



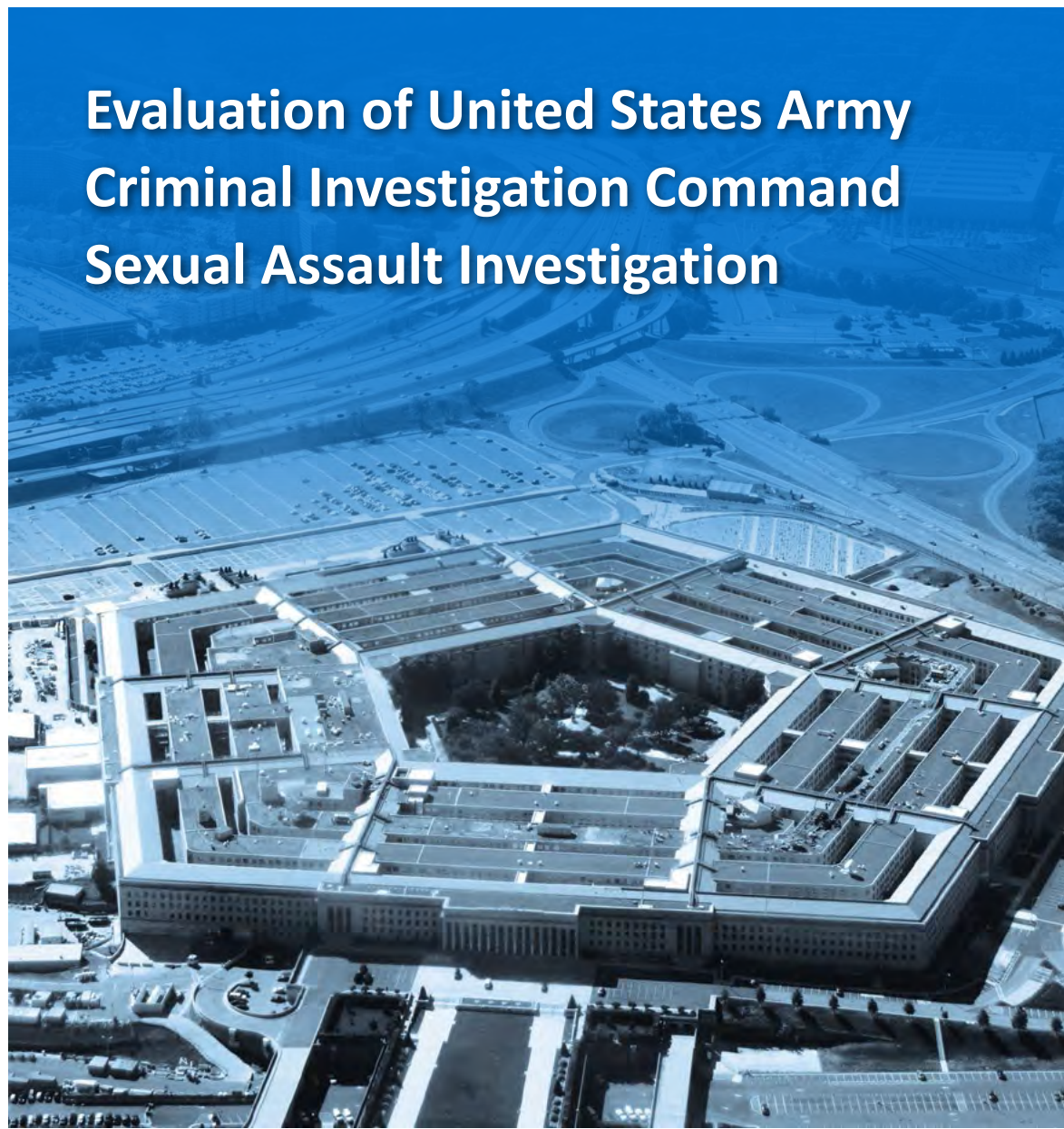
INSPECTOR GENERAL

U.S. Department of Defense

NOVEMBER 10, 2015



Evaluation of United States Army Criminal Investigation Command Sexual Assault Investigation



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Results in Brief

Evaluation of United States Army Criminal Investigation Command Sexual Assault Investigation

November 10, 2015

Objective

This evaluation was initiated in response to U.S. Senator Mark Warner's request for information regarding a U.S. Army Criminal Investigation Command (CID) sexual assault investigation involving his constituent. Our objective was to assess the victim's allegations and determine whether CID properly completed the investigation and treated the victim with the requisite level of dignity and respect.

Findings

- A. Of the victim's five allegations, we substantiated three and partially substantiated one:
1. CID failed to pursue the case, purportedly due to a lack of evidence, even though the subject was married at the time and could have received punishment for adultery and conduct unbecoming an Army officer. – SUBSTANTIATED
 2. CID failed to update the victim on the status of the investigation as required. – SUBSTANTIATED
 3. CID failed to inform subject's commander that the subject was under investigation, resulting in him being able to be honorably discharged on August 24, 2014, without any punishment. – PARTIALLY SUBSTANTIATED
 4. CID's attitude toward the victim was "derisive and dismissive." – SUBSTANTIATED

Findings (cont'd)

5. CID failed to report victim's case to the Army Sexual Harassment/Assault Response and Prevention Office. – NOT SUBSTANTIATED
- B. CID did not complete the investigation as required by guiding policies.

Recommendations

- A. The Commander, United States Army Criminal Investigation Command, should ensure that agents conducting sexual assault investigations:
1. Properly report non-CID purview offenses, such as adultery and conduct unbecoming an officer and a gentleman, for command action.
 2. Brief victims on the status of investigations as required.
 3. Brief commanders on investigations and report results as required.

Command officials took corrective action regarding Allegation 4; therefore, no recommendation is provided.

- B. The Commander, United States Army Criminal Investigation Command should:
1. Reopen the investigation and undertake corrective action to properly and thoroughly investigate the victim's sexual assault complaint.
 2. Ensure that agents are trained and supervised to properly and thoroughly investigate and report sexual assault allegations.

Management Comments and Our Response

The Commander, CID, agreed with all of our recommendations with the exception of the recommendation to reopen the investigation. We request further comments on that one recommendation. See the Recommendations Table on the next page.

Recommendations Table

Management	Recommendations Requiring Comment	No Additional Comments Required
The Commander, United States Army Criminal Investigation Command	B.1.	A.1., A.2., A.3., and B.2.



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

November 10, 2015

**MEMORANDUM FOR COMMANDER, UNITED STATES ARMY CRIMINAL
INVESTIGATION COMMAND**

**SUBJECT: Evaluation of United States Army Criminal Investigation Command Sexual
Assault Investigation (Report No. DODIG-2016-006)**

This evaluation was initiated in response to U.S. Senator Mark Warner's request for information regarding a U.S. Army Criminal Investigation Command (CID) sexual assault investigation involving his constituent. Our objective was to assess the victim's allegations and determine whether CID properly completed the investigation and treated the victim with the requisite level of dignity and respect. We conducted this evaluation in accordance with the "Quality Standards for Inspection and Evaluation" published by the Council of the Inspectors General on Integrity and Efficiency (CIGIE) in January 2012.

We substantiated three and partially substantiated one of the victim's five allegations made to Senator Warner regarding the manner in which CID handled the investigation. In addition, contrary to the conclusions expressed in CID's response to Senator Warner, we determined the CID sexual assault investigation was not completed as required by guiding policies.

We considered management comments on a draft of this report when preparing the final report. DoD Instruction 7650.03 requires that recommendations be resolved promptly. The Commander, CID, agreed with four of the five recommendations. We disagree with the Commander, CID's, position not to reopen the investigation; therefore, we request additional comments on the recommendation by November 30, 2015.

Please provide comments that conform to the requirements of DoD Instruction 7650.03. Please send a PDF file containing your comments to chris.redmond@dodig.mil. Copies of your comments must have the actual signature of the authorizing official for your organization. We cannot accept the /Signed/ symbol in place of the actual signature.

We appreciate the courtesies extended to the evaluation staff during the project. For more information on this report, please contact Mr. Chris Redmond at (703) 604-8556 (DSN 664-8556).

A handwritten signature in blue ink, appearing to read "R. Stone", is positioned above the name of the Deputy Inspector General.

**Randolph R. Stone
Deputy Inspector General
Policy and Oversight**

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Acronyms and Abbreviations

Introduction

This evaluation was initiated in response to U.S. Senator Mark Warner's request for information, dated January 23, 2015, regarding a United States Army Criminal Investigation Command (CID) investigation into a constituent's alleged sexual assault by a U.S. Army Reservist.

Senator Warner's letter indicated that CID had responded to his prior inquiry with a letter, dated January 13, 2015, indicating that CID personnel properly and thoroughly investigated the victim's complaint in accordance with prescribed regulations and reported the findings to the subject's commander for appropriate action. Senator Warner indicated CID's response to him contradicted what the victim was told by the subject's commander. He requested the DoD IG provide information regarding the status of the victim's concerns.

Our preliminary evaluation of the CID investigative file revealed numerous investigative and administrative deviations from CID policy requirements, indicating that the investigation was not thoroughly completed and not properly reported to the subject's commander for consideration of disciplinary action. As a result, the DoD Inspector General (IG) initiated a formal evaluation of CID's actions.

Objective

Our objective was to assess the victim's allegations and, in light of guiding policies, determine whether CID properly completed the investigation and treated the victim with the requisite level of dignity and respect. See Appendix A for our scope and methodology and Appendix B for the background.

Finding A

Of the Victim's Five Allegations, We Substantiated Three and Partially Substantiated One

Victim's Congressional Complaint

Our analysis of the victim's letter to Senator Warner identified five allegations regarding the manner in which CID handled her sexual assault investigation.

Allegation 1

CID failed to pursue the victim's case, purportedly due to a lack of evidence, even though the subject was married at the time and could have received punishment for adultery and conduct unbecoming an Army officer.

Policy

CID Pamphlet (CIDP) 195-12, "Sexual Assault Investigation Handbook," April 23, 2013, and May 27, 2014, editions.

CID Regulation (CIDR) 195-1, "Criminal Investigation Operational Procedures," April 22, 2014, and July 1, 2014, editions.

Discussion

The allegation was substantiated. CID did not pursue the victim's case after coordination with the supporting legal counsel who opined ". . . this incident did not meet the elements of a sexual assault under the Uniform Code of Military Justice (UCMJ)." After the victim informed CID the subject was married and wore his Army uniform before and after the alleged sexual assault, CID did not attempt to corroborate the information to "bolster the victim's credibility." Further, CID did not report the nonsexual assault offenses of adultery and conduct unbecoming an officer to the commander for appropriate action as required by policy.

Allegation 2

CID failed to update the victim on the status of the investigation as required.

Policy

Army Regulation (AR) 600-20, "Army Command Policy," March 18, 2008, Incorporating Rapid Action Revision, September 20, 2012.

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

Discussion

The allegation was substantiated. CID did not brief the victim monthly on the status of the investigation, as required, during the last three months of the investigation. Additionally, CID failed to brief the victim, as required, on the results of the investigation prior to its closure.

Allegation 3

CID failed to inform the subject's commander that the subject was under investigation; resulting in him being able to be honorably discharged on August 24, 2014, without any punishment.

Policy

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

Discussion

The allegation was partially substantiated. CID did not provide required routine briefs to the subject's action commander or the first O-6 (officer in the rank of colonel) in his chain of command regarding the status or closure of the investigation. Documentation in the case file material indicates that on June 5, 2014, and as expressed in CID's response to Senator Warner, CID provided subject's general court-martial convening authority with a CID Commanding General memorandum regarding the case initiation. However, there is no documentation that CID conducted any briefings or distributed any reports of the investigation to the subject's action commander. These failures did not provide the commander with an opportunity to initiate a suspension of favorable personnel actions while the subject was under investigation and did not provide an opportunity for the commander to consider disciplinary action. However, we cannot determine with certainty whether CID's failures directly resulted in subject's release from the U.S. Army Reserve without punishment.

In CID's response to Senator Warner, dated January 13, 2015, CID reported that the findings of the investigation were forwarded to the subject's commander for appropriate action. We found CID's response to Senator Warner to be erroneous, in that no report of the investigation was provided to the subject's commander. CID's response to our preliminary findings indicates that because of our evaluation, a CID supervisory special agent discussed the investigation with the action commander on March 24, 2015, and that the final ROI was provided to him on March 25, 2015.

Allegation 4

CID's attitude toward the victim was "derisive and dismissive."

Policy

AR 600-20, September 20, 2012.

CIDP 195-12, April 23, 2013, and May 27, 2014, editions.

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

Discussion

The allegation was substantiated. The CID case file documentation reflected that a CID agent told the victim "[y]ou cannot have consensual sexual relations and then revoke consent after the act." During a conversation with the CID special agent in charge (SAC), the victim attributed the comment to the CID case agent that interviewed and obtained her written statement. Documentation further reflects that the SAC told the victim he discussed the comment with the CID case agent and "... that it was in line with questioning to determine all the facts and what her perception was as her information being reported was confusing." The SAC did not notify his battalion leadership of the victim's complaint regarding the case agent's comment, as required by CID policy. A subsequent CID inquiry (initiated at our request) determined that the assigned agent did make a comment similar to the comment quoted above, and "the comments, tone, and nature of the case agent's responses and interruptions," during a 29-minute telephone conversation with the victim "did not display the professionalism expected of a CID agent." Additionally, during CID's follow-up interview, the victim told CID, she did not believe the agent treated her with dignity and respect. We reviewed the results of CID's internal inquiry and we concur with its conclusions. Additionally, CID officials formally counseled the case agent and provided remedial training.

Allegation 5

CID failed to report the victim's case to the Army Sexual Harassment/Assault Response and Prevention Office (SHARP).

Policy

AR 600-20, September 20, 2012.

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

Discussion

The allegation was not substantiated. CID did notify Army SHARP representatives during the course of the investigation.

Conclusions

Of the victim's five allegations contained in her letter to Senator Warner, we found evidence to substantiate allegations 1, 2, and 4, and to partially substantiate allegation 3. We did not find evidence to substantiate allegation 5.

Recommendations, Management Comments, and Our Response

Recommendation A

The Commander, United States Army Criminal Investigation Command, should ensure that agents conducting sexual assault investigations:

1. Properly report non-CID purview offenses, such as adultery and conduct unbecoming an officer and a gentleman, for command action.
2. Brief victims on the status of investigations as required.
3. Brief commanders on investigations and report results as required.

Because CID undertook corrective action regarding Allegation 4, no recommendation is provided.

Commander, United States Army Criminal Investigation Command, Comments

The Commander, United States Army Criminal Investigation Command, agreed with our recommendations and pointed out that CID implemented measures to reinforce existing command policies in line with the recommendations and took action to correct the case agent's specific deficiencies (regarding Allegation 4) in the investigation.

Our Response

Comments from the Commander, United States Army Criminal Investigation Command, fully addressed the recommendation. No further comments are required.

Finding B

CID Did Not Complete the Investigation as Required by Guiding Policies

In addition to those policy deficiencies associated with the victim's allegations enumerated in Finding A, our evaluation of the CID investigation revealed significant investigative and minor investigative and administrative deviations from CID policy guidance. See Appendix A for the definitions of significant and minor deficiencies.

Significant Deficiencies

Our evaluation revealed the following significant deficiencies:

CID Agents Needed to Interview the Victim More Thoroughly

Policy

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

CIDP 195-12, April 23, 2013, and May 27, 2014, editions.

Discussion

The interview did not thoroughly probe the potential factors that could have affected the victim's ability or inability to resist or what may have caused her to not physically or verbally resist the subject from starting and completing the alleged sexual assault. When asked whether the victim tried to push the subject off of her, the victim replied that she froze. During a previous civilian police interview about the same complaint, the victim explained her tendency to freeze and feel awkward in reaction to sudden contacts that she does not initiate, including hugs. The interviewing CID agent also did not probe the possibility that the victim experienced tonic immobility¹ as a potential factor that could have affected the victim's ability to resist the subject from starting and completing the alleged sexual assault. In addition, the interview did not thoroughly explore the issue of a perceived power differential between the subject and victim based on their existing professional relationship or any other potential reasons that may have caused her to freeze or affect her ability to resist.

¹ Tonic immobility is characterized by a reversible profound state of physical inactivity and relative unresponsiveness to external stimuli. Traumatic events involving intense and inescapable life threats may have the power to evoke such reaction in humans.

The interview did not thoroughly delve into the time preceding the sexual act occurring to determine if anything occurred between the two that would have possibly indicated to the subject that he had victim's consent. Further, the victim mentioned the names of several individuals whom she told about the incident and provided limited details of what she told some of them (see next deficiency).

A follow-up interview with the victim may have provided additional details of the events leading up to the alleged sexual assault and during the event itself to determine what she was thinking, how she felt, if she perceived any threats, or what may have caused her to freeze.

Further, the interviewing agent had not completed the Army's Special Victim Unit Investigation Course (SVUIC) and was not directly supervised by an SVUIC-trained agent as required. SVUIC training addresses tonic immobility and its effect on sexual assault victims. The interviewing agent has since completed SVUIC.

CID Agents Did Not Interview Witnesses

Policy

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

CIDP 195-12, April 23, 2013, and May 27, 2014, editions.

Discussion

The victim provided CID with the names and contact information of several individuals to whom she talked about the incident. CID agents did not interview those persons the victim identified in her sworn statement to whom she talked or reported the alleged sexual assault or her encounter with the subject. CID did not interview the individuals to determine if they had information to corroborate the victim's complaint. The victim informed CID that while she was with the subject someone from the unit called the subject and he had to leave. The victim also informed CID the subject was married. CID did not interview members of subject's unit to verify the phone call, to verify his marital status, and to determine their knowledge of the subject's relationship with the victim, knowledge of the incident or similar incidents, and knowledge of other suspected misconduct or allegations of a similar nature.

CID Agents Did Not Advise the Subject of His Legal Rights

Policy

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

Discussion

Two CID special agents attempted to conduct an interview of the subject without advising him of his legal rights as required by CID policy and Article 31 of the UCMJ. The subject declined to answer questions without first speaking with an attorney.

CID Agents Did Not Provide Required Briefings to the Subject's Commander

Policy

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

Discussion

CID coordinated with the supporting U.S. Army Reserve staff judge advocate throughout the investigation and at the onset of the investigation notified the subject's general court-martial convening authority (a U.S. Army major general). However, there was no documentation in the case file material or ROI to indicate the subject's action commander or the first O-6 (officer in the rank of colonel) in his chain of command was provided routine briefs on the case status or closure of the investigation as required by CID policy. A subsequent examination of case file material and a supplemental ROI, which CID published concurrent with this evaluation, indicates that on March 24, 2015, a CID supervisory special agent discussed the investigation with the subject's former action (unit) commander. The commander informed the CID supervisory special agent that the subject was honorably separated from the U.S. Army Reserve the previous year (2014) and he did not intend to bring the subject back on active duty for the adultery offense.

CID Incorrectly Categorized the Rape Offense as Unfounded

Policy

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

Discussion

Based on reviews of the victim's sworn statement to CID and the interview summary prepared by the civilian police jurisdiction, the CID and action commander's supporting trial counsels opined "... this incident did not meet

the elements of a sexual assault under the UCMJ.” Further, CID requested the prosecutors to render opinions based solely on the contents of the victim’s statement to CID and an interview summary prepared by a civilian police department to which the victim also made a report to, without the benefit of a complete and thorough investigation. As previously addressed in the CID Agents Needed to Interview the Victim More Thoroughly section, we found CID’s victim interview to be less than thorough (for example, CID did not explore the possibility that the victim was unable to resist due to tonic immobility and numerous investigative leads were not completed before the legal opinions were obtained). The definition of unfounded in the applicable version of CIDR 195-1 (April 22, 2014) coincides with the definition in DoD Manual 7730.47-M, volume 1, as “a complaint that is determined through investigation to be false or baseless.” In this instance, CID’s determination through investigation that the complaint was baseless was improperly grounded on a deficient investigation. CID’s incomplete investigation did not determine whether the alleged offense occurred, which is the definition of “insufficient evidence” outlined in CIDR 195-1. Additionally, in spite of receiving guidance from a CID supervisor, the case agent did not obtain a legal opinion regarding adultery and conduct unbecoming an officer offenses.

CID Did Not Provide Investigative Reports to the Subject’s Commander

Policy

CIDR 195-1, April 22, 2014, and July 1, 2014, editions.

Discussion

CID did not provide the subject’s commander with copies of the status or final ROIs. A subsequent examination of case file material and a supplemental ROI, which CID published because of this evaluation, indicates that on March 25, 2015, CID provided a copy of the final ROI to the commander for action deemed appropriate.

The proper distribution of CID ROIs with unfounded offenses was evaluated in a previous DoD Office of Inspector General (OIG) evaluation documented in Report No. DODIG-2015-094, “Evaluation of Military Criminal Investigative Organizations’ Sexual Assault Investigations,” March 24, 2015. In that project, DoD OIG evaluated 31 CID cases in which offenses had been unfounded. DoD OIG found no deficiencies regarding the dissemination of the reports to the appropriate commanders. On that basis, we believe this deficiency is anomalous and does not suggest CID has a systemic problem with distribution of CID ROIs with unfounded sexual assault offenses to commanders.

Minor Deficiencies

Additionally, we observed numerous minor investigative and administrative deficiencies. While these deficiencies did not individually have a notable adverse impact on the investigation, some are the by-product of the significant deficiencies noted above and their presence clearly diminished the quality of the investigation. The details regarding each minor investigative and administrative deficiency and the corresponding policy requirements were provided to CID as preliminary findings. See Appendix C for details. See Appendix A for the definitions of significant and minor deficiencies.

Conclusions

We found the CID sexual assault investigation was not completed as required by guiding policies. We identified significant investigative and minor investigative and administrative deficiencies.

- The investigation was not thorough.
- The alleged rape offense was improperly categorized as unfounded (CID did not determine through investigation that no crime occurred).
- The assigned agent was neither trained nor supervised as required.

Recommendations, Management Comments, and Our Response

Recommendation B

The Commander, United States Army Criminal Investigation Command should:

- 1. Reopen the investigation and undertake corrective action to properly and thoroughly investigate the victim's complaint.**

Commander, United States Army Criminal Investigation Command, Comments

The Commander, United States Army Criminal Investigation Command, disagreed and replied:

Two separate law enforcement agencies (a civilian police agency in Virginia & USACIDC) came to the same conclusion after interviewing the complainant. That conclusion, formed independently by each organization, was that the events as described by the complainant did not meet the elements of proof under Virginia state law or the Uniform Code of Military Justice (UCMJ). Additionally, three separate attorneys, two of them specially trained prosecutors for sexual assault crimes, reviewed the USACIDC investigation, and in one instance, independently spoke to the complainant in detail. All three attorneys opined that the events as described by the complainant did not meet the elements of proof for an offense under the UCMJ.

Our Response

Comments from the Commander, United States Army Criminal Investigation Command, did not address the specifics of our recommendation.

The fact that two separate law enforcement agencies came to a similar conclusion based on a less than full investigation is not dispositive, contrary to CID's response. We reiterate our position that CID prematurely requested the prosecutors render legal opinions based solely on the contents of the victim's statement to CID, which we found to be less than thorough, and a civilian police department's victim interview summary, without the benefit of a complete and thorough investigation. The victim's statement indicates she told several people details about the incident the same night; one friend scolded her, stating everyone would have told her not to meet with the suspect had they known. She further alluded to realizing that the suspect was a person with a reputation of "screwing around with lots of girls." Despite DoD and CID policy requirements, CID agents did not complete interviews of the people she identified, nor did they interview personnel at his military unit to determine whether other potential victims were present before obtaining legal coordination. Legal opinions do not override CID's responsibility to adhere to policy requirements regarding investigative thoroughness.

The recommended additional investigation, which is required by DoD and CID policy, might disclose additional information that the prosecutors should have received, prior to rendering legal opinions. The prosecutors decided that the facts described in the victim's statements did not meet the elements of proof to establish that a crime occurred based upon the facts known at the time. However, because the investigation was not appropriately thorough, they might not have had all the facts.

Additionally, the civilian police agency's position regarding the case has no bearing on CID's handling of the victim's complaint. The civilian police agency's decisions were made in relation to Virginia State law and in accordance with the agency's policies, procedures, and requirements. The decisions of another jurisdiction do not override the requirement to abide by DoD, Army, and CID policy guidance.

DoD Instruction 5505.18, "Investigation of Adult Sexual Assault in the Department of Defense," January 25, 2013, Incorporating Change 2, June 18, 2015, paragraph 3.d., states "[a]ll adult sexual assault investigations assumed by an MCIO [Military Criminal Investigative Organization] will be investigated thoroughly" In addition, CIDR 195-1, April 22, 2014, and July 1, 2014, editions, paragraph 7.1a, specifies that ". . . documentation of CID investigative information and activities

must be accurate, thorough, and timely.” Further, paragraph 7.9 specifies that “CID supervisors will . . . ensure thorough and timely investigative effort” This requirement is reinforced in CID Pamphlet 195-12, paragraph 4-4.

By corroborating as many facts as possible, no matter how insignificant they may seem, an agent can better help establish the validity of the victim’s story and improve his/her creditability, even when there may be other problems with the investigation. Verifying as many details as possible, even when they are not directly relevant to the elements of the crime, will always bolster the victim’s credibility.

Further, CID Pamphlet 195-12, paragraph 5-4, requires investigators to follow up on all information provided by the victim.

To be thorough, CID case agents need to investigate the subject of the allegations to determine if he has a history of similar activity and if his behavior is known by members of his former unit. Agents also need to thoroughly document the victim’s account of the allegation, interview persons identified by the victim who potentially possess probative information relative to the subject’s behavior before and after the alleged assault, and investigate any additional facts and details not previously uncovered.

In order to fulfill both the DoD and CID mandates, we reassert our recommendation that CID reopen this investigation to complete an accurate and thorough investigation. Accordingly, we request that the Commander, United States Army Criminal Investigation Command, provide comments in response to the final report.

2. Ensure that agents are trained and supervised to properly and thoroughly investigate and report sexual assault allegations.

Commander, United States Army Criminal Investigation Command, Comments

The Commander, United States Army Criminal Investigation Command, agreed and pointed out that CID implemented measures to reinforce existing command policies in line with the recommendation.

Our Response

Comments from the Commander, United States Army Criminal Investigation Command, fully addressed the recommendation. No further comments are required.

Appendix A

Scope and Methodology

We evaluated the investigation to determine compliance with DoD, U.S. Army, and CID policy requirements in effect at the time of the investigation while noting observations and deficiencies. The evaluation also determined whether CID personnel treated the victim with dignity and respect as required by policy.

We completed this evaluation in accordance with the “Quality Standards for Inspection and Evaluation” published by the Council of Inspectors General for Integrity and Efficiency in January 2012. Those standards require that we plan and perform the evaluation to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings, conclusions, and recommendations based on our evaluation objectives. We believe that the evidence obtained provides a reasonable basis for our findings, conclusions, and recommendations based on our evaluation.

Following receipt of Senator Warner’s letter, we requested CID provide the report of investigation (ROI) and case file material. We evaluated CID’s sexual assault investigative policy guidance to assess the extent to which it addressed investigative activity expected to be conducted in response to adult sexual assault reports. We familiarized ourselves with tasks expected in any adult sexual assault investigation. We analyzed the ROI and supporting documentation and also held discussion meetings with CID officials to determine whether CID completed the investigation as required by DoD, U.S. Army, and CID guidance.

In conducting the evaluation, we noted investigative and administrative deficiencies and reported our preliminary findings with supporting applicable regulation and policy information to the Commander, CID, and requested a response. Headquarters, CID, responded with comments. We assessed the information to formulate our conclusions.

We used the following definitions when identifying observations and deficiencies, both minor and significant, found in the investigative file:

Minor Deficiency. A minor investigative or administrative deficiency is a task or step CID did not perform, or performed not in conformity with DoD, Service, or CID policies and procedures. A minor deficiency is not likely to affect the outcome or have a negative impact on the investigation.²

² The severity of the deficiencies depends in large part on the totality of the circumstances. What might be a minor deficiency in one investigation could be a significant deficiency in another.

Significant Deficiency. An investigation will be found to contain significant deficiencies if one or more deficiencies result from a material failure(s) to conform to critical elements of DoD, Service, or CID policies and procedures. A significant deficiency indicates a breakdown in practices, programs, and/or policies having actual notable adverse impact on, or had a likelihood of materially affecting, the integrity of the investigation and/or adversely affecting or having a high probability of adversely affecting the outcome of an investigation.

This evaluation was limited to an examination of the CID ROI and case file documentation in light of applicable regulatory guidance and documentation provided by Senator Warner. The evaluation did not include interviews; however, we met with CID personnel numerous times to discuss the investigation and our findings.

Prior Coverage

The GAO and DoD OIG have issued six reports discussing topics related to sexual assault investigations in the last 5 years. Unrestricted GAO reports can be accessed at <http://www.gao.gov>. These unrestricted DoD OIG reports can be accessed at <http://www.dodig.mil/pubs/index.cfm>.

GAO

GAO Report No. GAO-11-579, "Military Justice: Oversight and Better Collaboration Needed for Sexual Assault and Adjudications," June 22, 2011

DoD IG

Report No. DODIG-2015-094, "Evaluation of Military Criminal Investigative Organizations' Adult Sexual Assault Investigations," March 24, 2015

Report No. DODIG-2014-108, "Evaluation of the Military Criminal Investigative Organizations' Adult Sexual Assault Investigation Policies," September 16, 2014

Report No. DODIG-2014-105, "Evaluation of Military Criminal Investigative Organizations' Child Sexual Assault Investigations," September 9, 2014

Report No. DODIG-2013-091, "Evaluation of the Military Criminal Investigative Organizations' Sexual Assault Investigations," July 9, 2013

Report No. DODIG-2013-043, "Evaluation of the Military Criminal Investigative Organizations' Sexual Assault Investigation Training," February 28, 2013

Appendix B

Background

Within the U.S. Army, CID is responsible for investigating all sexual assaults.³ Additionally, CID is responsible for developing specific investigative policy and requirements to govern the investigation of sexual assault and for training assigned special agents in accordance with the U.S. Army's training standards.

Policy and Requirements

DoDD 6495.01, "Sexual Assault Prevention and Response (SAPR) Program," January 23, 2012, Incorporating Change 2, January 20, 2015

DoDI 6495.02, "Sexual Assault Prevention and Response Program Procedures," March 28, 2013, Incorporating Change 2, July 7, 2015

DoDI 5505.18, "Investigation of Adult Sexual Assault in the Department of Defense," January 25, 2013, Incorporating Change 2, June 18, 2015

Directive-Type Memorandum 14-002, "The Establishment of Special Victim Capability (SVC) Within the Military Criminal Investigative Organizations," February 11, 2014, (in effect at the time the evaluated investigation was conducted and replaced by DoDI 5505.19 on February 3, 2015)

AR 195-2, "Criminal Investigation Activities," May 15, 2009, Incorporating Rapid Action Revision, July 8, 2010

AR 600-20, "Army Command Policy," March 18, 2008, Incorporating Rapid Action Revision, September 20, 2012

CIDR 195-1, "Criminal Investigation Operational Procedures," April 22, 2014, and July 1, 2014, editions

CIDP 195-12, "Sexual Assault Investigation Handbook," April 23, 2013, and May 27, 2014, editions

³ Articles 120, 120c, and 125 (June 28, 2012 edition) of the Uniform Code of Military Justice.

Appendix C

Minor Deficiencies

The following minor investigative and administrative deficiencies negatively impacted the overall quality of the investigation; however, the deficiencies did not individually have a notable adverse impact on the investigation.

- Case agents failed to obtain the subject's orders for inactive duty for training to assist in corroborating the victim's statement about the subject's military status and affiliation at the time of the reported assault.
- Canvass interviews of people residing near the incident scene were not completed to identify possible witnesses.
- Allegation of harassment towards the victim was not followed up on.
- Review of data extracted from the victim's cellular telephone was not documented.
- A supplemental local law enforcement report was not obtained. CID obtained the report in response to our preliminary findings.
- Evidence collected during the investigation was not retained as evidence for five years as required by DoD and CID policy.
- The CID investigation did not undergo a quality assurance review by a supervisory echelon of CID.
- Status ROIs were not published as required.
- Interview of the subject was not completed in a controlled environment.
- Law enforcement records checks on the subject were not completed before the subject interview.
- DNA was not collected from subject.⁴
- The interview of subject was not audio or video recorded.

We provided CID the details regarding each minor deficiency and the corresponding policy requirements.

⁴ Subject declined to provide DNA during subject processing when his fingerprints and photograph were obtained, however, CID did not request his commander order him to provide DNA as required.

Management Comments

CID Comments



REPLY TO
ATTENTION OF

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

CIOP-CO

29 September 2015

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

SUBJECT: Report of Evaluation of U.S. Army Criminal Investigation Command Sexual
Assault Investigation (Project No. 2015C001)

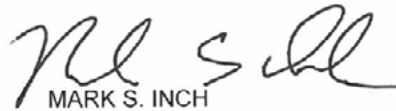
1. Thank you for the opportunity to comment on the proposed Department of Defense Inspector General (DoDIG) evaluation of a USACIDC sexual assault investigation.
2. I concur that some of the investigative and administrative short-comings reported by the DoDIG were not completed to USACIDC standards. The USACIDC implemented measures to reinforce existing command policies in line with Recommendations A1, A2, A3 and B2. Additionally, we have taken action to correct the case agent's specific deficiencies in this investigation.
3. We appreciate DoDIG's review of 34 other sexual assault investigations conducted by USACIDC. We understand that assessment, targeted at unit notification requirements for sexual assault investigations, identified no significant deficiencies or systemic problems. Additionally, I feel it is important to note that although this investigation was not reported to the Colonel-level leadership in the Soldier's chain of command (as required by USACIDC policy), it was reported to a General Officer in the chain of command and the unit's Staff Judge Advocate.
4. I do not concur with Recommendation B1 to reopen the investigation. Two separate law enforcement agencies (a civilian police agency in Virginia & USACIDC) came to the same conclusion after interviewing the complainant. That conclusion, formed independently by each organization, was that the events as described by the complainant did not meet the elements of proof under Virginia state law or the Uniform Code of Military Justice (UCMJ). Additionally, three separate attorneys, two of them specially trained prosecutors for sexual assault crimes, reviewed the USACIDC investigation, and in one instance, independently spoke to the complainant in detail. All three attorneys opined that the events as described by the complainant did not meet the elements of proof for an offense under the UCMJ.
5. The USACIDC will continue to prioritize the thorough completion of all sexual assault investigations and the execution of all critical requirements involved in these very sensitive investigations using our special training and dedicated resources. We believe this case was not indicative of the usual high standards we expect and observe in our agents.

CID Comments (cont'd)

CIOP-CO

SUBJECT: Report of Evaluation of U.S. Army Criminal Investigation Command Sexual Assault Investigation (Project No. 2015C001)

6. The point of contact is [REDACTED]



MARK S. INCH
Major General, USA
Commanding

Acronyms and Abbreviations

AAS	Agent's Activity Summary
AIR	Agent's Investigation Report
AR	Army Regulation
CID	United States Army Criminal Investigations Command
CIDP	CID Pamphlet
CIDR	CID Regulation
DoDD	Department of Defense Directive
DoDI	Department of Defense Instruction
DoD IG	Department of Defense Inspector General
DNA	Deoxyribonucleic Acid
MCIO	Military Criminal Investigative Organization
OIG	Office of Inspector General
ROI	Report of Investigation
SAC	Special Agent in Charge
SARC	Sexual Assault Response Coordinator
SHARP	Sexual Harassment/Assault Response and Prevention
SVUIC	Special Victim Unit Investigation Course
UCMJ	Uniform Code of Military Justice
USAMPS	United States Army Military Police School

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U.S. DEPARTMENT OF DEFENSE

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