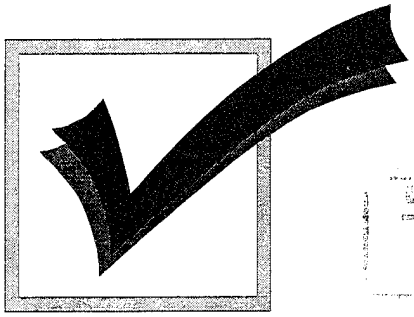
# JAGMAN

# INVESTIGATIONS

# HANDBOOK



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# ADMINISTRATIVE INVESTIGATIONS


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## INTRODUCTION

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

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

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

The organizational approach to this handbook is to discuss how an investigating officer (IO) goes about conducting a Preliminary Inquiry, Command Investigation, or Litigation Report Investigation[1]. Sample forms and report formats are provided. The checklists contained in this handbook will be particularly useful to both the IO and the convening authority (CA) in ensuring that the investigative report includes all necessary information and enclosures. The IO should review the checklists contained herein **prior** to initiating his/her investigative effort to see if there are specific informational requirements given the nature of the incident under investigation.

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

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

Should the reader have any questions regarding JAGMAN investigations that are not answered in this handbook, you are encouraged to contact your station or staff judge advocate or the nearest Naval Legal Service Office/Marine Law Center. Questions may also be directed to the Civil Law Department, Naval Justice School, DSN 948-4437, COMM (401) 841-4437.

## PRELIMINARY INQUIRY

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

***Method of inquiry.*** The convening authority (CA) may conduct a PI personally or appoint a member of the command to do so. There are no requirements nor restrictions governing how the inquiry is to be accomplished. The goal is to take a "quick look" at a particular incident (e.g., a minor fender-bender), and gather enough information so that an informed decision can be made regarding whether some sort of JAGMAN investigation is truly necessary. Generally, the PI should not take any longer than three (3) working days. If more time is required, it means that the inquiry officer is attempting to do too much or has not been sufficiently instructed as to what issue(s) is to be addressed (see page II-3 for a PI checklist). Upon completion of the PI, a report is tendered to the CA. The PI report need not be in writing, but some form of limited documentation is advisable (see page II-5 for a sample PI report). JAGMAN 0204.

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

1. Take no further action. Where further investigation would serve no useful purpose, there is no need to convene a JAGMAN investigation. This is an appropriate course where the PI reveals that the incident is likely to be of little interest to anyone outside the immediate command or that the event will be adequately investigated under some other procedure (e.g., NCIS investigation, MLSR/survey procedure, etc.). JAGMAN 0205a(2)(a), 0207. As a matter of practice, documentation of the PI and the command decision is advisable.

2. Conduct a command investigation. JAGMAN 0205a(2)(b).

3. Convene a litigation-report investigation. ***Consultation with the "cognizant judge advocate" is required.*** JAGMAN 0205a(2)(c).

4. Convene a court or board of inquiry. If the CA is not a general court-martial convening authority (GCMCA) and therefore not empowered to convene a court or board of inquiry, the CA may request, via the chain-of-command, that an officer with such authority convene the investigation. JAGMAN 0205a(2)(d).

**NOTE:** It is always appropriate for the CA to consult with a judge advocate before deciding how to proceed. JAGMAN 0206.

***Reporting the results of PIs.*** After deciding which of the command options to exercise, the CA is to report that decision to his/her immediate superior in the chain-of-command. This does **not** require a special, stand-alone report; command decisions on PIs are to be relayed in the context of existing situational reporting systems. JAGMAN 0204h(2). You may wish to determine if your ISIC has issued guidance on what types of incidents should be or should not be reported.

***Review of command decision.*** The initial determination of which option to exercise is a matter of command discretion. Superiors in the chain-of-command may direct that an option be reconsidered or that a particular course of action be taken. For example, a superior may feel that a litigation-report investigation may be the preferred method of investigating and documenting a particular incident and direct that a subordinate convene such an investigation rather than a command investigation. JAGMAN 0204i and 0205b.

## PRELIMINARY INQUIRY CHECKLIST

____ CA appoints a preliminary inquiry officer.

____ Begin work on the inquiry immediately upon hearing that you are to be appointed, whether or not you have received an appointing order in writing.

____ Decide what the purpose and methodology of your inquiry will be.

____ Can this preliminary inquiry be completed in three working days? If not, you may be trying to do too much. Further clarification from the CA may be necessary.

____ Has this incident involved a member of the command and/or occurred within the command? If not, are you the appropriate command to conduct the preliminary inquiry and/or any administrative investigation?

____ Is this incident under investigation by NCIS, the FBI, or local civilian law enforcement agencies? (If yes, refer to JAGMAN 0204c).

____ Is this considered a "major" incident? (Refer to JAGMAN Appendix A-2-a for a definition of a "major" incident.)

____ If believed to be a "major" incident, refer to JAGMAN 0204g, 0204h, 0205a(1), and 0211e(1).

____ Obtain any available documentation pertaining to the inquiry, i.e. copies of rules and regulations, instructions, correspondence and messages, logs, standard operating procedures, personnel records, medical records, official reports, vehicle accident report forms, etc.

____ Locate and preserve evidence, i.e. real objects (firearms, bullets, etc.) and note physical locations (accident sites, etc).

____ Draw up a list of possible witnesses.

____ Conduct an interview of any witness you deem relevant to your inquiry, those that will provide you with enough information to understand what occurred and enable you to make an informed recommendation to the CA.

____ If a witness is not physically available, an interview may be conducted via telephone or message.

____ Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty, of his/her rights under Article 31, UCMJ. (Refer to page VIII-1 of this handbook for a sample form.)

____ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that he/she has suffered, of his/her right not to sign such a statement. (Refer to page VIII-2 of this handbook for a sample form). *See* JAGMAN 0221b.

____ Is a Privacy Act statement required for any witness interviewed? JAGMAN 0216 requires that Privacy Act statements be obtained from each witness from whom personal information is taken. (Refer to page VIII-3 of this handbook for a sample form.)

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

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

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

____ No further action.

____ Command investigation.

____ Litigation-report investigation.

____ Recommend court/board of inquiry to GCMCA.

____ CA reports the result of the PI to the ISIC.

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

## SAMPLE PRELIMINARY INQUIRY REPORT

(Date)

From: (Name and rank of individual conducting preliminary inquiry)
To: (Title of authority ordering preliminary inquiry)

Subj: PRELIMINARY INQUIRY INTO (DESCRIPTION OF INCIDENT)

Ref: (a) JAGMAN Section 0204

1. This reports completion of the preliminary inquiry conducted in accordance with reference (a) into (description of incident).

2. Personnel contacted: (List individuals with name, rank, title, unit, and telephone number).

3. Materials reviewed: (List documents, objects, materials, tangibles reviewed and, if of probable evidentiary value, where stored together with name of the custodian of such material and that person's phone number).

4. Summary of findings: (Summary should not extend beyond one paragraph and should summarize both what is known and unknown about the event in question).

5. Recommendation: (Choose one: consult a judge advocate; no further investigation warranted; command investigation; litigation-report investigation; board of inquiry; or court of inquiry).

_____

Name, rank, unit, telephone

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

## COMMAND INVESTIGATIONS

By far the most common administrative investigation is the Command Investigation (known under previous versions of the JAGMAN as "informal investigations" or "investigations not requiring a hearing"). The Command Investigation (CI) functions to search out, develop, assemble, analyze, and record all available information relative to the incident under investigation. The findings of fact, opinions and recommendations developed may provide the basis for various actions designed to improve command management and administration, publish "lessons learned" to the fleet, and allow for fully informed administrative determinations.

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

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

***Rules on Convening.*** A CI will be convened, in writing, by the CA (*see* page III-3 for a sample convening order). When the CA feels that the investigation of an incident is impractical or inappropriate for the command to investigate, another command may be requested to conduct the investigation. *See* JAGMAN 0209c. When circumstances do not allow for completion of an investigation, (e.g., deployments), requests for assistance may be directed to superiors in the chain-of-command. When more than one command is involved, a single investigation should be conducted and coordination/cooperation is required. Special convening rules for incidents involving injuries to Marine Corps personnel are contained in JAGMAN 0209c(5).

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

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

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

In handling witnesses, there are several things to keep in mind. You may obtain information by personal interview, correspondence, or telephone inquiry. If a witness is unable to review and/or sign a statement, you may simply make a summary of the conversation and certify it to be accurate. Before interviewing witnesses, ensure you understand when and what rights advisements may be required: if you suspect a military member has committed a criminal offense, Article 31, UCMJ, warnings are required; when interviewing a service member concerning the incurring of injury, warning under JAGMAN 0221b is required; if you are asking for personal information (as opposed to information related to performance of duty), Privacy Act advice is necessary. Refer to section VIII of this handbook for forms.

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

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

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

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

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

## SAMPLE COMMAND INVESTIGATION CONVENING ORDER

Ser Info
Date

From: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Pendleton
To: Captain _____, USMC

Subj: COMMAND INVESTIGATION OF THE FIRE THAT OCCURRED AT _____ ON _ AUGUST 19_

Ref: (a) JAG Manual

1. This appoints you, per chapter II of reference (a), to inquire into the facts and circumstances surrounding the fire that occurred at _____ on _ August 19_.

2. Investigate the cause of the fire, resulting injuries and damages, and any fault, neglect, or responsibility therefor, and recommend appropriate administrative or disciplinary action. Report your findings of fact, opinions, and recommendations in letter form by _ September 19 _, unless an extension of time is granted. If you have not previously done so, read chapter II of reference (a) in its entirety before beginning your investigation.

3. You may seek legal advice from _____ during the course of your investigation.

4. By copy of this appointing order, Commanding Officer, Headquarters Company, is directed to furnish necessary clerical assistance.

_____
Colonel, U.S. Marine Corps

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

## CONDUCTING THE COMMAND INVESTIGATION CHECKLIST

### I. GETTING STARTED

____ CA appoints an investigating officer in writing.

____ Begin work on the investigation immediately upon hearing that you are to be appointed, whether or not you have received a convening order in writing.

____ Carefully examine the convening order to determine the scope of your investigation.

____ Determine when the investigative report is due to the CA.

____ If you can not reach that deadline, request an extension.

____ Review all relevant instructions on your investigation, i.e. JAGMAN Chapter 2, etc.

____ Determine which checklists may apply to your investigation and review them carefully to determine what information is required. Refer to sections V and IX 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 0204c).

____ 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 0204g, O204h, 0205a(1), and 0211e(1).

## II. HANDLING WITNESSES

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

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

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

____ Inform the CA, orally, with confirmation in writing, immediately upon learning that a material witness might leave the area before review of the investigation is completed.

____ Conduct an intensive interview of each witness, i.e. names, places, dates, and events that are relevant.

____ Witness statements should be as factual in content as possible. If a witness makes a vague statement ("he was drunk"), try to pin down the actual facts.

____ If a witness is not physically available for an interview, attempt to conduct it via telephone, mail or message.

____ Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty, of his/her rights under Article 31b. (Refer to page VIII-1 of this handbook for a sample form.)

____ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that he/she has suffered, of his/her right not to sign such a statement. (Refer to page VIII-2 of this handbook for a sample form). *See* JAGMAN 0221b.

____ Is a Privacy Act statement required for the witness interviewed? JAGMAN 0216 requires that Privacy Act statements be obtained from each witness from whom personal information is taken. (Refer to page VIII-3 of this handbook for a sample form.)

____ Record the interview of each witness in detailed notes or by mechanical means.

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

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

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

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

## III. DOCUMENTARY EVIDENCE

____ Make a list, to be supplemented as the investigation proceeds, of all possible documents, to include:

____ Copies of relevant rules, regulations, instructions, standard operating procedures;

____ relevant correspondence and messages;

____ personnel records;

____ medical records (clinical and hospital records, death certificates, autopsy reports, etc.);

____ official logs and reports; and

____ required forms (personnel injury forms, vehicle accident reports, etc.).

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

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

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

## IV. OTHER EVIDENCE

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

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

____ If unable to obtain certain information, attempt to obtain if via fax, message, telephone, or mail.

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

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

## DRAFTING THE CI REPORT

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

____ Classification of the report, (secret, confidential, etc.). Omit classified information unless absolutely essential (*see* JAGMAN 0217b).

### PRELIMINARY STATEMENT

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

____ Set forth the nature of the investigation.

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

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

____ Note any extensions requested and granted.

____ Note the limited participation by any member or advisor.

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

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

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

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

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

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

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

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

____ Reference after each finding of fact, the enclosures to the report which support the finding of fact.

____ Identify by grade or rate, service number, organization, occupation or business, and residence person(s) connected with the incident.

____ Make appropriate findings of fact for all relevant facts, including information already stated in the preliminary statement. The preliminary statement is not a substitute for findings of fact.

____ Place findings of fact in chronological and/or logical order.

____ Is each fact a separate finding?

____ Is each finding of fact supported by an enclosure?

____ Are all enclosures used? (if not used, delete the enclosure.)

____ Ensure that, when read together, the findings of fact tell the whole story of the incident without having to refer back to the enclosures.

____ Does the story flow? Is it readable?

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

____ Ensure that each of your opinions are exactly that, not findings of fact or recommendations.

____ Ensure that each opinion references the finding(s) of fact that support it.

____ Ensure that you have rendered those opinions required by the convening order, as well as any others you feel are appropriate.

**RECOMMENDATIONS** are proposals made on the basis of the opinions.

____ Ensure that each of your recommendations are exactly that, not findings of fact or opinions.

____ Ensure that each recommendation is logical and consistent with the findings of fact and opinions.

____ Address those recommendations specifically required by the convening order and any others considered appropriate.

____ Recommend any appropriate corrective, disciplinary, or administrative action.

____ Enclose a draft of a punitive letter of reprimand if recommending such action.

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

## SIGNING

____ Sign your report.

## ENCLOSURES

____ Convening order.

____ All evidence in logical order.

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

____ Are any reproduced documents certified to be true copies?

____ Have you complied with the special marking requirements applicable to photographs? *See* JAGMAN, §§ 0215c, and 0217h(4).

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

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

## CONCLUDING ACTION

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

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

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

____ Have you signed your Investigative Report?

## SAMPLE COMMAND INVESTIGATION REPORT

Ser Info
Date

From: Captain _____, USMC
To: Commanding Officer, Headquarters Battalion, Marine Corps Base, Camp Pendleton

Subj: SAME AS SUBJECT ON CONVENING ORDER

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

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

Preliminary Statement

1. Paragraph 1 of an investigative report must contain information in the form of a "preliminary statement." Contents may require continuation in one or more additional paragraphs. In general, *see* JAGMAN § 0217(c) for required contents. Where applicable, an investigating officer should indicate the name and organization of any judge advocate consulted. Extensions of time to complete the report should be noted here. Also state in appropriate cases that the matter was first referred to NCIS and NCIS expressed no objection to proceeding with the investigation.

Findings of Fact

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

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

Opinions

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

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

Recommendations

1. _____
2. _____
3. _____

_____
(SIGNATURE OF INVESTIGATING OFFICER)

## LITIGATION-REPORT INVESTIGATIONS

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

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

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

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

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

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

In handling witnesses, there are several things to keep in mind. You may obtain information by personal interview, correspondence, or telephone inquiry. The IO should **never** obtain signed or sworn statements during the course of a litigation-report investigation **unless** he/she has consulted with the supervising judge advocate. Before interviewing witnesses, ensure you understand when and what rights advisements may be required: if you suspect a military member has committed a criminal offense, Article 31, UCMJ, warnings are required; when interviewing a service member concerning the incurring of injury, warning under JAGMAN 0221b is required; if you are asking for personal information (as opposed to information related to performance of duty), Privacy Act advice is necessary. Refer to section VIII of this handbook for forms.

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

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

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

The IO must **not** draft opinions and/or recommendations unless specifically directed to by the supervising judge advocate.

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

***Protection.*** The IO must properly mark the litigation-report investigative report. *See*, JAGMAN 0210e(3). Copies of the report, and any of the working notes of the IO, must be maintained in files marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" and safeguarded against improper disclosure. A judge advocate should be consulted before releasing the report, or any portion thereof, to anyone.

## SAMPLE LITIGATION-REPORT INVESTIGATION CONVENING ORDER

Ser Info
Date

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

Subj: LITIGATION-REPORT INVESTIGATION OF THE FIRE THAT OCCURRED AT QUARTERS XYZ, NAVSUBBASE NLON, ON _ AUGUST 19_

Ref: (a) JAG Manual

1. Per reference (a), you are hereby appointed to investigate the circumstances surrounding the fire that occurred at Quarters XYZ, Naval Submarine Base New London, on _ August 19_, and to prepare the related litigation-report. During the investigation, you will be under the direction and supervision of LCDR _____, JAGC, USN. Consult LCDR _____ before beginning your inquiry or collecting any evidence. If you have not already done so, you should also read chapter II of reference (a) in its entirety before consulting LCDR _____.

2. This investigation is being convened and your report is being prepared in contemplation of litigation and for the express purpose of assisting attorneys representing interests of the United States in this matter. As such, it is privileged and should be discussed only with personnel who have an official need to know of its progress or results. If you have any doubt about the propriety of discussing the investigation with any particular individual, then you should seek guidance from LCDR _____ before doing so.

3. Investigate all facts and circumstances surrounding the fire, including the cause of the fire, resulting injuries and damages, and any fault, neglect, or responsibility therefor. Report your findings to LCDR _____ by _ September 19_, unless an extension of time is granted. Do not express any opinions or recommendations unless LCDR _____ directs you to do so. Label your report "FOR OFFICIAL USE ONLY: ATTORNEY WORKPRODUCT," and take appropriate measures to safeguard it.

_____
(Signature of CA)

Copy to:
COMSUBGRU TWO

## CONDUCTING THE LITIGATION-REPORT INVESTIGATION CHECKLIST

### I. GETTING STARTED

____ Convening authority (CA) consults with cognizant judge advocate.

____ CA appoints an investigating officer in writing, identifying the judge advocate under whose direction and supervision the investigation will be conducted.

____ The IO must consult with the assigned judge advocate **before** beginning the investigation.

____ Carefully examine the convening order to determine the scope of your investigation.

____ Determine when the investigative report is due to the CA.

____ If you can not reach that deadline, request an extension.

____ Review all relevant instructions on your investigation, e.g. JAGMAN Chapter 2, etc.

____ Determine which checklists may apply to your investigation and review them carefully to determine what information is required. Refer to sections V and IX 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 0204c).

____ Is this considered a "major" incident? (Refer to page 2 of this handbook for definition.)

____ If believed to be a "major" incident, refer to JAGMAN 0204g, O204h, and 0205a(1).

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

## II. HANDLING WITNESS

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

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

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

____ Inform the CA, orally, with confirmation in writing, immediately upon learning that a material witness might leave the area before review of the investigation is completed.

____ Conduct an intensive interview of each witness, e.g. names, places, dates, and events that are relevant.

____ Witness statements should be as factual in content as possible. If a witness makes a vague statement ("he was drunk") try to pin down actual facts.

____ If a witness is not physically available for an interview, attempt to conduct it via telephone, mail or message.

____ Advise any military witness who may be suspected of an offense, misconduct, or improper performance of duty, of his/her rights under Article 31b, UCMJ. (Refer to page VIII-1 of this handbook for a sample).

____ Advise each witness prior to signing any statement relating to the origin, incident, or aggravation of any disease or injury that he/she has suffered, of his/her right not to sign such a statement. (Refer to page VIII-2 of this handbook for a sample). *See* JAGMAN 0221b.

____ Is a Privacy Act statement required for the witness interviewed? JAGMAN 0216 requires that Privacy Act statements be obtained from each witness from whom personal information is taken. (Refer to page VIII-3 of this handbook for a sample.)

____ Record the interview of each witness in detailed notes.

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

____ Witnesses will not, in most cases, be asked to make a written statement or to sign a statement that the investigator has prepared. **DO NOT attach signed witness statements as enclosures to the investigation, unless the supervising judge advocate so directs.**

____ Indicate on the narrative statement that it represents an accurate summary of oral statements made by the witness.

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

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

## III. DOCUMENTARY EVIDENCE

____ Make a list, to be supplemented as the investigation proceeds, of all possible documents, to include:

____ Copies of relevant rules, regulations, instructions, standard operating procedures;

____ relevant correspondence and messages;

____ personnel records;

____ medical records (clinical and hospital records, death certificates, autopsy reports, etc.);

____ official logs and reports; and

____ required forms (personnel injury forms, vehicle accident reports, etc.)

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

____ If unable to obtain a certain document, attempt to obtain is via fax, message, telephone, or mail.

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

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

**OTHER EVIDENCE**

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

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

____ If unable to obtain certain information, attempt to obtain them via fax, message, telephone, or mail.

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

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

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

### PRELIMINARY STATEMENT

____ Include this statement: "This report was prepared under the supervision of a judge advocate in contemplation of litigation by or against the United States."

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

____ Set forth the nature of the investigation.

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

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

____ Note any extensions requested and granted.

____ Note the limited participation by any member or advisor.

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

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

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

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

____ Distinguish in your own mind the differences among the terms "fact", "opinion", and "recommendation".

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

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

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

____ Reference after each finding of fact, the enclosures to the report which support the finding of fact.

____ Identify by grade or rate, service number, organization, occupation or business, and residence person(s) connected with the incident.

____ Make appropriate findings of fact for all relevant facts, including information already stated in the preliminary statement. The preliminary statements is not a substitute for findings of fact.

____ Place findings of fact in chronological and/or logical order.

____ Is each fact a separate finding?

____ Is each finding of fact supported by an enclosure?

____ Are all enclosures used? (if not used delete the enclosure).

____ Ensure that, when read together, the findings of fact tell the whole story of the incident without having to refer back to the enclosures.

____ Does the story flow? Is it readable?

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

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

____ Ensure that each of your opinions are exactly that, not findings of fact or recommendations.

____ Ensure that each opinion references the finding(s) of fact that support is.

____ Ensure you discuss each opinion with the supervisory judge advocate.

**RECOMMENDATIONS** are proposals made on the basis of opinions.

____ Ensure that each of your recommendations are a exactly that, not findings of fact or opinions.

____ Ensure that each recommendation is logical and consistent with the findings of fact and opinions.

____ Recommend any appropriate corrective, disciplinary, or administrative action.

____ Enclose a draft of a punitive letter or reprimand if recommending such action.

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

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

**SIGNING**

____ Is the report signed by the assigned judge advocate?

____ Sign your report.

**ENCLOSURES**

____ Convening order.

____ All evidence in logical order.

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

____ Are any reproduced documents certified to be true copies?

____ Have you complied with the special marking requirements applicable to photographs? *See* JAGMAN, §§, 0215c, and 0217h(4).

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

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

## CONCLUDING ACTION

____ Is the report marked "**FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT**" on the top center of each page?

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

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

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

____ Have you signed your Investigative Report?

## SAMPLE LITIGATION-REPORT INVESTIGATION

Ser Info
Date

From: Commanding Officer, Naval Submarine Base New London
To: LCDR _____, JAGC, USN
LT _____, USN

Subj: SAME AS SUBJECT ON CONVENING ORDER

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

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

Preliminary Statement

1. Paragraph 1 of an investigative report must contain information in the form of a "preliminary statement." Contents may require continuation in one or more additional paragraphs. The name and organization of the supervisory judge advocate should be listed and the following language must be added: "**This report was prepared under the supervision of a judge advocate in contemplation of litigation by or against the United States.**"

Findings of Fact

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

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

**report as an enclosure. Each finding of fact must reference each enclosure that supports it.**

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

_____

(SIGNATURE OF INVESTIGATING OFFICER)

_____

(SIGNATURE OF SUPERVISORY JUDGE ADVOCATE)

# LINE OF DUTY / MISCONDUCT DETERMINATIONS

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

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

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

1. *Might* result in permanent disability; or

2. results in the physical inability to perform duty for a period exceeding 24 hours (as distinguished from a period of hospitalization for evaluation or observation). JAGMAN § 0221.

**Opinions concerning line of duty *are prohibited* in death cases.**

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

1. As a result of the member's own "misconduct." There must be clear and convincing evidence that the injury was intentionally incurred or the result of willful neglect which demonstrates a reckless disregard for foreseeable and likely consequences.

2. While avoiding duty by deserting.

3. While absent without leave, and such absence materially interfered with the performance of required military duties (generally, in excess of 24 hours).

4. While confined under sentence of a court-martial that included an unremitted dishonorable discharge.

5. While confined under sentence of civil court following conviction of an offense that is defined as a felony by the law of the jurisdiction where convicted.

**Preliminary Inquiries (PI's)**. Each injury or disease requiring LOD/misconduct determinations *must* be reviewed through use of a PI. JAGMAN, § 0230a. Upon completion of the PI, the command is to report the results to the GCMCA through use of the Personnel Casualty Report system. JAGMAN, § 0230b, MILPERSMAN 4210100. A copy of the PI report is delivered to the appropriate medical department for inclusion in the health or dental record. If the medical officer and the commanding officer are of the opinion that the injury or disease was incurred "in line of duty" and "not as a result of the member's own misconduct," then appropriate entries stating such are entered in the health record. **No further investigation** is required, unless directed by the GCMCA. JAGMAN, §0230c.

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

1. the injury or disease was incurred in such a way that suggests a finding of "misconduct" or "not in line of duty" might result (JAGMAN, §§ 0230d(1), (2));

2. there is a reasonable chance of permanent disability and the CA considers an investigation essential to ensuring an adequate official record;

3. the injury involves a Naval or Marine Reservist and the CA considers and investigation essential to ensuring an adequate official record.

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

1. If the CA concludes that the injury or disease was incurred "in line of duty" and "not due to a member's own misconduct," that shall be expressed (regardless of whether it differs from or concurs with the IO's opinion). JAGMAN, § 0231a(1).

2. If, upon review of the report or record, the convening (or higher) authority believes the injury or disease was incurred ***not*** "in line of duty" or "due to the member's own misconduct," the member ***must*** be informed of the preliminary determination and afforded an opportunity, not to exceed 10 days, to submit any desired information to try and convince the CA otherwise. The member may be permitted to review the investigative report before providing any information. If the member decides to present information, it shall be considered by the CA and appended to the record. If the member elects not to provide information, or the 10 day period lapses without submission, then such shall be noted in the endorsement. JAGMAN, §§ 0231a(2).

The CI is forwarded to a GCMCA with an assigned judge advocate. The GCMCA shall indicate approval, disapproval or modification of conclusions concerning misconduct and line of duty. A copy of such action will be returned to the CA so that appropriate entries may be made in the member's service and medical records. JAGMAN, § 0231b(1).

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

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

## LINE OF DUTY/MISCONDUCT CHECKLIST
(JAGMAN 0221 - 0230)

____ Is a LOD/misconduct determination required?

____ Possible permanent disability?

____ Physical inability to perform duties for 24 hours or more?

____ A PI must be conducted.

____ *See* Section II of this Handbook for considerations in carrying out a PI.

____ The results of the PI are reported to the GCMCA via the Personnel Casualty Report (MILPERSMAN 4210100).

____ Ensure medical receives a copy of the PI.

____ If the CA determines this injury was incurred "in the line of duty, not due to misconduct," ensure medical record entries stating as such are made.

____ A command must convene a CI when:

____ The results of the PI indicate that the injury was incurred under circumstances which suggest a finding of "misconduct" might result. These circumstances include, but are not limited to, all cases in which the injury was incurred:

____ while the member was using illegal drugs;

____ while the member's blood alcohol content was of .10 percent by volume or greater. This does not preclude the convening of an investigation if the blood-alcohol percentage is lower than .10, if the circumstances so indicate;

____ as a result of a bona fide suicide attempt; and

____ while the member was acting recklessly or with willful neglect.

____ The results of the PI indicate that the injury was incurred under circumstances that suggest a finding of "not in line of duty" might result.

____ Was the servicemember in a desertion status at the time of injury?

____ Was the servicemember UA at the time of injury?

____ Was the servicemember in the Brig with a dishonorable discharge at the time of the injury?

____ Was the servicemember in jail as a result of a felony conviction at the time of the injury?

____ There is a reasonable chance of permanent disability and the commanding officer considers the convening of an investigation essential to ensure an adequate official record is made concerning the circumstances surrounding the incident.

____ The injured member is in the Naval Reserve or the Marine Corps Reserve and the commanding officer considers an investigation essential to ensure an adequate official record is made concerning the circumstances surround the incident.

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

____ Identifying data of all persons, military or civilian, killed or injured.

____ Name, sex, age.

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

____ Experience/expertise, where relevant.

____ Civilian title, business or occupation, address.

____ Experience/expertise, where relevant.

____ All relevant records must be obtained, including: military or civilian police accident reports, pertinent hospitalization or clinical records, death certificates, autopsy reports, records of coroners' inquest or medical examiners' reports, and pathological, histological, and toxicological studies.

____ Place of injury occurrence, the site and terrain, to include photographs, maps, charts, diagrams or other relevant exhibits.

____ Duty status of injured person: leave, liberty, unauthorized absence (UA), active duty, active duty for training, or inactive duty for training at time of injury.

____ Whether any UA status at time of injury materially interfered with his/her military duty.

____ Nature/extent of injuries, including description of body parts injured.

____ Extent of hospitalization.

____ Cost from any civilian medical facilities.

____ Amount of time "lost."

____ Physical factors and impairment.

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

____ Any alcohol or habit-forming drug impairment.

____ Individual's general appearance, behavior, rationality of speech, and muscular coordination.

____ Quantity and nature of intoxicating agent used.

____ Period of time in which consumed.

____ Results of blood, breath, urine or tissue test for intoxicating agents.

____ Lawfulness of intoxicating agent.

____ Mental factors.

____ Emotionally upset (angry, depressed, moody, tense).

____ Mentally preoccupied with unrelated matters.

____ Motivation.

____ Knowledge of/adherence to standard procedures.

____ Attempted suicide (genuine intent to die v. gesture or malingering). *See* JAGMAN 0226.

____ Mental disease or defect. Psychiatric evaluation warranted?

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

____ Training.

- ____ Formal/on the job.
- ____ Adequacy.
- ____ Engaged in tasks different from those in which trained.
- ____ Engaged in tasks too difficult for skill level.

____ Emergency responses/reaction time.

____ Supervision (adequate/lax/absent).

____ Design factors.

- ____ Equipment's condition, working order.
- ____ Operating unfamiliar equipment/controls.
- ____ Operating equipment with controls that function differently than expected due to lack of standardization.
- ____ Unable to reach all controls from his/her work station and see and hear all displays, signals, and communications.
- ____ Provided insufficient support manuals.
- ____ Using support equipment which was not clearly identified and likely to be confused with similar but noncompatible equipment.

____ Environmental factors.

- ____ Harmful dusts, fumes, gases without proper ventilation.
- ____ Working in a hazardous environment without personal protective equipment or a line-tender.
- ____ Unable to hear and see all communications and signals.

____ Exposed to temperature extremes that could degrade efficiency, cause faintness, stroke or numbness.

____ Suffering from eye fatigue due to inadequate lighting or glare.

____ Visually restricted by dense fog, rain, smoke or snow.

____ Darkened ship lighting conditions.

____ Exposed to excessive noise/vibration levels.

____ Personnel protective equipment.

____ Using required equipment for the job (e.g., seatbelts, safety glasses, hearing protectors).

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

____ Not using proper equipment due to lack of comfort or conflict with Rambo image (identify).

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

____ Hazardous conditions.

____ Inadequate/missing guards, handrail, ladder treads, protective mats, safety devices/ switches, skid proofing.

____ Jury-rigged equipment.

____ Use of improper noninsulated tools.

____ Incorrectly installed equipment.

____ Defective/improperly maintained equipment.

____ Slippery decks or ladders, obstructions.

____ Improper clothing (leather heels, conventional shoes vice steel-toed shoes, loose-fitting clothes, no shirt, conventional eyeglasses vice safety glasses).

**Remember to consult other applicable checklists for information requirements. For example, if a sailor injured himself in a motor vehicle accident, the IO would also need to gather that information listed in JAGMAN § 0243c for inclusion in the final CI.**

## SPECIAL CONSIDERATIONS IN DEATH CASES

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

**NOTE: NCIS must be notified per SECNAVINST 5520.3 series in any death case involving actual or suspected criminal conduct.**

***Preliminary Inquiry (PI).*** A PI should be conducted into the death of a member of the naval service or into the death of a civilian which occurs at a place under naval control. At the conclusion of the PI, the CA must determine which of the options listed in JAGMAN 0205 will be exercised, and report that decision to the next superior in the chain-of-command.

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

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

(2) was the result of enemy action.

***Limited Investigations.*** Where the death of a servicemember occurred at a location within the U.S. and not under military control, while the member was off-duty, and there is no discernable "nexus," or connection, between the circumstances of the death and the naval service, the command need only obtain a copy of the investigation conducted by civilian authorities and retain it as an internal report. JAGMAN, § 0235d. No further investigation is required.

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

1. the case involves civilian or other non-naval personnel found dead on a naval installation under peculiar or doubtful circumstances, unless the incident is one over which NCIS has jurisdiction;

2. the circumstances surrounding the death places the adequacy of military medical care reasonably at issue;

3. there exists a probable "nexus," or connection, between the naval service and the circumstances of the death of a servicemember; or

4. it is unclear if enemy action caused the death, such as in possible "friendly-fire" incidents.

**Investigation reports will not contain any opinions concerning line of duty/misconduct in death cases. Misconduct will not be attributed to a deceased member.**

Even though prohibited from rendering the ultimate line of duty/misconduct opinion, an investigation may uncover evidence which calls into question the propriety of a deceased individual's conduct. In a fair and impartial manner, such facts must be documented in the investigation. To find that the acts of a deceased servicemember may have caused harm or loss of life, including the member's own, through intentional acts, findings of fact must be established through clear and convincing evidence. JAGMAN, § 0240.

***Independent Reviews***. Prior to endorsement of an investigation which calls into question the deceased's conduct, the CA may wish the report to be reviewed to ensure thoroughness, accuracy of the findings, and fairness to the deceased member. The individual selected to conduct this review shall have no previous connection to the investigative process and must be outside the CA's immediate chain of command. To the extent possible, the reviewer should possess training, experience, and background sufficient to allow critical analysis of the factual circumstances. The reviewer is not to act as the deceased's representative, but rather provide critical analysis from the perspective of the deceased, tempered by the reviewer's own experience, training, and education. If the reviewer believes comments are warranted, such comments shall be completed and provided to the CA within 10 working days of the report's delivery to the reviewer. The CA is to consider any comments submitted by the reviewer and take any action deemed appropriate. The comments shall be appended to the investigative report. JAGMAN, § 0239.

# COMMAND ENDORSEMENTS

## COMMAND INVESTIGATIONS

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

1. Returns the report to the IO for further inquiry or corrective action, noting any incomplete, ambiguous, or erroneous action of the IO;

2. determines that the investigation is of no interest to anyone outside the command and chooses to file the investigation, without further forwarding, as an internal report;

3. transmits the report by endorsement to the next appropriate superior officer, typically to the GCMCA over the CA. The CA's endorsement will set forth appropriate comments, recording approval or disapproval in whole or in part, of the investigation's proceedings, findings, opinions, and recommendations. In line of duty/misconduct investigations, the CA is required to specifically approve or disapprove the line of duty/misconduct opinion.

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

* The finds of fact are hereby modified as follows: (modification)

* The following additional findings of fact are added: (numbers start after the last findings of fact in the basic investigation).

* Opinion ___ in the basic correspondence is not substantiated by the findings of fact because _____ and is therefore disapproved (modified to read as follows: _____).

* The following additional opinions are added: (numbers start after the last opinions in the basic investigation).

* Recommendation ___ is not appropriate for action at this command; however, a copy of this investigation is being furnished to _____ for such action as deemed appropriate.

* Additional recommendations: (numbers start after the last recommendation in the basic investigation).

* The action recommended in recommendation ___ has been accomplished by ___ _____ (has been forwarded to _____ for action; etc.).

The CA's endorsement must specifically indicate what corrective action, if any, is warranted and has been or will be taken. Whenever punitive or nonpunitive action is contemplated or taken as the result of the incident under inquiry, such action should be noted in the endorsement. JAGMAN, §§ 0209g(1), 0218. 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." JAGMAN, § 0203.

Punitive letters, or copies of recommended drafts, shall be included as enclosures. Nonpunitive letters are ***not*** to be mentioned in endorsements or included as enclosures. JAGMAN, § 0218.

***Routing the CI.*** Upon completion of the endorsement, the CA forwards the original investigative report through the chain-of-command to the GCMCA over the CA. ***It is no longer appropriate to list the Judge Advocate General as the ultimate addressee; CI's are not routinely forwarded to JAG.*** The subject matter and facts found will dictate the exact routing of the report; for example, area coordinators may be included as via addresses if the investigation relates to an issue affecting their area coordination responsibilities.

One complete copy of the investigation should be forwarded with the original for each intermediate reviewing authority (additional copies are required in death cases). JAGMAN, § 0219a. Advance copies of the report of investigation shall be forwarded by the CA in the following cases:

(a) For CI's involving injuries and deaths of naval personnel, or material damage to a ship, submarine, or Government property (excluding aircraft), advance copies are sent to Commander, Naval Safety Center. In aircraft mishap cases, copies of investigations are sent to the Naval Safety Center only upon request. JAGMAN, § 0219b.

(b) When the adequacy of medical care is reasonably in issue and which involve significant potential claims, permanent disability, or death, advance copies of the CI are sent to the Naval Inspector General, Chief, Bureau of Medicine and Surgery (two copies); and the local NLSO. JAGMAN, §§ 0209g(2)(a), 0219c.

(c) Advance copies are to be provided to servicing NLSOs for CI's involving potential claims or civil lawsuits. JAGMAN, § 0219b.

***Retention of CI's.*** The CA must maintain a copy of all CI's for a minimum of 2 years.

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

## LITIGATION-REPORT INVESTIGATIONS

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

1. Return the investigation to the supervisory judge advocate for further inquiry; or

2. endorse and forward the report. JAGMAN, § 0210g(1).

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

***Routing the investigation***. Upon completion of the endorsement, the CA forwards the original investigative report to the Judge Advocate General (Code 33), via the Staff Judge Advocate of the GCMCA in the chain of command. JAGMAN, § 0210g(2). One complete copy of the investigation should be forwarded with the original for the GCMCA. JAGMAN, §0219a. 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, including the servicing Naval Legal Service Office. Dissemination of the report ***shall not*** otherwise be made without first consulting a judge advocate. JAGMAN, § 0210g(2).

***Retention of litigation-report investigations***. The original CA is required to retain a copy of the litigation-report investigation, kept in a file marked "FOR OFFICIAL USE ONLY: LITIGATION/ATTORNEY WORK PRODUCT" and safeguard against improper disclosure. JAGMAN, § 0210(g). The JAGMAN does not prescribe a time period for retention; before destroying, consultation with a judge advocate or OJAG (Code 33) is advisable.

***Release of litigation-report investigations***. For all litigation-report investigations, the Judge Advocate General retains release authority. Convening and reviewing authorities are ***not authorized*** to release litigation-report investigations or their contents. JAGMAN, §0220c.

## ARTICLE 31 RIGHTS

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

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

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

## WAIVER OF RIGHTS

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

_____ _____
(Witness's signature and date) (Member's signature and date)

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

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

## COMPLIANCE WITH SECTION 0221 OF THE JAG MANUAL

I, _____ have been advised that:

- questions have arisen concerning whether or not my injury/disease, sustained or discovered on _____ 19__, was incurred in the line of duty or as a result of my own misconduct;

- in the event such injury/disease is determined to have been incurred not in the line of duty or as a result of my own misconduct, I will be required to serve for an additional period beyond my present enlistment to make up for the duty time lost;

- lost duty time will not count as creditable service for pay entitlement purposes;

- I may be required for forfeit some pay (where absence from duty in excess of one day immediately follows intemperate use of liquor or habit-forming drugs);

- if I am permanently disabled and that disability is determined to have been the result of misconduct or was incurred not in the line of duty, I may be barred from receiving disability pay or allowances, as well as veteran's benefits;

- I may ***not*** be required to give a statement relating to the origin, incidence, or aggravation of any disease/injury that I may have.

I do/do not desire to submit a statement.

_____ _____

Date Signature

_____

Witness Signature

_____

Witness Name/Rate/Grade/Unit/Telephone Number

## PRIVACY ACT STATEMENT

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

Today, _____, 19__, I acknowledge that I have received the following advisement under the guidelines of the Privacy Act.

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

1. AUTHORITY: 5 U.S.C. 301; 10 U.S.C. 972, 1201-1221, 2733, 2734-2734b., 2737, 5013, 5031-5036, 5131-5150, 5947, 6148, 7205, 7622-7623; 28 U.S.C. 1346, 2671-2680; 31 U.S.C. 240-243, 3521-3531, 3701-3702, 3717-3718; 37 U.S.C. 802; 38 U.S.C. 105; 42 U.S.C. 2651-2653; 44 U.S.C. 3101; 49 U.S.C. 1901.

2. PRINCIPAL PURPOSES. The information which will be solicited is intended principally and may be used for the following purposes:

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

b. Determinations on disciplinary or punitive action.

c. Determinations on liability of personnel for losses of, or damage to , public funds or property.

d. Evaluation of petitions, grievances, and complaints.

e. Adjudication, pursuit, or defense of claims for or against the Government or among private parties.

f. Other determinations, as required, in the course of naval administration.

g. Public information releases.

h. Evaluation of procedures, operations, material, and designs by the Navy and contractors, with a view to improving the efficiency and safety of the Department of the Navy.

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

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

a. Where an individual is a subject of an investigation for purpose 2a or 2b, above: Disclosure is voluntary. You are advised that you are initially presumed to be entitled to have the [personnel determination] [disciplinary determinations] in paragraph 2, above, resolved in your favor, but the final determination will be based on all the evidence in the investigative record. If you do not provide the requested information, you will be entitled to a favorable determination if the record does not contain sufficient evidence to overcome the presumption in your favor. If the completed record does contain sufficient evidence to overcome the presumption in your favor, however, your election not to provide the requested information possible could prevent the investigation from obtaining evidence which may be needed to support a favorable determination.

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

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

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

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

_____

(Signature and date)

## BASIC CHECKLISTS FOR SPECIFIC TYPES OF INCIDENTS
(JAGMAN 0242-0255)

The following pages contain basic checklists for specific types of incidents. Use these in combination with the checklist for the specific type of investigation you are conducting.

AIRCRAFT ACCIDENTS . . . . . 2

MOTOR VEHICLE ACCIDENTS . . . . . 5

EXPLOSIONS . . . . . 9

STRANDING OF A SHIP . . . . . 11

COLLISIONS . . . . . 14

ACCIDENTAL/INTENTIONAL FLOODING OF A SHIP . . . . . 16

FIRES . . . . . 18

LOSS OR EXCESS OF GOVERNMENT FUNDS OR PROPERTY . . . . . 22

CLAIMS . . . . . 24

HEALTH CARE INCIDENTS . . . . . 29

FIREARM ACCIDENTS . . . . . 33

POLLUTION INCIDENTS . . . . . 34

## AIRCRAFT ACCIDENTS
(JAGMAN 0242)

**NOTE: PARTICIPATION OF THE NATIONAL TRANSPORTATION SAFETY BOARD (NTSB) OR THE FEDERAL AVIATION AGENCY (FAA) IS COVERED BY OPNAVINST 3750.15 (SERIES). REMEMBER, THE JAGMAN IO MUST MAINTAIN AND PROTECT THE PRIVILEGED NATURE OF THE AIRCRAFT MISHAP INVESTIGATION (AMI) AND SHALL NOT RELY UPON THE AMI NOR OBTAIN ANY EVIDENCE FROM THE AMI NOR DISCUSS THE CASE WITH THE AMI INVESTIGATOR(S). *SEE* JAGMAN 0242b.**

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

- ____ The different objectives of the two investigations;
- ____ the reasons why procedures vary;
- ____ the need to preserve the privileged nature of the aircraft accident safety investigation; and
- ____ the fact that since neither command nor administrative action may alter the privileged character of statements provided to the aircraft accident safety investigation, such statements will not be available to the JAGMAN investigation from any official source.

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

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

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

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

____ Type, model, and bureau member of the aircraft involved.

____ Identification of the squadron, detachment, or unit authorizing the fight 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.

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

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

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

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

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

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

____ The use of night vision goggles; or

____ other mission-specific factors relevant to aircraft or air crew equipment or performance.

____ Weather conditions throughout the flight.

____ Preflight history of the aircraft.

____ Compliance or noncompliance with pertinent technical directives, including:

____ Flight hours since the last overhaul;

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

____ flight hours since the last intermediate check.

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

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

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

____ Post-accident examination of the aircraft.

____ Detailed description of all damage to the aircraft, including:

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

____ Examination of the scene of the accident, to include:

____ 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 an regional flight rules governing the flight and copies of air charts in effect and in use.

____ Performance data on aircraft in question under prevailing wind, weather, and temperature conditions.

____ In the case of deaths resulting from the accident, the precise medical cause thereof, (substantiated by medical records).

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

____ Involvement of other aircraft, if any.

____ The roles of supervisory, support, and controlling personnel.

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

____ When the evidence is not sufficient to form an opinion or opinions as to the cause or causes of the accident, a description of those factors, if any, which in the opinion of the investigator(s) substantially contributed to the accident.

## MOTOR VEHICLE ACCIDENT CHECKLIST
(JAGMAN 0243)

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

____ Identify the driver(s) and owner(s), to include the name, age, addresses (home and work), and telephone numbers.

____ For military members indicate their military status at the time of the accident (e.g., active duty, TAD, leave, liberty, etc.), their grade/rank, and the name, address, location and Unit Identification Code (UIC) of their unit.

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

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

____ Private vehicle involved: name, address, policy numbers, and telephone numbers of the insurer of the vehicle, including the amount and type of insurance carried.

____ Time of the accident.

____ Light and weather conditions.

____ Effect on driving conditions.

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

____ Road and terrain factors, road characteristics.

____ Any obstructions to the driver's vision.

____ Speed of the vehicles involved as evidenced by testimony of witnesses, skid marks, condition of road, and the damage to the vehicles.

____ Actions of other vehicles involved in the accident, including any part played by them in creating the conditions that resulted in the accident.

____ Traffic conditions at the scene and their effect on the accident.

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

____ Any regulations to use safety devices installed in the vehicles (e.g., seat belts, child carriers).

____ Copies of statues, ordinances, or regulations should be made an enclosure.

____ Mechanical condition of the vehicles involved.

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

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

____ The amount of alcohol consumed, results of any blood alcohol or other test for intoxication.

____ Any medications or drugs taken prior to the accident.

____ Any unusual stress or abnormal condition that might have affected the driver's alertness.

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

____ Driving experience of the driver(s) both generally and in the type of vehicles being driven, to include the state which licensed the driver.

____ Any previous loss of driving privileges and driving-related convictions.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

____ Whether or not disciplinary action should be taken.

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

____ Should the Government initiate a claim?

____ Pertinent recommendations on matters of safety procedures.

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

## EXPLOSIONS CHECKLIST
(JAGMAN 0245)

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

____ Type of explosion.

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

____ Measurable time intervals, if any, between explosions.

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

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

____ Description of any loss or damaged to Government and private property.

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

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

- ____ Radius of complete destruction;
- ____ radius of structural damage beyond economical;
- ____ radius of repairable structural damage;
- ____ radius of general glass breakage;
- ____ distances that significate missiles were projected, including kind and weight;
- ____ distance between locations, if explosions occurred at more than one location; and
- ____ distance between ships and other vessels or structures affected and distances to nearby ships or structures not affected.

____ Approximate shape and dimensions of crater, if any, including depth and kind.

____ Weather and atmospheric conditions and their effect of shock waves.

____ Personnel involved and the extent of the involvement.

____ Personnel qualifications in terms of the PQS system or other required safety qualifications.

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

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

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

____ Opinions on the probable cause(s) of the explosion.

____ An environmental assessment of the damage caused by the explosion may be necessary, particularly if there is evidence of chemical contamination of the surrounding area.

## STRANDING OF A SHIP CHECKLIST
(JAGMAN 0246)

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

____ Tactical situation.

____ Pertinent logs, charts, orders, regulations.

____ Condition of the sea and weather.

- ____ Light conditions, visibility.
- ____ Rate and direction of the tidal stream.
- ____ Time of tide.
- ____ Any other factors involving natural elements.

____ Navigational factors.

- ____ Sailing directions/coast pilot.
- ____ Fleet guide.
- ____ Track laid out/DR plot indicated/fixes plotted/track projected.
- ____ Notices to mariners.
- ____ Compass errors/application.
- ____ Depth of water and type of bottom.
- ____ Navigation reference points coordinated (radar/visual, points logged/plotting teams coordinated).

____ Material factors.

____ Radar, fathometer, compasses, ship's depth indicators, ship's speed log.

____ Alidades, bearing circles, peroruses, periscopes, bearing repeaters.

____ Ship's draft/submerged keel depth

____ Ship's anchor.

____ Ship's control system.

____ Navigation fix errors and navigation reset errors.

____ Ship's course and speed.

____ Mechanical or electronic deficiency or failure of the ship.

____ Ascertain the cause and responsibility for the stranding and resulting damage.

____ Was the proper chart provided by the Department of the Navy used?

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

____ If not, when was it last accurately ascertained?

____ Steps take during the time land was in sight to correct the ship's course and speed.

____ Personnel factors (posted/qualified): CDO, OOD, diving officer, navigator, piloting officer, fathometer operator, lookouts, helmsman, planes man, bearing takers, CIC team, leadsman, line handlers, local pilot.

____ Location of conning officer.

____ Personnel qualified in accordance with PQS requirements for the systems operation and maintenance.

____ Communications factors: Radio, telephone, IC systems, oral (audibility/understanding).

____ Assistance factors (tugs).

____ Organizational factors.

____ Ship organization directives.

____ Watch organization directives.

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

____ Draft reading/soundings taken.

____ Damaged surveyed.

____ Excess machinery secured.

## COLLISION CHECKLIST
(JAGMAN 0247)

**NOTE: COLLISIONS WILL NORMALLY BE INVESTIGATED BY A COURT OF INQUIRY DUE TO SIGNIFICANT PROPERTY DAMAGE AND POTENTIAL FOR LOSS OF LIFE INVOLVED.**

____ Tactical situation existing at the time of the collision.

____ Personnel manning and qualifications:

- ____ CDO, OOD, diving officer, helmsman, lookouts;
- ____ CIC team (sonar team, fire control tracking party and navigation team); and
- ____ phone talkers.

____ Location of conning officer.

____ Location of commanding officer.

____ Material factors:

- ____ Radar, sonar, navigational lights, periscopes, compasses, ship control systems;
- ____ ballast, blow and vent systems; and
- ____ UNREP special equipment.

____ Communication factors.

- ____ Radio, telephone, oral, signal systems.
- ____ Interferences (e.g., background noise level).

____ Rules-of-the-road factors.

- ____ Operating area factors.
- ____ Adherence to op area boundaries.
- ____ Existence of safety lanes.
- ____ Depth constraints (depth separation, depth changes, out-of-layer operations).

____ Weather, visibility, and other environmental factors.

____ Assistance factors:

____ pilot - experience/language barrier; and

____ tugs, line handlers.

____ Aides to navigation.

____ Use and accuracy of charges;

____ sailing directions/coast pilot;

____ fleet guide;

____ tide and current conditions as calculated and as experienced;

____ maintenance of required navigational standards;

____ notices to mariners;

____ radar and visual points designated and logged; and

____ navigation team properly briefed.

## ACCIDENTAL OR INTENTIONAL FLOODING OF A SHIP CHECKLIST
(JAGMAN 0248)

____ Is flooding "significant" enough to document? *See* JAGMAN 0248a.

____ Location of flooding (compartment noun name and number).

____ Date and time of flooding.

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

____ Source of flooding (internal or external).

- ____ Pipe rupture or valve failure.
- ____ Tank rupture/hull rupture/shaft seal failure.
- ____ Open to sea through designed hull penetration.
- ____ Other.

____ Flooding detection method.

- ____ Time duty emergency party called away, general quarters sounded.
- ____ Response time.

____ Dewatering equipment used (effective, available, operative).

____ Time flooding was stopped or brought under control.

____ Time required to dewater.

____ Time space was last inspected prior to flooding.

____ Compartments flooded and rate of flooding.

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

- ____ Draft forward and aft and list of ship before and after damage.
- ____ General distribution and amount of variable weights before damage.

____ Extent of damage (list all items).

____ Include photographs or documents to document range and extent.

____ Summary of steps taken to control damage and to correct list, trim or depth.

____ Injured incurred by personnel.

____ Ship's location at time of flooding.

____ Ship's condition of readiness.

____ Effect of flooding on ship's ability to carry out mission.

____ Estimated dollar amount of damage or repairs required.

____ Opinion on the probable cause of the flooding, including the cause of progressive flooding of other compartments.

____ Opinion on whether the occurrence of a similar type of flooding is possible on a similar ship.

## FIRES CHECKLIST
(JAGMAN 0249)

____ Is fire "significant" enough to document? *See* JAGMAN 0249a.

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

____ Class of fire (A, B, C, D).

____ Time fire detected.

____ Means of detection.

____ Time fire started (estimated).

____ Time fire reported.

____ Time fire alarm sounded.

____ Time fire located.

____ Time started fighting fire.

____ Time general quarters sounded.

____ Time assistance was requested.

____ Time assistance arrived.

____ Time boundaries set.

____ Time fire extinguished.

____ Time reflash watch set.

____ Fire did/did not reflash.

____ Extinguishing agents used (indicate effectiveness).

- ____ Fire main water (submarines: trim/drain system water).
- ____ Light water, foam (portable/installed), C02 (portable/installed), PKP, Steam smothering, flooding, other.

____ Extinguishing equipment (indicate availability and operability).

____ Pumps (portable/installed) size and quantity.

____ Nozzles/applicators (LC and HC).

____ Foam maker, vehicles, educators, type and size of hoses, other.

____ Firefighting organization used.

____ Nucleus fire party.

____ Repair party (condition I or II watches).

____ Inport fire party.

____ Outside assistance (explain).

____ Fire party/repair locker personnel assigned per appropriate publications, ships organization and regulations manual, battle bill, etc.

____ Number of personnel responding and their level of fire-fighting and damage control training.

____ Personnel duties and responsibilities. Assigned in writing?

____ Fire/repair locker organization charts properly maintained?

____ Damage control system diagrams up to date and available for use?

____ System of communications. Communications effectively established between control stations?

____ Protective equipment used (indicate details and assessments of availability, operability, and effectiveness).

____ OBAs, EAB masks, fire suits, boots, gloves, helmets, other.

____ Alarm system.

____ CO2 flooding, high temperature, other.

____ How it spread.

____ Through hot deck/bulkhead.

____ Through hole in deck/bulkhead.

____ By explosion (type).

____ Through vent ducts.

____ By liquid flow.

____ By wind.

____ Electric power in area.

____ Jettison bill (current, used).

____ If ship underway, course changes (snorkeling, surfaced).

____ Automatic vent closures.

____ Magazines flooded.

____ Operational problems.

____ OBAs/canisters effective, sufficient number.

____ EABs effective.

____ Sufficient water and pressure.

____ Flooding problems.

____ Drainage problems (installed/portable).

____ Lighting (explain).

____ Adequate equipment readily available.

____ Adequate intra-ship communications.

____ Other (explain).

____ Material discrepancies of any equipment used.

____ Determine all heat/ignition sources possible then eliminate those that are improbable.

____ Operating personnel qualified in accordance with PQS requirements for the systems operation and maintenance.

____ Identity of personnel that were injured or killed (with full description of injuries, medical records, autopsy reports).

____ Description of physical effects of the fire.

____ Include photographs or diagrams to document range and extent of damage.

____ Date of last inspection of involved spaces with any noted discrepancies.

____ Ship's location at time of fire.

____ Ship's condition of readiness.

____ Effect on ship's ability to carry out its mission.

____ Estimated dollar amount of damage or repairs required.

____ Overall assessment of effectiveness of fire/repair locker organization and leadership.

____ Opinion on the cause of fire and the factors that contributed to the spread of the fire.

____ Opinion on whether the occurrence of a similar type of fire is possible on a similar ship.

## LOSS OR EXCESS OF GOVERNMENT FUNDS OR PROPERTY CHECKLIST
(JAGMAN 0250)

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

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

____ Any accountable individual must receive the special notice contained in JAGMAN 0250e.

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

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

____ In cases of loss of funds, whether the loss was

- ____ loss of proceeds of sale of Government property; or
- ____ physical loss of funds (e.g, embezzlement or fraudulent acts of subordinate finance personnel); or
- ____ result of illegal or unproper 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.

____ The experience and training of the accountable individual in the handling of funds or property.

____ The workload, including collateral duties, of the accountable individual at the time of the irregularity.

____ A description, with diagrams where appropriate, of the physical working conditions of the accountable individual who incurred the loss or excess.

____ Physical security arrangements and devices.

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

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

____ Information on recent inspections, assist visits, management control reviews, or other evaluations of procedures.

____ Identification of the regulations pertinent to the handling of the property or funds involved and were such regulations followed?

____ A description of remedial measures taken to prevent recurrence of the irregularity.

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

____ An opinion whether the loss or excess was proximately caused by the fault or negligence of any accountable individual or by an act of a non-accountable individual that can be the basis for financial liability under section 0167.

## CLAIMS FOR OR AGAINST THE GOVERNMENT CHECKLIST
(JAGMAN 0251)

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

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

____ How they were involved?

- ____ Killed as a result of the incident (identifying information for the next-of-kin or legal representative must be provided).
- ____ Injured party.
- ____ Owner of property damaged.
- ____ Military member whose acts or omissions are alleged to have caused the harm.
- ____ Witness.

____ Information on how those involved may be located.

- ____ Permanent address that will be accurate for at least 5 years after the accident.
- ____ Indicate each individual's status.
- ____ Military: Regular or Reserve, on active duty, TAD, leave, liberty, etc., at the time of the incident.
- ____ Civilians: Federal employee, personal services contractor employed by an independent contractor, etc.

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

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

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

____ A factual description of how the individual(s) was injured,

____ What equipment was being used.

____ Who was operating the equipment.

____ Who was supervising (or should have been supervising).

____ Whether equipment failed or was operated incorrectly.

____ If equipment failure, the maintenance history of the equipment.

____ If the injury occurred on Government property.

____ The condition of the property.

____ Who is responsible for the property's upkeep.

____ Authority for the injured party to be present on Government property.

____ The nature and extent of personal injuries.

____ Amount of medical, dental, and hospital expenses incurred, supported by itemized bills or receipts for payment.

____ Nature and extent of treatment.

____ Number of days hospitalized.

____ Name and address of all treating hospitals and medical facilities.

____ Name(s) and addresses of all treating physicians or other care givers.

____ Extent and nature of all follow-on or outpatient care.

____ Prognosis.

____ Degree of disability, if any (total, partial permanent, partial nonpermanent).

____ Necessity for future treatment and estimated costs.

____ Salary/earnings lost due to time lost from employment

____ Actual number of work days lost.

____ Estimated compensation for that period based on hourly wage or salary.

____ Full time, part-time, or self-employed.

____ Diminished earning capacity.

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

____ If an individual died.

____ Time of death relative to the injury.

____ Intervening treatment and state of consciousness.

____ Cause of death as established by autopsy.

____ Pre-existing medical conditions.

____ Age.

____ Occupation.

____ Burial expenses.

____ Heirs.

____ Amount of property damage.

____ Include photographs before and after, if possible.

____ Estimates or bills of repair and receipts.

____ Whether any pre-existing damage existed.

____ Original purchase price.

____ Date of purchase.

____ Salvage value of property.

____ Government property damaged.

____ Estimates or bills of repair and receipts.

____ Original purchase price.

____ Date of purchase.

____ Salvage value of property.

____ If no damage, so state.

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

____ Insurance company.

____ Policy number.

____ Policy provisions relevant to this claim or incident.

____ Extent of coverage and limits on liability.

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

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

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

____ Whether civilian or military criminal charges were filed.

____ Jurisdiction in which they were filed.

____ Status or final disposition of those charges.

____ Existence of any law, regulation, or order relevant to the incident and whether it was violated.

____ If a stray animal was involved, whether the jurisdiction has an "open range" law (attach a copy as an enclosure).

____ An opinion whether any military personnel involved were acting in the scope of their employment at the time of the incident.

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

____ An opinion regarding fault or negligence.

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

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

## HEALTH CARE INCIDENTS CHECKLIST
(JAGMAN 0252)

**NOTE: INVESTIGATIONS UNDER JAGMAN 0252 ARE SEPARATE FROM ANY QUALITY ASSURANCE INVESTIGATION CONDUCTED BY THE STAFF OF A MILITARY TREATMENT FACILITY SOLELY FOR QUALITY ASSURANCE PURPOSES.**

____ Comprehensive chronology and description of all relevant facts.

____ Identification of all involved health care providers, including:

- ____ Credentials (education, training, and experience).
- ____ Status (trainee or staff; Government employee or contractor).
- ____ Role (attending, consulting, supervision).

____ Full identification of the staff physician responsible for the patient's care at the time of the incident.

____ If maintenance of equipment or training of personnel is involved, identify the individual(s) responsible for the maintenance or training at issue.

____ Patient information.

- ____ Name, date of birth, age, sex, address, phone number, marital status, dependents, occupation.
- ____ Medical history.
- ____ Condition immediately prior to incident.
- ____ Current condition.

____ Nature and extent of injuries alleged to have occurred.

- ____ Additional treatment required.
- ____ Prognosis.
- ____ Degree of disability.

____ Loss of chance of recovery.

____ Names and addresses of subsequent treating physicians or health care providers.

____ A copy of the claim and any other documents or correspondence which shed light on the claimant's or potential claimant's contentions concerning the matter.

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

____ Indicate the date and person who secured those items and the current location and custodian of each.

____ Complete copy of the medical record. Entries must be reviewed to ensure handwriting is legible and, if illegible, typed transcripts should be attached to the investigation.

____ All special studies must be retrospectively reviewed to assess whether the original interpretations were accurate.

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

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

____ Copies of all relevant documents.

____ MTF staff bylaws.

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

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

____ All patient information pamphlets, brochures, or sheets which were provided to the patient.

____ In cases involving contract providers, a copy of the contract.

____ In cases involving possible equipment/device failure.

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

____ The date, location, and names of the persons involved in the evaluation of the equipment/device and the findings thereof. Equipment/devices must be removed from service and secured until examined by appropriate technical representatives. Equipment/devices must not be used, altered, tested, or repaired until properly evaluated.

____ Copies of maintenance reports and any protocols.

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

____ "Currency" of members to perform their duties at the time of the incident.

____ "Orientation" to perform the duties assigned at the time of the incident.

____ The standard of care for any practices, procedures, policies, protocols, or systems involved in the incident and the basis which establishes that standard of care (provide a copy of relevant medical literature, text, treatises, articles, policy, practices, or procedures).

____ This refers to clinical/surgical procedures, nursing procedures, ancillary services such as the medical laboratory or pharmacy procedures, and health care administrative policies. The source and date of documents relevant to the standard of care must be provided.

____ Summaries of expert reviews of the care documented by the investigation.

____ Identify the reviewer and the reviewer's credentials.

____ Evaluation (e.g., expert opinion) describing the duty that was owed the patient (standard of care).

____ Manner in which the duty was either met or not met.

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

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

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

## FIREARM ACCIDENTS CHECKLIST
(JAGMAN 0254)

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

____ Date, time of day, and names and addresses of witnesses present.

____ Description of physical location of incident.

____ Description of the firearm.

- ____ Mechanical condition.
- ____ Safety mechanisms.
- ____ Whether the safety mechanisms were used by the firearm handler.

____ Authorization for possession of the firearm.

- ____ How, when, and where it was obtained.

____ Description of firearm handler's formal training, experience, and familiarity with the firearm's condition, safety procedures, and proper use.

____ Discussion of any psychological problems, mental impairment due to drug or alcohol use, and mental responsibility of the firearm handler.

## POLLUTION INCIDENTS CHECKLIST
(JAGMAN 0255a)

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

____ Location and circumstances of the spill, including:

____ Weather and conditions at the site (visibility, darkness, presence/phase of the moon).

____ How, when, and by whom the spill was detected.

____ Description of the activity occurring when the spill occurred (e.g., shifting fuel, taking on fuel, pumping bilges).

____ Type of material (e.g., fuel, oil, other hazardous material).

____ Estimated quantity of material spilled and the basis for the estimate.

____ Source of the spill, (e.g., tank, drum, or valve).

____ Identity of personnel involved, including:

____ Name, rank/grade, unit, address (home and work).

____ Training and experience for task.

____ Who was (or should have been) providing supervision.

____ Whether required reports were made (e.g., reports required by OPNAVINST 5090.1 series, reports to the National Response Center, reports required by state and local law, reports to the Navy operational chain-of-command).

____ Whether local SOPA and command instructions were complied with.

____ Description of cleanup.

____ Membership of the quick response team and training.

____ Response time.

____ Actions taken.

____ Equipment used.

____ Effectiveness of equipment and personnel.

____ Availability and readiness of equipment and personnel.

____ Nature and extent of damages to Government and private property.

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

____ Relevant training documents (e.g., Personnel Qualification Standard (PQS) records), deck/watch logs, and engineering logs which support the facts.

____ An opinion regarding the cause of the spill.

____ Faulty equipment, container, fitting, valve.

____ Operator error/safety.

____ Operational procedure error.