



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
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JAN 15 2013

Ref: 12-00263-F

OCCL

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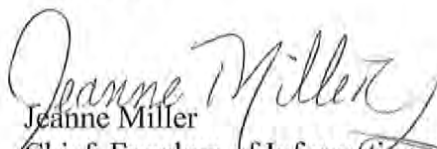
Dear Mr. McAdams:

This is the final response to your Freedom of Information Act (FOIA) request dated July 30, 2012, for a copy of a "1996 Inspector General report, apparently about the death of one James Sabow, and/or the claim that drugs from Central America were flown into El Toro in the 1980s." We received your request on July 30, 2012, and assigned it FOIA case number 12-00263-F.

A search of the records maintained by the Office of the Deputy Inspector General for Policy and Oversight resulted in the retrieval of the enclosed report which is responsive to your request. I determined that the redacted portions are exempt from release pursuant to 5 U.S.C. § 552(b)(6), which pertains to information, the release of which would constitute a clearly unwarranted invasion of personal privacy; and 5 U.S.C. § 552(b)(7)(C), which pertains to records or information compiled for law enforcement purposes, the release of which could reasonably be expected to constitute an unwarranted invasion of the personal privacy of individuals.

If you are not satisfied with this action, you may submit an administrative appeal to the Department of Defense, Office of the Inspector General, Office of Communications and Congressional Liaison, ATTN: Mr. John R. Crane, Suite 15F25, 4800 Mark Center Drive, Alexandria, VA 22350-1500. Your appeal should cite case number 12-00263-F and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,


Jeanne Miller
Chief, Freedom of Information and
Privacy Office

Enclosure(s):
As stated

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**REVIEW
OF THE NAVAL CRIMINAL INVESTIGATIVE
SERVICE INVESTIGATION
INTO THE DEATH OF
COLONEL JAMES EMERY SABOW
UNITED STATES MARINE CORPS**



**OFFICE OF THE INSPECTOR GENERAL
DEPARTMENT OF DEFENSE**

June 5, 1996

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ACRONYMS

AFIP.....	Armed Forces Institute of Pathology
BrigGen	Brigadier General
CAPT.....	Captain, U.S. Navy
CID	Criminal Investigations Division
Col	Colonel
Cpt	Captain, U.S. Marine Corps
GSR.....	Gunshot Residue
HQ	Headquarters
HQMC	Headquarters, United States Marine Corps
IGMC.....	Inspector General, Marine Corps
JAGMAN	Navy Judge Advocate General Manual Investigation
LtCol	Lieutenant Colonel
Maj.....	Major
MCAS	Marine Corps Air Station
MP	Military Police
NIH	National Institutes of Health
NIS.....	Naval Investigative Service
OCSCO.....	Orange County Sheriff-Coroner's Office
OIG	Office of the Inspector General, Department of Defense
ROI	Report of Investigation
SA.....	Special Agent
TDY	Temporary Duty
USMC	United States Marine Corps

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INTRODUCTION

This review was initiated on April 13, 1994, in response to a request from the Assistant Secretary of the Navy (Manpower and Reserve Affairs), to review, under the provisions of Section 1185 of the National Defense Authorization Act for Fiscal Year 1994, Title 10, United States Code, Section 113, note, "Investigations of Deaths of Members of the Armed Forces from Self-Inflicted Causes," the investigations into the death of Colonel (Col) James Emery Sabow, United States Marine Corps (USMC). The request was predicated on a request by (b)(6) (b)(7)(C), (b)(6) (b)(7)(C), (b)(6) (b)(7)(C) reported he had conducted a 3-year investigation into the death of (b)(6) (b)(7)(C) that showed Col Sabow's death was a homicide.

CASE SUMMARY

Death of Col Sabow

On Tuesday, January 22, 1991, at approximately 9:30 a.m., Col Sabow, a 51-year-old male, was found dead, having suffered a massive wound to the head. He was found by his wife, (b)(6) (b)(7)(C), in the backyard of their Government quarters located at 5163 F Street, Marine Corps Air Station (MCAS), El Toro, CA. A shotgun was found next to the body. Col Sabow's death was investigated by the Naval Criminal Investigative Service, then known as the Naval Investigative Service (NIS). At the request of MCAS El Toro, the Orange County Sheriff-Coroner's Office (OCSCO), Santa Ana, CA, responded to the scene and transported the decedent to the OCSCO to conduct an autopsy.¹ The cause of Col Sabow's death was determined to be from massive cerebral contusions and lacerations due to a shotgun wound to the head. The manner of death was determined to be suicide.

In addition to the criminal investigation conducted by NIS, an administrative investigation was conducted pursuant to the provisions of the U.S. Navy Judge Advocate General Manual (JAGMAN), known as a JAGMAN investigation. A second JAGMAN investigation was conducted at the request of (b)(6) (b)(7)(C). Additionally, the Inspector General of the Marine Corps (IGMC) conducted an oversight review of the NIS death investigation as directed by the Assistant Commandant, USMC.

Events Prior to Death

The following facts summarize information about events prior to Col Sabow's death obtained during the IGMC, NIS and JAGMAN investigations.

In November 1990, the IGMC received an anonymous letter that reported alleged criminal activity regarding the illegal use of Government aircraft and false temporary duty

¹ Officials at MCAS El Toro requested the OCSCO respond to the scene and conduct the autopsy because MCAS El Toro did not have the facilities to conduct autopsies.

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(TDY) claims by (b)(6) (b)(7)(C), Chief of Staff, MCAS El Toro. It was alleged that (b)(6) (b)(7)(C) misused Government aircraft to travel to various locations on personal business. On November 13, 1990, the complaint was discussed by telephone between a representative of the Headquarters (HQ), IGMC and Brigadier General (BrigGen) Wayne Adams, Commander, MCAS El Toro. On November 13, 1990, BrigGen Adams signed a memorandum to the IGMC that stated he had discussed the allegations with (b)(6) (b)(7)(C) and found no evidence of wrongdoing. However, flight records and TDY vouchers obtained by the Naval Inspector General at HQ, USMC, provided convincing evidence of wrongdoing; therefore, on January 10, 1991, the Assistant Commandant, USMC, convened an investigation to be conducted by the IGMC in lieu of the local command. (b)(6) (b)(7)(C) was subsequently relieved of his duties as Chief of Staff, MCAS El Toro, on January 12, 1991, pending completion of the investigation.

The IGMC investigation substantiated that (b)(6) (b)(7)(C) did use military aircraft for the sole purpose of his personal convenience and prestige. The investigation disclosed evidence of additional wrongdoing by (b)(6) (b)(7)(C).

During the course of the IGMC investigation allegations of wrongdoing similar to those made and substantiated against (b)(6) (b)(7)(C) were made against Col Sabow, who was then serving as the Assistant Chief of Staff for Operations (G3) MCAS El Toro. On January 17, 1991, while the IGMC looked into the allegations against Col Sabow, he was officially relieved of his duties by BrigGen Adams. The investigation regarding allegations against Col Sabow was terminated with the death of Col Sabow on January 22, 1991.

On the morning of Col Sabow's death, a newspaper account of the investigation and the allegations against (b)(6) (b)(7)(C) appeared in the Orange County Register.

CASE ANALYSIS

Record Collection

All known records concerning the death of Col Sabow were obtained and examined during this review. Records included the following:

- NIS report of investigation (ROI),
- Two Navy JAGMAN ROIs,
- IGMC ROI pertaining to misconduct and/or criminal activity involving Col Sabow and (b)(6) (b)(7)(C),

² Our investigation established that a long time personal and professional relationship existed between Cols Sabow and (b)(6) (b)(7)(C). In addition to Col Sabow being an immediate subordinate of (b)(6) (b)(7)(C), they had known each other for over 25 years and were next door neighbors.

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- IGMC oversight review of the NIS death investigation,
- Death scene and autopsy photographs,
- Laboratory reports,
- Written complaint of (b)(6) (b)(7)(C)

The NIS Investigation

The military police (MP) arrived at the scene of Col Sabow's death at 9:40 a.m. and under the direction of the Provost Marshal and his operations officer, cordoned off the area surrounding the Sabow residence. After being notified of the death by the MPs, NIS agents arrived at 9:55 a.m. and initiated an investigation by processing the crime scene and interviewing known and potential witnesses.

Crime Scene Evidence

Six NIS agents and one USMC Criminal Investigations Division (CID) investigator were present during the processing of the crime scene. The NIS agents observed Col Sabow's body lying on the ground in the backyard of his quarters. He was lying on his right side and a patio chair was inverted over his posterior. A long barreled firearm was positioned under Col Sabow's right side. His body was approximately 8 feet from the edge of the cement patio.

The crime scene, including the interior of the house, was recorded using still photographs. The death scene was also recorded on video/audio tape. Gunshot residue (GSR) swabs were taken from Col Sabow's hands for examination. At the request of MCAS El Toro, Col Sabow's body was subsequently transported to the OCSCO.

Items of evidence seized during the processing of the crime scene included one note pad, one writing tablet, one Ithaca Model 200E 12 gauge shotgun, one expended Winchester 12 gauge dove and quail cartridge, one unexpended Winchester 12 gauge dove and quail shell, the latter two items having been removed from the shotgun at the scene, one 13" x 8" x 8" cardboard box containing two rifle swivels and various shotgun shells and rifle rounds, and the terry cloth robe worn by Col Sabow.

Analysis of the GSR swabs from Col Sabow's hands by the California Department of Justice Bureau of Forensic Services, Riverside Regional Criminalistics Laboratory, by atomic absorption spectrophotometry disclosed "...very high levels of antimony and lead were found on the palm and back of the left hand samples, while samples from the right hand were negative. This could be due to the left hand being near the muzzle of the discharging shotgun."

Other evidence seized during the crime scene examination was submitted to the NIS Forensic Laboratory, San Diego, CA. On March 1, 1991, a NIS laboratory report disclosed that forensic examination of the shotgun found two latent fingerprints suitable for

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identification. A May 1, 1991, laboratory report indicated that comparison of record prints for (b)(6) (b)(7)(C) and 10 law enforcement officials who had access to the shotgun during the processing of the crime scene and later at the NIS office did not identify a match to those found on the shotgun. A May 23, 1991, laboratory report, however, identified the two latent fingerprints on the shotgun as belonging to (b)(6) (b)(7)(C), (b)(6) (b)(7)(C). No other identifiable latent or partial fingerprints were found on the shotgun. Examination of the note pad, the tablet and the cloth robe failed to disclose any information of investigative value. Examination of the expended 12 gauge shotgun cartridge, the unexpended 12 gauge shell, and the cardboard box failed to disclose any information of investigative value.

Witness Recollections

Screening interviews of neighbors failed to identify anyone who heard the shot that killed Col Sabow or observed anything out of the ordinary on the morning of his death.

Interviews of Marine officers, both those on active duty and one retired general officer who were known to have spoken with Col Sabow on the night before his death, were conducted. The officers discussed their perception of Col Sabow's reaction and his expressed personal feelings on being accused of wrongdoing and being relieved of his duties. Col Sabow was variously described as "dispirited" or being in a "visible state of shock, as if he had been handed a death sentence." Several of those interviewed by the NIS perceived Col Sabow as an extremely proud man who was first and foremost a Marine. Many were of the opinion that he was so disgraced and dishonored by the allegations against him and his subsequent relief of duty that he very possibly felt he could not live with the shame.

Especially poignant were the results of two interviews of (b)(6) (b)(7)(C) conducted by the NIS during which she described what appeared to be a deterioration in Col Sabow's mental state during the week prior to his death. He told her (b)(6) (b)(7)(C) "over being relieved of his duties on January 17, 1991, and appeared to be panic stricken. He said to her, (b)(6) (b)(7)(C) " She described Col Sabow's anger at what he perceived as a lack of support from fellow Marine officers and the Marine Corps in general. (b)(6) (b)(7)(C) discussed Col Sabow's concern, on the morning of his death, that the allegations against, and subsequent relief of (b)(6) (b)(7)(C) had been published in a local newspaper. (b)(6) (b)(7)(C) described Col Sabow as becoming "more and more paranoid" after reading the article. She said on the morning of January 22, 1991, Col Sabow was told by (b)(6) (b)(7)(C) that an article about him (Col Sabow) and another Colonel would probably be in the next day's paper. (b)(6) (b)(7)(C) told the NIS that she and Col Sabow had previously discussed the possibility of the allegations against Col Sabow appearing in the newspaper. Col Sabow was very concerned that if such an article were to appear in the newspaper about him, (b)(6) (b)(7)(C) would be shamed.

(b)(6) (b)(7)(C) told the NIS that from the time Col Sabow was relieved she had been by his side constantly, and that as the week went on she became more concerned for him. The only time she had left him alone was to go to church on the morning he died. (b)(6) (b)(7)(C) said she left for mass at around 8:30 a.m. and returned home at approximately 9:30 a.m.

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When (b)(6) (b)(7)(C) entered the house, she could not find Col Sabow inside, and she walked to the back patio calling his name. She found him lying in the backyard with a shotgun near or in his mouth. She said that as soon as she saw him, she knew he was dead. She touched his face, kissed him, and felt a lump on the back of his head. She said that his head and hands were swollen and there was blood running from Col Sabow's ear. (b)(6) (b)(7)(C) related that she ran screaming next door to (b)(6) (b)(7)(C) house. In response, (b)(6) (b)(7)(C) ran over to the Sabow's backyard and then returned to his house and called for help.

During her NIS interview on January 30, 1991, (b)(6) (b)(7)(C) discussed the reasons she believed Col Sabow had committed suicide and why he would not have left a suicide note. She said that she did not believe she would ever find a note because everything that needed to be said between them had been said. She also said she did not believe he was in the frame of mind to write a note.

The NIS conducted 39 interviews during its investigation, but did not develop any evidence or indication of foul play. The facts developed by the NIS investigation support the determination made by the medical examiner regarding the cause and manner of death.

Autopsy

On January 23, 1991, a full autopsy was conducted at the OCSCO by (b)(6) (b)(7)(C) (b)(6) (b)(7), a board certified forensic pathologist. A total of 38 photographs were taken at autopsy, and three x-ray films were exposed of Col Sabow's head. In attendance were two other OCSCO employees and two NIS special agents. In an explanation of the examination of the external portion of the body, the pathologist noted that, other than wounds and other damage caused by the discharge of the shotgun, the body did not exhibit additional trauma. The pathologist described an entry type gunshot wound in the roof of the mouth that was covered with black soot. The tongue revealed laceration of the anterior surface and mid-tongue area. Examination of the head revealed massive fracture of the skull with no exit wound. Both the upper and lower jaws were fractured.

Examination of the respiratory system disclosed that the left lung weighed 440 grams, the right weighed 970 grams and there was a large amount of aspirated blood in the right lung parenchyma (lung tissue). Examination of the central nervous system revealed, in addition to other findings, "No intact brainstem, including midbrain, pons, or cerebral peduncle is identified. Only a small portion of the medulla and spinal cord is noted in the foramen magnum, which is removed and saved."

Following the autopsy, the Deputy Coroner, OCSCO, issued a death certificate that listed the cause of Col Sabow's death as massive cerebral contusions and lacerations due to a shotgun wound to the head and the manner of death as suicide.

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The Administrative Investigations

A JAGMAN administrative investigation was conducted by an attorney assigned to the Office of the Staff Judge Advocate, MCAS El Toro, and completed on February 7, 1991. The JAGMAN included written statements provided to the investigating officer by (b)(6) (b)(7)(C), Col Sabow's legal counsel, and (b)(6) (b)(7)(C), court reporter. Also included were summaries of statements obtained by NIS of (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C), a NIS diagram of the death scene, a copy of the death certificate and other official forms showing the assignment of Col Sabow to the MCAS El Toro, assignment of quarters on MCAS El Toro and an Emergency Medical Service Report pertaining to actions taken on the date of Col Sabow's death. No personal interviews were conducted by the investigating officer.

On December 10, 1991, at the request of (b)(6) (b)(7)(C), a second JAGMAN administrative investigation of Col Sabow's death was directed and conducted. The second JAGMAN report was completed on December 13, 1991. Copies of interviews conducted by the NIS were included as enclosures to the report as were results of examinations conducted by forensics laboratories. Personal or telephonic interviews were conducted of NIS Special Agents (SAs) (b)(6) (b)(7)(C) (now (b)(6) (b)(7)(C)) and (b)(6) (b)(7)(C) during the second investigation.

The HQ, USMC compared the results of the second JAGMAN investigation with the results of the first JAGMAN investigation and the NIS investigation. The first JAGMAN report contained minor errors (such as reporting that (b)(6) (b)(7)(C) called the MCAS El Toro Branch Medical Clinic, when in fact (b)(6) (b)(7)(C) actually called the Commanding General, MCAS El Toro.) No variation in the essential findings of fact in the three investigations was found and the significant conclusions and findings were the same. The investigations all concluded that the shotgun wound to the head that killed Col Sabow was self-inflicted and there was no evidence of foul play in the death of Col Sabow.

The JAGMAN investigations were conducted in accordance with the Navy JAGMAN for the purpose of determining the duty status of a Service member for eligibility for payment of benefits. The proceedings, findings of fact and recommendations of both JAGMAN reports were reviewed and approved by Marine Corps officials.

Other Information

In June 1993, (b)(6) (b)(7)(C)³, a paid consultant to (b)(6) (b)(7)(C), complained to the IGMC that the NIS mishandled Col Sabow's death investigation. (b)(6) (b)(7)(C) alleged Col Sabow was murdered, and that Col Sabow knew of illegal covert activities taking place at MCAS El Toro.

³ (b)(6) (b)(7)(C) retired from the U.S. Army Criminal Investigation Command in 1975, after which he acted as a counterterrorism, counternarcotics and security consultant to various corporations and Middle East countries.

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As a result of (b)(6) (b)(7)(C) complaint, the IGMC conducted a review of the NIS death investigation, and issued their findings on July 28, 1993. It was the IGMC opinion that (b)(6) (b)(7)(C) did not present any evidence to warrant further investigation into the allegations of illegal covert activities at MCAS El Toro. The Armed Forces Institute of Pathology (AFIP), Office of the Armed Forces Medical Examiner reviewed the autopsy and concurred with the determination of suicide as the manner of death. The IGMC concluded that although there were "indications of minor procedural errors and discrepancies (concerning the NIS death investigation), the outcome of the investigation remains the same; suicide."⁴

Review of Investigations

We reviewed and analyzed the NIS and JAGMAN ROIs. The analysis considered events that preceded Col Sabow's death and the techniques used by investigators to reach their conclusions.

The NIS responded to the scene with SAs and one USMC CID investigator. During the initial phase of the investigation, 12 screening interviews were conducted in the neighborhood. During the course of the investigation, NIS conducted 27 additional interviews. A total of 78 photographs were taken of the death scene and inside of the Sabow residence. The scene and subsequent examination of the decedent by the NIS forensic agent were videotaped. Detailed sketches and measurements of the death scene were prepared.

From our review of the NIS ROI and related documents, it appears that the NIS followed regulations and guidelines in effect at the time they conducted their investigation, except for procedural errors by a NIS agent and a NIS forensic agent. These procedural errors had no impact on the outcome of the investigation.

We also reviewed and analyzed the JAGMAN ROIs. Although the second report contained a minor error in findings of fact (it was reported that (b)(6) (b)(7)(C) described Col Sabow's emotional state as "desperate," when in fact (b)(6) (b)(7)(C) described Col Sabow's emotional state as "dispirited"), both investigations were found to be adequate to meet the purposes for which they were prepared.

⁴ The minor procedural errors were cited in the review of the crime scene and included the appearance that there were too many people "trampling around in the crime scene" and the investigator's use of too much medical terminology in his summarization of the physical examination of Col Sabow. Further errors noted by the IGMC from viewing the NIS videotape of the crime scene included the NIS forensic agent's undressing the decedent at the scene, not bagging the hands before moving the body, and failing to use a sheet when moving the body to catch any evidence that may have fallen into the grass. It was also noted that the weapon should have only been handled by one person rather than three, even though all were wearing surgical gloves.

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OFFICE OF THE INSPECTOR GENERAL, DEPARTMENT OF DEFENSE, REVIEW

On March 15, 1994, (b)(6) (b)(7)(C) submitted a request to the Assistant Secretary of the Navy (Manpower and Reserve Affairs) for a review of the investigation into the death of Col Sabow. In support of his request, (b)(6) (b)(7)(C) also submitted a 15-page document setting forth his interpretation of the facts and events pertaining to the death of Col Sabow.

Our review was officially initiated by this office on April 13, 1994. In addition to our review of previous investigations, we conducted additional investigation in order to address matters raised by (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) alleged that Col Sabow was murdered; that his death resulted from a cover-up of alleged illegal activity that occurred at MCAS El Toro; and lastly, that there was misconduct on the part of NIS during the course of their investigation. None of these allegations had surfaced at the time the NIS conducted its investigation into Col Sabow's death. According to (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) evidence that Col Sabow was murdered was discovered by them during their own investigation into Col Sabow's death.

During our interview of (b)(6) (b)(7)(C), she said she never questioned the fact that (b)(6) (b)(7)(C) killed himself until a March 9, 1991, meeting that was held at MCAS El Toro with the Commanding General to answer (b)(6) (b)(7)(C) questions regarding (b)(6) (b)(7)(C) death. Until this time, (b)(6) (b)(7)(C) blamed the Marine Corps and what she called their heavy handed handling of what she considered to be allegations of minor misconduct. She believed that the Marine Corps had forced (b)(6) (b)(7)(C) to commit suicide. After the March 9, 1991, meeting, (b)(6) (b)(7)(C) began to question the finding of suicide. (b)(6) (b)(7)(C) discussed with us their belief that Col Sabow was murdered, and that (b)(6) (b)(7)(C) was responsible for the murder. (b)(6) (b)(7)(C) claimed that a telephone call Col Sabow had received at about 8:30 a.m. on the morning of his death, just as (b)(6) (b)(7)(C) was leaving the house to go to church, was made by (b)(6) (b)(7)(C) who told Col Sabow he was coming over.⁶

Allegation 1: Col Sabow was murdered

(b)(6) (b)(7)(C) alleged that, on the morning of January 22, 1991, an unknown assailant(s) entered Col Sabow's backyard and hit Col Sabow on the back of the head with some unknown object. The blow fractured the base of his skull and caused a seizure that resulted in the laceration of his tongue. The blood from the injuries flowed into his lungs while he continued to breathe. After Col Sabow was rendered unconscious and was lying on the ground, the assailant(s) placed his shotgun in his mouth and discharged the weapon. (b)(6) (b)(7)(C) further alleged that there were two shells in the shotgun because the assailant(s) also intended to

⁵ (b)(6) (b)(7)(C)

⁶ When previously interviewed by NIS on January 30, 1991, (b)(6) (b)(7) stated that as she departed the house on January 22, 1991, she heard Col Sabow answer the telephone, but she did not know who called because she had left the house.

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murder (b)(6) (b)(7)(C) and stage the incident to appear as if Col Sabow killed his wife and then committed suicide.

In response to the Sabow family's concerns regarding the manner of Col Sabow's death, we interviewed five board certified forensic pathologists, (b)(6) (b)(7)(C) (b)(6) (b)(7)(C) was referred to us by (b)(6) (b)(7)(C), who claimed the pathologist had reviewed the evidence (b)(6) (b)(7)(C) presented and had concluded that Col Sabow's death was a homicide. After we presented the pathologists with all the evidence in the case, they all concluded that the forensic evidence fully supports the manner of death as suicide. The reasons for their conclusions are discussed more fully below. We also interviewed additional witnesses presented by (b)(6) (b)(7)(C). The results of those interviews are discussed later in our report.

We interviewed (b)(6) (b)(7)(C), the pathologist who conducted the autopsy on Col Sabow, at the OCSCO in Santa Ana, CA. Also present at the interview were (b)(6) (b)(7)(C) chief deputy coroner, (b)(6) (b)(7)(C) chief forensic pathologist, (b)(6) (b)(7)(C), manager of investigations, and (b)(6) (b)(7)(C) supervising deputy coroner.

(b)(6) (b)(7)(C) stated that present during the autopsy were two autopsy assistants, one photographer, and NIS SAs (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) said SA (b)(6) (b)(7) had not spoken to her during the autopsy. (b)(6) (b)(7)(C) was asked to review and comment on questions raised by (b)(6) (b)(7)(C) regarding the autopsy results. She read a portion of (b)(6) (b)(7)(C) submission regarding the facts surrounding the death of (b)(6) (b)(7)(C) as he understood them. Specifically her attention was directed to the portion that reads "At the autopsy, the brain cortex was pulpified. Brain stem, including mid-brain, pons, medulla was totally destroyed and, as such, were unidentifiable. The only portion of the brain stem that was at all visible was the stub of medulla..." After reviewing the autopsy report, (b)(6) (b)(7)(C) advised us that the brain could accurately be described as "distorted" rather than "pulpified." While viewing an autopsy photograph of Col Sabow's right lung, (b)(6) (b)(7)(C) stated the lungs did look very hemorrhagic, but that it is difficult to differentiate hemorrhage from aspiration within the lung. She advised that there could be overlapping of aspiration with the blood going into the respiratory passages through gravity. (b)(6) (b)(7)(C) stated she had consulted with a neuropathologist, (b)(6) (b)(7)(C), and the conclusion was that Col Sabow could have taken a couple of breaths after the shotgun was fired.

(b)(6) (b)(7)(C) was asked to examine a photograph taken at autopsy of the back of the body with the right side of the head supported on a block. She stated "...it's (the head) supported by the head block. It's not an exact depiction because this is just a picture." She said the head was tilted and distorted by the block. (b)(6) (b)(7)(C) said she saw definite lividities at that location and that portions of the right side of the head were a bit more swollen than the left side. She attributed this partially to how the body was positioned on the head

7 (b)(6) (b)(7)(C) was asked if SA (b)(6) (b) had spoken to her during the autopsy because of (b)(6) (b)(7)(C) allegation that SA (b)(6) (b)(7) may have had undue influence over the pathologist during the autopsy.

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block. In addition, she stated the skull bone was broken there and could have been pushing out or just giving the effect that that side was swollen. In her opinion, what she described as an artificial bulging was secondary to the position of the head on the block. (b)(6) (b)(7)(C) stated she had noted no external trauma at that location during the autopsy nor did she see anything external to correspond with any kind of impact to the back of the head, as alleged by (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) was interviewed as part of our review. She advised us that she is board certified in neurology, anatomic pathology, neuropathology, and forensic pathology. Her current practice is in neuropathology and forensic pathology working for the OCSCO as well as being an (b)(6) (b)(7)(C) (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) had not been involved in the actual autopsy of Col Sabow, but had reviewed the records and tissue from that autopsy so as to make a determination as to the manner of death. She had been asked to do so by the OCSCO because of questions about the coroner's decision that the death was a suicide as opposed to the alternate explanation from Col Sabow's family that it may have been a homicide.

(b)(6) (b)(7)(C) said, in review of the case, "He had blood coming from the nares and from the ears and, in the picture of the decedent at the scene, there was active dribbling of it down, which would be appropriate not only for the position that he was found in but for evidence of some survival after the injury, in that there is active bleeding going on." She points out "There was also evidence, obvious evidence, on his arms and hands bilaterally,...being that there was gunshot residue located prominently on the left hand between the index and the thumb finger, which would be very compatible with that hand having cradled the muzzle of the gun..."

(b)(6) (b)(7)(C) examined the autopsy report completed by (b)(6) (b)(7)(C) and the autopsy photographs to explain the internal trauma to the brain caused by the shotgun blast and whether Col Sabow could have continued breathing after the shotgun wound. (b)(6) (b)(7)(C) also examined the tissue saved in the case, and observed, "I can identify there is the high part of cervical cord...I can see segments of cervical cord from the first cervical vertebrae, C-1 through C-4...respiratory function is modified and participated in by fibers that go down the spinal cord above C-4, higher than that, you will have respiratory failure and very rapid death. But if that is intact, as it was in this case, as I could show you in the bottle, it is possible anatomically -- and it was still connected to lower medulla where there are even higher concentration of fibers involved in respiration -- that breathing was still possible."

(b)(6) (b)(7)(C) explained that the blood present in Col Sabow's lungs may have come not only from aspiration. She noted that there was also "evidence that there was a gaping defect" caused by the shotgun blast through the oral cavity. She said "...there was a lot of blood and shattered tissue. These structures here are extremely vascular. The tongue is very vascular. So you can imagine that a lot of blood was pooled back there...the gravitational effect sends it down, the explosive force sends it down...from a tremendous force of this shotgun wound in a

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very closed and tight space -- there can also be the additional contributing factor of rupture of the tissues within the lung causing hemorrhage within the lung."

In addressing (b)(6) (b)(7)(C) allegation that Col Sabow was struck on the back of the head, or attacked by an individual or individuals prior to his death, (b)(6) (b)(7)(C) stated the following:

"What is very important is the negative, the absence of any evidence of trauma elsewhere on the head, on the neck, on the hands, on the forearms, or on the trunk...There was no evidence of trauma externally on the head or the scalp, meaning, in particular, if there is an allegation that the Colonel was assaulted from behind, there was no bruising anywhere on the scalp, and this is looked for. Hair is parted, hair is shaved. There are no abrasions, there are no bruises, no lacerations anywhere on the head, around the back, on the sides, or on the face...There was nothing on the neck either externally or...internally, but no ligature marks, no fingerprints, again no bruises or lacerations. Hands or forearms. Had there been a tussle or any kind of struggle beforehand, we look for what we call defense marks. People raise their hands or their arms to ward off blows, we see characteristic lesions like that. There was nothing like that. Nor was there anything on the trunk, there was nothing on the back, on the chest. There was no indication of blow, squeeze, grabbing, or any other implement or instrument applied to the skin or the body. The absence of trauma elsewhere is critical and important."

(b)(6) (b)(7)(C) addressed (b)(6) (b)(7)(C) allegation that the shotgun was placed in Col Sabow's mouth and fired by an unknown individual or individuals by stating "...it is very difficult to imitate a suicide with an intra-oral gun, because...you've got to incapacitate that victim in some way that he's going to allow you to put the gun in his mouth. The allegation is that he (Col Sabow) was assaulted before in such a manner that he would allow this kind of maneuver to be done...it is very unlikely that it could have been placed there unless this fellow was incapacitated in such a way to allow that -- i.e., semicomatose, weak, not able to respond. They couldn't have done it without that, and I have no evidence for that. I have no morphologic evidence."

(b)(6) (b)(7)(C) said the GSR on Col Sabow's left hand is further supportive of self-infliction. She stated "The gunshot residue on the left hand holding the muzzle, which is characteristic for a right-handed person to do that. That's supportive of self-infliction. If he had been incapacitated and somebody else put the rifle there, it's not likely that he would get the gunshot residue on his hand, unless they planted his hand there and shot at the same time, in which case they would have gunshot residue on them, but the fact we found that there, plus appropriate spatter on the other adjacent surfaces, is supportive of self-infliction."

Regarding (b)(6) (b)(7)(C) contention that Col Sabow suffered a seizure that caused him to bite his tongue, (b)(6) (b)(7)(C) stated "...seizures may be accompanied by tongue biting, but they are small, anterior, intralateral contusions, bruises. They are not posterior lacerations...not in

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the center, in the roof, and it's not a laceration, it's not a gaping defect...his tongue injury is not from a seizure, it is from gun placement."

(b)(6) (b)(7)(C) said "...as far as physical evidence, it all seems to me to be completely consistent with suicide, shored up by the fact that I don't find any evidence to suggest any other mode there. There's no other trauma that I can demonstrate."

We consulted on the case with (b)(6) (b)(7)(C) State of Maryland, Baltimore, MD. Upon reviewing the pictures of the death scene, (b)(6) (b)(7)(C) stated the scene was classically consistent with suicide. He stated that Col Sabow's hands were in a position not unusual for someone who had steadied a shotgun barrel in his mouth. (b)(6) (b)(7)(C) stated that the GSR on Col Sabow's hands and the way the hands were positioned are often found in suicide victims and that the fingers often stayed curled in the position Col Sabow's fingers were curled. In viewing the autopsy photographs, (b)(6) (b)(7)(C) stated that the lacerations on the mouth and tongue were consistent with the "blowback" effect from the gasses and powder from the blast. He pointed out that the tongue was lacerated, but not the type of lacerations typically associated with seizures, because there were no lacerations on the sides of the tongue as normally seen with seizures. He stated the brain was destroyed and the skull and facial bones were shattered. The base of the skull was destroyed forming an open cavity to the throat that would allow blood and brain matter to flow directly into the lungs, especially since it is not known how long Col Sabow may have remained upright in the chair.

In addressing the blood in the lungs, (b)(6) (b)(7)(C) stated it would have taken only one gasp or breath to fill the lungs as they were or that it may have also been an "electrical discharge in the brain" causing an involuntary drawing in of the breath. According to (b)(6) (b)(7)(C), the fact that there was more blood in the right lung than the left was a result of gravity. He stated that blood pools downward after death resulting, in this case, in the blood pooling on the right side, as Col Sabow was found lying on his right side. (b)(6) (b)(7)(C) questioned why the autopsy report made no mention of brain matter in the throat or lungs. After viewing the photograph of the neck and throat organs, he believed that some matter seen there could be brain matter, but that it was difficult to tell without examining the actual organs.

(b)(6) (b)(7)(C) discussed the bulging on the back of Col Sabow's head below the right ear, saying "it was clearly made by the blast." He said the projection of the shell was probably toward that area and the blast blew Col Sabow's brain and bits of bone to that area. He stated that since the brain was so pulverized, everything shifted to that area, especially since Col Sabow was lying on his right side. He stated there is no indication from the reports or photographs that Col Sabow was hit on the head. (b)(6) (b)(7)(C) said the autopsy report seemed to be complete and there were many photographs taken of the procedure. Upon reading (b)(6) (b)(7)(C) submission, (b)(6) (b)(7)(C) said he (b)(6) (b)(7)(C) had taken much of the information out of context and construed it to fit his theory of homicide. When asked to give his opinion of the manner of death based on the materials he had reviewed, he stated that the manner of death was suicide.

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We spoke to (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), Bexar County, San Antonio, TX. In (b)(6) (b)(7)(C) submission requesting a review of the investigation of his (b)(6) (b)(7)(C), he quoted from one of (b)(6) (b)(7)(C) books to support his contention that (b)(6) (b)(7)(C) was murdered. (b)(6) (b)(7)(C) had used the material from (b)(6) (b)(7)(C) book to claim that (b)(6) (b)(7)(C) had inhaled blood for 4 to 6 minutes prior to the shotgun wound to the head. Upon reviewing (b)(6) (b)(7)(C) submission, (b)(6) (b)(7)(C) said his words had been taken out of context and it was not impossible for someone to aspirate after such a wound. He said all it would take is one intake of breath. (b)(6) (b)(7)(C) reviewed the quotes attributed to him from his books in (b)(6) (b)(7)(C) documents regarding Col Sabow's death. (b)(6) (b)(7)(C) said that the quotes were merely general observations that have no bearing on the ruling as to the manner of death in this case.

Several months later we reinterviewed (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) first addressed the fact that the autopsy report revealed that Col Sabow's right lung was heavier than his left. He pointed out that Col Sabow had been found lying on his right side and had been in this position for several hours. He said the right main-stem bronchus is straighter than the left so that, if there is a pressure wave in forcing blood down the airway, the right is going to be predominant, more blood would be found in the right lung. (b)(6) (b)(7)(C) said even though Col Sabow had a severe injury to the head, one or two gasps of breath would produce the same effect. In addition, there would have been some leakage of blood into the lungs because, even though respiration and brain activity may cease, the heart could go on beating for some minutes after death. (b)(6) (b)(7)(C) stated the congestion in the lungs is partly explainable by the positioning of the body and gravity plus some aspiration of blood.

In viewing photographs of Col Sabow's left hand, (b)(6) (b)(7)(C) pointed out a blackish gray deposit and some other very fine gray deposits. He stated this indicated blowback from the muzzle of the weapon and that the left hand was in close proximity to the muzzle at the time of discharge. He said this was consistent with Col Sabow's left hand grasping the muzzle at the time of discharge. He discarded the suggestion that anyone could have staged this event as a suicide.

(b)(6) (b)(7)(C) reviewed the document supplied by (b)(6) (b)(7)(C) regarding the facts of his brother's death as he perceived them. In that document (b)(6) (b)(7)(C) notes, "There was wet and dried blood on the right palm, spattered and speckled blood were found on the right forearm and wrist, the left hand and arm were also covered with blood. If, indeed, the left hand was used to steady the gun and the right hand was used to depress the trigger, the bathrobe, the socks, and the pajama bottoms would also have been spattered with blood." (b)(6) (b)(7)(C) pointed out that there was no defect in the head resulting from the shotgun blast and that the blood had to exit someplace because of the pressure, so the only place to exit was the mouth and nose. If Col Sabow was leaning into the shotgun, with his left hand supporting the muzzle and the right used to discharge the weapon, the blood would most likely arc over the gun rather than go straight down. He stated that the lack of blood on the front of the clothing did not bother him with a relatively intact head such as in this case.

We also discussed (b)(6) (b)(7)(C) belief that Col Sabow was knocked unconscious and was lying on the ground when someone placed and discharged the shotgun into his mouth.

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(b)(6) (b)(7)(C) stated that if this had been the case, the material coming out of the nose and mouth in an arc would have landed on the body, which had not happened in this case. He stated that in fact, these observations more or less prove that Col Sabow could not have been on his back when he was shot, because the body was free of blood spatter.

During this review, we discussed with (b)(6) (b)(7)(C) lacerations on Col Sabow's tongue and the allegation by (b)(6) (b)(7)(C) that they were a result of Col Sabow biting his tongue during a seizure caused by a blow to the back of the head. (b)(6) (b)(7)(C) said when people have seizures and bite their tongue they tend to bite the tip and sometimes the sides of the tongue, but not the center. In Col Sabow's case, (b)(6) (b)(7)(C) in viewing a photograph of Col Sabow's tongue which had been removed during autopsy, stated that Col Sabow had multiple tears on the top of the tongue and they were not of the type caused by someone biting the tongue. He also pointed out in the picture that the lacerations are on the top and back of the tongue, not consistent with injuries seen during seizures.

In conclusion, (b)(6) (b)(7)(C) stated that he observed nothing that would indicate that this was anything other than a self-inflicted gunshot wound.

(b)(6) (b)(7)(C) opined that the physical evidence at the death scene proves that Col Sabow was murdered. (b)(6) (b)(7)(C) informed Office of the Inspector General (OIG) investigators on several occasions that three of the world's foremost forensic pathologists as well as three pathologists from the National Institutes of Health (NIH), Bethesda, MD, had examined the records pertaining to the death. (b)(6) (b)(7)(C) refused to identify the pathologists at NIH, stating only that they consulted to the AFIP. According to (b)(6) (b)(7)(C), all concluded without doubt, based on the physical evidence, that Col Sabow had been murdered. (b)(6) (b)(7)(C) identified the non-NIH pathologists as (b)(6) (b)(7)(C) San Diego County, CA, (b)(6) (b)(7)(C) Pittsburgh, PA, and (b)(6) (b)(7)(C) University of California, Los Angeles.

(b)(6) (b)(7)(C) San Diego County, CA, was interviewed as part of our review. (b)(6) (b)(7)(C) stated he had been contacted by (b)(6) (b)(7)(C) regarding Col Sabow's autopsy report. (b)(6) (b)(7)(C) did not agree with the findings and asked (b)(6) (b)(7)(C) if he would be willing to review the report. (b)(6) (b)(7)(C) agreed and was sent the autopsy report and later some photographs by (b)(6) (b)(7)(C). He stated (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) lawyer came to see him; however, at that point (b)(6) (b)(7)(C) had become involved with the media. (b)(6) (b)(7)(C) began to receive telephone calls from the media regarding comments wrongly attributed to him concerning the death. (b)(6) (b)(7)(C) said (b)(6) (b)(7)(C) had discussed the possibility of (b)(6) (b)(7)(C) performing a second autopsy, but (b)(6) (b)(7)(C) had not agreed.

⁸ During the course of our interview, we provided (b)(6) (b)(7)(C) with all the photographs in this case. (b)(6) (b)(7)(C) said that from the nature of (b)(6) (b)(7)(C) questions, it was obvious (b)(6) (b)(7)(C) had not seen all the photographs.

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During our interview, we asked (b)(6) (b)(7)(C) whether he had expressed an opinion to (b)(6) (b)(7)(C) that the position of Col Sabow's hands was inconsistent with the autopsy report which stated that the pons, medulla and brainstem were completely destroyed. He recalled Col Sabow's hand was not near the trigger and that may have been a question, but that it was entirely possible that when Col Sabow fell to the ground from the chair his hand could have come up to where it was found. (b)(6) (b)(7)(C) was informed that he had been attributed with stating that with the damage to the brain, brainstem and spinal cord, the hands or arms freeze in a certain position because of something called "spinal shock." (b)(6) (b)(7)(C) stated that was "all nonsense." He said when a person is shot through the brain, he goes limp and when the person falls the body can assume whatever position the fall indicates. He stated that if a person does not fall, the hands would fall downward because of gravity. (b)(6) (b)(7)(C) said that he did not use the term "spinal shock."

When discussing the amount of blood in the right lung, (b)(6) (b)(7)(C) stated that it was possible that the blood was not all aspirated blood. He pointed out that the right bronchus is straighter than the left and anything aspirated would naturally tend to go in the right lung as opposed to the left. In viewing the autopsy photographs in conjunction with the autopsy report, (b)(6) (b)(7)(C) opined that the amount of blood in the lungs was fairly dramatic and would indicate some breathing effort was present. He stated that the medulla also controls the heart, which can function by itself and will continue to beat until it runs out of blood. (b)(6) (b)(7)(C) noted that there was a small portion of the medulla and spinal cord noted in the foramen magnum, which indicates that there was enough reflex breathing to aspirate the blood, and the fact that Col Sabow may have been breathing after the gunshot wound could not be ruled out.

(b)(6) (b)(7)(C) was asked if the blood in the lungs could have resulted from Col Sabow biting his tongue during a "seizure" caused by a blow to the back of the head, as alleged by (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) examined relevant autopsy pictures and stated that the injury on the tongue was major trauma that had something to do with the shotgun wound, not biting of the tongue. He stated that when a person bites his tongue the bite would be on the side or on the tip, not the middle or back as depicted in the photographs. (b)(6) (b)(7)(C) concluded that the lacerations on Col Sabow's tongue as depicted in the autopsy photos were not consistent with biting.

We interviewed (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) He has conducted research involving mammals, not humans, and has no formal medical training or medical degree.

(b)(6) (b)(7)(C) became involved in this case at the request of (b)(6) (b)(7)(C), who had been given (b)(6) (b)(7)(C) name by an acquaintance at the NIH in response to a request for someone who had expertise in how the brain controlled breathing. (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) provided him with files that included investigative reports, the autopsy

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report and numerous photographs, including photographs of the pharyngeal-laryngeal cavity. He stated that he only used the material he received from (b)(6) (b)(7)(C) in forming his scenarios. He said he had no previous experience as a professional consultant in examining autopsies or autopsy photographs. (b)(6) (b)(7)(C) said the material he received stated the gunshot entered the pharynx and traveled through the brain without exiting, creating a large swelling at the back of the head with no exit wound. He stated there was significant damage evidenced in the autopsy and quoted from one of the autopsy reports "Multiple fractures of the skull with massive trauma to the brain and spinal cord."⁹

We reviewed a document given to us by (b)(6) (b)(7)(C) and prepared by (b)(6) (b)(7)(C). The document presented four hypothetical scenarios developed by (b)(6) (b)(7)(C) based on information provided to him by (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) noted that his scenarios are based on the facts that, the gunshot entered the pharynx and traveled posteriorly through the brain without exiting; there was significant damage to the brainstem evidenced in the autopsy ("multiple fractures of the skull with massive trauma to the brain and upper spinal cord"); there was considerable amounts of aspirated blood in the lung; and finally that the body was found lying in a right lateral position. According to the document, "the obvious anomaly in this evidence is how did the blood enter the lung."

The four hypothetical scenarios and conclusions presented by (b)(6) (b)(7)(C) are:

o "The "self-inflicted gunshot wound" caused Col. Sabow [sic] to die instantly and caused breathing to cease immediately, but the body remained in an upright position for an indeterminate time (at least several minutes), allowing the blood from the wound in the pharynx to pass through the larynx and enter the lung. Yet, the body was found on the ground, lying on the right side. This scenerio [sic] would require the body to remain upright for several minutes before falling. This must be considered unlikely.

o The "self-inflicted gunshot wound" caused Col. Sabow to die instantly and caused breathing to cease immediately, and the body fell to the ground. Blood from the wound in the pharynx passed through the larynx and entered the lung. Given the position of the head, neck and lung with the body lying on the ground, it must be considered unlikely that so much blood would have flowed into the lung, including uphill into the left lung. If there is any doubt of the possibility of this occurring, I recommend an actual experiment with a cadaver. Based on current evidence, this scenerio [sic] must be considered unlikely.

o The "self-inflicted gunshot wound" mortally wounded Col. Sabow, but he continued to breathe, aspirating the blood from the wound in his throat into his

⁹ It was pointed out to (b)(6) (b)(7)(C) that the autopsy report did not contain such a sentence as he quoted. He responded that he should not have put the sentence in quotations unless he actually quoted it, but stated "for all intents and purposes of this investigation, if we take the quotation marks off and consider it a paraphrase of the autopsy report, I think it's a reasonable statement."

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lung. The amount of blood would at least take several large breaths/gasps. This would require breathing to continue following the massive damage to Col. Sabow's brainstem that resulted from direct projectile damage and shock waves from the expanding gases and the shotgun pellets [as evidenced by the "small vertical tears on the corners (sides) of the mouth"]. Breathing (including gasping) requires an intact brainstem and spinal cord, so the possibility that Col. Sabow took several large breaths subsequent to the gunshot would be highly unlikely.

o Col. Sabow was rendered unconscious or immobile by a blow to the head that fractured the base of the skull, causing bleeding into the pharynx. Breathing continued after this injury, aspirating blood into the lung. At sometime later, a shotgun was placed in the mouth and triggered (by another party) causing death and obscuring any evidence of prior injury. This scenerio is consistent with the evidence available.

I conclude that the preponderance of evidence does not support the finding that Col. James E. Sabow died of a self-inflicted gunshot wound."

(b)(6) (b)(7)(C) said "from the autopsy material there was considerable amounts of blood found in the lung and the indication that this blood was aspirated, that the blood was breathed into the lung, as stated in one or more places in the autopsy, and the body was found lying in the right lateral position with the head below the neck." He said he proposed his four scenarios from this information. We asked (b)(6) (b)(7)(C) whether he had considered the possibility of the heart continuing to beat for a minute or two following the gunshot wound. He said he had but, the "autopsy report indicated that the blood was not of pulmonary, arterial, or capillary origin, but was aspirated." He further stated that the autopsy report indicated that the blood was of tracheal origin rather than pulmonary origin.¹⁰

(b)(6) (b)(7)(C) was asked if, in his last scenario, he took into consideration whether Col Sabow was sitting up or lying down at the time someone put the shotgun into his mouth. (b)(6) (b)(7)(C) stated "...if one allows that he received a blow in the back of the head and that he had now aspirated the blood, as far as the rest of the scenario goes, it does not matter what position he was in when he received the gunshot wound." It was pointed out that it would make a considerable difference if one was considering the physical evidence at the scene. (b)(6) (b)(7)(C) said he did not consider anything other than the possible ways in which the blood got into the lung. According to (b)(6) (b)(7)(C), anything else was beyond his expertise, that a layperson had a lot to speculate on in this case, that his area of expertise is very limited and he considers himself a layperson beyond his area of expertise.

(b)(6) (b)(7)(C) told us he had met with (b)(6) (b)(7)(C), who had not had access to the entire record and had not actually rendered an opinion. He stated that (b)(6) (b)(7)(C) had agreed to

¹⁰ The autopsy report actually states "The left lung weighs 440 grams, the right weighs 970 grams. There is a large amount of aspirated blood into the right lung parenchyma. Section of the pulmonary artery fails to reveal pulmonary embolus. Section of the major bronchi and trachea shows mugosal congestion. The lumen has a large amount of aspirated blood, more marked on the right than the left side."

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participate in a second autopsy but that (b)(6) (b)(7)(C) had not yet decided if one would be requested.

During our review we attempted to interview (b)(6) (b)(7)(C). In response to a written request by the OIG for information, (b)(6) (b)(7)(C) responded that he was no longer involved as a forensic pathology consultant in this matter and was not in a position to submit any information setting forth his thoughts or opinions regarding the manner of Col Sabow's death.

In April 1996, (b)(6) (b)(7)(C) submitted to Senator Daschle, opinions he obtained from two neuroradiologists regarding the cause of Col Sabow's death. The neuroradiologists were identified as (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) indicated that the opinions of the two neuroradiologists, support his contention that his brother was struck on the head before being murdered.

We reviewed (b)(6) (b)(7)(C) letter to (b)(6) (b)(7)(C), in which he wrote that he had viewed "the imaging study and the autopsy photographs on Col. [sic] James E. Sabow." (b)(6) (b)(7)(C) concluded "these radiographs demonstrate a depressed occipital skull fracture...most consistent with local blunt force inflicted to that area of the calvarium. The fracture is inconsistent with injury at the time of, or after, the gunshot wound to the posterior fossa." (b)(6) (b)(7)(C) said he presented the case to two other neuroradiologists and three neurosurgeons who concluded "the degree of soft tissue swelling in the occipital region on the right indicated that the blunt force to the head occurred prior to death."

We telephonically interviewed (b)(6) (b)(7)(C) during this review. (b)(6) (b)(7)(C) told us he was asked by his chief of staff to review the radiograph and photographs. (b)(6) (b)(7)(C) said (b)(6) (b)(7)(C) had provided one x-ray of Col Sabow's head and three photographs of Col Sabow. When we advised (b)(6) (b)(7)(C) that there were actually three x-rays of Col Sabow's head, over 75 photographs, and a videotape of the death scene, (b)(6) (b)(7)(C) said he was under the assumption that (b)(6) (b)(7)(C) had provided him with all the information available in the case.

We provided all of the additional documentation to (b)(6) (b)(7)(C), who reviewed his findings and provided us with a report based on the totality of the information. (b)(6) (b)(7)(C) concluded "...after a review of the additional material provided by your office, the explosive nature of the gunshot wound to the skull base and brain is of significantly greater force than could be surmised from review of the limited material from which my initial opinion was based. Therefore, I believe it is possible that the depressed calvarial fracture on the right may indeed, be the result of the gunshot wound in conjunction with a fall, landing on the right posterior calvarium, with additional hemorrhage related to the greater calvarial disruption at this location, accounting for the large, superficial hematoma on the right posterior of the head..."

We reviewed (b)(6) (b)(7)(C) letter to (b)(6) (b)(7)(C) in which he wrote that he had reviewed one x-ray forwarded to him by (b)(6) (b)(7)(C) and concluded "the skull demonstrates several linear fractures as well as a depressed skull fracture...on one side. What caused the

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depressed fracture is open to speculation. That the fracture was caused before the shotgun blast certainly cannot be excluded on the basis of the x-ray. A pathologist who was asked stated that a badly fractured skull could be deformed with handling of the body."

We telephonically interviewed (b)(6) (b)(7)(C) regarding the report he provided to (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) told us he was asked by a colleague to evaluate one x-ray for (b)(6) (b)(7)(C).¹¹ He expressed concern that (b)(6) (b)(7)(C) may have taken his conclusions out of context, and told us that he did not conclude that Col Sabow received a blow to the head prior to the shotgun blast. (b)(6) (b)(7)(C) provided a letter to our office clarifying his conclusion that "I cannot determine whether the skull fracture occurred before the shotgun blast or whether the fracture occurred or became depressed after the shotgun blast. The appearance of the soft tissues over the depressed skull fracture should give the best clues as to when the fracture occurred and became depressed."

The AFIP evaluated the radiographs, file, photographs of the scene and autopsy, and letters from (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) to (b)(6) (b)(7)(C). The AFIP concluded that "The 'eggshell' comminuted calvarial fractures with over-riding fracture fragments on both sides of the head are typical sequelae of the intra-oral gunshot wound. With the marked comminution of facial and skull based structures, the fractured calvarial structures can move as a separate unite [sic], thus allowing fragment over-ride and 'depression' in the occipital region just from the post-mortem posture of the patient."¹² Based on a review of all the information in this case, the AFIP concurred with the determination of suicide as the manner of death.

Allegation 2: Alleged misconduct of NIS agents in processing the scene and during the investigation

We addressed several allegations presented by (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) concerning the conduct of NIS agents during the investigation. (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) alleged that the crime scene was altered by NIS agents and that evidence was mishandled. Specifically, they alleged that the position of the lawn chair was moved between the time of Col Sabow's death and the time of the investigation; that the NIS agents improperly handled the weapon and failed to secure the weapon prior to obtaining fingerprints.

We reviewed the NIS investigation and also conducted interviews of the individuals involved in the investigation. Our review revealed that the NIS properly secured the crime scene in a timely manner and gathered evidence consistent with their training, policies and procedures, except for the previously noted procedural errors by a NIS agent and a NIS forensic agent. In addition, we reviewed the NIS videotape depicting the examination of the

¹¹ (b)(6) (b)(7)(C) was not aware at the time he evaluated the single x-ray that there were 3 x-rays, over 75 photographs and a videotape in this case.

¹² The AFIP stated that Col Sabow's injuries were typical of a shotgun wound to the mouth. Col Sabow's injuries were such that the badly fractured skull and facial structures moved and shifted with the movement and manipulation of the body, taking whatever shape was indicated from the position of the body.

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death scene. The videotape depicted the position of the lawn chair over the body of Col Sabow as identical to that shown in the still color photographs exposed during the examination of the crime scene.

We interviewed (b)(6) (b)(7)(C), USMC. (b)(6) (b)(7)(C) told us that on January 22, 1991, he was the (b)(6) (b)(7)(C) MCAS, El Toro and had been in a MP vehicle with the Provost Marshal when they were notified of a gunshot or a suicide at Col Sabow's residence. He said they were the first persons on the scene. He entered Col Sabow's backyard, observed Col Sabow lying on the ground, and saw no one else in the backyard. He approached the body, noticed the shotgun under Col Sabow and made sure that Col Sabow's finger was not on the trigger. He said initially he knelt and turned Col Sabow's head with the intent of administering cardiopulmonary resuscitation until he realized that Col Sabow was dead. He stated that within a few minutes MP patrols began arriving and he immediately had his people cordon off the area with orders to allow no one into the area without his or the Provost Marshal's permission. He stated that from then until NIS agents began their examination of the crime scene only authorized persons, like medical personnel, entered the area and nothing was moved or disturbed.

(b)(6) (b)(7)(C) viewed photographs of the death scene and said they depicted exactly what he had observed at the scene. He was asked specifically about the position of the chair and stated the position of the chair when he arrived was as depicted in the crime scene photographs.

(b)(6) (b)(7)(C) told us that the scene had been secured prior to the arrival of the NIS and that upon arrival, they had taken charge of the scene. (b)(6) (b)(7)(C) said they had called for the assistance of a forensic agent from San Diego. No one touched Col Sabow's body until the arrival of that agent. (b)(6) (b)(7)(C) stated that nothing was removed or replaced at the crime scene as the scene was roped off and under the control of NIS agents on the scene at all times.

(b)(6) (b)(7)(C) was asked about the alleged mishandling of the shotgun at the NIS office. She was asked if she was aware of an individual handling the shotgun following forensic examination. She stated the incident had actually occurred before the shotgun was sent to the crime laboratory. She recalled that the evidence in the investigation had been placed on a table in the conference room of the El Toro NIS office in preparation for shipment to the laboratory. One agent, who is no longer with the NIS, picked up the shotgun without permission. He was immediately told to put the gun down and leave the room. She stated that because he had picked up the shotgun, she had to obtain his record fingerprints to send to the laboratory. Subsequent laboratory examination did not reveal this person's fingerprints on the weapon.

(b)(6) (b)(7)(C) provided, with the concurrence of (b)(6) (b)(7)(C), the name of an individual who had firsthand knowledge of the alleged mishandling of the shotgun by the NIS and could testify that the shotgun was covered with fingerprints. (b)(6) (b)(7)(C) told us that the individual requested a guarantee of complete confidentiality before agreeing to submit to an interview. According to (b)(6) (b)(7)(C), the individual also had information regarding alleged alteration or backdating of official documents pertaining to the death of Col Sabow. When OIG investigators interviewed the individual identified by (b)(6) (b)(7)(C), the witness

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denied any knowledge regarding the alteration or backdating of documents pertaining to Col Sabow's death.

The individual stated that he had been in the NIS office when the evidence had been laid out on a table in a conference room. He said that he asked the case agent if he could handle the shotgun and was told that he could. He said that it was his impression that the weapon had already been processed and returned by a crime laboratory before he handled it. When asked about his allegations that the weapon contained numerous fingerprints when removed from the crime scene, the individual stated that he remembered being told by the NIS case agent that one fingerprint had been found on the weapon by the crime laboratory.

In support of the above allegations, (b)(6) (b)(7)(C) told us that (b)(6) (b)(7)(C), a former Marine staff sergeant who was assigned to the USMC CID, MCAS El Toro, at the time of Col Sabow's death, was one of the first persons on the crime scene. (b)(6) (b)(7)(C) claimed that a lawn chair in which NIS believed Col Sabow had been sitting when shot was actually 4 to 5 feet from the body. According to (b)(6) (b)(7)(C), the NIS rearranged the chair over Col Sabow's body, recreating the crime scene prior to taking pictures and measurements. (b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) also claimed that although the NIS photographs depict ammunition cartons open in the garage, NIS had actually found them secured in a cabinet, neatly put away, with the lid closed.¹³

As a result of the information presented to us by (b)(6) (b)(7)(C) was interviewed by OIG investigators. He advised us that he was on duty on the morning of January 22, 1991, at MCAS El Toro when he was ordered to Col Sabow's residence by the MCAS Provost Marshal, via MP radio. Upon arrival, he was directed into the backyard by the Provost Marshal where he observed a man lying on the ground dressed in what appeared to be pajamas and a robe. He was informed by the Provost Marshal that the body was that of Col Sabow. The Provost Marshal instructed (b)(6) (b)(7)(C) to clear the backyard and seal off the crime scene. (b)(6) (b)(7)(C) stated that at that time the only persons in the backyard were (b)(6) (b)(7)(C), the Provost Marshal, the Deputy Provost Marshal and himself. (b)(6) (b)(7)(C) described the crime scene as Col Sabow lying on his right side with a lawn chair 2 to 3 feet behind him on its side. (b)(6) (b)(7)(C) said that he had not observed any NIS agent move the chair, but had been told later by (b)(6) (b)(7)(C) that the crime scene photographs depicted the lawn chair on top of Col Sabow and that it had been moved by the NIS agents.

During our interview, (b)(6) (b)(7)(C) was shown the crime scene pictures depicting the lawn chair over Col Sabow's body. (b)(6) (b)(7)(C) insisted that the chair was not in that position when he arrived at the scene, but was on its side 2 or 3 feet from the body.

(b)(6) (b)(7)(C) told us that when the forensic agent arrived on the scene the shotgun was taken into custody from where it lay on the ground. He said none of the NIS agents were

¹³ During his interview with the IGMC, (b)(6) (b)(7)(C) stated that he had located several reliable witnesses who could testify to alteration of the scene by NIS agents. During an interview with OIG investigators, however, (b)(6) (b)(7)(C) could only name (b)(6) (b)(7)(C) as a witness to the alleged alteration of the scene by NIS agents.

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familiar with the shotgun and that he picked up the shotgun from the ground under Col Sabow's leg while a NIS agent held up the pant leg of Col Sabow's pajamas. He unloaded the shotgun, taking the expended shotgun shell from the right barrel and an unexpended round from the left shotgun barrel. (b)(6) (b)(7)(C) insisted that he was the only person, with one exception, on the scene who touched the shotgun from the time he removed it from the ground until he broke it down and placed it into three evidence bags for safekeeping. He stated that as he "broke" the shotgun to extract the shells, one of the agents, apparently thinking that the barrels of the shotgun were going to fall to the ground, reached out and grabbed the barrels to prevent this from happening. (b)(6) (b)(7)(C) insisted during the interview that the forensic agent had not touched the shotgun at any time.

(b)(6) (b)(7)(C) stated he had accompanied other NIS agents into the house and garage. He reported that while in the garage, he observed one NIS agent go to a wooden cabinet, open the door and remove a box of shotgun shells from a shelf and open the top. He stated that it appeared that one of the boxes inside this box had been opened prior to anyone touching it. (b)(6) (b)(7)(C) stated that the agent removed this box and opened it to find two shells missing from the box. He stated that the agent had not worn rubber gloves while doing this.

We later reinterviewed (b)(6) (b)(7)(C) during which he viewed the NIS videotape depicting the examination of the death scene. The videotape depicted the chair over the body of Col Sabow as shown in the still color photographs exposed during the examination of the crime scene. Contrary to (b)(6) (b)(7)(C) testimony, the video clearly depicted the NIS forensic agent retrieving the shotgun from under the body of Col Sabow. Verbal comments on the tape indicated the agent was unfamiliar with the weapon. (b)(6) (b)(7)(C), then a staff sergeant, is shown entering the scene, taking the shotgun from the agent, opening the breach and removing the shells. The videotape clearly shows that no one grabbed the barrel of the shotgun as (b)(6) (b)(7)(C) opened the breach. It also shows that the forensic agent was wearing rubber gloves during the process, that (b)(6) (b)(7)(C) handed the shotgun to the forensic agent who subsequently handed it to another agent who was also wearing rubber gloves. The videotape shows the expended shell was removed from the right barrel and the unexpended shell was removed from the left barrel. Even after viewing the videotape, (b)(6) (b)(7)(C) continued to insist that he remembered being the one to pick the shotgun up off the ground.

(b)(6) (b)(7)(C) could not explain why the videotape depicted a crime scene examination in a different manner than he had described. (b)(6) (b)(7)(C) stated that he had not heard any discussion among the agents or anyone else at the scene regarding the moving of the chair. He then admitted that (b)(6) (b)(7)(C) had told him the NIS agents had placed the chair over Col Sabow's body. (b)(6) (b)(7)(C) also said he had not seen the crime scene photographs until shown them by OIG investigators.

No one else interviewed during our review said that the chair had been moved over Col Sabow's body. All other persons questioned regarding the scene remembered it as depicted in the photographs taken by NIS. No one present at the scene stated that they observed alteration of the scene prior to NIS photographs being taken.

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During our interview of (b)(6) (b)(7)(C), she alleged additional misconduct on the part of the NIS. She stated that approximately one week after Col Sabow's death, the NIS lead agent on the investigation into (b)(6) (b)(7)(C) death, (b)(6) (b)(7)(C), began visiting her in the afternoons. On one of those visits, according to (b)(6) (b)(7)(C), the agent stated (b)(6) (b)(7)(C)

(b)(6) (b)(7)(C) also told us that following the death of (b)(6) (b)(7)(C) she had been invited to dinner by (b)(6) (b)(7)(C), the wife of (b)(6) (b)(7)(C). During dinner (b)(6) (b)(7)(C) allegedly told (b)(6) (b)(7)(C) "I'll deny I ever said this, but I want you to know that your (b)(6) (b)(7)(C) was murdered." When asked if (b)(6) (b)(7)(C) had told her who was responsible for the murder, she stated "She implied that it was (b)(6) (b)(7)(C)."

We interviewed (b)(6) (b)(7)(C), who stated that her husband had been stationed at MCAS El Toro from January 1990 to July 1993. (b)(6) (b)(7)(C) said that on the morning of January 22, 1991, she was notified by BrigGen Adams of Col Sabow's death. She and several other wives went to (b)(6) (b)(7)(C) residence to provide comfort and assistance to (b)(6) (b)(7)(C). She said prior to that day she had not known Col and (b)(6) (b)(7)(C) well and had never socialized with them. (b)(6) (b)(7)(C) denied ever telling (b)(6) (b)(7)(C) that Col Sabow had been murdered. She stated that just prior to (b)(6) (b)(7)(C) leaving for (b)(6) (b)(7)(C), several months after the death, she took (b)(6) (b)(7)(C) to dinner and (b)(6) (b)(7)(C) had released her feelings and vented her beliefs regarding the death. According to (b)(6) (b)(7)(C), (b)(6) (b)(7)(C) told her she believed her (b)(6) (b)(7)(C) had been murdered. (b)(6) (b)(7)(C) indicated that one individual had been involved in some type of cover-up regarding the death. At first (b)(6) (b)(7)(C) could not remember the individual's name, but later she responded to the mention of (b)(6) (b)(7)(C) and said he was the individual (b)(6) (b)(7)(C) had spoken of as having covered up something in the death. (b)(6) (b)(7)(C) said, as she remembered it, (b)(6) (b)(7)(C) had spoken of misuse of some type of military aircraft as being the reason for the trouble.

Allegation 3: Illegal activities at MCAS El Toro

(b)(6) (b)(7)(C) alleged that as part of illegal covert operations, aircraft landed under cover of darkness at MCAS El Toro to load or unload illegal cargo. They alleged that (b)(6) (b)(7)(C) was somehow involved in the illegal operations and that Col Sabow had become aware of it. They theorized that Col Sabow may have been murdered to prevent him from demanding a court-martial regarding allegations of wrongdoing being made against him that could lead to the discovery of the illegal covert operation.

14 (b)(6) (b)(7)(C) denied making any comment to (b)(6) (b)(7)(C) regarding any belief that (b)(6) (b)(7)(C) had anything to do with the death of Col Sabow. The agent stated that initially, (b)(6) (b)(7)(C) seemed to accept the fact that her husband had committed suicide, but that after her (b)(6) (b)(7)(C) became involved (b)(6) (b)(7)(C) attitude seemed to change. The agent believed that, based on the extensive conversations the agent herself had with (b)(6) (b)(7)(C), she could understand how (b)(6) (b)(7)(C) could believe that (b)(6) (b)(7)(C) had some involvement in her (b)(6) (b)(7)(C) death.

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During our review, we interviewed 21 individuals regarding allegations by (b)(6) (b)(7)(C) of illegal covert operations at MCAS El Toro and the alleged knowledge of these activities by (b)(6) (b)(7)(C) and Sabow. With the exception of (b)(6) (b)(7)(C), no one else could confirm the existence of illegal covert operations taking place at MCAS El Toro.

(b)(6) (b)(7)(C) alleged that MCAS El Toro was being used in support of a legal covert activity that had been undertaken by a U.S. intelligence agency under the cover of a U.S. Department of Agriculture program named "Screw Worm," allegedly a program to eradicate the screw worm in Mexico. (b)(6) (b)(7)(C) also alleged that the covert operation was actually legitimately providing weapons, ammunition and other material to the Government of Peru in their struggle against guerrilla forces known as the "Shining Path." (b)(6) (b)(7)(C) further alleged that a number of individuals involved in this covert operation were concurrently conducting an illegal covert operation whereby they were smuggling additional weapons, ammunition and material to Peru. The individuals were allegedly selling the weapons, ammunition and material to the Shining Path as well as to the Government of Peru, for money and narcotics. The money and narcotics were then allegedly smuggled back into the United States and air dropped at remote locations on military installations in the western part of the United States. (b)(6) (b)(7)(C) claimed that he had identified and interviewed two pilots¹⁵ who had been engaged in this operation. (b)(6) (b)(7)(C) further alleged that this operation continued until approximately the time of Col Sabow's death. At about that time the operation was then moved to the country of Libya as a training mission in support of Muammar Gaddafi, leader of that country, in return for oil from Libya. (b)(6) (b)(7)(C) alleged that his investigation had disclosed that the covert operation at MCAS El Toro was under the control of (b)(6) (b)(7)(C).

(b)(6) (b)(7)(C) alleged that his investigation had developed witnesses who stated that during the period of time from 1989 to about the time of Col Sabow's death, C-130 aircraft landed at MCAS El Toro in the middle of the night, unannounced and unknown to anyone on the installation other than (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) told us that, according to his witnesses, the aircraft were unmarked or marked with logos of civilian companies, and were flown by nonmilitary type crews, i.e., long hair and bluejeans. The C-130s would go to a remote part of the airfield, described as "Spook Corner," where unidentified material and equipment was loaded or unloaded as part of the illegal covert operation or for some sort of servicing of the aircraft. The aircraft would then depart El Toro. (b)(6) (b)(7)(C) stated that he had MP witnesses who had provided testimony to this effect. (b)(6) (b)(7)(C) identified one such witness as (b)(6) (b)(7)(C), but he refused to identify any other member of the military who possessed knowledge of these alleged covert operations. (b)(6) (b)(7)(C) alleged that (b)(6) (b)(7)(C) had informed him that (b)(6) (b)(7)(C) had directed the Provost Marshal, (b)(6) (b)(7)(C), to keep all military policemen away from the unidentified aircraft while they were on the airfield.

¹⁵ (b)(6) (b)(7)(C) advised us that the two pilots were in Federal prison for narcotics smuggling. In light of the lack of evidence connecting this operation with Col Sabow or MCAS El Toro, the pilots were not interviewed.

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In our interview of (b)(6) (b)(7)(C), he stated that on one occasion he had gone to (b)(6) (b)(7)(C) office to brief him on an investigation and that (b)(6) (b)(7)(C) had accompanied him. During the conversation the topic of aircraft landing late at night came up and (b)(6) (b)(7)(C) told them "Keep your ass off the airstrip at night. Leave those airplanes alone. Don't go near them. Don't worry about them. Don't go near them." (b)(6) (b)(7)(C) said that at the time he had been assigned as the special weapons attack team commander and his working hours varied. At times he would come to the installation at 2:00 a.m. and see the aircraft and sometimes he would see an aircraft taking off at 4:00 a.m. He told us the aircraft were C-130s that were painted black with no markings on the tail, wings, fuselage, or anywhere else. He stated that, through binoculars, the crew appeared to have shoulder length hair and that he assumed they were civilians. The flights began about 4 to 6 months prior to Col Sabow's death. (b)(6) (b)(7)(C) said that prior to that, he had worked regular daytime hours and may not have noticed the aircraft since they operated only at night. He told us that junior troops had told him they saw aircraft landing at night, parking at the end of the runway and taking off shortly after they arrived.

We interviewed former (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) had been stationed with the MPs at MCAS El Toro from February 1989 until December of 1990. From the middle of August to late November 1990 she was the acting Provost Marshal. (b)(6) (b)(7)(C) said she had never heard of any strange aircraft using the airfield late at night under unusual circumstances. She stated (b)(6) (b)(7)(C) had placed a number of unreasonable restrictions on her and the MPs; however, she did not remember any incident in his office when she was ordered to keep MPs away from any aircraft.

We telephonically interviewed (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) stated that he worked in Air Operations, MCAS El Toro from August 1990 until April 1992. (b)(6) (b)(7)(C) stated the alleged landing of C-130 aircraft at night at MCAS El Toro "never happened."

We interviewed (b)(6) (b)(7)(C), airfield operations officer, MCAS El Toro. (b)(6) (b)(7)(C) was assigned as the assistant air operations officer from August 1987 until the summer of 1989 when he became the air operations officer, a position he held until the summer of 1990 when he was reassigned to another command. He stated that it would be absolutely incomprehensible that a C-130 could land with lights out and with Coast Air Traffic Command not asking why they are landing planes at that time of the night. He pointed out that he ran the airfield and was responsible for its operation, and he would have had to answer the questions of aircraft landing at night.

We interviewed four Marines who had been assigned to the MCAS El Toro Crash, Fire and Rescue Office prior to and after the date of Col Sabow's death. Crash, fire and rescue personnel are on duty 24 hours a day, 7 days a week with an unobstructed view of the runways and flight line of the air station. All stated that they had never heard any C-130 aircraft attempting to land at night when the field was in closed field conditions. If such a thing had happened, their office would have been notified and their dispatcher would have contacted the Office of the Provost Marshal to see if they had knowledge of such a landing. One marine said that on one occasion he had noticed a black C-130 on the airfield, but that it had been

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parked on the regular C-130 line. They told us that security is a top priority at El Toro and it would be very unlikely for a C-130 to land without anyone knowing about it. According to the Marines, air traffic control is manned 24 hours a day and someone would have notified the rescue team if a plane was trying to land at night.

We interviewed (b)(6) (b)(7)(C) Counternarcotics Operations Division, Office of the Director for Operations (J-3), Joint Chiefs of Staff, The Pentagon. (b)(6) (b)(7)(C) was briefed on the allegations of (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) regarding the use of MCAS El Toro and C-130 aircraft in support of a covert operation. (b)(6) (b)(7)(C) initial reaction was that no such actions occurred that met with the scenarios, but he agreed to review the records of all counternarcotics activities involving Peru. In discussing the manner in which his office operated, he confirmed that each and every trip made to any Central or South American country in support of drug interdiction had to have the personal approval of the Secretary of Defense. This requirement had been established in 1989 following the passage of legislation regarding assistance in narcotics interdiction. On November 18, 1994, (b)(6) (b)(7)(C) office notified us that a search of their records had not disclosed any information of value to this investigation.

We interviewed (b)(6) (b)(7)(C), who had been assigned to MCAS El Toro from October 1985 until April 1989 as the (b)(6) (b)(7)(C). He stated that he had no knowledge of any C-130 aircraft landing at MCAS El Toro while the air field was in a closed condition nor did he have any knowledge of (b)(6) (b)(7)(C) ordering the Provost Marshal to keep the MPs away from any aircraft.

(b)(6) (b)(7)(C), in a telephone conversation with OIG investigators, alleged that he had an informant, whom he subsequently identified as (b)(6) (b)(7)(C), a retired USMC lieutenant Colonel, who was knowledgeable of this covert operation and had provided the identification of those in control of the illegal operation. (b)(6) (b)(7)(C) provided an undated document (believed to have been written in March 1994) purportedly composed by (b)(6) (b)(7)(C) in which he described his knowledge of this operation and identified those involved and the circumstances which led to Col Sabow's death.

(b)(6) (b)(7)(C) stated in the document that it was his belief (b)(6) (b)(7)(C) was tasked to conduct covert operations out of western USMC bases which involved selling/transporting arms to the Middle East. He further stated he believed that since the operation was conducted under the auspices of Headquarters, U.S. Marine Corps (HQMC), no civilian or military laws had been broken by Col Sabow. (b)(6) (b)(7)(C) stated he believed that "for reasons known only to a select few" (whom he did not identify), HQMC started an investigation of (b)(6) (b)(7)(C), because of a "strong reason to believe that (b)(6) (b)(7)(C) had overstepped his authority and become uncontrollable."

(b)(6) (b)(7)(C) then stated "as the HQMC investigation evolved it was discovered that (b)(6) (b)(7)(C) had and was now (emphasis by (b)(6) (b)(7)(C)) receiving illegal moneys [sic] and gratuities from civilian contractors involved in the transporting of arms to the Middle East." (b)(6) (b)(7)(C) went on to state that HQMC then "launched a damage control team"

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under the IGMC to "objectify their findings, insure [sic] the operation would not be compromised, and remove (b)(6) (b)(7)(C) from his position of authority." (b)(6) (b)(7)(C) alleged that (b)(6) (b)(7)(C), while negotiating with HQMC for his retirement, implicated Col Sabow to obtain a better deal for himself. He stated that "HQMC felt compelled by operational necessity" to remove Col Sabow from his position "to preclude any compromise or leak of the operation." The intent of the IGMC was to "proceed as quickly as possible to discredit Jim's (Col Sabow) credibility [sic] and integrity" in hopes that he would retire quietly. It was not until Col Sabow had second thoughts about retirement that he learned of the real reason for (b)(6) (b)(7)(C) forced retirement.

(b)(6) (b)(7)(C) alleged that during a visit to Col Sabow's house, (b)(6) (b)(7)(C) told Col Sabow what had transpired over the previous years, citing several reasons that he believed put himself at risk. (b)(6) (b)(7)(C) then told Col Sabow that the USMC considered Col Sabow to be just as guilty as himself. "It was at this time that Jim (Col Sabow) knew he would not accept early retirement and his only choice was to clear his name and take his case to court martial." According to (b)(6) (b)(7)(C), "it was this decision that started the chain of events which lead [sic] to Jim's death."

(b)(6) (b)(7)(C) was interviewed by OIG investigators. (b)(6) (b)(7)(C) stated that he was a longtime personal friend of Col Sabow. He said that the last time he talked with Col Sabow was on January 18, 1991, when Col Sabow called him to tell him that he (Col Sabow) was under investigation by the IGMC and was being relieved of his duties. (b)(6) (b)(7)(C) stated that during this conversation, Col Sabow had said "I hope that my actions--I haven't done anything to embarrass you." (b)(6) (b)(7)(C) stated that he was not really sure what Col Sabow was insinuating, but that he told Col Sabow that there was nothing he had done to embarrass him and that he shouldn't ever feel like that. (b)(6) (b)(7)(C) stated during our interview that all the material discussed in the document pertaining to covert operations at MCAS El Toro is speculation on his part based on what he had been told by (b)(6) (b)(7)(C). He had no direct knowledge or proof that any of the activities discussed in his document actually occurred, and had no other independent source of verification or information. (b)(6) (b)(7)(C) said he wrote the document at the request of (b)(6) (b)(7)(C) "after talking to (b)(6) (b)(7)(C) and he enlightening me on things that have taken place."

(b)(6) (b)(7)(C) stated that (b)(6) (b)(7)(C) also had knowledge of a conversation that took place between Col Sabow and (b)(6) (b)(7)(C) at Col Sabow's house the night before he died. (b)(6) (b)(7)(C) supposedly informed Col Sabow of the alleged illegal activities in which he had been involved over the past years and his part in those illegal activities, including the taking of kickback payments from the contractors operating the aircraft. (b)(6) (b)(7)(C) was supposedly present during this conversation. During our interview, (b)(6) (b)(7)(C) said he had no knowledge of any meeting at Col Sabow's house the night before Col Sabow's death. He further stated he had no knowledge of any conversation between Cols Sabow and (b)(6) (b)(7)(C) pertaining to kickbacks on any contracts.

During a conversation on April 25, 1994, between (b)(6) (b)(7)(C) and OIG investigators, (b)(6) (b)(7)(C) identified another individual, (b)(6) (b)(7)(C), who had also been present during the conversation that took place

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between Col Sabow and (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) said, however, that neither the retired Colonel nor (b)(6) (b)(7)(C) had been present in the room during the entire conversation between Col Sabow and (b)(6) (b)(7)(C).

During an interview with representatives of the IGMC, (b)(6) (b)(7)(C) claimed that during the conversation on the night before his death, Col Sabow had threatened to expose the illegal covert activities and discuss his superior's part in those illegal activities. (b)(6) (b)(7)(C) further questioned the fact that (b)(6) (b)(7) had arrived at the Sabow home shortly after Col Sabow's body had been found. (b)(6) (b)(7)(C) stated he never received a satisfactory answer to how (b)(6) (b)(7) learned of the death and arrived in such a short period of time.

When we interviewed (b)(6) (b)(7)(C) she told us that (b)(6) (b)(7)(C) had gone to (b)(6) (b)(7)(C) house about 4:30 p.m. the night before his death. She stated (b)(6) (b)(7) and (b)(6) (b)(7)(C) were there and that (b)(6) (b)(7)(C) stayed for about an hour. When (b)(6) (b)(7)(C) returned home, (b)(6) (b)(7)(C) was with him, but (b)(6) (b)(7) was not. (b)(6) (b)(7)(C) said (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) sat in the living room talking. She had been in and out of the room while in the process of fixing dinner, but she had not heard (b)(6) (b)(7)(C) and (b)(6) (b)(7)(C) discussing contracts or kickbacks. She said she had never heard any conversations about those subjects at any time.

(b)(6) (b)(7), who was interviewed as part of our review, stated that on the afternoon of January 21, 1991, he and (b)(6) (b)(7)(C) had played golf at the MCAS El Toro golf course. Late that afternoon they went to (b)(6) (b)(7)(C) house for a drink. He and (b)(6) (b)(7)(C) had been discussing the circumstances surrounding (b)(6) (b)(7)(C) being relieved of duty, when Col Sabow arrived from his house next door. During the conversation in (b)(6) (b)(7)(C) house, Col Sabow had informed (b)(6) (b)(7)(C) that he was going to demand a court-martial. (b)(6) (b)(7)(C) replied that Col Sabow would be making a mistake. (b)(6) (b)(7) noted that (b)(6) (b)(7)(C) did not appear angry or excited when he responded to Col Sabow's statement. (b)(6) (b)(7) said he and Col Sabow left after about an hour, and during the walk from (b)(6) (b)(7)(C) house, Col Sabow told (b)(6) (b)(7) that he was concerned about something that was "frightening and irritating", but would not say what it was. Col Sabow then told (b)(6) (b)(7), "I just want to thank you for being one of the few loyal people around here." Col Sabow went into his house and (b)(6) (b)(7) departed in his car. (b)(6) (b)(7) stated he had not been in Col Sabow's house on the night before he died.

When asked about his knowledge of (b)(6) (b)(7)(C) discussing his involvement in illegal contracts and his receiving kickbacks from contractors, (b)(6) (b)(7) stated that he was surprised at the allegation and that he had no such knowledge. He stated that he had never heard any allegations regarding illegal contracts or kickbacks.

(b)(6) (b)(7)(C), now retired, was interviewed as part of this review. (b)(6) (b)(7)(C) denied any knowledge or involvement in covert activities of any kind. He also denied any involvement in or knowledge of unannounced landings of C-130 aircraft at MCAS El Toro during his assignment there. He denied receiving kickbacks from contractors. (b)(6) (b)(7)(C) stated that he did not remember any conversation during which Col Sabow had informed him that he intended to request a court-martial rather than accept Article 15

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nonjudicial punishment. He said considering his own position at the time, he could not have personally risked a court-martial. He said (b)(6) (b)(7)(C), he had no assets and no job, and he was not willing to risk losing his military retirement. During our interview, we specifically asked (b)(6) (b)(7)(C) if he had murdered Col Sabow or if he had any knowledge of foul play in the death of Col Sabow. (b)(6) (b)(7)(C) denied all allegations that he had anything to do with the death of Col Sabow.

(b)(6) (b)(7)(C) provided the name of a former Marine Corps officer (b)(6) (b)(7)(C) (b)(6) (b)(7)(C), who had been providing (b)(6) (b)(7)(C) information regarding documents prepared by the Marine Corps stating to the effect "We have to convince the family that Sabow was a crook." According to (b)(6) (b)(7)(C), (b)(6) (b)(7)(C) also informed (b)(6) (b)(7)(C) she had seen a document prepared by BrigGen Adams, regarding the initiation of investigations aimed at discrediting (b)(6) (b)(7)(C) so he would lose his medical license.

(b)(6) (b)(7)(C) was interviewed and stated she had been assigned to the Office of Assistant Chief of Staff for Operations, MCAS El Toro from October 1989 until November 1, 1990. She said she had no knowledge of anything, orally or in writing, from the Staff Judge Advocate's Office to the effect that they had to convince the Sabow family that he was a crook. Her only knowledge of BrigGen Adams allegedly writing letters with the intention of causing (b)(6) (b)(7)(C) to lose his medical license was what (b)(6) (b)(7)(C) himself had told her.

Additional Family Concerns

(b)(6) (b)(7)(C) was interviewed by OIG investigators. Present during the interview was an individual whom (b)(6) (b)(7)(C) identified as his friend, (b)(6) (b)(7)(C). (b)(6) (b)(7)(C) stated that he was a retired trial judge and a part-time Federal magistrate. He stressed that he was present only as an advisor and a friend of (b)(6) (b)(7)(C).

Despite (b)(6) (b)(7)(C) claims of being able to prove (b)(6) (b)(7)(C) was murdered by presenting facts and evidence from the crime scene pictures and autopsy photographs and report, it was apparent to the OIG investigators that (b)(6) (b)(7)(C) was basing his facts and evidence on only four or five photographs. Many of his questions could have been readily answered by viewing the additional photographs. (b)(6) (b)(7)(C) informed us that (b)(6) (b)(7)(C) had not seen all the photographs and requested that we not show (b)(6) (b)(7)(C) certain additional photographs. (b)(6) (b)(7)(C) stated (b)(6) (b)(7)(C) had not allowed (b)(6) (b)(7)(C) to see all of the crime scene and autopsy photographs, and (b)(6) (b)(7)(C) acknowledged that (b)(6) (b)(7)(C) did not believe (b)(6) (b)(7)(C) could emotionally handle seeing them. (b)(6) (b)(7)(C) had chosen only certain photographs for (b)(6) (b)(7)(C) viewing, and those show little detail. As a result, (b)(6) (b)(7)(C) knowledge and understanding of the autopsy procedures and findings were limited.

(b)(6) (b)(7)(C) continued to claim he had witnesses whose testimony would prove that (b)(6) (b)(7)(C) death was a murder; however, he refused to identify those witnesses. (b)(6) (b)(7)(C) also stated he had additional information pertaining to the covert operations that he had not even provided to (b)(6) (b)(7)(C). He refused to discuss any aspect of his allegations pertaining to covert operations and refused to provide his additional information. (b)(6) (b)(7)(C) claimed to

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have information obtained from MCAS El Toro to prove a conspiracy to cover up (b)(6) (b)(7)(C) murder and efforts to discredit himself as a doctor. He refused to provide this information.

Other than repeating allegations made by (b)(6) (b)(7)(C), and discussing the opinions of (b)(6) (b)(7)(C) had no factual information or direct knowledge to present that would assist in the investigation.

On December 23, 1994, OIG, Department of Defense, subpoenas duces tecum were served on (b)(6) (b)(7)(C), requiring the production of documents that they claimed to have in their possession relating to their allegations. On January 23, 1995, (b)(6) (b)(7)(C) declined to provide the information. By letter on March 30, 1995, they were informed that the OIG had determined that any further efforts to obtain their cooperation would be fruitless and that no request for enforcement of the subpoenas would be made.

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CONCLUSIONS

1. There is no credible evidence to support the allegation that Col Sabow's death was the result of a homicide. There is extensive evidence to support the conclusion that Col Sabow's death was self-inflicted.
2. The NIS investigation was conducted in a satisfactory manner except for procedural errors by a NIS agent and a NIS forensic agent. A NIS agent improperly handled the shotgun before it was sent to the laboratory for processing. Fingerprints were, however, properly taken of everyone who had access to the weapon. The weapon should have been properly safeguarded according to NIS policy. Procedural errors by a NIS forensic agent captured on video/audio tape included undressing the decedent at the scene, failing to bag the hands before moving the body, and failing to use a sheet when moving the body to catch any evidence that may have fallen into the grass. The handling of the body should have been conducted according to NIS policy. These procedural errors had no impact on the outcome of the investigation.
3. There is no credible evidence to support the allegations that illegal covert activities were taking place at MCAS El Toro, or that Col Sabow had any knowledge of illegal covert activities taking place at MCAS El Toro. The NIS did not investigate the allegations of illegal covert activities taking place at MCAS El Toro because the allegations had not been presented to the NIS at the time they were conducting their investigation.

RECOMMENDATIONS

1. The review should be closed with a finding that the investigation conducted by the NIS was satisfactory and the evidence supports the conclusion that Col Sabow's death was self-inflicted.
2. A copy of this report be provided to the Congress, Secretary of the Navy and requesting family members in accordance with the provisions of Title 10, United States Code, Section 113, note, "Investigations of Deaths of Members of the Armed Forces from Self-Inflicted Causes."

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