to ensure you have obtained all such documents available to you.

\_\_\_\_\_ If unable to obtain certain documents, attempt to obtain them via email or mail.

\_\_\_\_\_ Obtain original or certified true copies of all documents available to you.

\_\_\_\_\_ For all documents, include source and specific restrictions on disclosure to third parties.

**IV. Other Evidence**

\_\_\_\_\_ Make a list of other information that may assist the reviewing authorities in understanding the incident being investigated (e.g. real objects, physical locations, maps, charts, photographs, personal observations).

## **Litigation-Report Investigations**

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\_\_\_\_\_ Examine your list of possible information to ensure you have obtained all such information personally available to you

\_\_\_\_\_ If unable to obtain certain information, attempt to obtain it via email, telephone, or mail.

\_\_\_\_\_ Attempt to reduce such information to a form that can be conveniently included in your investigative report, such as photographs or sketches.

\_\_\_\_\_ Take all possible steps to ensure physical evidence is kept in an identified place, safe from tampering, loss, and damage, pending review of the investigation.

\_\_\_\_\_ Ensure all photographs and videos are labeled in accordance with section 0210(e) of the JAGMAN

**Drafting the Litigation Report:**  
**(Refer to JAGMAN appendix A-2-g for sample format)**

**I. Preliminary Statement**

- \_\_\_\_\_ Include this statement verbatim: **“This report was prepared under the supervision of a judge advocate in contemplation of litigation by or against the United States.”**
- \_\_\_\_\_ State that all reasonably available evidence was collected or is forthcoming and each directive of the CA has been met
- \_\_\_\_\_ Set forth the nature of the investigation.
- \_\_\_\_\_ Relate any delays or difficulties encountered, including non-availability of evidence or inability to interview relevant witnesses
- \_\_\_\_\_ Explain any conflicts in evidence, whether you consider certain evidence more reliable, and why.
- \_\_\_\_\_ Note any extensions requested and whether approved or denied.
- \_\_\_\_\_ Note the limited participation by any member or advisor.
- \_\_\_\_\_ Note any extensions requested and whether approved or denied.
- \_\_\_\_\_ If social security numbers (SSN) in the report were obtained from sources other than the individual (e.g. from service records), state so. If SSNs are obtained from the individual, a Privacy Act statement should be signed by the individual and included as an enclosure.
- \_\_\_\_\_ Indicate where original items of evidence are maintained, how they are safeguarded, and the name and phone number of the responsible custodian.
- \_\_\_\_\_ Include any other information necessary for a complete understanding of the case.

**II. Findings of Fact:** A fact is something that is or happened.

- \_\_\_\_\_ Understand the differences between the terms “fact,” “opinion,” and “recommendation.”
- \_\_\_\_\_ Conduct an evaluation of the evidence or lack of evidence.
- \_\_\_\_\_ Review any special fact-finding requirements pertaining to the specific incident in the JAGMAN checklists (refer to chapter XI of this handbook).
- \_\_\_\_\_ When drafting findings of fact (FoF), be specific regarding persons, times, places, and events.

- \_\_\_\_\_ After each FoF, reference the enclosures to the report which support that FoF.
  
- \_\_\_\_\_ Identify all persons connected with the incident by full name, grade or rate, service number, organization, occupation or business, and residence.
  
- \_\_\_\_\_ Make appropriate findings of facts for **all** relevant facts, including information already stated in the preliminary statement. The preliminary statement is **not** a substitute for FoF.
  
- \_\_\_\_\_ Place FoFs in chronological and/or logical order.
  
- \_\_\_\_\_ Is each FoF supported by at least one enclosure?
  
- \_\_\_\_\_ Is every enclosure referenced in at least one FoF?
  
- \_\_\_\_\_ Ensure that, when read together, the findings of fact **tell the whole story** of the incident without referring back to the enclosures?
  
- \_\_\_\_\_ Does the story flow? Is it **readable**? Does it **make sense**?
  
- \_\_\_\_\_ Ensure abbreviations and acronyms are adequately explained the first time they appear in the investigation (the final report will be read by persons far removed from and unfamiliar with the originating command).

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

**III. Opinions:** Reasonable evaluations, inferences, or conclusions based on the facts found. Opinions are valuable judgments.

- \_\_\_\_\_ Ensure each of your opinions are exactly that, not FoFs or recommendations.
  
- \_\_\_\_\_ Ensure each opinion references the FoFs that support it.
  
- \_\_\_\_\_ The IO should discuss each opinion with the supervising judge advocate.
  
- \_\_\_\_\_ The supervisory judge advocate should include an opinion regarding the scope of the employment of any government employee whose alleged actions may be the basis for a claim or litigation.

**IV. Recommendations:** Proposals made based on opinions.

- \_\_\_\_\_ Ensure each of your recommendations is exactly that, not FoFs or opinions.
  
- \_\_\_\_\_ Ensure each recommendation is logical and consistent with the FoFs and opinions.
  
- \_\_\_\_\_ Recommend any appropriate corrective, disciplinary, or administrative action.

- \_\_\_\_\_ If you recommend a punitive letter of reprimand, enclose a draft.
- \_\_\_\_\_ If you recommend a non-punitive letter of caution, draft and send under separate cover.
- \_\_\_\_\_ The IO should discuss each recommendation with the supervisory judge advocate.

**V. Signing.**

- \_\_\_\_\_ Is the report signed by the supervisory judge advocate?
- \_\_\_\_\_ Is the report signed by the investigating officer?

**VI. Enclosures.**

- \_\_\_\_\_ Enclosure (1) will be the convening order.
- \_\_\_\_\_ All evidence in logical order.
- \_\_\_\_\_ Is each statement, affidavit, transcript or summary of testimony, photograph, map, chart, document, or other exhibit a separate enclosure?
- \_\_\_\_\_ Are all reproduced documents certified to be true copies?
- \_\_\_\_\_ Have you complied with the special marking requirements applicable to photographs and videos? Refer to JAGMAN 0207(b)(4) and 0210(e) for marking requirements.
- \_\_\_\_\_ Are enclosures listed in the order in which they are cited in the body of the investigation?
- \_\_\_\_\_ Ensure you do not have inappropriate material in the investigation:
  - \_\_\_\_\_ Copies of safety investigations, aircraft mishap reports, Inspector General reports, polygraph examinations, and medical quality assurance investigations should never be included in the litigation-report investigation.
  - \_\_\_\_\_ NCIS investigations include the Report of Investigation (the narrative summary portion) and enclosures. Reports of Investigation should not be included in the litigation-report investigation. However, unless a local NCIS office indicates to the contrary, clearance is not required to include NCIS investigation **enclosures** in the litigation-report investigation.
  - \_\_\_\_\_ Sworn or signed witness statements should not be included as enclosures to the litigation-report investigation unless approved by the supervisory judge advocate and are from a claimant or opposing party to the litigation.



**VII. Concluding Action.**

- \_\_\_\_\_ Is the report marked “**FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT**” on the top center of every page?
  
- \_\_\_\_\_ Have you stretched your imagination to the utmost in gathering and recording all possible information on the incident investigated?
  
- \_\_\_\_\_ Have you carefully proofread the report to guard against embarrassing clerical errors?
  
- \_\_\_\_\_ Have you reviewed the report in its entirety with a cognizant judge advocate?
  
- \_\_\_\_\_ Have you signed the report?
  
- \_\_\_\_\_ Have you arranged for an advanced copy to be forwarded to OJAG Code 15?

**LINE OF DUTY/MISCONDUCT INVESTIGATIONS**

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

**Reason for LOD/misconduct determinations.** Adverse LOD/misconduct determinations can affect several benefits and/or rights administered by the Department of the Navy, including an extension of enlistment, withholding of longevity and retirement multipliers for the time missed, and denial of disability retirement and/or severance pay. An adverse LOD/misconduct determination may also impact survivors' and dependents' rights and benefits.

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

1. *Might* result in permanent disability.
2. Result in a service member's physical inability to perform duty for a period exceeding 24 hours, as distinguished from a period of hospitalization for evaluation or observation. Refer to JAGMAN 0212 for further discussion.
3. Results in death.

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

1. As a result of the member's own "misconduct." There must be clear and convincing evidence that the injury was intentionally incurred or resulted from willful neglect, demonstrating a reckless disregard for foreseeable and likely consequences.
2. While avoiding duty by deserting.
3. While absent without leave and such absence materially interfered with the performance of required military duties. This is generally over 24 hours, but see JAGMAN 0214(d) for further guidance.
4. While confined under the sentence of a court-martial that included an unremitted dishonorable discharge.
5. While confined under sentence of a civil court following conviction of an offense defined as a felony by the law of the jurisdiction where convicted.

**Preliminary Inquiry:** Each injury or disease requiring LOD/misconduct determination MUST, at a minimum, be investigated with a PI; JAGMAN 0222(a)(1). Upon completion of the PI, the command is to report the results to the GCMCA through the use of the Personnel Casualty Report system; JAGMAN

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0222(b), MILPERSMAN 1770-010. A copy of the PI is delivered to the appropriate medical department for review and notation in the health or dental record. If the medical officer and the commanding officer are of the opinion that the injury or disease was incurred “in the line of duty” and “not as a result of the member’s own misconduct,” then appropriate entries stating such are entered in the health record. No further investigation is required unless directed by the GCMCA per JAGMAN 0222(c).

**Command Investigation:** As noted above, the use of the PI and health record entries will provide sufficient documentation where injuries or diseases are found to have occurred while in the line of duty, not due to misconduct. A CI is only required when:

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

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

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

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

**Required warning:** Prior to being asked to make or sign any statement relating to the origin, incidence, or aggravation of any disease or injury that he or she has suffered, any person in the Armed Forces shall be advised of the right not to make such a statement. See JAGMAN Appendix A-2-j for a sample form.

**Mental responsibility:** Suicide and bona-fide suicide attempts, as distinguished from suicide gestures, create a strong inference of a lack of mental responsibility. As such, suicides or bona-fide suicide attempts are considered acts committed in the line of duty/not due to the member’s own misconduct because the member demonstrated a lack of mental responsibility and is therefore not responsible for his

## **Line of Duty/Misconduct Investigations**

or her actions. A self-inflicted injury not prompted by a serious suicidal intent, however, is a suicidal gesture and is deemed to be incurred as a result of the member's own misconduct unless evidence otherwise establishes that the member lacked mental responsibility. For further discussion, refer to JAG-MAN 0218, 0222(d)(1)(c).

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

Line of Duty/Misconduct Checklist (JAGMAN 0212-0232)

- \_\_\_\_\_ Is an LOD/misconduct determination required due to:
  - \_\_\_\_\_ Possible permanent disability?
  - \_\_\_\_\_ Physical inability to perform duties for greater than 24 hours?
  - \_\_\_\_\_ Death?
- \_\_\_\_\_ If a PI must be conducted:
  - \_\_\_\_\_ See Section II of this handbook for considerations when carrying out a PI.
  - \_\_\_\_\_ Consult a cognizant judge advocate.
- \_\_\_\_\_ Report the results of the PI to the GCMCA via the Personnel Casualty Report system.
- \_\_\_\_\_ Ensure medical receives a copy of the PI.
- \_\_\_\_\_ If the CA determines this injury was incurred “in the line of duty, not due to misconduct,” ensure medical record entries stating such are made.
- \_\_\_\_\_ The command must convene a CI when:
  - \_\_\_\_\_ The results of the PI indicate the injury was incurred under circumstances suggesting a finding of “misconduct” might result. These circumstance include, but are not limited to, all cases in which the injury was incurred:
    - \_\_\_\_\_ While the member was using illegal drugs;
    - \_\_\_\_\_ While the member’s blood alcohol content was 0.08% by volume or greater. This does not preclude the convening of an investigation if the blood alcohol content is lower than 0.08 if the circumstances so indicate;
    - \_\_\_\_\_ As a result of a bona fide suicide attempt;
    - \_\_\_\_\_ While the member was acting recklessly or with willful neglect of the **foreseeable** consequences of his/her actions;
  - \_\_\_\_\_ The PI results indicate the injury was incurred under circumstances suggesting a finding of “not in the line of duty” might result. These circumstances include when the member:
    - \_\_\_\_\_ Was in a desertion status at the time of injury;

\_\_\_\_\_ Was in an unauthorized absence status at the time of injury;

\_\_\_\_\_ Was in in the brig with a dishonorable discharge at the time of injury; or

\_\_\_\_\_ Was in civilian confinement as a result of civilian conviction for a felony at the time of injury.

\_\_\_\_\_ There is a reasonable chance of permanent disability and the CO considers an investigation essential to ensuring an adequate official record of the circumstances surrounding the event.

\_\_\_\_\_ The injured member is in the Naval or Marine Corps Reserve and the CO considers an investigation essential to ensuring an adequate official record of the circumstances surrounding the event.

Include the following information in the final report of any CI; the considerations in Section III of this Handbook also pertain. Consult a cognizant staff judge advocate at the outset of the investigation.

\_\_\_\_\_ Identifying information of all persons, military and/or civilian, killed or injured.

\_\_\_\_\_ Name, age, sex.

\_\_\_\_\_ Military grade or rate, regular or reserve, armed force, station or residence.

\_\_\_\_\_ Experience or expertise, where relevant.

\_\_\_\_\_ Civilian title, business or occupation, address.

\_\_\_\_\_ Experience or expertise, where relevant.

\_\_\_\_\_ Obtain all relevant records, including military or civilian police accident reports, hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquest or medical examiners' reports, and pathological, histological, and toxicological reports.

\_\_\_\_\_ Place of injury occurrence, the site, and terrain, to include photographs, maps, charts, diagrams, videos, and other relevant exhibits.

\_\_\_\_\_ Duty status of injured person: leave, liberty, unauthorized absence, active-duty, active-duty for training, or inactive-duty for training.

\_\_\_\_\_ Whether any UA status at the time of injury materially interfered with military duties.

\_\_\_\_\_ Nature and extent of injuries, including description of body parts injured.

\_\_\_\_\_ Extent of hospitalization.

\_\_\_\_\_ Cost from any civilian medical facilities.

\_\_\_\_\_ Amount of time “lost.”

\_\_\_\_\_ Physical factors and impairment.

\_\_\_\_\_ Tired (working excessive hours), hungry, on medication, (prescribed or unauthorized), ill or experiencing dizziness, headaches, or nausea, exposed to severe environmental extremes.

\_\_\_\_\_ Any alcohol or habit-forming drug impairment.

\_\_\_\_\_ Individual’s General appearance, behavior, rationality of speech, and muscular coordination.

\_\_\_\_\_ Quantity and nature of intoxicating agents used.

\_\_\_\_\_ Period of time in which consumed.

\_\_\_\_\_ Results of blood, breath, urine, or tissue tests for intoxicating agents.

\_\_\_\_\_ Lawfulness of intoxicating agents.

\_\_\_\_\_ Mental factors.

\_\_\_\_\_ Emotionally upset (angry, depressed, moody, tense) and/or mentally preoccupied with unrelated matters.

\_\_\_\_\_ Motivation.

\_\_\_\_\_ Knowledge of and adherence to standard procedures.

\_\_\_\_\_ Attempted suicide (good faith/genuine intent to die versus gesture or malingering).

\_\_\_\_\_ Mental disease or defect. Psychiatric evaluation warranted?

\_\_\_\_\_ **LOD Recommendation.**

\_\_\_\_\_ Member was **in the line of duty and not due to misconduct.**

\_\_\_\_\_ Member was **NOT in the line of duty and not due to misconduct.**

\_\_\_\_\_ Member was **NOT in the line of duty and DUE to misconduct.**

\_\_\_\_\_ **DO NOT RECOMMEND** member was **in the line of duty and DUE to misconduct.** If you have, you need to review and discuss further with a judge advocate.

**The CI must clearly document all facts leading up to and connected with the injury or death. Some of the information to be addressed might include, but is not limited to:**

- \_\_\_\_\_ Training.
  - \_\_\_\_\_ Formal or on the job.
  - \_\_\_\_\_ Adequacy.
  - \_\_\_\_\_ Engaged in tasks different from those in which trained.
  - \_\_\_\_\_ Engaged in tasks that were too difficult for skill level.
- \_\_\_\_\_ Emergency responses and/or reaction time.
- \_\_\_\_\_ Supervision (adequate/lax/absent).
- \_\_\_\_\_ Design factors.
  - \_\_\_\_\_ Equipment condition, working order.
  - \_\_\_\_\_ Operating unfamiliar equipment and/or controls.
  - \_\_\_\_\_ Operating equipment with controls the function differently than expected due to lack of standardization.
  - \_\_\_\_\_ Unable to reach all controls from his/her workstation and see and hear all displays, signals, and communications.
  - \_\_\_\_\_ Provided insufficient support materials.
  - \_\_\_\_\_ Using support equipment that was not clearly identified and likely to be confused with similar but non-compatible equipment.
- \_\_\_\_\_ Environmental factors.
  - \_\_\_\_\_ Harmful dust, fumes, and gases without proper ventilation.
  - \_\_\_\_\_ Working in a hazardous environment without personal protective equipment or a line tender.
  - \_\_\_\_\_ Unable to see and hear all communications and signals.
  - \_\_\_\_\_ Exposed to temperature extremes that could degrade efficiency, cause faintness, stroke, or numbness.



## Line of Duty/Misconduct Investigations

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\_\_\_\_\_ Suffering from eye fatigue due to inadequate lighting or glare.

\_\_\_\_\_ Visually restricted by dense fog, rain, smoke, or snow.

\_\_\_\_\_ Darkened ship lighting conditions.

\_\_\_\_\_ Exposed to excessive noise/vibration levels.

\_\_\_\_\_ Personal protective equipment.

\_\_\_\_\_ Using required equipment for the job (e.g., seatbelts, safety glasses, hearing protection).

\_\_\_\_\_ Not using proper equipment due to lack of availability (identify).

\_\_\_\_\_ Not using proper equipment due to lack of comfort or personal image (identify).

\_\_\_\_\_ Using protective equipment that failed and caused additional injuries (identify).

\_\_\_\_\_ Hazardous conditions.

\_\_\_\_\_ Inadequate and/or missing guards, handrail, ladder treads, protective mats, safety devices and/or switches, and skid-proofing.

\_\_\_\_\_ Jury-rigged equipment.

\_\_\_\_\_ Use of improper non-insulated tools.

\_\_\_\_\_ Incorrectly installed equipment.

\_\_\_\_\_ Defective/improperly maintained equipment.

\_\_\_\_\_ Slippery decks or ladders, obstructions.

\_\_\_\_\_ Improper clothing (leather heels, conventional shoes instead of steel-toed shoes, loose-fitting clothes, no shirt, conventional eyeglasses instead of safety glasses).

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

**SPECIAL CONSIDERATIONS IN DEATH CASES**

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

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

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

**Preliminary Inquiry (PI).** The death of a member of the naval service or the death of a civilian that occurs at a place under naval control should be investigated with a PI. At the conclusion of the PI, the CA must determine which option listed in JAGMAN 0204 to exercise and report that decision to the next superior in the chain of command.

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

1. Was the result of a previously known medical condition, and the adequacy of military medical care is not reasonably in issue; or
2. Was the result of enemy action?

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

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

1. The case involves civilian or other non-naval personnel found dead aboard an activity under military control where the death was apparently caused by suicide or other unusual circumstances;
2. the circumstances surrounding the death places the adequacy of military medical care reasonably at issue;

3. there exists a probable “nexus,” or connection, between the naval service and the circumstances of the death of a service member; or
4. it is unclear if enemy action caused the death, such as in possible “friendly-fire” incidents.

**Line of Duty Determinations:** A line of duty (LOD)/misconduct opinion *shall* be made in all death cases retroactive to 10 September 2001 and regardless of nexus to naval service, pursuant to the National Defense Authorization Act of Fiscal Year 2002 and NAVADMIN 065/03. (THIS INCLUDES SUICIDES). LOD determinations affect annuity calculations under the Uniformed Services Survivor Benefits Program (SBP). Refer to JAGMAN 0229(d) for a longer discussion on the impact of LOD determinations on benefits.

SBP annuities are calculated as a percentage of the SBP base amount (normally either 35% or 55% of the base amount). Regardless of retirement eligibility, when a service member’s death is determined to be in the LOD, the SBP base is equal to retired pay as if the service member retired with 100% disability (this equals 75% of the member’s base pay or high-36 pay. JAGMAN 0229(b)). However, if the service member is determined to be not in the LOD, then the SBP eligibility and annuity calculations fall under the rules existing before the NDAA of FY2002; that is, if the service member was ineligible for retirement at the time of death, SBP is inapplicable. If the service member was eligible for retirement at the time of death, then the SBP annuity would be paid to a qualified survivor. However, it will not be computed as total disability retirement. Refer to JAGMAN 0229(c) for further discussion on the intersection between LOD determinations and retirement eligibility.

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

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

**Independent Reviews.** Prior to endorsing an investigation that calls into question the deceased’s conduct, the CA may wish to have the report reviewed to ensure thoroughness, accuracy of the findings, and fairness to the deceased member. The individual selected to conduct this review shall have no previous connection to the investigative process and must be outside the CA’s immediate chain of command. To the extent possible, the reviewer should possess training, experience, and background sufficient to allow critical analysis of the factual circumstances. The reviewer is not to act as the deceased’s representative but rather to provide critical analysis from the perspective of the deceased, tempered by the reviewer’s own experience, training, and education. If the reviewer believes comments are warranted, such comments shall be completed and provided to the CA within ten working days of the report’s delivery to the reviewer. The CA will consider any comments submitted by the reviewer and take any action deemed appropriate. The comments shall be appended to the investigative report.

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

**COMMAND ENDORSEMENTS**

**Command Investigations**

*Review and Forwarding.* Upon completing the investigative report, the IO submits the report to the convening authority (CA), who reviews it and takes one of the following actions:

1. Returns the report to the IO for further inquiry or corrective action, noting any incomplete, ambiguous, or erroneous actions of the IO;
2. Determines the investigation is of no interest to anyone outside the command and files the investigation as an internal report without further forwarding; or
3. Endorses the report and transmits to the next appropriate superior officer, typically the GCMCA over the CA. The CA’s endorsement will have appropriate comments and record approval or disapproval (in whole or in part) of the investigation’s proceedings, findings, opinions, and recommendations. In line of duty/misconduct investigations, the CA is required to specifically approve or disapprove the line of duty/misconduct opinion.

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

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

The CA’s endorsement must specifically indicate what corrective action, if any, is warranted and has been or will be taken. Whenever punitive or non-punitive action is contemplated or taken as the result of the incident under inquiry, such action should be noted in the endorsement in accordance with JAG-MAN 0209(f)(2). CA’s can expect superior commanders to require subsequent reports on how lessons

learned have been implemented; if administrative investigations are to be effective tools, “tenacious follow-up action is required.”

Punitive letters or recommended drafts shall be included as enclosures. Non-punitive letters shall not be mentioned in endorsements or included as enclosures. Refer to JAGMAN 0209(f)(2)(d) for discussion.

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

One complete copy of the investigation should be forwarded with the original for each intermediate reviewing authority (additional copies are required in death cases); JAGMAN 0209(f)(3) and 0232. Advance copies of the report of the investigation shall be forwarded by the CA in the following cases:

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

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

*Retention of CIs.* The CA must maintain a copy of all CIs for at least two years, after which it should be forwarded to a federal records storage facility for storage.

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

## Litigation-Report Investigations

*Review and forwarding.* Upon receiving a litigation-report investigation, the CA reviews the documents and takes one of the following actions in accordance with JAGMAN 0210(f):

1. Return the investigation to the supervisory judge advocate for further inquiry; or
2. Endorse and forward the report.

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

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

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

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

**RIGHTS ADVISEMENT**

**Article 31 Rights**

*Administering Article 31(b), UCMJ, warnings:* Article 31(b) warnings stem from the right, grounded in the Fifth Amendment of the U.S. Constitution, that no person may be compelled to incriminate himself or herself and may not be compelled to answer any question the answer to which may tend to incriminate him or her. Art. 31 goes further than requirements in many civilian jurisdictions; it states that no person subject to the UCMJ may interrogate, or request any statement from, an accused or person suspected of an offense without first informing that person of the nature of the accusation, advising that the suspect does not have to make any statement regarding the offense of which he or she is accused or suspected, and any statement made may be used as evidence in a trial by court-martial. If the investigating officer (IO) fails to give these warnings, the statement will be treated as involuntary and will generally not be admissible at a court-martial.

The application of Art. 31, UCMJ, is broad. Interrogation includes any formal or informal questioning in which an incriminating response is either sought or is a reasonable consequence of such questioning. This includes any witness interview where the person interviewed is suspected of any wrongdoing. It is not enough to generally advise the witness they are suspected of wrongdoing, the investigator must orient the individual to the nature of the suspected misconduct, i.e. reckless driving, driving under the influence, etc. Giving these warnings is critical! While the rights advisement is not required to be in writing, it is best practice to document them in writing. See JAGMAN Appendix A-1-o.

The investigator can and should provide these rights to any service member suspected of committing an offense in a manner that builds rapport with the witness and encourages disclosure and honesty. The investigator must never threaten, coerce, or take any action that would result in a member being forced to give an involuntary statement. Instead, the investigator should carefully advise the member of the nature of the suspicion and the member’s rights, give the member time to review the rights acknowledgment form, and impress upon the member the importance to the investigation of full disclosure and gathering the witness’ perspective or side of the story. Do not, however, promise a service member that what he or she says against his or her interests will not be used against him or her. The investigator does not have the authority to promise such leniency.

**PRIOR QUESTIONING WITHOUT RIGHTS WARNING:** Provide a “cleansing warning” if the service member was previously questioned without receiving an Art. 31(b) rights warning. To do this, advise the service member that (1) the prior statement cannot be used against him or her; (2) even though the service member made the earlier statement, he or she can still choose to remain silent and request a lawyer; and (3) fully advise the member of his or her rights and record any waiver of those rights in writing.

**NEW OFFENSES:** If, during a conversation with or questioning of a service member, the command suspects the service member has committed a new or different offense from the one originally suspected, the questioner must stop the questioning immediately and complete a new rights warning form inclusive of the new or different offense(s).

See JAGMAN Appendix A-1-o for a sample Suspect’s Rights Acknowledgment /Statement. See also QUICKMAN Section I, for a discussion of Art. 31(b) rights.

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**Victim Witness Assistance Program (VWAP) Rights**

Victims and witnesses of criminal offenses have certain rights during the course of a criminal investigation, which may include notice of investigative milestones and opportunities to be heard at critical decision-making points in an investigation, disposition decision, or, potentially, at a trial by court-martial. As such, military criminal law enforcement investigators are required to provide notification and advise-ment of rights pursuant to SECNAV Instruction 5800.11B and OPNAV Instruction 5800.7A. Per OPNAV Instruction 5800.7A, personnel appointed to conduct JAGMAN investigations are explicitly excluded from the term “investigative and law enforcement staff,” meaning the JAGMAN investigating officer should not engage in explaining VWAP and should not provide potential crime victims or wit-nesses with notification or discussion of rights.

The investigating officer should be aware, however, of the possibility that a witness interviewed during the course of an investigation may be a victim or witness of a crime and must take care to coordinate with the appropriate individuals. This could include NCIS or a trained command Victim Witness Assis-tance Coordinator (VWAC). Consult a Judge Advocate to determine whether a witness to an investiga-tion is potentially entitled to notification of rights under the VWAP policy. This is especially true if any allegation of sexual assault or domestic violence arises during the course of an investigation.

**BASIC CHECKLISTS FOR SPECIFIC TYPES OF INCIDENTS**

The following pages contain basic checklists for specific types of incidents. They are not all-inclusive, but rather a starting point for CAs and IOs; adding to or adjusting the checklists to address the specific incident is encouraged. Use these in combination with the checklist for the specific type of investigation you are conducting.

Aircraft Accidents	XI-2
Motor Vehicle Accidents	XI-5
Explosions	XI-8
Stranding of a Ship	XI-10
Collisions and Allisions	XI-13
Accidental or Intentional Flooding of a Ship	XI-15
Fires	XI-17
Loss or Excess of Government Funds or Property	XI-21
Claims for or Against the Government	XI-23
Healthcare Incidents	XI-28
Firearm Accidents	XI-31
Pollution Incidents	XI-32

**AIRCRAFT ACCIDENTS**  
(JAGMAN A-2-n)

**Note:** Participation of the National Transportation Safety Board (NTSB) or the Federal Aviation Administration (FAA) is covered by OPNAVINST 3750.16 (series). Remember, the JAGMAN IO must maintain and protect the privileged nature of the aircraft mishap investigation (AMI) or an aviation mishap board (AMB). The IO shall not rely upon the AMI or AMB nor obtain any modified evidence from the AMI or AMB nor discuss the findings or progress of the AMI or AMB investigation. See JAGMAN A-2-n and consult a judge advocate if you have questions.

\_\_\_\_\_ If it is possible that witnesses will testify before the AMI and the JAGMAN investigation, the JAGMAN IO shall explain to those witnesses the reasons for the apparent duplication of effort; this is particularly important with non-military witnesses. The explanation shall cover:

\_\_\_\_\_ The different objectives of the two investigations;

\_\_\_\_\_ The reasons why procedures vary;

\_\_\_\_\_ The need to preserve the privileged nature of the aircraft mishap investigation; and

\_\_\_\_\_ The fact that since statements provided to the aircraft accident safety investigation are privileged, such statements will not be available to the JAGMAN investigation.

\_\_\_\_\_ Identity of the pilot(s), co-pilot(s), naval flight officer(s) (NFOs), aircrew, and passengers.

\_\_\_\_\_ Background, history, training, and experience of the pilot(s), co-pilot(s), NFO(s), and aircrew.

\_\_\_\_\_ Degree of familiarity with the type of aircraft involved of the pilot(s), co-pilot(s), NFO(s), and aircrew.

\_\_\_\_\_ The military or civilian status of all personnel on board, e.g., regular, reserve, retired; active-duty, inactive duty, inactive duty training; TAD, TDY, leave, liberty, etc.

\_\_\_\_\_ Type, model, and bureau number of the aircraft involved.

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

\_\_\_\_\_ If a privately owned or rented aircraft was involved, identify the owner, authorization for the flight, existence of private insurance, and extent of damage.

## Basic Checklists for Specific Types of Incidents

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

\_\_\_\_\_ Name, age, address (home and work), telephone number, occupation, of anyone injured and/or deceased; and;

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

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

\_\_\_\_\_ Potential stress factors such as fatigue, use of medication, or intoxication.

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

\_\_\_\_\_ the use of night vision goggles;

\_\_\_\_\_ other mission-specific factors relevant to aircraft or aircrew equipment or performance; and

\_\_\_\_\_ review of SPINS or other theater-specific guidance/direction.

\_\_\_\_\_ Review applicable NATOPS sections.

\_\_\_\_\_ Weather conditions during the flight.

\_\_\_\_\_ Preflight history of the aircraft.

\_\_\_\_\_ Compliance or noncompliance with pertinent technical directives, including:

\_\_\_\_\_ flight hours since the last overhaul;

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

\_\_\_\_\_ Flight hours since the last intermediate check.

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

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

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

\_\_\_\_\_ Post-accident examination of the aircraft.

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ Detailed description of all damage to the aircraft, including:

\_\_\_\_\_ Wreckage diagrams, disassembly and inspection reports, wreckage photographs, and data on engine, fuselage, and control surfaces.

\_\_\_\_\_ Examination of the scene of the accident, including:

\_\_\_\_\_ Its precise location;

\_\_\_\_\_ A description of the terrain; and

\_\_\_\_\_ A complete listing and cost of damage or destroyed government and non-government property.

\_\_\_\_\_ Description of rescue operation employed, effectiveness, and any difficulties encountered.

\_\_\_\_\_ All instructions in effect at the time of the accident concerning procedures relating to this particular flight, including applicable local and regional flight rules governing the flight, and copies of air charts in effect and use.

\_\_\_\_\_ Performance data on aircraft in question under the prevailing wind, weather, and temperature conditions.

\_\_\_\_\_ The precise medical cause of any deaths resulting from the accident, substantiated by medical records.

\_\_\_\_\_ Cause, nature, and extent of any injuries, including line of duty/misconduct determinations, if required.

\_\_\_\_\_ Involvement of other aircraft, if any.

\_\_\_\_\_ The roles of supervisory, support, and controlling personnel.

\_\_\_\_\_ When the evidence concerning the accident is sufficient to do so, an opinion or opinions as to the cause or causes of the accident.

\_\_\_\_\_ When the evidence is insufficient to form an opinion or opinions as to the cause or causes of the accident, a description of those factors, if any, which, in the opinion of the investigator(s), substantially contributed to the accident.

### MOTOR VEHICLE ACCIDENTS

**NOTE:** All but the most minor accidents involving Government vehicles and personally owned vehicles must be investigated. Accidents involving \$5,000 or less of property damage or minor personal injuries can be adequately documented by completing a Standard Form 91 (Police Accident Form) alone. See JAGMAN A-2-u and consult a judge advocate if you have questions.

\_\_\_\_\_ Vehicle(s) identified, including vehicle identification number (VIN), license plate number, make, model, year, and color.

\_\_\_\_\_ Identify the driver(s) and owner(s), including names, ages, addresses (home and work), telephone numbers, and email addresses.

\_\_\_\_\_ Military status of driver(s) and passenger(s) at time of the accident (e.g., active-duty, TAD, leave, liberty), grade/rank, and name, address, location, and Unit Identification Code (UIC) of their unit.

\_\_\_\_\_ If an individual dies or is incapacitated as a result of the accident, provide similar identifying information for the next-of-kin or legal representative.

\_\_\_\_\_ If a government vehicle was involved, identify the unit to which the vehicle was assigned, the individual at the unit who authorized the use of the vehicle, and its authorized purpose.

\_\_\_\_\_ If a private vehicle was involved: the name, address, policy numbers, and telephone numbers of the vehicle's insurer, including the amount and type of insurance carried.

\_\_\_\_\_ Time of accident.

\_\_\_\_\_ Light and weather conditions, including effect on driving conditions.

\_\_\_\_\_ Location of accident (e.g., highway number, direction of travel, milepost number, street name, intersection).

\_\_\_\_\_ Road and terrain factors, road characteristics.

\_\_\_\_\_ Any obstructions to the driver's vision.

\_\_\_\_\_ The speed of the vehicles involved as evidenced by testimony of witnesses, skid marks, road condition, and damage to the vehicles.

\_\_\_\_\_ Actions of other vehicles involved in the accident, including any part played in creating the conditions that resulted in the accident.

\_\_\_\_\_ Traffic conditions at the scene and their effect on the accident.

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ Traffic laws and regulations pertinent to the accident, including traffic safety devices, signs, and markings (e.g., school zone, no passing zone, railroad crossing, reduced speed).

\_\_\_\_\_ Any regulations for safety devices installed in the vehicles (e.g., seat belts, child carriers).

\_\_\_\_\_ Copies of statutes, ordinances, or regulations should be enclosures.

\_\_\_\_\_ Mechanical condition of the vehicles involved.

\_\_\_\_\_ If a mechanical defect or condition (e.g., faulty or worn brakes/tires) is determined to have contributed to the accident, include the relevant maintenance history of the vehicle.

\_\_\_\_\_ Physical condition of the driver(s), including intoxication, fatigue, use of medications or drugs, or other medical conditions, number of hours of sleep prior to the accident, number of hours worked.

\_\_\_\_\_ Amount of alcohol consumed and results of any blood alcohol or other test for intoxication.

\_\_\_\_\_ Any medications or drugs (prescription, over the counter, or illegal) taken prior to the accident.

\_\_\_\_\_ Unusual stress or abnormal condition that may have affected the driver's alertness?

\_\_\_\_\_ The opinion section should address any reasonable inferences that may be drawn from these facts relevant to the cause of the accident.

\_\_\_\_\_ The driving experience of the driver(s), both generally and in the type of vehicles being driven, including what state licensed the driver.

\_\_\_\_\_ Any previous loss of driving privileges and driving-related convictions.

\_\_\_\_\_ Safety devices installed and whether they were being used at the time of the accident.

\_\_\_\_\_ Conduct of passenger(s). Opinions may include reasonable inferences on the effect of any passenger's conduct on the driver(s).

\_\_\_\_\_ Facts and opinions relevant to knowledge by any passenger of any impairment of the driver at the time the passenger entered or had a reasonable opportunity to leave the vehicle.

\_\_\_\_\_ Damage to vehicle fully described (including photos, if available) and repair costs.

\_\_\_\_\_ Damage to other property (including photos, if available) and repair costs.

\_\_\_\_\_ Nature and extent of personal injuries and medical cost, documented by relevant medical records, bills, and receipts.

## Basic Checklists for Specific Types of Incidents

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- \_\_\_\_\_ If death resulted, indicate the cause of death to include a copy of the death certificate and any autopsy reports as enclosures.
  
- \_\_\_\_\_ Name, age, address, and telephone number of any witnesses to the accident.
  
- \_\_\_\_\_ A description of the witnesses' location in relation to the accident scene, their ability to observe from that location, and what they saw.
  
- \_\_\_\_\_ Ensure compliance with VWAP requirements. Provide DD Form 2701 to all non-law enforcement witnesses and victims.
  
- \_\_\_\_\_ Name, address, and telephone number of any law enforcement investigators.
  
- \_\_\_\_\_ Include a copy of any law enforcement or police report concerning the accident as an enclosure and indicate the custodian of the original report.
  
- \_\_\_\_\_ Any civilian or military criminal charges brought as a result of the accident and the ultimate resolution of those charges. Consult the cognizant judge advocate.
  
- \_\_\_\_\_ Opinion on the likely cause of the accident. If evidence is insufficient to establish a cause, list factors that, in the opinion of the investigating officer, contributed to the accident.
  
- \_\_\_\_\_ An opinion regarding the contributory or comparative negligence of any party, if any.
  
- \_\_\_\_\_ An opinion concerning any laws, articles of the UCMJ, or regulations violated, if not included in the facts relevant to military or criminal charges filed. Consult a judge advocate.
  
- \_\_\_\_\_ Whether or not the vehicles are economically repairable, and if not, their salvage value.
  
- \_\_\_\_\_ Whether the driver (in the case of a government vehicle) was acting within the scope of employment pursuant to state law and whether injuries sustained by military members were incurred in the line of duty or as a result of misconduct. See chapter VII of this manual.
  
- \_\_\_\_\_ Whether disciplinary action should be taken and a specific recommendation on forum.
  
- \_\_\_\_\_ If government property was damaged, a recommendation as to disposition of the property.
  
- \_\_\_\_\_ Whether the Government should initiate a claim.
  
- \_\_\_\_\_ Pertinent recommendations on matters of safety procedures.

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



## EXPLOSIONS

**NOTE:** Criminal law enforcement investigations are required for any fire or explosion of unknown origin affecting Navy property or property under Navy/Marine Corps control. Any such investigation must be coordinated with NCIS. Consult a Judge Advocate and see JAGMAN A-2-t.

\_\_\_\_\_ Date, time, and location of the explosion by compartment name and number.

\_\_\_\_\_ Type of explosion.

\_\_\_\_\_ Kind and quantity of the materials, gases, etc., that were involved.

\_\_\_\_\_ If there were multiple explosions, measurable time intervals, if any, between explosions.

\_\_\_\_\_ Existence of barricades and protective gear and the effect of the explosion on them.

\_\_\_\_\_ Existence of any natural obstructions such as a hill, forest, or other natural object intervening between the site of the explosion and the affected areas.

\_\_\_\_\_ Description of any loss or damage to Government and private property.

\_\_\_\_\_ Estimated dollar amount needed to replace or repair the loss or damage to property.

\_\_\_\_\_ Range and extent of damage as indicated by maps or photographs showing:

\_\_\_\_\_ Radius of complete destruction;

\_\_\_\_\_ Radius of structural damage beyond economical repair;

\_\_\_\_\_ Radius of repairable structural damage;

\_\_\_\_\_ Radius of general glass breakage;

\_\_\_\_\_ Distances that significant missiles were projected, including kind and weight;

\_\_\_\_\_ Distance between locations, if explosions occurred at more than one location;

\_\_\_\_\_ Distance between ships and other vessels or structures affected distances to nearby ships or structures not affected; and

\_\_\_\_\_ Distances to nearby ships or structures not affected.

\_\_\_\_\_ Approximate shape and dimensions of crater(s), if any, including depth and kind.

\_\_\_\_\_ Weather and atmospheric conditions and their effect on shock waves.

## Basic Checklists for Specific Types of Incidents

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- \_\_\_\_\_ Personnel involved and extent of their involvement.
- \_\_\_\_\_ Personnel qualifications in terms of PQS system or other required safety qualifications.
- \_\_\_\_\_ Level of training of personnel involved and whether training level met required standards.
- \_\_\_\_\_ Identity of personnel injured or killed (with full descriptions of injuries supported by medical records and autopsy reports).
- \_\_\_\_\_ Description of the safety precautions or operating procedures that were in effect at the time of the explosion and whether they were observed or violated.
- \_\_\_\_\_ Opinions on the probable cause(s) of the explosion.
- \_\_\_\_\_ An environmental assessment of the damage caused by the explosion may be necessary, particularly if there is evidence of chemical contamination of the surrounding area. Consult NCIS and the nearest Navy Region Legal Service Office/Marine Legal Services Support Team or your cognizant Staff Judge Advocate.

### STRANDING OF A SHIP

**NOTE:** The stranding of a navy ship could constitute a major incident. A court of inquiry will normally be convened unless a preliminary inquiry indicates a command investigation will be sufficient. These incidents may also involve aspects of admiralty law. Consult with OJAG code 15 and the cognizant judge advocate.

- \_\_\_\_\_ Tactical situation.
- \_\_\_\_\_ Pertinent logs, charts, orders, and regulations.
- \_\_\_\_\_ Condition of the sea and weather.
  - \_\_\_\_\_ Light conditions, visibility.
  - \_\_\_\_\_ Rate and direction of the tidal stream.
  - \_\_\_\_\_ Time of tide.
  - \_\_\_\_\_ Any other factors involving environmental or natural elements.
- \_\_\_\_\_ Navigational factors.
  - \_\_\_\_\_ Sailing directions, coast pilot.
  - \_\_\_\_\_ Fleet guide.
  - \_\_\_\_\_ Track laid out, DR plot indicated, fixes plotted, track projected.
  - \_\_\_\_\_ Notices to mariners.
  - \_\_\_\_\_ Compass errors, application.
  - \_\_\_\_\_ Depth of water and type of bottom.
  - \_\_\_\_\_ Navigation reference points coordinated: radar, visual, points logged, plotting teams coordinated.
- \_\_\_\_\_ Material factors.
  - \_\_\_\_\_ Radar, fathometer, compasses, ship's depth indicators, ship's speed log.
  - \_\_\_\_\_ Alidades, bearing circles, peloruses, periscopes, bearing repeaters.
  - \_\_\_\_\_ Ship's draft/submerged keel depth.

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ Ship's anchor.

\_\_\_\_\_ Ship's control system.

\_\_\_\_\_ Navigation fix errors and navigation reset errors.

\_\_\_\_\_ Ship's course and speed.

\_\_\_\_\_ Mechanical or electronic deficiencies, or failure of the ship.

\_\_\_\_\_ Ascertain the cause and responsibility for the stranding and resulting damage.

\_\_\_\_\_ Was the proper chart provided by the Department of the Navy used?

\_\_\_\_\_ Was the position of the ship accurately determined at the last favorable opportunity to avoid the casualty?

\_\_\_\_\_ If not, when was it last accurately ascertained?

\_\_\_\_\_ Steps taken during the time land was in sight to correct the ship's course and speed.

\_\_\_\_\_ Personnel factors (posted and/or qualified): CDO, OOD, diving officer, navigator, piloting officer, fathometer operator, lookouts, helmsman, planesman, bearing takers, CIC team, leadsman, line handlers, local pilot.

\_\_\_\_\_ Location of conning officer.

\_\_\_\_\_ Were personnel qualified in accordance with PQS requirements for systems operation and maintenance?

\_\_\_\_\_ Communications factors: radio, telephone, IC systems, oral (audibility/understanding).

\_\_\_\_\_ Assistance factors:

\_\_\_\_\_ Pilot: experience, language barrier.

\_\_\_\_\_ Tugs, line handlers.

\_\_\_\_\_ Organizational factors:

\_\_\_\_\_ Ship organization directives.

\_\_\_\_\_ Watch organization directives.

\_\_\_\_\_ Training and qualifications.

## **Basic Checklists for Specific Types of Incidents**

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\_\_\_\_\_ Action taken after grounding: Ship secured to prevent further damage (anchors kedged out, ballast shifted, cargo shifted).

\_\_\_\_\_ Draft readings, soundings taken.

\_\_\_\_\_ Damage surveyed.

\_\_\_\_\_ Excess machinery secured.

### COLLISIONS AND ALLISIONS

**NOTE:** all vessel collisions and allisions (a vessel and fixed object) are admiralty incidents. Consult JAGMAN Chapter XI and OJAG (code 15) for required investigations and guidance. See JAGMAN Appendix A-2-q.

- \_\_\_\_\_ Tactical situation at the time of the collision.
- \_\_\_\_\_ Personnel manning and qualifications:
  - \_\_\_\_\_ CDO, OOD, diving officer, helmsman, lookouts;
  - \_\_\_\_\_ CIC team (sonar team, fire control tracking party, and navigation team); and
  - \_\_\_\_\_ Phone talkers.
- \_\_\_\_\_ Location of conning officer.
- \_\_\_\_\_ Location of commanding officer.
- \_\_\_\_\_ Material factors:
  - \_\_\_\_\_ Radio, telephone, oral, and signal systems.
  - \_\_\_\_\_ Interferences (e.g., background noise level).
- \_\_\_\_\_ Rules of the road factors:
  - \_\_\_\_\_ Operating area factors.
  - \_\_\_\_\_ Adherence to op area boundaries
  - \_\_\_\_\_ Existence of safety lanes.
  - \_\_\_\_\_ Depth constraints (depth separation, depth changes, out-of-layer operations).
- \_\_\_\_\_ Weather, visibility, and other environmental factors:
- \_\_\_\_\_ Assistance factors:
  - \_\_\_\_\_ Pilot: experience, language barrier.
  - \_\_\_\_\_ Tugs, line handlers.

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ Aids to navigation:

\_\_\_\_\_ Use and accuracy of charges;

\_\_\_\_\_ Sailing directions, coast pilot;

\_\_\_\_\_ Fleet guide;

\_\_\_\_\_ Tide and current conditions as calculated and as experienced.

\_\_\_\_\_ Maintenance of required navigational standards.

\_\_\_\_\_ Notices to mariners.

\_\_\_\_\_ Radar and visual points designated and logged, and.

\_\_\_\_\_ Navigation team properly briefed.

**ACCIDENTAL OR INTENTIONAL FLOODING OF A SHIP**

**NOTE:** See JAGMAN A-2-r for a discussion of what constitutes significant flooding.

\_\_\_\_\_ Is flooding “significant” enough to document? See JAGMAN Appendix A-2-r for discussion of significant flooding:

\_\_\_\_\_ Location of flooding (compartment noun name and number).

\_\_\_\_\_ Date and time of flooding.

\_\_\_\_\_ Type of flooding (e.g., fresh or salt water, oil, JP-5, etc.).

\_\_\_\_\_ Source of flooding (internal or external).

\_\_\_\_\_ Pipe rupture or valve failure.

\_\_\_\_\_ Tank rupture/hull rupture/shaft seal failure.

\_\_\_\_\_ Open to sea through designed hull penetration.

\_\_\_\_\_ Other.

\_\_\_\_\_ Flooding detection method.

\_\_\_\_\_ Time duty emergency party called away, and general quarters sounded.

\_\_\_\_\_ Response time.

\_\_\_\_\_ Dewatering equipment used (effective, available, operative).

\_\_\_\_\_ Time flooding was stopped or brought under control.

\_\_\_\_\_ Time required to dewater.

\_\_\_\_\_ When space was last inspected prior to flooding?

\_\_\_\_\_ Compartments flooded and rate of flooding.

\_\_\_\_\_ Amount of flooding (effect on list, trim, or depth control).

\_\_\_\_\_ Draft forward and aft before and after damage.

\_\_\_\_\_ List of ship before and after damage.

\_\_\_\_\_ General distribution and amount of variable weights before damage.



## Basic Checklists for Specific Types of Incidents

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

**FIRES**

**NOTE:** if the investigated mishap is a fire of unknown origin affecting DON personnel or property under Navy or Marine Corps control, coordinate any investigation with NCIS and consult with a judge advocate.

\_\_\_\_\_ Is fire “significant” enough to document? See JAGMAN Appendix A-2-s for discussion.

\_\_\_\_\_ Date, time, and location of fire (compartment noun name and number).

\_\_\_\_\_ Class of fire (A, B, C, D).

\_\_\_\_\_ Time fire was detected.

\_\_\_\_\_ Means of detection.

\_\_\_\_\_ Time fire started.

\_\_\_\_\_ Time fire reported.

\_\_\_\_\_ Time fire alarm sounded.

\_\_\_\_\_ Time fire was located.

\_\_\_\_\_ Time fire fighting started.

\_\_\_\_\_ Time General quarters sounded or fire party called away.

\_\_\_\_\_ Time assistance was requested.

\_\_\_\_\_ Time assistance arrived.

\_\_\_\_\_ Time boundaries were set.

\_\_\_\_\_ Time fire extinguished.

\_\_\_\_\_ Time reflash watch set.

\_\_\_\_\_ Fire did/did not reflash.

\_\_\_\_\_ Extinguishing agent(s) used, indicate effectiveness.

\_\_\_\_\_ Fire main water (submarines: trim/drain system water).

\_\_\_\_\_ Light water, foam (portable or installed), CO2 (portable or installed), PKP, steam smothering, flooding, other.

## Basic Checklists for Specific Types of Incidents

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- \_\_\_\_\_ Extinguishing equipment (indicate availability and operability).
  - \_\_\_\_\_ Pumps (portable or installed) size and quantity.
  - \_\_\_\_\_ Nozzles/applicators (LC and HC).
  - \_\_\_\_\_ Foam maker, vehicles, educators, type and size of hoses, other.
- \_\_\_\_\_ Firefighting organization used.
  - \_\_\_\_\_ Nucleus fire party.
  - \_\_\_\_\_ Repair party (condition I or II watches).
  - \_\_\_\_\_ In-port fire party.
  - \_\_\_\_\_ Outside assistance: detail and explain.
  - \_\_\_\_\_ Fire party/repair locker personnel assigned per appropriate publications, ships organization and regulations manual, battle bill, etc.
- \_\_\_\_\_ Number of responding personnel and their firefighting and damage control training levels.
- \_\_\_\_\_ Personnel duties and responsibilities. Were duties assigned in writing?
- \_\_\_\_\_ Were fire/repair locker organization charts properly maintained?
- \_\_\_\_\_ Were damage control system diagrams up to date and available for use?
- \_\_\_\_\_ What system of communications were used?
- \_\_\_\_\_ Were communications effectively established between control stations?
- \_\_\_\_\_ What protective equipment was used? Indicate details and assessments of availability, operability, and effectiveness?
  - \_\_\_\_\_ OBAs, EAB masks, fire suits, boots, gloves, helmets, other.
  - \_\_\_\_\_ Alarm system.
  - \_\_\_\_\_ CO2 flooding, high temperature, other.
- \_\_\_\_\_ How did the fire spread?
  - \_\_\_\_\_ Through hot deck or bulkhead.
  - \_\_\_\_\_ Through hole in deck or bulkhead.

## Basic Checklists for Specific Types of Incidents

\_\_\_\_\_ By explosion (type).

\_\_\_\_\_ Through vent ducts.

\_\_\_\_\_ By liquid flow.

\_\_\_\_\_ By wind.

\_\_\_\_\_ What electric power was in the area?

\_\_\_\_\_ Jettison bill (current, used)

\_\_\_\_\_ If the ship was underway, course changes (snorkeling, surfaced).

\_\_\_\_\_ Automatic vent closures?

\_\_\_\_\_ Magazines flooded?

\_\_\_\_\_ Operational problems?

\_\_\_\_\_ Were OBAs/canisters effective, were there a sufficient number?

\_\_\_\_\_ Were EABs effective?

\_\_\_\_\_ Was there sufficient water and pressure?

\_\_\_\_\_ Were there flooding problems?

\_\_\_\_\_ Were there drainage problems (installed/portable)?

\_\_\_\_\_ Were there lighting problems? Explain.

\_\_\_\_\_ Was adequate equipment readily available?

\_\_\_\_\_ Were adequate intra-ship communications available?

\_\_\_\_\_ Were there other issues/problems? Explain.

\_\_\_\_\_ Material discrepancies of any equipment used.

\_\_\_\_\_ Determine all possible heat/ignition sources, then eliminate those that are improbable.

\_\_\_\_\_ Were operating personnel qualified in accordance with PQS requirements for the systems' operation and maintenance?

\_\_\_\_\_ Identity of personnel injured or killed (with full description of injuries, medical records, autopsy reports).

## Basic Checklists for Specific Types of Incidents

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- \_\_\_\_\_ Description of physical effects of the fire.
- \_\_\_\_\_ Photographs or diagrams to document the range and extent of damage.
- \_\_\_\_\_ Date of last inspection of involved spaces with any noted discrepancies.
- \_\_\_\_\_ Ship's location at time of fire.
- \_\_\_\_\_ Ship's condition of readiness at time of fire.
- \_\_\_\_\_ Fire's effect on ship's ability to carry out its mission.
- \_\_\_\_\_ Estimated dollar amount of damage or repairs required.
- \_\_\_\_\_ Overall assessment of the effectiveness of fire/repair locker organization and leadership.
- \_\_\_\_\_ Opinion on the cause of fire and the factors that contributed to the spread of the fire.
- \_\_\_\_\_ Opinion on whether the occurrence of a similar type of fire is possible on a similar ship.

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

**Note on loss of funds:** Chapter 6 of volume 5 of the Department of Defense Financial Management Regulation, (DoD 7000.14-R), “Disbursing Policy and Procedures,” provides specific procedures, findings, and recommendations for investigation of major losses of funds due to physical loss, or illegal, incorrect, or improper payment. Command investigations appointed under the JAGMAN are used in the case of major losses of funds, defined as those losses of \$750 or more or any physical loss where there is evidence of fraud within the accounting function, regardless of the dollar amount.

**Note on loss of property:** For losses of government property, the command may use a survey procedure under applicable Navy or Marine Corps regulations in lieu of a JAGMAN investigation. Use of the DD form 200, Financial Liability Investigation of Property Loss meets the investigative requirements in most situations.

\_\_\_\_\_ Any accountable individual must receive special notice under section (e) of JAGMAN Appendix A-2-v.

\_\_\_\_\_ What items were lost or found in excess and the exact dollar value of the loss or excess, e.g., property, vouchers, cash, and so forth.

\_\_\_\_\_ The nature of the loss or excess (inventory gain or loss, cash shortage or overage, etc.).

\_\_\_\_\_ In cases of loss of funds, whether the loss was:

\_\_\_\_\_ loss of proceeds of sale of government property;

\_\_\_\_\_ physical loss of funds (e.g., embezzlement or fraudulent acts of subordinate finance personnel); or

\_\_\_\_\_ result of illegal or improper payment (e.g., payments on forged checks or vouchers).

\_\_\_\_\_ How the loss or excess is being carried in the command’s accounts.

\_\_\_\_\_ Identity and position of the accountable officer.

\_\_\_\_\_ Identity and position of any other person who had custody of the funds or property.

\_\_\_\_\_ The general reputation of the accountable individuals for honesty and care in the handling and safeguarding of funds or property entrusted to them.

\_\_\_\_\_ Experience and training of accountable individuals in handling funds or property.

\_\_\_\_\_ Workload, including collateral duties, of the accountable individual at the time of the irregularity.

## **Basic Checklists for Specific Types of Incidents**

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\_\_\_\_\_ Description, with diagrams where appropriate, of the physical working conditions of the accountable individual who incurred the loss or excess.

\_\_\_\_\_ Physical security arrangements and devices.

\_\_\_\_\_ Security containers and persons with access to them and whether they were being used properly at the time of the irregularity.

\_\_\_\_\_ Internal control procedures in the division, department, or office where the irregularity occurred and whether they were being applied properly at the time of the irregularity.

\_\_\_\_\_ Information on recent inspections, assist visits, management control reviews, or other procedure evaluations.

\_\_\_\_\_ Identification of regulations pertinent to the handling of the property or funds involved and whether such regulations followed.

\_\_\_\_\_ Description of remedial measures taken to prevent recurrence of the irregularity.

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

\_\_\_\_\_ An opinion on whether the loss or excess was proximately caused by the fault or negligence of any accountable individual or by an act of a non-accountable individual that can be the basis for financial liability under Section 0607, Chapter 6, DOD 7000.14-R.

**CLAIMS FOR OR AGAINST THE GOVERNMENT**

**NOTE:** Consult with a judge advocate regarding the type of investigation to convene in any case in which there is a possibility of a claim for or against the government; see JAGMAN A-2-m.

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

\_\_\_\_\_ How they were involved.

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

\_\_\_\_\_ Injured party.

\_\_\_\_\_ Owner of property damaged.

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

\_\_\_\_\_ Witness; provide VWAP information as appropriate.

\_\_\_\_\_ Information on how those involved may be located.

\_\_\_\_\_ Permanent address that will be accurate for at least five years after the accident.

\_\_\_\_\_ Each individual's status (active-duty, reserve, DON/DoD civilian, contractor, dependent, civilian, etc.).

\_\_\_\_\_ Military: regular or reserve, active-duty, TAD, leave, liberty, etc., at the time of the incident.

\_\_\_\_\_ Civilians: Federal employees, personal services contractors employed by independent contractors, etc.

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

\_\_\_\_\_ Include a full description of the date, time, and place of incident: location, terrain, weather, light conditions, obstructions, and photographs of the site.

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

\_\_\_\_\_ Identity and position of the accountable officer.



## Basic Checklists for Specific Types of Incidents

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- \_\_\_\_\_ Factual description of how the individual(s) was injured.
  - \_\_\_\_\_ What equipment was being used?
  - \_\_\_\_\_ Who was operating the equipment?
  - \_\_\_\_\_ Who was supervising (or should have been supervising)?
  - \_\_\_\_\_ Whether equipment failed or was operated incorrectly?
  - \_\_\_\_\_ If equipment failure, maintenance history of the equipment.
- \_\_\_\_\_ If the injury occurred on Government property.
  - \_\_\_\_\_ Condition of the property.
  - \_\_\_\_\_ Who is responsible for the property's upkeep?
  - \_\_\_\_\_ Authority for the injured party to be present on Government property.
- \_\_\_\_\_ Nature and extent of personal injuries.
  - \_\_\_\_\_ Amount of medical, dental, and hospital expenses incurred; supported by itemized bills or receipts for payment.
- \_\_\_\_\_ Nature and extent of treatment.
  - \_\_\_\_\_ Number of days hospitalized.
  - \_\_\_\_\_ Name(s) and address of all treating hospitals and medical facilities.
  - \_\_\_\_\_ Name(s) and addresses of all treating physicians or other caregivers.
  - \_\_\_\_\_ Extent and nature of all follow-on or outpatient care.
  - \_\_\_\_\_ Prognosis.
  - \_\_\_\_\_ Degree of disability, if any (total, partial permanent, partial non-permanent).
  - \_\_\_\_\_ Necessity for future treatment and estimated costs.
- \_\_\_\_\_ Salary and/or earnings lost due to time lost from employment.
  - \_\_\_\_\_ Actual number of workdays lost.
  - \_\_\_\_\_ Estimated compensation for that period based on hourly wage or salary.

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ Full-time, part-time, or self-employed.

\_\_\_\_\_ Diminished earning capacity.

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

\_\_\_\_\_ If an individual died:

\_\_\_\_\_ Time of death relative to the injury.

\_\_\_\_\_ Intervening treatment and state of consciousness during that treatment.

\_\_\_\_\_ Cause of death as established by autopsy.

\_\_\_\_\_ Pre-existing medical conditions.

\_\_\_\_\_ Age.

\_\_\_\_\_ Occupation.

\_\_\_\_\_ Burial expenses.

\_\_\_\_\_ Heirs and contact information.

\_\_\_\_\_ Amount of property damage.

\_\_\_\_\_ Include before and after photographs, if possible.

\_\_\_\_\_ Estimates or bills of repair and receipts.

\_\_\_\_\_ Whether any pre-existing damage existed.

\_\_\_\_\_ Original purchase price.

\_\_\_\_\_ Date of purchase.

\_\_\_\_\_ Salvage value of property.

\_\_\_\_\_ Government property damaged.

\_\_\_\_\_ Estimates or bills of repair and receipts.

\_\_\_\_\_ Original purchase price.

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ Date of purchase.

\_\_\_\_\_ Salvage value of property.

\_\_\_\_\_ If no damage, so state.

\_\_\_\_\_ Whether the claimant has insurance for this type of damage or injury.

\_\_\_\_\_ Insurance company and policy number.

\_\_\_\_\_ Policy provisions relevant to this claim or incident.

\_\_\_\_\_ Extent of coverage and limits on liability.

\_\_\_\_\_ Whether a claim has been or will be made against the insurance carrier, and the status of any such claim.

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

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

\_\_\_\_\_ Whether civilian or military criminal charges were filed.

\_\_\_\_\_ Jurisdiction in which they were filed.

\_\_\_\_\_ Status or final disposition of those charges.

\_\_\_\_\_ Any law, regulation, or order relevant to the incident and whether it was violated.

\_\_\_\_\_ If a stray animal was involved, whether the jurisdiction has an “open range” law (if yes, attach a copy as an enclosure).

\_\_\_\_\_ Opinion on whether military personnel involved were acting in the scope of their employment at the time of the incident.

\_\_\_\_\_ Opinion regarding the cause(s) of the incident. If the facts are insufficient to form an opinion regarding the cause(s), indicate factors that significantly contributed to the incident.

\_\_\_\_\_ Opinion regarding fault or negligence.

\_\_\_\_\_ Opinion on whether a claim is likely to be filed, the amount likely to be claimed, and names and addresses of any potential claimants and their legal representatives.

\_\_\_\_\_ Opinion on whether a claim should be filed by the Government for personal injuries to its employees or property damage.

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ Sonic boom/jet noise/artillery noise.

\_\_\_\_\_ Detailed description of the alleged damage.

\_\_\_\_\_ Photographs of the damaged building or structure involved, including significant details of construction, size of rooms, age, and general state of repair.

\_\_\_\_\_ Detailed examination and description of any alleged plaster damage.

\_\_\_\_\_ Existence or absence of glass damage in the damaged building or structure and whether other glass damage resulting from the incident was reported and verified.

\_\_\_\_\_ Whether windows and doors were open or shut at the time of the boom.

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

\_\_\_\_\_ Existence or absence of similar damage to other buildings in the immediate area.

\_\_\_\_\_ Type(s) of surrounding community development, type(s) of construction, and density of buildings or structures in the immediate area, etc.

\_\_\_\_\_ Occurrence or absence of seismic disturbances registered in the locality at the time.

\_\_\_\_\_ Other potential sources of damage, such as heavy truck or rail traffic, explosions or earthquakes, distance and direction relative to the claimant's building or structure.

\_\_\_\_\_ Any unusual weather or climatic conditions that may have affected the claimant's building or structure.

\_\_\_\_\_ Complete physical description of aircraft alleged to have caused the damage, including markings, whether jet or prop-driven, any other distinctive characteristics.

\_\_\_\_\_ Full description of the approximate altitude, maneuvers, speed, direction of flight, time of day, date, formation, and number of aircraft.

\_\_\_\_\_ Any complaints of noise or sonic booms received by any duty office that coincides with the alleged damage.

\_\_\_\_\_ Authorization and description of flight, aircraft involved, applicable charts, and air traffic controller transcripts or audiotapes of aircraft in the vicinity of the damage.

**HEALTHCARE INCIDENTS**

**NOTE:** Investigations under JAGMAN A-2-x are separate from any quality assurance investigation conducted by the staff of a military treatment facility solely for quality assurance purposes. Questions regarding the investigation of healthcare incidents should be directed to the bureau of medicine and surgery risk management department (M3/5HCS5).

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

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ A copy of the claim and any other documents or correspondence that shed light on the (potential) claimant's contentions concerning the matter.

\_\_\_\_\_ Secure all medical records (inpatient and outpatient), and special studies (x-rays, tissue slides, EKG tapes, fetal monitoring strips, etc.).

\_\_\_\_\_ Indicate date secured, person who secured the items, and current location and custodian of each item.

\_\_\_\_\_ Complete copy of medical record. Entries must be reviewed to ensure handwriting is legible. If illegible, typed transcripts should be attached to the investigation.

\_\_\_\_\_ All special studies must be retrospectively reviewed to assess whether original interpretations were accurate.

\_\_\_\_\_ Retrospective reviews must be structured as "blind" reviews, e.g., the reviewer should not be aware of the previous interpretation.

\_\_\_\_\_ A summary with the name and credentials of the person conducting the retrospective review and that person's findings must be included with the investigation. The summary should not be signed by the reviewer.

\_\_\_\_\_ Copies of all relevant documents.

\_\_\_\_\_ MTF staff bylaws.

\_\_\_\_\_ MTF policies, procedures, and protocols (clinical, surgical, nursing, and ancillary services such as the laboratory or pharmacy, and health care administrative policies) in effect at the time of the incident.

\_\_\_\_\_ All relevant logbook entries pertaining to the patient maintained by labs, clinics, offices (e.g., emergency room logs reflecting arrival and departure times, ambulance logbook and trip sheets, rescue service reports, centralized appointment registers and printouts, and pharmacy history printouts.

\_\_\_\_\_ All information pamphlets, brochures, or sheets that were provided to the patient.

\_\_\_\_\_ In cases involving contract providers, a copy of the contract.

\_\_\_\_\_ In cases involving possible equipment or device failure:

\_\_\_\_\_ Photographs of the equipment or devices taken before the equipment or device is moved, used again, altered, tested, or repaired. Photographs must be annotated to reflect the time, date, and identity of the person who took the photograph.

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ Date, location, and names of persons who evaluated or tested the equipment or device and the findings thereof. Equipment or devices must be removed from service and secured until examined by appropriate technical representatives. Equipment or devices must not be used, altered, tested, or repaired until properly evaluated.

\_\_\_\_\_ Copies of maintenance reports and any protocols.

\_\_\_\_\_ Review of staffing levels (physician, nursing, corpsman, and ancillary) at time of incident.

\_\_\_\_\_ “Currency” of members to perform their duties at time of incident.

\_\_\_\_\_ “Orientation” to perform the duties assigned at time of incident.

\_\_\_\_\_ The standard of care for any practices, procedures, policies, protocols, or systems involved in the incident and the basis that establishes that standard of care. Provide a copy of relevant medical literature, text, treatises, articles, policy, practices, or procedures.

\_\_\_\_\_ Clinical procedures, surgical procedures, nursing procedures, ancillary services such as laboratory or pharmacy procedures, and health care administrative policies. The source and date of documents relevant to the standard of care must be provided.

\_\_\_\_\_ Summaries of expert reviews of the care documented by the investigation.

\_\_\_\_\_ Identify the reviewer and the reviewer’s credentials.

\_\_\_\_\_ Evaluation (expert opinion) describing duty owed to the patient (standard of care).

\_\_\_\_\_ Manner in which the duty owed was either met or not met.

\_\_\_\_\_ In instances where the duty was not met, an opinion on whether the act or omission resulted in harm to the patient and, if so, a description of the harm, including an explanation of how the harm may affect the patient in the future.

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

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

**FIREARM INCIDENTS**

**NOTE:** If an incident involves accidental or apparently self-inflicted gunshot wounds, a CI is required. If any person is injured, cross-reference with guidance on LOD/misconduct investigations. Consult a judge advocate and JAGMAN A-2-x.

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



**POLLUTION INCIDENTS**

**NOTE:** Reference should be made to OPNAVINST 5090.1(series) CH-1 for additional fact-finding and reporting requirements. Additionally, this may require the use of a litigation report and/or be treated as an admiralty incident. Consult a judge advocate and JAGMAN A-2-y.

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

## Basic Checklists for Specific Types of Incidents

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\_\_\_\_\_ Equipment used.

\_\_\_\_\_ Effectiveness of equipment and personnel.

\_\_\_\_\_ Availability and readiness of equipment and personnel.

\_\_\_\_\_ Nature and extent of damages to Government and private property.

\_\_\_\_\_ Personal injuries, if any, including name of injured parties and extent of injuries.

\_\_\_\_\_ Relevant training documents (e.g., Personnel Qualification Standard (PQS) records), deck and/or watch logs, and engineering logs that support the facts.

\_\_\_\_\_ An opinion regarding the cause of the spill.

\_\_\_\_\_ Faulty equipment, container, fitting, valve.

\_\_\_\_\_ Operator error/safety.

\_\_\_\_\_ Operational error.